

corporation, company, firm, society, other organization, or individual.

(2) *Exclusions.* A nongovernmental entity or person does not include—

(i) The United States government, a state government, a unit of local government (including a county, city, town, township, parish, village, or other general-purpose subdivision of a state) or an Indian tribe or tribal organization established under Federal, state or Indian tribal law (including the Department of Hawaiian Home Lands), or a department, agency, or instrumentality of any such entity;

(ii) A federally-chartered public corporation that receives Federal funds appropriated specifically for that corporation;

(iii) An insured depository institution or affiliate of an insured depository institution; or

(iv) An officer, director, employee, or representative (acting in his or her capacity as an officer, director, employee, or representative) of an entity listed in paragraphs (j)(2)(i) through (iii) of this section.

(k) *Party.* The term “party”. The authority citation for part 405 continues to read as follows: with respect to a covered agreement means each NGEF and each insured depository institution or affiliate that entered into the agreement.

(l) *Relevant supervisory agency.* The “relevant supervisory agency” for a covered agreement means the appropriate Federal banking agency for—

(1) Each insured depository institution (or subsidiary thereof) that is a party to the covered agreement;

(2) Each insured depository institution (or subsidiary thereof) or CRA affiliate that makes payments or loans or provides services that are subject to the covered agreement; and

(3) Any company (other than an insured depository institution or subsidiary thereof) that is a party to the covered agreement.

(m) *Term of agreement.* An agreement that does not have a fixed termination date is considered to terminate on the last date on which any party to the agreement makes any payment or provides any loan or other resources under the agreement, unless the relevant supervisory agency for the agreement

otherwise notifies each party in writing.

[66 FR 2099, Jan. 10, 2001, as amended at 66 FR 14071, Mar. 9, 2001]

PART 347—INTERNATIONAL BANKING

Subpart A—Foreign Banking and Investment by Insured State Nonmember Banks

Sec.

347.101 Authority, purpose, and scope.

347.102 Definitions.

347.103 Effect of state law on actions taken under this subpart.

347.104 Insured state nonmember bank investment in foreign organizations.

347.105 Permissible financial activities outside the United States.

347.106 Going concerns.

347.107 Joint ventures.

347.108 Portfolio investments.

347.109 Limitations on indirect investments in nonfinancial organizations.

347.110 Affiliate holdings.

347.111 Underwriting and dealing limits applicable to foreign organizations held by insured state nonmember banks.

347.112 Restrictions applicable to foreign organizations that act as futures commission merchants.

347.113 Restrictions applicable to activities by a foreign organization in the United States.

347.114 Extensions of credit to foreign organizations held by insured state nonmember banks; shares of foreign organizations held in connection with debts previously contracted.

347.115 Permissible activities for a foreign branch of an insured state nonmember bank.

347.116 Recordkeeping and supervision of the foreign activities of insured state nonmember banks.

347.117 General consent.

347.118 Expedited processing.

347.119 Specific consent.

347.120 Computation of investment amounts.

347.121 Requirements for insured state nonmember bank to close a foreign branch.

347.122 Limitations applicable to the authority provided in this subpart.

Subpart B—Foreign Banks

347.201 Authority, purpose, and scope.

347.202 Definitions.

347.203 Deposit insurance required for all branches of foreign banks engaged in domestic retail deposit activity in the same state.

Federal Deposit Insurance Corporation

§ 347.102

- 347.204 Commitment to be examined and provide information.
- 347.205 Record maintenance.
- 347.206 Domestic retail deposit activity requiring deposit insurance by U.S. branch of a foreign bank.
- 347.207 Disclosure of supervisory information to foreign supervisors.
- 347.208 Assessment base deductions by insured branch.
- 347.209 Pledge of assets.
- 347.210 Asset maintenance.
- 347.211 Examination of branches of foreign banks.
- 347.212 FDIC approval to conduct activities that are not permissible for federal branches.
- 347.213 Establishment or operation of non-insured foreign branch.
- 347.214 Branch established under section 5 of the International Banking Act.
- 347.215 Exemptions from deposit insurance requirement.
- 347.216 Depositor notification.

Subpart C—International Lending

- 347.301 Purpose, authority, and scope.
- 347.302 Definitions.
- 347.303 Allocated transfer risk reserve.
- 347.304 Accounting for fees on international loans.
- 347.305 Reporting and disclosure of international assets.

AUTHORITY: 12 U.S.C. 1813, 1815, 1817, 1819, 1820, 1828, 3103, 3104, 3105, 3108, 3109; title IX, Pub. L. 98-181, 97 Stat. 1153.

SOURCE: 70 FR 17560, Apr. 6, 2005; 70 FR 20704, Apr. 21, 2005, unless otherwise noted.

§ 347.101 Authority, purpose, and scope.

(a) This subpart is issued pursuant to section 18(d) and (l) of the Federal Deposit Insurance Act (12 U.S.C. 1828(d), 1828(l)).

(b) The rules in subpart A address the FDIC's requirements for insured state nonmember bank investments in foreign organizations, permissible foreign financial activities, loans or extensions of credit to or for the account of foreign organizations, and the FDIC's recordkeeping, supervision, and approval requirements. The rules also address the permissible activities for foreign branches of insured state nonmember banks, as well as the FDIC's requirements for establishing, operating, relocating and closing of branches in foreign countries.

§ 347.102 Definitions.

For the purposes of this subpart:

(a) An affiliate of an insured state nonmember bank means:

(1) Any entity of which the insured state nonmember bank is a direct or indirect subsidiary or which otherwise controls the insured state nonmember bank;

(2) Any organization which is a direct or indirect subsidiary of such entity or which is otherwise controlled by such entity; or

(3) Any other organization that is a direct or indirect subsidiary of the insured state nonmember bank or is otherwise controlled by the insured state nonmember bank.

(b) Control means the ability to control in any manner the election of a majority of an organization's directors or trustees; or the ability to exercise a controlling influence over the management and policies of an organization. An insured state nonmember bank is deemed to control an organization of which it is a general partner or its affiliate is a general partner.

(c) Domestic means United States.

(d) Eligible insured state nonmember bank means an eligible depository institution as defined in §303.2(r) of this chapter.

(e) Equity interest means any ownership interest or rights in an organization, whether through an equity security, contribution to capital, general or limited partnership interest, debt or warrants convertible into ownership interests or rights, loans providing profit participation, binding commitments to acquire any such items, or some other form of business transaction.

(f) Equity security means voting or nonvoting shares, stock, investment contracts, or other interests representing ownership or participation in a company or similar enterprise, as well as any instrument convertible to any such interest at the option of the holder without payment of substantial additional consideration.

(g) FRB means the Board of Governors of the Federal Reserve System.

(h) Foreign bank means an organization that is organized under the laws of a foreign country, a territory of the United States, Puerto Rico, Guam,

§ 347.103

12 CFR Ch. III (1–1–14 Edition)

American Samoa, or the Virgin Islands that:

(1) Is recognized as a bank by the bank supervisory or monetary authority of the country of its organization or the country in which its principal banking operations are located;

(2) Receives deposits to a substantial extent in the regular course of its business; and

(3) Has the power to accept demand deposits.

(i) Foreign banking organization means a foreign organization that is formed for the sole purpose of either holding shares of a foreign bank or performing nominee, fiduciary, or other banking services incidental to the activities of a foreign branch or foreign bank affiliate of the insured state nonmember bank.

(j) Foreign branch means an office or place of business located outside the United States, its territories, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Virgin Islands, at which banking operations are conducted, but does not include a representative office.

(k) Foreign country means any country other than the United States and includes any territory, dependency, or possession of any such country or of the United States.

(l) Foreign organization means an organization that is organized under the laws of a foreign country.

(m) Insured state nonmember bank or bank means a state bank, as defined by §3(a)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(a)(2)), whose deposits are insured by the FDIC and that is not a member of the Federal Reserve System.

(n) Indirectly means investments held or activities conducted by a subsidiary of an organization.

(o) Investment grade means a security that is rated in one of the four highest categories by:

(1) Two or more NRSROs; or

(2) One NRSRO if the security is rated by only one NRSRO.

(p) Loan or extension of credit means all direct and indirect advances of funds to a person, government, or entity made on the basis of any obligation of that person, government, or entity to repay funds.

(q) Organization or entity means a corporation, partnership, association, bank, or other similar entity.

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

(s) Representative office means an office that engages solely in representative functions such as soliciting new business for its home office or acting as liaison between the home office and local customers, but which has no authority to make business or contracting decisions other than those relating to the personnel and premises of the representative office.

(t) Subsidiary means any organization more than 50 percent of the voting equity interests of which are directly or indirectly held by another organization.

(u) Tier 1 capital means Tier 1 capital as defined in §325.2 of this chapter or §324.2 of this chapter, as applicable.

(v) Well capitalized means well capitalized as defined in §325.103 of this chapter or §324.403 of this chapter, as applicable.

[70 FR 17560, Apr. 6, 2005, as amended at 78 FR 55595, Sept. 10, 2013]

§ 347.103 Effect of state law on actions taken under this subpart.

A bank may acquire and retain equity interests in a foreign organization or establish a foreign branch, subject to the requirements of this subpart, if it is authorized to do so by the law of the state in which the bank is chartered.

§ 347.104 Insured state nonmember bank investments in foreign organizations.

(a) *Investment in foreign banks or foreign banking organizations.* A bank may directly or indirectly acquire and retain equity interests in a foreign bank or foreign banking organization.

(b) *Investment in other foreign organizations.* A bank may only:

(1) acquire and retain equity interests in foreign organizations, other than foreign banks or foreign banking organizations in amounts of 50 percent or less of the foreign organization's voting equity interests, if the equity

interest is held through a domestic or foreign subsidiary; and

(2) The bank meets its minimum capital requirements.

§ 347.105 Permissible financial activities outside the United States.

(a) *Limitation on authorized activities.* A bank may not directly or indirectly acquire or hold equity interests in a foreign organization that will result in the bank and its affiliates:

(1) Holding more than 50 percent, in the aggregate, of the voting equity interest in such foreign organization; or

(2) Controlling such foreign organization, unless the activities of a foreign organization are limited to those authorized under paragraph (b) of this section.

