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country, as well as the distribution and location of its assets and liabilities that are located or booked elsewhere;

(2) The extent to which the operations and assets of the foreign bank and any affiliates are subject to supervision by its home country supervisor;

(3) Whether the home country supervisor of such foreign bank is actively working to establish arrangements for comprehensive consolidated supervision of the bank, and whether demonstrable progress is being made;

(4) Whether the foreign bank has effective and reliable systems of internal controls and management information and reporting, which enable its management properly to oversee its worldwide operations;

(5) Whether the foreign bank's home country supervisor has any objection to the bank continuing to operate in the United States;

(6) Whether the foreign bank's home country supervisor and the home country supervisor of any parent of the foreign bank share material information regarding the operations of the foreign bank with other supervisory authorities;

(7) The relationship of the U.S. operations to the other operations of the foreign bank, including whether the foreign bank maintains funds in its U.S. offices that are in excess of amounts due to its U.S. offices from the foreign bank's non-U.S. offices;

(8) The soundness of the foreign bank's overall financial condition;

(9) The managerial resources of the foreign bank, including the competence, experience, and integrity of the officers and directors, and the integrity of its principal shareholders;

(10) The scope and frequency of external audits of the foreign bank;

(11) The operating record of the foreign bank generally and its role in the banking system in its home country;

(12) The foreign bank's record of compliance with relevant laws, as well as the adequacy of its anti-money-laundering controls and procedures, in respect of its worldwide operations;

(13) The operating record of the U.S. offices of the foreign bank;

(14) The views and recommendations of the Comptroller or the relevant state supervisors in those states in which the foreign bank has operations, as appropriate;

(15) Whether the foreign bank, if requested, has provided the Board with adequate assurances that such information will be made available on the operations or activities of the foreign bank and any of its affiliates as the Board deems necessary to determine and enforce compliance with the IBA, the BHC Act, and other U.S. banking statutes; and

(16) Any other information relevant to the safety and soundness of the U.S. operations of the foreign bank.

(c) *Restrictions on U.S. operations*—(1) *Terms of agreement.* Any foreign bank that the Board determines is not subject to CCS may be required to enter into an agreement to conduct its U.S. operations subject to such restrictions as the Board, having considered the criteria set forth in paragraph (b) of this section, determines to be appropriate in order to ensure the safety and soundness of its U.S. operations.

(2) *Failure to enter into or comply with agreement.* A foreign bank that is required by the Board to enter into an agreement pursuant to paragraph (c)(1) of this section and either fails to do so, or fails to comply with the terms of such agreement, may be subject to:

(i) Enforcement action, in order to ensure safe and sound banking operations, under 12 U.S.C. 1818; or

(ii) Termination or a recommendation for termination of its U.S. operations, under § 211.25(a) and (e) and section (7)(e) of the IBA (12 U.S.C. 3105(e)).

Subpart C—Export Trading Companies

SOURCE: 66 FR 54374, Oct. 26, 2001, unless otherwise noted.

§ 211.31 Authority, purpose, and scope.

(a) *Authority.* This subpart is issued by the Board of Governors of the Federal Reserve System (Board) under the authority of the Bank Holding Company Act of 1956 (BHC Act) (12 U.S.C. 1841 *et seq.*), the Bank Export Services Act (title II, Pub. L. 97–290, 96 Stat. 1235 (1982)) (BESA), and the Export Trading Company Act Amendments of 1988 (title III, Pub. L. 100–418, 102 Stat. 1384 (1988)) (ETC Act Amendments).

(b) *Purpose and scope.* This subpart is in furtherance of the purposes of the BHC Act, the BESA, and the ETC Act Amendments, the latter two statutes being designed to increase U.S. exports by encouraging investments and participation in export trading companies by bank holding companies and the specified investors. The provisions of this subpart apply to eligible investors as defined in this subpart.

§ 211.32 Definitions.

The definitions in §§ 211.1 and 211.2 of subpart A apply to this subpart, subject to the following:

(a) *Appropriate Federal Reserve Bank* has the same meaning as in § 211.21(c).

(b) *Bank* has the same meaning as in section 2(c) of the BHC Act (12 U.S.C. 1841(c)).

