section, the Office of Self-Help Development and Technical Assistance is hereby abolished.

(2)(A) If the nonprofit corporation described in subsection (b) of this section agrees to accept the liabilities of the Office, the Bank, notwithstanding any other provision of law, shall transfer all assets, liabilities, and property of the Office to such nonprofit corporation on the day on which such nonprofit corporation is incorporated.

(B) Such assets shall include all sums which are appropriated to the Office by the Congress and all sums which are contained in the Account established pursuant to section 3042 of this title. If any such sums are appropriated after the date on which the transfer described in subparagraph (A) occurs, the Bank shall promptly transfer such sums to such nonprofit corporation.

(b) Establishment; Board of Directors; functions, etc.

(1) As soon as possible after August 13, 1981, the Board shall establish a nonprofit corporation under the laws of the District of Columbia and, notwithstanding the laws of the District of Columbia, name the directors of such nonprofit corporation.

(2) Notwithstanding the laws of the District of Columbia, the Board of Directors of such nonprofit corporation shall—

(A) select an executive director who shall be responsible for the administration of such nonprofit corporation;

(B) set the compensation of such executive director and the other employees of such nonprofit corporation;

(C) promulgate and publish the policies of such nonprofit corporation and make such policies available at all times to eligible cooperatives; and

(D) perform the functions specified in subparagraphs (A) and (C) of paragraph (3).

(3) Such nonprofit corporation shall only perform—

(A) the functions which are authorized to be performed pursuant to sections 3043 through 3048 of this title and section 3050 of this title;

(B) such functions as are necessary to comply with the laws under which it was incorporated in the District of Columbia; and

(C) such functions as are necessary to remain qualified as an organization described in section 501(c)(3) of title 26.

(4) Notwithstanding any other provision of law—

(A) the Bank may provide administrative or staff support to such nonprofit corporation; and

(B) any member of the Board of Directors of the Bank may serve as a member of the Board of Directors of such nonprofit corporation.

(c) Treatment for tax purposes

(1) Notwithstanding any other provision of law, such nonprofit corporation shall be deemed to be, and treated as, qualified as an organization described in section 501(c)(3) of title 26 from the date on which such nonprofit corporation is established under the laws of the District of Columbia until the date on which the Internal Revenue Service makes a final determination on the application which such nonprofit corporation will submit to the Internal Revenue Service seeking status as an organization qualifying under such section.

(2) When performed by such nonprofit corporation, the functions described in subsection (b)(3)(A) of this section shall be deemed to be performed for ''charitable purposes'' within the meaning of section 501(c)(3) of title 26.

(d) Contributions from the Bank

(1) The Board of Directors of the Bank may make contributions to the nonprofit corporation in such amounts as the Board of Directors of the Bank deems appropriate, except that—

(A) such contributions may be made only out of the Bank's earnings, determined in accordance with generally accepted accounting principles; and

(B) the Bank shall set aside amounts sufficient to satisfy its obligations to the Secretary of the Treasury for payments of principal and interest on class A notes and other debt before making any contributions to such nonprofit corporation.

(2) During any period in which the nonprofit corporation described in subsection (b) of this section is qualified as an organization described in section 501(c)(3) of title 26, contributions made by the Bank pursuant to paragraph (1) shall be treated as charitable contributions within the meaning of section 170(c)(2) of title 26, and may be deducted notwithstanding the provisions of section 170(b)(2) of title 26.

(3) During any period in which the nonprofit corporation described in subsection (b) of this section is qualified as an organization described in section 501(c)(3) of title 26, contributions to such nonprofit corporation by any person shall qualify as charitable contributions, as defined in section 170(c) of title 26, for purposes of the charitable contribution deduction provided for in section 170(a) of title 26, and shall also qualify for the deductions for estate and gift tax purposes provided for in sections 2055 and 2522 of title 26.

(e) Conflict of interest rules

Notwithstanding the laws of the District of Columbia, the Board of Directors of such nonprofit corporation shall adopt and publish its own conflict of interest rules which shall be no less stringent in effect than the conflict of interest provisions adopted by the Board of Directors of the Bank pursuant to section 3024 of this title.

(Pub. L. 95–351, title II, § 211, as added Pub. L. 97–35, title III, § 395(a), Aug. 13, 1981, 95 Stat. 437; amended Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095.)

AMENDMENTS

1986—Subsecs. (b)(3)(C), (c), (d)(2), (3). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'' wherever appearing, which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

CHAPTER 32—FOREIGN BANK PARTICIPATION IN DOMESTIC MARKETS

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CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 619, 1813, 3902 of this title; title 15 section 78c; title 31 sections 3121, 9110.

§ 3101. Definitions

For the purposes of this chapter—

(1) ''agency'' means any office or any place of business of a foreign bank located in any State of the United States at which credit balances are maintained incidental to or arising out of the exercise of banking powers, checks are paid, or money is lent but at which deposits may not be accepted from citizens or residents of the United States;

(2) ''Board'' means the Board of Governors of the Federal Reserve System;

(3) ''branch'' means any office or any place of business of a foreign bank located in any State of the United States at which deposits are received;

(4) ''Comptroller'' means the Comptroller of the Currency;

(5) ''Federal agency'' means an agency of a foreign bank established and operating under section 3102 of this title;

(6) ''Federal branch'' means a branch of a foreign bank established and operating under section 3102 of this title;

(7) ''foreign bank'' means any company organized under the laws of a foreign country, a territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands, which engages in the business of banking, or any subsidiary or affiliate, organized under such laws, of any such company. For the purposes of this chapter the term ''foreign bank'' includes, without limitation, 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 or operating;

(8) ''foreign country'' means any country other than the United States, and includes any colony, dependency, or possession of any such country;

(9) ''commercial lending company'' means any institution, other than a bank or an organization operating under section 25 of the Federal Reserve Act [12 U.S.C. 601 et seq.], organized under the laws of any State of the United States, or the District of Columbia

which maintains credit balances incidental to or arising out of the exercise of banking powers and engages in the business of making commercial loans;

(10) ''State'' means any State of the United States or the District of Columbia;

(11) ''State agency'' means an agency of a foreign bank established and operating under the laws of any State;

(12) ''State branch'' means a branch of a foreign bank established and operating under the laws of any State;

(13) the terms ''affiliate,''[1] ''bank'', ''bank holding company'', ''company'', ''control'', and ''subsidiary'' have the same meanings assigned to those terms in the Bank Holding Company Act of 1956 [12 U.S.C. 1841 et seq.], and the terms ''controlled'' and ''controlling'' shall be construed consistently with the term ''control'' as defined in section 2 of the Bank Holding Company Act of 1956 [12 U.S.C. 1841];

(14) ''consolidated'' means consolidated in accordance with generally accepted accounting principles in the United States consistently applied;

(15) the term ''representative office'' means any office of a foreign bank which is located in any State and is not a Federal branch, Federal agency, State branch, State agency, or subsidiary of a foreign bank;

(16) the term ''office'' means any branch, agency, or representative office; and

(17) the term ''State bank supervisor'' has the meaning given to such term in section 1813 of this title.

(Pub. L. 95–369, § 1(b), Sept. 17, 1978, 92 Stat. 607; Pub. L. 102–242, title II, § 202(e), Dec. 19, 1991, 105 Stat. 2290.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning Pub. L. 95–369, Sept. 17, 1978, 92 Stat. 607, known as the International Banking Act of 1978, which enacted this chapter and sections 347d and 611a of this title, amended sections 72, 378, 614, 615, 618, 619, 1813, 1815, 1817, 1818, 1820 to 1823, 1828, 1829b, 1831b, and 1841 of this title, and enacted provisions set out as notes under sections 36, 247, 601, 611a, and 3101 of this title. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

The Bank Holding Company Act of 1956, referred to in par. (13), is act May 9, 1956, ch. 240, 70 Stat. 133, as amended, which is classified principally to chapter 17 (§ 1841 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1841 of this title and Tables.

AMENDMENTS

1991—Par. (13). Pub. L. 102–242, § 202(e)(1), inserted reference to affiliate after first reference to ''the terms''.

Pars. (15) to (17). Pub. L. 102–242, § 202(e)(2), added pars. (15) to (17).

SHORT TITLE OF 1991 AMENDMENT

Section 201 of Pub. L. 102–242 provided that: ''This subtitle [subtitle A (§§ 201–215) of title II of Pub. L. 102–242, enacting sections 3109 to 3111 of this title, amending this section and sections 1467a, 1817, 1820, 1842, 2803, 2804, 3102, 3104 to 3108, and 4009 of this title and sections 44, 57a, 1607, 1681s, 1691c, 1692*l*, and 1693*o* of Title 15, Commerce and Trade, and enacting provisions set out as a note under section 3102 of this title] may be cited as the 'Foreign Bank Supervision Enhancement Act of 1991'.''

SHORT TITLE

Section 1(a) of Pub. L. 95–369 provided that: ''This Act [enacting this chapter and sections 347d and 611a of this title, amending sections 72, 378, 614, 615, 618, 619, 1813, 1815, 1817, 1818, 1820 to 1823, 1828, 1829b, 1831b and 1841 of this title, and enacting provisions set out as notes under sections 36, 247, 601, and 611a of this title] may be cited as the 'International Banking Act of 1978'.''

FOREIGN CONTROL OF UNITED STATES FINANCIAL INSTITUTIONS

Pub. L. 96–221, title IX, §§ 901, 902, Mar. 31, 1980, 94 Stat. 192, 193, provided that:

''SEC. 901. For purposes of this title enacting this provision—

''(1) the term 'domestic financial institution' means any bank, mutual savings bank, or savings and loan association organized under the laws of any State or of the United States;

''(2) the term 'foreign person' means any foreign organization or any individual resident in a foreign country or any organization or individual owned or controlled by such an organization or individual; and

''(3) the term 'takeover' means any acquisition of the stock or assets of any domestic financial institution if, after such acquisition, the amount of stock or assets held is 5 per centum or more of the institution's stock or assets.