(b) *Authorized activities.* The following financial activities are authorized outside the United States:

(1) Commercial and other banking activities.

(2) Financing, including commercial financing, consumer financing, mortgage banking, and factoring, subject to compliance with any attendant restrictions contained in 12 CFR 225.28(b).

(3) Leasing real or personal property, acting as agent, broker or advisor in leasing real or personal property, subject to compliance with any attendant restrictions in 12 CFR 225.28(b).

(4) Acting as a fiduciary, subject to compliance with any attendant restrictions in 12 CFR 225.28(b).

(5) Underwriting credit life, credit accident and credit health insurance.

(6) Performing services for other direct or indirect operations of a domestic banking organization, including representative functions, sale of long-term debt, name saving, liquidating assets acquired to prevent loss on a debt previously contracted in good faith, and other activities that are permissible for a bank holding company under sections 4(a)(2)(A) and 4(c)(1)(C) of the Bank Holding Company Act.

(7) Holding the premises of a branch of an Edge corporation or insured state nonmember bank or the premises of a direct or indirect subsidiary, or holding or leasing the residence of an officer or employee of a branch or a subsidiary.

(8) Providing investment, financial, or economic services, subject to com-

pliance with any attendant restrictions in 12 CFR 225.28(b).

(9) General insurance agency and brokerage.

(10) Data processing.

(11) Organizing, sponsoring, and managing a mutual fund if the fund's shares are not sold or distributed in the United States or to U.S. residents and the fund does not exercise management control over the firms in which it invests.

(12) Performing management consulting services, provided that such services when rendered with respect to the domestic market must be restricted to the initial entry.

(13) Underwriting, distributing, and dealing in debt securities outside the United States.

(14) With the prior approval of the FDIC under section 347.119(d), underwriting, distributing, and dealing in equity securities outside the United States.

(15) Operating a travel agency in connection with financial services offered outside the United States by the bank or others.

(16) Providing futures commission merchant services, subject to compliance with any attendant restrictions in 12 CFR 225.28(b).

(17) Engaging in activities that the FRB has determined in Regulation Y (12 CFR 225.28(b)) are closely related to banking under section 4(c)(8) of the Bank Holding Company Act.

(18) Engaging in other activities, with the prior approval of the FDIC.

(c) *Limitation on activities authorized under Regulation Y.* If a bank relies solely on the cross-reference to Regulation Y contained in paragraph (b)(17) of this section as authority to engage in an activity, compliance with any attendant restrictions on the activity that are contained in 12 CFR 225.28(b) is required.

(d) *Approval of other activities.* Activities that are not specifically authorized by this section, but that are authorized by 12 CFR 211.10 or FRB interpretations of activities authorized by that section, may be authorized by specific consent of the FDIC on an individual basis and upon such terms and conditions as the FDIC may consider

§ 347.106

appropriate. Activities that will be engaged in as principal (defined by reference to section 362.1(b) of this chapter), and that are not authorized by 12 CFR 211.10 or FRB interpretations of activities authorized under that section, must satisfy the requirements of part 362 of this chapter and be approved by the FDIC under this part as well as part 362 of this chapter.

§ 347.106 Going concerns.

Going concerns. If a bank acquires an equity interest in a foreign organization that is a going concern, no more than 5 percent of either the consolidated assets or revenues of the foreign organization may be attributable to activities that are not permissible under § 347.105(b).

§ 347.107 Joint ventures.

(a) *Joint ventures.* If a bank, directly or indirectly, acquires or holds an equity interest in a foreign organization that is a joint venture, and the bank or its affiliates do not control the foreign organization, no more than 10 percent of either the consolidated assets or revenues of the foreign organization may be attributable to activities that are not permissible under § 347.105(b).

(b) *Joint venture defined.* For purposes of this section, the term “joint venture” means any organization in which 20 percent or more but not in excess of 50 percent of the voting equity interests, in the aggregate, are directly or indirectly held by a bank or its affiliates.

§ 347.108 Portfolio investments.

(a) *Portfolio investments.* If a bank, directly or indirectly, acquires or holds an equity interest in a foreign organization as a portfolio investment and the foreign organization is not controlled, directly or indirectly, by the bank or its affiliates:

(1) No more than 10 percent of either the consolidated assets or revenues of the foreign organization may be attributable to activities that are not permissible under § 347.105(b); and

(2) Any loans or extensions of credit made by the bank and its affiliates to the foreign organization must be on substantially the same terms, including interest rates and collateral, as

12 CFR Ch. III (1–1–14 Edition)

those prevailing at the same time for comparable transactions between the bank or its affiliates and nonaffiliated organizations.

(b) *Portfolio investment defined.* For purposes of this section, the term “portfolio investment” means an investment in an organization in which less than 20 percent of the voting equity interests, in the aggregate, are directly or indirectly held by a bank or its affiliates.

§ 347.109 Limitations on indirect investments in nonfinancial foreign organizations.

(a) A bank may, through a subsidiary authorized by §§ 347.105 or 347.106, or an Edge corporation if also authorized by the FRB, acquire and hold equity interests in foreign organizations that are not foreign banks or foreign banking organizations and that engage generally in activities beyond those listed in § 347.105(b), subject to the following:

(1) The amount of the investment does not exceed 15 percent of the bank’s Tier 1 capital;

(2) The aggregate holding of voting equity interests of one foreign organization by the bank and its affiliates must be less than:

(i) 20 percent of the foreign organization’s voting equity interests; and

(ii) 40 percent of the foreign organization’s voting and nonvoting equity interests;

(b) The bank or its affiliates must not otherwise control the foreign organization; and

(c) Loans or extensions of credit made by the bank and its affiliates to the foreign organization must be on substantially the same terms, including interest rates and collateral, as those prevailing at the same time for comparable transactions between the bank or its affiliates and nonaffiliated organizations.

§ 347.110 Affiliate holdings.

References in §§ 347.107, 347.108, and 347.109 to equity interests of foreign organizations held by an affiliate of a bank include equity interests held in connection with an underwriting or for distribution or dealing by an affiliate permitted to do so by §§ 362.8 or 362.18 of this chapter or section 4(c)(8) of the

Federal Deposit Insurance Corporation

§ 347.111

Bank Holding Company Act (12 U.S.C. 1843(c)(8)).

§ 347.111 Underwriting and dealing limits applicable to foreign organizations held by insured state non-member banks.

A bank that holds an equity interest in one or more foreign organizations which underwrite, deal, or distribute equity securities outside the United States as authorized by § 347.105(b)(14) is subject to the following limitations:

(a) *Underwriting commitment limits.* (1) The aggregate underwriting commitments by the foreign organizations for the equity securities of a single entity, taken together with underwriting commitments by any affiliate of the bank under the authority of 12 CFR 211.10(b), may not exceed the lesser of \$60 million or 25 percent of the bank's Tier 1 capital, except as otherwise provided in this paragraph.

(2) Underwriting commitments in excess of this limit must be either:

- (i) Covered by binding commitments from subunderwriters or purchasers; or
- (ii) Deducted from the capital of the bank, with at least 50 percent of the deduction being taken from Tier 1 capital, with the bank remaining well capitalized after this deduction.

(b) *Distribution and dealing limits.* The equity securities of any single entity held for distribution or dealing by the foreign organizations, taken together with equity securities held for distribution or dealing by any affiliate of the bank under the authority of 12 CFR 211.10:

(1) May not exceed the lesser of \$30 million or 5 percent of the bank's Tier 1 capital, subject to the following:

- (i) Any equity securities acquired pursuant to any underwriting commitment extending up to 90 days after the payment date for the underwriting may be excluded from this limit;
- (ii) Any equity securities of the entity held under the authority of §§ 347.105 through 347.109 or 12 CFR 211.10 for purposes other than distribution or dealing must be included in this limit; and
- (iii) Up to 75 percent of the position in an equity security may be reduced by netting long and short positions in the same security, or offsetting cash positions against derivative instru-

ments referenced to the same security so long as the derivatives are part of a prudent hedging strategy; and

(2) Must be included in calculating the general consent limits under § 347.117(b)(3) if the bank relies on the general consent provisions as authority to acquire equity interests of the same foreign entity for investment or trading.

(c) *Additional distribution and dealing limits.* With the exception of equity securities acquired pursuant to any underwriting commitment extending up to 90 days after the payment date for the underwriting, equity securities of a single entity held for distribution or dealing by all affiliates of the bank (this includes shares held in connection with an underwriting or for distribution or dealing by an affiliate permitted to do so by §§ 362.8 or 362.18 of this chapter or section 4(c)(8) of the Bank Holding Company Act), combined with any equity interests held for investment or trading purposes by all affiliates of the bank, must conform to the limits of §§ 347.105 through 347.109.

(d) *Combined limits.* The aggregate of the following may not exceed 25 percent of the bank's Tier 1 capital:

(1) All equity interests of foreign organizations held for investment or trading under § 347.109 or by an affiliate of the bank under the corresponding paragraph of 12 CFR 211.10.

(2) All underwriting commitments under paragraph (a) of this section, taken together with all underwriting commitments by any affiliate of the bank under the authority of 12 CFR 211.10, after excluding the amount of any underwriting commitment:

(i) Covered by binding commitments from subunderwriters or purchasers under paragraph (a)(1) of this section or the comparable provision of 12 CFR 211.10; or

(ii) Already deducted from the bank's capital under paragraph (a)(2) of this section, or the appropriate affiliate's capital under the comparable provisions of 12 CFR 211.10; and

(3) All equity securities held for distribution or dealing under paragraph (b) of this section, taken together with all equity securities held for distribution or dealing by any affiliate of the bank under the authority of 12 CFR

§ 347.112

211.10, after reducing by up to 75 percent the position in any equity security by netting and offset, as permitted by paragraph (b)(1)(iii) of this section or the comparable provision of 12 CFR 211.10.

§ 347.112 Restrictions applicable to foreign organizations that act as futures commission merchants.

