for which you wish it to be effective. By doing so, you agreed to pay the additional premium designated in the actuarial documents for this optional coverage; and

(3) You or we did not cancel the option in writing on or before the cancellation date. Your election of CAT coverage for any crop year after this endorsement is effective will be considered as notice of cancellation by you.

(b) If you select Fresh Fruit Option A only, Fresh Fruit Option A will apply to all of your apples intended for processing and fresh market.

(c) If you select Fresh Fruit Option B, those provisions will apply to all of your apples intended for fresh market and the provisions of Fresh Fruit Option A will apply to all of your apples intended for processing.

(d) If you select the Sunburn Option as designated in the Special Provisions, you must also select Fresh Fruit Option B.

(e) In addition to the requirements of section 10 of these provisions, you must permit us to inspect and grade the fruit prior to harvest or no quality adjustment will be made.

(f) Fresh Fruit Option A and Fresh Fruit Option B are subject to the following conditions:

(1) Fresh Fruit Option A—In addition to section 11(c) of these provisions and notwithstanding the definition of ''marketable'' in section 1 of these provisions, your production to count will be adjusted when your apples are damaged by hail to the extent that such apples will not grade U.S. No. 1 (processing). Harvested apple production that is damaged by hail to the extent that it does not grade 80 percent U.S. No. 1 (processing) or better, in accordance with applicable USDA Standards for Grades of Apples, will be adjusted as follows:

(i) Production to count with 21 through 40 percent not grading U.S. No. 1 (processing) or better will be reduced 2 percent for each full percent in excess of 20 percent.

(ii) Production to count with 41 through 50 percent not grading U.S. No. 1 (processing) or better will be reduced 40 percent plus an additional 3 percent for each full percent in excess of 40 percent.

(iii) Production to count with 51 percent through 64 percent not grading U.S. No. 1 (processing) or better will be reduced 70 percent plus an additional 2 percent for each full percent in excess of 50 percent.

(iv) Production to count with 65 percent or more not grading U.S. No. 1 (processing) or better will be considered 100 percent cull production.

(v) The difference between the total production and the production to count as determined above will be considered cull production.

(vi) Thirty (30) percent of all cull production will be considered production to count, unless otherwise specified in the Special Provisions.

(vii) No reduction in production to count will be applied to any apple grading less than U.S. No. 1 (processing) due solely to size, shape, russeting, or color.

(viii) Any appraisal we make on the insured acreage will be considered production to count unless such appraised production is knocked to the ground by wind or hail or frozen on the tree to the extent that harvest is not practical.

(2) Fresh Fruit Option B—Notwithstanding section 11(c) and the definitions of ''harvest'' and ''marketable'' in section 1 of these provisions, the total production to count for a unit will include all harvested and appraised production. Harvested apple production that is damaged by hail to the extent that it does not grade 80 percent U.S. Fancy or better, in accordance with applicable USDA Standards for Grades of Apples, will be adjusted as follows:

(i) Production to count with 21 through 40 percent not grading U.S. Fancy or better will be reduced 2 percent for each full percent in excess of 20 percent.

(ii) Production to count with 41 through 50 percent not grading U.S. Fancy or better will be reduced 40 percent plus an additional 3 percent for each full percent in excess of 40 percent.

(iii) Production to count with 51 percent through 64 percent not grading U.S. Fancy or better will be reduced 70 percent plus an additional 2 percent for each full percent in excess of 50 percent.

(iv) Production to count with 65 percent or more not grading U.S. Fancy or better will be considered 100 percent cull production.

(v) The difference between the total production and the production to count as determined above will be considered cull production.

(vi) Apples that are knocked to the ground by wind or frozen to the extent they can be harvested but not marketed as U.S. Fancy grade apples will be considered 100 percent cull production.

(vii) Thirty (30) percent of all cull production will be considered production to count, unless otherwise specified in the Special Provisions.

(viii) No reduction in production to count will be applied to any apple grading less than U.S. Fancy due solely to size, shape, russeting, or color.

(ix) Any appraisal we make on the insured acreage will be considered production to count unless such appraised production is knocked to the ground by wind, hail, or frozen on the tree to the extent that harvest is not practical.

(g) Sunburn Option

(1) In addition to the causes of loss specified in section 9 of these provisions, excess sun is an insurable cause of loss.

(2) Notwithstanding the definitions of ''harvest'' and ''marketable'' in section 1 and 11(c)(1) and (2) of these provisions, the total production to be counted for a unit will include all harvested and appraised production. Harvested apple production that, due to excessive sun or in conjunction with hail damage, does not grade 80 percent U.S. Fancy or better, in accordance with applicable USDA Standards, will be adjusted as follows:

(i) Production to count with 21 through 40 percent not grading U.S. Fancy or better due solely to excessive sun or excessive sun along with hail damage, will be reduced 2 percent for each full percent in excess of 20 percent.

(ii) Production to count with 41 through 50 percent not grading U.S. Fancy or better due solely to excessive sun or excessive sun along with hail damage, will be reduced 40 percent plus an additional 3 percent for each full percent in excess of 40 percent.

(iii) Production to count with 51 through 64 percent not grading U.S. Fancy or better due solely to excessive sun or excessive sun along with hail damage, will be reduced 70 percent plus an additional 2 percent for each full percent in excess of 50 percent.

(iv) Production to count with 65 percent or more not grading U.S. Fancy or better due solely to excessive sun or excessive sun along with hail damage, will be considered 100 percent cull production.

(v) The difference between the total production and the production to count as determined above will be considered cull production.

(vi) Thirty (30) percent of all cull production will be considered as production to count unless otherwise specified in the Special Provisions.

Signed in Washington, D.C., on April 2, 1998.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 98–9208 Filed 4–7–98; 8:45 am]

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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 303, 325, 326, 327, 346, 347, 351, and 362

RIN 3064–AC05

International Banking Regulations: Consolidation and Simplification

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: As part of the FDIC's systematic review of its regulations and written policies under section 303(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI), the FDIC has revised and consolidated its three different groups of rules and regulations governing international banking. The first group governs insured branches of foreign banks and specifies what deposit-taking activities are permissible for uninsured state-licensed branches of foreign banks. The FDIC's final rule makes conforming changes throughout this group of regulations to reflect the statutory requirement that domestic retail deposit activities must be conducted through an insured bank subsidiary, not through an insured branch. Also with respect to this group of regulations, the FDIC is rescinding the provisions concerning optional insurance for U.S. branches of foreign banks; the pledge of assets formula has been revised; and the FDIC

Division of Supervision's (DOS) new supervision program—the Case Manager approach—has been integrated throughout the applicable regulations. The second group of regulations governs the foreign branches of insured state nonmember banks, and also governs such banks' investment in foreign banks or other financial entities. The final rule modernizes this group of regulations and clarifies provisions outlining the activities in which insured state nonmember banks may engage abroad, and reduces the instances in which banks must file an application before opening a foreign branch or making a foreign investment. The third group of regulations governs the international lending of insured state nonmember banks and specifies when reserves are required for particular international assets. The final rule revises this group of regulations to simplify the accounting for fees on international loans to make it consistent with generally accepted accounting principles. Consistent with the goals of CDRI, the final rule improves efficiency, reduces costs, and eliminates outmoded requirements.

DATES: This final rule is effective July 1, 1998. Compliance is mandatory for all affected institutions on July 1, 1998. Affected institutions may elect to comply with the final rule voluntarily at any time after May 8, 1998. If an affected institution elects to comply voluntarily with any section of subpart A, B, or C of 12 CFR part 347, the institution or bank must comply with the entire subpart.

FOR FURTHER INFORMATION CONTACT: Christie A. Sciacca, Associate Director (202/898–3671), Karen M. Walter, Chief (202/898–3540), Suzanne L. Williams, Senior Financial Analyst (202/898–6788), Division of Supervision; Jamey Basham, Counsel (202/898–7265), Wendy Sneff, Counsel (202/898–6865), Legal Division, FDIC, 550 17th Street, NW, Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION: The FDIC is conducting a systematic review of its regulations and written policies. Section 303(a) of the CDRI (12 U.S.C. 4803(a)) requires the FDIC to streamline and modify its regulations and written policies in order to improve efficiency, reduce unnecessary costs, and eliminate unwarranted constraints on credit availability. Section 303(a) also requires the FDIC to remove inconsistencies and outmoded and duplicative requirements from its regulations and written policies.

As part of this review, the FDIC has determined that certain portions of part 346 are out-of-date, and other provisions of this part require clarification. Although the FDIC previously made certain regulatory amendments which took effect as recently as 1996, other regulatory language contained in part 346 does not accurately reflect the underlying statutory authority. The FDIC has also determined that part 347 is outmoded. Part 347 has not been revised in any significant regard since 1979, when it was originally promulgated. The FDIC published a proposed rule in the **Federal Register** on July 15, 1997 (62 FR 37748).

The FDIC has decided to consolidate its international banking rules into a single part, part 347, for ease of reference. This final rule places material on foreign branching and foreign bank investment by nonmember banks, currently located in part 347, into subpart A of part 347. Material currently located in part 346, governing insured branches of foreign banks and deposit-taking by uninsured state-licensed branches of foreign banks, is placed in subpart B of part 347. Part 351 of the FDIC's current rules and regulations, which contains rules governing the international lending operations of insured state nonmember banks, is placed in subpart C of new part 347. Part 351 was originally adopted in 1984 as an interagency rulemaking in coordination with the Board of Governors of the Federal Reserve System (FRB) and the Office of the Comptroller of the Currency (OCC). The most significant revision to part 351 is to require banks to follow GAAP in accounting for fees on international loans. This change was discussed with accounting staff at the OCC and FRB as part of an interagency working group and they are in general agreement with the change. However, as the other two federal banking agencies are not ready to act on a revised regulation at this time, the FDIC has decided to unilaterally issue its revision to part 351 in connection with its consolidation of the international banking regulations.

In addition, the FDIC has recently published a notice of proposed rulemaking (62 FR 52810, October 9, 1997) containing complete revision of part 303 of the FDIC's rules and regulations, which contains the FDIC's applications procedures and delegations of authority. For ease of reference, the FDIC will consolidate its applications procedures for international banking matters into a single subpart of part 303, subpart J. In order to finalize part 347 without waiting for the part 303 proposal to be finalized, this part 347 proposal includes, as a separate subpart D of part 347, revised application procedures compatible with the substantive provisions of this final rule. These application procedures will be transferred to subpart J of part 303 once it is finalized, as is discussed in connection with subpart D, below.

I. Subpart A—Foreign Branches and Investments in Foreign Banks and Other Entities

A. Background

Section 18(d)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1828(d)(2)) requires a nonmember bank to obtain the FDIC's consent to establish or operate a foreign branch. Section 18(d)(2) also authorizes the FDIC to impose conditions and issue regulations governing the affairs of foreign branches.

Section 18(l) of the FDI Act (12 U.S.C. 1828(l)) requires a nonmember bank to obtain the FDIC's consent to acquire and hold, directly or indirectly, stock or other evidences of ownership in any foreign bank or other entity. Section 18(l) also states that these entities may not engage in any activities in the United States except as the Board of Directors of the FDIC (Board), in its judgment, has determined are incidental to the international or foreign business of these entities. In addition, section 18(l) authorizes the FDIC to impose conditions and issue regulations governing these investments. Finally, although nonmember banks are subject to the interaffiliate transaction restrictions of sections 23A and 23B of the Federal Reserve Act, 12 U.S.C. 371c and 371c–1, as expressly incorporated by section 18(j) of the FDI Act, 12 U.S.C. 1821(j), section 18(l) provides that nonmember banks may engage in transactions with these foreign banks and other entities in which the nonmember bank has invested in the manner and within the limits prescribed by the FDIC.

