

PART 28—INTERNATIONAL BANKING ACTIVITIES

Subpart A—Foreign Operations of National Banks

Sec.

- 28.1 Authority, purpose, and scope.
- 28.2 Definitions.
- 28.3 Filing requirements for foreign operations of a national bank.
- 28.4 Permissible activities.
- 28.5 Filing of notice.

Subpart B—Federal Branches and Agencies of Foreign Banks

- 28.10 Authority, purpose, and scope.
- 28.11 Definitions.
- 28.12 Approval of a Federal branch or agency.
- 28.13 Permissible activities.
- 28.14 Limitations based upon capital of a foreign bank.
- 28.15 Capital equivalency deposits.
- 28.16 Deposit-taking by an uninsured Federal branch.
- 28.17 Notice of change in activity or operations.
- 28.18 Recordkeeping and reporting.
- 28.19 Enforcement.
- 28.20 Maintenance of assets.
- 28.21 Service of process.
- 28.22 Voluntary liquidation.
- 28.23 Termination of a Federal branch or agency.

Subpart C—International Lending Supervision

- 28.50 Authority, purpose, and scope.
- 28.51 Definitions.
- 28.52 Allocated transfer risk reserve.
- 28.53 Accounting for fees on international loans.
- 28.54 Reporting and disclosure of international assets.

AUTHORITY: 12 U.S.C. 1 *et seq.*, 24(Seventh), 93a, 161, 602, 1818, 3101 *et seq.*, and 3901 *et seq.*

SOURCE: 61 FR 19532, May 2, 1996, unless otherwise noted.

Subpart A—Foreign Operations of National Banks

§ 28.1 Authority, purpose, and scope.

(a) *Authority.* This subpart is issued pursuant to 12 U.S.C. 1 *et seq.*, 24(Seventh), 93a, and 602.

(b) *Purpose.* This subpart sets forth filing requirements for national banks that engage in international operations

and clarifies permissible foreign activities of national banks.

(c) *Scope.* This subpart applies to any national bank that engages in international operations through a foreign branch, or acquires an interest in an Edge corporation, Agreement corporation, foreign bank, or certain other foreign organizations.

§ 28.2 Definitions.

For purposes of this subpart:

(a) *Agreement corporation* means a corporation having an agreement or undertaking with the Board of Governors of the Federal Reserve System (FRB) under section 25 of the Federal Reserve Act (FRA), 12 U.S.C. 601 through 604a.

(b) *Edge corporation* means a corporation that is organized under section 25A of the FRA, 12 U.S.C. 611 through 631.

(c) *Foreign bank* means an organization that:

- (1) Is organized under the laws of a foreign country;
- (2) Engages in the business of banking;
- (3) Is recognized as a bank by the bank supervisory or monetary authority of the country of its organization or principal banking operations;
- (4) Receives deposits to a substantial extent in the regular course of its business; and
- (5) Has the power to accept demand deposits.

(d) *Foreign branch* means an office of a national bank (other than a representative office) that is located outside the United States at which banking or financing business is conducted.

(e) *Foreign country* means one or more foreign nations, and includes the overseas territories, dependencies, and insular possessions of those nations and of the United States, and the Commonwealth of Puerto Rico.

[61 FR 19532, May 2, 1996, as amended at 61 FR 60387, Nov. 27, 1996]

§ 28.3 Filing requirements for foreign operations of a national bank.

(a) *Notice requirement.* A national bank shall notify the OCC when it:

- (1) Files an application, notice, or report with the FRB to:
 - (i) Establish, open, close, or relocate a foreign branch; or

(ii) Acquire or divest of an interest in, or close, an Edge corporation, Agreement corporation, foreign bank, or other foreign organization; or

(2) Opens, closes, or relocates a foreign branch, and no application or notice is required by the FRB for such transaction.

(b) *Other applications and notices accepted.* In lieu of a notice under paragraph (a)(1) of this section, the OCC may accept a copy of an application, notice, or report submitted to another Federal agency that covers the proposed action and contains substantially the same information required by the OCC.

(c) *Additional information.* A national bank shall furnish the OCC with any additional information the OCC may require in connection with the national bank's foreign operations.

§ 28.4 Permissible activities.

(a) *General.* Subject to the applicable approval process, if any, a national bank may engage in any activity in a foreign country that is:

(1) Permissible for a national bank in the United States; and

(2) Usual in connection with the business of banking in the country where it transacts business.

(b) *Additional activities.* In addition to its general banking powers, a national bank may engage in any activity in a foreign country that is permissible under the FRB's Regulation K, 12 CFR part 211.

(c) *Foreign operations guarantees.* A national bank may guarantee the deposits and other liabilities of its Edge corporations and Agreement corporations and of its corporate instrumentalities in foreign countries.

§ 28.5 Filing of notice.

(a) *Where to file.* A national bank shall file any notice or submission required under this subpart with the Office of the Comptroller of the Currency, International Banking and Finance, 250 E Street SW, Washington, DC 20219.

(b) *Availability of forms.* Individual forms and instructions for filings are available from International Banking and Finance.

Subpart B—Federal Branches and Agencies of Foreign Banks

§ 28.10 Authority, purpose, and scope.

(a) *Authority.* This subpart is issued pursuant to the authority in the International Banking Act of 1978 (IBA), 12 U.S.C. 3101 *et seq.*, and 12 U.S.C. 93a.