(a) If a bank acquires or retains an equity interest in a foreign organization that acts as a futures commission merchant pursuant to § 347.105(b)(16), the foreign organization may not be a member of an exchange or clearing association that requires members to guarantee or otherwise contract to cover losses suffered by other members unless the:

(1) Foreign organization's liability does not exceed two percent of the bank's Tier 1 capital, or

(2) Bank has obtained the prior approval of the FDIC under § 347.120(d).

(b) [Reserved]

§ 347.113 Restrictions applicable to activities by a foreign organization in the United States.

(a) A bank, acting under the authority provided in this subpart, may not directly or indirectly hold:

(1) Equity interests of any foreign organization that engages in the general business of buying or selling goods, wares, merchandise, or commodities in the United States; or

(2) More than 5 percent of the equity interests of any foreign organization that engages in activities in the United States unless any activities in which the foreign organization engages in the United States are incidental to its international or foreign business.

(b) For purposes of this section:

(1) A foreign organization is not engaged in any business or activities in the United States unless it maintains an office in the United States other than a representative office.

(2) The following activities are incidental to international or foreign business:

(i) Activities that are permissible for an Edge corporation in the United States under 12 CFR 211.6; or

(ii) Other activities approved by the FDIC.

12 CFR Ch. III (1–1–14 Edition)

§ 347.114 Extensions of credit to foreign organizations held by insured state nonmember banks; shares of foreign organizations held in connection with debts previously contracted.

(a) *Loans or extensions of credit.* A bank that directly or indirectly holds equity interests in a foreign organization pursuant to the authority of this subpart may make loans or extensions of credit to or for the accounts of the organization without regard to the provisions of section 18(j) of the FDI Act (12 U.S.C. 1828(j)).

(b) *Debts previously contracted.* Equity interests acquired to prevent a loss upon a debt previously contracted in good faith are not subject to the limitations or procedures of this subpart; however, they must be disposed of promptly but in no event later than two years after their acquisition, unless the FDIC authorizes retention for a longer period.

§ 347.115 Permissible activities for a foreign branch of an insured state nonmember bank.

In addition to its general banking powers and if permitted by the law of the state in which the bank is chartered, a foreign branch of a bank may conduct the following activities to the extent that they are consistent with banking practices in a foreign country where the bank maintains a branch:

(a) *Guarantees.* Guarantee debts, or otherwise agree to make payments on the occurrence of readily ascertainable events including, without limitation, nonpayment of taxes, rentals, customs duties, or costs of transport and loss or nonconformance of shipping documents, if:

(1) The guarantee or agreement specifies a maximum monetary liability; and

(2) To the extent the guarantee or agreement is not subject to a separate amount limit under state or federal law, the amount of the guarantee or agreement is combined with loans and other obligations for purposes of applying any legal lending limits.

(b) *Government obligations.* Engage in the following types of transactions

with respect to the obligations of foreign countries, so long as aggregate investments, securities held in connection with distribution and dealing, and underwriting commitments do not exceed ten percent of the bank's Tier 1 capital:

(1) Underwrite, distribute and deal, invest in, or trade obligations of:

(i) The national government of the country in which the branch is located or its political subdivisions; and

(ii) An agency or instrumentality of such national government if supported by the taxing authority, guarantee, or full faith and credit of the national government.

(2) Underwrite, distribute and deal, invest in or trade obligations¹ rated as investment grade of:

(i) The national government of any foreign country or its political subdivisions, to the extent permissible under the law of the issuing foreign country; and

(ii) An agency or instrumentality of the national government of any foreign country to the extent permissible under the law of the issuing foreign country, if supported by the taxing authority, guarantee, or full faith and credit of the national government.

(c) *Local investments.* (1) Acquire and hold local investments in:

(i) Equity securities of the central bank, clearinghouses, governmental entities, and government sponsored development banks of the country in which the branch is located;

(ii) Other debt securities eligible to meet local reserve or similar requirements; and

(iii) Shares of automated electronic payment networks, professional societies, schools, and similar entities necessary to the business of the branch.

(2) Aggregate local investments (other than those required by the law of the foreign country or permissible under section 5136 of the Revised Statutes (12 U.S.C. 24 (Seventh)) by all the bank's branches in a single foreign country must not exceed 1 percent of the total deposits in all the bank's

branches in that country as reported in the preceding year-end Report of Income and Condition (Call Report):²

(d) *Insurance.* Act as an insurance agent or broker.

(e) *Employee benefits program.* Pay to an employee of a branch, as part of an employee benefits program, a greater rate of interest than that paid to other depositors of the branch.

(f) *Repurchase agreements.* Engage in repurchase agreements involving securities and commodities that are the functional equivalents of extensions of credit.

(g) *Other activities.* Engage in other activities, with the prior approval of the FDIC.

(h) *Approval of other activities.* Activities that are not specifically authorized by this section, but that are authorized by 12 CFR 211.4 or FRB interpretations of activities authorized by that section, may be authorized by specific consent of the FDIC on an individual basis and upon such terms and conditions as the FDIC may consider appropriate. Activities that will be engaged in as principal (defined by reference to section 362.1(b) of this chapter), and that are not authorized by 12 CFR 211.4 or FRB interpretations of activities authorized under that section, must satisfy the requirements of part 362 of this chapter and be approved by the FDIC under this part as well as part 362 of this chapter.

§347.116 Recordkeeping and supervision of foreign activities of insured state nonmember banks.

(a) Records, controls and reports. A bank with any foreign branch, any investment in a foreign organization of 20 percent or more of the organization's voting equity interests, or control of a foreign organization must maintain a system of records, controls and reports that, at minimum, provide for the following:

(1) Risk assets. To permit assessment of exposure to loss, information furnished or available to the main office should be sufficient to permit periodic

¹If the obligation is an equity interest, it must be held through a subsidiary of the foreign branch and the insured state nonmember bank must meet its minimum capital requirements.

²If a branch has recently been acquired by the bank and the branch was not previously required to file a Call Report, branch deposits as of the acquisition date must be used.

§ 347.117

12 CFR Ch. III (1–1–14 Edition)

and systematic appraisals of the quality of risk assets, including loans and other extensions of credit. Coverage should extend to a substantial proportion of the risk assets in the branch or foreign organization, and include the status of all large credit lines and of credits to customers also borrowing from other offices or affiliates of the bank. Appropriate information on risk assets may include:

- (i) A recent financial statement of the borrower or obligee and current information on the borrower's or obligee's financial condition;
- (ii) Terms, conditions, and collateral;
- (iii) Data on any guarantors;
- (iv) Payment history; and
- (v) Status of corrective measures employed.

(2) *Liquidity.* To enable assessment of local management's ability to meet its obligations from available resources, reports should identify the general sources and character of the deposits, borrowing, and other funding sources employed in the branch or foreign organization with special reference to their terms and volatility. Information should be available on sources of liquidity—cash, balances with banks, marketable securities, and repayment flows—such as will reveal their accessibility in time and any risk elements involved.

(3) *Contingencies.* Data on the volume and nature of contingent items such as loan commitments and guarantees or their equivalents that permit analysis of potential risk exposure and liquidity requirements.

(4) *Controls.* Reports on the internal and external audits of the branch or foreign organization in sufficient detail to permit determination of conformance to auditing guidelines. Appropriate audit reports may include coverage of:

- (i) Verification and identification of entries on financial statements;
- (ii) Income and expense accounts, including descriptions of significant chargeoffs and recoveries;
- (iii) Operations and dual-control procedures and other internal controls;
- (iv) Conformance to head office guidelines on loans, deposits, foreign exchange activities, accounting procedures in compliance with applicable ac-

counting standards, and discretionary authority of local management;

(v) Compliance with local laws and regulations; and

(vi) Compliance with applicable U.S. laws and regulations.

(b) *Availability of information to examiners; reports.* (1) Information about foreign branches or foreign organizations must be made available to the FDIC by the bank for examination and other supervisory purposes.

(2) The FDIC may from time to time require a bank to make and submit such reports and information as may be necessary to implement and enforce the provisions of this subpart, and the bank shall submit an annual report of condition for each foreign branch pursuant to instructions provided by the FDIC.

§ 347.117 General consent.

(a) *General consent to establish or relocate a foreign branch.* General consent of the FDIC is granted, subject to the written notification requirement contained in section 303.182(a) and consistent with the requirements of this subpart, for an:

(1) Eligible bank to establish a foreign branch conducting activities authorized by section 347.115 of this section in any foreign country in which:

(i) The bank already operates one or more foreign branches or foreign bank subsidiaries;

(ii) The bank's holding company operates a foreign bank subsidiary; or

(iii) An affiliated bank or Edge or Agreement corporation operates one or more foreign branches or foreign bank subsidiaries.

(2) Insured state nonmember bank to relocate an existing foreign branch within a foreign country.

(b) *General consent to invest in a foreign organization.* General consent of the FDIC is granted, subject to the written notification requirement contained in section 303.183(a) (unless no notification is required because the investment is acquired for trading purposes) and consistent with the requirements of this subpart, for an eligible bank to make investments in foreign organizations, directly or indirectly, if:

(1) The bank operates at least one foreign bank subsidiary or foreign

branch, an affiliated bank or Edge or Agreement corporation operates at least one foreign bank subsidiary or foreign branch, or the bank's holding company operates at least one foreign bank subsidiary in the country where the foreign organization will be located;

(2) In any instance where the bank and its affiliates will hold 20 percent or more of the foreign organization's voting equity interests or control the foreign organization, at least one state nonmember bank has a foreign bank subsidiary or foreign branch (other than a shell branch) in the country where the foreign organization will be located;³ and

(3) The investment is within one of the following limits:

(i) The investment is acquired at net asset value from an affiliate;

(ii) The investment is a reinvestment of cash dividends received from the same foreign organization during the preceding 12 months; or

(iii) The total investment, directly or indirectly, in a single foreign organization in any transaction or series of transactions during a twelve-month period does not exceed 2 percent of the bank's Tier 1 capital, and such investments in all foreign organizations in the aggregate do not exceed:

(A) 5 percent of the bank's Tier 1 capital during a 12-month period; and

(B) Up to an additional 5 percent of the bank's Tier 1 capital if the investments are acquired for trading purposes.

