Management of shell branches

(1) Transactions prohibited

A branch or agency of a foreign bank shall not manage, through an office of the foreign bank which is located outside the United States, any State, or the District of Columbia that is not permitted to manage at any branch or subsidiary of such bank which is located outside the United States. (2) Regulations

Any regulations promulgated to carry out this section—

(A) shall be promulgated in accordance with section 3108 of this title; and

(B) shall be uniform, to the extent practicable.

Editorial Notes

References in Text


Sections 461, 463, 464, 465, and 466 of this title, referred to in subsec. (a)(1)(A), was in the original “section 19 of the Federal Reserve Act.” Provisions of section 19 relating to minimum and maximum reserve ratios are classified to the cited sections. For complete classification of section 19 to the Code, see References in Text note set out under section 461 of this title.

For definition of “this chapter,” referred to in subsecs. (d)(3)(C), (e)(1), and (e)(1)(A), see References in Text note set out under section 3101 of this title.

The Federal Deposit Insurance Act of 1956, referred to in subsecs. (d)(3)(C) and (e)(1)(B)(ii), is act May 9, 1956, ch. 240, 70 Stat. 133, which is classified principally to chapter 17 (§ 1841) of the title. For complete classification of this Act to the Code, see Short Title note set out under section 1811 of this title and Tables.

Codification

Section is comprised of section 7 of Pub. L. 95–369. Subsec. (b) of section 7 of Pub. L. 95–369 enacted section 347d of this title.

Amendments


Subsec. (c)(1)(C). Pub. L. 104–208, § 2214(a)(3), added subpar. (C) and struck out heading and text of former subpar. (C). Text read as follows: “Each branch or agency of a foreign bank shall be examined at least once during each 12-month period (beginning on the date the most recent examination of such branch or agency ended) in an on-site examination.”

Subsec. (c)(1)(D). Pub. L. 104–208, § 2214(a)(4), inserted “... only to the same extent that fees are collected by the Board for examination of any State member bank” before period at end.

Subsec. (d)(2). Pub. L. 104–208, § 2214(b)(1), substituted “Except as provided in paragraph (6), the Board” for “The Board”.

Subsec. (d)(5). Pub. L. 104–208, § 2214(b)(2), substituted “The Board” for “Consistent with the standards for approval in paragraph (2), the Board”.

Subsec. (d)(6), (7). Pub. L. 104–208, § 2214(b)(3), added pars. (6) and (7).

Subsec. (e)(1)(A). Pub. L. 104–208, § 2214(c), designated existing provisions as cl. (i), substituted “and” for “or” at end, and added cl. (ii).


1992—Subsec. (e)(6)(A). Pub. L. 102–550, § 1604(a)(1)(A), substituted “against which...” for “(i) the Board has issued an order under section 3102(i) of this title, or

(ii) the Comptroller of the Currency has issued an order under section 3102(i) of this title, or

a refusal by such office or subsidiary” for “against which the Board or, in the case of an order issued under section 3102(i) of this title, the Comptroller of the Currency has issued an order under paragraph (1) or a refusal by such office or subsidiary”.


§ 3106
TITLE 12—BANKS AND BANKING
Page 1506


1991—Subsec. (c). Pub. L. 102–242, §202(a), added par. (1), inserted heading for par. (2), and struck out former par. (1) which read as follows: “The Board may make examinations of or with respect to foreign banks, or any subsidiary or successor of any such foreign bank, or branch or agency of any such foreign bank, or each commercial lending company or bank controlled by one or more foreign banks, or by one or more foreign companies that control a foreign bank, the cost of which shall be assessed against and paid by such foreign bank or company, as the case may be. The Board shall, insofar as possible, use the reports of examinations made by the Comptroller, the Federal Deposit Insurance Corporation, or the appropriate State bank supervisory authority for the purposes of this subsection.”