(b) *Purpose and scope.* This subpart implements the IBA pertaining to the licensing, supervision, and operations of Federal branches and agencies in the United States. For corporate procedures pertaining to Federal branches and agencies, refer to 12 CFR part 5.

[61 FR 19532, May 2, 1996, as amended at 61 FR 60387, Nov. 27, 1996]

§ 28.11 Definitions.

For purposes of this subpart:

(a) *Affiliate* means any entity that controls, is controlled by, or is under common control with another entity.

(b) *Agreement corporation* means a corporation having an agreement or undertaking with the FRB under section 25 of the FRA, 12 U.S.C. 601 through 604a.

(c) *Capital equivalency deposit* means a deposit by a Federal branch or agency in a member bank as described in section 4 of the IBA, 12 U.S.C. 3102(g).

(d) *Change the status of an office* means conversion of a:

(1) State branch or state agency operated by a foreign bank, or a commercial lending company controlled by a foreign bank, into a Federal branch, limited Federal branch, or Federal agency;

(2) Federal agency into a Federal branch or limited Federal branch;

(3) Federal branch into a limited Federal branch or Federal agency; or

(4) Limited Federal branch into a Federal branch or Federal agency.

(e) *Control.* An entity controls another entity if the entity directly or indirectly controls or has the power to vote 25 percent or more of any class of voting securities of the other entity or controls in any manner the election of a majority of the directors or trustees of the other entity.

(f) *Edge corporation* means a corporation that is organized under section 25A of the FRA, 12 U.S.C. 611 through 631.

(g) *Establish a Federal branch or agency* means to:

(1) Open and conduct business through a Federal branch or agency;

(2) Acquire directly or indirectly through merger, consolidation, or similar transaction with another foreign bank, the operations of a Federal branch or agency that is open and conducting business;

(3) Acquire a Federal branch or agency through the acquisition of a foreign bank subsidiary that will cease to operate in the same corporate form following the acquisition;

(4) Change the status of an office; or

(5) Relocate a Federal branch or agency within a state or from one state to another.

(h) *Federal agency* means an office or place of business, licensed by the OCC and operated by a foreign bank in any state, that may engage in the business of banking, including maintaining credit balances, cashing checks, and lending money, but may not accept deposits from citizens or residents of the United States. Obligations may not be considered credit balances unless they are:

(1) Incidental to, or arise out of the exercise of, other lawful banking powers;

(2) To serve a specific purpose;

(3) Not solicited from the general public;

(4) Not used to pay routine operating expenses in the United States such as salaries, rent, or taxes;

(5) Withdrawn within a reasonable period of time after the specific purpose for which they were placed has been accomplished; and

(6) Drawn upon in a manner reasonable in relation to the size and nature of the account.

(i) *Federal branch* means an office or place of business, licensed by the OCC and operated by a foreign bank in any state, that may engage in the business of banking, including accepting deposits, that is not a Federal agency as defined in paragraph (h) of this section.

(j) *Foreign bank* means an organization that is organized under the laws of a foreign country, a territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands, and that engages directly in the

business of banking in a foreign country.

(k) *Foreign business* means any entity, including a corporation, partnership, sole proprietorship, association, foundation or trust that is organized under the laws of a foreign country, or any United States entity that is controlled by a foreign entity or foreign national.

(l) *Foreign country* means one or more foreign nations, and includes the overseas territories, dependencies, and insular possessions of those nations and of the United States, and the Commonwealth of Puerto Rico.

(m) *Home country* means the country in which the foreign bank is chartered or incorporated.

(n) *Home country supervisor* means the governmental entity or entities in the foreign bank's home country responsible for supervising and regulating the foreign bank.

(o) *Home state* of a foreign bank means the state in which the foreign bank has a branch, agency, subsidiary commercial lending company, or subsidiary bank. If a foreign bank has an office in more than one state, the home state of the foreign bank is the state that is selected to be the home state by the foreign bank or, in default of the foreign bank's selection, by the FRB.

(p) *Immediate family member of an individual* means the spouse, father, mother, brother, sister, son, or daughter of that individual.

(q) *Initial deposit* means the first deposit transaction between a depositor and the Federal branch made on or after July 1, 1996. The initial deposit may be placed into different deposit accounts or into different kinds of deposit accounts, such as demand, savings, or time accounts. Deposit accounts that are held by a depositor in the same right and capacity may be added together for the purpose of determining the dollar amount of the initial deposit. *First deposit* means the deposit made when there is no current deposit relationship between the depositor and the Federal branch.

(r) *International banking facility* means a set of asset and liability accounts segregated on the books and records of a depository institution, a United States branch or agency of a foreign bank, or an Edge corporation or

Agreement corporation, that includes only international banking facility time deposits and extensions of credit.

(s) *Large United States business* means any business entity including a corporation, company, partnership, sole proprietorship, association, foundation or trust that is organized under the laws of the United States or any state thereof, and has:

(1) Securities registered on a national securities exchange or quoted on the National Association of Securities Dealers Automated Quotation System; or

(2) More than \$1 million in annual gross revenues for the fiscal year immediately preceding the year of the initial deposit.

(t) *Limited Federal branch* means a Federal branch that, pursuant to an agreement between the parent foreign bank and the FRB, may receive only those deposits permissible for an Edge corporation to receive.

(u) *Managed or controlled* by a Federal branch or agency means that a majority of the responsibility for business decisions, including decisions with regard to lending, asset management, funding, or liability management, or the responsibility for recordkeeping of assets or liabilities for a non-United States office, resides at the Federal branch or agency. For purposes of this definition, forwarding data or information of offshore operations gathered or compiled by the United States office in the normal course of business to the parent foreign bank does not constitute recordkeeping.

