Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL RESERVE SYSTEM

12 CFR Part 211

[Regulation K; Docket No. R–0896]

International Operations of United States Banking Operations

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is publishing for comment proposed amendments to Subpart A of Regulation K (International Operations of U.S. Banking Operations). The amendments provide additional general consent authority for *de novo* investments in foreign companies by U.S. banking organizations that are strongly capitalized and well managed. This expanded general consent authority is designed to permit U.S. banking organizations meeting these requirements to make certain investments without the need for prior approval or review. In order to strike a reasonable balance, however, between reduced regulatory burden and continued Board oversight, the amendments would impose aggregate limits on the total amount of general consent investments that may be made in the course of a year. In addition, certain investments or activities would not be eligible for the expanded authority. The proposed rule would require an investor making use of the expanded authority to provide the Board with a post-investment notice. In addition, for those investments requiring prior notice to the Board, the proposed rule would streamline the processing of such notices.

DATES: Comments must be submitted by October 30, 1995.

ADDRESSES: Comments should refer to Docket No. R–0896, and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551. Comments also may be delivered to Room B–2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street NW., (between Constitution Avenue and C Street) at any time. Comments received will be available for inspection in Room MP–500 of the Martin Building between 9 a.m. and 5 p.m. weekdays, except as provided in 12 CFR 261.8 of the Board's rules regarding the availability of information.

FOR FURTHER INFORMATION CONTACT: Kathleen M. O'Day, Associate General Counsel (202/452–3786), Sandra L. Richardson, Managing Senior Counsel (202/452–6406), or Andres L. Navarrete, Attorney (202/452–2300), Legal Division; William A. Ryback, Associate Director (202/452–2722), Michael G. Martinson, Assistant Director (202/452–2798), or Betsy Cross, Manager (202/452–2574), Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System. For the users of Telecommunication Device for the Deaf (TDD) *only*, please contact Dorothea Thompson (202/452–3544), Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Subpart A of the Board's Regulation K sets out the rules governing the foreign activities of U.S. banking organizations, including procedures for making investments in foreign banking and non-banking organizations. Under § 211.5(c), all such investments, whether made directly or indirectly, are required to be made in accordance with the general consent, prior notice, or specific consent procedures contained in that paragraph. 12 CFR 211.5(c). No prior notice or application is required for any investment that falls within the general consent authority. Such authority at present is limited to investments where the total amount invested in any one organization, in one transaction or a series of transactions, does not exceed the lesser of $25 million or 5 percent of the investor's Tier 1 capital where the investor is a member bank, bank holding company, or Edge corporation engaged in banking.[1]

The Board has reviewed the general consent authority in light of the amount and nature of the investments that required prior review because they exceeded the general consent dollar limits. The Board has concluded that the current general consent authority may be safely expanded for U.S. banking organizations that are strongly capitalized and well managed. This expanded general consent authority is intended to reduce the burden associated with obtaining approval for such investments for U.S. banking organizations meeting these requirements.

The constraining limit in the general consent authority that triggers the requirement of prior notice often has been the $25 million cap. The Board seeks comment on a rule that, in order to reduce burden on applicants, would add additional general consent authority for U.S. banking organizations that are strongly capitalized and well managed by removing the absolute dollar limit and linking the general consent limits solely to percentages of capital.

Proposed Rule

The proposed rule would streamline the Board's notice requirement under Subpart A of Regulation K by increasing the limit on investments that may be made abroad without providing prior notice to the Board. This liberalization would be available in relation to certain *de novo* investments and for additional investments in existing subsidiaries and joint ventures by investors that have demonstrated strong capital and management. This expanded general consent authority also is intended to reduce the burden associated with obtaining approval for such investments for U.S. banking organizations meeting the strongly-capitalized and well-managed standards. The Board seeks comment on each of the requirements or limitations discussed below.

Strongly-Capitalized and Well-Managed Requirement

The expanded general consent authority would be available for investments by member banks, bank holding companies, Edge corporations that are not engaged in banking, and agreement corporations. The expanded authority would only be available where the investor, its parent member bank, if any, and the bank holding company are strongly capitalized and well managed, as those terms are defined by the Board. ''Strongly capitalized,'' in relation to

[1] In the case of an Edge corporation not engaged in banking, the relevant general consent limit is the lesser of $25 million or 25 percent of its Tier 1 capital.

member banks, is defined with reference to the definition of ''well capitalized'' set out in the prompt corrective action standards, which requires, at a minimum, a 6 percent Tier 1 and 10 percent total risk-based capital ratio and a leverage ratio of 5 percent.[2] 12 CFR 208.33(b)(1). For purposes of Regulation K, Edge or agreement corporations and bank holding companies would be required to have a total risk-based capital ratio of 10 percent or more in order to be considered strongly capitalized for purposes of the expanded authority. A definition of ''well managed'' is also included in the proposed rule, which provides that, in order to be considered well managed, the Edge or agreement corporation, its parent member bank, if any, and the bank holding company must each have received a composite rating of at least 1 or 2, with no component below 3, at its most recent examination or review.

