

§211.45

12 CFR Ch. II (1–1–10 Edition)

§211.45 Accounting for fees on international loans.

(a) *Restrictions on fees for restructured international loans.* No banking institution shall charge, in connection with the restructuring of an international loan, any fee exceeding the administrative cost of the restructuring unless it amortizes the amount of the fee exceeding the administrative cost over the effective life of the loan.

(b) *Accounting treatment.* Subject to paragraph (a) of this section, banking institutions shall account for fees on international loans in accordance with generally accepted accounting principles.

[Reg. K, 68 FR 1159, Jan. 9, 2003]

INTERPRETATIONS

§211.601 Status of certain offices for purposes of the International Banking Act restrictions on interstate banking operations.

The Board has considered the question of whether a foreign bank's California office that may accept deposits from certain foreign sources (e.g., a United States citizen residing abroad) is a branch or an agency for the purposes of the grandfather provisions of section 5 of the International Banking Act of 1978 (12 U.S.C. 3103(b)). The question has arisen as a result of the definitions in the International Banking Act of *branch* and *agency*, and the limited deposit-taking capabilities of certain California offices of foreign banks.

The International Banking Act defines *agency* as "any office * * * at which deposits may not be accepted from citizens or residents of the United States," and defines *branch* as "any office * * * of a foreign bank * * * at which deposits are received" (12 U.S.C. 3101(1) and (3)). Offices of foreign banks in California prior to the International Banking Act were generally prohibited from accepting deposits by the requirement of State law that such offices obtain Federal deposit insurance (Cal. Fin. Code 1756); until the passage of the International Banking Act an office of a foreign bank could not obtain such insurance. California law, however, permits offices of foreign banks, with the approval of the Banking Department, to accept deposits from any per-

son that resides, is domiciled, and maintains its principal place of business in a foreign country (Cal. Fin. Code 1756.2). Thus, under a literal reading of the definitions of *branch* and *agency* contained in the International Banking Act, a foreign bank's California office that accepts deposits from certain foreign sources (e.g., a U.S. citizen residing abroad), is a branch rather than an agency.

Section 5 of the International Banking Act establishes certain limitations on the expansion of the domestic deposit-taking capabilities of a foreign bank outside its home State. It also grandfathers offices established or applied for prior to July 27, 1978, and permits a foreign bank to select its home State from among the States in which it operated branches and agencies on the grandfather date. If a foreign bank's office that was established or applied for prior to June 27, 1978, is a *branch* as defined in the International Banking Act, then it is grandfathered as a branch. Accordingly, a foreign bank could designate a State other than California as its home State and subsequently convert its California office to a full domestic deposit-taking facility by obtaining Federal deposit insurance. If, however, the office is determined to be an *agency*, then it is grandfathered as such and the foreign bank may not expand its deposit-taking capabilities in California without declaring California its home State.

In the Board's view, it would be inconsistent with the purposes and the legislative history of the International Banking Act to enable a foreign bank to expand its domestic interstate deposit-taking capabilities by grandfathering these California offices as branches because of their ability to receive certain foreign source deposits. The Board also notes that such deposits are of the same general type that may be received by an Edge Corporation and, hence in accordance with section 5(a) of the International Banking Act, by branches established and operated outside a foreign bank's home State. It would be inconsistent with the structure of the interstate banking provisions of the International Banking Act to grandfather as full deposit-