''SEC. 902. The Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Board of Directors of the Federal Deposit Insurance Corporation, and the Federal Home Loan Bank Board may not approve any application relating to the takeover of any domestic financial institution by a foreign person until July 1, 1980, unless—

''(1) such takeover is necessary to prevent the bankruptcy or insolvency of the domestic financial institution involved;

''(2) the application was initially submitted for filing on or before March 5, 1980;

''(3) the domestic financial institution has deposits of less than $100,000,000;

''(4) the application relates to a takeover of shares or assets pursuant to a foreign person's intrafirm reorganization of its interests in a domestic financial institution, including specifically any application to establish a bank holding company pursuant to such reorganization;

''(5) the application relates to a takeover of the assets or shares of a domestic financial institution if such assets or shares are owned or controlled by a foreign person; or

''(6) the application relates to the takeover of a domestic financial institution which is a subsidiary of a bank holding company under an order to divest by December 31, 1980.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 347d, 1813, 1817, 1828, 2804, 4009, 4402 of this title; title 15 sections 57a, 1607, 1681s, 1691c, 1692*l*, 1693*o*; title 18 sections 20, 212, 213, 648, 655, 1004, 1014, 1030, 1906, 1956, 2113; title 31 section 5313.

§ 3102. Establishment of Federal branches and agencies by foreign bank

(a) Establishment and operation of Federal branches and agencies

(1) Initial Federal branch or agency

Except as provided in section 3103 of this title, a foreign bank which engages directly in a banking business outside the United States may, with the approval of the Comptroller, es-

[1] So in original. The comma probably should follow the quotation marks.

tablish one or more Federal branches or agencies in any State in which (1) it is not operating a branch or agency pursuant to State law and (2) the establishment of a branch or agency, as the case may be, by a foreign bank is not prohibited by State law.

(2) Board conditions required to be included

In considering any application for approval under this subsection, the Comptroller of the Currency shall include any condition imposed by the Board under section 3105(d)(5) of this title as a condition for the approval of such application by the agency.

(b) Rules and regulations; rights and privileges; duties and liabilities; exceptions; coordination of examinations

In establishing and operating a Federal branch or agency, a foreign bank shall be subject to such rules, regulations, and orders as the Comptroller considers appropriate to carry out this section, which shall include provisions for service of process and maintenance of branch and agency accounts separate from those of the parent bank. Except as otherwise specifically provided in this chapter or in rules, regulations, or orders adopted by the Comptroller under this section, operations of a foreign bank at a Federal branch or agency shall be conducted with the same rights and privileges as a national bank at the same location and shall be subject to all the same duties, restrictions, penalties, liabilities, conditions, and limitations that would apply under the National Bank Act to a national bank doing business at the same location, except that (1) the requirements of section 481 of this title shall be met with respect to a Federal branch or agency if it is examined at least once in each calendar year; (2) any limitation or restriction based on the capital stock and surplus of a national bank shall be deemed to refer, as applied to a Federal branch or agency, to the dollar equivalent of the capital stock and surplus of the foreign bank, and if the foreign bank has more than one Federal branch or agency the business transacted by all such branches and agencies shall be aggregated in determining compliance with the limitation; (3) a Federal branch or agency shall not be required to become a member bank, as that term is defined in section 221 of this title; and (4) a Federal agency shall not be required to become an insured bank as that term is defined in section 1813(h) of this title. The Comptroller of the Currency shall coordinate examinations of Federal branches and agencies of foreign banks with examinations conducted by the Board under section 3105(c)(1) of this title and, to the extent possible, shall participate in any simultaneous examinations of the United States operations of a foreign bank requested by the Board under such section.

(c) Application to establish Federal branch or agency; matters considered

In acting on any application to establish a Federal branch or agency, the Comptroller shall take into account the effects of the proposal on competition in the domestic and foreign commerce of the United States, the financial and managerial resources and future prospects of the applicant foreign bank and the branch or agency, and the convenience and needs of the community to be served.

(d) Receipt of deposits and exercising of fiduciary powers at Federal agency prohibited

Notwithstanding any other provision of this section, a foreign bank shall not receive deposits or exercise fiduciary powers at any Federal agency. A foreign bank may, however, maintain at a Federal agency for the account of others credit balances incidental to, or arising out of, the exercise of its lawful powers.

(e) Maintenance of Federal branch and Federal agency in same State prohibited

No foreign bank may maintain both a Federal branch and a Federal agency in the same State.

(f) Conversion of foreign bank branch, agency or commercial lending company into Federal branch or agency; approval of Comptroller

Any branch or agency operated by a foreign bank in a State pursuant to State law and any commercial lending company controlled by a foreign bank may be converted into a Federal branch or agency with the approval of the Comptroller. In the event of any conversion pursuant to this subsection, all of the liabilities of such foreign bank previously payable at the State branch or agency, or all of the liabilities of the commercial lending company, shall thereafter be payable by such foreign bank at the branch or agency established under this subsection.

(g) Deposit requirements; asset requirements

(1) Upon the opening of a Federal branch or agency in any State and thereafter, a foreign bank, in addition to any deposit requirements imposed under section 3104 of this title, shall keep on deposit, in accordance with such rules and regulations as the Comptroller may prescribe, with a member bank designated by such foreign bank, dollar deposits or investment securities of the type that may be held by national banks for their own accounts pursuant to paragraph ''Seventh'' of section 24 of this title, in an amount as hereinafter set forth. Such depository bank shall be located in the State where such branch or agency is located and shall be approved by the Comptroller if it is a national bank and by the Board of Governors of the Federal Reserve System if it is a State Bank.

(2) The aggregate amount of deposited investment securities (calculated on the basis of principal amount or market value, whichever is lower) and dollar deposits for each branch or agency established and operating under this section shall be not less than the greater of (1) that amount of capital (but not surplus) which would be required of a national bank being organized at this location, or (2) 5 per centum of the total liabilities of such branch or agency, including acceptances, but excluding (A) accrued expenses, and (B) amounts due and other liabilities to offices, branches, agencies, and subsidiaries of such foreign bank. The Comptroller may require that the assets deposited pursuant to this subsection shall be maintained in such amounts as he may from time to time deem necessary or desirable, for the maintenance of a sound financial

condition, the protection of depositors, and the public interest, but such additional amount shall in no event be greater than would be required to conform to generally accepted banking practices as manifested by banks in the area in which the branch or agency is located.

(3) The deposit shall be maintained with any such member bank pursuant to a deposit agreement in such form and containing such limitations and conditions as the Comptroller may prescribe. So long as it continues business in the ordinary course such foreign bank shall, however, be permitted to collect income on the securities and funds so deposited and from time to time examine and exchange such securities.

(4) Subject to such conditions and requirements as may be prescribed by the Comptroller, each foreign bank shall hold in each State in which it has a Federal branch or agency, assets of such types and in such amount as the Comptroller may prescribe by general or specific regulation or ruling as necessary or desirable for the maintenance of a sound financial condition, the protection of depositors, creditors and the public interest. In determining compliance with any such prescribed asset requirements, the Comptroller shall give credit to (A) assets required to be maintained pursuant to paragraphs (1) and (2) of this subsection, (B) reserves required to be maintained pursuant to section 3105(a) of this title, and (C) assets pledged, and surety bonds payable, to the Federal Deposit Insurance Corporation to secure the payment of domestic deposits. The Comptroller may prescribe different asset requirements for branches or agencies in different States, in order to ensure competitive equality of Federal branches and agencies with State branches and agencies and domestic banks in those States.

(h) Additional branches or agencies

(1) Approval of agency required

A foreign bank with a Federal branch or agency operating in any State may (A) with the prior approval of the Comptroller establish and operate additional branches or agencies in the State in which such branch or agency is located on the same terms and conditions and subject to the same limitations and restrictions as are applicable to the establishment of branches by a national bank if the principal office of such national bank were located at the same place as the initial branch or agency in such State of such foreign bank and (B) change the designation of its initial branch or agency to any other branch or agency subject to the same limitations and restrictions as are applicable to a change in the designation of the principal office of a national bank if such principal office were located at the same place as such initial branch or agency.

(2) Notice to and comment by Board

The Comptroller of the Currency shall provide the Board with notice and an opportunity for comment on any application to establish an additional Federal branch or Federal agency under this subsection.

(i) Termination of authority to operate Federal branch or agency

Authority to operate a Federal branch or agency shall terminate when the parent foreign bank voluntarily relinquishes it or when such parent foreign bank is dissolved or its authority or existence is otherwise terminated or canceled in the country of its organization. If (1) at any time the Comptroller is of the opinion or has reasonable cause to believe that such foreign bank has violated or failed to comply with any of the provisions of this section or any of the rules, regulations, or orders of the Comptroller made pursuant to this section, or (2) a conservator is appointed for such foreign bank or a similar proceeding is initiated in the foreign bank's country of organization, the Comptroller shall have the power, after opportunity for hearing, to revoke the foreign bank's authority to operate a Federal branch or agency. The Comptroller may, in his discretion, deny such opportunity for hearing if he determines such denial to be in the public interest. The Comptroller may restore any such authority upon due proof of compliance with the provisions of this section and the rules, regulations, or orders of the Comptroller made pursuant to this section.

(j) Receivership over assets of foreign bank in United States

(1) Whenever the Comptroller revokes a foreign bank's authority to operate a Federal branch or agency or whenever any creditor of any such foreign bank shall have obtained a judgment against it arising out of a transaction with a Federal branch or agency in any court of record of the United States or any State of the United States and made application, accompanied by a certificate from the clerk of the court stating that such judgment has been rendered and has remained unpaid for the space of thirty days, or whenever the Comptroller shall become satisfied that such foreign bank is insolvent, he may, after due consideration of its affairs, in any such case, appoint a receiver who shall take possession of all the property and assets of such foreign bank in the United States and exercise the same rights, privileges, powers, and authority with respect thereto as are now exercised by receivers of national banks appointed by the Comptroller.

(2) In any receivership proceeding ordered pursuant to this subsection (j), whenever there has been paid to each and every depositor and creditor of such foreign bank whose claim or claims shall have been proved or allowed, the full amount of such claims arising out of transactions had by them with any branch or agency of such foreign bank located in any State of the United States, except (A) claims that would not represent an enforceable legal obligation against such branch or agency if such branch or agency were a separate legal entity, and (B) amounts due and other liabilities to other offices or branches or agencies of, and wholly owned (except for a nominal number of directors' shares) subsidiaries of, such foreign bank, and all expenses of the receivership, the Comptroller or the Federal Deposit Insurance Corporation, where that Corporation has been appointed receiver of the foreign bank, shall turn over the remainder, if any, of the assets and proceeds of such foreign bank to the head office of such foreign bank, or to the duly appointed domiciliary liquidator or receiver of such foreign bank.