Expanded Authority for General Consent Investments

The new proposed limits for the expanded general consent authority would be tied to the capital of the investor. With regard to limits on investments in any one company by Edge corporations not engaged in banking or agreement corporations that meet the requirements discussed above, the Board proposes that the limits should be changed to the lesser of 20 percent of the Edge or agreement corporation's Tier 1 capital or 2 percent of the Tier 1 capital of the member bank.[3] So long as the 2 percent limit is not exceeded by its parent, Edge corporations not engaged in banking will be permitted to invest up to 20 percent of their capital. This higher limit is authorized because such Edge corporations do not take deposits in the United States or own U.S. depository institutions. Any financial effect on the parent bank would be constrained by the 2 percent limit.

A limit of 2 percent of the Tier 1 capital of a member bank appears to strike a reasonable balance between two objectives: permitting an organization considered to be strongly capitalized and well managed to make investments that management considers to be appropriate with a minimum of regulatory interference, and requiring prior review for investments involving a high percentage of capital. The latter investments may cause supervisory concern because an initial capital investment can be leveraged many times.

The proposed rule also sets an overall aggregate limit on all investments made during the previous 12-month period under the existing and the expanded general consent authority. All such investments made by an Edge corporation not engaged in banking or an agreement corporation, when aggregated with the proposed investment, would not be permitted to exceed the lesser of 50 percent of the Edge or agreement corporation's total capital or 5 percent of the parent member bank's total capital. An overall aggregate limit of 5 percent of their total capital would apply to investments by member banks and bank holding companies. These limits again were selected in an effort to strike a reasonable balance between giving such entities credit for their strongly-capitalized and well-managed status, in the form of reduced regulatory burden, but maintaining the requirement for, at a minimum, prior notice to the Board once the overall level of foreign investments may give rise to supervisory concern.

The proposal provides, however, that in determining compliance with these aggregate limits, an investment in a subsidiary shall be counted only once notwithstanding that such subsidiary may, within the next 12 months, downstream all or part of such investment to another subsidiary. This change is designed to avoid double counting and simply recognizes that often, especially for tax purposes, investments are downstreamed from one subsidiary to another in a banking group—an event that, so long as the investors are strongly capitalized and well managed, generally would not raise supervisory concerns. It would, however, significantly reduce the burden upon investors that meet the requirements for the expanded authority by removing the need for prior notices to the Board for transactions that really constitute the movement of funds within the banking group.

Additional Investments

The proposed rule also confirms that strongly-capitalized and well-managed investors making investments under the expanded general consent authority may also make additional investments in subsidiaries and joint ventures under the standards set out in the existing general consent authority. 12 CFR 211.5(c)(1)(ii–iv). Thus, once the expanded general consent authority for initial investments has been exhausted in respect of one organization, additional investments may be made consistent with the provisions of § 211.5(c)(1).

Eligible Investments

The proposed rule establishes the nature of investments eligible for the expanded general consent authority, as well as the types of activities that may be conducted by the organization in which the investment is to be made. Subject to certain exceptions, the rule would permit investments in any activities either permissible for subsidiaries under Regulation K or permissible for national banks to engage in directly. Ineligible investments are limited to an investor's initial entry into a foreign country, the establishment or acquisition of an initial subsidiary bank in a foreign country, investments in general partnerships or unlimited liability companies, and an acquisition of shares or assets of a corporation that is not an affiliate of the investor. Retention of specific approval authority over establishment of new foreign bank offices and outward expansion of banking institutions is consistent with the minimum standards for consolidated supervision of the Basle Committee on Banking Supervision.

Exclusion of the acquisitions is intended to limit the expanded authority to investments in *de novo* subsidiaries (including subsequent investments in such subsidiaries) by excluding the acquisition of going concerns (unless already held by an affiliate). The risks associated with such acquisitions are considered to be greater than the amount of capital invested (extending also, for example, to the value of the company's assets).

The Board seeks comment on the exclusion of these investments from the expanded general consent authority. In particular, the Board seeks comment on whether additional investments in companies acquired as going concerns also should be eligible for the expanded authority.

Post-Investment Notice Requirement

The proposed rule would require an investor making use of the expanded authority to provide the Board with a post-investment notice within 10 days of making the investment. The notice would require provision of certain minimal information for purposes of supervising the banking organizations making use of the expanded authority, including a description of the investment, the terms and sources of

[2] The member bank also may not be subject to any written agreement, order, capital directive, or prompt corrective action directive issued by the Board to meet and maintain a specific capital level for any capital measure. 12 CFR 208.33(b)(1).