§ 347.118 Expedited processing.

(a) *Expedited processing of branch applications.* An eligible bank may establish a foreign branch conducting activities authorized by § 347.115 in an additional foreign country, after complying with the expedited processing requirements contained in § 303.182(b) and (c)(1), if any of the following are located in two or more foreign countries:

(1) Foreign branches or foreign bank subsidiaries of the eligible bank;

(2) Foreign branches or foreign bank subsidiaries of banks and Edge or

Agreement corporations affiliated with the eligible bank; and

(3) Foreign bank subsidiaries of the eligible bank's holding company.

(b) *Expedited processing of applications for investment in foreign organizations.* An investment that does not qualify for general consent but is otherwise in conformity with the limits and requirements of this subpart may be made 45 days after an eligible bank files a substantially complete application with the FDIC in compliance with the expedited processing requirements contained in § 303.183(b) and (c)(1), or within such earlier time as authorized by the FDIC.

§ 347.119 Specific consent.

General consent and expedited processing under this subpart do not apply in the following circumstances:

(a) *Limitation on access to supervisory information in foreign country.* (1) Applicable law or practice in the foreign country where the foreign organization or foreign branch would be located would limit the FDIC's access to information for supervisory purposes; and

(i) A bank would hold 20 percent or more of the voting equity interests of a foreign organization or control such organization as a result of a foreign investment; or

(ii) A bank would be establishing a foreign branch.

(b) *World Heritage site.* A foreign branch of a bank would be located on a site on the World Heritage List or on the foreign country's equivalent of the National Register of Historic Places, in accordance with section 403 of the National Historic Preservation Act Amendments of 1980 (16 U.S.C. 470a-2).

(c) *Modification or suspension of general consent or expedited processing.* The FDIC at any time notifies the bank that the FDIC is modifying or suspending its general consent or expedited processing procedure.

(d) *Specific consent.* Direct or indirect investments in or activities of foreign organizations by banks, the establishment of foreign branches or issues regarding the types or amounts of activity that can be engaged in by foreign branches, which are not authorized under §§ 347.117 or 347.118 require prior

³A list of these countries can be obtained from the FDIC's Internet Web Site at <http://www.fdic.gov>.

§ 347.120

review and specific consent of the FDIC.

§ 347.120 Computation of investment amounts.

In computing the amount that may be invested in any foreign organization under §§ 347.117 through 347.119, any investments held by an affiliate of a bank must be included.

§ 347.121 Requirements for insured state nonmember bank to close a foreign branch.

A bank must comply with the written notification requirement contained in § 303.182(d) when it closes a foreign branch.

§ 347.122 Limitations applicable to the authority provided in this subpart.

The FDIC may impose such conditions on authority granted in this subpart as it considers appropriate. If a bank is unable or fails to comply with the requirements of this subpart or any conditions imposed by the FDIC regarding transactions under this subpart, the FDIC may require termination of any activities or divestiture of investments permitted under this subpart after giving the bank notice and a reasonable opportunity to be heard on the matter.

Subpart B—Foreign Banks

§ 347.201 Authority, purpose, and scope.

(a) This subpart is issued pursuant to sections 5(c) and 10(b)(4) of the Federal Deposit Insurance Act (FDI Act)(12 U.S.C. 1815(c) and 1820(b)(4)) and sections 6, 7, and 15 of the International Banking Act of 1978 (IBA)(12 U.S.C. 3104, 3105, and 3109).

(b) This subpart implements the insured branch asset pledge and examination commitment requirement for foreign banks in the FDI Act. It also implements the deposit insurance, permissible activity, and cross-border cooperation provisions of the IBA regarding the FDIC. Sections 347.203–347.211 apply to state and federal branches whose deposits are insured. Sections 347.204 and 347.207 are applicable to depository institution subsidiaries of a foreign bank. Section 347.212 applies to

12 CFR Ch. III (1–1–14 Edition)

insured state branches and §§ 347.213–347.216 apply to state branches whose deposits are not insured by the FDIC.

§ 347.202 Definitions.

For the purposes of this subpart:

(a) Affiliate means any entity that controls, is controlled by, or is under common control with another entity. An entity shall be deemed to “control” another entity if the entity directly or indirectly owns, controls, or has the power to vote 25 percent or more of any class of voting securities of the other entity or controls in any manner the election of a majority of the directors or trustees of the other entity.

(b) Branch means any office or place of business of a foreign bank located in any state of the United States at which deposits are received. The term does not include any office or place of business deemed by the state licensing authority or the Comptroller of the Currency to be an agency.

(c) Deposit has the same meaning as that term in section 3(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(1)).

(d) Depository means any insured state bank, national bank, or insured branch.

(e) *Domestic retail deposit activity* means the acceptance by a Federal or State branch of any initial deposit of less than an amount equal to the standard maximum deposit insurance amount (“SMDIA”).

(f) Federal branch means a branch of a foreign bank established and operating under the provisions of section 4 of the International Banking Act of 1978 (12 U.S.C. 3102).

(g) Foreign bank means any company organized under the laws of a foreign country, any territory of the United States, Puerto Rico, Guam, American Samoa, the Northern Mariana Islands, or the Virgin Islands, which engages in the business of banking. The term includes foreign commercial banks, foreign merchant banks and other foreign institutions that engage in banking activities usual in connection with the business of banking in the countries where such foreign institutions are organized and operating. Except as otherwise specifically provided by the Federal Deposit Insurance Corporation,

Federal Deposit Insurance Corporation

§ 347.202

banks organized under the laws of a foreign country, any territory of the United States, Puerto Rico, Guam, American Samoa, the Northern Mariana Islands, or the Virgin Islands which are insured banks other than by reason of having an insured branch are not considered to be foreign banks for purposes of §§ 347.204, 347.205, 347.209, and 347.210.

(h) Foreign business means any entity including, but not limited to, a corporation, partnership, sole proprietorship, association, foundation or trust, which is organized under the laws of a foreign country or any United States entity which is owned or controlled by an entity which is organized under the laws of a foreign country or a foreign national.

(i) Foreign country means any country other than the United States and includes any colony, dependency or possession of any such country.

(j) FRB means the Board of Governors of the Federal Reserve System.

(k) Home state of a foreign bank means the state so determined by the election of the foreign bank, or in default of such election, by the Board of Governors of the Federal Reserve System.

(l) Immediate family member of a natural person means the spouse, father, mother, brother, sister, son or daughter of that natural person.

(m) Initial deposit means the first deposit transaction between a depositor and the branch where there is no existing deposit relationship. The initial deposit may be placed into different deposit accounts or into different kinds of deposit accounts, such as demand, savings or time. Deposit accounts that are held by a depositor in the same right and capacity may be added together for the purposes of determining the dollar amount of the initial deposit.

(n) Insured bank means any bank, including a foreign bank with an insured branch, the deposits of which are insured in accordance with the provisions of the Federal Deposit Insurance Act.

(o) Insured branch means a branch of a foreign bank any deposits of which branch are insured in accordance with the provisions of the Federal Deposit Insurance Act.

(p) Large United States business means any entity including, but not limited to, a corporation, partnership, sole proprietorship, association, foundation or trust which is organized under the laws of the United States or any state thereof, and:

(1) Whose securities are registered on a national securities exchange or quoted on the National Association of Securities Dealers Automated Quotation System; or

(2) Has annual gross revenues in excess of \$1,000,000 for the fiscal year immediately preceding the initial deposit.

(q) A majority owned subsidiary means a company the voting stock of which is more than 50 percent owned or controlled by another company.

(r) Noninsured branch means a branch of a foreign bank deposits of which branch are not insured in accordance with the provisions of the Federal Deposit Insurance Act.

(s) OCC means the Office of the Comptroller of the Currency.

(t) Person means an individual, bank, corporation, partnership, trust, association, foundation, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, or any other form of entity.

(u) Significant risk to the deposit insurance fund shall be understood to be present whenever there is a high probability that the Deposit Insurance Fund administered by the FDIC may suffer a loss.

(v) *Standard maximum deposit insurance amount*, referred to as the "SMDIA" hereafter, means \$250,000 adjusted pursuant to subparagraph (F) of section 11(a)(1) of the FDI Act (12 U.S.C. 1821(a)(1)(F)).

(w) State means any state of the United States or the District of Columbia.

(x) State branch means a branch of a foreign bank established and operating under the laws of any state.

(y) Wholly owned subsidiary means a company the voting stock of which is 100 percent owned or controlled by another company except for a nominal number of directors' shares.

[70 FR 17560, Apr. 6, 2005; 70 FR 20704, Apr. 21, 2005, as amended at 71 FR 20527, Apr. 21, 2006; 74 FR 47718, Sept. 17, 2009; 75 FR 49365, Aug. 13, 2010]

§ 347.203 Deposit insurance required for all branches of foreign banks engaged in domestic retail deposit activity in the same State.

The FDIC will not insure deposits in any branch of a foreign bank unless the foreign bank agrees that every branch established or operated by the foreign bank in the same state that engages in domestic retail deposit activity will be an insured branch.

§ 347.204 Commitment to be examined and provide information.

(a) In connection with an application for deposit insurance for a U.S. branch or depository institution subsidiary of a foreign bank that has been determined to be subject to comprehensive consolidated supervision by the appropriate Federal banking agency, as defined in section 3(q) of the FDI Act (12 U.S.C. 1813(q)), the foreign bank shall provide binding written commitments (including a consent to U.S. jurisdiction and designation of agent for service, acceptable to the FDIC) to the following terms:

(1) The FDIC will be provided with any information about the foreign bank and its affiliates located outside of the United States that the FDIC requests to determine:

(i) The relationship between the U.S. branch or depository institution subsidiary and its affiliates; and

(ii) The effect of such relationship on such U.S. branch or depository institution subsidiary;

(2) The FDIC will be allowed to examine the affairs of any office, agency, branch or affiliate of the foreign bank located in the United States and will be provided any information requested to determine:

(i) The relationship between the U.S. branch or depository institution subsidiary and such offices, agencies, branches or affiliates; and

(ii) The effect of such relationship on such U.S. branch or depository institution subsidiary.

