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state in which such offices or subsidiaries are located.

(b) *Change of home state*—(1) *Prior notice.* A foreign bank may change its home state once, if it files 30 days' prior notice of the proposed change with the Board.

(2) *Application to change home state.* (i) A foreign bank, in addition to changing its home state by filing prior notice under paragraph (b)(1) of this section, may apply to the Board to change its home state, upon showing that a national bank or state-chartered bank with the same home state as the foreign bank would be permitted to change its home state to the new home state proposed by the foreign bank.

(ii) A foreign bank may apply to the Board for such permission one or more times.

(iii) In determining whether to grant the request of a foreign bank to change its home state, the Board shall consider whether the proposed change is consistent with competitive equity between foreign and domestic banks.

(3) *Effect of change in home state.* The home state of a foreign bank and any change in its home state by a foreign bank shall not affect which Federal Reserve Bank or Reserve Banks supervise the operations of the foreign bank, and shall not affect the obligation of the foreign bank to file required reports and applications with the appropriate Federal Reserve Bank.

(4) *Conforming branches to new home state.* Upon any change in home state by a foreign bank under paragraph (b)(1) or (b)(2) of this section, the domestic branches of the foreign bank established in reliance on any previous home state of the foreign bank shall be conformed to those which a foreign bank with the new home state could permissibly establish or operate as of the date of such change.

(c) *Prohibition against interstate deposit production offices.* A covered interstate branch of a foreign bank may not be used as a deposit production office in accordance with the provisions in § 208.7 of Regulation H (12 CFR 208.7).

§ 211.23 Nonbanking activities of foreign banking organizations.

(a) *Qualifying foreign banking organizations.* Unless specifically made eligible for the exemptions by the Board, a foreign banking organization shall qualify for the exemptions afforded by this section only if, disregarding its United States banking, more than half of its worldwide business is banking; and more than half of its banking business is outside the United States.[10] In order to qualify, a foreign banking organization shall:

(1) Meet at least two of the following requirements:

(i) Banking assets held outside the United States exceed total worldwide nonbanking assets;

(ii) Revenues derived from the business of banking outside the United States exceed total revenues derived from its worldwide nonbanking business; or

(iii) Net income derived from the business of banking outside the United States exceeds total net income derived from its worldwide nonbanking business; and

(2) Meet at least two of the following requirements:

(i) Banking assets held outside the United States exceed banking assets held in the United States;

(ii) Revenues derived from the business of banking outside the United States exceed revenues derived from the business of banking in the United States; or

(iii) Net income derived from the business of banking outside the United States exceeds net income derived from the business of banking in the United States.

(b) *Determining assets, revenues, and net income.* (1)(i) For purposes of paragraph (a) of this section, the total assets, revenues, and net income of an organization may be determined on a consolidated or combined basis.

(ii) The foreign banking organization shall include assets, revenues, and net income of companies in which it owns

[10] None of the assets, revenues, or net income, whether held or derived directly or indirectly, of a subsidiary bank, branch, agency, commercial lending company, or other company engaged in the business of banking in the United States (including any territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands) shall be considered held or derived from the business of banking ''outside the United States''.

50 percent or more of the voting shares when determining total assets, revenues, and net income.

(iii) The foreign banking organization may include assets, revenues, and net income of companies in which it owns 25 percent or more of the voting shares, if all such companies within the organization are included.

(2) Assets devoted to, or revenues or net income derived from, activities listed in § 211.10(a) shall be considered banking assets, or revenues or net income derived from the banking business, when conducted within the foreign banking organization by a foreign bank or its subsidiaries.

(c) *Limited exemptions available to foreign banking organizations in certain circumstances.* The following shall apply where a foreign bank meets the requirements of paragraph (a) of this section but its ultimate parent does not:

(1) Such foreign bank shall be entitled to the exemptions available to a qualifying foreign banking organization if its ultimate parent meets the requirements set forth in paragraph (a)(2) of this section and could meet the requirements in paragraph (a)(1) of this section but for the requirement in paragraph (b)(2) of this section that activities must be conducted by the foreign bank or its subsidiaries in order to be considered derived from the banking business;

(2) An ultimate parent as described in paragraph (c)(1) of this section shall be eligible for the exemptions available to a qualifying foreign banking organization except for those provided in § 211.23(f)(5)(iii).