(Pub. L. 95–369, § 4, Sept. 17, 1978, 92 Stat. 610; Pub. L. 102–242, title II, §§ 202(b), (c), 203(b), Dec. 19, 1991, 105 Stat. 2290, 2291.)

REFERENCES IN TEXT

For definition of ''this chapter'', referred to in subsec. (b), see References in Text note set out under section 3101 of this title.

The National Bank Act, referred to in subsec. (b), is act June 3, 1864, ch. 106, 13 Stat. 99, as amended, which is classified principally to chapter 2 (§ 21 et seq.) of this title. For complete classification of this Act to the Code, see References in Text note set out under section 38 of this title.

Section 3104 of this title, referred to in subsec. (g)(1), was in the original a reference to section 6 of Pub. L. 95–369, which enacted section 3104 of this title and amended sections 1813, 1815, 1817, 1818, 1820 to 1823, 1828, 1829b, and 1831b of this title.

AMENDMENTS

1991—Subsec. (a). Pub. L. 102–242, § 202(b), inserted heading, designated existing provisions as par. (1) and inserted heading, and added par. (2).

Subsec. (b). Pub. L. 102–242, § 203(b), inserted at end: ''The Comptroller of the Currency shall coordinate examinations of Federal branches and agencies of foreign banks with examinations conducted by the Board under section 3105(c)(1) of this title and, to the extent possible, shall participate in any simultaneous examinations of the United States operations of a foreign bank requested by the Board under such section.''

Subsec. (h). Pub. L. 102–242, § 202(c), amended heading, designated existing provisions as par. (1), inserted par. (1) heading, redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, and added par. (2).

STUDY AND REPORT ON SUBSIDIARY REQUIREMENTS FOR FOREIGN BANKS

Section 215 of Pub. L. 102–242, as amended by Pub. L. 102–550, title XVI, § 1604(a)(14), Oct. 28, 1992, 106 Stat. 4083, directed Secretary of the Treasury, jointly with Board of Governors of the Federal Reserve System and in consultation with Comptroller of the Currency, Federal Deposit Insurance Corporation, and Attorney General, to conduct a study of whether foreign banks should be required to conduct banking operations in United States through subsidiaries rather than branches and, not later than 1 year after Dec. 19, 1991, to transmit to Congress a report on the results of the study.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3101, 3105 of this title.

§ 3103. Interstate banking by foreign banks

(a) Interstate branching and agency operations

(1) Federal branch or agency

Subject to the provisions of this chapter and with the prior written approval by the Board and the Comptroller of the Currency of an application, a foreign bank may establish and operate a Federal branch or agency in any State outside the home State of such foreign bank to the extent that the establishment and operation of such branch would be permitted under section 36(g) of this title or section 1831u of this title if the foreign bank were a national bank whose home State is the same State as the home State of the foreign bank.

(2) State branch or agency

Subject to the provisions of this chapter and with the prior written approval by the Board and the appropriate State bank supervisor of an application, a foreign bank may establish and operate a State branch or agency in any State outside the home State of such foreign bank to the extent that such establishment and operation would be permitted under section 1828(d)(4) or 1831u of this title if the foreign bank were a State bank whose home State is the same State as the home State of the foreign bank.

(3) Criteria for determination

In approving an application under paragraph (1) or (2), the Board and (in the case of an application under paragraph (1)) the Comptroller of the Currency—

(A) shall apply the standards applicable to the establishment of a foreign bank office in the United States under section 3105(d) of this title;

(B) may not approve an application unless the Board and (in the case of an application under paragraph (1)) the Comptroller of the Currency—

(i) determine that the foreign bank's financial resources, including the capital level of the bank, are equivalent to those required for a domestic bank to be approved for branching under section 36 of this title and section 1831u of this title; and

(ii) consult with the Secretary of the Treasury regarding capital equivalency; and

(C) shall apply the same requirements and conditions to which an application for an interstate merger transaction is subject under paragraphs (1), (3), and (4) of section 1831u(b) of this title.

(4) Operation

Subsections (c) and (d)(2) of section 1831u of this title shall apply with respect to each branch and agency of a foreign bank which is established and operated pursuant to an application approved under this subsection in the same manner and to the same extent such provisions of such section apply to a domestic branch of a national or State bank (as such terms are defined in section 1813 of this title) which resulted from a merger transaction under such section 1831u of this title.

(5) Exclusive authority for additional branches

Except as provided in this section, a foreign bank may not, directly or indirectly, acquire, establish, or operate a branch or agency in any State other than the home State of such bank.

(6) Requirement for a separate subsidiary

If the Board or the Comptroller of the Currency, taking into account differing regulatory or accounting standards, finds that adherence by a foreign bank to capital requirements equivalent to those imposed under section 36 of this title and section 1831u of this title could be verified only if the banking activities of such bank in the United States are carried out in a domestic banking subsidiary within the United States, the Board and (in the case of an application under paragraph (1)) the Comptroller of the Currency may approve

an application under paragraph (1) or (2) subject to a requirement that the foreign bank or company controlling the foreign bank establish a domestic banking subsidiary in the United States.

(7) Additional authority for interstate branches and agencies of foreign banks

Notwithstanding paragraphs (1) and (2), a foreign bank may, with the approval of the Board and the Comptroller of the Currency, establish and operate a Federal branch or Federal agency or, with the approval of the Board and the appropriate State bank supervisor, a State branch or State agency in any State outside the foreign bank's home State if—

(A) the establishment and operation of a branch or agency is expressly permitted by the State in which the branch or agency is to be established; and

(B) in the case of a Federal or State branch, the branch receives only such deposits as would be permissible for a corporation organized under section 25A of the Federal Reserve Act [12 U.S.C. 611 et seq.].

(8) Continuing requirement for meeting community credit needs after initial interstate entry by acquisition

(A) In general

If a foreign bank acquires a bank or a branch of a bank, in a State in which the foreign bank does not maintain a branch, and such acquired bank is, or is part of, a regulated financial institution (as defined in section 803 of the Community Reinvestment Act of 1977 [12 U.S.C. 2902]), the Community Reinvestment Act of 1977 [12 U.S.C. 2901 et seq.] shall continue to apply to each branch of the foreign bank which results from the acquisition as if such branch were a regulated financial institution.

(B) Exception for branch that receives only deposits permissible for an Edge Act corporation

Paragraph (1) shall not apply to any branch that receives only such deposits as are permissible for a corporation organized under section 25A of the Federal Reserve Act [12 U.S.C. 611 et seq.] to receive.

(9) Home State of domestic bank defined

For purposes of this subsection, the term ''home State'' means—

(A) with respect to a national bank, the State in which the main office of the bank is located; and

(B) with respect to a State bank, the State by which the bank is chartered.

(b) Continuance of lawful interstate banking operations previously commenced

Unless its authority to do so is lawfully revoked otherwise than pursuant to this section, a foreign bank, notwithstanding any restriction or limitation imposed under subsection (a) of this section, may establish and operate, outside its home State, any State branch, State agency, or bank or commercial lending company subsidiary which commenced lawful operation or for which an application to commence business had been lawfully filed with the appropriate State or Federal authority, as the case may be, on or before July 27, 1978. Notwithstanding subsection (a) of this section, a foreign bank may continue to operate, after September 29, 1994, any Federal branch, State branch, Federal agency, State agency, or commercial lending company subsidiary which such bank was operating on the day before September 29, 1994, to the extent the branch, agency, or subsidiary continues, after September 29, 1994, to engage in operations which were lawful under the laws in effect on the day before September 29, 1994.

(c) Determination of home State of foreign bank

For the purposes of this section—

(1) in the case of a foreign bank that has any branch, agency, subsidiary commercial lending company, or subsidiary bank in more than 1 State, the home State of the foreign bank is the 1 State of such States which is selected to be the home State by the foreign bank or, in default of any such selection, by the Board; and

(2) in the case of a foreign bank that does not have a branch, agency, subsidiary commercial lending company, or subsidiary bank in more than 1 State, the home State of the foreign bank is the State in which the foreign bank has a branch, agency, subsidiary commercial lending company, or subsidiary bank.

(d) Clarification of branching rules in case of foreign bank with domestic bank subsidiary

In the case of a foreign bank that has a domestic bank subsidiary within the United States—

(1) the fact that such bank controls a domestic bank shall not affect the authority of the foreign bank to establish Federal and State branches or agencies to the extent permitted under subsection (a) of this section; and

(2) the fact that the domestic bank is controlled by a foreign bank which has Federal or State branches or agencies in States other than the home State of such domestic bank shall not affect the authority of the domestic bank to establish branches outside the home State of the domestic bank to the extent permitted under section 36(g) of this title or section 1828(d)(4) or 1831u of this title, as the case may be.

(Pub. L. 95–369, § 5, Sept. 17, 1978, 92 Stat. 613; Pub. L. 103–328, title I, §§ 104, 107(f), Sept. 29, 1994, 108 Stat. 2354, 2361.)

REFERENCES IN TEXT

For definition of ''this chapter'', referred to in subsec. (a)(1), (2), see References in Text note set out under section 3101 of this title.

The Community Reinvestment Act of 1977, referred to in subsec. (a)(8)(A), is title VIII of Pub. L. 95–128, Oct. 12, 1977, 91 Stat. 1147, as amended, which is classified generally to chapter 30 (§ 2901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2901 of this title and Tables.

Edge Act corporation, referred to in subsec. (a)(8)(B), is a corporation organized under section 25A of the Federal Reserve Act, as added by act Dec. 24, 1919, ch. 18, 41 Stat. 378, and amended, popularly known as the Edge Act, which is classified to subchapter II (§ 611 et seq.) of chapter 6 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 611 of this title and Tables.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–328, §§104(a), 107(f), inserted heading and substituted provisions consisting of pars. (1) to (9) for former provisions relating to limitations on interstate banking by foreign banks.

Subsec. (b). Pub. L. 103–328, §104(b), inserted at end ''Notwithstanding subsection (a) of this section, a foreign bank may continue to operate, after September 29, 1994, any Federal branch, State branch, Federal agency, State agency, or commercial lending company subsidiary which such bank was operating on the day before September 29, 1994, to the extent the branch, agency, or subsidiary continues, after September 29, 1994, to engage in operations which were lawful under the laws in effect on the day before September 29, 1994.''

Subsec. (c). Pub. L. 103–328, §104(d), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''For the purposes of this section, the home State of a foreign bank that has branches, agencies, subsidiary commercial lending companies, or subsidiary banks, or any combination thereof, in more than one State, is whichever of such States is so determined by election of the foreign bank, or, in default of such election, by the Board.''

Subsec. (d). Pub. L. 103–328, §104(c), added subsec. (d).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3102 of this title.

§ 3104. Insurance of deposits

(a) Objective

In implementing this section, the Comptroller and the Federal Deposit Insurance Corporation shall each, by affording equal competitive opportunities to foreign and United States banking organizations in their United States operations, ensure that foreign banking organizations do not receive an unfair competitive advantage over United States banking organizations.

(b) Deposits of less than $100,000

No foreign bank may establish or operate a Federal branch which receives deposits of less than $100,000 unless the branch is an insured branch as defined in section 3(s) of the Federal Deposit Insurance Act [12 U.S.C. 1813(s)], or unless the Comptroller determines by order or regulation that the branch is not engaged in domestic retail deposit activities requiring deposit insurance protection, taking account of the size and nature of depositors and deposit accounts.

(c) Deposits required to be insured under State law

(1) After September 17, 1978, no foreign bank may establish a branch, and after one year following such date no foreign bank may operate a branch, in any State in which the deposits of a bank organized and existing under the laws of that State would be required to be insured, unless the branch is an insured branch as defined in section 3(s) of the Federal Deposit Insurance Act [12 U.S.C. 1813(s)], or unless the branch will not thereafter accept deposits of less than $100,000, or unless the Federal Deposit Insurance Corporation determines by order or regulation that the branch is not engaged in domestic retail deposit activities requiring deposit insurance protection, taking account of the size and nature of depositors and deposit accounts.

(2) Notwithstanding the previous paragraph, a branch of a foreign bank in operation on September 17, 1978, which has applied for Federal deposit insurance pursuant to section 5 of the Federal Deposit Insurance Act [12 U.S.C. 1815] by September 17, 1979, and has not had such application denied, may continue to accept domestic retail deposits until January 31, 1980.

(d) Retail deposit-taking by foreign banks

(1) In general

After December 19, 1991, notwithstanding any other provision of this chapter or any provision of the Federal Deposit Insurance Act [12 U.S.C. 1811 et seq.], in order to accept or maintain domestic retail deposit accounts having balances of less than $100,000, and requiring deposit insurance protection, a foreign bank shall—

(A) establish 1 or more banking subsidies in the United States for that purpose; and

(B) obtain Federal deposit insurance for any such subsidiary in accordance with the Federal Deposit Insurance Act.

(2) Exception

Domestic retail deposit accounts with balances of less than $100,000 that require deposit insurance protection may be accepted or maintained in a branch of a foreign bank only if such branch was an insured branch on December 19, 1991.

(3) Insured banks in U.S. territories

For purposes of this subsection, the term ''foreign bank'' does not include 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 Federal Deposit Insurance Corporation pursuant to the Federal Deposit Insurance Act [12 U.S.C. 1811 et seq.].

(Pub. L. 95–369, §6, Sept. 17, 1978, 92 Stat. 614; Pub. L. 96–64, Sept. 14, 1979, 93 Stat. 412; Pub. L. 102–242, title II, §214(a), Dec. 19, 1991, 105 Stat. 2303; Pub. L. 102–550, title XVI, §1604(a)(10), (11), Oct. 28, 1992, 106 Stat. 4082, 4083; Pub. L. 102–558, title III, §§302(a), 305, Oct. 28, 1992, 106 Stat. 4224, 4226; Pub. L. 103–328, title I, §107(a), (d), Sept. 29, 1994, 108 Stat. 2358, 2360.)

REFERENCES IN TEXT

For definition of ''this chapter'', referred to in subsec. (d)(1), see References in Text note set out under section 3101 of this title.

The Federal Deposit Insurance Act, referred to in subsec. (d)(1), (3), is act Sept. 21, 1950, ch. 967, §2, 64 Stat. 873, as amended, which is classified generally to chapter 16 (§1811 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1811 of this title and Tables.

AMENDMENTS

1994—Subsecs. (a) to (d). Pub. L. 103–328, §107(a), added subsec. (a) and redesignated former subsecs. (a) to (c) as (b) to (d), respectively.

Subsec. (d)(3). Pub. L. 103–328, §107(d), added par. (3).

1992—Subsec. (c). Pub. L. 102–550, §1604(a)(10), struck out the subsec. (c) which was in effect before the subsec. (c) added by Pub. L. 102–242, §214(a)(3), and which amended various other sections of this title.

Subsec. (c)(1). Pub. L. 102–558, §302(a)(1), inserted ''domestic retail'' before ''deposit accounts'' and ''and requiring deposit insurance protection,'' after ''$100,000,'' in introductory provisions. Pub. L. 102–550, §1604(a)(11)(A), which made an identical amendment,

was repealed, effective Oct. 28, 1992, by Pub. L. 102–558, § 305, set out as a Repeal of Duplicative Provisions note under section 1815 of this title.

Subsec. (c)(2). Pub. L. 102–558, § 302(a)(2), substituted ''Domestic retail deposit'' for ''Deposit'' and inserted ''that require deposit insurance protection'' after ''$100,000''. Pub. L. 102–550, § 1604(a)(11)(B), which made an identical amendment, was repealed, effective Oct. 28, 1992, by Pub. L. 102–558, § 305, set out as a Repeal of Duplicative Provisions note under section 1815 of this title.

1991—Subsec. (b). Pub. L. 102–242, § 214(a)(1), (2), redesignated subsec. (b) as (b)(1) and designated last undesignated par. as par. (2).

Subsec. (c). Pub. L. 102–242, § 214(a)(3), added subsec. (c).

1979—Subsec. (b). Pub. L. 96–64 inserted second par. which extended time for foreign banks to obtain required deposit insurance with respect to domestic existing branches.

EFFECTIVE DATE OF 1992 AMENDMENTS

Section 302(b) of Pub. L. 102–558 provided that: ''This section, and the amendments made by this section [amending this section], shall have the same effective date as the Federal Deposit Insurance Corporation Improvement Act of 1991 [Pub. L. 102–242].''

Amendment by Pub. L. 102–550 effective as if included in the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102–242, as of Dec. 19, 1991, see section 1609(a) of Pub. L. 102–550, set out as a note under section 191 of this title.

REGULATIONS

Section 107(b) of Pub. L. 103–328 provided that:

''(1) IN GENERAL.—Each Federal banking agency, after consultation with the other Federal banking agencies to assure uniformity, shall revise the regulations adopted by such agency under section 6 of the International Banking Act of 1978 [12 U.S.C. 3104] to ensure that the regulations are consistent with the objective set forth in section 6(a) of the International Banking Act of 1978.

''(2) SPECIFIC FACTORS.—In carrying out paragraph (1), each Federal banking agency shall consider whether to permit an uninsured branch of a foreign bank to accept initial deposits of less than $100,000 only from—

''(A) individuals who are not citizens or residents of the United States at the time of the initial deposit;

''(B) 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;

''(C) persons to whom the branch or foreign bank has extended credit or provided other nondeposit banking services;

''(D) foreign businesses and large United States businesses;

''(E) foreign governmental units and recognized international organizations; and

''(F) persons who are depositing funds in connection with the issuance of a financial instrument by the branch for the transmission of funds.

''(3) REDUCTION IN REGULATORY DE MINIMIS EXEMPTION.—In carrying out paragraph (1), each Federal banking agency shall limit any exemption which is—

''(A) available under any regulation prescribed pursuant to section 6(d) of the International Banking Act of 1978 [12 U.S.C. 3104(d)] providing for the acceptance of initial deposits of less than $100,000 by an uninsured branch of a foreign bank; and

''(B) based on a percentage of the average deposits at such branch;

to not more than 1 percent of the average deposits at such branch.

''(4) ADDITIONAL RELEVANT CONSIDERATIONS.—In carrying out paragraph (1), each Federal banking agency shall also consider 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 State economy.

''(5) DEADLINE FOR PRESCRIBING REVISED REGULATIONS.—Each Federal banking agency—

''(A) shall publish final regulations under paragraph (1) in the Federal Register not later than 12 months after the date of enactment of this Act [Sept. 29, 1994]; and

''(B) may establish reasonable transition rules to facilitate any termination of any deposit-taking activities that were permissible under regulations that were in effect before the date of enactment of this Act.

''(6) DEFINITIONS.—For purposes of this subsection—

''(A) the term 'Federal banking agency' means—

''(i) the Comptroller of the Currency with respect to Federal branches of foreign banks; and

''(ii) the Federal Deposit Insurance Corporation with respect to State branches of foreign banks; and

''(B) the term 'uninsured branch' means a branch of a foreign bank that is not an insured branch, as defined in section 3(s)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)(3)).''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1818, 3102 of this title.

§ 3105. Authority of Federal Reserve System

(a) Bank reserves

(1)(A) Except as provided in paragraph (2) of this subsection, sections 371a, 371b, 371b–1,[1] 374, 374a, 461, 464, and 465 of this title shall apply to every Federal branch and Federal agency of a foreign bank in the same manner and to the same extent as if the Federal branch or Federal agency were a member bank as that term is defined in section 221 of this title; but the Board either by general or specific regulation or ruling may waive the minimum and maximum reserve ratios prescribed under sections 461, 463, 464, 465, and 466 of this title and may prescribe any ratio, not more than 22 per centum, for any obligation of any such Federal branch or Federal agency that the Board may deem reasonable and appropriate, taking into consideration the character of business conducted by such institutions and the need to maintain vigorous and fair competition between and among such institutions and member banks. The Board may impose reserve requirements on Federal branches and Federal agencies in such graduated manner as it deems reasonable and appropriate.

(B) After consultation and in cooperation with the State bank supervisory authorities, the Board may make applicable to any State branch or State agency any requirement made applicable to, or which the Board has authority to impose upon, any Federal branch or agency under subparagraph (A) of this paragraph.

(2) A branch or agency shall be subject to this subsection only if (A) its parent foreign bank has total worldwide consolidated bank assets in excess of $1,000,000,000; (B) its parent foreign bank is controlled by a foreign company which owns or controls foreign banks that in the aggregate have total worldwide consolidated bank assets in excess of $1,000,000,000; or (C) its parent

[1] See References in Text note below.

foreign bank is controlled by a group of foreign companies that own or control foreign banks that in the aggregate have total worldwide consolidated bank assets in excess of $1,000,000,000.