(c) *Company* has the same meaning as in section 2(b) of the BHC Act (12 U.S.C. 1841(b)).

(d) *Eligible investors* means:

(1) Bank holding companies, as defined in section 2(a) of the BHC Act (12 U.S.C. 1841(a));

(2) Edge and agreement corporations that are subsidiaries of bank holding companies but are not subsidiaries of banks;

(3) Banker's banks, as described in section 4(c)(14)(F)(iii) of the BHC Act (12 U.S.C. 1843(c)(14)(F)(iii)); and

(4) Foreign banking organizations, as defined in § 211.21(o).

(e) *Export trading company* means a company that is exclusively engaged in activities related to international trade and, by engaging in one or more export trade services, derives:

(1) At least one-third of its revenues in each consecutive four-year period from the export of, or from facilitating the export of, goods and services produced in the United States by persons other than the export trading company or its subsidiaries; and

(2) More revenues in each four-year period from export activities as described in paragraph (e)(1) of this section than it derives from the import, or facilitating the import, into the United States of goods or services produced outside the United States. The four-year period within which to calculate revenues derived from its activities under this section shall be deemed to have commenced with the first fiscal year after the respective export trading company has been in operation for two years.

(f) *Revenues* shall include net sales revenues from exporting, importing, or third-party trade in goods by the export trading company for its own account and gross revenues derived from all other activities of the export trading company.

(g) *Subsidiary* has the same meaning as in section 2(d) of the BHC Act (12 U.S.C. 1841(d)).

(h) *Well capitalized* has the same meaning as in § 225.2(r) of Regulation Y (12 CFR 225.2(r)).

(i) *Well managed* has the same meaning as in § 225.2(s) of Regulation Y (12 CFR 225.2(s)).

§ 211.33 Investments and extensions of credit.

(a) *Amount of investments.* In accordance with the procedures of § 211.34, an eligible investor may invest no more than 5 percent of its consolidated capital and surplus in one or more export trading companies, except that an Edge or agreement corporation not engaged in banking may invest as much as 25 percent of its consolidated capital and surplus but no more than 5 percent of the consolidated capital and surplus of its parent bank holding company.

(b) *Extensions of credit*—(1) *Amount.* An eligible investor in an export trading company or companies may extend credit directly or indirectly to the export trading company or companies in a total amount that at no time exceeds 10 percent of the investor's consolidated capital and surplus.

(2) *Terms.* (i) An eligible investor in an export trading company may not extend credit directly or indirectly to the export trading company or any of its customers or to any other investor holding 10 percent or more of the shares of the export trading company on terms more favorable than those afforded similar borrowers in similar circumstances, and such extensions of credit shall not involve more than the normal risk of repayment or present other unfavorable features.

(ii) For the purposes of this section, an investor in an export trading company includes any affiliate of the investor.

(3) *Collateral requirements.* Covered transactions between a bank and an affiliated export trading company in which a bank holding company has invested pursuant to this subpart are subject to the collateral requirements of section 23A of the Federal Reserve Act (12 U.S.C. 371c), except where a bank issues a letter of credit or advances funds to an affiliated export trading company solely to finance the purchase of goods for which:

(i) The export trading company has a bona fide contract for the subsequent sale of the goods; and

(ii) The bank has a security interest in the goods or in the proceeds from their sale at least equal in value to the letter of credit or the advance.

§ 211.34 Procedures for filing and processing notices.

(a) *General policy.* Direct and indirect investments by eligible investors in export trading companies shall be made in accordance with the general consent or prior notice procedures contained in this section. The Board may at any time, upon notice, modify or suspend the general-consent procedures with respect to any eligible investor.

(b) *General consent*—(1) *Eligibility for general consent.* Subject to the other limitations of this subpart, the Board grants its general consent for any investment an export trading company:

(i) If the eligible investor is well capitalized and well managed;

(ii) In an amount equal to cash dividends received from that export trading company during the preceding 12 calendar months; or

(iii) That is acquired from an affiliate at net asset value or through a contribution of shares.

(2) *Post-investment notice.* By the end of the month following the month in which the investment is made, the investor shall provide the Board with the following information:

(i) The amount of the investment and the source of the funds with which the investment was made; and

(ii) In the case of an initial investment, a description of the activities in which the export trading company proposes to engage and projections for the export trading company for the first year following the investment.