A nonmember bank's authority to establish a foreign branch or invest in foreign banks or other entities, and the permissible activities for foreign branches or foreign investment entities, must be established in the first instance under the law of its state chartering authority. Congress created sections 18(d)(2) and 18(l) out of a concern that there was no federal-level review of nonmember banks' foreign branching and investments. S. Rep. No. 95–323, 95th Cong., 1st Sess. (1977) at 15. Although the FRB had long held authority over foreign branching and investment by state member banks and national banks (member banks) under the Federal Reserve Act, as well as foreign investment by bank holding companies under the Bank Holding Company Act, the FDIC did not hold

corresponding statutory authority over nonmember banks until Congress created sections 18(d)(2) and 18(l) as part of the Financial Institutions Regulatory and Interest Rate Control Act of 1978, Pub. L. 95–630 (FIRIRCA).

The FRB's rules governing foreign branching and investments by member banks are contained in subpart A of Regulation K (12 CFR 211.1–211.8). The FRB has issued a notice of proposed rulemaking to revise Regulation K (62 FR 68424 (Dec. 31, 1997)). The FDIC's subpart A of part 347 maintains parity with the substance of the current version of Regulation K. The FDIC's treatment of permissible activities for foreign branches and foreign entities in which nonmember banks invest is virtually identical to Regulation K, and the amount limits and expedited approval processes are very similar (the differences take into account certain variances attributable to structural differences between the types of institutions governed). Substantive differences between the FDIC's final rule and the current version of Regulation K are noted below.

In certain of the few instances in which the FDIC is adopting a different treatment than the FRB's under the current version of Regulation K, the differences raise issues under section 24 of the FDI Act (12 U.S.C. 1831a) and part 362 of the FDIC's rules and regulations (12 CFR part 362). Section 24 and part 362 prohibit a state bank from engaging as principal in any activity which is not permissible for a national bank, unless the FDIC first determines that it would not pose a significant risk of loss to the appropriate deposit insurance fund and the bank meets its minimum capital requirements. Section 24 and part 362 similarly prohibit a subsidiary of a state bank from engaging as principal in any activity which is not permissible for a subsidiary of national bank, unless the FDIC first determines that it would not pose a significant risk of loss to the appropriate deposit insurance fund and the bank meets its minimum capital requirements. Section 24 and part 362 also prohibit a state bank from making an equity investment which is not permissible for a national bank, unless the investment is made through a majority-owned subsidiary, the FDIC determines that it would not pose a significant risk of loss to the appropriate deposit insurance fund for the subsidiary to hold the equity investment, and the bank meets its minimum capital requirements. These section 24 issues are discussed below.

Impact of Proposed Revisions to Regulation K

The FDIC has decided to finalize subpart A of part 347 now, notwithstanding the pendency of the FRB's proposal to modify subpart A of Regulation K. Nonmember banks affected by the current version of part 347 have advised the FDIC that they view the FDIC's current rule as an impediment to their ability to compete effectively abroad. The FDIC desires to make the improvements provided under its proposed rule available to nonmember banks without additional delay. If the FRB at some time in the future adopts some or all of the changes it has recently proposed to subpart A of Regulation K, the FDIC may propose additional revisions to subpart A of part 347. The FDIC seeks to maintain general similarity between the restrictions governing the international activities of nonmember banks and member banks, but the FDIC will not be able to assess the advisability of any changes to subpart A of part 347 until the FRB issues final revisions to Regulation K.

If the FRB adopts certain of its proposed changes which would reduce the authority of member banks or their subsidiaries to conduct certain activities abroad, nonmember banks engaging in those activities as authorized by part 347 without an application to the FDIC are cautioned to assess whether an application to the FDIC may nevertheless be required under section 24 of the FDI Act. The FDIC, in structuring subpart A, has been mindful of section 24 issues and structured the rule so that activities authorized by subpart A without application to the FDIC do not require separate case-by-case authorization under section 24. However, if the FRB cuts back on what international activities are permissible for member banks and their subsidiaries under subpart A of Regulation K, the structure may develop gaps which the FDIC will need to address by further revisions to subpart A of part 347. Affected nonmember banks assessing such questions in the interim are encouraged to contact FDIC staff for assistance.

B. Discussion of Comments

The FDIC received two comment letters on subpart A, both from insured state nonmember banks with numerous foreign investments subject to current part 347. Both commenters expressed wholehearted support for the FDIC's efforts to update the rule. Both commenters made suggestions for additional improvements to the proposal, or alternative treatments of certain issues thereunder. Most of these related to the procedures for approving branches or investments. The FDIC has considered each suggestion in turn.

Comments on Application Processing Times

One comment suggested that the FDIC shorten from 45 to 30 days the application processing period under § 347.103 for an eligible bank with branches in two or more countries to establish a branch in an additional country. The FDIC does not think that a 45-day period is burdensome, given that the bank itself will know well in advance of its intention to establish a new branch and can plan accordingly.

This commentor also suggested that the FDIC similarly shorten the 45-day application processing period under 347.108(b) for an eligible bank to make foreign investments not eligible for general consent. Such an application would be required if the eligible bank sought to acquire 20 percent or more of an entity in a jurisdiction which is new to the FDIC as specified in section 347.108(a)(2). In such a case, the FDIC will need a 45-day period to contact host country supervisors and establish a working arrangement with them for cross-border supervision. Moreover, as is the case with the foreign branch application, the FDIC believes that the eligible bank will have sufficient advance notice of its desire to make such a significant investment that the bank can give the FDIC 45 days advance notice. Another situation in which such an application would be required is if an eligible bank with no existing foreign banking experience seeks to make a foreign investment. In such cases, 45 days will give the FDIC necessary time to work with the applicant to ensure it has appropriate operational and management systems in place to deal with the unique risks posed by foreign investments. Finally, such applications are required if an eligible bank seeks to invest more than five percent of its Tier 1 capital (plus an additional five percent for trading purposes) in a 12-month period. While the FDIC has no desire that state nonmember banks be thwarted in their efforts to obtain sound investment opportunities abroad which require swift action, given that the total outstanding foreign investments of even the most internationally active state nonmember banks is generally in the range of 10–15 percent of Tier 1 capital at present, it is the FDIC's opinion that the five percent threshold allows sufficient flexibility for institutions to take advantage of investment opportunities.

In addition, as a result of another comment, the FDIC has modified its application procedures so that applications subject to expedited processing under the 45-day period may be approved by delegated authority prior to the expiration of such period. Thus, if the application presents no special concerns or any such concerns are resolved promptly, approval can be granted prior to the expiration of the 45 day period.

In a similar vein, one commenter requested additional information about what considerations would be involved and what timing would apply if an application was subject to regular processing because the branch or foreign organization is located in a country whose laws or practices limit the FDIC's access to information for examination and other supervisory purposes. The commenter also requested that the FDIC consider any precedent regarding the country in question that has been developed by the OCC or the FRB. The FDIC's concern is that it have sufficient access to information as is necessary to evaluate the impact of the foreign operation on the insured state nonmember bank, and to serve the FDIC's international supervisory obligations as the nonmember bank's home country supervisor. In conducting this review, the FDIC will take into account any information obtained from, and experience gained by, the OCC and the FRB in supervising similar foreign operations of member banks in the foreign country. The FDIC's approach to applications involving secrecy jurisdictions will depend on the facts of the case, but generally speaking, the FDIC is likely to consider some or all of the following.

The FDIC will assess the nature and extent of the secrecy restriction, with particular focus on the matters which are to be kept secret, whether there are appropriate exceptions for regulators, and whether the FDIC is within the scope of such exception. The FDIC will also consider whether the host country supervisor possesses, and exercises when appropriate, a right of access, and whether there is some other appropriately independent third party, such as an independent auditor, which has access to, and systematically evaluates, the relevant operations. The nature and extent of the foreign operation's dealing with customers will be taken into account. If total access is not possible, the FDIC will take into account the practicability of alternate precautions, such as duplicate record-keeping in the U.S., reliance on host country supervisors and recognized external auditors, the use of special operating policies at the foreign organization, and the systematic use of customer confidentiality waivers.

As for timing, the FDIC has recently approved certain applications from insured state nonmember banks seeking to establish foreign operations in secrecy jurisdictions. As the cases were ones of first impression, and involved issues of significant concern, processing took longer than would otherwise be the case. Now that the FDIC has begun to establish a framework for addressing these types of applications, future applications will be processed more quickly. In the final rule, the FDIC has also expanded the delegations of authority for approving foreign branch and foreign investment applications involving secrecy jurisdictions. These applications may be approved under delegated authority whenever the approving official is satisfied that adequate arrangements have been made (through conditions imposed in connection with the approval and agreed to in writing by the applicant) to ensure necessary FDIC access to information for supervisory purposes. In addition, as with any application, processing will be faster to the extent the applicant discloses sufficient information about its proposal in the first instance such that the FDIC can identify all issues raised therein early in the review procedure.

This commenter also appeared to be under the impression that regular processing is required for an application to establish a branch, or to acquire 20 percent or more of a foreign organization, in a country in which there is not already a foreign bank subsidiary of a state nonmember bank. In actuality, there is no such condition in connection with general consent or expedited processing for branch applications. In addition, although § 347.108(a)(2) imposes such a condition upon general consent approval for investing in 20 percent or more of a foreign organization, expedited processing is still available for eligible institutions under § 347.108(b) in the absence of general consent.

Foreign Experience of Applicants

Regarding the FDIC's general consent under § 347.103(b) for a nonmember bank to establish or relocate a foreign branch in any country in which it already maintains a branch, the FDIC received a comment suggesting the authority be expanded to include any country in which the bank already controls a foreign organization. The FDIC has not adopted this suggestion. Such foreign organizations may not necessarily be engaged in banking, and may not have given the applicant sufficient familiarity with the conduct of banking in the country in question. For example, § 347.104(b) authorizes the establishment of foreign organizations engaged in management consulting, or data processing. However, in response to this comment, the FDIC has expanded final § 347.103(b) to include any jurisdiction in which the nonmember bank already has a foreign bank subsidiary. The FDIC has also decided to make expedited processing available for a nonmember bank to establish a foreign branch in a country in which an affiliate has a foreign bank subsidiary, foreign branch, or Edge or Agreement corporation. Also, the FDIC has made conforming changes to the category of banks eligible for expedited processing of foreign branch applications under § 347.103(c) of the final rule. The FDIC proposed that expedited processing be available to eligible banks with foreign branches or foreign affiliates in two or more countries, but the final rule takes into account other banking-related operations of the bank or its affiliates.

For the same reason that the FDIC has not extended foreign branch approval procedures so far as to take all foreign organizations into account, the FDIC has changed proposed § 347.108(a)(1), which required a nonmember bank or an affiliate to own a foreign organization subsidiary before the bank could exercise general consent authority to invest in foreign organizations. Under the final rule, ''foreign organization'' subsidiary has been changed to ''foreign bank'' subsidiary. Upon further consideration, the FDIC has become concerned that foreign organizations may not necessarily be engaged in banking, and may not have given the applicant sufficient familiarity with the conduct of banking. However, the FDIC has also expanded § 347.108(a)(1) to make general consent available if a nonmember bank has a foreign branch, or an affiliate with a banking-related office abroad.

