

(1) Act as trustees until discharged by the Secretary;

(2) Carry out the obligations of the Board under any contracts or agreements entered into by the Board pursuant to § 1280.223(b);

(3) From time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and of the trustees, to such persons as the Secretary may direct; and

(4) Upon the request of the Secretary, execute such assignment of other instruments necessary or appropriate to transfer to such persons full title and right to all of the funds, property, and claims of the Board or the trustees pursuant to this subpart.

(c) Any person to whom funds, property or claims have been transferred or delivered pursuant to this subpart shall be subject to the same obligation imposed upon the Board and upon the trustees.

(d) Any residual funds not required to pay the necessary costs of liquidation shall be turned over to the Secretary to be used, to the extent practicable, for continuing one or more of the promotion, research, consumer information, education, industry information, and producer information plans or projects authorized pursuant to this subpart.

**§ 1280.242 Effect of termination or amendment.**

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant thereto, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability that has arisen or may hereafter arise in connection with any provision of this subpart or any regulation issued thereunder; or

(b) Release or extinguish any violation of this subpart or any regulation issued thereunder; or

(c) Affect or impair any rights or remedies of the United States, the Secretary or any person with respect to any such violation.

**§ 1280.243 Personal liability.**

No member, employee, or agent of the Board, including employees, agents, or Board members of the QSSB, acting pursuant to the authority provided in this subpart, shall be held personally responsible, either individually or jointly, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts of either commission or omission, of such member, employee, or agent except for acts of dishonesty or willful misconduct.

**§ 1280.244 Patents, copyrights, inventions, and publication.**

Any patents, copyrights, inventions, or publications developed through the use of funds remitted to the Board under the provisions of this subpart shall be the property of the United States Government as represented by the Board, and shall, along with any rents, royalties, residual payments, or other income from the rental, sales, leasing, franchising, or other uses of such patents, copyrights, inventions, or publications, inure to the benefit of the Board. Upon termination of this subpart, § 1280.240 shall apply to determine disposition of all such property.

**§ 1280.245 Amendments.**

Amendments to the subpart may be proposed, from time to time, by the Board or by any interested person affected by the provisions of the Act, including the Secretary.

**§ 1280.246 Separability.**

If any provision of this subpart is declared invalid or its applicability to any person or circumstances is held invalid, the validity of the remainder of this subpart of the applicability thereof to other persons or circumstances shall not be affected thereby.

Dated: April 26, 1996.  
Lon Hatamiya,  
*Administrator.*  
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**DEPARTMENT OF THE TREASURY**

**Office of the Comptroller of the Currency**

**12 CFR Parts 5, 20, and 28**

[Docket No. 96-11]

RIN 1557-AB26

**International Banking Activities**

**AGENCY:** Office of the Comptroller of the Currency, Treasury.

**ACTION:** Final rule.

**SUMMARY:** The Office of the Comptroller of the Currency (OCC) is comprehensively revising its regulations governing the international operations of national banks and the operation of foreign banks through Federal branches and agencies in the United States. The revision is part of the OCC's Regulation Review Program, which seeks to simplify OCC regulations and reduce unnecessary compliance costs, consistent with maintaining safety and soundness and furthering the other

responsibilities of the OCC. The final rule streamlines and consolidates into one part of the Code of Federal Regulations substantially all provisions relating to international banking, and clarifies and simplifies their various requirements.

The final rule also updates the rules to implement provisions of the Foreign Bank Supervisory Enhancement Act of 1991 (FBSEA) and the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (Interstate Act) relating to Federal branches and agencies.

**EFFECTIVE DATE:** July 1, 1996.

**FOR FURTHER INFORMATION CONTACT:** Raija Bettauer, Counselor for International Activities, (202) 874-0680, Raija.Bettauer@OCC.treas.gov.; Laurie Sears, Attorney, International Activities (202) 874-0680, Laurie.Sears@OCC.treas.gov.; Timothy M. Sullivan, Director, International Banking and Finance, (202) 874-4730, Tim.Sullivan@OCC.treas.gov.; Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

**SUPPLEMENTARY INFORMATION:**

**Background**

On July 5, 1995, the OCC published a notice of proposed rulemaking (60 FR 34907) (proposal) proposing to revise its regulations governing the international operations of national banks and the operation of foreign banks through Federal branches and agencies in the United States (12 CFR parts 20 and 28). The proposal was another component of the OCC's Regulation Review Program (Program). The goal of the Program is to review all of the OCC's rules and to eliminate provisions that impose unnecessary regulatory burden and do not contribute significantly to maintaining the safety and soundness of national banks (and Federal branches and agencies) or to accomplishing the OCC's other statutory responsibilities. Another goal of the Program is to clarify the OCC's regulations and to better communicate the standards that the rules intend to convey.

The proposal sought to achieve those goals and also to update the OCC's rules to implement provisions in the FBSEA (Pub. L. 102-242, title II, 105 Stat. 2286) and Interstate Act (Pub. L. 103-328, 108 Stat. 2338) relating to Federal branches and agencies of foreign banks. It also added a mechanism for the OCC to obtain information on foreign banking organizations to improve the OCC's safety and soundness oversight of Federal branches and agencies.

The proposal further sought to reduce the complexity of the existing regulatory

framework for international banking by referencing provisions in the regulations of the Board of Governors of the Federal Reserve System (FRB) and the Federal Deposit Insurance Corporation (FDIC), and, where possible, using terms and procedures consistent with the provisions in the other agencies' regulations dealing with comparable situations.

#### Comments Received

The OCC received four comment letters on the proposal: one from a national bank and three from trade associations. The commenters generally supported the OCC's efforts to consolidate and streamline the current regulations and reduce unnecessary regulatory burden. Overall, commenters commended the OCC's efforts, and some commenters offered variations on certain of the proposed changes.

#### Overview of the Final Rule and Response to Comments Received

The final rule consolidates into a single comprehensive regulation the substantive requirements governing international banking operations supervised by the OCC. The final rule relocates and incorporates what is currently subpart B of part 20, regarding international lending supervision, as subpart C of part 28. The OCC originally drafted this subpart in consultation with the FRB and the FDIC, and the OCC hopes to undertake a review of subpart C of part 28 in the near future in consultation with those agencies.

Under the final rule, the procedural requirements of 12 CFR part 5 continue to apply to Federal branches and agencies, unless otherwise provided, and part 28 cross-references the procedural requirements in part 5, as appropriate. The Comptroller's Manual for Corporate Activities also provides additional and more specific guidance on the application of the general corporate regulations to the Federal branches and agencies.

The four commenters recommended changes that focused on specific sections of the proposal. The OCC carefully considered each of the comments, and has made changes in the final rule in response to the comments received. The following discussion of significant sections identifies and discusses the comments the OCC received on the proposal and the changes the OCC made to the proposal to address those comments. The discussion also notes other changes to the current regulations that the OCC has adopted in the final rule. The preamble concludes by indicating the technical changes that the final rule makes to

remove superfluous sections of 12 CFR part 5. A derivation table summarizing sections of former parts 20 and 28 changed by the final rule is included at the end of this preamble.

#### Subpart A—Foreign Operations of National Banks

##### *Filing Requirements for Foreign Operations of a National Bank (§28.3)*

The proposal required a national bank to notify the OCC upon establishing, opening, relocating, or closing a foreign branch, or when filing an application, notice, or report with the FRB regarding the acquisition or divestment of certain foreign investments. Under the proposal, a national bank could satisfy this requirement by providing the OCC with a copy of the appropriate filing made with the FRB. Also, the proposal removed the requirement in the current regulation for a national bank to make two separate filings when establishing a foreign branch or acquiring certain foreign investments.

One commenter requested that the OCC clarify the requirement that notice be provided to the OCC when a national bank "establishes" a foreign branch. The commenter noted that both the OCC's proposal and FRB's Regulation K, 12 CFR 211.3(a), require notice at the opening, closing, or relocating of a foreign branch. However, the OCC proposal also required a notice for "establishing" a foreign branch. The commenter requested that the OCC clarify whether "establish" has the same meaning as "open," and, if not, whether the OCC is requesting something beyond that which is required under Regulation K.

Regulation K states that the establishment of a foreign branch generally requires the specific *approval* of the FRB. See 12 CFR 211.3(a)(1). Regulation K also requires any member bank that opens, closes, or relocates a foreign branch to *report* those changes in a manner prescribed by the FRB. See 12 CFR 211.3(a)(5). In addition, Regulation K requires a member bank to obtain the FRB's approval, or notify the FRB, when it acquires, divests, or disposes of certain foreign investments. See 12 CFR 211.5, 211.7.

The final rule makes it clear that whenever a national bank is required to make a filing with the FRB under Regulation K, as described in the paragraph above, it must also provide a copy of that filing or a notice of that filing to the OCC. However, even if not required by the FRB, the final rule requires a national bank to provide a simple notice to the OCC of the opening, closing, or relocation of a foreign

branch. As the primary supervisor of the national bank and its consolidated global operations, it is necessary for the OCC to know the basic structure and location of the national bank's operations in order to effectively supervise the consolidated operations of the bank.

##### *Liability for Deposits Maintained at Non-United States Offices*

Section 326 of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI Act) (Pub. L. 103-325, 108 Stat. 2160) amends the Federal Reserve Act, 12 U.S.C. 221 *et seq.*, to limit a *United States bank's* liability for deposits in its foreign branches if the branch cannot repay the deposit due to foreign sovereign action, war, insurrection, or civil strife, and the bank has not expressly agreed in writing to repay the deposit under those circumstances. The proposal specifically solicited public comment on whether additional guidance is necessary or desirable to implement this provision of the CDRI Act. The OCC received no comments regarding the effect of the proposal on United States banks.

One commenter, however, urged the OCC to adopt a provision in the final rule applying section 326 to Federal branches and agencies of foreign banks operating in the United States. The suggested provision would state that United States offices of foreign banks will not be subject to liability for deposits maintained at a non-United States office if that non-United States office cannot repay the deposits due to foreign sovereign action, war, insurrection, or civil strife. The commenter argued that its request is consistent with the protection provided United States banks under section 326 and the national treatment principle.

The OCC has decided not to adopt the commenter's suggestion at this time. Subpart B of part 28 contains a general provision regarding United States laws that apply to Federal branches and agencies, and the OCC expects to provide additional and more specific guidance in this area in the future. Section 326 was the product of some particular concerns. The OCC believes that it will be more appropriate to address the commenter's question via a process that better allows those concerns to be considered and, if appropriate, specific guidance to be issued.

## Subpart B—Federal Branches and Agencies of Foreign Banks

### *Authority, Purpose, Scope, and Filing Requirements (§ 28.10)*

The proposal set out the legal authority, purpose, and scope of subpart B. The final rule adds a new paragraph (c) to this section to explain that, unless otherwise provided, the rules of general applicability in 12 CFR part 5 apply to a filing by a foreign bank or a Federal branch or agency as they would apply to a similar filing by a national bank. The final rule tells filers where to file and where to obtain forms. The final rule also informs filers that the OCC accepts a copy of an application form, notice, or report submitted to another Federal regulatory agency that covers the proposed action and contains substantially the same information that would be required by the OCC.

