AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

maintain the confidentiality of such information to the extent possible under applicable law.

§ 211.28 Provisions applicable to branches and agencies: limitation on loans to one borrower.

(a) *Limitation on loans to one borrower.* Except as provided in paragraph (b) of this section, the total loans and extensions of credit by all the state branches and state agencies of a foreign bank outstanding to a single borrower at one time shall be aggregated with the total loans and extensions of credit by all federal branches and federal agencies of the same foreign bank outstanding to such borrower at the time; and shall be subject to the limitations and other provisions of section 5200 of the Revised Statutes (12 U.S.C. 84), and the regulations promulgated thereunder, in the same manner that extensions of credit by a federal branch or federal agency are subject to section 4(b) of the IBA (12 U.S.C. 3102(b)) as if such state branches and state agencies were federal branches and federal agencies.

(b) *Preexisting loans and extensions of credit.* Any loans or extensions of credit to a single borrower that were originated prior to December 19, 1991, by a state branch or state agency of the same foreign bank and that, when aggregated with loans and extensions of credit by all other branches and agencies of the foreign bank, exceed the limits set forth in paragraph (a) of this section, may be brought into compliance with such limitations through routine repayment, provided that any new loans or extensions of credit (including renewals of existing unfunded credit lines, or extensions of the maturities of existing loans) to the same borrower shall comply with the limits set forth in paragraph (a) of this section.

§ 211.29 Applications by state branches and state agencies to conduct activities not permissible for federal branches.

(a) *Scope.* A state branch or state agency shall file with the Board a prior written application for permission to engage in or continue to engage in any type of activity that:

(1) Is not permissible for a federal branch, pursuant to statute, regulation, official bulletin or circular, or order or interpretation issued in writing by the Comptroller; or

(2) Is rendered impermissible due to a subsequent change in statute, regulation, official bulletin or circular, written order or interpretation, or decision of a court of competent jurisdiction.

(b) *Exceptions.* No application shall be required by a state branch or state agency to conduct any activity that is otherwise permissible under applicable state and federal law or regulation and that:

(1) Has been determined by the FDIC, pursuant to 12 CFR 362.4(c)(3)(i) through (c)(3)(ii)(A), not to present a significant risk to the affected deposit insurance fund;

(2) Is permissible for a federal branch, but the Comptroller imposes a quantitative limitation on the conduct of such activity by the federal branch;

(3) Is conducted as agent rather than as principal, provided that the activity is one that could be conducted by a state-chartered bank headquartered in the same state in which the branch or agency is licensed; or

(4) Any other activity that the Board has determined may be conducted by any state branch or state agency of a foreign bank without further application to the Board.

(c) *Contents of application.* An application submitted pursuant to paragraph (a) of this section shall be in letter form and shall contain the following information:

(1) A brief description of the activity, including the manner in which it will be conducted, and an estimate of the expected dollar volume associated with the activity;

(2) An analysis of the impact of the proposed activity on the condition of the U.S. operations of the foreign bank in general, and of the branch or agency in particular, including a copy, if available, of any feasibility study, management plan, financial projections, business plan, or similar document concerning the conduct of the activity;

(3) A resolution by the applicant's board of directors or, if a resolution is not required pursuant to the applicant's organizational documents, evidence of approval by senior management, authorizing the conduct of such

activity and the filing of this application;

(4) If the activity is to be conducted by a state branch insured by the FDIC, statements by the applicant:

(i) Of whether or not it is in compliance with 12 CFR 346.19 (Pledge of Assets) and 12 CFR 346.20 (Asset Maintenance);

(ii) That it has complied with all requirements of the FDIC concerning an application to conduct the activity and the status of the application, including a copy of the FDIC's disposition of such application, if available; and

(iii) Explaining why the activity will pose no significant risk to the deposit insurance fund; and

(5) Any other information that the Reserve Bank deems appropriate.

(d) *Factors considered in determination.* (1) The Board shall consider the following factors in determining whether a proposed activity is consistent with sound banking practice:

(i) The types of risks, if any, the activity poses to the U.S. operations of the foreign banking organization in general, and the branch or agency in particular;

(ii) If the activity poses any such risks, the magnitude of each risk; and

(iii) If a risk is not de minimis, the actual or proposed procedures to control and minimize the risk.

(2) Each of the factors set forth in paragraph (d)(1) of this section shall be evaluated in light of the financial condition of the foreign bank in general and the branch or agency in particular and the volume of the activity.

(e) *Application procedures.* Applications pursuant to this section shall be filed with the appropriate Federal Reserve Bank. An application shall not be deemed complete until it contains all the information requested by the Reserve Bank and has been accepted. Approval of such an application may be conditioned on the applicant's agreement to conduct the activity subject to specific conditions or limitations.

(f) *Divestiture or cessation.* (1) If an application for permission to continue to conduct an activity is not approved by the Board or, if applicable, the FDIC, the applicant shall submit a detailed written plan of divestiture or cessation of the activity to the appropriate Federal Reserve Bank within 60 days of the disapproval.

(i) The divestiture or cessation plan shall describe in detail the manner in which the applicant will divest itself of or cease the activity, and shall include a projected timetable describing how long the divestiture or cessation is expected to take.

(ii) Divestiture or cessation shall be complete within one year from the date of the disapproval, or within such shorter period of time as the Board shall direct.

(2) If a foreign bank operating a state branch or state agency chooses not to apply to the Board for permission to continue to conduct an activity that is not permissible for a federal branch, or which is rendered impermissible due to a subsequent change in statute, regulation, official bulletin or circular, written order or interpretation, or decision of a court of competent jurisdiction, the foreign bank shall submit a written plan of divestiture or cessation, in conformance with paragraph (f)(1) of this section within 60 days of the effective date of this part or of such change or decision.

§ 211.30 Criteria for evaluating U.S. operations of foreign banks not subject to consolidated supervision.

(a) *Development and publication of criteria.* Pursuant to the Foreign Bank Supervision Enhancement Act, Pub. L. 102–242, 105 Stat. 2286 (1991), the Board shall develop and publish criteria to be used in evaluating the operations of any foreign bank in the United States that the Board has determined is not subject to comprehensive consolidated supervision.

(b) *Criteria considered by Board.* Following a determination by the Board that, having taken into account the standards set forth in §211.24(c)(1), a foreign bank is not subject to CCS, the Board shall consider the following criteria in determining whether the foreign bank's U.S. operations should be permitted to continue and, if so, whether any supervisory constraints should be placed upon the bank in connection with those operations:

(1) The proportion of the foreign bank's total assets and total liabilities that are located or booked in its home