This commenter also suggested that proposed § 347.108(a)(2), which conditioned the availability of general consent authority to invest in 20 percent or more of a foreign organization upon the existence of a foreign organization subsidiary of a state nonmember bank in the country in question, be similarly expanded to include any country in which a state nonmember bank maintains a foreign branch. The FDIC is not making this change at this time, out of a concern that many state nonmember banks currently operate ''nameplate'' branches in several foreign countries, involving little actual presence in the

foreign country since all operations are effectively conducted in the United States. Authorization of free-standing foreign organizations in such countries may require more extensive analysis by the FDIC and more extensive coordination with host country supervisors, and it is thus appropriate to deal with such applications through expedited processing. In addition, although the FDIC proposed that the § 347.108(a)(2) condition could be satisfied through the existence of a ''foreign organization'' subsidiary in the foreign country, upon further consideration of the issue, the FDIC has decided to require the existence of a ''foreign bank'' subsidiary. The FDIC is doing this out of a concern that a foreign organization may not necessarily be engaged in banking, and the FDIC consequently may not have evaluated all necessary factors. For example, as noted above, § 347.104(b) authorizes the establishment of foreign organizations engaged in management consulting, or data processing.

This commenter also requested that the FDIC adopt some mechanism to inform the public of the list of foreign countries in which state nonmember banks have foreign bank subsidiaries, so that affected banks can easily determine whether the § 347.108(a)(2) condition is satisfied. The FDIC will make such information available through its Internet web site, www.fdic.gov, in the near future.

In addition, this commenter pointed out that the preamble to the proposed rule created confusion as to whether the § 347.108(a)(2) condition would be satisfied if the state nonmember bank seeking to exercise general consent authority was the only state nonmember bank with a foreign bank subsidiary in the foreign country in question. In such a case, the condition would indeed be satisfied. There is no requirement that some *other* state nonmember bank have a foreign bank subsidiary in the foreign country. The purpose of the § 347.108(a)(2) condition is to ensure the FDIC has experience with the jurisdiction and a working relationship with its supervisors. These goals will be met regardless of whether the state nonmember bank presence in the foreign country is that of the state nonmember bank making the investment, or another state nonmember bank.

Delegations of Authority

One commenter suggested that the FDIC Board of Directors should delegate its authority to authorize foreign branches, or foreign organizations in which state nonmember banks invest, to engage in activities not specifically set out in subpart A (including incidental activities in the United States), or to engage in such activities in a greater amount. This commenter also suggested delegation of the Board's authority to approve extensions of the two-year holding period for nonconforming foreign investments obtained in satisfaction of debts previously contracted. However, the FDIC feels that these issues are of such significance that they should be determined by the Board. In addition, the commenter was under the impression that a state nonmember bank seeking to invest in a foreign organization which conducts equity securities underwriting and dealing activity within the limits contained in subpart A would be required to obtain Board approval. Under the rule, Board approval would be required from a state nonmember bank seeking to invest in a foreign organization which would conduct underwriting and dealing activities in excess of subpart A's limits. However, for equity securities underwriting and dealing activities within the limits of § 347.105, the Board has delegated its authority regarding the prior approval required by § 347.104(b)(3).

Eligible Bank Definition

Regarding the definition of an ''eligible insured state nonmember bank'' under proposed section 347.102(c), one commenter noted that a bank must have a satisfactory or better Community Reinvestment Act (CRA) (12 U.S.C. 2901 *et seq.*) rating in order to meet the definition, but that ''special purpose'' banks which are exempt from CRA will not have been assigned CRA ratings. Under the FDIC's CRA regulations at 12 CFR part 345, special purpose banks that do not perform commercial or retail banking services by granting credit to the public in the ordinary course of business, other than as is incidental to their specialized operations, are not subject to examination under the FDIC's CRA regulations (12 CFR 345.11(c)(3)). The FDIC does not intend to apply the CRA element of the definition of an eligible insured state nonmember bank to a special purpose bank which is not subject to examination under the FDIC's CRA regulations. Language to this effect has been added to the definition. The substantive portions of the definition have also been transferred to § 347.401 of the final rule, in order to more appropriately locate the definition with the application processing requirements in subpart D, and § 347.102(c) now simply cross-references to the definition in § 347.401. Additional changes to the eligibility definition are discussed in connection with subpart D, below.

Substantive Comments

The public comments received by the FDIC also addressed three substantive issues. The first concerns the FDIC's list of authorized financial activities for a foreign organization in which a state nonmember bank may invest (§ 347.104(b)). One commenter, noting the FDIC's inclusion of activities authorized under Regulation Y (12 CFR 225.28(b)) as being closely related to banking under section 4(c)(8) of the Bank Holding Company Act (Regulation Y list), suggested the FDIC also include any activity determined by the OCC to be incidental to the business of banking under section 24(Seventh) of the National Bank Act (12 U.S.C. 24(Seventh)). The FDIC has not added such a reference. The list of financial activities authorized under section 347.104(b) as a whole is quite extensive, and should be sufficient to permit nonmember banks to maintain a competitive footing abroad. Adoption of an additional analytical approach to authorizing activities abroad, incorporating the ''incidental to the business of banking'' test, seems unnecessary.

The second substantive comment concerns the FDIC's identification of specific items on which a state nonmember bank should maintain a system of records, controls and reports about the activities of its foreign branches and organizations (§ 347.110(a)(1)–(4)). One commenter was concerned that the list of specific items might be strictly applied, without making allowances for the nature of the foreign operation's particular transactions. As an example, the commenter noted that a recent borrower financial statement, listed in § 347.110(a)(1)(i), might not be necessary for an extension of credit collateralized by investment grade securities with a market value of 150 percent of the outstanding loan amount. To address this concern, the FDIC has changed the language of the regulation slightly, so that the detailed list of items to be held in connection with risk assets (§ 347.100(a)(1)(i)–(v)) and to be included in audit reports (§ 347.110(a)(1)(4)(i)–(vi)) is illustrative rather than mandatory. However, the FDIC cautions bank management that the bank must maintain a system which, at a minimum, meets the informational objectives spelled out in § 347.110(a)(1)–(4).

The third substantive comment concerns the FDIC's limitation on mutual fund activities of a foreign

organization in which a state nonmember bank invests (§ 347.104(b)(4)). This section permits the foreign organization to organize, sponsor, and manage a mutual fund, but only if the fund's shares are not sold or distributed in the United States or to U.S. residents and the fund does not exercise management control over the firms in which it invests. The commenter did not object to the latter restriction concerning control, but suggested that the FDIC should permit the mutual fund shares to be sold or distributed in the United States or to U.S. residents so long as the fund was not required to be registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1). The standard which the FDIC proposed under § 347.104(b)(4) is consistent with what is permissible for a member bank under the FRB's current standard in Regulation K. The commenter's proposed modification raises potential legal and supervisory issues which the FDIC would prefer not to address in a vacuum, in the absence of specific facts about the product in question. If a state nonmember bank wishes in the future to invest in a foreign organization which will organize or sponsor a mutual fund whose shares will be distributed or sold in the United States or to U.S. residents, the bank may submit an application to the FDIC.

C. Other Changes from Proposed Subpart A

In addition to the changes the FDIC has made to proposed subpart A in response to public comments, the FDIC has made three additional changes concerning foreign branches of state nonmember banks. First, the proposal's definition of a ''foreign branch'' in § 347.102(i) erroneously covered offices located in territories of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Virgin Islands. This is inconsistent with the current definition in current § 347.2(a) and section 3(o) of the FDI Act (12 U.S.C. § 1813(o)), and the final definition in § 347.102(i) has been corrected accordingly.

Second, under proposed § 347.103(b), the FDIC provided its general consent for an eligible bank to establish additional branches in a country in which it already maintained a branch, or to relocate an existing branch within a foreign country. This had the effect of requiring a bank which did not meet the criteria of an eligible insured state nonmember bank to go through the full application process to relocate an existing foreign branch within a foreign country. Upon further consideration, the FDIC does not see the necessity for a general rule requiring full applications for such relocations, given the limited impact they would have on the nonmember bank and the FDIC's ability to suspend general consent as to any particular institution if necessary. Therefore, under § 347.103(b)(2) of the final rule, the FDIC gives its general consent for relocations of existing foreign branches.

Third, in the proposed rule, the FDIC indicated it was considering whether to authorize foreign branches to underwrite, distribute and deal, invest in and trade obligations of any foreign government (as opposed to the current authorization which extends only to obligations of the country in which the branch is located). The FDIC has decided to adopt this proposal, but has added an additional requirement that the non-local obligations be rated investment grade by at least two established international rating agencies. In contrast to the situation in the U.S., foreign sovereign debt is frequently rated. Nonmember banks still have the option of making an application to the FDIC to include unrated investment quality obligations as part of their foreign branch's line of business in this regard.

D. Description of Final Rule, Subpart A

Foreign Branches

The most significant change from current part 347 is the FDIC's grant of authority to a nonmember bank meeting certain eligibility criteria to establish foreign branches under general consent or expedited processing procedures. The existing list of foreign branch powers under current § 347.3(c) has also been redrafted to bring it more in line with modern banking practice. The final rule also introduces expanded powers for foreign branches to underwrite, distribute, deal, invest in, and trade foreign government obligations.

The general consent and expedited processing procedures are discussed in detail in the analysis of subpart D, below, but to summarize them briefly, § 347.103(b) gives the FDIC's general consent for a nonmember bank to relocate existing foreign branches within a foreign country, and for an eligible nonmember bank—one which is well-capitalized, well-rated under certain supervisory assessment benchmarks, and has no supervision problems—to establish branches within a foreign country in which the nonmember bank has a branch or a foreign bank subsidiary. By expedited processing requiring only 45 days prior notice to the FDIC, an eligible nonmember bank may also establish additional branches in a country in which an affiliate of the bank operates a foreign bank subsidiary, or in which an affiliated bank or Edge or Agreement corporation operate a foreign branch. An eligible nonmember bank which has established its international expertise by successfully operating such entities in two or more foreign countries may also establish branches in additional foreign countries under expedited processing procedures. There are certain necessary limitations on these general consent and expedited processing procedures, however, as discussed in the analysis of subpart D.

Section 347.103(a) of the final rule lists the permissible activities for a foreign branch. In order to modernize the list of foreign branch powers currently contained in § 347.3(c), the final rule eliminates § 347.3(c)(2) (specific authorization for a foreign branch to accept drafts or bills of exchange), and § 347.3(c)(5) (specific authorization for a foreign branch to make loans secured by real estate). The FDIC has not included a counterpart to the FRB's specific authorization for a foreign branch to engage in repurchase agreements involving securities that are the functional equivalent of extensions of credit. In the FDIC's view, these activities are within the general banking powers of a foreign branch, and thus do not require specific mention on the list of activities which the FDIC has authorized in addition to such general banking powers.

The final rule also eliminates § 347.3(c)(6) (specific authorization for a foreign branch to pay its foreign branch officers and employees a greater rate of interest on branch deposits than the rate paid to other depositors on similar branch deposits). Regulation K presently contains a similar provision. While section 22(e) of the Federal Reserve Act (12 U.S.C. 376) generally limits a member bank's authority to pay employees a greater rate of interest than the rate paid to other depositors on similar deposits, the FDIC is not aware of any current regulatory restrictions directly prohibiting a nonmember bank from doing so, assuming there were no implications of insider abuse or of evading certain limited regulatory requirements concerning executive compensation. Thus, in the FDIC's view, this activity is within the general banking powers of a foreign branch of a nonmember bank.