(v) *Manual* means the Comptroller's Corporate Manual (see 12 CFR 5.2(c)).

(w) *Parent foreign bank senior management* means individuals at the executive level of the parent foreign bank who are responsible for supervising and authorizing activities of the Federal branch or agency.

(x) *Person* means an individual or a corporation, government, partnership, association, or any other entity.

(y) *State* means any state of the United States and the District of Columbia.

(z) *United States bank* means a bank organized under the laws of the United States or any state.

[61 FR 19532, May 2, 1996, as amended at 61 FR 60387, Nov. 27, 1996]

§ 28.12 Approval of a Federal branch or agency.

(a) *Approval requirements.* A foreign bank shall submit an application to and obtain prior approval from the OCC before it:

(1) Establishes a Federal branch, Federal agency, or limited Federal branch; or

(2) Exercises fiduciary powers at a Federal branch. (A foreign bank may submit an application to exercise fiduciary powers at the time of filing an application for a Federal branch or at any subsequent date.)

(b) *Standards for approval.* Generally, in reviewing an application by a foreign bank to establish a Federal branch or agency, the OCC considers:

(1) The financial and managerial resources and future prospects of the applicant foreign bank and the Federal branch or agency;

(2) Whether the foreign bank has furnished to the OCC the information the OCC requires to assess the application adequately, and provided the OCC with adequate assurances that information will be made available to the OCC on the operations or activities of the foreign bank or any of its affiliates that the OCC deems necessary to determine and enforce compliance with the IBA and other applicable Federal banking statutes;

(3) Whether the foreign bank and its United States affiliates are in compliance with applicable United States law;

(4) The convenience and needs of the community to be served and the effects of the proposal on competition in the domestic and foreign commerce of the United States;

(5) Whether the foreign bank is subject to comprehensive supervision or regulation on a consolidated basis by its home country supervisor; and

(6) Whether the home country supervisor has consented to the proposed establishment of the Federal branch or agency.

(c) *Comprehensive supervision or regulation on a consolidated basis.* In determining whether a foreign bank is subject to comprehensive supervision or regulation on a consolidated basis, the OCC reviews various factors, including whether the foreign bank is supervised or regulated in a manner so that its home country supervisor receives sufficient information on the worldwide operations of the foreign bank to assess the foreign bank's overall financial condition and compliance with laws and regulations as specified in the FRB's Regulation K, 12 CFR 211.24.

(d) *Conditions on approval.* The OCC may impose conditions on its approval including a condition permitting future termination of activities based on the inability of the foreign bank to provide information on its activities, or those of its affiliate, that the OCC deems necessary to determine and enforce compliance with United States banking laws.

(e) *Expedited review.* Unless the OCC concludes that the filing presents significant supervisory or compliance concerns, or raises significant legal or policy issues, the OCC generally processes the following filings by an eligible foreign bank, as defined in paragraph (f) of this section, under expedited review procedures:

(1) *Intrastate relocations.* An application submitted by an eligible foreign bank to relocate a Federal branch or agency within a state is deemed approved by the OCC as of the seventh day after the close of the applicable public comment period in 12 CFR part 5, unless the OCC notifies the bank prior to that date that the filing is not eligible for expedited review.

(2) *Change of status.* An application to change the status of an office submitted by an eligible foreign bank is deemed approved by the OCC 45 days after filing with the OCC, unless the OCC notifies the bank prior to that date that the filing is not eligible for expedited review.

(3) *Fiduciary powers.* An application submitted by an eligible foreign bank to exercise fiduciary powers at an established Federal branch is deemed approved by the OCC 30 days after filing with the OCC, unless the OCC notifies

the bank prior to that date that the filing is not eligible for expedited review.

(4) *Other filings.* Any other application submitted by an eligible foreign bank may be approved by the OCC on an expedited basis as described in the Manual.

(f) *Eligible foreign bank.* For purposes of this section, a foreign bank is an eligible foreign bank if each Federal branch and agency of the foreign bank in the United States:

(1) Has a composite rating of 1 or 2 under the interagency rating system for United States branches and agencies of foreign banks;

(2) Is not subject to a cease and desist order, consent order, formal written agreement, Prompt Corrective Action directive (see 12 CFR part 6) or, if subject to such order, agreement, or directive, is informed in writing by the OCC that the Federal branch or agency may be treated as an "eligible foreign bank" for purposes of this section; and

(3) Has, if applicable, a Community Reinvestment Act (CRA), 12 U.S.C. 2906, rating of "Outstanding" or "Satisfactory".

(g) *After-the-fact approval.* Unless otherwise provided by the OCC, a foreign bank proposing to establish a Federal branch or agency through the acquisition of, or merger or consolidation with, a foreign bank that has an office in the United States, may proceed with the transaction before an application to establish the Federal branch or agency has been filed or acted upon, if the applicant:

(1) Gives the OCC reasonable advance notice of the proposed acquisition, merger, or consolidation;

(2) Prior to consummation of the acquisition, merger, or consolidation, commits in writing to comply with the OCC application procedures within a reasonable period of time, or has already submitted an application; and

(3) Commits in writing to abide by the OCC's decision on the application, including a decision to terminate activities of the Federal branch or agency.

