Federal Reserve System

§ 211.3 Foreign branches of U.S. banking organizations.

(a) General—(1) Definition of banking organization. For purposes of this section, a banking organization is defined as a member bank and its affiliates.

(2) A banking organization is considered to be operating a branch in a foreign country if it has an affiliate that is a member bank, Edge or agreement corporation, or foreign bank that operates an office (other than a representative office) in that country.

(3) For purposes of this subpart, a foreign office of an operating subsidiary of a member bank shall be treated as a foreign branch of the member bank and may engage only in activities permissible for a branch of a member bank.

(4) At any time upon notice, the Board may modify or suspend branching authority conferred by this section with respect to any banking organization.

(b) (1) Establishment of foreign branches. (i) Foreign branches may be established by any member bank having capital and surplus of $1,000,000 or more, an Edge corporation, an agreement corporation, any subsidiary the shares of which are held directly by the investor or an affiliate of the investor under any authority, but which is not a subsidiary of the investor or of an affiliate of the investor.

(ii) Loans and extensions of credit means all direct and indirect advances of funds to a person made on the basis of any obligation of that person to repay the funds.

(iii) NRSRO means a nationally recognized statistical rating organization as designated by the Securities and Exchange Commission.

(iv) Organization means a corporation, government, partnership, association, or any other entity.

(v) Person means an individual or an organization.

(vi) Portfolio investment means an investment in an organization other than a subsidiary or joint venture.

(vii) Representative office means an office that:

(1) Engages solely in representational and administrative functions (such as soliciting new business or acting as liaison between the organization’s head office and customers in the United States); and

(2) Does not have authority to make any business decision (other than decisions relating to its premises or personnel) for the account of the organization it represents, including contracting for any deposit or deposit-like liability on behalf of the organization.

(viii) Subsidiary means an organization that has more than 50 percent of its voting shares held directly or indirectly, or that otherwise is controlled or capable of being controlled, by the investor or an affiliate of the investor under any authority. Among other circumstances, an investor is considered to control an organization if:

(1) The investor or an affiliate is a general partner of the organization; or

(2) The investor and its affiliates directly or indirectly own or control more than 50 percent of the equity of the organization.

(x) Tier 1 capital has the same meaning as provided under the Capital Adequacy Guidelines.

(y) Well capitalized means:

(1) In relation to a parent member or insured bank, that the standards set out in §208.43(b)(1) of Regulation H (12 CFR 208.43(b)(1)) are satisfied;

(2) In relation to a bank holding company, that the standards set out in §225.2(r)(1) of Regulation Y (12 CFR 225.2(r)(1)) are satisfied; and

(3) In relation to an Edge or agreement corporation, that it has tier 1 and total risk-based capital ratios of 6.0 and 10.0 percent, respectively, or greater.

(2) Well managed means that the Edge or agreement corporation, any parent insured bank, and the bank holding company received a composite rating of 1 or 2, and at least a satisfactory rating for management if such a rating is given, at their most recent examination or review.
§ 211.4 Permissible activities and investments of foreign branches of member banks.

(a) Permissible activities and investments. In addition to its general banking powers, and to the extent consistent with its charter, a foreign branch of a member bank may engage in the following activities and make the following investments, so far as is usual in connection with the business of banking in the country where it transacts business:

(1) Guarantees. Guarantee debts, or otherwise agree to make payments on the occurrence of readily ascertainable events (including, but not limited to, nonpayment of taxes, rentals, customs duties, or costs of transport, and loss or nonconformance of shipping documents) if the guarantee or agreement specifies a maximum monetary liability; however, except to the extent that the member bank is fully secured, it may not have liabilities outstanding for any person on account of such guarantees or agreements which, when aggregated with other unsecured obligations of the same person, exceed the limit contained in section 5200(a)(1) of the Revised Statutes (12 U.S.C. 84) for loans and extensions of credit;

(2) Government obligations. Underwrite, distribute, buy, sell, and hold obligations of:

(A) The national government of the country where the branch is located and any political subdivision of that country;

(B) An agency or instrumentality of the national government of the country where the branch is located where such obligations are supported by the taxing authority, guarantee, or full faith and credit of that government;

(C) The national government or political subdivision of any country, where such obligations are rated investment grade.

(c) Reporting. Any banking organization that opens, closes, or relocates a branch shall report such change in a manner prescribed by the Board.

(d) Reserves of foreign branches of member banks. Member banks shall maintain reserves against foreign branch deposits when required by Regulation D (12 CFR part 204).

(e) Conditional approval; access to information. The Board may impose such conditions on authority granted by it under this section as it deems necessary, and may require termination of any activities conducted under authority of this section if a member bank is unable to provide information on its activities or those of its affiliates that the Board deems necessary to determine and enforce compliance with U.S. banking laws.