In addition, the FDIC has not included a counterpart to the FRB's specific authorization for a foreign branch to extend credit to an officer of the branch residing in the foreign country in which the branch is located

to finance the officer's living quarters. In the FDIC's view, this activity is within the general banking powers of a foreign branch, provided that the bank observes prudent banking practices and Regulation O limits on loans to the bank's executive officers. Given that Regulation O currently permits a bank to finance an executive officer's purchase, construction, maintenance, or improvement of a personal residence, the FDIC need not specifically authorize it here.

To update the current authorization under § 347.3(c)(3) to hold the equity securities of the central bank, clearing houses, governmental entities, and development banks of the country in which the branch is located, final § 347.103(a)(2) adds debt securities eligible to meet local reserve or similar requirements, as well as shares of automated electronic payment networks, professional societies, schools, and similar entities necessary to the business of the branch. Section 347.103(a)(2) continues to set the limit for such investments at one percent of the total deposits in all the bank's branches in that country as reported in the preceding year-end Report of Income and Condition (Call Report), subject to the same exclusions as currently apply for investments required by local law or permissible for a national bank under 12 U.S.C. 24 (Seventh).

The current authorization under § 347.3(c)(4) to underwrite, distribute and deal, invest and trade in obligations of the national government of the country in which the branch is located has been similarly updated. Section 347.103(a)(3) clarifies that obligations of the national government's political subdivisions, and its agencies and instrumentalities if supported by the national government's taxing authority or full faith and credit, are also eligible. The final rule also revises the investment limit to reference ten percent of the nonmember bank's Tier 1 capital, instead of the outdated reference to ten percent of its capital and surplus.

Finally, the FDIC has decided to permit a foreign branch to underwrite, distribute and deal, invest in and trade obligations of any foreign government, rather than just the obligations of the country in which it is located. Section 347.103(a)(3)(ii) permits this activity, so long as the issuing country permits foreign enterprises to do so.

Since Regulation K does not currently authorize member (and thus national) banks to conduct this activity, the FDIC, in adopting the final rule, has determined that the activity does not create a significant risk to the deposit insurance fund, as required by section 24 of the FDI Act and part 362 of the FDIC's rules and regulations.[1] Section 347.103(a)(3)(ii) allows nonmember banks to consolidate these activities, which must currently be carried out in different branch offices in each country, into a single branch office, for more convenient administration and oversight. The non-local obligations are counted as part of the ten percent limit applicable to local obligation underwriting, distribution, investment and trading, and must also be rated as investment grade by at least two established international rating agencies.

Foreign Investments

The final rule completely revises the FDIC's approach to approvals of a nonmember bank's investment in the stock or other evidences of ownership of a foreign bank or other entity. The final rule adopts an approach like that of the FRB under Regulation K. The rule lists the various types of financial activities in which a nonmember bank's foreign subsidiaries and joint ventures may engage. The rule also authorizes limited indirect investment in and trading of the stock of nonfinancial entities. Securities underwriting and dealing abroad up to specified limits is permitted, with the FDIC's prior approval. Moreover, the rule grants eligible nonmember banks the FDIC's general consent to make investments in conformity with the rule up to specified annual limits, and permits additional investments upon 45 days prior notice.

Investment in Foreign Banks and Other Entities Engaged in Financial Activities

Section 347.104(b) contains a list of approved activities which are financial in nature. A foreign subsidiary of a nonmember bank is limited to conducting these authorized financial activities, unless the nonmember bank acquires the subsidiary as a going concern, in which case up to five percent of the subsidiary's assets or revenues may be attributable to activities which are not on the list. Under the definition of ''subsidiary'' at § 347.102(p), a foreign organization is a subsidiary of a nonmember bank if the nonmember bank and its affiliates hold more than 50 percent of the foreign organization's voting equity securities. It is important to note that this definition of a subsidiary differs from the commonly-used subsidiary definition found in section 2(d) of the Bank Holding Company Act (BHCA) (12 U.S.C. 1841(d)). Under section 2(d), subsidiary status typically arises upon ownership of 25 percent or more of the entity's voting securities. The FDIC has adopted the less-inclusive subsidiary definition which is triggered at 50 percent rather than the more commonly-used 25 percent in order to maintain consistency with the corresponding provisions of Regulation K. This less-inclusive approach is also carried through to the definition of an affiliate under § 347.102(a), also to maintain consistency with Regulation K.

Subsidiary status under § 2(d) of the BHCA also arises when the parent controls in any manner the election of the majority of the subsidiary's directors in any manner or if the parent has the power to directly or indirectly exercise a controlling influence over the management and policies of an organization. In contrast, the final rule separates these elements out into their own definition of ''control'' at § 347.102(b). Section 347.102(b) also provides that control is deemed to exist whenever a nonmember bank or its affiliate is a general partner of a foreign organization. As is the case with subsidiaries, any foreign organization which is controlled by a state nonmember bank or its affiliates, regardless of the percent of voting stock owned by the state nonmember bank, is limited to conducting approved financial activities contained on the § 347.104(b) list, subject to the same five percent exception for going concerns.

If a nonmember bank and its affiliates hold less than 50 percent of the voting equity securities of a foreign organization and do not control the organization, up to 10 percent of the organization's assets or revenues may be attributable to activities which are not on the list. If the nonmember bank and its affiliates' hold less than 20 percent of a foreign organization's voting equity interests, the nonmember bank is prohibited from making any loans or extensions of credit to the organization which are not on substantially the same terms as those prevailing at the time for comparable transactions with nonaffiliated organizations.

The list of authorized financial activities in § 347.104(b) is modeled on the FRB's corresponding provision in Regulation K, 12 CFR 211.5(d). The final rule reorders the activities in an effort

[1] Because section 24 only permits the FDIC to authorize equity investments which are not permissible for a national bank through a majority-owned subsidiary, proposed § 347.103(a)(3)(B) requires any foreign government obligations which constitute equity interests to be held through a subsidiary of the foreign branch. However, practically speaking, the vast majority of foreign government obligations are debt obligations instead of equity interests, and could be held at the branch level.

to group similar activities together, and where there are conditions and limitations on the conduct of a particular activity, this additional information is separately set out in §§ 347.105 and 347.106. Additional activities require the FDIC's approval.

The final rule does not include six activities which currently appear in Regulation K. The FDIC has not included these activities, because they are each authorized under Regulation Y (12 CFR 225.28(b)) as being closely related to banking under section 4(c)(8) of the Bank Holding Company Act (Regulation Y list), and the final rule authorizes foreign investment organizations to engage in any activity on the Regulation Y list. The omitted activities are: financing; acting as fiduciary; providing investment, financial, or economic advisory services; leasing real or personal property or acting as agent, broker or advisor in connection with such transactions if the lease serves as the functional equivalent of an extension of credit to the lessee; acting as a futures commission merchant; and acting as principal or agent in swap transactions.

In addition, § 347.104(b) contains certain activities—for example, data processing—which are also authorized by the Regulation Y list, but are subject to certain additional limitations and conditions under Regulation Y. In such cases, the activities are included in § 347.104(b) because a foreign investment entity is permitted to conduct them under the less restrictive terms of § 347.104(b). But in cases in which the nonmember bank relies solely on § 347.104(b)'s cross-reference to the Regulation Y list as authority to conduct an activity, the foreign investment entity must comply with the attendant restrictions in 12 CFR 227.28(b).

Also, in the case of one activity authorized by § 347.104(b)'s cross-reference to the Regulation Y list, acting as a futures commission merchant (FCM), the FDIC has imposed one restriction in addition to the restrictions imposed by Regulation Y at 12 CFR 225.28(b). Under § 347.106(a), a foreign investment entity may not have potential liability to a mutual exchange or clearing association of which the foreign investment entity is a member exceeding an amount equal to two percent of the nonmember bank's Tier 1 capital, unless the FDIC grants its prior approval.

Unlike Regulation K, the FDIC's rule authorizes nonmember banks to directly invest in foreign organizations which are not foreign banks. Under 12 CFR 211.5(b)(2), the only foreign organizations in which member banks are permitted to invest directly are foreign banks; foreign organizations formed for the sole purpose of either holding shares of a foreign bank or for performing nominee, fiduciary, or other banking services incidental to the activities of the member bank's foreign branches or affiliates; or subsidiaries of foreign branches authorized under 12 CFR 211.3(b)(9). Any investment by a member bank in a foreign organization which is not one of these types of entities must be made indirectly, through an Edge corporation subsidiary or foreign bank subsidiary of the member bank. This limitation arises out of the language of section 25 of the Federal Reserve Act, which generally limits the direct investments of member banks to foreign banks. In contrast, section 18(l) of the FDI Act permits state nonmember banks, to the extent authorized by state law, to invest in foreign ''banks or other entities.'' As discussed above, the legislative history of section 18(l) shows that Congress was, at the time it created section 18(l), mindful of the FRB's parallel authority over member banks under section 25. Therefore, the FDIC interprets the difference between the two statutes to be significant, and the type of foreign organizations in which a state nonmember bank may invest directly are not restricted by section 18(l).

A national bank's inability to invest directly in the shares of a nonbank foreign organization raises issues under section 24 of the FDI Act and part 362 of the FDIC's rules and regulations. If a nonmember bank acquires a sufficient stake in a nonbank foreign organization such that the nonbank foreign organization is a ''majority-owned subsidiary'' [2] of the state nonmember bank for purposes of section 24, no section 24 analysis is required. This is because subpart A of part 347 only authorizes foreign organizations to engage in the same activities which the FRB has authorized for the foreign subsidiaries of member (and thus national) banks. Therefore, the nonmember bank's foreign subsidiary can only engage as principal in the same activities permitted for a foreign subsidiary of a national bank, and section 24's application requirement is never triggered.

If the nonmember bank holds a lesser amount of the nonbank foreign organization's shares, such that it does not rise to a ''majority-owned subsidiary'' within the meaning of section 24 and part 362, the FDIC is required by section 24 and part 362 to determine that the nonmember bank's equity investment in a nonbank foreign organization does not pose a significant risk to the appropriate deposit insurance fund. The FDIC has determined that dispensing with the intermediate foreign bank subsidiary or Edge subsidiary, the vehicle through which a national bank is permitted to make this type of investment, is simply a structural matter that does not create a significant risk to the deposit insurance fund. The final rule therefore authorizes nonmember banks to hold such non-majority equity interests. However, section 24 and part 362 provide that the FDIC may only permit equity investments to be held by the bank through a majority-owned subsidiary. The final rule therefore requires these investments to be held through some form of U.S. or foreign majority-owned subsidiary.