### *Definitions (§ 28.11)*

The proposal included new and updated definitions to assist in the implementation of new statutory requirements and to make the definitions more consistent with those of the FRB and FDIC. The final rule adopts the definitions as proposed, except as discussed below.

The final rule includes a new definition for “affiliate” that was discussed in the preamble of the proposal. The final rule extends the exemption for those from whom an uninsured Federal branch may take deposits of less than \$100,000 to include persons to whom the branch, or foreign bank (including any affiliate thereof) has extended credit or provided other nondeposit banking services within the past 12 months. Therefore, it was necessary to add a definition for “affiliate.”

The final rule adds a definition of “capital equivalency deposit” that refers to section 4 of the International Banking Act of 1978 (IBA), 12 U.S.C. 3102(g).

The final rule also adds a separate definition of “control” that was not in the proposal. However, the proposal described this term in two other definitions, so the final rule eliminates this redundancy.

The final rule defines “initial deposit” to clarify that “first deposit” means any deposit made when there is no current deposit relationship between the depositor and the Federal branch. This issue is discussed more thoroughly in the discussion of § 28.16 in reference to a comment received regarding accounts established with a deposit of \$100,000 or more before the effective date of the regulation.

The OCC received a comment suggesting changes to the definition of “managed or controlled,” but the final rule adopts the definition as proposed. The Interstate Act, 12 U.S.C. 3105(k), provides that United States branches and agencies of foreign banks cannot manage any type of activity that is conducted through an offshore office of the foreign bank that is managed or controlled by the branch or agency unless a United States bank is permitted to manage that activity at its offshore branch or subsidiary.

The proposal defined “managed or controlled” to mean that the majority of the responsibility for business decisions, including decisions with regard to lending, asset management, funding, or liability management, or the responsibility for recordkeeping of assets or liabilities for a non-United States office, resides at the Federal branch or agency. This definition is consistent with the definition used in the Federal Financial Institutions Examinations Council (FFIEC) Supplement to the quarterly Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks, FFIEC 002S, for the purpose of determining which United States branches and agencies of foreign banks manage or control offshore offices and must complete FFIEC 002S. 57 FR 61907, Dec. 29, 1992.

One commenter proposed that the OCC exclude from the definition of “managed or controlled” recordkeeping for a non-United States office by the United States office. The commenter recommended that, for various cost and efficiency reasons, a foreign bank may maintain records at a United States location for non-United States offices that the United States office does not otherwise manage or control, and that FFIEC 002S is intended for other purposes. Therefore, the broad definition of “managed or controlled” in FFIEC 002S that is used for reporting purposes should not automatically be used for applying restrictions on the types of activities that may be managed at offshore branches.

The OCC carefully considered this comment and decided not to adopt the commenter’s recommendation. The OCC believes that two different definitions of “managed or controlled” would be impractical and confusing. In most, if not virtually all, cases where a United States office is performing recordkeeping functions for a non-United States office, the United States office would otherwise satisfy the definition of “managed or controlled.” The OCC recognizes, however, that if a United States office of the foreign bank

simply compiles or forwards to the parent foreign bank data or information regarding offshore operations in the normal course of business, that activity would not constitute recordkeeping for this purpose. Thus, that United States office of the foreign bank would not “manage or control” the foreign bank’s offshore activities for purposes of this provision.

Consequently, the final rule defines “managed or controlled” to apply to those offshore offices for which a Federal branch or agency has substantial responsibility with regard to assets or liabilities or recordkeeping. For example, consistent with FFIEC 002S, a Federal branch or agency would be deemed to manage or control its offshore office if: (1) The manager for the Federal branch or agency and the manager for the offshore office are the same person or there is other significant overlap in personnel; (2) substantial responsibility for decisions regarding either assets or liabilities of the offshore office resides with staff in the Federal branch or agency; or (3) recordkeeping systems for either assets or liabilities of the offshore office are maintained in the Federal branch or agency. The restrictions, however, generally would not apply to offshore branches that are full-service facilities managed or controlled by staff located at the offshore office or at a location outside the United States.

### *Approval of a Federal Branch or Agency (§ 28.12)*

The proposal updated and clarified criteria for OCC approval of applications to establish a Federal branch or agency, or a limited Federal branch. The proposal also streamlined the procedures and provided for expedited review for certain corporate applications by eligible foreign banks.

Commenters generally commended the OCC’s efforts to streamline the approval process. The OCC received no suggestions to improve this section, and the final rule adopts this section as proposed. Commenters especially favored the OCC’s proposal to expedite the review procedure for eligible foreign banks.

For purposes of the expedited review procedures in the final rule, a foreign bank is an “eligible foreign bank” if each Federal branch and agency of the foreign bank in the United States: (1) Has a composite rating of 1 or 2 under the interagency rating system used by the OCC for United States branches and agencies of foreign banks (ROCA); (2) is not subject to a cease and desist order, consent order, formal written agreement, or Prompt Corrective Action

directive (see 12 CFR part 6) or, if subject to such order, agreement, or directive, is informed in writing by the OCC that the parent foreign bank may be treated as an "eligible foreign bank" for purposes of this section; and (3) has, if applicable, a Community Reinvestment Act (CRA), 12 U.S.C. 2906, rating of "Outstanding" or "Satisfactory." The OCC will not provide expedited review, however, if it concludes, and advises the applicant in writing, that the filing presents significant supervisory or compliance concerns, or raises significant legal or policy issues.

The final rule also adds a paragraph to allow a foreign bank proposing to establish a Federal branch or agency through acquisition, merger, or consolidation with another foreign bank to obtain after-the-fact approval from the OCC in certain circumstances. This type of an establishment occurs when there is a change in the corporate form of the foreign bank operating the Federal branch or agency, for instance, through a merger of a foreign bank operating a Federal branch or agency into another foreign bank. This could also occur, in certain circumstances, through the acquisition of the assets or operations of a foreign bank operating a Federal branch or agency by another foreign bank.

The regulation provides the minimum requirements for an after-the-fact application, and further criteria and information regarding these transactions and procedures may be contained in the Manual. The OCC reserves, however, the right to deny the application, and an applicant must agree to abide by the OCC's decision, including terminating the activity or activities of an Federal branch or agency, if the OCC so requires.

The final rule expands the types of change of status that may be granted expedited review by including the conversion of a state branch or agency operated by a foreign bank, or a commercial lending company controlled by a foreign bank into a Federal branch, limited Federal branch, or Federal agency.

#### *Permissible Activities (§ 28.13)*

In paragraph (a) of this section the proposal restated the general provision on the applicability of domestic law to Federal branches and agencies and requested comment on forms of supplemental guidance that interested parties thought would be most useful. The OCC received no comments on this paragraph and accordingly no substantive changes are made to paragraph (a) in the final rule.

In paragraph (b) of this section, the proposal restated the requirement in the Interstate Act regarding the management of certain offshore activities, 12 U.S.C. 3105(k), and clarified, in general terms, the activities that a United States bank may manage at its offshore branch or subsidiary. The Interstate Act provides that a United States branch or agency of a foreign bank shall not, through an offshore shell branch that it manages and controls, manage the types of activities that a United States bank may not manage at its foreign branch or subsidiary.

A commenter suggested that in accordance with the legislative history of the Interstate Act, the OCC should clarify that § 28.13(b) applies to offshore *shell* branches. The OCC agrees that this clarification is warranted and has changed the title of paragraph (b) of this section to mirror section 107(e) of the Interstate Act, 12 U.S.C. 3105(k).

In the preamble to the proposal, the OCC solicited comment on whether procedural or quantitative supervisory requirements that may apply to an activity of a United States bank at its foreign branches or subsidiaries should also apply to a Federal branch or agency in this context. One commenter noted that the Interstate Act does not require such limits to be imposed and that in other relevant contexts the Federal banking agencies have not imposed such limits. The OCC agrees with the commenter. The final rule refers to the "types" of activities and explicitly excludes United States procedural or quantitative supervisory requirements that may apply to the offshore branch or subsidiary of a United States bank.

The OCC notes, however, that the Interstate Act does not confer on a foreign bank the right to manage activities of an offshore office from its Federal branch or agency. The OCC will continue to monitor relationships between Federal branches and agencies and offshore offices of foreign banks and to evaluate the compliance of law and safety and soundness of the United States operations of Federal branches and agencies.

#### *Capital Equivalency Deposit (§ 28.15)*

The proposal restated the current provision that eligible capital equivalency deposits (CED) for Federal branches and agencies may include dollar deposits or investment securities that are permissible investments for a national bank. The proposal also stated that high-grade commercial paper and bankers' acceptances are the functional equivalents of deposits. The proposal required that permissible CED instruments be valued at the lower of

the principal amount or market value. The proposal provided that if no published source for market value is available, the instruments must be priced by an independent pricing service at least quarterly.

One commenter recommended that the OCC not subject negotiable certificates of deposits or bankers' acceptances issued by United States banks or United States offices of foreign banks to the requirement that the instruments have a market value that is available from either a published source or from an independent pricing service. The commenter was concerned that this requirement may in practice prevent Federal branches and agencies from pledging negotiable certificates of deposit or bankers' acceptances issued by banks that are regulated by United States authorities and that are in a safe and sound financial condition solely because their prices are not published.

The proposal was not intended to make it impractical for Federal branches or agencies to pledge high quality instruments as CED. As mentioned in the proposal, the quality of bank certificates of deposit offered as CED has been occasionally questionable or difficult to ascertain. Also, certain securities used as CED may be volatile or difficult to price at market value. Therefore, the OCC included the published source requirement in the proposal.

The OCC recognizes, however, that this requirement may unnecessarily exclude certain high quality certificates of deposit or other instruments. Therefore, the final rule does not adopt the published source requirement for certificates of deposit and banker's acceptances. Instead, the final rule requires that for an instrument to qualify as CED it must be: (1) An investment security eligible for investment by a national bank; (2) a United States dollar deposit payable in the United States, other than a certificate of deposit; (3) a certificate of deposit, payable in the United States, or bankers' acceptance, provided that, in either case, the issuer or the instrument is rated investment grade by an internationally recognized rating organization, and neither the issuer nor the instrument is rated lower than investment grade by any such rating organization that has rated the issuer or the instrument; or (4) another asset permitted by the OCC to qualify as CED. Although currently under OCC supervisory policy dollar deposits include dollar denominated certificates of deposit payable in the United States, the final rule categorizes certificates of deposits separately to clarify the

treatment of these instruments. The final rule also restates the requirement in section 4 of the IBA, 12 U.S.C. 3102(g)(2), that the obligations used for CED must be valued at principal amount or market value, whichever is lower. The OCC believes that these requirements strike a reasonable balance between the OCC's concerns about the quality of these instruments offered as CED and providing flexibility to Federal branches and agencies in their choice of instruments that can be properly pledged as CED. In addition, the OCC retains the authority to disallow any particular CED investment that it concludes is inappropriate.