(c) *Filing notice*—(1) *Prior notice.* An eligible investor shall give the Board 60 days' prior written notice of any investment in an export trading company that does not qualify under the general consent procedure.

(2) *Notice of change of activities.* (i) An eligible investor shall give the Board 60 days' prior written notice of changes in the activities of an export trading company that is a subsidiary of the investor if the export trading company expands its activities beyond those described in the initial notice to include:

(A) Taking title to goods where the export trading company does not have a firm order for the sale of those goods;

(B) Product research and design;

(C) Product modification; or

(D) Activities not specifically covered by the list of activities contained in section 4(c)(14)(F)(ii) of the BHC Act (12 U.S.C. 1843(c)(14)(F)(ii)).

(ii) Such an expansion of activities shall be regarded as a proposed investment under this subpart.

(d) *Time period for Board action.* (1) A proposed investment that has not been disapproved by the Board may be made 60 days after the appropriate Federal Reserve Bank accepts the notice for processing. A proposed investment may be made before the expiration of the 60-day period if the Board notifies the investor in writing of its intention not to disapprove the investment.

(2) The Board may extend the 60-day period for an additional 30 days if the Board determines that the investor has not furnished all necessary information or that any material information furnished is substantially inaccurate. The Board may disapprove an investment if the necessary information is provided within a time insufficient to allow the Board reasonably to consider the information received.

(3) Within three days of a decision to disapprove an investment, the Board shall notify the investor in writing and state the reasons for the disapproval.

(e) *Time period for investment.* An investment in an export trading company that has not been disapproved shall be made within one year from the date of

the notice not to disapprove, unless the time period is extended by the Board or by the appropriate Federal Reserve Bank.

Subpart D—International Lending Supervision

SOURCE: 49 FR 5592, Feb. 13, 1984, unless otherwise noted.

§ 211.41 Authority, purpose, and scope.

(a) *Authority.* This subpart is issued by the Board of Governors of the Federal Reserve System (Board) under the authority of the International Lending Supervision Act of 1983 (Pub. L. 98–181, title IX, 97 Stat. 1153) (International Lending Supervision Act); the Federal Reserve Act (12 U.S.C. 221 *et seq.*) (FRA), and the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841 *et seq.*) (BHC Act).

(b) *Purpose and scope.* This subpart is issued in furtherance of the purposes of the International Lending Supervision Act. It applies to State banks that are members of the Federal Reserve System (State member banks); corporations organized under section 25A of the FRA (12 U.S.C. 611 through 631) (Edge Corporations); corporations operating subject to an agreement with the Board under section 25 of the FRA (12 U.S.C. 601 through 604a) (Agreement Corporations); and bank holding companies (as defined in section 2 of the BHC Act (12 U.S.C. 1841(a)) but not including a bank holding company that is a foreign banking organization as defined in § 211.21(o).

[Reg. K, 68 FR 1159, Jan. 9, 2003]

§ 211.42 Definitions.

For the purposes of this subpart:

(a) *Administrative cost* means those costs which are specifically identified with negotiating, processing and consummating the loan. These costs include, but are not necessarily limited to: legal fees; costs of preparing and processing loan documents; and an allocable portion of salaries and related benefits of employees engaged in the international lending function. No portion of supervisory and administrative expenses or other indirect expenses such as occupancy and other similar overhead costs shall be included.

(b) *Banking institution* means a State member bank; bank holding company; Edge Corporation and Agreement Corporation engaged in banking. Banking institution does not include a foreign banking organization as defined in § 211.21(o).

(c) *Federal banking agencies* means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation.

(d) *International assets* means those assets required to be included in banking institutions' *Country Exposure Report* forms (FFIEC No. 009).

(e) *International loan* means a loan as defined in the instructions to the *Report of Condition and Income* for the respective banking institution (FFIEC Nos. 031 and 041) 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.

(f) *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.

(g) *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.

[Reg. K, 68 FR 1159, Jan. 9, 2003]

§ 211.43 Allocated transfer risk reserve.

(a) *Establishment of Allocated Transfer Risk Reserve.* A banking institution shall establish an allocated transfer