(b) Omitted

(c) Foreign bank examinations and reporting

(1) Examination of branches, agencies, and affiliates

(A) In general

The Board may examine each branch or agency of a foreign bank, each commercial lending company or bank controlled by 1 or more foreign banks or 1 or more foreign companies that control a foreign bank, and other office or affiliate of a foreign bank conducting business in any State.

(B) Coordination of examinations

(i) In general

The Board shall coordinate examinations under this paragraph with the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and appropriate State bank supervisors to the extent such coordination is possible.

(ii) Simultaneous examinations

The Board may request simultaneous examinations of each office of a foreign bank and each affiliate of such bank operating in the United States.

(iii) Avoidance of duplication

In exercising its authority under this paragraph, the Board shall take all reasonable measures to reduce burden and avoid unnecessary duplication of examinations.

(C) On-site examination

Each Federal branch or agency, and each State branch or agency, of a foreign bank shall be subject to on-site examination by an appropriate Federal banking agency or State bank supervisor as frequently as would a national bank or a State bank, respectively, by the appropriate Federal banking agency.

(D) Cost of examinations

The cost of any examination under subparagraph (A) shall be assessed against and collected from the foreign bank or the foreign company that controls the foreign bank, as the case may be, only to the same extent that fees are collected by the Board for examination of any State member bank.

(2) Reporting requirements

Each branch or agency of a foreign bank, other than a Federal branch or agency, shall be subject to section 335 of this title and the provision requiring the reports of condition contained in section 324 of this title to the same extent and in the same manner as if the branch or agency were a State member bank. In addition to any requirements imposed under section 3102 of this title, each Federal branch and agency shall be subject to section 248(a) of this title and to section 483 of this title to the same extent and in the same manner as if it were a member bank.

(d) Establishment of foreign bank offices in United States

(1) Prior approval required

No foreign bank may establish a branch or an agency, or acquire ownership or control of a commercial lending company, without the prior approval of the Board.

(2) Required standards for approval

Except as provided in paragraph (6), the Board may not approve an application under paragraph (1) unless it determines that—

(A) the foreign bank engages directly in the business of banking outside of the United States and is subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in its home country; and

(B) the foreign bank has furnished to the Board the information it needs to adequately assess the application.

(3) Standards for approval

In acting on any application under paragraph (1), the Board may take into account—

(A) whether the appropriate authorities in the home country of the foreign bank have consented to the proposed establishment of a branch, agency or commercial lending company in the United States by the foreign bank;

(B) the financial and managerial resources of the foreign bank, including the bank's experience and capacity to engage in international banking;

(C) whether the foreign bank has provided the Board with adequate assurances that the bank will make available to the Board such information on the operations or activities of the foreign bank and any affiliate of the bank that the Board deems necessary to determine and enforce compliance with this chapter, the Bank Holding Company Act of 1956 [12 U.S.C. 1841 et seq.], and other applicable Federal law; and

(D) whether the foreign bank and the United States affiliates of the bank are in compliance with applicable United States law.

(4) Factor

In acting on an application under paragraph (1), the Board shall not make the size of the foreign bank the sole determinant factor, and may take into account the needs of the community as well as the length of operation of the foreign bank and its relative size in its home country. Nothing in this paragraph shall affect the ability of the Board to order a State branch, agency, or commercial lending company subsidiary to terminate its activities in the United States pursuant to any standard set forth in this chapter.

(5) Establishment of conditions

The Board may impose such conditions on its approval under this subsection as it deems necessary.

(6) Exception

(A) In general

If the Board is unable to find, under paragraph (2), that a foreign bank is subject to

comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in its home country, the Board may nevertheless approve an application by such foreign bank under paragraph (1) if—

(i) the appropriate authorities in the home country of the foreign bank are actively working to establish arrangements for the consolidated supervision of such bank; and

(ii) all other factors are consistent with approval.

(B) Other considerations

In deciding whether to use its discretion under subparagraph (A), the Board shall also consider whether the foreign bank has adopted and implements procedures to combat money laundering. The Board may also take into account whether the home country of the foreign bank is developing a legal regime to address money laundering or is participating in multilateral efforts to combat money laundering.

(C) Additional conditions

In approving an application under this paragraph, the Board, after requesting and taking into consideration the views of the appropriate State bank supervisor or the Comptroller of the Currency, as the case may be, may impose such conditions or restrictions relating to the activities or business operations of the proposed branch, agency, or commercial lending company subsidiary, including restrictions on sources of funding, as are considered appropriate. The Board shall coordinate with the appropriate State bank supervisor or the Comptroller of the Currency, as appropriate, in the implementation of such conditions or restrictions.

(D) Modification of conditions

Any condition or restriction imposed by the Board in connection with the approval of an application under authority of this paragraph may be modified or withdrawn.

(7) Time period for Board action

(A) Final action

The Board shall take final action on any application under paragraph (1) not later than 180 days after receipt of the application, except that the Board may extend for an additional 180 days the period within which to take final action on such application after providing notice of, and the reasons for, the extension to the applicant foreign bank and any appropriate State bank supervisor or the Comptroller of the Currency, as appropriate.

(B) Failure to submit information

The Board may deny any application if it does not receive information requested from the applicant foreign bank or appropriate authorities in the home country of the foreign bank in sufficient time to permit the Board to evaluate such information adequately within the time periods for final action set forth in subparagraph (A).

(C) Waiver

A foreign bank may waive the applicability of this paragraph with respect to any application under paragraph (1).

(e) Termination of foreign bank offices in United States

(1) Standards for termination

The Board, after notice and opportunity for hearing and notice to any appropriate State bank supervisor, may order a foreign bank that operates a State branch or agency or commercial lending company subsidiary in the United States to terminate the activities of such branch, agency, or subsidiary if the Board finds that—

(A)(i) the foreign bank is not subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in its home country; and

(ii) the appropriate authorities in the home country of the foreign bank are not making demonstrable progress in establishing arrangements for the comprehensive supervision or regulation of such foreign bank on a consolidated basis; or

(B)(i) there is reasonable cause to believe that such foreign bank, or any affiliate of such foreign bank, has committed a violation of law or engaged in an unsafe or unsound banking practice in the United States; and

(ii) as a result of such violation or practice, the continued operation of the foreign bank's branch, agency or commercial lending company subsidiary in the United States would not be consistent with the public interest or with the purposes of this chapter, the Bank Holding Company Act of 1956 [12 U.S.C. 1841 et seq.], or the Federal Deposit Insurance Act [12 U.S.C. 1811 et seq.].

However, in making findings under this paragraph, the Board shall not make size the sole determinant factor, and may take into account the needs of the community as well as the length of operation of the foreign bank and its relative size in its home country. Nothing in this paragraph shall affect the ability of the Board to order a State branch, agency, or commercial lending company subsidiary to terminate its activities in the United States pursuant to any standard set forth in this chapter.

(2) Discretion to deny hearing

The Board may issue an order under paragraph (1) without providing for an opportunity for a hearing if the Board determines that expeditious action is necessary in order to protect the public interest.

(3) Effective date of termination order

An order issued under paragraph (1) shall take effect before the end of the 120-day period beginning on the date such order is issued unless the Board extends such period.

(4) Compliance with State and Federal law

Any foreign bank required to terminate activities conducted at offices or subsidiaries in the United States pursuant to this subsection

shall comply with the requirements of applicable Federal and State law with respect to procedures for the closure or dissolution of such offices or subsidiaries.

(5) Recommendation to agency for termination of a Federal branch or agency

The Board may transmit to the Comptroller of the Currency a recommendation that the license of any Federal branch or Federal agency of a foreign bank be terminated in accordance with section 3102(i) of this title if the Board has reasonable cause to believe that such foreign bank or any affiliate of such foreign bank has engaged in conduct for which the activities of any State branch or agency may be terminated under paragraph (1).

(6) Enforcement of orders

(A) In general

In the case of contumacy of any office or subsidiary of the foreign bank against which—

(i) the Board has issued an order under paragraph (1); or

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

or a refusal by such office or subsidiary to comply with such order, the Board or the Comptroller of the Currency may invoke the aid of the district court of the United States within the jurisdiction of which the office or subsidiary is located.

(B) Court order

Any court referred to in subparagraph (A) may issue an order requiring compliance with an order referred to in subparagraph (A).

(7) Criteria relating to foreign supervision

Not later than 1 year after December 19, 1991, the Board, in consultation with the Secretary of the Treasury, shall develop and publish criteria to be used in evaluating the operation of any foreign bank in the United States that the Board has determined is not subject to comprehensive supervision or regulation on a consolidated basis. In developing such criteria, the Board shall allow reasonable opportunity for public review and comment.

(f) Judicial review

(1) Jurisdiction of United States courts of appeals

Any foreign bank—

(A) whose application under subsection (d) of this section or section 3107(a) of this title has been disapproved by the Board;

(B) against which the Board has issued an order under subsection (e) of this section or section 3107(b) of this title; or

(C) against which the Comptroller of the Currency has issued an order under section 3102(i) of this title,

may obtain a review of such order in the United States court of appeals for any circuit in which such foreign bank operates a branch, agency, or commercial lending company that has been required by such order to terminate its activities, or in the United States Court of Appeals for the District of Columbia Circuit, by filing a petition for review in the court before the end of the 30-day period beginning on the date the order was issued.

(2) Scope of judicial review

Section 706 of title 5 (other than paragraph (2)(F) of such section) shall apply with respect to any review under paragraph (1).

(g) Consultation with State bank supervisor

The Board shall request and consider any views of the appropriate State bank supervisor with respect to any application or action under subsection (d) or (e) of this section.

(h) Limitations on powers of State branches and agencies

(1) In general

After the end of the 1-year period beginning on December 19, 1991, a State branch or State agency may not engage in any type of activity that is not permissible for a Federal branch unless—

(A) the Board has determined that such activity is consistent with sound banking practice; and

(B) in the case of an insured branch, the Federal Deposit Insurance Corporation has determined that the activity would pose no significant risk to the deposit insurance fund.

(2) Single borrower lending limit

A State branch or State agency shall be subject to the same limitations with respect to loans made to a single borrower as are applicable to a Federal branch or Federal agency under section 3102(b) of this title.

(3) Other authority not affected

This section does not limit the authority of the Board or any State supervisory authority to impose more stringent restrictions.

(i) Proceedings related to conviction for money laundering offenses

(1) Notice of intention to issue order

If the Board finds or receives written notice from the Attorney General that—

(A) any foreign bank which operates a State agency, a State branch which is not an insured branch, or a State commercial lending company subsidiary;

(B) any State agency;

(C) any State branch which is not an insured branch; or

(D) any State commercial lending subsidiary,

has been found guilty of any money laundering offense, the Board shall issue a notice to the agency, branch, or subsidiary of the Board's intention to commence a termination proceeding under subsection (e) of this section.

(2) Definitions

For purposes of this subsection—

(A) Insured branch

The term ''insured branch'' has the meaning given such term in section 3(s) of the Federal Deposit Insurance Act [12 U.S.C. 1813(s)].

(B) Money laundering offense defined

The term ''money laundering offense'' means any criminal offense under section 1956 or 1957 of title 18 or under section 5322 of title 31.

(j) Study on equivalence of foreign bank capital

Not later than 180 days after December 19, 1991, the Board and the Secretary of the Treasury shall jointly submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives a report—

(1) analyzing the capital standards contained in the framework for measurement of capital adequacy established by the Supervisory Committee of the Bank for International Settlements, foreign regulatory capital standards that apply to foreign banks conducting banking operations in the United States, and the relationship of the Basle and foreign standards to risk-based capital and leverage requirements for United States banks; and

(2) establishing guidelines for the adjustments to be used by the Board in converting data on the capital of such foreign banks to the equivalent risk-based capital and leverage requirements for United States banks for purposes of determining whether a foreign bank's capital level is equivalent to that imposed on United States banks for purposes of determinations under this section and sections 3 and 4 of the Bank Holding Company Act of 1956 [12 U.S.C. 1842, 1843].

An update shall be prepared annually explaining any changes in the analysis under paragraph (1) and resulting changes in the guidelines pursuant to paragraph (2).

(k) Management of shell branches

(1) Transactions prohibited

A branch or agency of a foreign bank shall not manage, through an office of the foreign bank which is located outside the United States and is managed or controlled by such branch or agency, any type of activity that a bank organized under the laws of the United States, any State, or the District of Columbia is not permitted to manage at any branch or subsidiary of such bank which is located outside the United States.

(2) Regulations

Any regulations promulgated to carry out this section—

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

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

(Pub. L. 95–369, §7, Sept. 17, 1978, 92 Stat. 620; Pub. L. 102–242, title II, §§202(a), 203(a), 214(b), Dec. 19, 1991, 105 Stat. 2286, 2291, 2304; Pub. L. 102–550, title XV, §1507, title XVI, §1604(a)(1), (2), (12), (13), Oct. 28, 1992, 106 Stat. 4056, 4081–4083; Pub. L. 103–328, title I, §107(e)(1), Sept. 29, 1994, 108 Stat. 2360; Pub. L. 104–208, div. A, title II, §2214, Sept. 30, 1996, 110 Stat. 3009–411.)

REFERENCES IN TEXT

Section 371b–1 of this title, referred to in subsec. (a)(1)(A), was repealed by Pub. L. 96–221, title V, §529, Mar. 31, 1980, 94 Stat. 168, subject to a savings provision.

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

For definition of ''this chapter'', referred to in subsecs. (d)(3)(C), (4) and (e)(1), see References in Text note set out under section 3101 of this title.

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

The Federal Deposit Insurance Act, referred to in subsec. (e)(1)(B)(ii), is act Sept. 21, 1950, ch. 967, §2, 64 Stat. 873, as amended, which is classified generally to chapter 16 (§1811 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1811 of this title and Tables.

CODIFICATION

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

AMENDMENTS

1996—Subsec. (c). Pub. L. 104–208, §2214(a)(1), inserted heading.

Subsec. (c)(1)(B)(iii). Pub. L. 104–208, §2214(a)(2), added cl. (iii).

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

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

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

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

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

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

1994—Subsec. (k). Pub. L. 103–328 added subsec. (k).

1992—Subsec. (e)(6)(A). Pub. L. 102–550, §1604(a)(1)(A), substituted ''against which—

''(i) the Board has issued an order under paragraph (1); or

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

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

Subsec. (e)(6)(B). Pub. L. 102–550, §1604(a)(1)(B), substituted ''order referred to in subparagraph (A)'' for ''order issued under paragraph (1)''.

Subsec. (e)(7). Pub. L. 102–550, §1604(a)(2), substituted ''public'' for ''publc''.

Subsec. (i). Pub. L. 102–550, §1507, added subsec. (i).

Subsec. (j). Pub. L. 102–550, §1604(a)(12), made technical amendment to directory language of Pub. L. 102–242, §214(b). See 1991 Amendment note below.

Subsec. (j)(1). Pub. L. 102–550, § 1604(a)(13), substituted ''Supervisory Committee'' for ''Supervisory committee''.

1991—Subsec. (c). Pub. L. 102–242, § 203(a), added par. (1), inserted heading for par. (2), and struck out former par. (1) which read as follows: ''The Board may make examinations of each branch or agency of a foreign bank, and of each commercial lending company or bank controlled by one or more foreign banks or by one or more foreign companies that control a foreign bank, the cost of which shall be assessed against and paid by such foreign bank or company, as the case may be. The Board shall, insofar as possible, use the reports of examinations made by the Comptroller, the Federal Deposit Insurance Corporation, or the appropriate State bank supervisory authority for the purposes of this subsection.''

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

Subsec. (j). Pub. L. 102–242, § 214(b), as amended by Pub. L. 102–550, § 1604(a)(12), added subsec. (j).

CHANGE OF NAME

Committee on Banking, Finance and Urban Affairs of House of Representatives treated as referring to Committee on Banking and Financial Services of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress.

EFFECTIVE DATE OF 1994 AMENDMENT

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

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by section 1604(a)(1), (2), (12), (13) of Pub. L. 102–550 effective as if included in the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102–242, as of Dec. 19, 1991, see section 1609(a) of Pub. L. 102–550, set out as a note under section 191 of this title.

MORATORIUM ON EXAMINATION FEES UNDER THIS CHAPTER

Section 115(a) of Pub. L. 103–328 provided that: ''Section 7(c)(1)(D) of the International Banking Act of 1978 [12 U.S.C. 3105(c)(1)(D)] shall not apply with respect to any examination under section 7(c)(1)(A) of such Act which begins before or during the 3-year period beginning on July 25, 1994.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 347d, 372, 461, 1813, 1820, 3102, 3103, 3107 of this title.

§ 3106. Nonbanking activities of foreign banks

(a) Applicability of Bank Holding Company Acts

Except as otherwise provided in this section (1) any foreign bank that maintains a branch or agency in a State, (2) any foreign bank or foreign company controlling a foreign bank that controls a commercial lending company organized under State law, and (3) any company of which any foreign bank or company referred to in (1) and (2) is a subsidiary shall be subject to the provisions of the Bank Holding Company Act of 1956 [12 U.S.C. 1841 et seq.], and to section 1850 of this title and chapter 22 of this title in the same manner and to the same extent that bank holding companies are subject to such provisions.

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

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

(c) Engagement in nonbanking activities after certain period

(1) After December 31, 1985, a foreign bank or other company to which subsection (a) of this section applies on September 17, 1978, or on the date of the establishment of a branch in a State an application for which was filed on or before July 26, 1978, may continue to engage in nonbanking activities in the United States in which directly or through an affiliate it was lawfully engaged on July 26, 1978 (or on a date subsequent to July 26, 1978, in the case of activities carried on as the result of the direct or indirect acquisition, pursuant to a binding written contract entered into on or before July 26, 1978, of another company engaged in such activities at the time of acquisition), and may engage directly or through an affiliate in nonbanking activities in the United States which are covered by an application to engage in such activities which was filed on or before July 26, 1978; except that the Board by order, after opportunity for hearing, may terminate the authority conferred by this subsection on any such foreign bank or company to engage directly or through an affiliate in any activity otherwise permitted by this subsection if it determines having due regard to the purposes of this chapter and the Bank Holding Company Act of 1956 [12 U.S.C. 1841 et seq.], that such action is necessary to prevent undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices in the United States. Notwithstanding subsection (a) of this section, a foreign bank or company referred to in this subsection may retain ownership or control of any voting shares (or, where necessary to prevent dilution of its voting interest, acquire additional voting shares) of any domestically-controlled affiliate covered in 1978 which since July 26, 1978, has engaged in the business of underwriting, distributing, or otherwise buying or selling stocks, bonds, and other securities in the United States, notwithstanding that such affiliate acquired after July 26, 1978, an interest in, or any or all of the assets of, a going concern, or commences

to engage in any new activity or activities. Except in the case of affiliates described in the preceding sentence, nothing in this subsection shall be construed to authorize any foreign bank or company referred to in this subsection, or any affiliate thereof, to engage in activities authorized by this subsection through the acquisition, pursuant to a contract entered into after July 26, 1978, of any interest in or the assets of a going concern engaged in such activities. Any foreign bank or company that is authorized to engage in any activity pursuant to this subsection but, as a result of action of the Board, is required to terminate such activity may retain the ownership of control of shares in any company carrying on such activity for a period of two years from the date on which its authority was so terminated by the Board. As used in this subsection, the term ''affiliate'' shall mean any company more than 5 per centum of whose voting shares is directly or indirectly owned or controlled or held with power to vote by the specified foreign bank or company, and the term ''domestically-controlled affiliate covered in 1978'' shall mean an affiliate organized under the laws of the United States or any State thereof if (i) no foreign bank or group of foreign banks acting in concert owns or controls, directly or indirectly, 45 per centum or more of its voting shares, and (ii) no more than 20 per centum of the number of directors as established from time to time to constitute the whole board of directors and 20 per centum of the executive officers of such affiliate are persons affiliated with any such foreign bank. For the purpose of the preceding sentence, the term ''persons affiliated with any such foreign bank'' shall mean (A) any person who is or was an employee, officer, agent, or director of such foreign bank or who otherwise has or had such a relationship with such foreign bank that would lead such person to represent the interests of such foreign bank, and (B) in the case of any director of such domestically controlled affiliate covered in 1978, any person in favor of whose election as a director votes were cast by less than two-thirds of all shares voting in connection with such election other than shares owned or controlled, directly or indirectly, by any such foreign bank.

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

(d) Construction of terms

Nothing in this section shall be construed to define a branch or agency of a foreign bank or a commercial lending company controlled by a foreign bank or foreign company that controls a foreign bank as a ''bank'' for the purposes of any provisions of the Bank Holding Company Act of 1956 [12 U.S.C. 1841 et seq.], or section 1850 of this title, except that any such branch, agency or commercial lending company subsidiary shall be deemed a ''bank'' or ''banking subsidiary'', as the case may be, for the purposes of applying the prohibitions of chapter 22 of this title and the exemptions provided in sections 4(c)(1), 4(c)(2), 4(c)(3), and 4(c)(4) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c)(1), (2), (3), and (4)) to any foreign bank or other company to which subsection (a) of this section applies.

(Pub. L. 95–369, §8(a)–(d), Sept. 17, 1978, 92 Stat. 622, 623; Pub. L. 97–320, title VII, §§704, 705, Oct. 15, 1982, 96 Stat. 1539; Pub. L. 100–86, title II, §204, Aug. 10, 1987, 101 Stat. 584; Pub. L. 102–242, title II, §207, Dec. 19, 1991, 105 Stat. 2295.)

REFERENCES IN TEXT

The Bank Holding Company Act of 1956, referred to in subsecs. (a), (c), and (d), is act May 9, 1956, ch. 240, 70 Stat. 133, as amended, which is classified principally to chapter 17 (§1841 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1841 of this title and Tables.

For definition of ''this chapter'', referred to in subsec. (c), see References in Text note set out under section 3101 of this title.

AMENDMENTS

1991—Subsec. (a). Pub. L. 102–242 substituted ''to such provisions'' for ''thereto, except that any such foreign bank or company shall not by reason of this subsection be deemed a bank holding company for purposes of section 3 of the Bank Holding Company Act of 1956''.

1987—Subsec. (c). Pub. L. 100–86 designated existing provisions as par. (1) and added par. (2).

1982—Subsec. (c). Pub. L. 97–320, §704, inserted ''or on the date of the establishment of a branch in a State an application for which was filed on or before July 26, 1978'' after ''September 17, 1978,''.

Pub. L. 97–320, §705(a), substituted provision that the term ''domestically-controlled affiliate covered in 1978'' shall mean an affiliate organized under the laws of the United States or any State thereof if no foreign bank or group of foreign banks acting in concert owns or controls, directly or indirectly, 45 per centum or more of its voting shares, and no more than 20 per centum of the number of directors as established from time to time to constitute the whole board of directors and 20 per centum of the executive officers of such affiliate are persons affiliated with any such foreign bank, for provision that it meant any affiliate the majority of whose voting shares was owned by a company or group of companies organized under the laws of the United States or any State thereof, if it had been under continuous domestic majority-controlling ownership since July 26, 1978, and if a foreign bank or group of foreign banks did not own or control, directly or indirectly, 25 per centum or more of its voting shares, and defined ''persons affiliated with any such foreign bank''.

Pub. L. 97–320, §705(b), substituted ''since July 26, 1978, has engaged'' for ''engages'' before ''in the business of underwriting'', and inserted '', notwithstanding that such affiliate acquired after July 26, 1978, an interest in, or any or all of the assets of, a going concern, or commences to engage in any new activity or activities'' after ''and other securities in the United States''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1818 of this title.

§3106a. Compliance with State and Federal laws

(1) Every branch or agency of a foreign bank and every commercial lending company controlled by one or more foreign banks or by one or more foreign companies that control a foreign bank shall conduct its operations in the

United States in full compliance with provisions of any law of the United States or any State thereof which—

(A) impose requirements that protect the rights of consumers in financial transactions, to the extent that the branch, agency, or commercial lending company engages in activities that are subject to such laws;

(B) prohibit discrimination against any individual or other person on the basis of the race, color, religion, sex, marital status, age, or national origin of (i) such individual or other person or (ii) any officer, director, employee, or creditor of, or any owner of any interest in, such individual or other person; and

(C) apply to national banks or State-chartered banks doing business in the State in which such branch or agency or commercial lending company, as the case may be, is doing business.

(2) No application for a branch or agency shall be approved by the Comptroller or by a State bank supervisory authority, as the case may be, unless the entity making the application has agreed to conduct all of its operations in the United States in full compliance with provisions of any law of the United States or any State thereof which—

(A) impose requirements that protect the rights of consumers in financial transactions, to the extent that the branch, agency, or commercial lending company engages in activities that are subject to such laws;

(B) prohibit discrimination against individuals or other persons on the basis of the race, color, religion, sex, marital status, age, or national origin of (i) such individual or other person or (ii) any officer, director, employee, or creditor of, or any owner of any interest in, such individual or other person; and

(C) apply to national banks or State-chartered banks doing business in the State in which the entity to be established is to do business.

(Pub. L. 95–369, § 9(b), as added Pub. L. 95–630, title III, § 311, Nov. 10, 1978, 92 Stat. 3678; amended Pub. L. 103–328, title I, § 107(c), Sept. 29, 1994, 108 Stat. 2360.)

AMENDMENTS

1994—Par. (1). Pub. L. 103–328, § 107(c)(1), added subpar. (A) and redesignated former subpars. (A) and (B) as (B) and (C), respectively.

Par. (2). Pub. L. 103–328, § 107(c)(2), added subpar. (A) and redesignated former subpars. (A) and (B) as (B) and (C), respectively.

EFFECTIVE DATE

Section effective upon the expiration of 120 days after Nov. 10, 1978, see section 2101 of Pub. L. 95–630, set out as a note under section 375b of this title.

§ 3107. Representative offices

(a) Prior approval to establish representative offices

(1) In general

No foreign bank may establish a representative office without the prior approval of the Board.

(2) Standards for approval

In acting on any application under this paragraph to establish a representative office, the Board shall take into account the standards contained in section 3105(d)(2) of this title and may impose any additional requirements that the Board determines to be necessary to carry out the purposes of this chapter.

(b) Termination of representative offices

The Board may order the termination of the activities of a representative office of a foreign bank on the basis of the standards, procedures, and requirements applicable under section 3105(e) of this title with respect to branches and agencies.

(c) Examinations

The Board may make examinations of each representative office of a foreign bank, the cost of which shall be assessed against and paid by such foreign bank.

(d) Compliance with State law

This chapter does not authorize the establishment of a representative office in any State in contravention of State law.

(Pub. L. 95–369, § 10, Sept. 17, 1978, 92 Stat. 624; Pub. L. 102–242, title II, § 204, Dec. 19, 1991, 105 Stat. 2292; Pub. L. 102–550, title XVI, § 1604(a)(4), Oct. 28, 1992, 106 Stat. 4082.)

REFERENCES IN TEXT

For definition of ''this chapter'', referred to in subsecs. (a)(2) and (d), see References in Text note set out under section 3101 of this title.

AMENDMENTS

1992—Subsec. (b). Pub. L. 102–550 substituted ''section 3105(e) of this title'' for ''paragraphs (1), (2), and (3) of section 3105(d) of this title''.

1991—Pub. L. 102–242 amended section generally. Prior to amendment, section read as follows:

''(a) Any foreign bank that maintains an office other than a branch or agency in any State shall register with the Secretary of the Treasury in accordance with rules prescribed by him, within one hundred and eighty days after September 17, 1978, or the date on which the office is established, whichever is later.

''(b) This chapter does not authorize the establishment of any such office in any State in contravention of State law.''

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–550 effective as if included in the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102–242, as of Dec. 19, 1991, see section 1609(a) of Pub. L. 102–550, set out as a note under section 191 of this title.

MORATORIUM ON EXAMINATION FEES UNDER THIS CHAPTER

Pub. L. 103–328, title I, § 115(b), Sept. 29, 1994, 108 Stat. 2368, provided that: ''The provision of section 10(c) of the International Banking Act of 1978 [12 U.S.C. 3107(c)] relating to the cost of examinations under such section shall not apply with respect to any examination under such section which begins before or during the 3-year period beginning on July 25, 1994.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3105 of this title.

§ 3108. Regulation and enforcement

(a) Rules, regulations and orders

The Comptroller, the Board, and the Federal Deposit Insurance Corporation, are authorized

and empowered to issue such rules, regulations, and orders as each of them may deem necessary in order to perform their respective duties and functions under this chapter and to administer and carry out the provisions and purposes of this chapter and prevent evasions thereof.

(b) Enforcement

(1) In general

In addition to any powers, remedies, or sanctions otherwise provided by law, compliance with the requirements imposed under this chapter or any amendment made by this chapter may be enforced under section 8 of the Federal Deposit Insurance Act [12 U.S.C. 1818] by any appropriate Federal banking agency as defined in that Act [12 U.S.C. 1811 et seq.].

(2) Authority to administer oaths; subpoena power

In the course of, or in connection with, an application, examination, investigation, or other proceeding under this chapter, the Board, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation, as the case may be, any member of the Board or of the Board of Directors of the Corporation, and any designated representative of the Board, Comptroller, or Corporation (including any person designated to conduct any hearing under this chapter) may—

(A) administer oaths and affirmations and take or cause to be taken depositions; and

(B) issue, revoke, quash, or modify any subpoena, including any subpoena requiring the attendance and testimony of a witness or any subpoenas duces tecum.

(3) Administrative aspects of subpoenas

(A) Attendance and production at designated site

The attendance of any witness and the production of any document pursuant to a subpoena under paragraph (2) may be required at the place designated in the subpoena from any place in any State (as defined in section 3(a)(3) of the Federal Deposit Insurance Act [12 U.S.C. 1813(a)(3)]) or other place subject to the jurisdiction of the United States.

(B) Service of subpoena

Service of a subpoena issued under this subsection may be made by registered mail, or in such other manner reasonably calculated to give actual notice as the Board, Comptroller of the Currency, or Federal Deposit Insurance Corporation may by regulation or otherwise provide.

(C) Fees and travel expenses

Witnesses subpoenaed under this subsection shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States.

(4) Contumacy or refusal

(A) In general

In the case of contumacy of any person issued a subpoena under this subsection or a refusal by such person to comply with such subpoena, the Board, Comptroller of the Currency, or Federal Deposit Insurance Corporation, or any other party to proceedings in connection with which subpoena was issued may invoke the aid of—

(i) the United States District Court for the District of Columbia, or

(ii) any district court of the United States within the jurisdiction of which the proceeding is being conducted or the witness resides or carries on business.

(B) Court order

Any court referred to in subparagraph (A) may issue an order requiring compliance with a subpoena issued under this subsection.