The OCC recognizes that, on the effective date of this regulation, CED accounts of some Federal branches and agencies may contain instruments that do not meet the investment grade rating standard of the final rule. In order to avoid unnecessary operational disruption, the OCC will not require immediate replacement of those instruments. Instead, an instrument in the CED account that does not qualify under this regulation must be replaced with a qualifying instrument, *i.e.*, one that satisfies the requirements of this regulation, upon maturity of that instrument. This accommodation applies, however, only to instruments already properly pledged as CED under the current regulation.

#### *Deposit-Taking by an Uninsured Federal Branch (§ 28.16)*

The Interstate Act, 12 U.S.C. 3104 note, requires the OCC and the FDIC to review and revise their regulations regarding deposit-taking by foreign branches to ensure that the agencies' regulations are consistent with the principle of national treatment articulated in the IBA, 12 U.S.C. 3104(a). Specifically, the OCC and FDIC are directed to consider whether foreign branches may accept initial deposits of less than \$100,000 from six categories of depositors listed in the statute. The Interstate Act also directs the agencies to reduce the amount of deposits of less than \$100,000, not otherwise permissible under this regulation, that may be accepted by foreign branches. This exemption, characterized as a "regulatory *de minimis* exemption" by the Interstate Act, reduces the amount of those deposits maintained by an uninsured Federal branch under the exemption from 5% to 1% of the average deposits held by that Federal branch.

The Interstate Act also directs the OCC to consider equal competitive opportunities among foreign banks and United States banks and the availability

of credit to all sectors of the United States economy, including international trade finance. One objective that Congress expected the agencies to achieve in the implementation of this regulation is to afford equal competitive opportunities to foreign and United States banks by ensuring that foreign banks do not receive an unfair competitive advantage in taking uninsured deposits.

The OCC proposal, in general, adopted the exceptions suggested by Congress in the Interstate Act, but added several limited exemptions. The OCC believes these additional limited exemptions are consistent with the purposes of the Interstate Act. The preamble to the OCC's proposal set forth in detail the information and data that the OCC reviewed in considering this question. See 60 FR 34907, July 5, 1995. The final rule adopts this provision as proposed with some changes as described in the following discussion.

#### *Nondeposit Banking Services (§ 28.16(b)(3))*

The Interstate Act requires the OCC to consider whether to permit an uninsured Federal branch to accept initial deposits of less than \$100,000 from persons to whom the branch or foreign bank has extended credit or provided other nondeposit banking services. The OCC's proposal provided that an uninsured Federal branch may accept initial deposits of less than \$100,000 from persons to whom the branch or foreign bank has extended credit or provided other nondeposit banking services within the past 12 months or has entered into an agreement to provide those services within the next 12 months.

The proposal recognized that in a banking relationship a deposit may, in some cases, precede the extension of credit or the provision of other nondeposit banking services by the uninsured Federal branch or foreign bank. In the proposal, the OCC also indicated that it was considering clarifying this exemption to permit uninsured Federal branches to accept deposits from persons, *and their affiliates*, to whom the branch, foreign bank, *or any financial institution affiliate* thereof has extended credit or provided other non-deposit banking service within the past 12 months, or with whom the branch, bank, *or its financial institution affiliate* has a written agreement to extend credit to provide such services. The OCC did not receive any comments opposing the clarification of this exemption.

One commenter strongly supported expanding the scope of this exemption

to include nondeposit banking services provided to the depositor, or its affiliates, by financial affiliates of the foreign bank. The commenter noted that, like United States banks, foreign banks provide nondeposit banking services through affiliates for a variety of regulatory and business reasons. Financial affiliates frequently provide banking services to customers that can also be provided directly by the bank. Similarly, depositors frequently conduct their operations through affiliates. The commenter also suggested that the OCC exercise its discretion under the Interstate Act to expand this category to cover *deposit* services provided by the foreign bank or its financial institution affiliates.

The OCC has adopted one of the commenter's recommendations. The final rule expands the scope of this exemption to permit an uninsured Federal branch to accept initial deposits of less than \$100,000 from a person to whom the branch, foreign bank, or an affiliate of the foreign bank has extended credit or provided other nondeposit banking services within the past 12 months or has a written agreement to provide credit or those services within the next 12 months. The OCC believes that this expansion is warranted by the connection among the foreign entity's various components. Similarly, a customer who has a business relationship with an affiliate of the foreign bank may prefer the convenience of a deposit relationship with a Federal branch of the foreign bank. Moreover, the deposit relationship with the branch may, in some cases, precede the extension of credit or providing of other nondeposit banking services by the branch or foreign bank or its affiliates.

This expansion is supported by the language of the IBA, which defines "foreign bank" to include any affiliate of a foreign bank. See 12 U.S.C. 3101(7). Consistent with this exemption, affiliates of a foreign bank include companies that are capable of extending credit or providing some other nondeposit banking service to prospective depositors. For example, affiliates of a foreign bank that provide credit or other nondeposit banking services may include investment advisors, broker-dealers, futures commission merchants, finance companies, Edge corporations and Agreement corporations, commodity trading advisors, other banks, or any other comparable institution.

The OCC does not find equally compelling the commenter's argument to expand the exemption to include affiliates of the *depositor*, or to expand

the transactions triggering the exemption to include providing deposit services. There is no explicit statutory support in the IBA for this expansion, or any indication in the Interstate Act that Congress intended to include affiliates of persons to whom the branch or foreign bank (including its affiliates) has extended credit or provided any other nondeposit banking service. However, as a matter of convenience to depositors, the final rule includes a provision in the exemption to permit a Federal branch to accept deposits from immediate family members of an individual to whom the branch or foreign bank (including its affiliates) has extended credit or other nondeposit banking services within the past 12 months or has entered into a written agreement to provide such services within the next 12 months. The OCC notes that it specifically requested comment on an exemption for immediate family members in this section, and one commenter strongly supported this proposal. The OCC received no opposing comments.

#### *Business Deposits (§ 28.16(b)(4))*

The Interstate Act requires the OCC to consider whether to permit an uninsured branch to accept initial deposits of less than \$100,000 from a foreign business or large United States business. The OCC has determined that this exemption is consistent with the objectives in section 6(a) of the IBA, 12 U.S.C. 3104. Consequently, the OCC's proposal provided that an uninsured Federal branch may accept initial deposits of less than \$100,000 from foreign businesses and large United States businesses. The proposal defined "large United States business" to mean any business entity organized under the laws of the United States, and that has: (1) securities registered on a national securities exchange or quoted on the National Associate of Securities Dealers Automated Quotation System (NASDAQ); or (2) more than \$1 million in annual gross revenues. The proposal specifically requested comment on this definition, including the appropriateness of the criteria and suggestions for alternative criteria. Two commenters suggested modifications to this exemption.

One commenter urged the OCC to expand this exemption to permit an uninsured Federal branch to accept deposits from *all businesses*. The commenter believed that the Interstate Act gives the OCC and the FDIC discretion because the Interstate Act directs the agencies to "consider" adopting the exemption categories listed in the statute. The commenter noted

that the ability of an uninsured Federal branch to accept initial deposits of less than \$100,000 from all businesses is significant in maintaining and expanding credit availability to the United States economy. However, the commenter did not offer more specific information to support this assertion.

Alternatively, the commenter recommended that the OCC expand the exemption criteria to include businesses with: (1) \$1 million in total assets; (2) 50 or more employees; or (3) affiliates of large United States businesses. The commenter suggested that the OCC expand the proposed criteria for large United States businesses to accommodate the wide range of different circumstances of business entities. For example, a foundation or trust would not be listed on a national securities exchange and may not generate revenues, although it could be considered large in terms of its total assets or employees. Also, the commenter proposed that the OCC should treat a large United States business and its affiliates as a group.

Another commenter, however, recommended narrowing the exemption by increasing the \$1 million annual gross revenue amount required for large United States businesses to between \$25 and \$100 million. Furthermore, the commenter suggested imposing conditions under which a domestic business may open an account with an uninsured Federal branch. The commenter argued that using a \$1 million cut-off would include a great number of domestic businesses and would undermine the purpose of the restriction. This commenter did not offer any more specific arguments to support its recommendation.

In the final rule, the OCC clarifies that the definition of "large United States business" includes non-profit institutions, such as foundations. In the absence of data supporting an alternative definition of "large United States business," however, the OCC has decided not to make any other changes in the definition in the final rule. The OCC believes that the proposal represents a reasonable balance between Congress' concern that foreign banks and United States banks be provided equal competitive opportunities and the importance of maintaining credit to all sectors of the United States economy. At the same time, additional criteria or more specific conditions under which business deposits can be made, as proposed by one commenter, would make the exemption more complex and difficult to administer by uninsured Federal branches, without clear

evidence that it would further the purposes of the Interstate Act.

#### *Other Categories of Depositors (§ 28.16(b) (1), (2), (6) and (8))*

One commenter expressed support for the other categories of exempt depositors proposed by the OCC. The proposal included a list of nine types of persons or entities from which an uninsured Federal branch may accept initial deposits of less than \$100,000. In particular, the commenter supported the exemptions for Federal and state governments, individuals who are neither citizens nor residents of the United States, individuals who are not United States citizens, but who are residents of the United States and are employed by a foreign bank, foreign business, foreign government or recognized international organization, and deposits made in connection with the issuance of a financial instrument for the transmission of funds. The OCC did not receive any comments suggesting changes to these categories, and the final rule adopts the other depositor exemption categories as proposed.

#### *De minimis Deposits (§ 28.16(b)(9)) and Transition rule (§ 28.16(f))*

The Interstate Act, 12 U.S.C. 3104 note, requires that the OCC reduce the amount of deposits of less than \$100,000 that an uninsured Federal branch may accept from any party under the *de minimis* exemption from 5% to 1% of the branch's average deposits.<sup>1</sup> The Interstate Act also permits the OCC to establish reasonable transition rules to facilitate the termination of any deposit-taking activities that would no longer be permissible under the new regulatory exemptions.

As required, the OCC's proposal reduced the amount of the *de minimis* exemption from 5% to 1% of an uninsured Federal branch's average deposits. In addition, the proposal provided a five-year transition period for all currently exempted accounts, other than time deposits. During the transition period, branches would have to reclassify deposits accepted under the current set of exemptions into one of the new exemptions, or terminate those deposit accounts that do not qualify for an exemption under this regulation as of the end of the transition period. The transition period for a time deposit would be until maturity of the deposit, at which time the branch must reclassify the deposit under a new exemption,

<sup>1</sup> The *de minimis* calculation methodology remains unchanged from the current rule and is consistent with the calculation methodology used by the FDIC for state-licensed branches.

obtain a special exemption from the OCC for the specific deposit, or terminate the deposit relationship. An uninsured branch may continue to accept deposits for an existing account that does not qualify for an exemption until the end of the transition period.

