FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 303, 325, 327, and 347

RIN 3064–AC85

International Banking

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The FDIC is amending its international banking regulations in subpart J of part 303 and revising subparts A and B of part 347. The amendments reorganize, clarify, and revise subparts A and B of part 347, and address various issues raised as part of the FDIC's ongoing effort under the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (12 U.S.C. 3311). Included in the revisions are amendments that address relocation of insured U.S. branches of foreign banks within and outside the state where such branches are presently located, adoption of a risk-based asset pledge requirement for insured U.S. branches of foreign banks, and information and examination requirements for foreign banks that own branches or depository institution subsidiaries seeking FDIC deposit insurance. The FDIC has also decided to maintain its existing position concerning the availability of FDIC deposit insurance for wholesale U.S. branches of foreign banks.

DATES: These revisions are effective July 1, 2005.

FOR FURTHER INFORMATION CONTACT: John Di Clemente, Chief, International Section, Division of Supervision and Consumer Protection, (202) 898–3540 or *jdiclemente@fdic.gov* or Rodney D. Ray, Counsel, Legal Division, (202) 898–3556 or *rray@fdic.gov*, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Background

On July 19, 2004, the FDIC issued a notice of proposed rulemaking (''NPR'') in the **Federal Register**, with a 60 day comment period, regarding proposed amendments to its international banking regulations contained in subpart J of part 303, subpart B of part 325, subpart A of part 327, and subparts A and B of part 347 of title 12 of the Code of Federal Regulations. (69 FR 43060).

The proposed amendments were intended to accomplish various goals. These included implementation of the ''plain language'' requirement contained in section 722 of the Gramm-Leach-Bliley Act of 1999 (12 U.S.C. 4809); addressing certain regulatory burden issues raised in public comments as part of the FDIC's ongoing burden reduction effort under the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA)(12 U.S.C. 3311); maintaining parity with Regulation K, which was amended by the Board of Governors of the Federal Reserve System (''FRB'') in October, 2001; and updating and enhancing the FDIC's supervisory processes by revising existing rules and proposing certain new rules. In addition, although no amendments were proposed regarding the topics, the FDIC requested comments on whether deposits in wholesale U.S. branches of foreign banks should be insured by the FDIC and whether the accounting regulations contained in subpart C of part 347 should be revised.

The comment period closed on September 17, 2004. Comments were received from the American Bankers Association (''ABA''), the Institute for International Bankers (''IIB''), and the Conference of State Bank Supervisors (''CSBS'') regarding issues addressed in the NPR. In addition, at the IIB's request, FDIC staff met with representatives of the IIB and representatives of its constituent foreign banks regarding the IIB's EGRPRA suggestions and issues addressed in its comment letter.[1] No comments were received regarding subpart C of part 347 and, therefore, none of the rules in that subpart are being amended in the final rule.

A discussion of the comments and changes to the proposal that are being adopted in this final rule are presented below.

II. International Banking Procedural, Capital Maintenance, Assessment Rules

Subpart J of part 303 contains the FDIC application procedures that implement the international banking regulations in part 347, subparts A and B. Although the NPR contained several amendments to the subpart J regulations, most of them consisted of technical amendments because of the substantial restructuring being proposed for the regulations in part 347. There were no comments on those amendments and the FDIC is adopting them as proposed.

In addition to the technical amendments, the FDIC proposed to amend section 303.184, which addresses moving an insured branch of a foreign bank (''grandfathered branch''),[2] by specifying that expedited processing could be provided for applications involving intrastate relocations of eligible grandfathered branches. This amendment was added to address concerns expressed by the IIB that grandfathered branches would be precluded from moving or relocating from their existing locations if their proposed relocations were made subject to the ''immediate neighborhood'' geographic relocation requirement applied to proposed branch relocations of state nonmember banks in section 303.41(b). In their comments, the ABA and IIB expressed support for the proposed amendment but the IIB indicated that it assumed that the FDIC would subject a proposed interstate relocation to standard processing and requested that the FDIC clarify this point in the final rule. The FDIC has considered the IIB request and has added a new paragraph (e) to section 303.184 to address standard processing of applications to relocate a grandfathered state branch to another state. In doing so, the FDIC believes it is appropriate to address a state licensing issue raised by the IIB comment letter and to ensure that the rule will only be utilized for legitimate relocations of existing grandfathered state branches and not simply to recharacterize the establishment of a new foreign branch in another state as a ''move'' or ''relocation'' of a grandfathered state branch to avoid compliance with the subsidiary requirement contained in section 6(d) of the IBA. Therefore, under section 303.184, as revised by this final rule, in addition to satisfying the criteria contained in paragraph (d), a foreign bank proposing to relocate a grandfathered state branch to another state without affecting its grandfathered status will be required, under paragraph (e), to comply with any applicable state laws and regulations of the states affected by the proposed relocation. In addition, because the foreign bank will be relocating its whole grandfathered branch operation from one state to another (not creating an additional out-of-state branch of the grandfathered branch, which would not be allowed), the existing license of the branch in the state from which it is moving may need to be surrendered or cancelled and a

[1] A meeting summary and list of participants is available on the FDIC's Web page at *http://www.fdic.gov/regulations/laws/federal/04cMEETING.html*.

[2] A grandfathered branch of a foreign bank is a U.S. branch of a foreign bank that obtained FDIC deposit insurance prior to December 19, 1991 and is authorized to accept or maintain domestic retail deposit accounts pursuant to section 6(d)(2) of the International Banking Act (''IBA'')(12 U.S.C. 3104(d)(2)).

new license obtained in the state to which the branch is relocating. To avoid a ''break'' in the existence of the grandfathered branch, which may create an issue regarding compliance with the subsidiary requirement contained in section 6(d) of the IBA, the rule also specifies that the foreign bank must obtain any required regulatory approvals from the appropriate state licensing authority of the state to which the insured branch proposes to relocate before relocating the existing branch operations and surrendering its existing license to the appropriate state licensing authority of the state from which the branch is relocating.

In addition to the amendments proposed in subpart J of part 303, the FDIC also proposed revisions to sections 325.103 and 327.4, regarding capital maintenance and the annual assessment rate, respectively, for insured U.S. branches of foreign banks. The amendments were proposed to conform those sections with proposed amendments to the FDIC's asset pledge and asset maintenance requirements contained in subpart B of part 347. Because the FDIC has decided to maintain the existing quarterly calculation methodology for asset maintenance in the final rule, for the reasons discussed subsequently in connection with section 347.210, the reference to the ''insured branch's daily third-party liabilities'' has been eliminated in the final rule.

III. Foreign Banking and Investment by Insured State Nonmember Banks

Subpart A of part 347 primarily addresses branching, investments, and permissible activities of state nonmember banks in foreign countries. The FDIC proposed various amendments in the NPR that reorganized the existing sections in the subpart and clarified their coverage. For example, the FDIC proposed to divide particularly complex sections, such as existing section 347.104 into sections 347.104 through 347.110, which are less complex sections but accomplish a similar result. The FDIC also proposed to move and consolidate existing sections based on the subject matter addressed to make the requirements easier to locate and understand. For example, existing sections 347.103, addressing foreign branch powers and FDIC consent requirements, and 347.108, addressing FDIC consent requirements for foreign investments, were made sections 347.115 (permissible activities for foreign branches), and 347.117 (general consent for foreign branches and investments), 347.118 (expedited processing for foreign branches and investments, and 347.119 (specific consent). The discussion that follows is provided to explain a few of the more significant amendments to the subpart.