The final rule does not include one activity authorized by Regulation K concerning a foreign investment entity's ability to underwrite life, annuity, pension fund-related, and other types of insurance, where the associated risks have been determined by the FRB to be actuarially predictable. Under Regulation K, the FRB has not given general authorization for this activity to be conducted directly or indirectly by a subsidiary of a member bank. Since the activity is thus not generally permissible for a subsidiary of a national bank, a section 24 issue arises. However, under section 24(b) and 24(d)(2), the FDIC may not give section 24 approval for a state bank or its subsidiary to engage in insurance underwriting if it is not permissible for a national bank, or is not expressly excepted by other subsections of section 24 covering limited types of insurance underwriting. Therefore, the FDIC is presently foreclosed from granting general regulatory authorization for nonmember banks to underwrite life, pension fund-related, or other types of insurance in this fashion. This prohibition does not extend to annuity underwriting, and a nonmember bank which wishes to underwrite annuities through a foreign organization may apply to the FDIC

[2] Section 24 and part 362 do not set out a separate definition of ''majority-owned subsidiary.'' Part 362 defines a ''subsidiary'' to mean any company directly or indirectly controlled by an insured state nonmember bank. Part 362 further defines ''control'' to mean the power to vote, directly or indirectly, 25 percent or more of any class of the voting stock of a company, the ability to control in any manner the election of a majority of a company's directors or trustees, or the ability to exercise a controlling influence over the management and policies of a company. A state nonmember bank thus holds a company as a ''majority-owned subsidiary'' when the bank holds more than 50 percent of the company's stock. This is equivalent to the definition of ''subsidiary'' in proposed § 347.102(p).

under the final rule and part 362 for specific approval to do so.

Portfolio Investments in Nonfinancial Foreign Organizations

Section 347.104(g) of the final rule authorizes nonmember banks to make portfolio investments in a foreign organization without regard to whether the activities of the organization are authorized financial activities listed in § 347.104(b). Aggregate holdings of a particular foreign organization's equity interests by the nonmember bank and its affiliates must be less than 20 percent of the foreign organization's voting equity interests and 40 percent of its total voting and nonvoting equity interests. The latter restriction prevents a nonmember bank from, by obtaining a large equity position albeit a nonvoting one, obtaining a level of influence over the foreign organization which is inconsistent with the notion of a portfolio holding. The nonmember bank and its affiliates are not permitted to control the foreign organization, and any loan or extensions of credit to the foreign organization must be on substantially the same terms as those prevailing at the time for comparable transactions with nonaffiliated organizations.

Section 347.104(g) limits these investments in nonfinancial foreign organizations to an amount equal to 15 percent of the nonmember bank's Tier 1 capital. In contrast to the FDIC's approach with foreign organizations engaged primarily in financial activities authorized under § 347.104(b), § 347.104(g) does not displace current limitations prohibiting member (and thus national) banks from making nonfinancial portfolio investments at the bank level or through a domestic subsidiary of the bank. Section 347.104(g) requires these investments to be held through a foreign subsidiary, or an Edge corporation subsidiary (subject to the FRB's authorization). The FDIC is authorizing these portfolio investments so that a nonmember bank's foreign bank and other financial subsidiaries can compete effectively in their foreign markets. It is therefore not necessary to authorize portfolio investments at the bank or domestic subsidiary level.

U.S. Activities of Foreign Organizations

As discussed above, section 18(l) of the FDI Act states that the foreign organizations in which nonmember banks invest may not engage in any activities in the U.S. except as the Board of Directors, in its judgment, has determined are incidental to the international or foreign business of the foreign organization. Section 347.107 of the final rule addresses what activities may be engaged in within the United States. The rule prohibits a nonmember bank from investing in any foreign organization which engages in the general business of buying or selling goods, wares, merchandise, or commodities in the U.S., and prohibits investments totaling over five percent of the equity interests of any foreign organization if the organization engages in any business or activities in the U.S. which are not incidental to its international or foreign business. A foreign organization will not be considered to be engaged in business or activities in the U.S. unless it maintains an office in the U.S. other than a representative office.

This structure follows the one established by the FRB under Regulation K. The FDIC is including the five percent threshold and the U.S. office threshold in acknowledgment that the U.S. is a leading international market and a substantial number of foreign organizations transact some portion of their business here. If nonmember banks are prohibited from investing in every foreign organization which does even a limited amount of its business in the U.S., nonmember banks will be at a disadvantage *vis a vis* their international financial institution competitors.

Beyond these thresholds, the regulation permits foreign organizations to conduct activities that are permissible in the U.S. for an Edge corporation, or such other business or activities as are approved by the FDIC. In approving additional activities, the FDIC will consider whether the activities are international in character. For activities proposed by a foreign subsidiary or joint venture of a nonmember bank, the FDIC will also consider whether the activity would be conducted through a foreign organization to circumvent some legal requirement which would apply if the nonmember bank conducted the activity through a domestic organization.

Underwriting, Distributing, and Dealing Equity Securities Outside the United States

Under the final rule, a foreign investment entity of a nonmember bank is permitted to underwrite, distribute, and deal equity securities outside the United States. Briefly summarized, the final rule imposes three main limits as part of § 347.105.

First, underwriting commitments for a single issuer may not exceed an amount equal to the lesser of $60 million or 25 percent of the nonmember bank's Tier 1 capital.

Second, distribution and dealing shares of a single entity may not exceed an amount equal to the lesser of $30 million or five percent of the nonmember bank's Tier 1 capital.[3]

Third, the sum of underwriting commitments, distribution and dealing shares, and any portfolio investments in nonfinancial foreign organizations under § 347.104(g) may not exceed an amount equal to 25 percent of the nonmember bank's Tier 1 capital.

Each of these three limits is discussed further below. In determining compliance with these limits, the nonmember bank counts all commitments of and shares held by each foreign organization in which the nonmember bank has invested pursuant to subpart A of part 347. The nonmember bank also counts all commitments of and shares held by foreign organizations in which the nonmember bank's affiliates have invested pursuant to subpart A of Regulation K.

The $60 million/25 percent underwriting commitment limit may be exceeded to the extent the commitment is covered by binding commitments from subunderwriters or purchasers. The limit may also be exceeded to the extent the commitment is deducted from the nonmember bank's capital and the bank remains well-capitalized after the deduction. At least half of this deduction must be from Tier 1 capital, and the deduction applies for all regulatory purposes.

The $30 million/five percent limit on the equity securities of a single entity which may be held for distribution or dealing is subject to two exceptions. First, in order to facilitate underwritings, any equity securities acquired pursuant to an underwriting commitment extending up to 90 days after the payment date of the underwriting are not included in the limit. Second, up to 75 percent of the position in an equity security may be reduced by netting long and short positions in the identical equity security, or by offsetting cash positions against derivative instruments referenced to the same security. The provision permitting netting of derivative positions is intended to recognize the beneficial impact of prudent hedging strategies, and encourage such strategies where the nonmember bank and the foreign organization determines they are appropriate. The FDIC expects a nonmember bank asserting netting involving derivatives to be able to

[3] Regulation K currently authorizes the lesser of $30 million or 10 percent.

establish the validity of the hedging strategy to the nonmember bank's examiners.

If the nonmember bank's foreign organizations hold the same equity securities for distribution and dealing as well as for investment or trading pursuant to § 347.104 or the corresponding provision of Regulation K, two additional considerations apply.

First, the investment or trading securities are included in calculating the $30 million/five percent per-entity distribution and dealing limit, in order to prevent securities which are potentially distribution or dealing inventory from being characterized as investment or trading shares. Conversely, if the nonmember bank relies on the general consent provisions under proposed § 347.108 to acquire the securities for investment or trading purposes, distribution and dealing securities are counted towards the general consent investment limits.

Second, equity interests in a particular foreign organization held for distribution and dealing are required to conform with the limits of § 347.104. Equity interests held for distribution or dealing by an affiliate permitted to do so under § 337.4 of the FDIC's rules and regulations (12 CFR 337.4) or section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) are counted for this limit. If the nonmember bank's foreign organizations hold equity interests in the same entity for investment and trading purposes, such interests are included in determining compliance with these limits. However, in order to permit 100 percent underwriting, the final rule contains an exception for equity securities acquired pursuant to an underwriting commitment for up to 90 days after the payment date for the underwriting.

The combined limit, under which nonfinancial portfolio shares, underwriting commitments, and distribution and dealing shares are limited to 25 percent of the nonmember bank's Tier 1 capital, only includes underwriting commitments net of amounts subject to commitments from subunderwriters or purchasers or already deducted from the nonmember bank's capital. Equity securities held for distribution or dealing are only counted net of any position reduction through netting, as permitted in connection with the five percent dealing limit.

Approval of Investments

The final rule permits a nonmember bank meeting certain eligibility criteria to make foreign investments pursuant to general consent and expedited processing procedures. These procedures are discussed in detail in the analysis of subpart D below, but to summarize them briefly, § 347.108 grants the FDIC's general consent for nonmember banks meeting the same eligibility criteria as apply in the foreign branching context to invest up to five percent of their Tier 1 capital in any 12-month period in foreign investments, plus up to an additional five percent in equity interests for trading purposes. A sublimit of two percent of Tier 1 capital per foreign organization applies. The nonmember bank must already operate at least one foreign branch or foreign bank subsidiary, or an affiliate of the bank must operate a foreign bank subsidiary, or an affiliated bank or Edge or Agreement corporation must operate a foreign branch. In addition, at least one nonmember bank must have a foreign bank subsidiary in the relevant foreign country, in order for general consent to be applicable. An investment that does not qualify for general consent, but is otherwise in compliance with the rule, may be made by an eligible bank upon 45 days prior notice under the expedited processing procedure. There are certain necessary limitations on these general consent and expedited processing procedures, however, as discussed in the analysis of subpart D.

Extensions of Credit

Section 347.109(a) of the final rule does not alter the FDIC's current treatment under § 347.5 of extensions of credit to foreign investment entities: the limitations of section 18(j) of the FDI Act, incorporating by reference the interaffiliate transaction restrictions of sections 23A and 23B of the Federal Reserve Act, do not apply.

Debts Previously Contracted

With one exception, § 347.109(b) of the final rule does not alter the FDIC's current treatment under § 347.4(b), whereby equity interests acquired to prevent loss on a debt previously contracted in good faith are not subject to the limits and approvals of the regulation. The FDIC is extending the time period an institution is granted to dispose of such equity interests without the FDIC's specific approval under part 347 from one to two years. The extension is not intended to relieve an institution from its general obligation to dispose of the investment promptly under the circumstances and make diligent efforts to such end. However, extending the point at which an application is required reduces administrative burden, and the FDIC can monitor the progress of divestiture efforts as part of the normal examination cycle. As with the current requirements of § 347.4(b), the final rule is not intended to displace any of the nonmember bank's concurrent obligations under state law, or extend a state law divestiture or approval period of less than two years.

E. Supervision and Recordkeeping for Foreign Branches and Investments

Section 347.110 of the final rule does not alter the FDIC's current requirements for reporting and recordkeeping under current § 347.6. These requirements are intended to facilitate both the nonmember bank's oversight of its foreign operations and the FDIC's supervision of them. The final rule adds one new element. If a nonmember bank seeks to establish a foreign branch, or acquire a foreign joint venture or subsidiary, in a country in which applicable law or practice would limit the FDIC's access to information about the branch or subsidiary for supervisory purposes, the nonmember bank may not rely on the FDIC's general consent or expedited processing procedures to do so. In such cases, the FDIC must have an opportunity to evaluate the impact of the limits on the FDIC's access, and determine whether the FDIC can still serve its domestic and international supervisory obligations through measures such as duplicate record-keeping in the U.S., reliance on host country supervisors, operating policies of the foreign organization, or reliance on recognized external auditors.

II. Subpart B—Deposit Insurance Requirements for State Branches and Foreign Banks Having Insured Branches

A. Background

Subpart B, like current part 346 of the FDIC's Rules and Regulations, implements certain provisions of the International Banking Act of 1978 (IBA) (Pub. L. 95–369), as amended, and corresponding provisions of the FDI Act. Subpart B establishes the permissible deposit-taking activities of uninsured state licensed branches of foreign banks. Subpart B also establishes certain rules applicable to insured branches of foreign banks, whose ability to conduct domestic retail deposit activity is grandfathered under the Foreign Bank Supervision Enhancement Act of 1991 (FBSEA) (Title II, subtitle A of the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102–242). These rules cover asset pledge and asset maintenance requirements for insured branches, approval requirements for any activities

not permissible for federal branches, and information-related items.