One commenter addressed the *de minimis* deposit and transition provisions of the proposal. The commenter supported the general approach of the five-year phase-in period. However, the commenter suggested the following modifications. First, the commenter suggested that the reclassification of initial deposits of less than \$100,000 that were accepted under the current regulation should apply only to those deposits that were accepted under the current 5% *de minimis* test. In other words, the commenter thought it unnecessary to apply the reclassification requirement to all deposits maintained by uninsured branches under the current set of exemptions as the proposal provided.

The OCC considered this option and decided to adopt the requirement as proposed. The OCC interprets the Interstate Act to require reclassification of all deposits maintained by an uninsured Federal branch under the current exemptions. Those exemptions include deposits received, not only under the 5% *de minimis* exemption, but also deposits received under other current exemptions that no longer apply under the final rule. The OCC believes that its interpretation is more consistent with the Interstate Act and its legislative history which appear to contemplate a transition period for all existing exempted deposits, *i.e.*, not only for the *de minimis* deposits. In addition, the OCC has provided a five-year transition period for reclassification to reduce any disruption imposed by reclassification. In the final rule, the OCC clarifies that accounts accepted under all the existing regulatory exemptions must be reclassified during the transition period.

Second, the commenter requested clarification regarding the transition rule. The commenter requested that the OCC confirm that the reclassification of initial deposits of less than \$100,000 could take place at any time during the phase-in period depending on the circumstances of the deposit account. The OCC confirms that a deposit, including a time deposit, may be reclassified at any time during the five-year transition period, but a time deposit is not required to be reclassified until its maturity date.

Third, the commenter addressed the transition period for time deposits. The proposal provided that the transition period for a time deposit would be until

maturity of the deposit, at which time the branch must reclassify the deposit under a new exemption or obtain a special exemption from the OCC for the specific deposit. The commenter pointed out that time deposits can be as short as seven days in duration, and, therefore, a branch would have an unreasonably short period of time to reclassify many of its time deposits. The commenter recommended that the OCC delay the effective date for the requirement to begin reclassifying time deposits once they mature until six months after publication of the final rule.

The OCC recognizes that the proposal may provide insufficient time to reclassify time deposits that mature shortly after the effective date of the regulation. Therefore, the final rule provides, in the case of time deposits, that an uninsured Federal branch has until the maturity of the time deposit or 90 days after the effective date of the final rule, whichever is longer, to reclassify the deposit. The OCC believes that 90 days from the effective date of the final rule is a reasonable period of time to reclassify time deposits that mature shortly after the effective date of the regulation.

Fourth, the commenter requested clarification regarding the applicability of § 28.16 to accounts established with deposits of \$100,000 or more before the effective date of this regulation. Specifically, the commenter pointed out that the proposed definition of "initial deposit" may conflict with the commenter's understanding that accounts established with a deposit of \$100,000 or more before the effective date of the final rule would not be subject to the reclassification requirement. The proposal defined "initial deposit" as the first deposit received after the effective date of the final rule. The commenter noted that, under the proposal, after the effective date of the final rule the first deposit to an existing account of, for example, \$10,000 that was initially opened with a deposit of \$100,000 or more would be subject to this section although the original deposit of \$100,000 or more was not subject to the current regulation. The commenter requested confirmation that existing deposits that were not subject to the exemptions because the initial deposit was \$100,000 or more would not be subject to the revised regulation, even if the first deposit in the account after the effective date of the revised regulation was less than \$100,000.

The commenter's interpretation is correct. Only initial deposits of less than \$100,000 that were received under one

of the current sets of exemptions under the current regulation are subject to the reclassification requirements in the final rule. Accordingly, the OCC changed the proposed definition of "initial deposit" to provide that a "first deposit" means any deposit when there is no current deposit relationship between the depositor and the Federal branch.

#### *Notice of Change in Activity or Operations (§ 28.17)*

The proposal added this section to clarify the OCC's policy regarding notice requirements for certain changes in activities and operations. The proposal required a Federal branch or agency to provide a notice to the OCC when changing its corporate title or mailing address, converting to a state branch, state agency, or a representative office, or when its parent foreign bank changes its home state designation.

The final rule removes proposed paragraphs (b) and (c) of this section concerning where to file and when the OCC would accept notices filed with other banking agencies. In order to provide this information for all filings and requests under this subpart, the final rule contains this information in § 28.10(c).

#### *Recordkeeping and Reporting (§ 28.18)*

The proposal restated current OCC policy and practice requiring a parent foreign bank to provide the OCC with information regarding its affairs. The proposal also added a specific requirement that a foreign bank operating a Federal branch or agency in the United States provide the OCC with a copy of regulatory reports that it files with other Federal regulatory agencies that are designated in guidance issued by the OCC. The proposal also clarified that, while a Federal branch or agency does not need to maintain all records in English, it must maintain sufficient records in English to permit examiners to perform their responsibilities. The OCC received no comments on this section and has made no changes in the final rule.

#### *Maintenance of Assets (§ 28.20)*

The proposal clarified the current asset maintenance requirements for Federal branches and agencies. Because the OCC believes that the importance of the asset maintenance requirement as a supervisory tool may increase in the future, the proposal requested comment on whether the level of detail provided in the proposal adequately clarified the use and scope of the provision to the industry. The OCC also requested comment on the exclusion of classified assets. The OCC received no comments

on either issue and made no changes in the final rule.

*Termination of a Federal Branch or Agency (§ 28.23)*

The proposal clarified the OCC's authority to terminate Federal branches and agencies. The proposal explicitly spelled out the grounds for termination in section 4(i) of the IBA, 12 U.S.C. 3102(i), and the grounds for national bank termination in 12 U.S.C. 191 and 12 U.S.C. 1821(c)(5). It also stated that a recommendation from the FRB to terminate a Federal branch or agency could constitute grounds for termination. The OCC received no comments on this section.

The OCC further clarifies this section in the final rule by including a reference to termination of a Federal branch or agency based on the foreign bank's insolvency, as specified in section 4(j)(1) of the IBA, 12 U.S.C. 3102(j)(1). In other respects, the final rule is unchanged from the proposal.

**Subpart C—International Lending Supervision**

*Allocated Transfer Risk Reserve (§ 28.52) and Accounting for Fees on International Loans (§ 28.53)*

This subpart implements the requirements of the International Lending Supervision Act of 1983 (12 U.S.C. 3901 *et seq.*). Subpart C requires national banks and District of Columbia banks to establish reserves against the risks presented in certain international assets and sets forth the accounting for various fees received by the banks when making international loans.

This subpart is subpart B of part 20 in the current regulation. The proposal relocated this subpart to subpart C of part 28. Because subpart B of part 20 was originally promulgated in cooperation with the FRB and the FDIC, the OCC intends to review the subpart with those agencies in the future, and, therefore, the OCC made no substantive changes to this subpart in the proposal. Public comment was invited on the subpart in order to bring particular issues to the OCC's attention.

One commenter recommended that the accounting provisions in the proposal be amended to be uniform among the Federal banking regulatory agencies and consistent with generally accepted accounting principles and various Financial Accounting Standards Board Statements. The commenter also requested clarification of regulatory accounting practices for the allocated transfer risk reserve as it relates to the allowance for loan and lease losses. The OCC will address these issues when the

subpart is reviewed with the FRB and the FDIC.

*Technical Changes to Part 5*

Insofar as the final rule consolidates all substantive rules regarding the corporate activities of Federal branches and agencies into part 28, the OCC removes those sections in 12 CFR part 5 that concern Federal branches and agencies. However, the final rule points out, in § 28.10(c), that the rules of general applicability in part 5 apply to a Federal branch or agency as they would to a national bank undertaking a similar transaction, unless otherwise stated in part 28.

**Derivation Table**

This table directs readers to the original provision upon which the revised provision is based.

| Revised provision | Original provision       | Comments            |
|-------------------|--------------------------|---------------------|
| § 28.2 .....      | § 20.2 .....             | Modified.           |
| § 28.3 .....      | §§ 20.3, 20.4            | Significant change. |
| § 28.4(a) .....   | .....                    | Added.              |
| § 28.4(b) .....   | 12 CFR 7.7010(b) (1995). | Modified.           |
| § 28.4(c) .....   | 12 CFR 7.1012 (1995).    | No change.          |
| § 28.11 .....     | § 20.5 .....             | Removed.            |
| § 28.12 .....     | § 28.2 .....             | Significant change. |
| § 28.13 .....     | § 28.3 .....             | Significant change. |
| § 28.14 .....     | § 28.4 .....             | Significant change. |
| § 28.15 .....     | § 28.5 .....             | Modified.           |
| § 28.16 .....     | § 28.6 .....             | Significant change. |
| § 28.17 .....     | § 28.8 .....             | Significant change. |
| § 28.18 .....     | .....                    | Added.              |
| § 28.19 .....     | § 28.10 .....            | Significant change. |
| § 28.20 .....     | .....                    | Added.              |
| § 28.22 .....     | § 28.9 .....             | Significant change. |
| § 28.23 .....     | .....                    | Added.              |
| Subpart C .....   | Subpart B of part 20.    | No change.          |
|                   | § 5.23 .....             | Removed.            |
|                   | § 5.25 .....             | Removed.            |
|                   | § 5.32 .....             | Removed.            |
|                   | § 5.41 .....             | Removed.            |
|                   | § 5.43 .....             | Removed.            |

**Regulatory Flexibility Act**

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. This regulation will reduce the regulatory burden on national banks and Federal branches and agencies of foreign

banks, regardless of size, by simplifying and clarifying existing regulations.

**Executive Order 12866**

The OCC has determined that this final rule is not a significant regulatory action.

**Unfunded Mandates Reform Act of 1995**

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104-4, 109 Stat. 48 (March 22, 1995) (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. Because the OCC has determined that the final rule will not result in expenditures by state, local, and tribal governments, or by the private sector, of more than \$100 million in any one year, the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered. Nevertheless, as discussed in the preamble, the final rule has the effect of reducing burden.

**Paperwork Reduction Act of 1995**

The collection of information requirements contained in this final rule have received approval from the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), under OMB control number 1557-0102. Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project 1557-0204, Washington, DC 20503, with copies to the Legislative and Regulatory Activities Division 1557-0204, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219. The OCC will submit the collection of information requirements contained in this final rule for renewal of OMB approval following publication of this final rule.

The collection of information requirements in this rule are found in 12 CFR 28.3, 28.10, 28.13, 28.14, 28.15, 28.16, 28.17, 28.18, 28.20, 28.52, 28.53, and 28.54. The collections of information are necessary for regulatory and examination purposes, for Federal

branches and agencies and national banks with foreign operations to ensure their compliance with Federal law and regulations, and to evidence compliance with various regulatory requirements. This information assists management in its safe and sound operation of the institution. The OCC uses the information to evaluate national banks with international operations and Federal branches and agencies for supervisory, prudential, and legal purposes, and for statistical and examination purposes.

Respondents are not required to respond to the foregoing collection of information unless it displays a currently valid OMB control number. The likely respondents are foreign banks and national banks.

*Estimated average annual burden hours per recordkeeper:* 36.3 hours.