The FDIC proposed to revise existing sections 347.103 and 347.104 in the NPR to better address the interplay between the FDIC's part 362 and part 347. This revision was accomplished in two ways. First we separated the substance of existing section 347.104(f), dealing with direct and indirect investments in foreign organizations, into section 347.104 in the proposed rule.[3] Second, we created ''permissible activities'' sections for state nonmember banks and their subsidiaries in section 347.105(b) out of existing section 347.104(a)–(b) and for foreign branches of state nonmember banks in section 347.115(a)–(g) out of existing section 347.103(a). In addition, the order and list of activities authorized for state nonmember banks and their subsidiaries and foreign branches of state nonmember banks were revised to more closely track the order of the activities listed as permissible for member banks and their subsidiaries or foreign branches of member banks under the corresponding provision in Regulation K. This revision will make the comparison easier between activities authorized under subpart A of part 347 and those authorized under Regulation K for branches of member banks or member banks and their subsidiaries. The FDIC also added paragraph (d) to proposed section 347.105 and paragraph (h) to proposed section 347.115, for clarification, to generally address when activities, other than those authorized by the respective sections, may be authorized by specific consent under part 347 or when authorization for the activities must be obtained under part 362 as well as subpart A of part 347.

The ABA commented on the proposed amendment to section 347.115, including another FDIC proposal adopting the same definition of ''investment grade'' that had been adopted by the FRB and the OCC. In its comment, the ABA noted that the adoption of the same approach to ''investment grade'' was a substantive improvement, which it supported. It also expressed support for the addition of section 347.115(h), discussed above.

The FDIC also proposed to amend its authorization for ''general consent'' in two ways. The first way was to allow insured state nonmember banks to branch into a foreign country under general consent in circumstances covered by proposed section 347.117(a)(1)(ii) or (iii). This change would allow an eligible state nonmember bank to establish additional branches in a country in which the bank's holding company operates a foreign bank subsidiary, or in which an affiliated bank or Edge or Agreement corporation operates one or more foreign branches or foreign bank subsidiaries and allow for an after-the-fact notification to the FDIC in those circumstances, rather than requiring prior approval under expedited processing, as is presently required under section 347.103(c)(1). The second way was to grant general consent to invest in a foreign organization, under proposed section 347.117(b)(2), when at least one insured state nonmember bank operates a foreign branch in the relevant foreign country where the organization will be located because of the FDIC's familiarity with the banking laws and practices of that country. The ABA commented on this amendment and expressed support for the proposed change in general consent for foreign branches.

[3] Like existing section 347.104(f), section 347.104 recognizes that the FDIC's treatment of direct and indirect investments by state nonmember banks in foreign organizations differs from the treatment such investments are provided in Regulation K for member banks. This is because of differences in the underlying statutory provisions governing member and state nonmember banks. Unlike member banks, whose investments are constrained by the language of section 25 of the Federal Reserve Act (12 U.S.C. 601), section 18(l) of the FDI Act permits state nonmember banks to invest in foreign ''banks and other entities,'' to the extent authorized by state law. Thus, considering the legislative history of section 18(l), and the language of the statute, the FDIC has interpreted section 18(l) as not restricting the types of foreign organizations in which a state nonmember bank can invest.

The ability of insured state nonmember banks to invest in other types of foreign organizations, however, raises issues under section 24 of the FDI Act (12 U.S.C. 1831a) and part 362 because national banks are unable to invest directly in nonbank foreign organizations. Section 24 prohibits an insured state nonmember bank from acquiring an equity investment that a national bank is not permitted to acquire. Such an investment may be made under section 24, subject to FDIC approval, however, if the investment is made through a majority-owned subsidiary of the bank. It may also be made if a company becomes majority-owned by the bank as a result of the investment and the ''as principal'' activities of the company are ones in which a subsidiary of a national bank could engage. Ownership of more than 50 percent of the equity in a nonbank foreign organization makes that organization a majority-owned subsidiary and, thus, no section 24 analysis is required because such a subsidiary is authorized only to engage in the same activities that the FRB has authorized for subsidiaries of member banks (and thus national banks) under Regulation K. In addition, while it is unnecessary for insured state nonmember bank investments of 50 percent or less of the equity of a nonbank foreign organization to be held through an intermediate foreign bank subsidiary or Edge subsidiary as required under Regulation K, those investments are required to be held through some form of U.S. or foreign majority-owned subsidiary in order to comply with the requirements of section 24 and part 362.

Although the FDIC received no comments on the proposed revision for foreign investments, an additional clarification to proposed section 347.117(b)(2) is included in this final rule. As indicated in the discussion contained in the NPR, when the FDIC amended its foreign banking regulations in 1998, it declined to adopt a suggestion that the FDIC grant general consent to invest in a foreign organization when at least one insured state nonmember bank operates a foreign branch in the relevant foreign country. This was due to concerns that ''nameplate'' branches being operated in foreign countries might fall within the scope of the authorization. In the discussion of the proposed amendment in the NPR, the FDIC indicated that it believed most nameplate branches would be operated in jurisdictions where authority to invest in foreign organizations by general consent would be inapplicable under section 347.119(a). Although the FDIC believes the discussion in the NPR was correct, it is concerned that the standard may be somewhat imprecise. Therefore, the text contained in section 347.117(b)(2) has been revised in the final rule to clearly indicate that the existence of a ''shell branch'' (a term that the FDIC intends to be synonymous with the term ''nameplate branch'') in a foreign country will not provide a basis for investment by general consent under section 347.117(b).

Finally, the proposal contained a new section 347.122, which was intended to enhance the FDIC's existing supervisory authority. The section recognizes that the FDIC may, under section 18(d)(2) and 18(l) of the FDI Act, condition the authority granted under subpart A as it considers appropriate and provide for termination of activities or divestiture of investments permitted under the subpart, after giving the bank notice and a reasonable opportunity to be heard, if a bank is unable or fails to comply with the requirements of the subpart or any conditions imposed by the FDIC regarding transactions under the subpart. The only comment on the section was submitted by the ABA, which expressed no opposition to the new section.

After considering the proposed amendments contained in the NPR and the comments submitted thereon, except as otherwise stated above, the FDIC is adopting all of the amendments to subpart A of part 347 in this final rule as they were proposed.

IV. Foreign Banks

The existing rules in part 347, subpart B primarily implement provisions of the FDI Act and International Banking Act concerning insured and noninsured U.S. branches of foreign banks. The FDIC proposed reorganizing the subpart by grouping the existing sections that were applicable to insured State and Federal branches at the beginning of the subpart, followed by the sections applicable to only State branches. In addition to several minor revisions to the existing sections, the FDIC also proposed more substantive amendments. These included revising its existing rules to update its foreign examination and information rule and applying them to U.S. banking subsidiaries of foreign banks, addressing how a grandfathered branch could be transferred to a new foreign bank owner and retain the branch's grandfathered status, adopting a risk-based approach for its asset pledge rule, and revising its asset maintenance rule to compute asset maintenance requirements based on a daily calculation of the third-party assets and liabilities. Finally, the FDIC proposed a new rule to facilitate cross-border supervision of insured U.S. branches of foreign banks and insured U.S. bank subsidiaries by providing for the sharing of supervisory information between the FDIC and foreign bank regulatory or supervisory authorities and addressing the confidentiality of such information. These more substantive amendments are discussed in greater detail below.