[3] The proposed 20 percent limit of the Edge's Tier 1 capital derives from the constraint imposed by section 25A of the Federal Reserve Act, which prohibits any investment in excess of 10 percent of the subscribing bank's capital in Edge and agreement corporations.

funding, the entities involved, and, where the investment is to redress a loss, a description of the reasons for the loss and the steps taken to address the problem. The Board solicits comment regarding this requirement generally, the information to be submitted in any such notice, and ways in which such a post-investment notice may be coordinated with existing reporting requirements.

Simultaneous Review

The proposal would amend the Board's current procedures for processing prior notices and applications under Subpart A of Regulation K. Specifically, under § 211.5(c)(2), the Board has 45 days to object to any investment that is the subject of a prior notice and the 45-day period commences on the day that the prior notice is *accepted* by the relevant Reserve Bank. The proposed rule would amend the regulation to provide that the 45-day period starts on the date of the Reserve Bank's *receipt* of the prior notice. This change is expected to accelerate the processing of such notices, reduce the number of information requests that applicants must answer, and more generally reduce the regulatory burden associated with sequential review. Under the proposed rule, however, the Board would continue to have the ability to modify or suspend the general consent and prior notice procedures. The Board also proposes to extend this treatment to the processing of applications under Regulation K.

Request for Comment

The Board requests comments on all aspects of the rule discussed above. In addition, comments are requested regarding other ways in which the provisions of Subpart A of Regulation K might be streamlined or rendered less burdensome, either in terms of U.S. banking organizations that meet strongly-capitalized and well-managed standards, or more generally.

Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an initial regulatory flexibility analysis with any notice of proposed rulemaking. A description of the reasons why the action by the agency is being considered and a statement of the objectives of, and the legal basis for, the proposed rule are contained in the supplementary information above. The overall effect of the proposed rule would be to reduce regulatory burden. The rule should not have a significant economic impact on a substantial number of small business entities consistent with the spirit and purpose of the Regulatory Flexibility Act.

Paperwork Reduction Act and Regulatory Burden

Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (Pub. L. 103–325, 108 Stat. 2160) also requires that the federal banking agencies must consider the administrative burdens and benefits of any new regulation that imposes additional requirements on insured depository institutions. The Board does not consider that the proposed rule would impose additional requirements on insured depository institutions, nor would it increase the regulatory paperwork burden of banking organizations pursuant to the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). To the contrary, the proposed rule would reduce regulatory burden for U.S. banking organizations that are strongly capitalized and well managed. The current annual burden for these application and notification requirements is estimated to be 440 hours. The proposed amendments could reduce the burden estimate by as much as half.

Although the proposal would require U.S. banking organizations making investments pursuant to the expanded general consent authority to file an abbreviated post-investment notice with the Board, this notice would take the place of the requirements relating to prior notice or application to the Board for prior approval that would be required under existing Regulation K procedures *before* any such investment could be made.

List of Subjects in 12 CFR Part 211

Exports, Federal Reserve System, Foreign banking, Holding companies, Investments, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Board of Governors proposes to amend 12 CFR Part 211 as set forth below:

PART 211—INTERNATIONAL BANKING OPERATIONS (REGULATION K)

1. The authority citation for part 211 is revised to read as follows:

Authority: 12 U.S.C. 221 *et seq.*, 1818, 1841 *et seq.*, 3101 *et seq.*, 3901 *et seq.*

2. Section 211.2 is amended by redesignating paragraphs (u) and (v) as paragraphs (v) through (w), respectively, and by adding new paragraphs (u) and (x) to read as follows:

§ 211.2 Definitions.

* * * * *

(u) *Strongly capitalized* means:

(1) In relation to a parent member bank, that the standards set out in 12 CFR 208.33(b)(1) are satisfied; and

(2) In relation to an Edge or Agreement corporation or a bank holding company, that it has a total risk-based capital ratio of 10.0 percent or greater.

* * * * *

(x) *Well managed* means that the Edge or Agreement corporation, its parent member bank, if any, and the bank holding company have each received a composite rating of at least 1 or 2, with no component below 3, at its most recent examination or review.

3. Section 211.5 is amended by:

a. Redesignating paragraphs (c) (2) and (3) as paragraphs (c) (3) and (4) respectively;

b. By adding a new paragraph (c)(2); and

c. In newly designated paragraph(c)(3), by removing the word ''accepted'' in the third sentence and adding in its place the word ''received''.

The addition reads as follows:

§ 211.5 Investments and activities abroad.

