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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.