*Estimated number of recordkeepers:* 185.

*Estimated total annual recordkeeping burden:* One per year.

*Start-up costs to respondents:* none.

#### List of Subjects

##### 12 CFR Part 5

Administrative practice and procedure, National banks, Reporting and recordkeeping requirements, Securities.

##### 12 CFR Part 20

Foreign banking, National banks, Reporting and recordkeeping requirements.

##### 12 CFR Part 28

Foreign banking, National banks, Reporting and recordkeeping requirements.

#### Authority and Issuance

For the reasons set out in the preamble and under the authority of 12 U.S.C. 93a, 602, and 3108, chapter I of title 12 of the Code of Federal Regulations is amended as set forth below:

### PART 5—[AMENDED]

1. The authority citation for part 5 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 93a.

#### § 5.23 [Removed]

2. Section 5.23 is removed.

#### § 5.25 [Removed]

3. Section 5.25 is removed.

#### § 5.32 [Removed]

4. Section 5.32 is removed.

#### § 5.41 [Removed]

5. Section 5.41 is removed.

#### § 5.43 [Removed]

6. Section 5.43 is removed.

### PART 20—[REMOVED]

7. Part 20 is removed.

8. Part 28 is revised to read as follows:

### PART 28—INTERNATIONAL BANKING ACTIVITIES

#### Subpart A—Foreign Operations of National Banks

Sec.

28.1 Authority, purpose, and scope.

28.2 Definitions.

28.3 Filing requirements for foreign operations of a national bank.

28.4 Permissible activities.

28.5 Filing of notice.

#### Subpart B—Federal Branches and Agencies of Foreign Banks

28.10 Authority, purpose, scope, and filing requirements.

28.11 Definitions.

28.12 Approval of a Federal branch or agency.

28.13 Permissible activities.

28.14 Limitations based upon capital of a foreign bank.

28.15 Capital equivalency deposits.

28.16 Deposit-taking by an uninsured Federal branch.

28.17 Notice of change in activity or operations.

28.18 Recordkeeping and reporting.

28.19 Enforcement.

28.20 Maintenance of assets.

28.21 Service of process.

28.22 Voluntary liquidation.

28.23 Termination of a Federal branch or agency.

#### Subpart C—International Lending Supervision

28.50 Authority, purpose, and scope.

28.51 Definitions.

28.52 Allocated transfer risk reserve.

28.53 Accounting for fees on international loans.

28.54 Reporting and disclosure of international assets.

Authority: 12 U.S.C. 1 *et seq.*, 93a, 161, 602, 1818, 3102, 3108, and 3901 *et seq.*

#### Subpart A—Foreign Operations of National Banks

##### § 28.1 Authority, purpose, and scope.

(a) *Authority.* This subpart is issued pursuant to 12 U.S.C. 1 *et seq.*, 24(Seventh), 93a, and 602.

(b) *Purpose.* This subpart sets forth filing requirements for national banks that engage in international operations and clarifies permissible foreign activities of national banks.

(c) *Scope.* This subpart applies to any national bank that engages in international operations through a foreign branch, or acquires an interest in an Edge corporation, Agreement corporation, foreign bank, or certain other foreign organizations.

##### § 28.2 Definitions.

For purposes of this subpart:

(a) *Agreement corporation* means a corporation having an agreement or undertaking with the Board of Governors of the Federal Reserve System (FRB) under section 25 of the Federal Reserve Act (FRA), 12 U.S.C. 601 through 604a.

(b) *Edge corporation* means a corporation that is organized under section 25(a) of the FRA, 12 U.S.C. 611 through 631.

(c) *Foreign bank* means an organization that:

(1) Is organized under the laws of a foreign country;

(2) Engages in the business of banking;

(3) Is recognized as a bank by the bank supervisory or monetary authority of the country of its organization or principal banking operations;

(4) Receives deposits to a substantial extent in the regular course of its business; and

(5) Has the power to accept demand deposits.

(d) *Foreign branch* means an office of a national bank (other than a representative office) that is located outside the United States at which banking or financing business is conducted.

(e) *Foreign country* means one or more foreign nations, and includes the overseas territories, dependencies, and insular possessions of those nations and of the United States, and the Commonwealth of Puerto Rico.

##### § 28.3 Filing requirements for foreign operations of a national bank.

(a) *Notice requirement.* A national bank shall notify the OCC when it:

(1) Files an application, notice, or report with the FRB to:

(i) Establish, open, close, or relocate a foreign branch; or

(ii) Acquire or divest of an interest in, or close, an Edge corporation,

Agreement corporation, foreign bank, or other foreign organization; or

(2) Opens, closes, or relocates a foreign branch, and no application or notice is required by the FRB for such transaction.

(b) *Other applications and notices accepted.* In lieu of a notice under paragraph (a)(1) of this section, the OCC may accept a copy of an application, notice, or report submitted to another Federal agency that covers the proposed action and contains substantially the same information required by the OCC.

(c) *Additional information.* A national bank shall furnish the OCC with any additional information the OCC may require in connection with the national bank's foreign operations.

**§ 28.4 Permissible activities.**

(a) *General.* Subject to the applicable approval process, if any, a national bank may engage in any activity in a foreign country that is:

(1) Permissible for a national bank in the United States; and

(2) Usual in connection with the business of banking in the country where it transacts business.

(b) *Additional activities.* In addition to its general banking powers, a national bank may engage in any activity in a foreign country that is permissible under the FRB's Regulation K, 12 CFR part 211.

(c) *Foreign operations guarantees.* A national bank may guarantee the deposits and other liabilities of its Edge corporations and Agreement corporations and of its corporate instrumentalities in foreign countries.

**§ 28.5 Filing of notice.**

(a) *Where to file.* A national bank shall file any notice or submission required under this subpart with the Office of the Comptroller of the Currency, International Banking and Finance, 250 E Street SW, Washington, DC 20219.

(b) *Availability of forms.* Individual forms and instructions for filings are available from International Banking and Finance.

**Subpart B—Federal Branches and Agencies of Foreign Banks****§ 28.10 Authority, purpose, scope, and filing requirements.**

(a) *Authority.* This subpart is issued pursuant to the authority in the International Banking Act of 1978 (IBA), 12 U.S.C. 3101 *et seq.*, and 12 U.S.C. 93a.

(b) *Purpose and scope.* This subpart implements the IBA pertaining to the licensing, supervision, and operations of Federal branches and agencies in the United States.

(c) *Filing requirements—(1) Rules of general applicability.* Except as otherwise provided by the OCC, the rules of general applicability in 12 CFR part 5 apply to any filing by a foreign bank, or Federal branch or agency as they would to a similar filing by a national bank.

(2) *Where to file.* A foreign bank or a Federal branch or agency shall file any notice or submission required under this subpart with the Office of the Comptroller of the Currency, International Banking and Finance, 250 E Street SW, Washington, DC 20219.

(3) *Availability of forms.* Individual forms and instructions for filings are available from International Banking and Finance.

(4) *Other notices accepted.* The OCC accepts a copy of an application form, notice, or report submitted to another Federal regulatory agency that covers the proposed action and contains substantially the same information as would be required by the OCC. The OCC may also require the applicant to submit supplemental information.

**§ 28.11 Definitions.**

For purposes of this subpart:

(a) *Affiliate* means any entity that controls, is controlled by, or is under common control with another entity.

(b) *Agreement corporation* means a corporation having an agreement or undertaking with the FRB under section 25 of the FRA, 12 U.S.C. 601 through 604a.

(c) *Capital equivalency deposit* means a deposit by a Federal branch or agency in a member bank as described in section 4 of the IBA, 12 U.S.C. 3102(g).

(d) *Change the status of an office* means conversion of a:

(1) State branch or state agency operated by a foreign bank, or a commercial lending company controlled by a foreign bank, into a Federal branch, limited Federal branch, or Federal agency;

(2) Federal agency into a Federal branch or limited Federal branch;

(3) Federal branch into a limited Federal branch or Federal agency; or

(4) Limited Federal branch into a Federal branch or Federal agency.

(e) *Control.* An entity controls another entity if the entity directly or indirectly controls or has the power to vote 25 percent or more of any class of voting securities of the other entity or controls in any manner the election of a majority of the directors or trustees of the other entity.

(f) *Edge corporation* means a corporation that is organized under section 25(a) of the FRA, 12 U.S.C. 611 through 631.

(g) *Establish a Federal branch or agency* means to:

(1) Open and conduct business through a Federal branch or agency;

(2) Acquire directly or indirectly through merger, consolidation, or similar transaction with another foreign bank, the operations of a Federal branch or agency that is open and conducting business;

(3) Acquire a Federal branch or agency through the acquisition of a foreign bank subsidiary that will cease to operate in the same corporate form following the acquisition;

(4) Change the status of an office; or

(5) Relocate a Federal branch or agency within a state or from one state to another.

(h) *Federal agency* means an office or place of business, licensed by the OCC and operated by a foreign bank in any state, that may engage in the business of banking, including maintaining credit balances, cashing checks, and lending money, but may not accept deposits from citizens or residents of the United States. Obligations may not be considered credit balances unless they are:

(1) Incidental to, or arise out of the exercise of, other lawful banking powers;

(2) To serve a specific purpose;

(3) Not solicited from the general public;

(4) Not used to pay routine operating expenses in the United States such as salaries, rent, or taxes;

(5) Withdrawn within a reasonable period of time after the specific purpose for which they were placed has been accomplished; and

(6) Drawn upon in a manner reasonable in relation to the size and nature of the account.

(i) *Federal branch* means an office or place of business, licensed by the OCC and operated by a foreign bank in any state, that may engage in the business of banking, including accepting deposits, that is not a Federal agency as defined in paragraph (h) of this section.

(j) *Foreign bank* means an organization that is organized under the laws of a foreign country, a territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands, and that engages directly in the business of banking in a foreign country.

(k) *Foreign business* means any entity, including a corporation, partnership, sole proprietorship, association, foundation or trust that is organized under the laws of a foreign country, or any United States entity that is controlled by a foreign entity or foreign national.

(l) *Foreign country* means one or more foreign nations, and includes the overseas territories, dependencies, and insular possessions of those nations and of the United States, and the Commonwealth of Puerto Rico.

(m) *Home country* means the country in which the foreign bank is chartered or incorporated.

(n) *Home country supervisor* means the governmental entity or entities in the foreign bank's home country responsible for supervising and regulating the foreign bank.

(o) *Home state* of a foreign bank means the state in which the foreign bank has a branch, agency, subsidiary commercial lending company, or subsidiary bank. If a foreign bank has an office in more than one state, the home

state of the foreign bank is the state that is selected to be the home state by the foreign bank or, in default of the foreign bank's selection, by the FRB.

(p) *Immediate family member of an individual* means the spouse, father, mother, brother, sister, son, or daughter of that individual.