Subsec. (j) to (h). Pub. L. 102–242, §202(a), added subsec. (d) to (h) and struck out former subsec. (d) which read as follows: “On or before two years after September 17, 1978, the Board after consultation with the appropriate State bank supervisory authorities shall report to the Committee on Banking, Finance and Urban Affairs of the United States House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the United States Senate its recommendations with respect to the implementation of this chapter, including any recommended requirements such as limitations on loans to affiliates or capital adequacy requirements which should be imposed on foreign banks to carry out the purposes of this chapter. Not later than one hundred and eighty days after September 17, 1978, the Board shall report to such Committees the steps which have been taken to consult and cooperate with State bank supervisory authorities as required by subsection (a)(1)(B) of this section.”


Statutory Notes and Related Subsidiaries

CHANGE OF NAME

Committee on Banking, Finance and Urban Affairs of House of Representatives treated as referring to Committee on Banking and Financial Services of House of Representatives by section 1(a) of Pub. L. 101–14, set out as a note preceding section 21 of Title 2, The Congress, Committee on Banking and Financial Services of House of Representatives abolished and replaced by Committee on Financial Services of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred from Committee on Energy and Commerce of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103–328, title I, §107(e)(2), Sept. 29, 1994, 108 Stat. 2361, provided that: “The amendment made by paragraph (1) [amending this section] shall become effective at the end of the 180-day period beginning on the date of enactment of this Act [Sept. 29, 1994].”

EFFECTIVE DATE OF 1992 AMENDMENT


MORATORIUM ON EXAMINATION FEES UNDER THIS CHAPTER

Pub. L. 103–328, title I, §115(a), Sept. 29, 1994, 108 Stat. 2368, provided that: “Section 7(c)(1)(D) of the Inter-
national Banking Act of 1978 [12 U.S.C. 3105(c)(1)(D)] shall not apply with respect to any examination under section 7(c)(1)(A) of such Act which begins before or during the 3-year period beginning on July 25, 1984.”

§ 3106. Nonbanking activities of foreign banks

(a) Applicability of Bank Holding Company Acts

Except as otherwise provided in this section (1) any foreign bank that maintains a branch or agency in a State, (2) any foreign bank or foreign company controlling a foreign bank that controls a commercial lending company organized under State law, and (3) any company of which any foreign bank or company referred to in (1) and (2) is a subsidiary shall be subject to the provisions of the Bank Holding Company Act of 1956 [12 U.S.C. 1841 et seq.], and to section 1560 of this title and chapter 22 of this title in the same manner and to the same extent that bank holding companies are subject to such provisions.

(b) Ownership or control of shares of nonbanking companies for certain period

Until December 31, 1985, a foreign bank or other company to which subsection (a) applies on September 17, 1978, may retain direct or indirect ownership or control of any voting shares of any nonbanking company in the United States that it owned, controlled, or held with power to vote on September 17, 1978, or engage in any nonbanking activities in the United States in which it was engaged on such date.