The FDIC received no public comments on proposed subpart B. The FDIC is issuing the final version of subpart B without change from the proposal. As the FDIC discussed in the NPR, the only significant change from current part 346 is the addition of regulatory language conforming to FBSEA's requirement that foreign banks conduct all domestic retail deposit activity through a U.S. insured bank subsidiary. Insured branches of foreign banks will also be required to calculate and report compliance with the pledge of asset requirement on a quarterly basis. These differences, and other changes from current part 346, are highlighted in the following description of subpart B.

B. Description of Final Rule, Subpart B

The definitions in § 347.202 are unchanged from current part 346, except that substantive limitations contained in some of the definitions have been moved to the appropriate substantive rule itself.

Section 347.203, requiring all branches of the same foreign bank in the same state which accept initial deposits in an amount of less than $100,000 to be insured, is unchanged from current part 346.

Section 347.204 has no counterpart in current part 346. However, the FDIC is merely implementing FBSEA provisions which have applied by their own terms since December 19, 1991. Thus, § 347.204 does not impose any new restrictions on foreign banks. FBSEA amended section 6(c) of the IBA (redesignated section 6(d) in 1994, 12 U.S.C. 3104(d)) to require any foreign bank intending to conduct domestic retail deposit activities in any state in the U.S. to organize an insured bank subsidiary to conduct these deposit activities. However, any insured branches which were accepting or maintaining domestic retail deposit accounts on December 19, 1991, are allowed to continue to operate as insured branches conducting domestic retail deposit activities. IBA section 6(d)(3) also exempts any bank organized under the laws of any territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands the deposits of which are insured by the FDIC pursuant to the FDI Act. This allows insured banks organized under the laws of the jurisdictions included therein to conduct any domestic retail deposit activities in the United States through insured branches, rather than organizing an insured bank subsidiary. This statutory scheme has been reiterated in § 347.204.

In connection with reiterating this statutory scheme in § 347.204, the FDIC has included § 347.204(b), mirroring the exemption for FDIC-insured banks organized under the laws of any territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands set out in IBA section 6(d)(3). The enumerated jurisdictions are commonwealths and territories of the United States which are specifically included within the ''foreign bank'' definition in IBA section 1(b)(7), and which the FDIC has included in the regulatory definition of ''foreign bank'' under § 347.202(g). In drafting the § 347.204(b) exemption, the FDIC has stuck closely to the IBA's statutory language, and has not listed the Northern Mariana Islands among the specifically-enumerated jurisdictions. The Northern Mariana Islands is a commonwealth, and, like the commonwealth of Puerto Rico, is specifically included in the definition of ''State'' for purposes of the FDI Act under section 3(a)(3) thereof (12 U.S.C. 1813(a)(3)). As such, the FDI Act on its face would permit a bank chartered by the Northern Mariana Islands to obtain FDIC insurance. Therefore, there may be an interpretive issue under IBA section 6(d)(3), whether a Northern Mariana Islands bank which had obtained FDIC insurance fell within the section 6(d)(3) exception and was permitted to engage in domestic retail deposit taking in the U.S. through an insured branch. Given that there are currently no Northern Mariana Islands banks with FDIC deposit insurance, the FDIC sees no need to express any interpretive position on this issue at this time.

In consideration of section 6(d) of the IBA, the FDIC has decided it is no longer necessary to have any counterpart to current § 346.8. Section 346.8 authorized foreign banks to seek insurance for a foreign branch even though the foreign branch did not engage in domestic retail deposit activity, and was therefore not required to obtain insurance. On their face, at least, FBSEA's amendments to section 6 of the IBA seem only to reach foreign banks conducting domestic retail deposit activity, and Congress has not repealed section 5(b) of the FDI Act, authorizing deposit insurance applications from foreign branches. Therefore, it may arguably be possible for a foreign branch which does not engage in domestic retail deposit activity to seek deposit insurance from the FDIC. As a practical matter, however, the FDIC does not foresee many circumstances in which it could be appropriate for the FDIC Board of Directors to approve such an application. Moreover, the elimination of § 346.8 does not affect a foreign bank's ability to argue that it may make an application under section 5(b) of the FDI Act. The Board would have to determine whether to actually accept and approve such an application, based upon its review of the facts and circumstances, in addition to the pertinent legal and policy considerations.

Section 347.205 permits an uninsured state foreign branch to operate under an agreement with the FRB which limits the branch to accepting only those deposits which would be permissible for an Edge corporation. This is unchanged from current part 346.

Section 347.206 sets out the rules under which uninsured state foreign branches may, without being deemed to be engaged in domestic retail deposit activity, accept deposits in an initial amount of less than $100,000. The FDIC conducted an exhaustive review of these rules in connection with the enactment of section 107 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (Pub. L. 103–328), and revised them to ensure they are consistent with ''affording equal competitive opportunities to foreign and United States banking organizations in their United States operations [and to] ensure that foreign banking organizations do not receive an unfair competitive advantage over United States banking organizations.'' 12 U.S.C. 3104(a). *See* 61 FR 5671 (February 14, 1996). These revisions to current section 346.6 took effect on April 1, 1996, and the FDIC is only adopting minor, nonsubstantive revisions in connection with this rulemaking. Regulatory language setting out the one percent ''de minimis'' exception is being revised to clearly state the calculation method which the FDIC has long applied in implementing the de minimis exception, but the calculation method is not changed. The FDIC is also relocating the application procedure for foreign branches seeking additional exceptions from the substantive rule to the separate procedural rules on applications, set out in new subpart D of part 347.

Section 347.207, specifying the notice which uninsured state foreign branches must give depositors, makes no changes from the comparable requirements of part 346. The same is true of section 347.208, the agreement by any foreign bank with an insured state branch to provide the FDIC with certain information about the bank and permit the FDIC to examine any of its U.S. operations. The same is also true of

§ 347.209, requiring insured state branches to maintain records on a separate-entity basis, and to maintain a set of records in English.

Section 347.210(a) of the final rule, setting forth the FDIC's requirement that an insured branch pledge assets for the benefit of the FDIC or its designee, contains certain changes from the comparable provisions of current part 346. The pledge requirement remains at five percent of the average of the insured branch's liabilities, as is currently the case, but the final rule requires the pledge to be calculated quarterly, whereas the current rule only requires it to be calculated for the last 30 days of the second and fourth calendar quarters. The final rule provides that the amount of assets that must be pledged to the FDIC will be equal to ''five percent of the average of the insured branch's liabilities for the last 30 days of the most recent calendar quarter.'' This formula will be more straightforward to apply and the calculation thereof will be easier for the insured branches. The final rule also requires the insured branch to provide the appropriate FDIC regional director with a written report regarding the pledged assets on a quarterly basis (§ 347.210(e)(6)(ii)). The current rule only requires semiannual reporting. This new reporting requirement is consistent with other FDIC reporting requirements, such as the filing of Reports of Income and Condition, and with the FDIC's policy of analyzing financial data on a quarterly basis. It is the FDIC's belief that quarterly calculation and reporting requirements do not impose a significant additional burden on insured branches because the information is already being collected and maintained by the bank. Also, § 347.210(e)(4) of the final rule now requires the foreign branch to provide the appropriate FDIC regional director with copies of all the documents and instruments delivered to the depository which holds the pledged assets. Submitting this information to the FDIC will not require additional preparation by the affected banks. Finally, the delegation of authority to the Director of DOS (and to the Deputy Director (DOS)) to enter into or revoke the approval of a pledge agreement or to require the dismissal of a depository pursuant to § 303.8(f) of the FDIC's current rules and regulations has been transferred to proposed § 347.210 as paragraph (f) of that section.

Section 347.211 of the final rule establishes a requirement for insured branches to maintain eligible assets in an amount not less than 106 percent of liabilities. The only change from the corresponding requirements under current part 346 is the addition of language permitting the FDIC to exclude from the eligible asset pool any asset which the FDIC considers not to be bankable.

Section 347.212 permits an insured branch to deduct from its deposit insurance assessment base any deposit to the credit of the foreign bank or any of its offices, branches, agencies, or wholly-owned subsidiaries. This is unchanged from part 346.

Section 347.213 will retain part 346's substantive requirements and standards regarding the necessity for an insured state branch to apply to the FDIC for approval to conduct or continue an activity which is otherwise not permissible for a federal branch. However, the application and plan of divestiture procedures which were formerly found in § 346.101 will be transferred to new § 347.405 of subpart D. Section 347.213, like § 346.101 before it, is modeled in large part on part 362, ''Activities and Investments of Insured State Banks.'' As part of the FDIC's ongoing CDRI review of all of its regulations and written policies, the FDIC has issued a notice of rulemaking to revise part 362. 62 FR 47,969 (September 12, 1997). After the closing of the comment period and the completion of the final part 362, § 347.213 and § 347.405 may be the subject of additional rulemaking proceedings, if necessary, to reflect any changes made to the underlying regulatory scheme governing the permissible activities of insured state banks.

Finally, the language of the rule has been revised throughout where necessary to incorporate references to the appropriate FDIC regional office or official to fully integrate DOS's new Case Manager approach to bank supervision.

III. Subpart C—International Lending

A. Background

The International Lending Supervision Act of 1983 (ILSA), 12 U.S.C. 3901, et. seq, was enacted to assure that the economic health and stability of the United States and the other nations of the world are not adversely affected or threatened by imprudent lending practices or inadequate supervision.

ILSA strengthens supervision of international lending by requiring each federal banking agency to evaluate the foreign country exposure and transfer risk of banks within its jurisdiction for use in the examination and supervision of such banks. 12 U.S.C. 3903. Transfer risk generally refers to the possibility that an asset of a bank 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. To implement this provision, the federal banking agencies, through the Interagency Country Exposure Review Committee (ICERC), assess and categorize countries on the basis of conditions that may lead to increased transfer risk.

In addition, section 905(a) of ILSA directs each federal banking agency to promulgate regulations or orders to require banks within its jurisdiction to establish and maintain a special reserve whenever the agency determines that the quality of a bank's assets has been impaired by a protracted inability of public or private borrowers in a foreign country to make payments on their external indebtedness, or no definite prospects exist for the orderly restoration of debt service. 12 U.S.C. 3904(a). To implement this provision of ILSA, on February 13, 1984, the FDIC, the Office of the Comptroller of the Currency, and the Federal Reserve System (collectively, the federal banking agencies) issued a joint notice of final rulemaking requiring banks to establish special reserves, called Allocated Transfer Risk Reserves (ATRRs), against the transfer risks presented in certain international assets. 49 FR 5587 (February 13, 1984), (codified in part 351 of the FDIC's Rules and Regulations, part 211 (Subpart D of Regulation K) of the Federal Reserve's Regulations,. and part 20 of the Comptroller of the Currency's Regulations). These regulations set forth specific instructions on the accounting treatment for ATRRs. The line item guidance for reporting ATRRs provided in the instructions for the preparation of Consolidated Reports of Condition and Income (Call Reports) refer back to ILSA and the regulations and other guidelines issued by the federal banking agencies. (Schedule RC, Item 4.c in FFIEC Forms 031, 032, 033 and 034.)