* * * * *

(c) * * *

* * * * *

(2)(i) *Additional general consent for de novo investments.* Notwithstanding the amount limitations of paragraph (c)(1) of this section, but subject to the other limitations of this section, the Board grants additional general consent authority for investments in an organization by an investor that is strongly capitalized and well managed if:

(A) The activities of the organization are limited to activities in which a national bank may engage directly or in which a subsidiary may engage under § 211.5(d);

(B) In the case of an investor that is an Edge corporation that is not engaged in banking or agreement corporation, the total amount invested in such organization (in one transaction or a series of transactions) does not exceed the lesser of the investor's 20 percent of the Tier 1 capital or 2 percent of the Tier 1 capital of the parent member bank;

(C) In the case of a bank holding company or member bank investor, the total amount invested in such organization (in one transaction or a series of transactions) directly or indirectly does not exceed 2 percent of the investor's Tier 1 capital;

(D) All investments made by an Edge corporation not engaged in banking or

an agreement corporation during the previous 12-month period under paragraph (c)(1) and (c)(2) of this section, when aggregated with the proposed investment, would not exceed the lesser of 50 percent of the total capital of the Edge or agreement corporation, or 5 percent of the total capital of the parent member bank;

(E) All investments made by a member bank or a bank holding company during the previous 12-month period under paragraph (c)(1) and (c)(2) of this section without providing prior notice to or obtaining the consent of the Board, when aggregated with the proposed investment, would not exceed 5 percent of its total capital; and

(F) Both before and immediately after the proposed investment the investor, its parent member bank, if any, and the bank holding company are strongly capitalized and well managed.

(ii) *Determining aggregate investment limits.* For purposes of determining compliance with the aggregate investment limits set out in paragraph (c)(2)(i) (D) and (E) of this section, an investment by an investor in a subsidiary shall be counted only once notwithstanding that such subsidiary may, within 12 months of the date of making the investment, downstream all or any part of such investment to another subsidiary.

(iii) *Additional investments.* An investor that makes investments under paragraph (c)(2)(i) of this section may also make additional investments in an organization under the standards set forth in paragraphs (c)(1)(ii), (c)(1)(iii) and (c)(1)(iv) of this section.

(iv) *Ineligible investments.* The following investments are not eligible for the general consent under paragraph (c)(2)(i) of this section:

(A) The initial entry into a foreign country;

(B) The establishment or acquisition of an initial subsidiary bank in a foreign country;

(C) Investments in general partnerships or unlimited liability companies; and

(D) An acquisition of shares or assets of an organization that is not an affiliate of the investor.

(v) *Post-investment notice.* Within 10 business days of making the investment, the investor shall provide the Board with a notice setting out all material information relating to the investment, including:

(A) A description of the investment and the activities to be conducted;

(B) The identity of all entities involved in the investment, including any downstream investment, and, if the investment is in a joint venture, the respective responsibilities of the parties to the joint venture;

(C) A description of the terms and sources of funds for the transaction and projections for the organization in which the investment is made for the first year following the investment; and

(D) In the case of additional investments, an explanation of the reasons for the investment and, where the investment is made in an organization that incurred a loss in the last year, a description of the reasons for the loss and the steps taken to address the problem.

* * * * *

By order of the Board of Governors of the Federal Reserve System, September 20, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–23670 Filed 9–22–95; 8:45 a.m.]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Chapter I

[Summary Notice No. PR–95–4]

Petition for Rulemaking; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received November 24, 1995.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Ave., SW., Washington, DC 20591; telephone (202) 267–3132. Comments may also be sent electronically to the following internet address: nprmcmts@mail.hq.faa.gov.

FOR FURTHER INFORMATION CONTACT: Mr. D. Michael Smith, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7470.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC on September 20, 1995.

Michael Chase,

Acting Assistant Chief Counsel for Regulations.

Petitions for Rulemaking

Docket No.: 25985
Petitioner: Mr. Stuart R. Miller
Regulations Affected: 14 CFR 91.107, 121.311, and 135.128
Description of Rulechange Sought: To require all children who have not reached their third birthday to be seated in their own seat within an FAA-approved safety device/safety restraint system for take off and landing and at the command of the pilot. In addition, the petitioner requests that the device shall be located/installed for use so as not to block or interfere with the egress of other passengers.
Petitioner's Reason for the Request: The petitioner feels that mandatory change would increase the accountability factor from corporate executives and from public officials, as well as focus on the safety for children passengers.

Docket No.: 28131
Petitioner: Aviation Consumer Action Project and Private Citizen
Sections of the FAR Affected: 14 CFR 121.219 and 135.169
Description of Rulechange Sought: To revise the current aircraft cabin ventilation requirements to require that each passenger or crew compartment be [suitably] ventilated by providing fresh, unrecirculated air at a rate no less than 20 cubic feet per minute per occupant.
Petitioner's Reason for the Request: The petitioner feels the cabin ventilation rates be revised because of the