(q) *Initial deposit* means the first deposit transaction between a depositor and the Federal branch made on or after July 1, 1996. The initial deposit may be placed into different deposit accounts or into different kinds of deposit accounts, such as demand, savings, or time accounts. Deposit accounts that are held by a depositor in the same right and capacity may be added together for the purpose of determining the dollar amount of the initial deposit. *First deposit* means the deposit made when there is no current deposit relationship between the depositor and the Federal branch.

(r) *International banking facility* means a set of asset and liability accounts segregated on the books and records of a depository institution, a United States branch or agency of a foreign bank, or an Edge corporation or Agreement corporation, that includes only international banking facility time deposits and extensions of credit.

(s) *Large United States business* means any business entity including a corporation, company, partnership, sole proprietorship, association, foundation or trust that is organized under the laws of the United States or any state thereof, and has:

(1) Securities registered on a national securities exchange or quoted on the National Association of Securities Dealers Automated Quotation System; or

(2) More than \$1 million in annual gross revenues for the fiscal year immediately preceding the year of the initial deposit.

(t) *Limited Federal branch* means a Federal branch that, pursuant to an agreement between the parent foreign bank and the FRB, may receive only those deposits permissible for an Edge corporation to receive.

(u) *Managed or controlled by a Federal branch or agency* means that a majority of the responsibility for business decisions, including decisions with regard to lending, asset management, funding, or liability management, or the responsibility for recordkeeping of assets or liabilities for a non-United States office, resides at the Federal branch or agency. For purposes of this definition, forwarding data or information of offshore operations gathered or compiled by the United States office in the normal course of

business to the parent foreign bank does not constitute recordkeeping.

(v) *Manual* means the Comptroller's Manual for Corporate Activities (see 12 CFR part 5).

(w) *Parent foreign bank senior management* means individuals at the executive level of the parent foreign bank who are responsible for supervising and authorizing activities of the Federal branch or agency.

(x) *Person* means an individual or a corporation, government, partnership, association, or any other entity.

(y) *State* means any state of the United States and the District of Columbia.

(z) *United States bank* means a bank organized under the laws of the United States or any state.

#### **§ 28.12 Approval of a Federal branch or agency.**

(a) *Approval requirements.* A foreign bank shall submit an application to and obtain prior approval from the OCC before it:

(1) Establishes a Federal branch, Federal agency, or limited Federal branch; or

(2) Exercises fiduciary powers at a Federal branch. (A foreign bank may submit an application to exercise fiduciary powers at the time of filing an application for a Federal branch or at any subsequent date.)

(b) *Standards for approval.* Generally, in reviewing an application by a foreign bank to establish a Federal branch or agency, the OCC considers:

(1) The financial and managerial resources and future prospects of the applicant foreign bank and the Federal branch or agency;

(2) Whether the foreign bank has furnished to the OCC the information the OCC requires to assess the application adequately, and provided the OCC with adequate assurances that information will be made available to the OCC on the operations or activities of the foreign bank or any of its affiliates that the OCC deems necessary to determine and enforce compliance with the IBA and other applicable Federal banking statutes;

(3) Whether the foreign bank and its United States affiliates are in compliance with applicable United States law;

(4) The convenience and needs of the community to be served and the effects of the proposal on competition in the domestic and foreign commerce of the United States;

(5) Whether the foreign bank is subject to comprehensive supervision or regulation on a consolidated basis by its home country supervisor; and

(6) Whether the home country supervisor has consented to the proposed establishment of the Federal branch or agency.

(c) *Comprehensive supervision or regulation on a consolidated basis.* In determining whether a foreign bank is subject to comprehensive supervision or regulation on a consolidated basis, the OCC reviews various factors, including whether the foreign bank is supervised or regulated in a manner so that its home country supervisor receives sufficient information on the worldwide operations of the foreign bank to assess the foreign bank's overall financial condition and compliance with laws and regulations as specified in the FRB's Regulation K, 12 CFR 211.24.

(d) *Conditions on approval.* The OCC may impose conditions on its approval including a condition permitting future termination of activities based on the inability of the foreign bank to provide information on its activities, or those of its affiliate, that the OCC deems necessary to determine and enforce compliance with United States banking laws.

(e) *Expedited review.* Unless the OCC concludes that the filing presents significant supervisory or compliance concerns, or raises significant legal or policy issues, the OCC generally processes the following filings by an eligible foreign bank, as defined in paragraph (f) of this section, under expedited review procedures:

(1) *Intrastate relocations.* An application submitted by an eligible foreign bank to relocate a Federal branch or agency within a state is deemed approved by the OCC as of the seventh day after the close of the applicable public comment period in 12 CFR part 5, unless the OCC notifies the bank prior to that date that the filing is not eligible for expedited review.

(2) *Change of status.* An application to change the status of an office submitted by an eligible foreign bank is deemed approved by the OCC 45 days after filing with the OCC, unless the OCC notifies the bank prior to that date that the filing is not eligible for expedited review.

(3) *Fiduciary powers.* An application submitted by an eligible foreign bank to exercise fiduciary powers at an established Federal branch is deemed approved by the OCC 30 days after filing with the OCC, unless the OCC notifies the bank prior to that date that the filing is not eligible for expedited review.

(4) *Other filings.* Any other application submitted by an eligible foreign bank may be approved by the OCC on an expedited basis as described in the Manual.

(f) *Eligible foreign bank.* For purposes of this section, a foreign bank is an eligible foreign bank if each Federal branch and agency of the foreign bank in the United States:

(1) Has a composite rating of 1 or 2 under the interagency rating system for United States branches and agencies of foreign banks;

(2) Is not subject to a cease and desist order, consent order, formal written agreement, Prompt Corrective Action directive (see 12 CFR part 6) or, if subject to such order, agreement, or directive, is informed in writing by the OCC that the Federal branch or agency may be treated as an "eligible foreign bank" for purposes of this section; and

(3) Has, if applicable, a Community Reinvestment Act (CRA), 12 U.S.C. 2906, rating of "Outstanding" or "Satisfactory".

(g) *After-the-fact approval.* Unless otherwise provided by the OCC, a foreign bank proposing to establish a Federal branch or agency through the acquisition of, or merger or consolidation with, a foreign bank that has an office in the United States, may proceed with the transaction before an application to establish the Federal branch or agency has been filed or acted upon, if the applicant:

(1) Gives the OCC reasonable advance notice of the proposed acquisition, merger, or consolidation;

(2) Prior to consummation of the acquisition, merger, or consolidation, commits in writing to comply with the OCC application procedures within a reasonable period of time, or has already submitted an application; and

(3) Commits in writing to abide by the OCC's decision on the application, including a decision to terminate activities of the Federal branch or agency.

(h) *Procedures for approval.* A foreign bank shall file an application for approval pursuant to this section in accordance with 12 CFR part 5 and the Manual.

(i) *Additional requirements.* Nothing in this section relieves a foreign bank of any requirement to obtain the approval of the FRB as may be necessary under the FRB's Regulation K, 12 CFR part 211.

#### § 28.13 Permissible activities.

(a) *Applicability of laws—(1) General.* Except as otherwise provided by the IBA, other Federal laws or regulations, or otherwise determined by the OCC, the operations of a foreign bank at a Federal branch or agency shall be conducted with the same rights and privileges and subject to the same duties, restrictions, penalties, liabilities,

conditions, and limitations that would apply if the Federal branch or agency were a national bank operating at the same location.

(2) *Parent foreign bank senior management approval.* Unless otherwise provided by the OCC, any provision in law, regulation, policy, or procedure that requires a national bank to obtain the approval of its board of directors will be deemed to require a Federal branch or agency to obtain the approval of parent foreign bank senior management.

(b) *Management of shell branches—(1) Federal branches and agencies.* A Federal branch or agency of a foreign bank shall not manage, through an office of the foreign bank that is located outside the United States and that is managed or controlled by that Federal branch or agency, any type of activity that a United States bank is not permitted to manage at any branch or subsidiary of the United States bank that is located outside the United States.

(2) *Activities managed in foreign branches or subsidiaries of United States banks.* The types of activities referred to in paragraph (b)(1) of this section include the types of activities authorized to a United States bank by state or Federal charters, regulations issued by chartering or regulatory authorities, and other United States procedural or quantitative requirements that may be applicable to the conduct of those activities by United States banks do not apply.

(c) *Additional guidance regarding permissible activities.* For purposes of section 7(h) of the IBA, 12 U.S.C. 3105(h), the OCC may issue opinions, interpretations, or rulings regarding permissible activities of Federal branches.

#### § 28.14 Limitations based upon capital of a foreign bank.

(a) *General.* Any limitation or restriction based upon the capital of a national bank shall be deemed to refer, as applied to a Federal branch or agency, to the dollar equivalent of the capital of the foreign bank.

(b) *Calculation.* Unless otherwise provided by the OCC, a foreign bank must calculate its capital in a manner consistent with 12 CFR part 3, for purposes of this section.

(c) *Aggregation.* The foreign bank shall aggregate business transacted by all Federal branches and agencies with the business transacted by all state branches and state agencies controlled by the foreign bank in determining its compliance with limitations based upon the capital of the foreign bank. The

foreign bank shall designate one Federal branch or agency office in the United States to maintain consolidated information so that the OCC can monitor compliance.

#### § 28.15 Capital equivalency deposits.

(a) *Capital equivalency deposits—(1) General.* For purposes of section 4(g) of the IBA, 12 U.S.C. 3102(g), unless otherwise provided by the OCC, a foreign bank's capital equivalency deposits (CED) must consist of:

(i) Investment securities eligible for investment by national banks;

(ii) United States dollar deposits payable in the United States, other than certificates of deposit;

(iii) Certificates of deposit, payable in the United States, and banker's acceptances, provided that, in either case, the issuer or the instrument is rated investment grade by an internationally recognized rating organization, and neither the issuer nor the instrument is rated lower than investment grade by any such rating organization that has rated the issuer or the instrument; or

(iv) Other assets permitted by the OCC to qualify as CED.

(2) *Legal requirements.* The agreement with the depository bank to hold the CED and the amount of the deposit must comply with the requirements in section 4(g) of the IBA, 12 U.S.C. 3102(g). If a foreign bank has more than one Federal branch or agency in a state, it shall determine the CED and the amount of liabilities requiring capital equivalency coverage on an aggregate basis for all the foreign bank's Federal branches or agencies in that state.

(b) *Increase in capital equivalency deposits.* For prudential or supervisory reasons, the OCC may require, in individual cases or otherwise, that a foreign bank increase its CED above the minimum amount.

(c) *Value of assets.* The obligations referred to in paragraph (a) of this section must be valued at principal amount or market value, whichever is lower.

(d) *Deposit arrangements.* A foreign bank should require its depository bank to segregate its CED on the depository bank's books and records. The funds deposited and obligations referred to in paragraph (a) of this section that are placed in safekeeping at a depository bank to satisfy a foreign bank's CED requirement:

(1) May not be reduced in aggregate value by withdrawal without the prior approval of the OCC;

(2) Must be pledged and maintained pursuant to an agreement prescribed by the OCC; and

(3) Must be free from any lien, charge, right of setoff, credit, or preference in connection with any claim of the depository bank against the foreign bank.

(e) *Maintenance of capital equivalency ledger account.* Each Federal branch or agency shall maintain a capital equivalency account and keep records of the amount of liabilities requiring capital equivalency coverage in a manner and form prescribed by the OCC.

**§ 28.16 Deposit-taking by an uninsured Federal branch.**

(a) *Policy.* In carrying out this section, the OCC shall consider the importance of according foreign banks competitive opportunities equal to those of United States banks and the availability of credit to all sectors of the United States economy, including international trade finance.

(b) *General.* An uninsured Federal branch may accept initial deposits of less than \$100,000 only from:

(1) Individuals who are not citizens or residents of the United States at the time of the initial deposit;

(2) Individuals who are not citizens of the United States, but are residents of the United States, and are employed by a foreign bank, foreign business, foreign government, or recognized international organization;

(3) Persons (including immediate family members of an individual) to whom the branch or foreign bank (including any affiliate thereof) has extended credit or provided other nondeposit banking services within the past 12 months, or with whom the branch or foreign bank has a written agreement to extend credit or provide such services within 12 months after the date of the initial deposit;

(4) Foreign businesses and large United States businesses;

(5) Foreign governmental units, including political subdivisions, and recognized international organizations;

(6) Federal and state governmental units, including political subdivisions and agencies thereof;

(7) Persons who are depositing funds in connection with the issuance of a financial instrument by the branch for transmission of funds, or transmission of funds by any electronic means;

(8) Persons who may deposit funds with an Edge corporation as provided in the FRB's Regulation K, 12 CFR 211.4, including persons engaged in certain international business activities; and

(9) Any other depositor if:

(i) The aggregate amount of deposits received from those depositors does not exceed, on an average daily basis, 1

percent of the average of the branch's deposits for the last 30 days of the most recent calendar quarter, excluding deposits of other offices, branches, agencies, or wholly owned subsidiaries of the foreign bank; and

(ii) The branch does not solicit deposits from the general public by advertising, display of signs, or similar activity designed to attract the attention of the general public.

(c) *Application for an exemption.* A foreign bank may apply to the OCC for an exemption to permit an uninsured Federal branch to accept or maintain deposit accounts that are not listed in paragraph (b) of this section. The request should describe:

(1) The types, sources, and estimated amounts of such deposits and explain why the OCC should grant an exemption; and

(2) How the exemption maintains and furthers the policies described in paragraph (a) of this section.

(d) *Aggregation of deposits.* For purposes of paragraph (b)(9) of this section, a foreign bank that has more than one Federal branch in the same state may aggregate deposits in all of its Federal branches in that state, but exclude deposits of other branches, agencies or wholly owned subsidiaries of the bank. The Federal branch shall compute the average amount by using the sum of deposits as of the close of business of the last 30 calendar days ending with and including the last day of the calendar quarter, divided by 30. The Federal branch shall maintain records of the calculation until its next examination by the OCC.

(e) *Notification to depositors.* A Federal branch that accepts deposits pursuant to this section shall provide notice to depositors pursuant to 12 CFR 346.7, which generally requires that the Federal branch conspicuously display a sign at the branch and include a statement on each signature card, passbook, and instrument evidencing a deposit that the deposit is not insured by the Federal Deposit Insurance Corporation (FDIC).

(f) *Transition period.* (1) An uninsured Federal branch may maintain a deposit lawfully accepted under the exemptions existing prior to July 1, 1996 if the deposit would qualify for an exemption under paragraph (b) of this section, except for the fact that the deposit was made before July 1, 1996.

(2) If a deposit lawfully accepted under the exemption existing prior to July 1, 1996 would not qualify for an exemption under paragraph (b) or (c) of this section, the uninsured Federal branch must terminate the deposit no later than:

(i) In the case of time deposits, the maturity of a time deposit or October 1, 1996, whichever is longer; or

(ii) In the case of all other deposits, five years after July 1, 1996.

(g) *Insured banks in United States territories.* For purposes of this section, 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 whose deposits are insured by the FDIC pursuant to the Federal Deposit Insurance Act, 12 U.S.C. 1811 *et seq.*

**§ 28.17 Notice of change in activity or operations.**

*Notice.* A Federal branch or agency shall notify the OCC if:

(a) It changes its corporate title;

(b) It changes its mailing address;

(c) It converts to a state branch, state agency, or representative office; or

(d) The parent foreign bank changes the designation of its home state.

**§ 28.18 Recordkeeping and reporting.**

(a) *General.* A Federal branch or agency shall comply with applicable recordkeeping and reporting requirements that apply to national banks and with any additional requirements that may be prescribed by the OCC. A Federal branch or agency, and the parent foreign bank, shall furnish information relating to the affairs of the parent foreign bank and its affiliates that the OCC may from time to time request.

(b) *Regulatory reports filed with other agencies.* A foreign bank operating a Federal branch or agency in the United States shall provide the OCC with a copy of reports filed with other Federal regulatory agencies that are designated in guidance issued by the OCC.

(c) *Maintenance of accounts, books, and records.* (1) Each Federal branch or agency shall maintain a set of accounts and records reflecting its transactions that are separate from those of the foreign bank and any other branch or agency. The Federal branch or agency shall keep a set of accounts and records in English sufficient to permit the OCC to examine the condition of the Federal branch or agency and its compliance with applicable laws and regulations. The Federal branch or agency shall promptly provide any additional records requested by the OCC for examination or supervisory purposes.

(2) A foreign bank with more than one Federal branch or agency in a state shall designate one of those offices to maintain consolidated asset, liability, and capital equivalency accounts for all Federal branches or agencies in that state.

**§ 28.19 Enforcement.**

As provided by section 13 of the IBA, 12 U.S.C. 3108(b), the OCC may enforce compliance with the requirements of the IBA, other applicable banking laws, and OCC regulations or orders under section 8 of the Federal Deposit Insurance Act, 12 U.S.C. 1818. This enforcement authority is in addition to any other remedies otherwise provided by the IBA or any other law.

**§ 28.20 Maintenance of assets.**

(a) *General rule.* (1) For prudential, supervisory, or enforcement reasons, the OCC may require a foreign bank to hold certain assets in the state in which its Federal branch or agency is located. Those assets may only consist of currency, bonds, notes, debentures, drafts, bills of exchange, or other evidence of indebtedness including loan participation agreements or certificates, or other obligations payable in the United States or in United States funds or, with the approval of the OCC, funds freely convertible into United States funds.

(2) If the OCC requires asset maintenance, the amount of assets held by a foreign bank shall be prescribed by the OCC, but may not be less than 105 percent of the aggregate amount of liabilities of the Federal branch or agency, payable at or through the Federal branch or agency. To determine the aggregate amount of liabilities for purposes of this section, the foreign bank shall include bankers' acceptances, but exclude liabilities to the head office and any other branches, offices, agencies, subsidiaries, and affiliates of the foreign bank.

(b) *Valuation.* For the purposes of this section, marketable securities must be valued at principal amount or market value, whichever is lower.

(c) *Credits.* In determining compliance with the asset maintenance requirements, the OCC will give the Federal branch or agency credit for:

(1) Capital equivalency deposits maintained pursuant to § 28.15;

(2) Reserves required to be maintained by the Federal branch or agency pursuant to the FRB's authority under 12 U.S.C. 3105(a); and

(3) Assets pledged, and surety bonds payable, to the FDIC to secure the payment of domestic deposits.

(d) *Exclusions.* In determining eligible assets for purposes of this section, the Federal branch or agency shall exclude:

(1) Any amount due from the head office or any other branch, office, agency, subsidiary, or affiliate of the foreign bank;

(2) Any classified asset;

(3) Any asset that, in the determination of the OCC, is not supported by sufficient credit information;

(4) Any deposit with a bank in the United States, unless that bank has executed a valid waiver of offset agreement;

(5) Any asset not in the Federal branch's actual possession unless the branch holds title to the asset and maintains records sufficient to enable independent verification of the branch's ownership of the asset, as determined at the most recent examination; and

(6) Any other particular asset or class of assets as provided by the OCC, based on a case-by-case assessment of the risks associated with the asset.

(e) *International banking facility.* Unless specifically exempted by the OCC, the eligible assets and liabilities of any international banking facility operated through the Federal branch or agency must be included in the computation of eligible assets and liabilities for purposes of this section.

**§ 28.21 Service of process.**

A foreign bank operating at any Federal branch or agency is subject to service of process at the location of the Federal branch or agency.

**§ 28.22 Voluntary liquidation.**

(a) *Procedures.* Unless otherwise provided, a Federal branch or agency that proposes to close its operations shall comply with the requirements in 12 CFR 5.48, as applicable, and the Manual.

(b) *Notice to customers and creditors.* A foreign bank shall provide any customers and known creditors, not previously notified in writing, with written notice of the impending closure of the Federal branch or agency at least 30 days prior to its closure.

(c) *Report of condition.* The Federal branch or agency shall submit a Report of Assets and Liabilities of United States Branches and Agencies of Foreign Banks as of the close of the last business day prior to the start of liquidation of the Federal branch or agency. This report must include a certified maturity schedule of all remaining liabilities, if any.

(d) *Return of certificate.* The Federal branch or agency shall return the Federal branch or agency license certificate within 30 days of closure to the public.

(e) *Reports of examination.* The Federal branch or agency shall send the OCC certification that all of its Reports of Examination have been destroyed or return its Reports of Examination to the OCC.

**§ 28.23 Termination of a Federal branch or agency.**

(a) *Grounds for termination.* The OCC may revoke the authority of a foreign bank to operate a Federal branch or agency if:

(1) The OCC determines that there is reasonable cause to believe that the foreign bank has violated or failed to comply with any of the provisions of the IBA, other applicable Federal laws or regulations, or orders of the OCC;

(2) A conservator is appointed for the foreign bank, or a similar proceeding is initiated in the foreign bank's home country;

(3) One or more grounds for receivership, including insolvency, as specified in 12 U.S.C. 3102(j), exists;

(4) One or more grounds for termination, including unsafe and unsound practices, insufficiency or dissipation of assets, concealment of books and records, a money laundering conviction, or other grounds as specified in 12 U.S.C. 191, exists; or

(5) The OCC receives a recommendation from the FRB, pursuant to 12 U.S.C. 3105(e)(5), that the license of a Federal branch or agency be terminated.

(b) *Procedures—(1) Notice and hearing.* Except as otherwise provided in this section, the OCC may issue an order to terminate the license of a Federal branch or agency after providing notice to the Federal branch or agency and after providing an opportunity for a hearing.

(2) *Procedures for hearing.* The OCC shall conduct a hearing under this section pursuant to the OCC's Rules of Practice and Procedure in 12 CFR part 19.

(3) *Expedited procedure.* The OCC may act without providing an opportunity for a hearing if it determines that expeditious action is necessary in order to protect the public interest. When the OCC finds that it is necessary to act without providing an opportunity for a hearing, the OCC in its sole discretion, may:

(i) Provide the Federal branch or agency with notice of the intended termination order;

(ii) Grant the Federal branch or agency an opportunity to present a written submission opposing issuance of the order; or

(iii) Take any other action designed to provide the Federal branch or agency with notice and an opportunity to present its views concerning the termination order.