(d) *Loss of eligibility for exemptions*—(1) *Failure to meet qualifying test.* A foreign banking organization that qualified under paragraph (a) or (c) of this section shall cease to be eligible for the exemptions of this section if it fails to meet the requirements of paragraphs (a) or (c) of this section for two consecutive years, as reflected in its annual reports (FR Y–7) filed with the Board.

(2) *Continuing activities and investments.* (i) A foreign banking organization that ceases to be eligible for the exemptions of this section may continue to engage in activities or retain investments commenced or acquired prior to the end of the first fiscal year for which its annual report reflects nonconformance with paragraph (a) or (c) of this section.

(ii) *Termination or divestiture.* Activities commenced or investments made after that date shall be terminated or divested within three months of the filing of the second annual report, or at such time as the Board may determine upon request by the foreign banking organization to extend the period, unless the Board grants consent to continue the activity or retain the investment under paragraph (e) of this section.

(3) *Request for specific determination of eligibility.* (i) A foreign banking organization that ceases to qualify under paragraph (a) or (c) of this section, or an affiliate of such foreign banking organization, that requests a specific determination of eligibility under paragraph (e) of this section may, prior to the Board's determination on eligibility, continue to engage in activities and make investments under the provisions of paragraphs (f)(1), (2), (3), and (4) of this section.

(ii) The Board may grant consent for the foreign banking organization or its affiliate to make investments under paragraph (f)(5) of this section.

(e) *Specific determination of eligibility for organizations that do not qualify for the exemptions*—(1) *Application.* (i) A foreign organization that is not a foreign banking organization or a foreign banking organization that does not qualify under paragraph (a) or (c) of this section for some or all of the exemptions afforded by this section, or that has lost its eligibility for the exemptions under paragraph (d) of this section, may apply to the Board for a specific determination of eligibility for some or all of the exemptions.

(ii) A foreign banking organization may apply for a specific determination prior to the time it ceases to be eligible for the exemptions afforded by this section.

(2) *Factors considered by Board.* In determining whether eligibility for the exemptions would be consistent with the purposes of the BHC Act and in the public interest, the Board shall consider:

(i) The history and the financial and managerial resources of the foreign organization or foreign banking organization;

(ii) The amount of its business in the United States;

(iii) The amount, type, and location of its nonbanking activities, including whether such activities may be conducted by U.S. banks or bank holding companies;

(iv) Whether eligibility of the foreign organization or foreign banking organization would result in undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices; and

(v) The extent to which the foreign banking organization is subject to comprehensive supervision or regulation on a consolidated basis or the foreign organization is subject to oversight by regulatory authorities in its home country.

(3) *Conditions and limitations.* The Board may impose any conditions and limitations on a determination of eligibility, including requirements to cease activities or dispose of investments.

(4) *Eligibility not granted.* Determinations of eligibility generally would not be granted where a majority of the business of the foreign organization or foreign banking organization derives from commercial or industrial activities.

(f) *Permissible activities and investments.* A foreign banking organization that qualifies under paragraph (a) of this section may:

(1) Engage in activities of any kind outside the United States;

(2) Engage directly in activities in the United States that are incidental to its activities outside the United States;

(3) Own or control voting shares of any company that is not engaged, directly or indirectly, in any activities in the United States, other than those that are incidental to the international or foreign business of such company;

(4) Own or control voting shares of any company in a fiduciary capacity under circumstances that would entitle such shareholding to an exemption under section 4(c)(4) of the BHC Act (12 U.S.C. 1843(c)(4)) if the shares were held or acquired by a bank;

(5) Own or control voting shares of a foreign company that is engaged directly or indirectly in business in the United States other than that which is incidental to its international or foreign business, subject to the following limitations:

(i) More than 50 percent of the foreign company's consolidated assets shall be located, and consolidated revenues derived from, outside the United States; provided that, if the foreign company fails to meet the requirements of this paragraph (f)(5)(i) for two consecutive years (as reflected in annual reports (FR Y–7) filed with the Board by the foreign banking organization), the foreign company shall be divested or its activities terminated within one year of the filing of the second consecutive annual report that reflects nonconformance with the requirements of this paragraph (f)(5)(i), unless the Board grants consent to retain the investment under paragraph (g) of this section;