(h) *Procedures for approval.* A foreign bank shall file an application for approval pursuant to this section in accordance with 12 CFR part 5 and the Manual.

Comptroller of the Currency, Treasury

§ 28.15

(i) Additional requirements. Nothing in this section relieves a foreign bank of any requirement to obtain the approval of the FRB as may be necessary under the FRB's Regulation K, 12 CFR part 211.

§ 28.13 Permissible activities.

(a) *Applicability of laws*—(1) *General*. Except as otherwise provided by the IBA, other Federal laws or regulations, or otherwise determined by the OCC, the operations of a foreign bank at a Federal branch or agency shall be conducted with the same rights and privileges and subject to the same duties, restrictions, penalties, liabilities, conditions, and limitations that would apply if the Federal branch or agency were a national bank operating at the same location.

(2) *Parent foreign bank senior management approval*. Unless otherwise provided by the OCC, any provision in law, regulation, policy, or procedure that requires a national bank to obtain the approval of its board of directors will be deemed to require a Federal branch or agency to obtain the approval of parent foreign bank senior management.

(b) *Management of shell branches*—(1) *Federal branches and agencies*. A Federal branch or agency of a foreign bank shall not manage, through an office of the foreign bank that is located outside the United States and that is managed or controlled by that Federal branch or agency, any type of activity that a United States bank is not permitted to manage at any branch or subsidiary of the United States bank that is located outside the United States.

(2) *Activities managed in foreign branches or subsidiaries of United States banks*. The types of activities referred to in paragraph (b)(1) of this section include the types of activities authorized to a United States bank by state or Federal charters, regulations issued by chartering or regulatory authorities, and other United States banking laws. However, United States procedural or quantitative requirements that may be applicable to the conduct of those activities by United States banks do not apply.

(c) *Additional guidance regarding permissible activities*. For purposes of sec-

tion 7(h) of the IBA, 12 U.S.C. 3105(h), the OCC may issue opinions, interpretations, or rulings regarding permissible activities of Federal branches.

§ 28.14 Limitations based upon capital of a foreign bank.

(a) *General*. Any limitation or restriction based upon the capital of a national bank shall be deemed to refer, as applied to a Federal branch or agency, to the dollar equivalent of the capital of the foreign bank.

(b) *Calculation*. Unless otherwise provided by the OCC, a foreign bank must calculate its capital in a manner consistent with 12 CFR part 3, for purposes of this section.

(c) *Aggregation*. The foreign bank shall aggregate business transacted by all Federal branches and agencies with the business transacted by all state branches and state agencies controlled by the foreign bank in determining its compliance with limitations based upon the capital of the foreign bank. The foreign bank shall designate one Federal branch or agency office in the United States to maintain consolidated information so that the OCC can monitor compliance.

§ 28.15 Capital equivalency deposits.

(a) *Capital equivalency deposits*—(1) *General*. For purposes of section 4(g) of the IBA, 12 U.S.C. 3102(g), unless otherwise provided by the OCC, a foreign bank's capital equivalency deposits (CED) must consist of:

(i) Investment securities eligible for investment by national banks;

(ii) United States dollar deposits payable in the United States, other than certificates of deposit;

(iii) Certificates of deposit, payable in the United States, and banker's acceptances, provided that, in either case, the issuer or the instrument is rated investment grade by an internationally recognized rating organization, and neither the issuer nor the instrument is rated lower than investment grade by any such rating organization that has rated the issuer or the instrument; or

(iv) Other assets permitted by the OCC to qualify as CED.

(2) *Legal requirements*. The agreement with the depository bank to hold the

§ 28.16

CED and the amount of the deposit must comply with the requirements in section 4(g) of the IBA, 12 U.S.C. 3102(g). If a foreign bank has more than one Federal branch or agency in a state, it shall determine the CED and the amount of liabilities requiring capital equivalency coverage on an aggregate basis for all the foreign bank's Federal branches or agencies in that state.

(b) *Increase in capital equivalency deposits.* For prudential or supervisory reasons, the OCC may require, in individual cases or otherwise, that a foreign bank increase its CED above the minimum amount. For example, the OCC may require an increase if a Federal branch or agency of the foreign bank increases its leverage through the establishment, acquisition, or maintenance of an operating subsidiary.

(c) *Value of assets.* The obligations referred to in paragraph (a) of this section must be valued at principal amount or market value, whichever is lower.

(d) *Deposit arrangements.* A foreign bank should require its depository bank to segregate its CED on the depository bank's books and records. The funds deposited and obligations referred to in paragraph (a) of this section that are placed in safekeeping at a depository bank to satisfy a foreign bank's CED requirement:

(1) May not be reduced in value below the minimum required for that branch or agency without the prior approval of the OCC, but in no event below the statutory minimum;

(2) Must be maintained pursuant to an agreement prescribed by the OCC that shall be a written agreement entered into with the OCC for purposes of section 8 of the Federal Deposit Insurance Act, 12 U.S.C. 1818; and

(3) Must be free from any lien, charge, right of setoff, credit, or preference in connection with any claim of the depository bank against the foreign bank.

(e) *Maintenance of capital equivalency ledger account.* Each Federal branch or agency shall maintain a capital equivalency account and keep records of the amount of liabilities requiring capital

12 CFR Ch. I (1-1-03 Edition)

equivalency coverage in a manner and form prescribed by the OCC.

[61 FR 60363, Nov. 27, 1996, as amended at 66 FR 49098, Sept. 26, 2001; 67 FR 4326, Jan. 30, 2002; 67 FR 41620, June 19, 2002]

§ 28.16 Deposit-taking by an uninsured Federal branch.