### Subpart C—International Lending Supervision

#### § 28.50 Authority, purpose, and scope.

(a) *Authority.* This subpart is issued pursuant to 12 U.S.C. 1 *et seq.*, 93a, 161, and 1818; and the International Lending Supervision Act of 1983 (Pub. L. 98–181, title IX, 97 Stat. 1153, 12 U.S.C. 3901 *et seq.*).

(b) *Purpose.* This subpart implements the requirements of the International Lending Supervision Act of 1983 (12 U.S.C. 3901 *et seq.*).

(c) *Scope.* This subpart requires national banks and District of Columbia banks to establish reserves against the risks presented in certain international assets and sets forth the accounting for various fees received by the banks when making international loans.

#### § 28.51 Definitions.

For the purposes of this subpart:

(a) *Banking institution* means a national bank or a District of Columbia bank.

(b) *Federal banking agencies* means the OCC, the FRB, and the FDIC.

(c) *International assets* means those assets required to be included in banking institutions' *Country Exposure Report* forms (FFIEC 009).

(d) *International loan* means a loan as defined in the instructions to the *Report of Condition and Income* for the respective banking institution (FFIEC 031, 032, 033 and 034) and made to a foreign government, or to an individual, a corporation, or other entity not a citizen of, resident in, or organized or incorporated in the United States.

(e) *International syndicated loan* means a loan characterized by the formation of a group of *managing* banking institutions and, in the usual case, assumption by them of underwriting commitments, and participation in the loan by other banking institutions.

(f) *Loan agreement* means the document signed by all of the parties to a loan, containing the amount, terms, and conditions of the loan, and the interest and fees to be paid by the borrower.

(g) *Restructured international loan* means a loan that meets the following criteria:

(1) The borrower is unable to service the existing loan according to its terms and is a resident of a foreign country in which there is a generalized inability of public and private sector obligors to meet their external debt obligations on a timely basis because of a lack of, or restraints on the availability of, needed foreign exchange in the country; and

(2) The terms of the existing loan are amended to reduce stated interest or extend the schedule of payments; or

(3) A new loan is made to, or for the benefit of, the borrower, enabling the borrower to service or refinance the existing debt.

(h) *Transfer risk* means the possibility that an asset cannot be serviced in the currency of payment because of a lack of, or restraints on the availability of, needed foreign exchange in the country of the obligor.

#### § 28.52 Allocated transfer risk reserve.

(a) *Establishment of allocated transfer risk reserve.* A banking institution shall establish an allocated transfer risk reserve (ATRR) for specified international assets when required by the OCC in accordance with this section.

(b) *Procedures and standards—(1) Joint agency determination.* At least annually, the Federal banking agencies shall determine jointly, based on the standards set forth in paragraph (b)(2) of this section, the following:

(i) Which international assets subject to transfer risk warrant establishment of an ATRR;

(ii) The amount of the ATRR for the specified assets; and

(iii) Whether an ATRR established for specified assets may be reduced.

(2) *Standards for requiring ATRR—(i) Evaluation of assets.* The Federal banking agencies shall apply the following criteria in determining whether an ATRR is required for particular international assets:

(A) Whether the quality of a banking institution's assets has been impaired by a protracted inability of public or private obligors in a foreign country to make payments on their external indebtedness as indicated by such factors, among others, as whether:

(1) Such obligors have failed to make full interest payments on external indebtedness;

(2) Such obligors have failed to comply with the terms of any restructured indebtedness; or

(3) A foreign country has failed to comply with any International Monetary Fund or other suitable adjustment program; or

(B) Whether no definite prospects exist for the orderly restoration of debt service.

(ii) *Determination of amount of ATRR.* (A) In determining the amount of the ATRR, the Federal banking agencies shall consider:

(1) The length of time the quality of the asset has been impaired;

(2) Recent actions taken to restore debt service capability;

(3) Prospects for restored asset quality; and

(4) Such other factors as the Federal banking agencies may consider relevant to the quality of the asset.

(B) The initial year's provision for the ATRR shall be 10 percent of the principal amount of each specified international asset, or such greater or lesser percentage determined by the Federal banking agencies. Additional provision, if any, for the ATRR in subsequent years shall be 15 percent of the principal amount of each specified international asset, or such greater or lesser percentage determined by the Federal banking agencies.

(3) *Notification.* Based on the joint agency determinations under paragraph (b)(1) of this section, the OCC shall notify each banking institution holding assets subject to an ATRR:

(i) Of the amount of the ATRR to be established by the institution for specified international assets; and

(ii) That an ATRR to be established for specified assets may be reduced.

(c) *Accounting treatment of ATRR—(1) Charge to current income.* A banking institution shall establish an ATRR by a charge to current income and the amounts so charged shall not be included in the banking institution's capital or surplus.

(2) *Separate accounting.* A banking institution shall account for an ATRR separately from the Allowance for Possible Loan Losses, and shall deduct the ATRR from "gross loans and leases" to arrive at "net loans and leases." The ATRR must be established for each asset subject to the ATRR in the percentage amount specified.

(3) *Consolidation.* A banking institution shall establish an ATRR, as required, on a consolidated basis. Consolidation should be in accordance with the procedures and tests of significance set forth in the instructions for preparation of *Consolidated Reports of Condition and Income* (FFIEC 031, 032, 033 and 034). For bank holding companies, the consolidation shall be in accordance with the principles set forth in the "Instructions to the Bank Holding Company Financial Supplement to Report F.R. Y-6" (Form F.R. Y-9). Edge corporations and Agreement corporations engaged in banking shall report in accordance with instructions for preparation of the Report of Condition for Edge corporations and Agreement corporations (Form F.R. 2886b).

(4) *Alternative accounting treatment.* A banking institution need not establish an ATRR if it writes down in the period in which the ATRR is required, or has written down in prior periods, the value

of the specified international assets in the requisite amount for each such asset. For purposes of this paragraph, international assets may be written down by a charge to the Allowance for Possible Loan Losses or a reduction in the principal amount of the asset by application of interest payments or other collections on the asset. However, the Allowance for Possible Loan Losses must be replenished in such amount necessary to restore it to a level which adequately provides for the estimated losses inherent in the banking institution's loan portfolio.

(5) *Reduction of ATRR.* A banking institution may reduce an ATRR when notified by the OCC or, at any time, by writing down such amount of the international asset for which the ATRR was established.

**§ 28.53 Accounting for fees on international loans.**

(a) *Restrictions on fees for restructured international loans.* No banking institution shall charge any fee in connection with a restructured international loan unless all fees exceeding the banking institution's administrative costs, as described in paragraph (c)(2) of this section, are deferred and recognized over the term of the loan as an interest yield adjustment.

(b) *Amortizing fees.* Except as otherwise provided by this section, fees received on international loans shall be deferred and amortized over the term of the loan. The interest method should be used during the loan period to recognize the deferred fee revenue in relation to the outstanding loan balance. If it is not practicable to apply the interest method during the loan period, the straight-line method shall be used.

(c) *Accounting treatment of international loan or syndication administrative costs and corresponding fees.* (1) Administrative costs of originating, restructuring, or syndicating an international loan shall be expensed as incurred. A portion of the fee income equal to the banking institution's administrative costs may be recognized as income in the same period such costs are expensed.

(2) The administrative costs of originating, restructuring, or syndicating an international loan include those costs which are specifically identified with negotiating, processing and consummating the loan. These costs include, but are not necessarily limited to: Legal fees; costs of preparing and processing loan documents; and an allocable portion of salaries and related benefits of employees engaged in the international lending function and, where applicable, the syndication

function. No portion of supervisory and administrative expenses or other indirect expenses such as occupancy and other similar overhead costs shall be included.

(d) *Fees received by managing banking institutions in an international syndicated loan.* Fees received on international syndicated loans representing an adjustment of the yield on the loan shall be recognized over the loan period using the interest method. If the interest yield portion of a fee received on an international syndicated loan by a managing banking institution is unstated or differs materially from the pro rata portion of fees paid other participants in the syndication, an amount necessary for an interest yield adjustment shall be recognized. This amount shall at least be equivalent (on a pro rata basis) to the largest fee received by a loan participant in the syndication that is not a managing banking institution. The remaining portion of the syndication fee may be recognized as income at the loan closing date to the extent that it is identified and documented as compensation for services in arranging the loan. Such documentation shall include the loan agreement. Otherwise, the fee shall be deemed an adjustment of yield.

(e) *Loan Commitment fees.* (1) Fees which are based upon the unfunded portion of a credit for the period until it is drawn and represent compensation for a binding commitment to provide funds or for rendering a service in issuing the commitment shall be recognized as income over the term of the commitment period using the straight-line method of amortization. Such fees for revolving credit arrangements, where the fees are received periodically in arrears and are based on the amount of the unused loan commitment, may be recognized as income when received provided the income result would not be materially different.

(2) If it is not practicable to separate the commitment portion from other components of the fee, the entire fee shall be amortized over the term of the combined commitment and expected loan period. The straight-line method of amortization should be used during the commitment period to recognize the fee revenue. The interest method should be used during the loan period to recognize the remaining fee revenue in relation to the outstanding loan balance. If the loan is funded before the end of the commitment period, any unamortized commitment fees shall be recognized as revenue at that time.

(f) *Agency fees.* Fees paid to an agent banking institution for administrative

services in an intentional syndicated loan shall be recognized at the time of the loan closing or as the service is performed, if later.

**§ 28.54 Reporting and disclosure of international assets.**

(a) *Requirements.* (1) Pursuant to section 907(a) of the International Lending Supervision Act of 1983 (title IX, Pub. L. 98-181, 97 Stat. 1153, 12 U.S.C. 3906) (ILSA) a banking institution shall submit to the OCC, at least quarterly, information regarding the amounts and composition of its holdings of international assets.

(2) Pursuant to section 907(b) of ILSA (12 U.S.C. 3906), a banking institution shall submit to the OCC information regarding concentrations in its holdings of international assets that are material in relation to total assets and to capital of the institution, such information to be made publicly available by the OCC on request.

(b) *Procedures.* The format, content, and reporting and filing dates of the reports required under paragraph (a) of this section shall be determined jointly by the Federal banking agencies. The requirements to be prescribed by the agencies may include changes to existing reporting forms (such as the Country Exposure Report, FFIEC 009) or such other requirements as the agencies deem appropriate. The agencies also may determine to exempt from the requirements of paragraph (a) of this section banking institutions that, in the agencies' judgment, have *de minimis* holdings of international assets.

(c) *Reservation of authority.* Nothing contained in this part shall preclude the OCC from requiring from a banking institution such additional or more frequent information on the institution's holdings of international assets as the OCC may consider necessary.

Dated: April 13, 1996.

Eugene A. Ludwig,

Comptroller of the Currency.

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