(c) Engagement in nonbanking activities after certain period

(1) After December 31, 1985, a foreign bank or other company to which subsection (a) applies on September 17, 1978, or on the date of the establishment of a branch in a State an application for which was filed on or before July 26, 1978, may continue to engage in nonbanking activities in the United States in which directly or through an affiliate it was lawfully engaged on July 26, 1978 (or on a date subsequent to July 26, 1978, in the case of activities carried on as the result of the direct or indirect acquisition, pursuant to a binding written contract entered into on or before July 26, 1978, of another company engaged in such activities at the time of acquisition), and may engage directly or through an affiliate in nonbanking activities in the United States which are covered by an application to engage in such activities which was filed on or before July 26, 1978; except that the Board by order, after opportunity for hearing, may terminate the authority conferred by this subsection on any such foreign bank or company to engage directly or through an affiliate in any activity otherwise permitted by this subsection if it determines having due regard to the purposes of this chapter and the Bank Holding Company Act of 1956 [12 U.S.C. 1841 et seq.], that such action is necessary to prevent undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices in the United States. Notwithstanding subsection (a) of this section, a foreign bank or company referred to in this subsection may retain ownership or control of any voting shares (or, where necessary to prevent dilution of its...
voting interest, acquire additional voting shares) of any domestically-controlled affiliate covered in 1978 which since July 26, 1978, has engaged in the business of underwriting, distributing, or otherwise buying or selling stocks, bonds, and other securities in the United States, notwithstanding that such affiliate acquired after July 26, 1978, an interest in, or any or all of the assets of, a going concern, or commences to engage in any new activity or activities. Except in the case of affiliates described in the preceding sentence, nothing in this subsection shall be construed to authorize any foreign bank or company referred to in this subsection, or any affiliate thereof, to engage in activities authorized by this subsection through the acquisition, pursuant to a contract entered into after July 26, 1978, of any interest in or the assets of a going concern engaged in such activities. Any foreign bank or company that is authorized to engage in any activity pursuant to this subsection but, as a result of action of the Board, is required to terminate such activity may retain the ownership of control of such company carrying on such activity for a period of two years from the date on which its authority was so terminated by the Board. As used in this subsection, the term "affiliate" shall mean any company more than 5 per centum of whose voting shares is directly or indirectly owned or controlled or held with power to vote by the specified foreign bank or company, and the term "domestically-controlled affiliate covered in 1978" shall mean an affiliate organized under the laws of the United States or any State thereof if (i) no foreign bank or group of foreign banks acting with any such foreign bank or company becomes a "bank" or "banking subsidiary", as defined in section 2(a) of the Bank Holding Company Act of 1956 [12 U.S.C. 1841 et seq.], or section 1850 of this title, except that any such branch, agency or commercial lending company subsidiary shall be deemed a "bank" or "banking subsidiary", as the case may be, for the purposes of applying the prohibitions of section 22 of this title and the exemptions provided in sections 4(c)(1), 4(c)(2), 4(c)(3), and 4(c)(4) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c)(1), (2), (3), and (4)) to any foreign bank or other company to which subsection (a) applies.

The authority conferred by this subsection on a foreign bank or other company shall terminate 2 years after the date on which such foreign bank or other company becomes a "bank holding company" as defined in section 2(a) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(a)); except that the Board may, upon application of such foreign bank or other company, extend the 2-year period for not more than one year at a time, if, in its judgment, such an extension would not be detrimental to the public interest, but no such extensions shall exceed 3 years in the aggregate.

(3) TERMINATION OF GRANDFATHERED RIGHTS.—(A) IN GENERAL.—If any foreign bank or foreign company files a declaration under section 4(h)(1)(C) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(h)(1)(C)), any authority conferred by this subsection on any foreign bank or company to engage in any activity that the Board has determined to be permissible for financial holding companies under section 4(k) of such Act (12 U.S.C. 1843(k)) shall terminate immediately.

(B) RESTRICTIONS AND REQUIREMENTS AUTHORIZED.—If a foreign bank or company that engages, directly or through an affiliate pursuant to paragraph (1), in an activity that the Board has determined to be permissible for financial holding companies under section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)) has not filed a declaration with the Board of its status as a financial holding company under such section by the end of the 2-year period beginning on November 12, 1999, the Board, giving due regard to the principle of national treatment and equality of competitive opportunity, may impose such restrictions and requirements on the conduct of such activities by such foreign bank or company as are comparable to those imposed on a financial holding company organized under the laws of the United States, including a requirement to conduct such activities in compliance with any prudential safeguards established under section 1828a of this title.

(d) Construction of terms

Nothing in this section shall be construed to define a branch or agency of a foreign bank or a commercial lending company controlled by a foreign bank or foreign company that controls a foreign bank as a "bank" for the purposes of any provisions of the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.), or section 1850 of this title, except that any such branch, agency or commercial lending company subsidiary shall be deemed a "bank" or "banking subsidiary", as defined in section 2(a) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(a)), 4(c)(2), 4(c)(3), and 4(c)(4) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c)(1), (2), (3), and (4)) (B) to any foreign bank or other company to which subsection (a) applies.


Editorial Notes

REFERENCES IN TEXT

The Bank Holding Company Act of 1956, referred to in subsections (a), (c), and (d), is act May 9, 1956, ch. 240, 70 Stat. 133, which is classified principally to chapter 17 (§ 1841 et seq.) of this title. Section 4(h)(1)(C) of the Act was redesignated section 4(h)(1)(D) by Pub. L. 111–203, title VI, § 606(a)(2), July 21, 2010, 124 Stat. 1607, and is classified to section 1843(h)(1)(D) of this title. For complete classification of this Act to the Code, see Short

1 See References in Text note below.