Section 347.208 of the FDIC's existing rules addresses foreign bank agreements with the FDIC to be examined and provide information. The regulation implements section 10(b) of the FDI Act (12 U.S.C. 1820(b)) and was initially issued in 1979. Although the regulation addresses foreign banks applying for deposit insurance for U.S. branches, it does not address deposit insurance applications of U.S. depository institution subsidiaries of foreign banks.[4]

To update the rule and enhance the FDIC's supervisory authority, the FDIC proposed to redesignate the rule as section 347.204 and substantially amend it to make it more useful. As envisioned in the proposal, the amended rule would have addressed several issues. It would have made the rule applicable to U.S. depository institution subsidiaries, as well as U.S. branches, of a foreign bank seeking deposit insurance from the FDIC. It also would have required the foreign bank to provide the FDIC with a written commitment (including the foreign bank's consent to U.S. court jurisdiction and designation of agent for service of process, acceptable to the FDIC) to:

- Permit examination of the foreign bank and affiliates located outside the U.S.;
- Provide information regarding the foreign bank and affiliates located outside the U.S.; and
- Permit examination and provide information regarding the offices and affiliates of the foreign bank that are located in the U.S.

In addition, the proposal would have allowed the FDIC to waive the foreign examination provision if the FRB had determined that the foreign bank was subject to comprehensive consolidated supervision (''CCS''). It also would have allowed for the FDIC, in its discretion and subject to the requirements specified in the regulation, to waive some or all of the commitment requirements imposed by the section in lieu of requiring its own separate commitment from the foreign bank.

There were two comments on proposed section 347.204. The ABA expressed support for the proposed amendments to the section. The IIB expressed concerns, however, about what it viewed as exertion of ''extraterritorial'' examination authority over non-U.S. offices and affiliates of foreign banks. The IIB also asserted that the proposal would reverse the FDIC's longstanding position, dating back to 1979, when the original rule was adopted, when the FDIC recognized that despite its broad statutory authority to conduct such examinations, home country laws typically would prohibit the FDIC from doing so. Therefore, the IIB observed, the FDIC adopted a compromise under which it asserted examination authority only over U.S. branches and affiliates and required an agreement to provide information concerning operations of non-U.S. offices and affiliates. The IIB also felt that the proposed foreign examination provision was largely unnecessary because the proposed rule contained waiver authority for foreign banks that had been determined to be subject to CCS. It noted that section 3 of the Bank Holding Company Act (12 U.S.C. 1842) required a finding of comprehensive consolidated supervision by the FRB before a foreign bank could acquire or establish a U.S. commercial bank subsidiary and that the acquisition by a foreign bank of control of a savings

[4] The statute requires a foreign bank, in connection with obtaining deposit insurance for a branch or depository institution subsidiary, to submit a binding written commitment to the FDIC to permit any examination of the affairs of any affiliate of the branch or depository institution subsidiary to the extent necessary to determine: (1) the relationship between the depository institution and the affiliate and (2) the effect of such relationship on such depository institution.

association was subject to a CCS determination by the OTS.

The FDIC has reviewed and considered the comments on proposed section 347.204, as well as the information and an examination requirement contained in existing section 347.208, and has decided to make several revisions to section 347.204 in the final rule.

Although the IIB did not specifically reference the 1979 statement mentioned in its comment, the FDIC believes that the reference was to a comment contained in the preamble to the proposed rule for the FDIC's initial foreign banking regulations. In that notice, the FDIC observed:

> The FDIC is aware that most foreign banks would be prohibited, or at least restricted, by law or policy of the country of the bank's domicile from providing such a commitment. Were the FDIC to require a commitment allowing the FDIC to conduct a full examination of the bank, it is probable that no foreign bank could operate an insured branch. This result clearly is not intended. Thus, the FDIC proposes that a foreign bank agree to provide the FDIC with information regarding the affairs of the bank and its affiliates which are located outside the United States. As to activities within the United States, the bank shall agree to allow the FDIC to examine the affairs of the bank and its affiliates. 44 FR 23869, 23871 (April 23, 1979).

The FDIC believes that this conservative approach may have been prudent in the context of foreign banks seeking deposit insurance for U.S. branches in the late 1970s but that the approach has become somewhat outdated and the rule should be more reflective of the supervisory structure that is currently in existence. In this regard, it is noted that the underlying statutory provision in the FDI Act and the initial regulation preceded the failure of the Bank of Credit and Commerce International (''BCCI'') in the early 1990s, which had an impact on certain insured depository institutions in the United States that had undisclosed relationships with BCCI. The underlying statutory provision and initial regulation also preceded the enactment of statutory amendments to the IBA, Bank Holding Company Act, and Home Owners Loan Act, as part of the Foreign Bank Supervision and Enforcement Act of 1991,[5] that require comprehensive consolidated supervision determinations in certain circumstances by the appropriate Federal banking agency under those statutes, including the initial acquisition of control or establishment of a U.S. bank, savings association, branch, agency, or representative office. Because the appropriate Federal banking agencies consider, as part of their CCS determination, whether the foreign bank's home country supervisor receives sufficient information on the worldwide operations of the foreign bank to assess its overall financial condition and compliance with laws and regulations, as specified in 12 CFR 211.24(c)(ii), the FDIC believes acceptable commitments and assurances of cooperation by the foreign bank, coupled with appropriate supervisory coordination and communication with the home country regulator may be sufficient to satisfy the examination commitment for a foreign bank and its affiliates outside the U.S. Thus, a CCS determination from the appropriate Federal banking agency should reduce the need for foreign examination commitments. Therefore, the section has been rewritten to eliminate the foreign examination commitment requirement as a prerequisite for obtaining consideration of a deposit insurance application if the foreign bank has been determined to be subject to CCS by the appropriate Federal banking agency.[6]

The FDIC has also revised the final rule to eliminate the waiver provisions contained in paragraph (b) of the proposal. The first waiver provision concerned the foreign examination commitment, which is no longer addressed in paragraph (a) of the final rule. In addition, the other waiver provision, regarding waivers for commitments provided to other Federal banking agencies, has been deleted. Although the latter provision was intended to avoid the appearance of duplication, the FDIC is concerned that such waivers may create the potential for uncertainty regarding the FDIC's authority under the commitments. Thus the FDIC believes the potential enforcement difficulties attendant to such waivers outweigh the potential benefits of such waiver authority.

The FDIC also has revised the consent to jurisdiction and designation of agent provisions in the final rule to clarify those provisions by eliminating the ''court'' and ''process'' references. The FDIC presently requires that foreign owners of insured depository institutions, including foreign banks, provide consents to personal jurisdiction that are acceptable to the FDIC; however, the consents are not limited merely to court proceedings.[7] Thus, the consent to jurisdiction and designation of agent provisions have been revised in the final rule to avoid giving the erroneous impression that consents to jurisdiction and designations of agents that are limited to consent to jurisdiction of the U.S. courts and service of process in court proceedings will be acceptable to the FDIC.

