§ 28.13 Permissible activities.

(a) Applicability of laws—(1) General. Except as otherwise provided by the IBA, other Federal laws or regulations, or otherwise determined by the OCC, the operations of a foreign bank at a Federal branch or agency shall be conducted with the same rights and privileges and subject to the same duties, restrictions, penalties, liabilities, conditions, and limitations that would apply if the Federal branch or agency were a national bank operating at the same location.

(2) Parent foreign bank senior management approval. Unless otherwise provided by the OCC, any provision in law, regulation, policy, or procedure that requires a national bank to obtain the approval of its board of directors will be deemed to require a Federal branch or agency to obtain the approval of parent foreign bank senior management.

(b) Management of shell branches—(1) Federal branches and agencies. A Federal branch or agency of a foreign bank shall not manage, through an office of the foreign bank that is located outside the United States and that is managed or controlled by that Federal branch or agency, any type of activity that a United States bank is not permitted to manage at any branch or subsidiary of the United States bank that is located outside the United States.

(2) Activities managed in foreign branches or subsidiaries of United States banks. The types of activities referred to in paragraph (b)(1) of this section include the types of activities authorized to a United States bank by state or Federal charters, regulations issued by charting or regulatory authorities, and other United States banking laws. However, United States procedural or quantitative requirements that may be applicable to the conduct of those activities by United States banks do not apply.

(c) Additional guidance regarding permissible activities. For purposes of section 7(h) of the IBA, 12 U.S.C. 3105(h), the OCC may issue opinions, interpretations, or rulings regarding permissible activities of Federal branches.

§ 28.14 Limitations based upon capital of a foreign bank.

(a) General. Any limitation or restriction based upon the capital of a national bank shall be deemed to refer, as applied to a Federal branch or agency, to the dollar equivalent of the capital of the foreign bank.

(b) Calculation. Unless otherwise provided by the OCC, a foreign bank must calculate its capital in a manner consistent with 12 CFR part 3, for purposes of this section.

(c) Aggregation. The foreign bank shall aggregate business transacted by all Federal branches and agencies with the business transacted by all state branches and state agencies controlled by the foreign bank in determining its compliance with limitations based upon the capital of the foreign bank. The foreign bank shall designate one Federal branch or agency office in the United States to maintain consolidated information so that the OCC can monitor compliance.

§ 28.15 Capital equivalency deposits.

(a) Capital equivalency deposits—(1) General. For purposes of section 4(g) of the IBA, 12 U.S.C. 3102(g), unless otherwise provided by the OCC, a foreign bank’s capital equivalency deposits (CED) must consist of:

(i) Investment securities eligible for investment by national banks;

(ii) United States dollar deposits payable in the United States or payable in any other Group of Ten country;

(iii) Certificates of deposit, payable in the United States, and banker’s acceptances, provided that, in either case, the issuer has an adequate capacity to meet financial commitments for the projected life of the asset or exposure. An issuer has an adequate capacity to meet financial commitments if the risk of default by the obligor is low and the full and timely repayment of principal and interest is expected;

(iv) Repurchase agreements; or

(v) Other similar assets permitted by the OCC to qualify to be included in the CED.

(2) Legal requirements. The agreement with the depository bank to hold the CED and the amount of the deposit must comply with the requirements in section 4(g) of the IBA, 12 U.S.C.
§28.16 Deposit-taking by an uninsured Federal branch.

(a) Policy. In carrying out this section, the OCC shall consider the importance of according foreign banks competitive opportunities equal to those of United States banks and the availability of credit to all sectors of the United States economy, including international trade finance.

(b) General. An uninsured Federal branch may accept initial deposits of less than the standard maximum deposit insurance amount as defined in 12 U.S.C. 1821(a)(1)(E) only from:

(1) Individuals who are not citizens or residents of the United States at the time of the initial deposit;

(2) Individuals who are not citizens of the United States, but are residents of the United States, and are employed by a foreign bank, foreign business, foreign government, or recognized international organization;

(3) Persons (including immediate family members of an individual) to whom the branch or foreign bank (including any affiliate thereof) has extended credit or provided other non-deposit banking services within the past 12 months, or with whom the bank with a Federal branch or agency shall deposit its CED into an account in a bank that is located in the state in which the Federal branch or agency is located. For this purpose, such depository bank is considered to be located in those states in which it has its main office or a branch. A foreign bank with Federal branches or agencies in more than one state may consolidate some or all of its CEDs into one such account.

(2) Calculation. The total amount of the consolidated CED shall continue to be calculated on an office-by-office basis.

(f) Maintenance of capital equivalency ledger account. Each Federal branch or agency shall maintain a capital equivalency ledger account and keep records of the amount of liabilities requiring capital equivalency coverage in a manner and form prescribed by the OCC.