(3) The FDIC will not process a deposit insurance application for any U.S. branch or depository institution subsidiary of a foreign bank if the foreign bank fails to provide the written commitments, consent to U.S. jurisdiction,

and designation of agent for service required by this section.

(b) The FDIC will consider the existence and extent of any prohibition or restrictions, if any, on its ability to utilize the commitments, consent to U.S. jurisdiction, and designation of agent for service required by this section, in determining whether to grant or deny a deposit insurance application for the U.S. branch or depository institution subsidiary of the foreign bank. In addition, the FDIC may consider any additional assurances or commitments provided by the foreign bank, including that it will cooperate and assist the FDIC, without limitation, by seeking to obtain waivers and exemptions from applicable confidentiality or secrecy restrictions or requirements to enable the foreign bank or its affiliates to make information about the foreign bank and its affiliates located outside of the United States available to the FDIC for review.

(c) The foreign bank's commitments, consent to U.S. jurisdiction, and designation of agent for service shall be signed by an officer of the foreign bank who has been so authorized by the foreign bank's board of directors and in all instances will be executed in a manner acceptable to the FDIC and shall be included with the branch or depository institution application for insurance. Any documents that are not in English shall be accompanied by an English translation.

§ 347.205 Record maintenance.

The records of each insured branch shall be kept as though it were a separate entity, with its assets and liabilities separate from the other operations of the head office, other branches or agencies of the foreign bank and its subsidiaries or affiliates. Each insured branch must keep a set of accounts and records in the words and figures of the English language that accurately reflects the business transactions of the insured branch on a daily basis. A foreign bank that has more than one insured branch in a state may treat such insured branches as one entity for record-keeping purposes and may designate one branch to maintain records for all the branches in the state.

§ 347.206 Domestic retail deposit activity requiring deposit insurance by U.S. branch of a foreign bank.

(a) *Domestic retail deposit activity.* To initiate or conduct domestic retail deposit activity requiring deposit insurance protection in any state after December 19, 1991, a foreign bank must establish one or more insured U.S. bank subsidiaries for that purpose.

(b) *Exception.* Paragraph (a) of this section does not apply to any bank organized under the laws of any territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands the deposits of which are insured by the FDIC pursuant to the Federal Deposit Insurance Act.

(c) *Grandfathered insured branches.* Domestic retail accounts with balances of less than an amount equal to the SMDIA that require deposit insurance protection may be accepted or maintained in an insured branch of a foreign bank only if such branch was an insured branch on December 19, 1991.

(d) *Change in ownership of grandfathered insured branch.* The grandfathered status of an insured branch may not be transferred, except in certain merger and acquisition transactions that the FDIC determines are not designed, or motivated by the desire, to avoid compliance with section 6(d)(1) of the International Banking Act (12 U.S.C. 3104(d)(1)).

[70 FR 17560, Apr. 6, 2005, as amended at 74 FR 47718, Sept. 17, 2009]

§ 347.207 Disclosure of supervisory information to foreign supervisors.

(a) *Disclosure by the FDIC.* The FDIC may disclose information obtained in the course of exercising its supervisory or examination authority to a foreign bank regulatory or supervisory authority, if the FDIC determines that disclosure is appropriate for bank supervisory or regulatory purposes and will not prejudice the interests of the United States.

(b) *Confidentiality.* Before making any disclosure of information pursuant to paragraph (a) of this section, the FDIC will obtain, to the extent necessary, the agreement of the foreign bank regulatory or supervisory authority to maintain the confidentiality of such information to the extent possible

under applicable law. The disclosure or transfer of information to a foreign bank regulatory or supervisory authority under this section will not waive any privilege applicable to the information that is disclosed or transferred.

§ 347.208 Assessment base deductions by insured branch.

Deposits in an insured branch to the credit of the foreign bank or any of its offices, branches, agencies, or wholly owned subsidiaries may be deducted from the assessment base of the insured branch.

§ 347.209 Pledge of assets.

(a) *Purpose.* A foreign bank that has an insured branch must pledge assets for the benefit of the FDIC or its designee(s). Whenever the FDIC is obligated under section 11(f) of the Federal Deposit Insurance Act (12 U.S.C. 1821(f)) to pay the insured deposits of an insured branch, the assets pledged under this section must become the property of the FDIC and be used to the extent necessary to protect the Deposit Insurance Fund.

(b) *Amount of assets to be pledged.* (1) For a newly insured branch, a foreign bank must pledge assets equal to at least 5 percent of the liabilities of the branch, based on the branch's projection of its liabilities at the end of each of the first three years of operations. For all other insured branches, a foreign bank must pledge assets equal to the appropriate percentage applicable to the insured branch, as determined by reference to the risk-based assessment schedule contained in this paragraph, of the insured branch's average liabilities for the last 30 days of the most recent calendar quarter.⁴

⁴This average must be computed by using the sum of the close of business figures for the 30 calendar days of the most recent calendar quarter, ending with and including the last day of the calendar quarter, divided by 30. For days on which the branch is closed, however, balances from the previous business day are to be used in determining its average liabilities. In determining its average liabilities, the insured branch may exclude liabilities to other offices, agencies, branches, and wholly owned subsidiaries of the foreign bank. The value of the pledged assets must

Continued

(2) *Risk-based assessment schedule.* The risk-based asset pledge required by paragraph (b)(1) will be determined by

utilizing the following risk-based assessment schedule:

Asset maintenance level	Supervisory risk subgroup		
	A (%)	B (%)	C (%)
Equal to or greater than 108%	2	3	4
Equal to or greater than 106%	4	5	6
Less than 106%	6	7	8

The appropriate asset pledge percentage will be determined based on the supervisory risk subgroup and asset maintenance level applicable to the insured branch.

(3) *Supervisory risk factors.* For purposes of this section, within each asset maintenance group, each institution will be assigned to one of three subgroups based on consideration by the FDIC of supervisory evaluations provided by the primary federal regulator for the insured branch. The supervisory evaluations include the results of examination findings by the primary federal regulator, as well as other information the primary federal regulator determines to be relevant. In addition, the FDIC will take into consideration such other information (such as state examination findings, if appropriate) as it determines to be relevant to the financial condition and the risk posed to the Deposit Insurance Fund. The three supervisory subgroups are:

(i) Subgroup “A”. This subgroup consists of financially sound institutions with only a few minor weaknesses;

(ii) Subgroup “B”. This subgroup consists of institutions that demonstrate weaknesses which, if not corrected, could result in significant deterioration of the institution and increased risk of loss to the deposit insurance fund; and

(iii) Subgroup “C”. This subgroup consists of institutions that pose a substantial probability of loss to the deposit insurance fund.

(4) The FDIC may require a foreign bank to pledge additional assets or to compute its pledge on a daily basis whenever the FDIC determines that the condition of the foreign bank or

the insured branch is such that the assets pledged under this section will not adequately protect the deposit insurance fund. In requiring a foreign bank to pledge additional assets, the FDIC will consult with the primary regulator for the insured branch. Among the factors to be considered in imposing these requirements are the concentration of risk to any one borrower or group of related borrowers, the concentration of transfer risk related to any one country, including the country in which the foreign bank’s head office is located or any other factor the FDIC determines is relevant.

(5) Each insured branch must separately comply with the requirements of this section. A foreign bank which has more than one insured branch in a state may, however, treat all of its insured branches in the same state as one entity and will designate one insured branch to be responsible for compliance with this section.

(c) *Depository.* A foreign bank must place pledged assets for safekeeping at any depository which is located in any state. However, a depository may not be an affiliate of the foreign bank whose insured branch is seeking to use the depository. A foreign bank must obtain the FDIC’s prior written approval of the depository selected, and such approval may be revoked and dismissal of the depository required whenever the depository does not fulfill any one of its obligations under the pledge agreement. A foreign bank shall appoint and constitute the depository as its attorney in fact for the sole purpose of transferring title to pledged assets

be computed based on the lesser of the principal amount (par value) or market value of such assets at the time of the original pledge

and thereafter as of the last day of the most recent calendar quarter.

to the FDIC as may be required to effectuate the provisions of paragraph (a) of this section.

(d) *Assets that may be pledged.* Subject to the right of the FDIC to require substitution, a foreign bank may pledge any of the kinds of assets listed in this paragraph (d); such assets must be denominated in United States dollars. A foreign bank shall be deemed to have pledged any such assets for the benefit of the FDIC or its designee at such time as any such asset is placed with the depository, as follows:

(1)(i) Negotiable certificates of deposit that are payable in the United States and that are issued by any state bank, national bank, state or federal savings association, or branch of a foreign bank which has executed a valid waiver of offset agreement or similar debt instruments that are payable in the United States and that are issued by any agency of a foreign bank which has executed a valid waiver of offset agreement; provided, that the maturity of any certificate or issuance is not greater than one year; and provided further, that the issuing branch or agency of a foreign bank is not an affiliate of the pledging bank or from the same country as the pledging bank's domicile;

(ii) Non-negotiable certificates of deposit, subject to the terms specified in paragraph (d)(1)(i) of this section other than the requirement of negotiability, that were pledged as collateral to the FDIC on March 18, 2005, until maturity according to the original terms of the existing deposit agreement.