Section 347.204(b)(3) of the proposal has also been made paragraph (b) in the final rule and revised. Because the FDIC believes that an acceptable consent to U.S. jurisdiction and designation of agent for service are essential components needed to obtain binding commitments from the foreign bank, the final rule clarifies that the consent to jurisdiction and designation of agent for service (and any limitations on the FDIC's ability to utilize them) will be considered together with the commitments provided by the foreign bank. Additionally, as revised by the final rule, the section recognizes that the FDIC also has discretion to consider any additional commitments or assurances by the foreign bank, including that it will cooperate and assist the FDIC, including, 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 such information available to the FDIC.

Therefore, the FDIC is adopting section 347.204, as revised in this final rule, for application to deposit insurance applications of U.S. branches and depository institution subsidiaries of foreign banks.

Another issue addressed in the proposal was an amendment contained in proposed section 347.206(d), concerning the transferability of grandfathered branches to new foreign banks. As indicated in the proposal, section 347.206 of the proposal is largely derived from existing section 347.204(a)–(c) and implements section 6(d) of the IBA (12 U.S.C. 3104(d)).[8]

As part of the EGRPRA process the IIB requested that the FDIC adopt an interpretation of section 6(d) that would

[5] Pub. L. 102–242, 105 Stat. 2236, 2286 (1991).

[6] In the event that the FDIC receives an application for deposit insurance for a U.S. banking subsidiary of a foreign bank that has not been determined to be subject to CCS by an appropriate Federal banking agency, the FDIC expects the foreign bank to provide the commitments required by section 347.204 and it may also require the foreign bank to provide the FDIC such additional commitments and assurances as the FDIC considers necessary under the circumstances.

[7] The consents to jurisdiction and designation of agent that the FDIC presently uses also include consent to agency jurisdiction and investigations for various supervisory and enforcement purposes.

[8] Section 6(d) of the IBA allows any insured branches that were accepting or maintaining domestic retail deposit accounts on December 19, 1991, to continue to operate as ''grandfathered'' insured branches conducting domestic retail deposit activities.

allow the grandfathered branch status of an insured U.S. branch of a foreign bank to survive the sale or transfer of the branch from one foreign bank to another foreign bank. As indicated in the proposal, the IIB's view was that because the availability of the grandfather exception appears to be conditioned upon a single exception (that the branch was insured as of December 19, 1991), it was inconsistent with the plain meaning of the statute to include an additional condition (that is, the branch was not transferred after December 19, 1991). The IIB also observed that other grandfather provisions enacted by Congress in the same statute expressly state that those grandfather rights terminate upon a change in control. Therefore, the absence of such a provision in the grandfathered branch exception, it was argued, indicates that Congress did not intend that an insured branch would lose its grandfathered status upon its sale or transfer. Additionally, the IIB observed that permitting transfers of grandfathered branches would provide an option for other foreign banks that would like to establish FDIC-insured branches but are constrained from doing so by the subsidiary requirement in section 6(d) of the IBA. Finally, it was observed that depositors would not lose the protections of deposit insurance solely as a result of the sale or transfer of an insured branch.

Having considered these points in the proposal, the FDIC observed that it had narrowly construed the exception in the past and that a broad reading of the grandfather exception requested would be at odds with the distinct preference Congress stated in section 6(d) of the IBA of making foreign banks desiring to engage in *new* domestic retail deposit activities requiring deposit insurance after December 19, 1991 do so through insured banking subsidiaries. The FDIC also noted that it was a well recognized rule of statutory construction that in ascertaining the plain meaning of a statute it is appropriate to look to the particular statutory language at issue, as well as the language and design of the statute as a whole. By reading the statute as a whole, rather than merely focusing on the precise language of the grandfathered branch exception, the proposed broad reading of the exception was contrary to the direction Congress provided in section 6(a) of the IBA, regarding implementation of the section, because purchasers of grandfathered branches could avoid forming and capitalizing banking subsidiaries to engage in domestic retail deposit activity in the U.S., rather than following the same process required for domestic banks of establishing and capitalizing a distinct corporate entity and applying for deposit insurance.

The FDIC recognized, however, that its existing regulations did not address this issue and that there may be other situations, such as certain merger and acquisition transactions, that are not designed or motivated by the desire to obtain access to the domestic retail deposit market and avoid compliance with the subsidiary requirement in section 6(d) of the IBA, where the grandfathered status of an insured branch should remain intact. Therefore, the FDIC proposed to address the issue by providing in section 347.206(d) of the proposal that in certain circumstances, such as certain merger and acquisition transactions, which are not designed or motivated by the desire to obtain access to the domestic retail deposit market and avoid compliance with the subsidiary requirement in section 6(d) of the IBA, the grandfathered status of an insured branch should remain intact following the transaction.

The FDIC received comments from the ABA and IIB on the proposed amendment. The ABA indicated that it did not oppose the amendment, noting that it appeared to state explicitly what has been considered to be the law implicitly. The IIB, however, reiterated its previously expressed view that there was adequate legal authority for the FDIC to permit, rather than prohibit, the transferability of an insured branch to another foreign bank without the loss of its grandfathered status. It also suggested that permitting the grandfathered status of the remaining 12 FDIC-insured branches to survive a transfer of the branch would not be fundamentally inconsistent with the 1991 Congressional determination that foreign banks seeking to engage in *new* domestic retail activity do so through subsidiaries rather than branches.

As indicated earlier, the IIB's legal and policy arguments on the transferability issue were submitted prior to the issuance of the proposal and were considered and discussed in the proposal. Although the FDIC recognizes that it might be possible to make legal and policy arguments supporting the IIB's proposed broad reading of the grandfather exception, the FDIC continues to believe that the exception should be construed narrowly, since it is contrary to Congress' general direction that foreign banks only engage in retail deposit taking after December 19, 1991, through banking subsidiaries with deposit insurance and that the statute not be construed to provide foreign banks with a competitive advantage over domestic banks.

The IIB also noted that requiring a specific proper motivation in a merger and acquisition might even call into question the survival of grandfathered status following a change in control of the foreign parent bank. It suggested, regardless of the FDIC's treatment of the broader transferability issue, that the FDIC clarify that changes in control of the foreign parent bank will not terminate the grandfathered status of existing insured branches.

The FDIC believes that it may be problematic to make a general statement such as that requested by the IIB in the context of a rulemaking proceeding. The FDIC believes that a change in ownership of a foreign bank that owns an insured branch may affect the FDIC's interest in the insured institution and that the FDIC should have an opportunity to evaluate the transaction before it is finalized. Therefore, since the universe of grandfathered insured branches of foreign banks is very limited, the FDIC believes that it is more appropriate for a foreign bank considering this type of transaction to discuss its planned structure with FDIC staff to evaluate whether the grandfathered status of the branch will remain intact following the proposed change in control of the existing foreign bank owner.

Therefore, for the reasons previously stated, the FDIC is adopting section 347.206, as proposed, in the final rule.

The FDIC also proposed to add a new section 347.207 to the subpart to facilitate cross-border supervision of insured U.S. branches and banking subsidiaries of foreign banks by providing for the sharing of supervisory information between the FDIC and foreign bank regulatory or supervisory authorities. As indicated in the proposal, the section was patterned after section 15 of the IBA (12 U.S.C. 3109) and 12 CFR 211.27. It also addressed the confidentiality of such information, based upon the FDIC's interpretation of section 8(v) of the FDI Act (12 U.S.C. 1818(v)), by providing that the disclosure or transfer of such information to a foreign bank regulatory or supervisory authority will not waive any privilege applicable to such information. The ABA's comment indicated that it supported the addition of the provision and it is being adopted in the final rule without further amendment.

In amendments contained in section 347.209 of the proposal, the FDIC proposed to revise the 5 percent asset pledge requirement, contained in existing section 347.210, to make it

more risk-focused and take into consideration characteristics that may be unique to each insured branch. As discussed in the proposal, under the amended rule, the asset pledge requirement would be determined in a manner similar to the approach the FDIC has taken with its risk-based deposit insurance assessment system. In addition, any newly insured branch would be subject to at least a 5 percent asset pledge requirement throughout the first three years of its operations as an insured branch.[9] After the first three years of operations as an insured branch, the asset pledge amount would be adjusted by taking into consideration the percentage of assets maintained by the insured branch, pursuant to section 347.210, and the supervisory information relative to the branch at issue. It was also envisioned that the most recent ROCA rating [10] for the insured branch will be a focal point of such supervisory information but, as with the risk-based premium system, the FDIC could also consider other supervisory information that it considered appropriate to fully evaluate the potential risk posed by the insured branch in determining the supervisory subgroup assignment for the branch. The appropriate percentage of assets required to be pledged would then be determined based on the supervisory risk subgroup assigned and the asset maintenance level applicable to the branch. The amended section would generally permit the asset pledge to be lowered to not less than 2 percent of third-party liabilities for insured branches that were perceived to pose a lower potential risk and up to 8 percent of liabilities for insured branches that were perceived to pose a higher potential risk to the deposit insurance fund. In addition, the FDIC's ability to require a higher percentage of pledged assets in appropriate circumstances would remain unchanged.

The FDIC also proposed amendments to the ''eligible collateral'' portion of the rule to specify that ''negotiable'' certificates of deposit (''CDs'') with waivers of offset from their issuers, but not non-negotiable CDs with waivers of offset from their issuers, and U.S. Treasury bills would be considered eligible collateral under the rule.

All of the commenters discussed the proposed amendments to this rule. The CSBS observed that the asset pledge and asset maintenance requirements were extremely important and valuable supervisory tools. It also observed that, while the role of the state asset pledge and asset maintenance requirements is paramount for the protection of creditors of uninsured branches, in the unique situation where retail deposits are insured by the FDIC, the major objective is the protection of depositors and that certain states had taken the initiative to avoid the imposition of double asset pledge requirements by exempting FDIC insured branches from state asset pledge requirements. Therefore, given the unique situation posed by insured branches of foreign banks and lack of effect on state prerogatives, the CSBS indicated that it did not object to the proposed amendments to the FDIC asset pledge and maintenance rules.

The ABA expressed general support for the amendments but suggested that additional financial instruments be added to the eligible collateral list in the rule. The ABA observed that the list of assets that foreign banks may pledge under the existing rule includes certain negotiable CDs and bankers acceptances issued by state and national banks, but does not include the same types of instruments issued by state and federal savings associations. The ABA also observed that eligible collateral, under the existing rule, includes notes issued by banks and bank holding companies but not savings associations and thrift holding companies. The ABA believed that there was no reason to distinguish between banks, savings associations, and their respective corporate parents in this manner, since financial instruments provided by these other issuers also would provide the same protection from the FDIC.

The IIB supported adoption of a risk-based asset pledge requirement but believed the proposed two percent minimum pledge amount should be eliminated in favor of either (i) a completely risk-based requirement or (ii) a smaller minimum. The IIB also disagreed with the FDIC's proposal to amend the eligible collateral requirement to require negotiable CDs with waivers of offset because of the practical burdens associated with requiring grandfathered branches to substitute negotiable CDs with waivers of offset for non-negotiable CDs with waivers of offset. It also observed that non-negotiable CDs with waivers of offset had been considered acceptable collateral for over 20 years.

The FDIC has considered the comments and is making certain amendments to section 347.209 in the final rule. The FDIC asset pledge requirement was established to provide the FDIC deposit insurance funds protection against losses on insured deposit claims by depositors of U.S. branches of foreign banks. While the FDIC is aware that the level of assets required to be pledged to the FDIC by a foreign bank may have an economic impact on the foreign bank, the FDIC's paramount interests are maintaining and protecting the resources of the deposit insurance funds that it administers and honoring its deposit insurance obligations to depositors of insured U.S. branches of foreign banks. Inherent in the asset pledge requirement, regardless of asset maintenance requirements imposed on U.S. branches, is the possibility that those U.S. branch assets may not be sufficient to pay the claims of domestic creditors, including the FDIC. Therefore, the FDIC believes that the proposed risk-based approach, including the two percent minimum requirement, represents the best compromise between the interest of the FDIC in assuring that the deposit insurance funds that it administers are protected and the financial interests of foreign banks in the pledged assets.

For similar reasons, although the FDIC may have allowed non-negotiable CDs to be treated as eligible collateral in the past, the FDIC is concerned that considering non-negotiable certificates of deposit as the equivalent of negotiable certificates of deposit, for asset pledge purposes, fails to take into consideration the potentially decreased value of non-negotiable certificates of deposit in the event of a forced sale, which is precisely the time the FDIC would be most concerned about their value, because of their non-negotiability. Therefore, except as provided in the final rule, the FDIC is adopting the proposal to allow only negotiable CDs with waivers of offset to be treated as eligible collateral for purposes of section 347.209. A limited exception is provided in the final rule, however, to treat non-negotiable CDs that insured branches have pledged on March 18, 2005 as eligible collateral until those certificates of deposit mature according to the original terms of their existing deposit agreements.[11] Finally,

[9] The asset pledge requirement of newly insured branches has been revised in the final rule to provide that the pledge will be based on the branch's projection of its liabilities at the end of each year during the first three years of its operations. This revision is intended to avoid requiring a newly insured branch to pledge assets based on its third year projected liabilities, which will likely reflect its largest liability balance, during its first and second years of operations, when its projected liabilities will presumably be lower.

[10] The ROCA system represents the rating of risk management, operational controls, compliance, and asset quality of a Foreign Banking Organization's U.S. operations.

[11] The FDIC recognizes that obtaining waivers of offset from issuers of negotiable certificates of deposit may make the pledge of certificates of

Continued

the FDIC agrees with the ABA's recommendation concerning other types of eligible collateral and the final rule has been amended to include those additional types of financial instruments.

The FDIC also proposed various amendments relating to the asset maintenance calculation for insured branches, in section 347.210 of the proposal, including a revision that would have required insured branches to maintain eligible assets at a ratio of not less than 106 percent of the insured branch's daily third-party liabilities, rather than based upon the preceding quarter's average book value of the insured branch's liabilities. The amendment was proposed to avoid potential anomalies that could be caused by using liability information from the preceding quarter, such as instances where grandfathered branches that were winding down their operations needed to calculate their asset maintenance on a daily basis to maintain compliance with the rule.

Two of the commenters addressed this revision. The ABA expressed support for the amendment. The IIB, however, suggested that the mere change of the longstanding quarterly calculation method would impose systems and other burdens on insured branches that it felt could be avoided by the FDIC continuing to resolve such situations on a case-by-case basis. The IIB also suggested that the FDIC might consider a specific modification to the existing asset maintenance requirement for branches that are winding down their operations.

The FDIC has considered the comments, as well as the IIB's representations to FDIC staff that it is less difficult to calculate asset maintenance, based on fixed liability numbers, than based on the daily assets and liabilities of a branch, which can fluctuate, and has decided to retain the substance of the asset maintenance requirements specified in existing section 347.211(a). In doing so, the FDIC notes that the daily calculation method specified in the existing rule may be used to address situations where the quarterly calculation method is considered inappropriate from a supervisory perspective. This authority may be utilized, in the FDIC's discretion, in instances where the current third-party liabilities of a branch decline or increase substantially in relation to the average book value of the branch's third-party liabilities for the preceding quarter. In addition, appropriate conforming changes are also being made in the final rule to section 347.210(d), based on revisions being made to paragraph (a).

There were no public comments on the proposed amendments to subpart B, other than those discussed above, and they are being adopted in the final rule, with the revisions previously discussed.

V. Deposit Insurance for Wholesale U.S. Branches of Foreign Banks

The FDIC included a request for comments in the NPR concerning whether the FDIC should revise its existing views regarding the availability of FDIC insurance for wholesale U.S. branches of foreign banks.

As explained in the NPR, the IIB expressed the view that some foreign banks with U.S. wholesale branches (*i.e.*, branches that are not engaged in domestic retail deposit activities that require FDIC insurance) may be interested in obtaining deposit insurance but that certain statements the FDIC made in the context of a 1998 final rule may have had the effect of discouraging international banks from applying for ''optional'' deposit insurance and that the FDIC should not continue to discourage this effort.

In that 1998 final rule (63 FR 17056), which accompanied the issuance of the FDIC's existing foreign banking rules in 1998, the FDIC observed that because section 5(b) of the FDI Act (12 U.S.C. 1815(b)), addressing deposit insurance applications for U.S. branches of foreign banks, had not been repealed, it arguably may be possible for a U.S. branch of a foreign bank that does not engage in domestic retail deposit activity to seek deposit insurance from the FDIC. The FDIC also observed, however, that as a practical matter, it did not foresee many circumstances in which it could be appropriate for the FDIC's Board of Directors to approve such an application, but that the elimination of the optional insurance rule would not affect a foreign bank's ability to argue that it may make such an application under section 5(b) of the FDI Act. Finally, the FDIC noted that the FDIC Board of Directors would have to determine whether to actually accept and approve such an application, based on its review of the facts and circumstances involved, in addition to the pertinent legal and policy considerations.

Among the arguments the IIB advanced to support an expanded view of the availability of deposit insurance for wholesale branches were:

- A ''plain meaning'' construction of section 5(b) permits ''any branch''—including a wholesale branch—to become insured;
- Congress expressly prohibited foreign banks from obtaining FDIC insurance for branches ''engaged in domestic retail deposit activities'' but did not remove the statutory provisions authorizing foreign banks to apply for deposit insurance for wholesale branches;
- The FDIC's approach ignores significant changes in regulatory practices and structures that have occurred since 1991 with regard to foreign banks; broader acceptance of the principle of ''investor choice;'' and rejection of a broader policy to force foreign banks to operate in the U.S. only through subsidiaries;
- Wholesale depositors often seek the benefits of FDIC insurance—even though the full amount of their deposits may not be insured. The ability to offer these benefits through a U.S. branch would provide a benefit to customers and increase a foreign bank's funding options;
- Optional FDIC insurance is likely to be attractive primarily to foreign banks already operating FDIC-insured branches and subsidiaries in the U.S. and to a relatively small number of other foreign banks, especially those seeking to serve particular ethnic markets. As a result, a more liberal policy likely would have a minimal effect on the deposit insurance fund; and
- Permitting wholesale branches to obtain deposit insurance is consistent with the business model that has been followed by some major U.S. banks that have retained insurance while focusing on wholesale markets.

Some of the arguments and observations countering the IIB's arguments were:

- Difficulty in reconciling the idea that Congress imposed the subsidiary requirement with regard to domestic retail deposit activity requiring deposit insurance for the protection of the FDIC with the implicit assumption that Congress did not believe such protection of the FDIC was needed with regard to wholesale branches of foreign banks because the first $100,000 of customer deposits in a wholesale branch would be insured to the same extent as deposits maintained in any other FDIC insured depository institution;
- Unlike bank subsidiaries, branches function as an integral part of the foreign bank itself and do not have their own independent board of directors. Thus, the directors of a foreign bank are not usually subject to the U.S.

deposit less attractive to foreign banks but there are several other types of financial instruments specified in the rule, besides certificates of deposit, that can be pledged by foreign banks to meet the collateral requirements.

jurisdiction, and domestic branch personnel essential to explaining certain transactions could be transferred beyond the reach of U.S. authorities;

• Essential records could also be difficult to reach if they are kept at the head office or at branches in other countries;

• A U.S. branch could be subjected to requirements under foreign laws or to political or economic decisions of a foreign government which conflict with domestic bank regulatory policies;

• Operating through a branch, as opposed to subsidiary structure, allows foreign banks the ability to engage in transactions with the home office without significant operational restrictions that might otherwise be applied to transactions with affiliates of insured U.S. banks; and

• Due to the operating relationship of a branch to its home office and dependence on the home office for financial support, the insolvency of a foreign bank with a multinational branch structure will result in the insolvency of the branches and this may pose complicated and time-consuming issues regarding the resolution of the branch that could more likely be avoided in situations involving banking subsidiaries.

The FDIC received two comments concerning this section. The CSBS expressed support for the view that ''optional insurance'' is not specifically authorized by statute. The IIB indicated that it continued to believe that the FDIC's concerns, such as those regarding the potential impact on the FDIC insurance fund, were misplaced or could be adequately addressed by other means. The IIB also requested that no action be taken on its request to allow it to continue to explore ways to address the FDIC's concerns.

As the FDIC has indicated above, there are arguments that can be made for providing deposit insurance coverage to wholesale U.S. branches of foreign banks, as well as compelling arguments that can be made against providing such coverage. Therefore, the FDIC has decided to maintain its previously stated position that, as a practical matter, it does not foresee many circumstances in which it could be appropriate for the FDIC's Board of Directors to approve such an application and that the FDIC Board of Directors would have to determine whether to actually accept and approve such an application, based on its review of the facts and circumstances involved, in addition to the pertinent legal and policy considerations.

VI. Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the FDIC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The FDIC has two OMB-approved information collections (3064–0125, Foreign Branching and Investment by Insured State Nonmember Banks, and 3064–0114, Foreign Banks) that cover the paperwork burden associated with subparts A and B of part 347. The information collections in 3064–0125 consist of applications related to establishing and closing a foreign branch; applications related to acquiring stock of a foreign organization; and records and reports which a nonmember bank must maintain once it has established a foreign branch or foreign organization. The information collections in 3064–0114 consist of applications to operate as a noninsured state-licensed branch of a foreign bank; applications from an insured state-licensed branch of a foreign bank to conduct activities which are not permissible for a federally-licensed branch; internal recordkeeping by insured branches of foreign banks; and reporting requirements related to an insured branch's pledge of assets to the FDIC. This proposal to amend part 347, subparts A and B will not result in any change in the current estimated paperwork burden associated with the regulation, therefore no submission has been made to OMB under the Paperwork Reduction Act.

VII. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), an agency must either prepare a Final Regulatory Flexibility Analysis (FRFA) for a final rule or certify that the final rule will not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 604, 605(b). For purposes of the analysis or certification, financial institutions with assets of $150 million or less are considered ''small entities.'' The FDIC has reviewed the impact of this final rule on small banks and, for the reasons provided below, certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

The final rule makes primarily technical revisions to update, reorganize, and clarify the existing rules in subpart A of part 347 and subpart J of part 303. Subpart J of part 303 contains the procedural rules that implement part 347. The rules in subpart A of part 347 address issues related to the international activities and investments of insured state nonmember banks. In general, they implement the FDIC's statutory authority under section 18(d)(2) of the Federal Deposit Insurance Act (FDI Act) (12 U.S.C. 1828(*d*)(2)), regarding branches of insured state nonmember banks in foreign countries, and section 18(*l*) of the FDI Act, regarding insured state nonmember bank investments in foreign entities. As of September 30, 2004, there were approximately 4,800 state nonmember commercial banks, but fewer than 40 of those institutions report having foreign offices. Available information indicates that state nonmember banks with foreign investments or foreign branches are not small entities.

The final rule also makes revisions to update, reorganize, and clarify the existing rules in subpart B of part 347, as well as additional revisions and amendments that address supervisory issues. The rules in subpart B of part 347 principally address issues related to insured and noninsured U.S. branches of foreign banks under section 6 of the International Banking Act (IBA) (12 U.S.C. 3104). As of December 31, 2004, there were approximately 199 U.S. branches of foreign banks, including 12 insured branches. Of this number, there were approximately 90 U.S. branches of foreign banks that appear to qualify as small entities, including 6 insured branches. The 12 insured branches are presently subject to the FDIC's asset pledge requirement, which is revised in section 347.209 of the final rule. Although the revision of the asset pledge requirement to implement a risk-based approach may result in an increase in the amount of assets pledged for insured branches with low supervisory ratings, the FDIC does not believe this will affect the insured branches that qualify as small entities. Other revisions to the rules affecting noninsured branches are not substantive and, thus, should have no significant economic impact on noninsured branches that qualify as small entities.

VIII. Assessment of Federal Regulations and Policies on Families

The FDIC has determined that the final rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681).

IX. Plain Language Requirement

Section 722 of the Gramm-Leach-Bliley Act (GLBA) (12 U.S.C. 4809), requires banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The proposed rule requested comments on how the rule might be changed to reflect the requirements of GLBA. No GLBA comments were received.

X. Small Business Regulatory Enforcement Fairness Act

The Office of Management and Budget has determined that the final rule is not a ''major rule'' within the meaning of the relevant sections of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (5 U.S.C. 801 *et seq.*). As required by SBREFA, the FDIC will file the appropriate reports with Congress and the General Accounting Office so that the final rule may be reviewed.

List of Subjects

12 CFR Part 303

Administrative practice and procedure, Authority delegations (Government agencies), Bank deposit insurance, Banks, banking, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 325

Banks, banking, Reporting and recordkeeping requirements.

12 CFR Part 327

Bank deposit insurance, Banks, banking, Savings associations.

12 CFR Part 347

Authority delegations (Government agencies), Bank deposit insurance, Banks, banking, Credit, Foreign banking, Investments, Reporting and recordkeeping requirements, United States investments abroad.

■ For the reasons set forth above and under the authority of 12 U.S.C. 1819(a) (Tenth), the FDIC Board of Directors hereby amends 12 CFR chapter III as follows:

PART 303—FILING PROCEDURES

Subpart J—International Banking

■ 1. The authority citation for part 303 is revised to read as follows:

Authority: 12 U.S.C. 378, 1813, 1815, 1817, 1818, 1819 (Seventh and Tenth), 1820, 1823, 1828, 1831a, 1831e, 1831o, 1831p–1, 1831w, 1835a, 1843(l), 3104, 3105, 3108, 3207; 15 U.S.C. 1601–1607.

■ 2. Revise § 303.182 to read as follows:

§ 303.182 Establishing, moving or closing a foreign branch of an insured state nonmember bank.

(a) Notice procedures for general consent. Notice in the form of a letter from an eligible depository institution establishing or relocating a foreign branch pursuant to § 347.117(a) of this chapter must be provided to the appropriate FDIC office no later than 30 days after taking such action. The notice must include the location of the foreign branch, including a street address, and a statement that the foreign branch has not been located on a site on the World Heritage List or on the foreign country's equivalent of the National Register of Historic Places (National Register), in accordance with section 402 of the National Historic Preservation Act Amendments of 1980 (NHPA Amendments Act) (16 U.S.C. 470a–2). The FDIC will provide written acknowledgment of receipt of the notice.

(b) Filing procedures for other branch establishments—(1) Where to file. An applicant seeking to establish a foreign branch other than under § 347.117(a) of this chapter shall submit an application to the appropriate FDIC office.

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

(i) The exact location of the proposed foreign branch, including the street address, and a statement whether the foreign branch will be located on a site on the World Heritage List or on the foreign country's equivalent of the National Register, in accordance with section 402 of the NHPA Amendments Act;

(ii) Details concerning any involvement in the proposal by an insider of the applicant, as defined in § 303.2(u) of this part, including any financial arrangements relating to fees, the acquisition of property, leasing of property, and construction contracts;

(iii) A brief description of the applicant's business plan with respect to the foreign branch; and

(iv) A brief description of the proposed activities of the branch and, to the extent any of the proposed activities are not authorized by § 347.115 of this chapter, the applicant's reasons why they should be approved.

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

(c) Processing—(1) Expedited processing for eligible depository institutions. An application filed under § 347.118(a) of this chapter by an eligible depository institution as defined in § 303.2(r) of this part seeking to establish a foreign branch by expedited processing will be acknowledged in writing by the FDIC and will receive expedited processing, unless the applicant is notified in writing to the contrary and provided with the basis for that decision. The FDIC may remove the application from expedited processing for any of the reasons set forth in § 303.11(c)(2) of this part. Absent such removal, an application processed under expedited processing is deemed approved 45 days after receipt of a substantially complete application by the FDIC, or on such earlier date authorized by the FDIC in writing.

(2) Standard processing. For those applications that are not processed pursuant to the expedited procedures, the FDIC will provide the applicant with written notification of the final action when the decision is rendered.

(d) Closing. Notices of branch closing under § 347.121 of this chapter, in the form of a letter including the name, location, and date of closing of the closed branch, shall be filed with the appropriate FDIC office no later than 30 days after the branch is closed.

■ 3. Amend § 303.183 by revising the section heading and paragraphs (a), (b)(1), and (c)(1) to read as follows:

§ 303.183 Investment by insured state nonmember banks in foreign organization.

(a) Notice procedures for general consent. Notice in the form of a letter from an eligible depository institution making direct or indirect investments in a foreign organization pursuant to § 347.117(b) of this chapter shall be provided to the appropriate FDIC office no later than 30 days after taking such action. The FDIC will provide written acknowledgment of receipt of the notice.

(b) Filing procedures for other investments—(1) Where to file. An applicant seeking to make a foreign investment other than under § 347.117(b) of this chapter shall submit an application to the appropriate FDIC office.