(a) *Policy.* In carrying out this section, the OCC shall consider the importance of according foreign banks competitive opportunities equal to those of United States banks and the availability of credit to all sectors of the United States economy, including international trade finance.

(b) *General.* An uninsured Federal branch may accept initial deposits of less than \$100,000 only from:

(1) Individuals who are not citizens or residents of the United States at the time of the initial deposit;

(2) Individuals who are not citizens of the United States, but are residents of the United States, and are employed by a foreign bank, foreign business, foreign government, or recognized international organization;

(3) Persons (including immediate family members of an individual) to whom the branch or foreign bank (including any affiliate thereof) has extended credit or provided other non-deposit banking services within the past 12 months, or with whom the branch or foreign bank has a written agreement to extend credit or provide such services within 12 months after the date of the initial deposit;

(4) Foreign businesses and large United States businesses;

(5) Foreign governmental units, including political subdivisions, and recognized international organizations;

(6) Federal and state governmental units, including political subdivisions and agencies thereof;

(7) Persons who are depositing funds in connection with the issuance of a financial instrument by the branch for transmission of funds, or transmission of funds by any electronic means;

(8) Persons who may deposit funds with an Edge corporation as provided in the FRB's Regulation K, 12 CFR 211.4, including persons engaged in certain international business activities; and

(9) Any other depositor if:

(i) The aggregate amount of deposits received from those depositors does not exceed, on an average daily basis, 1 percent of the average of the branch's deposits for the last 30 days of the most recent calendar quarter, excluding deposits of other offices, branches, agencies, or wholly owned subsidiaries of the foreign bank; and

(ii) The branch does not solicit deposits from the general public by advertising, display of signs, or similar activity designed to attract the attention of the general public.

(c) *Application for an exemption.* A foreign bank may apply to the OCC for an exemption to permit an uninsured Federal branch to accept or maintain deposit accounts that are not listed in paragraph (b) of this section. The request should describe:

(1) The types, sources, and estimated amounts of such deposits and explain why the OCC should grant an exemption; and

(2) How the exemption maintains and furthers the policies described in paragraph (a) of this section.

(d) *Aggregation of deposits.* For purposes of paragraph (b)(9) of this section, a foreign bank that has more than one Federal branch in the same state may aggregate deposits in all of its Federal branches in that state, but exclude deposits of other branches, agencies or wholly owned subsidiaries of the bank. The Federal branch shall compute the average amount by using the sum of deposits as of the close of business of the last 30 calendar days ending with and including the last day of the calendar quarter, divided by 30. The Federal branch shall maintain records of the calculation until its next examination by the OCC.

(e) *Notification to depositors.* A Federal branch that accepts deposits pursuant to this section shall provide notice to depositors pursuant to 12 CFR 346.7, which generally requires that the Federal branch conspicuously display a sign at the branch and include a statement on each signature card, passbook, and instrument evidencing a deposit that the deposit is not insured by the Federal Deposit Insurance Corporation (FDIC).

(f) *Transition period.* (1) An uninsured Federal branch may maintain a deposit

lawfully accepted under the exemptions existing prior to July 1, 1996 if the deposit would qualify for an exemption under paragraph (b) of this section, except for the fact that the deposit was made before July 1, 1996.

(2) If a deposit lawfully accepted under the exemption existing prior to July 1, 1996 would not qualify for an exemption under paragraph (b) or (c) of this section, the uninsured Federal branch must terminate the deposit no later than:

(i) In the case of time deposits, the maturity of a time deposit or October 1, 1996, whichever is longer; or

(ii) In the case of all other deposits, five years after July 1, 1996.

(g) *Insured banks in United States territories.* For purposes of this section, the term "foreign bank" does not include any bank organized under the laws of any territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands whose deposits are insured by the FDIC pursuant to the Federal Deposit Insurance Act, 12 U.S.C. 1811 *et seq.*

§ 28.17 Notice of change in activity or operations.

Notice. A Federal branch or agency shall notify the OCC if:

(a) It changes its corporate title;

(b) It changes its mailing address;

(c) It converts to a state branch, state agency, or representative office; or

(d) The parent foreign bank changes the designation of its home state.

§ 28.18 Recordkeeping and reporting.

(a) *General.* A Federal branch or agency shall comply with applicable recordkeeping and reporting requirements that apply to national banks and with any additional requirements that may be prescribed by the OCC. A Federal branch or agency, and the parent foreign bank, shall furnish information relating to the affairs of the parent foreign bank and its affiliates that the OCC may from time to time request.

(b) *Regulatory reports filed with other agencies.* A foreign bank operating a Federal branch or agency in the United States shall provide the OCC with a copy of reports filed with other Federal

§ 28.19

regulatory agencies that are designated in guidance issued by the OCC.

(c) *Maintenance of accounts, books, and records.* (1) Each Federal branch or agency shall maintain a set of accounts and records reflecting its transactions that are separate from those of the foreign bank and any other branch or agency. The Federal branch or agency shall keep a set of accounts and records in English sufficient to permit the OCC to examine the condition of the Federal branch or agency and its compliance with applicable laws and regulations. The Federal branch or agency shall promptly provide any additional records requested by the OCC for examination or supervisory purposes.

(2) A foreign bank with more than one Federal branch or agency in a state shall designate one of those offices to maintain consolidated asset, liability, and capital equivalency accounts for all Federal branches or agencies in that state.

§ 28.19 Enforcement.

As provided by section 13 of the IBA, 12 U.S.C. 3108(b), the OCC may enforce compliance with the requirements of the IBA, other applicable banking laws, and OCC regulations or orders under section 8 of the Federal Deposit Insurance Act, 12 U.S.C. 1818. This enforcement authority is in addition to any other remedies otherwise provided by the IBA or any other law.

§ 28.20 Maintenance of assets.

(a) *General rule.* (1) For prudential, supervisory, or enforcement reasons, the OCC may require a foreign bank to hold certain assets in the state in which its Federal branch or agency is located. Those assets may only consist of currency, bonds, notes, debentures, drafts, bills of exchange, or other evidence of indebtedness including loan participation agreements or certificates, or other obligations payable in the United States or in United States funds or, with the approval of the OCC, funds freely convertible into United States funds.

(2) If the OCC requires asset maintenance, the amount of assets held by a foreign bank shall be prescribed by the OCC, but may not be less than 105 percent of the aggregate amount of liabil-

12 CFR Ch. I (1-1-03 Edition)

ities of the Federal branch or agency, payable at or through the Federal branch or agency. To determine the aggregate amount of liabilities for purposes of this section, the foreign bank shall include bankers' acceptances, but exclude liabilities to the head office and any other branches, offices, agencies, subsidiaries, and affiliates of the foreign bank.

(b) *Valuation.* For the purposes of this section, marketable securities must be valued at principal amount or market value, whichever is lower.

(c) *Credits.* In determining compliance with the asset maintenance requirements, the OCC will give the Federal branch or agency credit for:

(1) Capital equivalency deposits maintained pursuant to § 28.15;

(2) Reserves required to be maintained by the Federal branch or agency pursuant to the FRB's authority under 12 U.S.C. 3105(a); and

(3) Assets pledged, and surety bonds payable, to the FDIC to secure the payment of domestic deposits.

(d) *Exclusions.* In determining eligible assets for purposes of this section, the Federal branch or agency shall exclude:

(1) Any amount due from the head office or any other branch, office, agency, subsidiary, or affiliate of the foreign bank;

(2) Any classified asset;

(3) Any asset that, in the determination of the OCC, is not supported by sufficient credit information;

(4) Any deposit with a bank in the United States, unless that bank has executed a valid waiver of offset agreement;

(5) Any asset not in the Federal branch's actual possession unless the branch holds title to the asset and maintains records sufficient to enable independent verification of the branch's ownership of the asset, as determined at the most recent examination; and

(6) Any other particular asset or class of assets as provided by the OCC, based on a case-by-case assessment of the risks associated with the asset.

(e) *International banking facility.* Unless specifically exempted by the OCC, the eligible assets and liabilities of any international banking facility operated through the Federal branch or agency

must be included in the computation of eligible assets and liabilities for purposes of this section.

§ 28.21 Service of process.

A foreign bank operating at any Federal branch or agency is subject to service of process at the location of the Federal branch or agency.

§ 28.22 Voluntary liquidation.

(a) *Procedures.* Unless otherwise provided, a Federal branch or agency that proposes to close its operations shall comply with the requirements in 12 CFR 5.48, as applicable, and the Manual.

(b) *Notice to customers and creditors.* A foreign bank shall provide any customers and known creditors, not previously notified in writing, with written notice of the impending closure of the Federal branch or agency at least 30 days prior to its closure.

(c) *Report of condition.* The Federal branch or agency shall submit a Report of Assets and Liabilities of United States Branches and Agencies of Foreign Banks as of the close of the last business day prior to the start of liquidation of the Federal branch or agency. This report must include a certified maturity schedule of all remaining liabilities, if any.

(d) *Return of certificate.* The Federal branch or agency shall return the Federal branch or agency license certificate within 30 days of closure to the public.

(e) *Reports of examination.* The Federal branch or agency shall send the OCC certification that all of its Reports of Examination have been destroyed or return its Reports of Examination to the OCC.

§ 28.23 Termination of a Federal branch or agency.

(a) *Grounds for termination.* The OCC may revoke the authority of a foreign bank to operate a Federal branch or agency if:

(1) The OCC determines that there is reasonable cause to believe that the foreign bank has violated or failed to comply with any of the provisions of

the IBA, other applicable Federal laws or regulations, or orders of the OCC;

(2) A conservator is appointed for the foreign bank, or a similar proceeding is initiated in the foreign bank's home country;

(3) One or more grounds for receivership, including insolvency, as specified in 12 U.S.C. 3102(j), exists;

(4) One or more grounds for termination, including unsafe and unsound practices, insufficiency or dissipation of assets, concealment of books and records, a money laundering conviction, or other grounds as specified in 12 U.S.C. 191, exists; or

(5) The OCC receives a recommendation from the FRB, pursuant to 12 U.S.C. 3105(e)(5), that the license of a Federal branch or agency be terminated.

(b) *Procedures—(1) Notice and hearing.* Except as otherwise provided in this section, the OCC may issue an order to terminate the license of a Federal branch or agency after providing notice to the Federal branch or agency and after providing an opportunity for a hearing.

(2) *Procedures for hearing.* The OCC shall conduct a hearing under this section pursuant to the OCC's Rules of Practice and Procedure in 12 CFR part 19.