(2) Treasury bills, interest bearing bonds, notes, debentures, or other direct obligations of or obligations fully guaranteed as to principal and interest by the United States or any agency or instrumentality thereof;

(3) Commercial paper that is rated P-1 or P-2, or their equivalent by a nationally recognized rating service; provided, that any conflict in a rating shall be resolved in favor of the lower rating;

(4) Banker's acceptances that are payable in the United States and that are issued by any state bank, national bank, state or federal savings association, or branch or agency of a foreign bank; provided, that the maturity of

any acceptance is not greater than 180 days; and provided further, that the branch or agency issuing the acceptance is not an affiliate of the pledging bank or from the same country as the pledging bank's domicile;

(5) General obligations of any state of the United States, or any county or municipality of any state of the United States, or any agency, instrumentality, or political subdivision of the foregoing or any obligation guaranteed by a state of the United States or any county or municipality of any state of the United States; provided, that such obligations have a credit rating within the top two rating bands of a nationally recognized rating service (with any conflict in a rating resolved in favor of the lower rating);

(6) Obligations of the African Development Bank, Asian Development Bank, Inter-American Development Bank, and the International Bank for Reconstruction and Development;

(7) Notes issued by bank and thrift holding companies, banks, or savings associations organized under the laws of the United States or any state thereof or notes issued by United States branches or agencies of foreign banks, provided, that the notes have a credit rating within the top two rating bands of a nationally recognized rating service (with any conflict in a rating resolved in favor of the lower rating) and that they are payable in the United States, and provided further, that the issuer is not an affiliate of the foreign bank pledging the note; or

(8) Any other asset determined by the FDIC to be acceptable.

(e) *Pledge agreement.* A foreign bank shall not pledge any assets unless a pledge agreement in form and substance satisfactory to the FDIC has been executed by the foreign bank and the depository. The agreement, in addition to other terms not inconsistent with this paragraph (e), shall give effect to the following terms:

(1) *Original pledge.* The foreign bank shall place with the depository assets of the kind described in paragraph (d) of this section, having an aggregate value in the amount as required pursuant to paragraph (b) of this section.

(2) *Additional assets required to be pledged.* Whenever the foreign bank is

required to pledge additional assets for the benefit of the FDIC or its designees pursuant to paragraph (b)(4) of this section, it shall deliver (within two business days after the last day of the most recent calendar quarter, unless otherwise ordered) additional assets of the kind described in paragraph (d) of this section, having an aggregate value in the amount required by the FDIC.

(3) *Substitution of assets.* The foreign bank, at any time, may substitute any assets for pledged assets, and, upon such substitution, the depository shall promptly release any such assets to the foreign bank; provided, that:

(i) The foreign bank pledges assets of the kind described in paragraph (d) of this section having an aggregate value not less than the value of the pledged assets for which they are substituted and certified as such by the foreign bank; and

(ii) The FDIC has not by written notification to the foreign bank, a copy of which shall be provided to the depository, suspended or terminated the foreign bank's right of substitution.

(4) *Delivery of other documents.* Concurrently with the pledge of any assets, the foreign bank will deliver to the depository all documents and instruments necessary or advisable to effectuate the transfer of title to any such assets and thereafter, from time to time, at the request of the FDIC, deliver to the depository any such additional documents or instruments. The foreign bank shall provide copies of all such documents described in this paragraph (e)(4) to the appropriate regional director concurrently with their delivery to the depository.

(5) *Acceptance and safekeeping responsibilities of the depository.* (i) The depository will accept and hold any assets pledged by the foreign bank pursuant to the pledge agreement for safekeeping free and clear of any lien, charge, right of offset, credit, or preference in connection with any claim the depository may assert against the foreign bank and shall designate any such assets as a special pledge for the benefit of the FDIC or its designee. The depository shall not accept the pledge of any such assets unless, concurrently with such pledge, the foreign bank delivers to the depository the documents

and instruments necessary for the transfer of title thereto as provided in this part.

(ii) The depository shall hold any such assets separate from all other assets of the foreign bank or the depository. Such assets may be held in book-entry form but must at all times be segregated on the records of the depository and clearly identified as assets subject to the pledge agreement.

(6) *Reporting requirements of the insured branch and the depository—*(i) Initial reports. Upon the original pledge of assets as provided in paragraph (e)(1) of this section:

(A) The depository shall provide to the foreign bank and to the appropriate FDIC regional director a written report in the form of a receipt identifying each asset pledged and specifying in reasonable detail with respect to each such asset the complete title, interest rate, series, serial number (if any), principal amount (par value), maturity date and call date; and

(B) The foreign bank shall provide to the appropriate regional director a written report certified as correct by the foreign bank which sets forth the value of each pledged asset and the aggregate value of all such assets, and which states that the aggregate value of all such assets is at least equal to the amount required pursuant to paragraph (b) of this section and that all such assets are of the kind described in paragraph (d) of this section.

(ii) *Quarterly reports.* Within ten calendar days after the end of the most recent calendar quarter:

(A) The depository shall provide to the appropriate regional director a written report specifying in reasonable detail with respect to each asset currently pledged (including any asset pledged to satisfy the requirements of paragraph (b)(4) of this section and identified as such), as of two business days after the end of the most recent calendar quarter, the complete title, interest rate, series, serial number (if any), principal amount (par value), maturity date, and call date, provided, that if no substitution of any asset has occurred during the reporting period, the reporting need only specify that no substitution of assets has occurred; and

(B) The foreign bank shall provide as of two business days after the end of the most recent calendar quarter to the appropriate regional director a written report certified as correct by the foreign bank which sets forth the value of each pledged asset and the aggregate value of all such assets, which states that the aggregate value of all such assets is at least equal to the amount required pursuant to paragraph (b) of this section and that all such assets are of the kind described in paragraph (d) of this section, and which states the average of the liabilities of each insured branch of the foreign bank computed in the manner and for the period prescribed in paragraph (b) of this section.

(iii) *Additional reports.* The foreign bank shall, from time to time, as may be required, provide to the appropriate regional director a written report in the form specified containing the information requested with respect to any asset then currently pledged.

(7) *Access to assets.* With respect to any asset pledged pursuant to the pledge agreement, the depository will provide representatives of the FDIC or the foreign bank with access (during regular business hours of the depository and at the location where any such asset is held, without other limitation or qualification) to all original instruments, documents, books, and records evidencing or pertaining to any such asset.

(8) *Release upon the order of the FDIC.* The depository shall release to the foreign bank any pledged assets, as specified in a written notification of the appropriate regional director, upon the terms and conditions provided in such notification, including without limitation the waiver of any requirement that any assets be pledged by the foreign bank in substitution of any released assets.

(9) *Release to the FDIC.* Whenever the FDIC is obligated under section 11(f) of the Federal Deposit Insurance Act to pay insured deposits of an insured branch, the FDIC by written certification shall so inform the depository; and the depository, upon receipt of such certification, shall thereupon promptly release and transfer title to any pledged assets to the FDIC or re-

lease such assets to the foreign bank, as specified in the certification. Upon release and transfer of title to all pledged assets specified in the certification, the depository shall be discharged from any further obligation under the pledge agreement.

(10) *Interest earned on assets.* The foreign bank may retain any interest earned with respect to the assets currently pledged unless the FDIC by written notice prohibits retention of interest by the foreign bank, in which case the notice shall specify the disposition of any such interest.

(11) *Expenses of agreement.* The FDIC shall not be required to pay any fees, costs, or expenses for services provided by the depository to the foreign bank pursuant to, or in connection with, the pledge agreement.

(12) *Substitution of depository.* The depository may resign, or the foreign bank may discharge the depository, from its duties and obligations under the pledge agreement by giving at least 60 days' written notice thereof to the other party and to the appropriate regional director. The FDIC, upon 30 days' written notice to the foreign bank and the depository, may require the foreign bank to dismiss the depository if the FDIC in its discretion determines that the depository is in breach of the pledge agreement. The depository shall continue to function as such until the appointment of a successor depository becomes effective and the depository has released to the successor depository the pledged assets and documents and instruments to effectuate transfer of title in accordance with the written instructions of the foreign bank as approved by the FDIC. The appointment by the foreign bank of a successor depository shall not be effective until:

(i) The FDIC has approved in writing the successor depository; and

(ii) A pledge agreement in form and substance satisfactory to the FDIC has been executed.

(13) *Waiver of terms.* The FDIC may by written order waive compliance by the foreign bank or the depository with any term or condition of the pledge agreement.

[70 FR 17560, Apr. 6, 2005; 70 FR 20704, Apr. 21, 2005, as amended at 71 FR 20527, Apr. 21, 2006]

§ 347.210 Asset maintenance.

(a) An insured branch of a foreign bank shall maintain on a daily basis eligible assets in an amount not less than 106 percent of the preceding quarter's average book value of the insured branch's liabilities or, in the case of a newly-established insured branch, the estimated book value of its liabilities at the end of the first full quarter of operation, exclusive of liabilities due to the foreign bank's head office, other branches, agencies, offices, or wholly owned subsidiaries. The Director of the Division of Supervision and Consumer Protection or his designee may impose a computation of total liabilities on a daily basis in those instances where it is found necessary for supervisory purposes. The FDIC Board of Directors, after consulting with the insured branch's primary regulator, may require that a higher ratio of eligible assets be maintained if the financial condition of the insured branch warrants such action. Among the factors which will be considered in requiring a higher ratio of eligible assets are the concentration of risk to any one borrower or group of related borrowers, the concentration of transfer risk to any one country, including the country in which the foreign bank's head office is located or any other factor the FDIC determines is relevant. Eligible assets shall be payable in United States dollars.

(b) In determining eligible assets for the purposes of compliance with paragraph (a) of this section, the insured branch shall exclude the following:

(1) Any asset due from the foreign bank's head office, or its other branches, agencies, offices or affiliates;

(2) Any asset classified "Value Impaired," to the extent of the required Allocated Transfer Risk Reserves or equivalent write down, or "Loss" in the most recent state or federal examination report;

(3) Any deposit of the insured branch in a bank unless the bank has executed a valid waiver of offset agreement;

(4) Any asset not supported by sufficient credit information to allow a review of the asset's credit quality, as determined at the most recent state or federal examination, as follows:

(i) Whether an asset has sufficient credit information will be a function of the size of the borrower and the location within the foreign bank of the responsibility for authorizing and monitoring extensions of credit to the borrower. For large, well known companies, when credit responsibility is located in an office of the foreign bank outside the insured branch, the insured branch must have adequate documentation to show that the asset is of good quality and is being supervised adequately by the foreign bank. In such cases, copies of periodic memoranda that include an analysis of the borrower's recent financial statements and a report on recent developments in the borrower's operations and borrowing relationships with the foreign bank generally would constitute sufficient information. For other borrowers, periodic memoranda must be supplemented by information such as copies of recent financial statements, recent correspondence concerning the borrower's financial condition and repayment history, credit terms and collateral, data on any guarantors, and where necessary, the status of any corrective measures being employed;

(ii) Subsequent to the determination that an asset lacks sufficient credit information, an insured branch may not include the amount of that asset among eligible assets until the FDIC determines that sufficient documentation exists. Such a determination may be made either at the next federal examination, or upon request of the insured branch, by the appropriate regional director;

(5) Any asset not in the insured branch's actual possession unless the insured branch holds title to such asset and the insured branch maintains records sufficient to enable independent verification of the insured branch's ownership of the asset, as determined at the most recent state or federal examination;

(6) Any intangible asset;

(7) Any other asset not considered bankable by the FDIC.

(c) A foreign bank which has more than one insured branch in a state may treat all of its insured branches in the same state as one entity for purposes of compliance with paragraph (a) of

this section and shall designate one insured branch to be responsible for maintaining the records of the insured branches' compliance with this section.

(d) The average book value of the insured branch's liabilities for a quarter shall be, at the insured branch's option, either an average of the balances as of the close of business for each day of the quarter or an average of the balances as of the close of business on each Wednesday during the quarter. Quarters end on March 31, June 30, September 30, and December 31 of any given year. For days on which the insured branch is closed, balances from the previous business day are to be used. Calculations of the average book value of the insured branch's liabilities for a quarter shall be retained by the insured branch until the next federal examination.

§ 347.211 Examination of branches of foreign banks.

(a) *Frequency of on-site examination.* Each branch or agency of a foreign bank shall be examined on-site at least once during each 12-month period (beginning on the date the most recent examination of the office ended) by:

- (1) The FRB;
- (2) The FDIC, if an insured branch;
- (3) The OCC, if the branch or agency of the foreign bank is licensed by the OCC; or
- (4) The state supervisor, if the office of the foreign bank is licensed or chartered by the state.

(b) *18-month cycle for certain small institutions—* (1) *Mandatory standards.* The FDIC may conduct a full-scope, on-site examination at least once during each 18-month period, rather than each 12-month period as provided in paragraph (a) of this section, if the insured branch:

- (i) Has total assets of less than \$500 million;
- (ii) Has received a composite ROCA supervisory rating (which rates risk management, operational controls, compliance, and asset quality) of 1 or 2 at its most recent examination;
- (iii) Satisfies the requirement of either the following paragraph (b)(iii)(A) or (B):
 - (A) The foreign bank's most recently reported capital adequacy position con-

sists of, or is equivalent to, Tier 1 and total risk-based capital ratios of at least 6 percent and 10 percent, respectively, on a consolidated basis; or

(B) The insured branch has maintained on a daily basis, over the past three quarters, eligible assets in an amount not less than 108 percent of the preceding quarter's average third party liabilities (determined consistent with applicable federal and state law) and sufficient liquidity is currently available to meet its obligations to third parties;

(iv) Is not subject to a formal enforcement action or order by the FRB, FDIC, or the OCC; and

(v) Has not experienced a change in control during the preceding 12-month period in which a full-scope, on-site examination would have been required but for this section.

(2) *Discretionary standards.* In determining whether an insured branch that meets the standards of paragraph (b)(1) of this section should not be eligible for an 18-month examination cycle pursuant to this paragraph (b), the FDIC may consider additional factors, including whether:

- (i) Any of the individual components of the ROCA supervisory rating of an insured branch is rated "3" or worse;
- (ii) The results of any off-site monitoring indicate a deterioration in the condition of the insured branch;
- (iii) The size, relative importance, and role of a particular insured branch when reviewed in the context of the foreign bank's entire U.S. operations otherwise necessitate an annual examination; and
- (iv) The condition of the parent foreign bank gives rise to such a need.

(c) *Authority to conduct more frequent examinations.* Nothing in paragraphs (a) and (b) of this section limits the authority of the FDIC to examine any insured branch as frequently as it deems necessary.

[70 FR 17560, Apr. 6, 2005; 70 FR 20704, Apr. 21, 2005, as amended at 72 FR 17803, Apr. 10, 2007]

§ 347.212 FDIC approval to conduct activities that are not permissible for federal branches.

(a) *Scope.* A foreign bank operating an insured state branch which desires to engage in or continue to engage in

§ 347.213

12 CFR Ch. III (1–1–14 Edition)

any type of activity that is not permissible for a federal branch, pursuant to the National Bank Act (12 U.S.C. 21 *et seq.*) or any other federal statute, regulation, official bulletin or circular, written order or interpretation, or decision of a court of competent jurisdiction, must file a written application for permission to conduct such activity with the FDIC.

(b) *Exceptions.* If the FDIC has already determined, pursuant to part 362 of this chapter, “Activities and Investment of Insured State Banks,” that an activity does not present a significant risk to the Deposit Insurance Fund, no application is required under paragraph (a) of this section for a foreign bank operating an insured branch to engage or continue to engage in the same activity.

(c) *Agency activities.* A foreign bank operating an insured state branch is not required to submit an application pursuant to paragraph (a) of this section to engage in or continue engaging in an activity conducted as agent if the activity is:

(1) permissible agency activity for a state-chartered bank located in the state which the state-licensed insured branch of the foreign bank is located;

(2) permissible agency activity for a state-licensed branch of a foreign bank located in that state; and

(3) permissible pursuant to any other applicable federal law or regulation.

(d) *Conditions of approval.* (1) Approval of such an application required by paragraph (a) of this section may be conditioned on the agreement by the foreign bank and its insured state branch to conduct the activity subject to specific limitations, which may include pledging of assets in excess of the asset pledge and asset maintenance requirements contained in §§347.209 and 347.210.

(2) In the case of an application to initially engage in an activity, as opposed to an application to continue to conduct an activity, the insured state branch shall not commence the activity until it has been approved in writing by the FDIC pursuant to this part and the FRB, and any and all conditions imposed in such approvals have been satisfied.

(e) *Divestiture or cessation.* (1) If an application for permission to continue to conduct an activity is not approved by the FDIC or the FRB, the applicant shall submit a plan of divestiture or cessation of the activity to the appropriate regional director.

(2) A foreign bank operating an insured state branch which elects not to apply to the FDIC for permission to continue to conduct an activity which is rendered impermissible by any change in statute, regulation, official bulletin or circular, written order or interpretation, or decision of a court of competent jurisdiction shall submit a plan of divestiture or cessation to the appropriate regional director.

(3) All plans of divestitures or cessation required by this paragraph must be completed within one year from the date of the disapproval, or within such shorter period as the FDIC may direct.

(f) *Procedures.* Procedures for applications under this section are set out in section 303.187.

[70 FR 17560, Apr. 6, 2005; 70 FR 20704, Apr. 21, 2005, as amended at 71 FR 20527, Apr. 21, 2006]

§ 347.213 Establishment or operation of noninsured foreign branch.

(a) A foreign bank may establish or operate a state branch, as provided by state law, without federal deposit insurance whenever:

(1) The branch only accepts initial deposits in an amount equal to the SMDIA or greater; or

(2) The branch meets the criteria set forth in § 347.214 or § 347.215.

(b) [Reserved]

[70 FR 17560, Apr. 6, 2005, as amended at 74 FR 47718, Sept. 17, 2009]

§ 347.214 Branch established under section 5 of the International Banking Act.

A foreign bank may operate any state branch as a noninsured branch whenever the foreign bank has entered into an agreement with the FRB to accept at that branch only those deposits as would be permissible for a corporation organized under section 25(a) of the Federal Reserve Act (12 U.S.C. 611 *et seq.*) and implementing rules and regulations administered by the FRB (12 CFR 211).

§ 347.215 Exemptions from deposit insurance requirement.

(a) *Deposit activities not requiring insurance.* A State branch will not be considered to be engaged in domestic retail deposit activity that requires the foreign bank parent to establish an insured U.S. bank subsidiary if the State branch accepts initial deposits only in an amount of less than an amount equal to the SMDIA that are derived solely from the following:

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

(2) Individuals who:

(i) Are not citizens of the United States;

(ii) Are residents of the United States; and

(iii) Are employed by a foreign bank, foreign business, foreign government, or recognized international organization;

(3) Persons (including immediate family members of natural persons) to whom the branch or foreign bank (including any affiliate thereof) has extended credit or provided other non-deposit banking services within the past twelve months or has entered into a written agreement to provide such services within the next twelve months;

(4) Foreign businesses, large United States businesses, and persons from whom an Edge or agreement corporation may accept deposits under 12 CFR 211.6(a)(1);

(5) Any governmental unit, including the United States government, any state government, any foreign government and any political subdivision or agency of any of the foregoing, and recognized international organizations;

(6) Persons who are depositing funds in connection with the issuance of a financial instrument by the branch for the transmission of funds or the transmission of such funds by any electronic means; and

(7) Any other depositor, but only if:

(i) The branch's average deposits under this paragraph (a)(7) do not exceed one percent of the branch's average total deposits, as calculated under paragraph (a)(7)(ii) if this section (*de minimis* exception).

(ii) For purposes of calculating this exception:

(A) The branch's average deposits under this paragraph and the average total deposits must be computed by summing the close of business figures for each of the last 30 calendar days, ending with and including the last day of the calendar quarter, and dividing the resulting sum by 30;

(B) For days on which the branch is closed, balances from the last previous business day are to be used;

(C) The branch may exclude deposits in the branch of other offices, branches, agencies or wholly owned subsidiaries of the bank to determine its average deposits;

(D) The branch must not solicit deposits from the general public by advertising, display of signs, or similar activity designed to attract the attention of the general public; and

(E) A foreign bank that has more than one state branch in the same state may aggregate deposits in such branches (excluding deposits of other branches, agencies or wholly owned subsidiaries of the bank) for the purpose of this paragraph (a)(7).

(b) *Application for an exemption.* (1) Whenever a foreign bank proposes to accept at a State branch initial deposits of less than an amount equal to the SMDIA and such deposits are not otherwise exempted under paragraph (a) of this section, the foreign bank may apply to the FDIC for consent to operate the branch as a noninsured branch. The Board of Directors may exempt the branch from the insurance requirement if the branch is not engaged in domestic retail deposit activities requiring insurance protection. The Board of Directors will consider the size and nature of depositors and deposit accounts, the importance of maintaining and improving the availability of credit to all sectors of the United States economy, including the international trade finance sector of the United States economy, whether the exemption would give the foreign bank an unfair competitive advantage over United States banking organizations, and any other relevant factors in making this determination.

(2) Procedures for applications under this section are set out in § 303.186.

(c) Transition period. A noninsured state branch may maintain a retail deposit lawfully accepted prior to April 1, 1996 pursuant to regulations in effect prior to July 1, 1998:

(1) If the deposit qualifies pursuant to paragraph (a) or (b) of this section; or

(2) If the deposit does not qualify pursuant to paragraph (a) or (b) of this section, in the case of a time deposit, no later than the first maturity date of the time deposit after April 1, 1996.

[70 FR 17560, Apr. 6, 2005, as amended at 74 FR 47718, Sept. 17, 2009]

§ 347.216 Depositor notification.

Any state branch that is exempt from the insurance requirement pursuant to § 347.215 shall:

(a) Display conspicuously at each window or place where deposits are usually accepted a sign stating that deposits are not insured by the FDIC; and

(b) Include in bold face conspicuous type on each signature card, passbook, and instrument evidencing a deposit the statement “This deposit is not insured by the FDIC”; or require each depositor to execute a statement which acknowledges that the initial deposit and all future deposits at the branch are not insured by the FDIC. This acknowledgment shall be retained by the branch so long as the depositor maintains any deposit with the branch. This provision applies to any negotiable certificates of deposit made in a branch on or after July 6, 1989, as well as to any renewals of such deposits which become effective on or after July 6, 1989.

Subpart C—International Lending

§ 347.301 Purpose, authority, and scope.

Under the International Lending Supervision Act of 1983 (Title IX, Pub. L. 98–181, 97 Stat. 1153) (12 U.S.C. 3901 *et seq.*) (ILSA), the Federal Deposit Insurance Corporation prescribes the regulations in this subpart relating to international lending activities of banks.

§ 347.302 Definitions.

For the purposes of this subpart:

(a) *Administrative cost* means those costs which are specifically identified

with negotiating, processing and consummating the loan. These costs include, but are not necessarily limited to: legal fees; costs of preparing and processing loan documents; and an allocable portion of salaries and related benefits of employees engaged in the international lending function. No portion of supervisory and administrative expenses or other indirect expenses such as occupancy and other similar overhead costs shall be included.

(b) *Banking institution* means an insured state nonmember bank.

(c) *Federal banking agencies* means the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation.

(d) *International assets* means those assets required to be included in banking institutions’ “Country Exposure Report” form (FFIEC No. 009).

(e) *International loan* means a loan as defined in the instructions to the “Report of Condition and Income” for the respective banking institution (FFIEC Nos. 031, 032, 033 and 034) and made to a foreign government, or to an individual, a corporation, or other entity not a citizen of, resident in, or organized or incorporated in the United States.

(f) *Restructured international loan* means a loan that meets the following criteria:

(1) The borrower is unable to service the existing loan according to its terms and is a resident of a foreign country in which there is a generalized inability of public and private sector obligors to meet their external debt obligations on a timely basis because of a lack of, or restraints on the availability of, needed foreign exchange in the country; and

(2) Either:

(i) The terms of the existing loan are amended to reduce stated interest or extend the schedule of payments; or

(ii) A new loan is made to, or for the benefit of, the borrower, enabling the borrower to service or refinance the existing debt.

(g) *Transfer risk* means the possibility that an asset cannot be serviced in the currency of payment because of a lack of, or restraints on the availability of, needed foreign exchange in the country of the obligor.

§ 347.303 Allocated transfer risk reserve.

(a) *Establishment of Allocated Transfer Risk Reserve.* A banking institution shall establish an allocated transfer risk reserve (ATRR) for specified international assets when required by the FDIC in accordance with this section.

(b) *Procedures and standards—(1) Joint agency determination.* At least annually, the federal banking agencies shall determine jointly, based on the standards set forth in paragraph (b)(2) of this section, the following:

(i) Which international assets subject to transfer risk warrant establishment of an ATRR;

(ii) The amount of the ATRR for the specified assets; and

(iii) Whether an ATRR established for specified assets may be reduced.

(2) *Standards for requiring ATRR—(i) Evaluation of assets.* The federal banking agencies shall apply the following criteria in determining whether an ATRR is required for particular international assets:

(A) Whether the quality of a banking institution's assets has been impaired by a protracted inability of public or private obligors in a foreign country to make payments on their external indebtedness as indicated by such factors, among others, as whether:

(1) Such obligors have failed to make full interest payments on external indebtedness; or

(2) Such obligors have failed to comply with the terms of any restructured indebtedness; or

(3) A foreign country has failed to comply with any International Monetary Fund or other suitable adjustment program; or

(B) Whether no definite prospects exist for the orderly restoration of debt service.

(ii) *Determination of amount of ATRR.*

(A) In determining the amount of the ATRR, the federal banking agencies shall consider:

(1) The length of time the quality of the asset has been impaired;

(2) Recent actions taken to restore debt service capability;

(3) Prospects for restored asset quality; and

(4) Such other factors as the federal banking agencies may consider relevant to the quality of the asset.

(B) The initial year's provision for the ATRR shall be ten percent of the principal amount of each specified international asset, or such greater or lesser percentage determined by the federal banking agencies. Additional provision, if any, for the ATRR in subsequent years shall be fifteen percent of the principal amount of each specified international asset, or such greater or lesser percentage determined by the federal banking agencies.

(3) *FDIC notification.* Based on the joint agency determinations under paragraph (b)(1) of this section, the FDIC shall notify each banking institution holding assets subject to an ATRR:

(i) Of the amount of the ATRR to be established by the institution for specified international assets; and

(ii) That an ATRR established for specified assets may be reduced.

(c) *Accounting treatment of ATRR—(1) Charge to current income.* A banking institution shall establish an ATRR by a charge to current income and the amounts so charged shall not be included in the banking institution's capital or surplus.

(2) *Separate accounting.* A banking institution shall account for an ATRR separately from the Allowance for Loan and Lease Losses, and shall deduct the ATRR from "gross loans and leases" to arrive at "net loans and leases." The ATRR must be established for each asset subject to the ATRR in the percentage amount specified.

(3) *Consolidation.* A banking institution shall establish an ATRR, as required, on a consolidated basis. For banks, consolidation should be in accordance with the procedures and tests of significance set forth in the instructions for preparation of Consolidated Reports of Condition and Income (FFIEC Nos. 031, 032, 033 and 034).

(4) *Alternative accounting treatment.* A banking institution need not establish an ATRR if it writes down in the period in which the ATRR is required, or has written down in prior periods, the value of the specified international assets in the requisite amount for each

§ 347.304

such asset. For purposes of this paragraph (c)(4), international assets may be written down by a charge to the Allowance for Loan and Lease Losses or a reduction in the principal amount of the asset by application of interest payments or other collections on the asset; provided, that only those international assets that may be charged to the Allowance for Loan and Lease Losses pursuant to generally accepted accounting principles may be written down by a charge to the Allowance for Loan and Lease Losses. However, the Allowance for Loan and Lease Losses must be replenished in such amount necessary to restore it to a level which adequately provides for the estimated losses inherent in the banking institution's loan and lease portfolio.

(5) *Reduction of ATRR.* A banking institution may reduce an ATRR when notified by the FDIC or, at any time, by writing down such amount of the international asset for which the ATRR was established.

§ 347.304 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.

§ 347.305 Reporting and disclosure of international assets.

(a) *Requirements.* (1) Pursuant to section 907(a) of ILSA, a banking institution shall submit to the FDIC, at least quarterly, information regarding the amounts and composition of its holdings of international assets.

(2) Pursuant to section 907(b) of ILSA, a banking institution shall submit to the FDIC information regarding concentrations in its holdings of international assets that are material in relation to total assets and to capital of

12 CFR Ch. III (1–1–14 Edition)

the institution, such information to be made publicly available by the FDIC on request.

(b) *Procedures.* The format, content and reporting and filing dates of the reports required under paragraph (a) of this section shall be determined jointly by the federal banking agencies. The requirements to be prescribed by the federal banking agencies may include changes to existing forms (such as revisions to the Country Exposure Report, Form FFIEC No. 009) or such other requirements as the federal banking agencies deem appropriate. The federal banking agencies also may determine to exempt from the requirements of paragraph (a) of this section banking institutions that, in the federal banking agencies' judgment, have *de minimis* holdings of international assets.

(c) *Reservation of Authority.* Nothing contained in this subpart shall preclude the FDIC from requiring from a banking institution such additional or more frequent information on the institution's holdings of international assets as the agency may consider necessary.

PART 348—MANAGEMENT OFFICIAL INTERLOCKS

Sec.

- 348.1 Authority, purpose, and scope.
- 348.2 Definitions.
- 348.3 Prohibitions.
- 348.4 Interlocking relationships permitted by statute.
- 348.5 Small market share exemption.
- 348.6 General exemption.
- 348.7 Change in circumstances.
- 348.8 Enforcement.

AUTHORITY: 12 U.S.C. 3207, 12 U.S.C. 1823(k).

SOURCE: 61 FR 40305, Aug. 2, 1996, unless otherwise noted.

§ 348.1 Authority, purpose, and scope.

(a) *Authority.* This part is issued under the provisions of the Depository Institution Management Interlocks Act (Interlocks Act) (12 U.S.C. 3201 *et seq.*), as amended.

(b) *Purpose.* The purpose of the Interlocks Act and this part is to foster competition by generally prohibiting a management official from serving two nonaffiliated depository organizations in situations where the management