(ii) The foreign company shall not directly underwrite, sell, or distribute, nor own or control more than 10 percent of the voting shares of a company that underwrites, sells, or distributes securities in the United States, except to the extent permitted bank holding companies;

(iii) If the foreign company is a subsidiary of the foreign banking organization, the foreign company must be, or must control, an operating company, and its direct or indirect activities in the United States shall be subject to the following limitations:

(A) The foreign company's activities in the United States shall be the same kind of activities, or related to the activities, engaged in directly or indirectly by the foreign company abroad, as measured by the ''establishment'' categories of the Standard Industrial Classification (SIC). An activity in the United States shall be considered related to an activity outside the United States if it consists of supply, distribution, or sales in furtherance of the activity;

(B) The foreign company may engage in activities in the United States that consist of banking, securities, insurance, or other financial operations, or

types of activities permitted by regulation or order under section 4(c)(8) of the BHC Act (12 U.S.C. 1843(c)(8)), only under regulations of the Board or with the prior approval of the Board, subject to the following;

(*1*) Activities within Division H (Finance, Insurance, and Real Estate) of the SIC shall be considered banking or financial operations for this purpose, with the exception of acting as operators of nonresidential buildings (SIC 6512), operators of apartment buildings (SIC 6513), operators of dwellings other than apartment buildings (SIC 6514), and operators of residential mobile home sites (SIC 6515); and operating title abstract offices (SIC 6541); and

(*2*) The following activities shall be considered financial activities and may be engaged in only with the approval of the Board under paragraph (g) of this section: credit reporting services (SIC 7323); computer and data processing services (SIC 7371, 7372, 7373, 7374, 7375, 7376, 7377, 7378, and 7379); armored car services (SIC 7381); management consulting (SIC 8732, 8741, 8742, and 8748); certain rental and leasing activities (SIC 4741, 7352, 7353, 7359, 7513, 7514, 7515, and 7519); accounting, auditing, and bookkeeping services (SIC 8721); courier services (SIC 4215 and 4513); and arrangement of passenger transportation (SIC 4724, 4725, and 4729).

(g) *Exemptions under section 4(c)(9) of the BHC Act.* A foreign banking organization that is of the opinion that other activities or investments may, in particular circumstances, meet the conditions for an exemption under section 4(c)(9) of the BHC Act (12 U.S.C. 1843(c)(9)) may apply to the Board for such a determination by submitting to the appropriate Federal Reserve Bank a letter setting forth the basis for that opinion.

(h) *Reports.* The foreign banking organization shall report in a manner prescribed by the Board any direct activities in the United States by a foreign subsidiary of the foreign banking organization and the acquisition of all shares of companies engaged, directly or indirectly, in activities in the United States that were acquired under the authority of this section.

(i) *Availability of information.* If any information required under this section is unknown and not reasonably available to the foreign banking organization (either because obtaining it would involve unreasonable effort or expense, or because it rests exclusively within the knowledge of a company that is not controlled by the organization) the organization shall:

(1) Give such information on the subject as it possesses or can reasonably acquire, together with the sources thereof; and

(2) Include a statement showing that unreasonable effort or expense would be involved, or indicating that the company whose shares were acquired is not controlled by the organization, and stating the result of a request for information.

§ 211.24 Approval of offices of foreign banks; procedures for applications; standards for approval; representative office activities and standards for approval; preservation of existing authority.

(a) *Board approval of offices of foreign banks*—(1) *Prior Board approval of branches, agencies, commercial lending companies, or representative offices of foreign banks.* (i) Except as otherwise provided in paragraphs (a)(2) and (a)(3) of this section, a foreign bank shall obtain the approval of the Board before it:

(A) Establishes a branch, agency, commercial lending company subsidiary, or representative office in the United States; or

(B) Acquires ownership or control of a commercial lending company subsidiary.

(2) *Prior notice for certain offices.* (i) After providing 45 days' prior written notice to the Board, a foreign bank may establish:

(A) An additional office (other than a domestic branch outside the home state of the foreign bank established pursuant to section 5(a)(3) of the IBA (12 U.S.C. 3103(a)(3))), provided that the Board has previously determined the foreign bank to be subject to comprehensive supervision or regulation on a consolidated basis by its home country supervisor (*comprehensive consolidated supervision* or *CCS*); or

(B) A representative office, if: