

§ 204.121

12 CFR Ch. II (1–1–14 Edition)

(5) Interest shall be paid on excess balances of eligible institutions maintained in an excess balance account in accordance with paragraph (b)(2) or (b)(3) of this section.

(6) A Reserve Bank may establish additional terms and conditions consistent with this part with respect to the operation of an excess balance account, including, but not limited to, terms of and fees for services, conditions under which an institution may act as agent for an account, restrictions on the agent with respect to account management, penalties for non-compliance with this section or any terms and conditions, and account termination.

(e) *Term deposits.* (1) A Federal Reserve Bank may accept term deposits from eligible institutions under the provisions of this paragraph (e) subject to such terms and conditions as the Board may establish from time to time, including but not limited to conditions regarding the maturity of the term deposits being offered, maximum and minimum amounts that may be maintained by an eligible institution in a term deposit, the interest rate or rates offered, early withdrawal of term deposits, pledging term deposits as collateral and, if term deposits are offered through an auction mechanism, the size of the offering, maximum and minimum bid amounts, and other relevant terms.

(2) A term deposit will not satisfy any institution's reserve balance requirement.

(3) A term deposit may not be used for general payments or settlement activities.

[Reg. D, 74 FR 25629, May 29, 2009, as amended at 75 FR 24389, May 5, 2010; 76 FR 42019, July 18, 2011; 77 FR 21854, Apr. 12, 2012]

INTERPRETATIONS

§ 204.121 Bankers' banks.

(a)(1) The Federal Reserve Act, as amended by the Monetary Control Act of 1980 (title I of Pub. L. 96–221), imposes Federal reserve requirements on depository institutions that maintain transaction accounts or nonpersonal time deposits. Under section 19(b)(9), however, a depository institution is not required to maintain reserves if it:

(i) Is organized solely to do business with other financial institutions;

(ii) Is owned primarily by the financial institutions with which it does business; and

(iii) Does not do business with the general public.

Depository institutions that satisfy all of these requirements are regarded as *bankers' banks*.

(2) In its application of these requirements to specific institutions, the Board will use the following standards:

(i) A depository institution may be regarded as organized solely to do business with other depository institutions even if, as an incidental part to its activities, it does business to a limited extent with entities other than depository institutions. The extent to which the institution may do business with other entities and continue to be regarded as a bankers' bank is specified in paragraph (a)(2)(iii) of this section.

(ii) A depository institution will be regarded as being owned primarily by the institutions with which it does business if 75 per cent or more of its capital is owned by other depository institutions. The 75 per cent or more ownership rule applies regardless of the type of depository institution.

(iii) A depository institution will not be regarded as doing business with the general public if it meets two conditions. First, the range of customers with which the institution does business must be limited to depository institutions, including subsidiaries or organizations owned by depository institutions; directors, officers or employees of the same or other depository institutions; individuals whose accounts are acquired at the request of the institution's supervisory authority due to the actual or impending failure of another depository institution; share insurance funds; depository institution trade associations; and such others as the Board may determine on a case-by-case basis consistent with the purposes of the Act and the bankers' bank exemption. Second, the extent to which the depository institution makes loans to, or investments in, the above entities (other than depository institutions) cannot exceed 10 per cent of total assets, and the extent to which it

Federal Reserve System

§ 204.121

receives deposits (or shares if the institution does not receive deposits) from or issues other liabilities to the above entities (other than depository institutions) cannot exceed 10 per cent of total liabilities (or net worth if the institution does not receive deposits).

If a depository institution is unable to meet all of these requirements on a continuing basis, it will not be regarded as a bankers' bank and will be required to satisfy Federal reserve requirements on all of its transaction accounts and nonpersonal time deposits.

(b) (1) Section 19(c)(1) of the Federal Reserve Act, as amended by the Monetary Control Act of 1980 (title I of Pub. L. 96-221) provides that Federal reserve requirements may be satisfied by the maintenance of vault cash or balances in a Federal Reserve Bank. Depository institutions that are not members of the Federal Reserve System may also satisfy reserve requirements by maintaining a balance in another depository institution that maintains required reserve balances at a Federal Reserve Bank, in a Federal Home Loan Bank, or in the National Credit Union Administration Central Liquidity Facility if the balances maintained by such institutions are subsequently passed through to the Federal Reserve Bank.

(2) On August 27, 1980, the Board announced the procedures that will apply to such pass-through arrangements (45 FR 58099). Section 204.3(i)(1) provides that the Board may permit, on a case-by-case basis, depository institutions that are not themselves required to maintain reserves (*bankers' banks*) to act as pass-through correspondents if certain criteria are satisfied. The Board has determined that a bankers' bank may act as a pass-through correspondent if it enters into an agreement with the Federal Reserve to accept responsibility for the maintenance of pass-through reserve accounts in accordance with Regulation D (12 CFR 204.3(i)) and if the Federal Reserve is satisfied that the quality of management and financial resources of the institution are adequate in order to enable the institution to serve as a pass-through correspondent in accordance with Regulation D. Satisfaction of these criteria will assure that pass-through arrangements are maintained

properly without additional financial risk to the Federal Reserve.

(3) In order to determine uniformly the adequacy of managerial and financial resources, the Board will consult with the Federal supervisor for the type of institution under consideration. Because the Board does not possess direct experience with supervising depository institutions other than commercial banks, and does not intend to involve itself in the direct supervision of such institutions, it will request the National Credit Union Administration to review requests from credit unions that qualify as bankers' banks and the Federal Home Loan Bank Board to review requests from savings and loan associations that qualify as bankers' banks, regardless of charter or insurance status. (The Board, itself, will consider requests from all commercial banks that qualify as bankers' banks.) If the Federal supervisor does not find the institution's managerial or financial resources to be adequate, the Board will not permit the institution to act as a pass-through correspondent. In order to assure the continued adequacy of managerial and financial resources, it is anticipated that the appropriate Federal supervisor will, on a periodic basis, review and evaluate the managerial and financial resources of the institution in order to determine whether it should continue to be permitted to act as a pass-through correspondent. It is anticipated that, with respect to state chartered institutions, the Federal supervisor may discuss the request with the institute State supervisor. The Board believes that this procedure will promote uniformity of treatment for all types of bankers' banks, and provide consistent advice concerning managerial ability and financial strength from supervisory authorities that are in a better position to evaluate these criteria for depository institutions that are not commercial banks.

(4) Requests for a determination as to whether a depository institution will be regarded as a bankers' bank for purposes of the Federal Reserve Act or for permission to act as a pass-through correspondent may be addressed to the Federal Reserve Bank in whose District the main office of the depository

§ 204.122

12 CFR Ch. II (1–1–14 Edition)

institution is located or to the Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551. The Board will act promptly on all requests received directly or through Federal Reserve Banks.

[45 FR 69879, Oct. 22, 1980, as amended by Reg. D, 72 FR 16990, Apr. 6, 2007]

§ 204.122 Secondary market activities of international banking facilities.

(a) Questions have been raised concerning the extent to which international banking facilities may purchase (or sell) IBF-eligible assets such as loans (including loan participations), securities, CDs, and bankers' acceptances from (or to) third parties. Under the Board's regulations, as specified in § 204.8 of Regulation D, IBFs are limited, with respect to making loans and accepting deposits, to dealing only with certain customers, such as other IBFs and foreign offices of other organizations, and with the entity establishing the IBF. In addition, an IBF may extend credit to a nonbank customer only to finance the borrower's non-U.S. operations and may accept deposits from a nonbank customer that are used only to support the depositor's non-U.S. business.

(b) Consistent with the Board's intent, IBFs may purchase IBF-eligible assets¹ from, or sell such assets to, any domestic or foreign customer provided that the transactions are at arm's length without recourse. However, an IBF of a U.S. depository institution may not purchase assets from, or sell such assets to, any U.S. affiliate of the institution establishing the IBF; an IBF of an Edge or Agreement corporation may not purchase assets from, or sell assets to, any U.S. affiliate of the Edge or Agreement corporation or to U.S. branches of the Edge or Agreement corporation or to U.S. branches of the Edge or Agreement corporation other than the branch² establishing

the IBF; and an IBF of a U.S. branch or agency of a foreign bank may not purchase assets from, or sell assets to any U.S. affiliates of the foreign bank or to any other U.S. branch or agency of the same foreign bank.² (This would not prevent an IBF from purchasing (or selling) assets directly from (or to) any IBF, including an IBF of an affiliate, or to the institution establishing the IBF; such purchases from the institution establishing the IBF would continue to be subject to Eurocurrency reserve requirements except during the initial four-week transition period.) Since repurchase agreements are regarded as loans, transactions involving repurchase agreements are permitted only with customers who are otherwise eligible to deal with IBFs, as specified in Regulation D.

(c) In the case of purchases of assets, in order to determine that the Board's use-of-proceeds requirement has been met, it is necessary for the IBF (1) to ascertain that the applicable IBF notices and acknowledgments have been provided, or (2) in the case of loans or securities, to review the documentation underlying the loan or security, or accompanying the security (e.g., the prospectus or offering statement), to determine that the proceeds are being used only to finance the obligor's operations outside the U.S., or (3) in the case of loans, to obtain a statement from either the seller or borrower that the proceeds are being used only to finance operations outside the U.S., or in the case of securities, to obtain such a statement from the obligor, or (4) in the case of bankers' acceptances, to review the underlying documentation to determine that the proceeds are being used only to finance the parties' operations outside the United States.

(d) Under the Board's regulations, IBFs are not permitted to issue negotiable Euro-CDs, bankers' acceptances, or similar instruments. Accordingly, consistent with the Board's intent in this area, IBFs may sell such instruments issued by third parties that qualify as IBF-eligible assets provided that the IBF, its establishing institution and any affiliate of the institution

¹In order for an asset to be eligible to be held by an IBF, the obligor or issuer of the instrument, or in the case of bankers' acceptances, the customer and any endorser or acceptor, must be an IBF-eligible customer.

²Branches of Edge or Agreement corporations and agencies and branches of foreign banks that file a consolidated report for reserve requirements purposes (FR 2900) are

considered to be the establishing entity of an IBF.