(3) *Expedited procedure.* The OCC may act without providing an opportunity for a hearing if it determines that expeditious action is necessary in order to protect the public interest. When the OCC finds that it is necessary to act without providing an opportunity for a hearing, the OCC in its sole discretion, may:

(i) Provide the Federal branch or agency with notice of the intended termination order;

(ii) Grant the Federal branch or agency an opportunity to present a written submission opposing issuance of the order; or

(iii) Take any other action designed to provide the Federal branch or agency with notice and an opportunity to present its views concerning the termination order.

Subpart C—International Lending Supervision

§ 28.50 Authority, purpose, and scope.

(a) *Authority.* This subpart is issued pursuant to 12 U.S.C. 1 *et seq.*, 93a, 161, and 1818; and the International Lending Supervision Act of 1983 (Pub. L. 98–181, title IX, 97 Stat. 1153, 12 U.S.C. 3901 *et seq.*).

(b) *Purpose.* This subpart implements the requirements of the International Lending Supervision Act of 1983 (12 U.S.C. 3901 *et seq.*).

(c) *Scope.* This subpart requires national banks and District of Columbia banks to establish reserves against the risks presented in certain international assets and sets forth the accounting for various fees received by the banks when making international loans.

§ 28.51 Definitions.

For the purposes of this subpart:

(a) *Banking institution* means a national bank or a District of Columbia bank.

(b) *Federal banking agencies* means the OCC, the FRB, and the FDIC.

(c) *International assets* means those assets required to be included in banking institutions' *Country Exposure Report* forms (FFIEC 009).

(d) *International loan* means a loan as defined in the instructions to the *Report of Condition and Income* for the respective banking institution (FFIEC 031, 032, 033 and 034) and made to a foreign government, or to an individual, a corporation, or other entity not a citizen of, resident in, or organized or incorporated in the United States.

(e) *Restructured international loan* means a loan that meets the following criteria:

(1) The borrower is unable to service the existing loan according to its terms and is a resident of a foreign country in which there is a generalized inability of public and private sector obligors to meet their external debt obligations on a timely basis because of a lack of, or restraints on the availability of, needed foreign exchange in the country; and

(2) The terms of the existing loan are amended to reduce stated interest or extend the schedule of payments; or

(3) A new loan is made to, or for the benefit of, the borrower, enabling the

borrower to service or refinance the existing debt.

(f) *Transfer risk* means the possibility that an asset cannot be serviced in the currency of payment because of a lack of, or restraints on the availability of, needed foreign exchange in the country of the obligor.

[61 FR 19532, May 2, 1996, as amended at 63 FR 57048, Oct. 26, 1998]

§ 28.52 Allocated transfer risk reserve.

(a) *Establishment of allocated transfer risk reserve.* A banking institution shall establish an allocated transfer risk reserve (ATRR) for specified international assets when required by the OCC in accordance with this section.

(b) *Procedures and standards—(1) Joint agency determination.* At least annually, the Federal banking agencies shall determine jointly, based on the standards set forth in paragraph (b)(2) of this section, the following:

(i) Which international assets subject to transfer risk warrant establishment of an ATRR;

(ii) The amount of the ATRR for the specified assets; and

(iii) Whether an ATRR established for specified assets may be reduced.

(2) *Standards for requiring ATRR—(i) Evaluation of assets.* The Federal banking agencies shall apply the following criteria in determining whether an ATRR is required for particular international assets:

(A) Whether the quality of a banking institution's assets has been impaired by a protracted inability of public or private obligors in a foreign country to make payments on their external indebtedness as indicated by such factors, among others, as whether:

(1) Such obligors have failed to make full interest payments on external indebtedness;

(2) Such obligors have failed to comply with the terms of any restructured indebtedness; or

(3) A foreign country has failed to comply with any International Monetary Fund or other suitable adjustment program; or

(B) Whether no definite prospects exist for the orderly restoration of debt service.

(ii) *Determination of amount of ATRR.*

(A) In determining the amount of the

ATRR, the Federal banking agencies shall consider:

(1) The length of time the quality of the asset has been impaired;

(2) Recent actions taken to restore debt service capability;

(3) Prospects for restored asset quality; and

(4) Such other factors as the Federal banking agencies may consider relevant to the quality of the asset.

(B) The initial year's provision for the ATRR shall be 10 percent of the principal amount of each specified international asset, or such greater or lesser percentage determined by the Federal banking agencies. Additional provision, if any, for the ATRR in subsequent years shall be 15 percent of the principal amount of each specified international asset, or such greater or lesser percentage determined by the Federal banking agencies.

(3) *Notification.* Based on the joint agency determinations under paragraph (b)(1) of this section, the OCC shall notify each banking institution holding assets subject to an ATRR:

(i) Of the amount of the ATRR to be established by the institution for specified international assets; and

(ii) That an ATRR to be established for specified assets may be reduced.

(c) *Accounting treatment of ATRR—(1) Charge to current income.* A banking institution shall establish an ATRR by a charge to current income and the amounts so charged shall not be included in the banking institution's capital or surplus.

(2) *Separate accounting.* A banking institution shall account for an ATRR separately from the Allowance for Possible Loan Losses, and shall deduct the ATRR from "gross loans and leases" to arrive at "net loans and leases." The ATRR must be established for each asset subject to the ATRR in the percentage amount specified.

