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(3) *Investments in Edge and Agreement Corporations.* To approve an application by a member bank to invest more than 10 percent of capital and surplus in Edge and agreement corporation subsidiaries, provided that:

(i) The member bank's total investment, including the retained earnings of the Edge and agreement corporation subsidiaries, does not exceed 20 percent of the bank's capital and surplus or would not exceed that level as a result of the proposal; and

(ii) The proposal raises no significant policy or supervisory issues.

(e) *Member banks*—(1) *Waiver of penalty for early withdrawals of time deposits.* To permit depository institutions to waive the penalty for early withdrawal of time deposits under section 19(j) of the Federal Reserve Act (12 U.S.C. 371b) and §204.2 of Regulation D (12 CFR part 204) if the following conditions are met:

(i) The President declares an area of major disaster or emergency area pursuant to section 301 of the Disaster Relief Act of 1974 (42 U.S.C. 5141);

(ii) The waiver is limited to depositors suffering disaster or emergency related losses in the officially designated area; and

(iii) The appropriate Reserve Bank and all relevant divisions of the Board's staff recommend approval.

(2) [Reserved]

(f) *Location of institution.* To determine the Federal Reserve District in which an institution is located pursuant to §204.3(b)(2)(ii) of Regulation D (12 CFR part 204) or §209.15(b) of Regulation I (12 CFR part 209) if:

(1) The relevant Federal Reserve Banks and the institution agree on the specific Reserve Bank in which the institution should hold stock or with which the institution should maintain reserve balances; and

(2) The agreed-upon location does not raise any significant policy issues.

[56 FR 25619, June 5, 1991, as amended at 56 FR 67153, 67154, Dec. 30, 1991; 58 FR 26509, May 4, 1993; 62 FR 34617, June 27, 1997; 66 FR 58655, Nov. 23, 2001]

§265.6 Functions delegated to General Counsel.

The Board's general counsel (or the general counsel's delegee) is authorized:

(a) *Procedure*—(1) *Reconsideration of Board action.* Pursuant to §262.3(i) of this chapter (Rules of Procedure) to determine whether or not to grant a request for reconsideration or whether to deny a request for stay of the effective date of any action taken by the Board with respect to an action as provided in that part.

(2) *Public meetings.* To order, after consulting with the directors of other interested divisions of the Board and the appropriate Reserve Bank, that a public meeting or other proceeding be held, under §262.25 of the Board's Rules of Procedure (12 CFR part 262), in connection with any application or notice filed with the Board, and to designate the presiding officer in the proceeding under terms and conditions the General Counsel deems appropriate.

(3) *Designation of Board counsel for hearings.* To designate Board staff attorneys as Board counsel in any proceeding ordered by the Board in accordance with §263.6 of the Board's Rules of Practice for Hearings (12 CFR part 263).

(4) *Oaths, depositions, subpoenas.* To take, or authorize designated persons to take, with the concurrence of the Director of the Division of Banking Supervision and Regulation, actions permitted under 12 U.S.C. 1818(n), 1820(c), and 12 U.S.C. 1844(f), including administering oaths and affirmations, taking depositions, and issuing, revoking, quashing, or modifying subpoenas duces tecum.

(b) *Availability of Information*—(1) *FOIA requests.* To make available information of the Board of the nature and in the circumstances described in the Board's Rules Regarding Availability of Information (12 CFR part 261).

(2) *Disclosure to foreign authorities.* To make the determinations required for disclosure of information to a foreign bank regulatory or supervisory authority, and to obtain, to the extent necessary, the agreement of such authority to maintain the confidentiality of such information to the extent possible under applicable law.

(3) *Assistance to foreign authorities.* To approve requests for assistance from any foreign bank regulatory or supervisory authority that is conducting an investigation regarding violations of any law or regulation relating to banking matters or currency transactions administered or enforced by such authority, and to make the determinations required for any investigation or collection of information and evidence pertinent to such request. In deciding whether to approve requests for assistance under this paragraph, the General Counsel shall consider:

(i) Whether the requesting authority has agreed to provide reciprocal assistance with respect to banking matters within the jurisdiction of any appropriate Federal banking agency;

(ii) Whether compliance with the request would prejudice the public interest of the United States; and

(iii) Whether the request is consistent with the requirement that the Board conduct any such investigation in compliance with the laws of the United States and the policies and procedures of the Board.

(c) *Bank holding companies; Change in bank control; Mergers*—(1) *Control determinations under section 2(g) of BHC Act.* To determine whether a company that transfers shares under section 2(g) of the Bank Holding Company Act (12 U.S.C. 1841(g)) is incapable of controlling the transferee.

(2) *Control determinations under section 4(c)(8) of BHC Act.* To determine, or issue an order for a hearing to determine, whether a company engaged in financial, fiduciary, or insurance activities falls within the exemption in section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)), permitting retention or acquisition of control thereof by a bank holding company.

(3) *Notices under CBC Act.* To revoke acceptance of and return as incomplete a notice filed under the Change in Bank Control Act (12 U.S.C. 1817(j)) or to extend the time during which action must be taken on a notice where the General Counsel determines, with the concurrence of the Director of the Division of Banking Supervision and Regulation, that the notice is materially incomplete under that Act or Regulation Y (12 CFR part 225) or contains material information that is substantially inaccurate.