* * * * *

(c) Processing—(1) Expedited processing for eligible depository institutions. An application filed under § 347.118(b) of this chapter by an eligible depository institution as defined in § 303.2(r) of this part seeking to make direct or indirect investments in a foreign organization will be acknowledged in writing by the FDIC and will receive expedited processing, unless the applicant is notified in writing to the contrary and provided with the basis for that decision. The FDIC may remove the application from expedited processing for any of the reasons set forth in § 303.11(c)(2) of this

part. Absent such removal, an application processed under expedited processing is deemed approved 45 days after receipt of a substantially complete application by the FDIC, or on such earlier date authorized by the FDIC in writing.

* * * * *

■ 4. Amend § 303.184 to revise paragraph (b)(1) and add paragraph (e) to read as follows:

§ 303.184 Moving an insured branch of a foreign bank.

* * * * *

(b) Processing—(1) Expedited processing for eligible insured branches. An application filed by an eligible insured branch as defined in § 303.181(c) of this part will be acknowledged in writing by the FDIC and will receive expedited processing if the applicant is proposing to move within the same state, unless the applicant is notified to the contrary and provided with the basis for that decision. The FDIC may remove an application from expedited processing for any of the reasons set forth in § 303.11(c)(2) of this part. Absent such removal, an application processed under expedited processing will be deemed approved on the latest of the following:

(i) The 21st day after the FDIC's receipt of a substantially complete application; or

(ii) The 5th day after expiration of the comment period described in paragraph (c) of this section.

* * * * *

(e) Relocation of insured branch from one state to another. If the foreign bank proposes to relocate an insured state branch to a state that is outside the state where the branch is presently located, in addition to meeting the approval criteria contained in paragraph (d) of this section, the foreign bank must:

(i) Comply with any applicable state laws or regulations of the states affected by the proposed relocation; and

(ii) Obtain any required regulatory approvals from the appropriate state licensing authority of the state to which the insured branch proposes to relocate before relocating the existing branch operations and surrendering its existing license to the appropriate state licensing authority of the state from which the branch is relocating.

* * * * *

■ 5. Amend § 303.186 to revise the section heading and paragraph (a)(1) to read as follows:

§ 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.

* * * * *

■ 6. Amend § 303.187 to revise the section heading and paragraphs (a)(1), (a)(2)(iv) and (b)(1) to read as follows:

§ 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) * * *

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

* * * * *

(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.

* * * * *

PART 325—CAPITAL MAINTENANCE

■ 7. The authority citation for part 325 continues to read as follows:

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819 (Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831o, 1835, 3907, 3909, 4808; Pub. L. 102–233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831n note); Pub. L. 102–242, 105 Stat. 2236, 2355, as amended by Pub. L. 103–325, 108 Stat. 2160, 2233 (12 U.S.C. 1828 note); Pub. L. 102–242, 105 Stat. 2236, 2386, as amended by Pub. L. 102–550, 106 Stat. 3672, 4089 (12 U.S.C. 1828 note).

■ 8. Amend § 325.103 to revise paragraph (c) to read as follows:

§ 325.103 Capital measures and capital category definitions.

* * * * *

(c) Capital categories for insured branches of foreign banks. For purposes of the provisions of section 38 and this subpart, an insured branch of a foreign bank shall be deemed to be:

(1) Well capitalized if the insured branch:

(i) Maintains the pledge of assets required under § 347.209 of this chapter; and

(ii) Maintains the eligible assets prescribed under § 347.210 of this chapter at 108 percent or more of the preceding quarter's average book value of the insured branch's third-party liabilities; and

(iii) Has not received written notification from:

(A) The OCC to increase its capital equivalency deposit pursuant to 12 CFR 28.15(b), or to comply with asset maintenance requirements pursuant to 12 CFR 28.20; or

(B) The FDIC to pledge additional assets pursuant to § 347.209 of this chapter or to maintain a higher ratio of eligible assets pursuant to § 347.210 of this chapter.

(2) Adequately capitalized if the insured branch:

(i) Maintains the pledge of assets required under § 347.209 of this chapter; and

(ii) Maintains the eligible assets prescribed under § 347.210 of this chapter at 106 percent or more of the preceding quarter's average book value of the insured branch's third-party liabilities; and

(iii) Does not meet the definition of a well capitalized insured branch.

(3) Undercapitalized if the insured branch:

(i) Fails to maintain the pledge of assets required under § 347.209 of this chapter; or

(ii) Fails to maintain the eligible assets prescribed under § 347.210 of this chapter at 106 percent or more of the preceding quarter's average book value of the insured branch's third-party liabilities.

(4) Significantly undercapitalized if it fails to maintain the eligible assets prescribed under § 347.210 of this chapter at 104 percent or more of the preceding quarter's average book value of the insured branch's third-party liabilities.

(5) Critically undercapitalized if it fails to maintain the eligible assets prescribed under § 347.210 of this chapter at 102 percent or more of the preceding quarter's average book value of the insured branch's third-party liabilities.

* * * * *

PART 327—ASSESSMENTS

■ 9. The authority citation for part 327 continues to read as follows:

Authority: 12 U.S.C. 1441, 1441b, 1813, 1815, 1817–1819; Pub. L. 104–208, 110 Stat. 3009–479 (12 U.S.C. 1821).

■ 10. In § 327.4, revise paragraphs (a)(1)(i)(B)(*1*), (a)(1)(i)(B)(*2*), (a)(1)(ii)(B)(*1*), and (a)(1)(ii)(B)(*2*) to read as follows:

§ 327.4 Annual assessment rate.

(a) * * *

(1) * * *

(i) * * *

(B) * * *

(*1*) Maintains the pledge of assets required under § 347.209 of this chapter; and

(*2*) Maintains the eligible assets prescribed under § 347.210 of this chapter at 108 percent or more of the average book value of the insured branch's third-party liabilities for the quarter ending on the report date specified in paragraph (a)(1) of this section.

(ii) * * *

(B) * * *

(*1*) Maintains the pledge of assets required under § 347.209 of this chapter; and

(*2*) Maintains the eligible assets prescribed under § 347.210 of this chapter at 106 percent or more of the average book value of the insured branch's third-party liabilities for the quarter ending on the report date specified in paragraph (a)(1) of this section; and

* * * * *

■ 11. Revise part 347 to read as follows:

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.
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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.

§ 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, 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.

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

§ 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 compliance 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 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 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 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 nonmember 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 instruments 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 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.

§ 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 obligations [1] 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

[1] If 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.

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 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 accounting 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

[2] If 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.

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

(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 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 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(l) of the Federal Deposit Insurance Act (12 U.S.C. 1813(l)).

(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 $100,000.

(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, 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 Bank Insurance Fund administered by the FDIC may suffer a loss.

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

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

(x) 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.

§ 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 deposit accounts with balances of less than $100,000 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)).

§ 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]

(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:

[4] This 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 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.

(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 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 release 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.

§ 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 $250 million or less;

(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 consists 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.

§ 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 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 affected 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.

§ 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 of $100,000 or greater; or

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

(b) [Reserved]

§ 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 $100,000 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 nondeposit 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 $100,000 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.

§ 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.

By order of the Board of Directors.

Dated at Washington, DC, this 18th day of March, 2005.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

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