(3) *Consolidation.* A banking institution shall establish an ATRR, as required, on a consolidated basis. Consolidation should be in accordance with the procedures and tests of significance set forth in the instructions for preparation of *Consolidated Reports of Condition and Income* (FFIEC 031, 032, 033 and 034). For bank holding companies, the consolidation shall be in accordance

with the principles set forth in the "Instructions to the Bank Holding Company Financial Supplement to Report F.R. Y-6" (Form F.R. Y-9). Edge corporations and Agreement corporations engaged in banking shall report in accordance with instructions for preparation of the Report of Condition for Edge corporations and Agreement corporations (Form F.R. 2886b).

(4) *Alternative accounting treatment.* A banking institution need not establish an ATRR if it writes down in the period in which the ATRR is required, or has written down in prior periods, the value of the specified international assets in the requisite amount for each such asset. For purposes of this paragraph, international assets may be written down by a charge to the Allowance for Possible Loan Losses or a reduction in the principal amount of the asset by application of interest payments or other collections on the asset. However, the Allowance for Possible Loan Losses must be replenished in such amount necessary to restore it to a level which adequately provides for the estimated losses inherent in the banking institution's loan portfolio.

(5) *Reduction of ATRR.* A banking institution may reduce an ATRR when notified by the OCC or, at any time, by writing down such amount of the international asset for which the ATRR was established.

§ 28.53 Accounting for fees on international loans.

(a) *Restrictions on fees for restructured international loans.* No banking institution shall charge, in connection with the restructuring of an international loan, any fee exceeding the administrative costs of the restructuring unless it amortizes the amount of the fee exceeding the administrative cost over the effective life of the loan.

(b) *Accounting treatment.* Subject to paragraph (a) of this section, a banking institution is to account for fees in accordance with generally accepted accounting principles.

[63 FR 57048, Oct. 26, 1998]

§ 28.54 Reporting and disclosure of international assets.

(a) *Requirements.* (1) Pursuant to section 907(a) of the International Lending

Supervision Act of 1983 (title IX, Pub. L. 98–181, 97 Stat. 1153, 12 U.S.C. 3906) (ILSA) a banking institution shall submit to the OCC, at least quarterly, information regarding the amounts and composition of its holdings of international assets.

(2) Pursuant to section 907(b) of ILSA (12 U.S.C. 3906), a banking institution shall submit to the OCC information regarding concentrations in its holdings of international assets that are material in relation to total assets and to capital of the institution, such information to be made publicly available by the OCC on request.

(b) *Procedures.* The format, content, and reporting and filing dates of the reports required under paragraph (a) of this section shall be determined jointly by the Federal banking agencies. The requirements to be prescribed by the agencies may include changes to existing reporting forms (such as the Country Exposure Report, FFIEC 009) or such other requirements as the agencies deem appropriate. The agencies also may determine to exempt from the requirements of paragraph (a) of this section banking institutions that, in the agencies' judgment, have *de minimis* holdings of international assets.

(c) *Reservation of authority.* Nothing contained in this part shall preclude the OCC from requiring from a banking institution such additional or more frequent information on the institution's holdings of international assets as the OCC may consider necessary.

PART 29 [RESERVED]

PART 30—SAFETY AND SOUNDNESS STANDARDS

Sec.

30.1 Scope.

30.2 Purpose.

30.3 Determination and notification of failure to meet safety and soundness standard and request for compliance plan.

30.4 Filing of safety and soundness compliance plan.

30.5 Issuance of orders to correct deficiencies and to take or refrain from taking other actions.

30.6 Enforcement of orders.

APPENDIX A TO PART 30—INTERAGENCY GUIDELINES ESTABLISHING STANDARDS FOR SAFETY AND SOUNDNESS

APPENDIX B TO PART 30—INTERAGENCY GUIDELINES ESTABLISHING STANDARDS FOR SAFEGUARDING CUSTOMER INFORMATION

AUTHORITY: 12 U.S.C. 93a, 1818, 1831–p, 3102(b); 15 U.S.C. 6801, 6805(b)(1).

SOURCE: 60 FR 35680, July 10, 1995, unless otherwise noted.

§ 30.1 Scope.

(a) The rules set forth in this part and the standards set forth in appendices A and B to this part apply to national banks and federal branches of foreign banks, that are subject to the provisions of section 39 of the Federal Deposit Insurance Act (section 39)(12 U.S.C. 1831p–1).

(b) The standards set forth in appendix B to this part also apply to uninsured national banks, federal branches and federal agencies of foreign banks, and the subsidiaries of any national bank, federal branch or federal agency of a foreign bank (except brokers, dealers, persons providing insurance, investment companies and investment advisers). Violation of these standards may be an unsafe and unsound practice within the meaning of 12 U.S.C. 1818.

[66 FR 8633, Feb. 1, 2001]

§ 30.2 Purpose.

Section 39 of the FDI Act, 12 U.S.C. 1831p–1, requires the Office of the Comptroller of the Currency (OCC) to establish safety and soundness standards. Pursuant to section 39, a bank may be required to submit a compliance plan if it is not in compliance with a safety and soundness standard prescribed by guideline under section 39(a) or (b). An enforceable order under section 8 of the FDI Act, 12 U.S.C. 1818(b), may be issued if, after being notified that it is in violation of a safety and soundness standard prescribed under section 39, the bank fails to submit an acceptable compliance plan or fails in any material respect to implement an accepted plan. This part establishes procedures for requiring submission of a compliance plan and issuing an enforceable order pursuant to section 39. The Interagency Guidelines Establishing Standards for Safety and Soundness are set forth in appendix A to this part, and the Interagency Guidelines Establishing Standards for