(4) *Tax certifications.* To make prior and final certification for federal tax purposes (26 U.S.C. (IRC) 1101–1103, 6158) with respect to distributions pursuant to the Bank Holding Company Act (12 U.S.C. 1841 *et seq.*).

(d) *Management interlocks*—(1) *General exceptions.* To grant exceptions from the prohibitions of Regulation L (12 CFR part 212) when the primary federal supervisor of the depository institution in need of management assistance approves.

(2) *Temporary exceptions.* To grant requests, after consultation with the Director for the Division of Banking Supervision and Regulation, for temporary director interlocks under Regulation L (12 CFR part 212) for newly chartered banks, banks in low income areas, minority banks, women's banks, organizations experiencing conditions endangering their safety or soundness, organizations sponsoring a credit union, and organizations that lose thirty percent or more of their directors or management officials due to changes in circumstances.

(e) *Consent enforcement orders.* With the concurrence of the director of the Board's Division of Banking Supervision and Regulation (or the Director's delegee):

(1) To enter into a cease-and-desist order, removal and prohibition order, or civil money penalty assessment order with a bank holding company or any nonbanking subsidiary thereof, with a state member bank, or with any other person or entity subject to the Board's jurisdiction, when the order has been consented to by the institution or individual subject to the order;

(2) To stay, modify, terminate, or suspend an order issued pursuant to paragraph (e)(1) of this section.

(f) *International banking*—(1) *After-the-fact applications.* With the concurrence of the Board's Director of the Division of Banking Supervision and Regulation, to grant a request by a foreign bank to establish a branch, agency, commercial lending company, or representative office through certain acquisitions, mergers, consolidations, or

similar transactions, in conjunction with which:

(i) The foreign bank would be required to file an after-the-fact application for the Board's approval under §211.24(a)(6) of Regulation K (12 CFR 211.24(a)(6)); or

(ii) The General Counsel may waive the requirement for an after-the-fact application if:

(A) The surviving foreign bank commits to wind down the U.S. operations of the acquired foreign bank; and

(B) The merger or consolidation raises no significant policy or supervisory issues.

(2) To modify the requirement that a foreign bank that has submitted an application or notice to establish a branch, agency, commercial lending company, or representative office pursuant to §211.24(a)(6) of Regulation K (12 CFR 211.24(a)(6)) shall publish notice of the application or notice in a newspaper of general circulation in the community in which the applicant or notificant proposes to engage in business, as provided in §211.24(b)(2) of Regulation K (12 CFR 211.24(b)(2)).

(3) With the concurrence of the Board's Director of the Division of Banking Supervision and Regulation, to grant a request for an exemption under section 4(c)(9) of the Bank Holding Company Act (12 U.S.C. 1843(c)(9)), provided that the request raises no significant policy or supervisory issues that the Board has not already considered.

(4) To return applications and notices filed under the International Banking Act for informational deficits.

(5) To determine that an entity qualifies as a ''special-purpose foreign government-owned bank'' for purposes of §211.24(d)(3) (12 CFR 211.24(d)(3)).

(g) *Conflicts of interest waivers.* To issue individual conflicts of interest waivers under 18 U.S.C. 208(b)(1) to employees and officials other than Board members.

[56 FR 25619, June 5, 1991, as amended at 56 FR 67154, Dec. 30, 1991; 57 FR 6789, Feb. 28, 1992; 57 FR 13002, Apr. 15, 1992; 58 FR 6363, Jan. 28, 1993; 58 FR 26509, May 4, 1993; 58 FR 53394, Oct. 15, 1993; 60 FR 10307, Feb. 24, 1995; 61 FR 13395, Mar. 27, 1996; 62 FR 45150, Aug. 26, 1997; 66 FR 54397, Oct. 26, 2001]

§ 265.7 Functions delegated to Director of Division of Banking Supervision and Regulation.

The Board's Director of the Division of Banking Supervision and Regulation (or the Director's delegee) is authorized:

(a) *Procedure*—(1) *Cease and desist orders.* To refuse, with the prior concurrence of the appropriate Reserve Bank and the Board's General Counsel, an application to the Board to stay, modify, terminate, or set aside any effective cease and desist order previously issued by the Board under section 8(b) of the Federal Deposit Insurance Act (12 U.S.C. 1818(b)), or any written agreement between the Board or the Reserve Bank and a bank holding company or any nonbanking subsidiary thereof or a state member bank.

(2) *Modification of commitments or conditions.* To grant or deny requests for modifying, including extending the time for, performing a commitment or condition relied on by the Board or its delegee in taking any action under the Bank Holding Company Act, the Bank Merger Act, the Change in Bank Control Act of 1978, the Federal Reserve Act, or the International Banking Act. In acting on such requests, the Board's Director may take into account changed circumstances and good faith efforts to fulfill the commitments or conditions, and shall consult with the directors of other interested divisions where appropriate. The Board's Director may not take any action that would be inconsistent with or result in an evasion of the provisions of the Board's original action.

(3) *Notice of insufficient capital.* To issue, with the concurrence of the Board's General Counsel, a notice that a state member bank or bank holding company has insufficient capital and which directs the bank or company to file with its regional Reserve Bank a capital improvement plan under subpart D of the Board's Rules of Practice for Hearings (12 CFR part 263).

(4) *Obtaining possession or control of securities; extending time period.* To approve, under §403.5(g) of the Treasury Department regulations (17 CFR part 403) implementing the Government Securities Act of 1986, as amended (Pub. L. 95–571), the application of a member