

operations and surrendering its existing license to the appropriate state licensing authority of the state from which the branch is relocating.

[67 FR 79247, Dec. 27, 2002, as amended at 70 FR 17559, Apr. 6, 2005; 78 FR 55470, Sept. 10, 2013; 83 FR 17739, Apr. 24, 2018; 85 FR 72555, Nov. 13, 2020]

EDITORIAL NOTE: At 85 FR 72555, Nov. 13, 2020, §303.184 was amended; however, a portion of the amendment could not be incorporated due to inaccurate amendatory instruction.

§ 303.185 Merger transactions involving foreign banks or foreign organizations.

(a) *Merger transactions involving an insured branch of a foreign bank.* Merger transactions requiring the FDIC's prior approval as set forth in §303.62 include any merger transaction in which the resulting institution is an insured branch of a foreign bank which is not a federal branch, or any merger transaction which involves any insured branch and any uninsured institution. In such cases:

(1) References to an eligible depository institution in subpart D of this part include an eligible insured branch as defined in §303.181;

(2) The definition of a corporate reorganization in §303.61(b) includes a merger transaction between an insured branch and other branches, agencies, or subsidiaries in the United States of the same foreign bank; and

(3) For the purposes of §303.62(b)(1) on interstate mergers, a merger transaction involving an insured branch is one involving the acquisition of a branch of an insured bank without the acquisition of the bank for purposes of section 44 of the FDI Act (12 U.S.C. 1831u) only when the merger transaction involves fewer than all the insured branches of the same foreign bank in the same state.

(b) *Certain merger transactions with foreign organizations outside any State.* Merger transactions requiring the FDIC's prior approval as set forth in §303.62 include any merger transaction in which an insured depository institution becomes directly liable for obligations which will, after the merger transaction, be treated as deposits under section 3(1)(5)(A)(i)-(ii) of the

FDI Act (12 U.S.C. 1813(1)(5)(A)(i)-(ii)), as a result of a merger or consolidation with a foreign organization or an assumption of liabilities of a foreign organization.

§ 303.186 Exemptions from insurance requirements for a state branch of a foreign bank.

(a) *Filing procedures—(1) Where to file.* An application by a foreign bank for consent to operate as a noninsured state branch, as permitted by §347.215(b) of this chapter, shall be submitted in writing to the appropriate FDIC office.

(2) *Content of filing.* A complete letter application shall include the following information:

(i) The kinds of deposit activities in which the state branch proposes to engage;

(ii) The expected source of deposits;

(iii) The manner in which deposits will be solicited;

(iv) How the activity will maintain or improve the availability of credit to all sectors of the United States economy, including the international trade finance sector;

(v) That the activity will not give the foreign bank an unfair competitive advantage over United States banking organizations; and

(vi) A resolution by the applicant's board of directors, or evidence of approval by senior management if a resolution is not required pursuant to the applicant's organizational documents, authorizing the filing of the application.

(3) *Additional information.* The FDIC may request additional information to complete processing.

(4) *Processing.* The FDIC will provide the applicant with written notification of the final action taken.

[67 FR 79247, Dec. 27, 2002, as amended at 70 FR 17559, Apr. 6, 2005]

§ 303.187 Approval for an insured state branch of a foreign bank to conduct activities not permissible for federal branches.

(a) *Filing procedures—(1) Where to file.* An application by an insured state branch seeking approval to conduct activities not permissible for a federal branch, as required by §347.212(a) of

this chapter, shall be submitted in writing to the appropriate FDIC office.

(2) *Content of filing.* A complete letter application shall include the following information:

(i) A brief description of the activity, including the manner in which it will be conducted and an estimate of the expected dollar volume associated with the activity;

(ii) An analysis of the impact of the proposed activity on the condition of the United States operations of the foreign bank in general and of the branch in particular, including a copy of the feasibility study, management plan, financial projections, business plan, or similar document concerning the conduct of the activity;

(iii) A resolution by the applicant's board of directors, or evidence of approval by senior management if a resolution is not required pursuant to the applicant's organizational documents, authorizing the filing of the application;

(iv) A statement by the applicant of whether it is in compliance with sections 347.209 and 347.210 of this chapter;

(v) A statement by the applicant that it has complied with all requirements of the Board of Governors concerning applications to conduct the activity in question and the status of each such application, including a copy of the Board of Governors' disposition of such application, if applicable; and

(vi) A statement of why the activity will pose no significant risk to the Deposit Insurance Fund.

(3) *Board of Governors application.* If the application to the Board of Governors contains the information required by paragraph (a) of this section, the applicant may submit a copy to the FDIC in lieu of a separate letter application.

(4) *Additional information.* The FDIC may request additional information to complete processing.

(b) *Divestiture or cessation—(1) Where to file.* Divestiture plans necessitated by a change in law or other authority, as required by §347.212(e) of this chapter, shall be submitted in writing to the appropriate FDIC office.

(2) *Content of filing.* A complete letter application shall include the following information:

(i) A detailed description of the manner in which the applicant proposes to divest itself of or cease the activity in question; and

(ii) A projected timetable describing how long the divestiture or cessation is expected to take.

(3) *Additional information.* The FDIC may request additional information to complete processing.

[67 FR 79247, Dec. 27, 2002, as amended at 70 FR 17559, Apr. 6, 2005; 71 FR 20526, Apr. 21, 2006]

§§ 303.188–303.199 [Reserved]

Subpart K—Prompt Corrective Action

§ 303.200 Scope.

(a) *General.* (1) This subpart covers applications filed pursuant to section 38 of the FDI Act (12 U.S.C. 1831o), which requires insured depository institutions that are not adequately capitalized to receive approval prior to engaging in certain activities. Section 38 restricts or prohibits certain activities and requires an insured depository institution to submit a capital restoration plan when it becomes undercapitalized. The restrictions and prohibitions become more severe as an institution's capital level declines.

(2) Definitions of the capital categories referenced in this Prompt Corrective Action subpart may be found in subpart H of part 324 of this chapter.

(b) *Institutions covered.* Restrictions and prohibitions contained in subpart H of part 324 of this chapter apply primarily to FDIC-supervised institutions, as well as to directors and senior executive officers of those institutions. Portions of subpart H of part 324 of this chapter also apply to all insured depository institutions that are deemed to be critically undercapitalized.

[67 FR 79247, Dec. 27, 2002, as amended at 78 FR 55470, Sept. 10, 2013; 83 FR 17739, Apr. 24, 2018; 85 FR 3245, Jan. 21, 2020]

§ 303.201 Filing procedures.

Applications shall be filed with the appropriate FDIC office. The application shall contain the information specified in each respective section of this subpart, and shall be in letter form