In order to simplify the task of preparing Call Reports by gathering all accounting information in one place, the FDIC requested comment in the Notice of Proposed Rulemaking on whether the instructions for the preparation of Call Reports should be amended to include a full description of the accounting treatment of ATRRs. 62 FR 37,748, 37,757–8 (July 15, 1997). The FDIC also requested comment as to whether, if the Call Report instructions are amended, to retain the detailed description of the accounting treatment of ATRRs in the revised regulations or to replace the

regulatory language with a simplified requirement to follow the accounting treatment outlined in the amended Call Report instructions. Call Report instructions are not issued unilaterally by each federal banking agency but are issued under the auspices of the Federal Financial Institutions Examination Council (FFIEC) in consultation with staff of the federal banking agencies. As the FFIEC has not, to date, amended the Call Report instructions to incorporate the detailed instructions for ATRR accounting, the FDIC has decided to retain the description of the accounting treatment in its revised regulation.

Section 906 of ILSA requires the federal banking agencies to promulgate regulations for the accounting for fees charged by banks in connection with international loans and the restructuring of certain international loans. 12 U.S.C. 3905. To implement this requirement, on March 29, 1984, the federal banking agencies issued a joint notice of final rulemaking concerning the accounting for fees on international loans, including restructured international loans. 49 FR 12,192 (March 29, 1984), (codified in part 351 of the FDIC's Rules and Regulations, part 211 (Subpart D of Regulation K) of the Federal Reserve's Regulations, and part 20 of the Comptroller of the Currency's Regulations).

Section 906(a) of ILSA deals specifically with the restructuring of international loans to avoid excessive debt service burden on debtor countries. 12 U.S.C. 3905(a). This section requires banks, in accounting for fees on a restructured international loan, to amortize any fee exceeding the administrative cost of the restructuring over the effective life of each such loan. In order to distinguish between the category of restructured international loans described in section 906(a) of ILSA and all other international loans for the purposes of accounting for fees, the 1984 regulation contained a definition of ''restructured international loan'' designed to meet the particular scope and purpose of section 906(a).

Section 906(b) of ILSA deals with the accounting for fees on all other international loans. 12 U.S.C. 3905(b). This section requires the federal banking agencies to promulgate regulations to account for agency, commitment, management and other fees in connection with such loans to assure that the appropriate portion of such fees is accrued to income over the effective life of each such loan. When ILSA was enacted in 1983 and part 351 was promulgated on March 29, 1984, Congress and the federal banking agencies considered that the broad fee accounting principles for banks then contained in generally accepted accounting principles (GAAP) were insufficient to accomplish adequate uniformity in accounting principles in this area. The preamble to the 1984 rule stated that the agencies would reexamine the need for a discussion of accounting treatment if the FASB were to issue a final pronouncement or standard on this subject. Since that time, the FASB has revised the GAAP rules for fee accounting for loans, including international loans, in a manner that accommodates the specific requirements of section 906(b) of ILSA. As a result, in order to reduce the regulatory burden on insured state nonmember banks and simplify its regulations, the FDIC has decided, in consultation with accounting staffs from the other federal banking agencies, to eliminate from the revised § 347.304(b) of the regulations the requirements as to the particular accounting method to be followed in accounting for fees on international loans and to require instead that state nonmember banks follow GAAP in accounting for such fees. In the event that the FASB changes the GAAP rules on fee accounting for international loans, the FDIC will reexamine its regulation in light of ILSA to assess the need for a revision to the regulation.

B. Discussion of Comments

Only one comment was received on subpart C of the revised regulation. The commenter generally supported efforts by the federal banking agencies to produce greater consistency between the information collected in regulatory reports and general purpose financial statements.

The commenter cited Section 37 of the Federal Deposit Insurance Act (FDIA) for the principle that accounting principles applicable to reports or statements required to be filed with banking agencies by insured depository institutions should depart from GAAP only if the banking agencies determine that the application of GAAP is inconsistent with the objectives stated in that section of the FDIA [4] and the resulting regulatory accounting principles are no less stringent than GAAP. 12 U.S.C. 1831n. However, the commenter failed to note that section 37(a)(2)(A) of the FDIA also provides that any requirement under that section to apply GAAP in reports to be filed with the banking agencies is subject to other requirements of the FDIA ''and any other provision of Federal law.'' 12 U.S.C. 1831n(a)(2)(A). As a result, to the extent that ILSA mandates a certain accounting treatment which differs from GAAP, the requirements of ILSA prevail and the implementing regulation will reflect these requirements.

The commenter also recommended that instructions for accounting for international loan fees and ATRRs should be developed on an interagency basis through proposed changes to the Call Reports rather than in agency-specific regulations. However, ILSA mandates that the federal banking agencies promulgate regulations or orders necessary to implement its provisions. As a result, the FDIC has decided to retain a regulatory requirement for banks to follow the provisions of ILSA. The commenter further proposed that the regulatory provisions dealing with accounting for international loan fees should be replaced with a requirement to follow the accounting treatment outlined in amended Call Report instructions. As noted above, amendments to Call Report instructions are made through the auspices of FFIEC. Call Report instructions have long had detailed instructions on accounting for loan fees generally. However, to date, FFIEC has not acted to revise the Call Report instructions to include detailed information on the accounting for international loan fees or ATRRs. As a result, the FDIC has decided to retain the detailed accounting information in its revised regulation.

The commenter also recommended that the regulatory provisions dealing with international loan fees should be replaced with a requirement to account for loan fees in conformity with the provisions of FASB SFAS No. 91, Accounting for Nonrefundable Fees and Costs Associated with Originating or Acquiring Loans and Initial Direct Costs of Leases and related authoritative pronouncements. The revised § 347.304(b) dealing with accounting for fees on international loans states that, except as specifically provided for restructured international loans, banks should account for fees in accordance with GAAP. As GAAP changes from time to time to reflect changing conditions, the FDIC has decided for the sake of flexibility not to specify that financial institutions follow any particular FASB standard.

The commenter also proposed that the provisions in revised section 347.303 dealing with establishment of ATRRs

[4] FDIA Section 37(a)(1) states that accounting principles applicable to reports filed with banking agencies should (A) result in financial statements and call reports that accurately reflect the capital of the institution, (B) facilitate effective supervision of the institutions, and (C) facilitate prompt corrective action to resolve the institutions at the least cost to the insurance funds. 12 U.S.C. 1831n(a)(1).

should be reevaluated in light of the criteria established in FASB Statements No. 5, Accounting for Contingencies, and No. 114, Accounting by Creditors for Impairment of a Loan (as amended by FASB Statement No. 118, Accounting by Creditors for Impairment of a Loan—Income Recognition and Disclosures). However, a general reliance on GAAP is not appropriate in this instance as ILSA directs the federal banking agencies to require banking institutions to establish and maintain an ATRR whenever, in the judgment of the appropriate banking agency, certain conditions enumerated by statute exist. The determination of the ATRR is conducted on an interagency basis by ICERC.

Lastly, the commenter requested that the Call Report instructions clarify the alternative accounting treatment for ATRRs. As noted earlier, amendments of Call Report instructions are made on an interagency basis through the FFIEC. The commenter also stated that the description of the alternative accounting treatment for ATRRs would permit institutions to charge to the allowance for loan and lease losses (ALLL) impairments of types of international assets which are not chargeable to the ALLL under GAAP. Under the alternative accounting treatment, banks may write down the value of specified international assets by either a reduction in the principal amount of the asset or by a charge to the ALLL. Banks that elect to take a charge to the ALLL, however, are required to replenish the ALLL in an amount necessary to restore it to a level which adequately provides for the estimated losses inherent in the banking institution's loan and lease portfolio in accordance with GAAP. We share the commenter's concern that the alternative accounting treatment provisions should be consistent with GAAP. As a result, in response to the comment, we have modified the description of the alternative accounting treatment to provide that banks may charge to the ALLL only those international assets that can be charged to the ALLL pursuant to GAAP.

C. Changes from Proposed Subpart C

Subpart C in the final regulation differs from the proposed regulation by the addition of § 347.301 dealing with *Purpose, Scope and Authority,* and a separate § 347.302 for *Definitions* and the renumbering of the subsequent sections. These changes are made to conform with the format of the other subparts of part 347.

The definitions of ''international loan'' and ''restructured international loan'' from § 351.2 are retained in the final regulation. These definitions were deleted in the proposed regulation from the section on accounting for loan fees in the interest of simplifying language without any intent to change the applicability of the regulation. However, in the interest of reducing any ambiguity, the FDIC has decided to add these definitions back into the final regulation. Because section 906(a) of ILSA refers to restructurings of international loans to avoid excessive debt service burden on debtor countries, the definition of ''restructured international loan,'' as introduced in the 1984 regulation and retained in this revision, contains two criteria. First, the borrower whose loan is being restructured because of debt service difficulties must be a resident of a foreign country experiencing 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, foreign exchange in that country. As noted above, the classification of countries according to transfer risk is the responsibility of ICERC. Second, in a restructuring, the terms of the loan are revised to extend the original schedule of payments or reduce stated interest, or the restructuring takes the form of provision of new funds for the benefit of the borrower that has the same effect as extending the schedule of payments or reducing stated interest on the original loan. These criteria are intended to cover loans restructured to meet debt service difficulties, but not ordinary refinancings.

For any loan that meets the definition of restructured international loan, § 347.304(a) of the final revised regulation prohibits any bank from charging any fee exceeding the administrative cost of the restructuring unless it amortizes the amount of the fee exceeding the administrative cost over the effective life of the loan. However, consistent with the preamble to the 1984 regulation, if any restructuring of an international loan would also be a ''troubled debt restructuring'' under the terms of Financial Accounting Standards Board (FASB) Statement of Financial Accounting Standards (SFAS) No. 15, as amended by SFAS 114 or SFAS 118 or a subsequent amendatory standard, the loan should be accounted for in accordance with that standard. This definition of ''restructured international loan,'' however, which was adopted to implement the specific fee accounting rules mandated by ILSA, is not intended to categorize any particular loan as a ''troubled debt restructuring.''

The description of administrative cost from the existing § 351.2(d)(2) is being retained in a new definition of ''administrative cost.'' This description was deleted in the proposed regulation from the section on accounting for loan fees in the interest of simplifying language without any intent to change the applicability of the regulation. However, in the interest of reducing any ambiguity, the FDIC has decided to add this description back into the final regulation as a defined term. References to syndication in the description of administrative cost in the current part 351 were deleted as the changes to the regulation remove the need to refer to syndication.

In addition, in response to a comment, we have modified the alternative accounting treatment to provide that banks may charge to the ALLL only those international assets that can be charged to the ALLL pursuant to GAAP.

D. Description of Final Rule, Subpart C

The final rule contains separate provisions for *Purpose, Authority and Scope* and for *Definitions.* The *Definitions* section retains, among others, the definitions of ''international loan'' and ''restructured international loan'' from the current part 351. Definitions of ''international syndicated loan'' and ''loan agreement'' have been deleted from the current regulation as changes to the regulation remove the need to define these terms. The description of ''administrative cost'' from the current part 351 has been retained as a defined term.

The final regulation contains provisions requiring the establishment of ATRRs that are similar to the existing provisions. The term ''Allowance for Possible Loan Losses'' in the existing regulation has been changed to ''Allowance for Loan and Lease Losses'' to reflect current terminology. As noted above, the FDIC has also modified the alternative accounting treatment for ATRRs to provide that banks may charge to the ALLL only those international assets that can be charged to the ALLL pursuant to GAAP.