(5) Expenses and fees

Any court having jurisdiction of any proceeding instituted under this subsection may allow any party to such proceeding such reasonable expenses and attorneys' fees as the court deems just and proper.

(6) Criminal penalty

Any person who willfully fails or refuses to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, contracts, agreements, or other records in accordance with any subpoena under this subsection shall be fined under title 18, imprisoned not more than 1 year, or both. Each day during which any such failure or refusal continues shall be treated as a separate offense.

(c) Powers of Federal Reserve Board and Federal Deposit Insurance Corporation

In the case of any provision of the Federal Reserve Act [12 U.S.C. 221 et seq.] to which a foreign bank or branch thereof is subject under this chapter, and which is made applicable to nonmember insured banks by the Federal Deposit Insurance Act [12 U.S.C. 1811 et seq.], whether by cross-reference to the Federal Reserve Act or by a provision in substantially the same terms in the Federal Deposit Insurance Act, the administration, interpretation, and enforcement of such provision, insofar as it relates to any foreign bank or branch thereof as to which the Board is an appropriate Federal banking agency, are vested in the Board, but where the making of any report to the Board or a Federal Reserve bank is required under any such provision, the Federal Deposit Insurance Corporation may require that a duplicate of any such report be sent directly to it. This subsection shall not be construed to impair any power of the Federal Deposit Insurance Corporation to make regular or special examinations or to require special reports.

(Pub. L. 95–369, §13, Sept. 17, 1978, 92 Stat. 624; Pub. L. 102–242, title II, §209, Dec. 19, 1991, 105 Stat. 2297.)

REFERENCES IN TEXT

For definition of "this chapter", referred to in text, see References in Text note set out under section 3101 of this title.

The Federal Deposit Insurance Act, referred to in subsecs. (b)(1) and (c), is act Sept. 21, 1950, ch. 967, §2, 64 Stat. 873, as amended, which is classified generally to chapter 16 (§1811 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1811 of this title and Tables.

The Federal Reserve Act, referred to in subsec. (c), is act Dec. 23, 1913, ch. 6, 38 Stat. 251, as amended, which is classified principally to chapter 3 (§ 221 et seq.) of this title. For complete classification of this Act to the Code, see References in Text note set out under section 226 of this title and Tables.

AMENDMENTS

1991—Subsec. (b). Pub. L. 102–242 inserted heading, designated existing provisions as par. (1) and inserted par. heading, and added pars. (2) to (6).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3105 of this title.

§ 3109. Cooperation with foreign supervisors

(a) Disclosure of supervisory information to foreign supervisors

Notwithstanding any other provision of law, the Board, Comptroller of the Currency, Federal Deposit Insurance Corporation, and Director of the Office of Thrift Supervision may disclose information obtained in the course of exercising supervisory or examination authority to any foreign bank regulatory or supervisory authority if the Board, Comptroller, Corporation, or Director determines that such disclosure is appropriate and will not prejudice the interests of the United States.

(b) Requirement of confidentiality

Before making any disclosure of any information to a foreign authority, the Board, Comptroller of the Currency, Federal Deposit Insurance Corporation, and Director of the Office of Thrift Supervision shall obtain, to the extent necessary, the agreement of such foreign authority to maintain the confidentiality of such information to the extent possible under applicable law.

(Pub. L. 95–369, § 15, as added Pub. L. 102–242, title II, § 206, Dec. 19, 1991, 105 Stat. 2294.)

§ 3110. Penalties

(a) Civil money penalty

(1) In general

Any foreign bank, and any office or subsidiary of a foreign bank, that violates, and any individual who participates in a violation of, any provision of this chapter, or any regulation prescribed or order issued under this chapter, shall forfeit and pay a civil penalty of not more than $25,000 for each day during which such violation continues.

(2) Assessment procedures

Any penalty imposed under paragraph (1) may be assessed and collected by the Board or the Comptroller of the Currency in the manner provided in subparagraphs (E), (F), (G), (H), and (I) of section 1818(i)(2) of this title for penalties imposed (under such section), and any such assessments shall be subject to the provisions of such section.

(3) Hearing procedure

Section 1818(h) of this title shall apply to any proceeding under this section.

(4) Disbursement

All penalties collected under authority of this section shall be deposited into the Treasury.

(5) "Violate" defined

For purposes of this section, the term ''violate'' includes taking any action (alone or with others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

(6) Regulations

The Board and the Comptroller of the Currency shall each prescribe regulations establishing such procedures as may be necessary to carry out this section.

(b) Notice under this section after separation from service

The resignation, termination of employment or participation, or separation of an institution-affiliated party (within the meaning of section 1813(u) of this title) with respect to a foreign bank, or any office or subsidiary of a foreign bank (including a separation caused by the termination of a location in the United States), shall not affect the jurisdiction or authority of the Board or the Comptroller of the Currency to issue any notice or to proceed under this section against any such party, if such notice is served before the end of the 6-year period beginning on the date such party ceased to be an institution-affiliated party with respect to such foreign bank or such office or subsidiary of a foreign bank (whether such date occurs on, before, or after December 19, 1991).

(c) Penalty for failure to make reports

(1) First tier

Any foreign bank, or any office or subsidiary of a foreign bank, that—

(A) maintains procedures reasonably adapted to avoid any inadvertent error and, unintentionally and as a result of such error—

(i) fails to make, submit, or publish such reports or information as may be required under this chapter or under regulations prescribed by the Board or the Comptroller of the Currency under this chapter, within the period of time specified by the agency; or

(ii) submits or publishes any false or misleading report or information; or

(B) inadvertently transmits or publishes any report that is minimally late,

shall be subject to a penalty of not more than $2,000 for each day during which such failure continues or such false or misleading information is not corrected. The foreign bank, or the office or subsidiary of a foreign bank, shall have the burden of proving that an error was inadvertent and that a report was inadvertently transmitted or published late.

(2) Second tier

Any foreign bank, or any office or subsidiary of a foreign bank, that—

(A) fails to make, submit, or publish such reports or information as may be required under this chapter or under regulations prescribed by the Board or the Comptroller of the Currency pursuant to this chapter, within the time period specified by such agency; or

(B) submits or publishes any false or misleading report or information,

in a manner not described in paragraph (1) shall be subject to a penalty of not more than $20,000 for each day during which such failure continues or such false or misleading information is not corrected.

(3) Third tier

Notwithstanding paragraph (2), if any company knowingly or with reckless disregard for the accuracy of any information or report described in paragraph (2) submits or publishes any false or misleading report or information, the Board or the Comptroller of the Currency may, in the Board's or Comptroller's discretion, assess a penalty of not more than $1,000,000 or 1 percent of total assets of such foreign bank, or such office or subsidiary of a foreign bank, whichever is less, per day for each day during which such failure continues or such false or misleading information is not corrected.

(4) Assessment of penalties

Any penalty imposed under paragraph (1), (2), or (3) shall be assessed and collected by the Board or the Comptroller of the Currency in the manner provided in subsection (a)(2) of this section (for penalties imposed under such subsection) and any such assessment (including the determination of the amount of the penalty) shall be subject to the provisions of such subsection.

(5) Hearing procedure

Section 1818(h) of this title shall apply to any proceeding under this subsection.

(Pub. L. 95–369, § 16, as added Pub. L. 102–242, title II, § 208, Dec. 19, 1991, 105 Stat. 2295.)

REFERENCES IN TEXT

For definition of ''this chapter'', referred to in subsecs. (a)(1) and (c)(1)(A)(i), (2)(A), see References in Text note set out under section 3101 of this title.

§ 3111. Criminal penalty

Whoever, with the intent to deceive, to gain financially, or to cause financial gain or loss to any person, knowingly violates any provision of this chapter or any regulation or order issued by the appropriate Federal banking agency under this chapter shall be imprisoned not more than 5 years or fined not more than $1,000,000 for each day during which a violation continues, or both.

(Pub. L. 95–369, § 17, as added Pub. L. 102–242, title II, § 213, Dec. 19, 1991, 105 Stat. 2303.)

REFERENCES IN TEXT

For definition of ''this chapter'', referred to in text, see References in Text note set out under section 3101 of this title.

CHAPTER 33—DEPOSITORY INSTITUTION MANAGEMENT INTERLOCKS

Sec.
3201. Definitions.
3202. Dual service of management official as management official of unaffiliated institution or holding company in same area, town, or village prohibited.
3203. Dual service of management official of $2,500,000,000 institution or holding company as management official of unaffiliated $1,500,000,000 institution or holding company prohibited.
3204. Exceptions.
3205. Management official in position prior to November 10, 1978.
(a) Continuation of service.
(b) Depository institution and diversified savings and loan holding company.
3206. Administration and enforcement.
3207. Rules and regulations.
3208. Powers available to Attorney General for enforcement.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 1786, 1818, 1823 of this title.

§ 3201. Definitions

As used in this chapter—

(1) the term ''depository institution'' means a commercial bank, a savings bank, a trust company, a savings and loan association, a building and loan association, a homestead association, a cooperative bank, an industrial bank, or a credit union;

(2) the term ''depository holding company'' means a bank holding company as defined in section 1841(a) of this title, a company which would be a bank holding company as defined in section 1841(a) of this title but for the exemption contained in subsection (a)(5)(F) thereof, or a savings and loan holding company as defined in section 1730a(a)(1)(D)[1] of this title;

(3) the characterization of any corporation (including depository institutions and depository holding companies), as an ''affiliate of,'' or as ''affiliated'' with any other corporation means that—

(A) one of the corporations is a depository holding company and the other is a subsidiary thereof, or both corporations are subsidiaries of the same depository holding company, as the term ''subsidiary'' is defined in either section 1841(d) of this title in the case of a bank holding company or section 1730a(a)(1)(H)[1] of this title in the case of a savings and loan holding company; or

(B) more than 25 percent of the voting stock of one corporation is beneficially owned in the aggregate by one or more persons who also beneficially own in the aggregate more than 25 percent of the voting stock of the other corporation; or

(C) one of the corporations is a trust company all of the stock of which, except for directors qualifying shares, was owned by one or more mutual savings banks on November 10, 1978, and the other corporation is a mutual savings bank; or

(D) one of the corporations is a bank, insured by the Federal Deposit Insurance Corporation and chartered under State law, and is a bankers' bank, described in Paragraph Seventh of section 24 of this title; or

(E) one of the corporations is a bank, chartered under State law and insured by the

[1] See References in Text note below.