The final regulation simplifies the provisions for accounting for fees on restructured international loans and other international loans. With respect to restructured international loans, the final regulation follows the ILSA requirement that banks amortize the amount of any fee exceeding the administrative cost of the restructuring over the effective life of the loan. Subject to the provisions for restructured international loans, banks are directed to account for fees on

international loans in accordance with GAAP.

IV. Subpart D—Application Procedures and Delegations of Authority

A. Overview

The final rule includes a separate subpart D containing application procedures and delegations of authority for the substantive matters covered by part 347 as revised. Under the FDIC's current rules, these application requirements are located in various sections of three different regulations: 12 CFR part 303, 12 CFR part 346, and 12 CFR part 347. As discussed above, the FDIC issued a Notice of Proposed Rulemaking to completely revise part 303 of the FDIC's rules and regulations, which contains the FDIC's applications procedures and delegations of authority. As part of these revisions to part 303, subpart J of part 303 will address application requirements relating to the foreign activities of insured state nonmember banks and the U.S. activities of insured branches of foreign banks. In order to permit part 347 to be issued in final form before the FDIC issues part 303 in final form, it is necessary to issue the application procedures for part 347 in this subpart D. However, when part 303 is issued in final form, the application procedures contained in subpart D to part 347 will be transferred to subpart J of part 303 as part of the same rulemaking, in order to centralize all international banking application procedures in one convenient place.

The FDIC has made certain nonsubstantive changes to the language of subpart D of part 347, in order to make it consistent with the language of proposed part 303. The FDIC has also made certain changes to the criteria establishing which applicants are ''eligible depository institutions'' entitled to processing under general consent or expedited processing procedures. These changes, discussed below, were also made to establish consistency with the part 303 proposal. At this time, it is impossible for the FDIC to determine if it will make further changes to the language of part 303 or to the eligibility criteria thereunder. If such changes are made, the FDIC, in connection with transferring the application procedures in subpart D of part 347 over to subpart J of part 303, will make further changes to these application procedures in order to maintain consistency.

B. Public Comments and Changes to Subpart D

Public comments on the application procedures were limited to those concerning foreign branches and investments of nonmember banks under subpart A. Those comments, and the corresponding changes the FDIC has made to the application procedures, are discussed in detail above, in the discussion of comments received in connection with subpart A, and will not be repeated here.

The FDIC has also eliminated two criteria under the definition of an eligible depository institution which were not consistent with the critieria under the definition proposed in connection with part 303. The final rule, in § 347.401(c), does not contain a requirement that the applicant have received a rating of 1 or 2 under the ''management'' component of the Uniform Financial Institutions Rating System (UFIRS); nor does it contain the requirement that the applicant have been chartered and operating for three years. In addition, in the interests of consistency with part 303, the FDIC has modified the proposed rule's criteria requiring that the applicant not be subject to any enforcement-related agreements. The proposal contained an exception for any board of directors resolution addressing corrective action taken pursuant to regulatory recommendations, whereas the final rule has no such carve-out.

C. Description of Final Rule

Establishing, Moving, or Closing a Foreign Branch of a State Nonmember Bank

Applications for a nonmember bank to establish a foreign branch are currently treated under the same process applicable for domestic branches under 12 CFR 303.2. The final rule treats foreign branches separately, since foreign branch applications are not legally required to be subjected to analysis under the Community Reinvestment Act or under the factors listed in section 6 of the FDI Act, as is the case for domestic branches.

Under §§ 347.103(b) and 347.402 of the final rule, the FDIC has given its general consent for an eligible depository institution to establish additional foreign branches in any country in which the bank already operates a branch or foreign bank subsidiary, or to relocate a branch within the country. The final rule, only requires an eligible nonmember bank to notify the FDIC of its actions within 30 days. In addition, if an eligible nonmember bank seeks to establish a foreign branch in any country in which the nonmember bank's affiliates operate certain banking-related offices, the FDIC will give the application expedited processing within 45 days. Expedited processing also applies to an eligible nonmember bank that operates branches or affiliates in two or more foreign countries and seeks to establish additional branches conducting approved activities in additional foreign jurisdictions. Certain banking-related offices of the eligible nonmember bank's affiliates may be counted for these purposes.

To be eligible, the nonmember bank must have received an FDIC-assigned composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (UFIRS); have a satisfactory or better Community Reinvestment Act rating (unless the bank is a ''special purpose'' bank not subject to examination under the FDIC's CRA regulations); and have a compliance rating of 1 or 2. The nonmember bank must also be well capitalized; and it must not be subject to a cease and desist order, consent order, prompt corrective action directive, written agreement, memorandum of understanding, or other administrative agreement with its primary federal regulator or chartering authority. An application to establish a foreign branch is not an ''application for a deposit facility'' covered by the Community Reinvestment Act, and the FDIC will therefore only take the nonmember bank's CRA rating into account for purposes of determining whether the application receives expedited treatment under the general consent and expedited processing procedures.

The FDIC has adopted these general consent and expedited processing provisions because a nonmember bank meeting the proposed requirements will ordinarily have sufficient familiarity with the implications of foreign branching, be well-managed, and be of sufficiently sound overall condition, that extensive FDIC review is not required. The FDIC retains the option to suspend expedited processing as to any application, for any of the reasons specified in § 347.402(c)(1). These are the same grounds for suspension as would be applicable under the general rules contained in the FDIC's part 303 proposal, at proposed § 303.11. The FDIC may also categorically suspend general consent or expedited processing for any particular nonmember bank, as specified in § 347.103(d)(3). If the FDIC suspends its general consent or expedited processing with respect to a particular nonmember bank, it means that the nonmember bank must make

full application to establish additional branches. Suspension of general consent or expedited processing does not, in and of itself, require closure of existing foreign branches. Cases necessitating actual closure of branches would be handled under section 8 of the FDI Act (12 U.S.C. 1818) or other relevant authority.

General consent and expedited processing are also inapplicable in any case presenting either of two special circumstances. Since the FDIC must have access to information about a foreign branch's activities in order to effectively supervise the institution, general consent or expedited processing do not apply if the law or practice of the foreign country would limit the FDIC's access to information for supervisory purposes. In such cases, the FDIC must have an opportunity to fully analyze the extent of the confidentiality conferred under foreign law, as described in connection with the discussion of public comments on subpart A, above. In addition, if the proposed foreign branch would have a direct adverse impact on a site which is on the World Heritage List[5] or the foreign jurisdiction's equivalent of the National Register of Historic Places, the FDIC may need an opportunity to evaluate the application in light of section 402 of the National Historic Preservation Act Amendments of 1980 (16 U.S.C. 470a–2).

Section 347.103(f) and 347.402(d) also requires a nonmember bank which closes a foreign branch to notify the appropriate regional director that it has done so. This notice is strictly for informational purposes, since the FDIC has previously determined that Congress did not intend section 42 of the FDI Act (12 U.S.C. 42) on branch closings to apply to foreign branches.

Finally, § 347.402 also sets out the procedures for applications which are not eligible for the general consent or expedited processing provisions.

Acquisition of Stock of Foreign Banks or Other Financial Entities by an Insured State Nonmember Bank

Section 347.4 of the FDIC's current rules contains an investment ceiling, under which a nonmember bank's investments in foreign organizations (as well as an Edge corporation) may not exceed 25 percent of the bank's capital and surplus. The FDIC has eliminated this general limit, and will now instead monitor the overall investments of each nonmember bank on an individual basis. In addition, § 347.4 presently requires an application before a nonmember bank may make any investment in a foreign organization. Under §§ 347.108(a) and 347.403 of the final rule, the FDIC grants its general consent for an eligible nonmember bank to make investments in foreign organizations complying with the activity and other limits of subpart A. Eligibility of the nonmember bank is determined by the same criteria as for foreign branch approvals. As is the case under the foreign branch application procedure, the FDIC will take the nonmember bank's Community Reinvestment Act rating into account only for purposes of determining whether the application is eligible for general consent or expedited processing, since an application to make a foreign investment is not an ''application for a deposit facility'' covered by the CRA.

The final rule permits investments in a single foreign organization of up to two percent of the nonmember bank's Tier 1 capital during any twelve-month period. Aggregate investments for investment purposes may total as much as five percent of the nonmember bank's Tier 1 capital during any twelve-month period, and an additional five percent for investments acquired for trading purposes. Investments acquired at net asset value from an affiliate or representing reinvestments of cash dividends from the foreign organization are not subject to these limits. The final rule only requires the nonmember bank to notify the FDIC of its investment within thirty days, and no notice is required for trading investments.

However, in order to make investments under general consent, the nonmember bank or an must already have at least one foreign bank subsidiary or foreign branch, as evidence that the nonmember bank's management has suitable expertise to address the special considerations that arise in foreign investments. This experience requirement can also be satisfied if an affiliate of the nonmember bank has a foreign bank subsidiary, or if an affiliated bank or Edge or Agreement corporation has a foreign branch. In addition, if the investment will constitute a joint venture or a subsidiary or will otherwise be controlled by the state nonmember, the final rule requires that at least one other nonmember bank already have a foreign bank subsidiary in the country in question. This will prevent nonmember banks from establishing a presence in a jurisdiction in which the FDIC has not had an opportunity to contact host country supervisory authorities and establish a working arrangement for cross-border supervision.

The final rule also permits an eligible nonmember bank to make any investment which complies with the activity and other limits of subpart A through an expedited processing procedure lasting 45 days. Under § 347.403(c)(1), the FDIC may remove an applicant from expedited processing if the FDIC's review of the application indicates significant concerns related to supervision, law or policy. In such a case, a complete application is required. These are the same grounds for removal as would be applicable under the general rules contained in the FDIC's part 303 proposal, at proposed § 303.11.

As is the case in connection with the foreign branch rules, the FDIC is adopting these general consent and expedited processing procedures because a nonmember bank meeting the requirements of the provisions has sufficient expertise, is well-managed, and is in sufficiently sound overall condition, that extensive FDIC review is not required. The FDIC retains the option to suspend these procedures as to any institutions for which this is not the case. As with foreign branch applications, the consequence of suspension is that a full application is required in the future, and divestiture is not implicated. General consent and expedited processing are also not available in any foreign country if its law or practice would limit the FDIC's access to information for supervisory purposes, for the same reasons stated above in connection with foreign branch approvals.

Finally, § 347.402 also sets out the procedures for applications which are not eligible for the general consent or expedited processing provisions.

Exemptions From the Insurance Requirement for a State Branch of a Foreign Bank

From its initial adoption in 1979, § 346.6 of the FDIC's rules has provided a list of deposit activities in which a state branch could engage that would not constitute ''domestic retail deposit activity''. If the state branch only conducts deposit-taking activities which are enumerated in § 346.6(a)(1)–(7), and are carried forward to proposed § 347.206(a)(1)–(7), then the state branch is deemed to not be engaged in domestic retail deposit activity, and the deposit insurance requirement is not triggered. Pursuant to § 346.6(b), which has been carried forward as § 347.206(b), the

[5] The World Heritage List was established under the terms of The Convention Concerning the Protection of World Culture and Natural Heritage adopted in November, 1972 at a General Conference of the United Nations Education, Scientific and Cultural Organization. Current versions of the list are on the Internet at http://www.unesco.org/whc/heritage.htm, or may be obtained from the FDIC Public Information Center, Room 100, 801 17th Street, NW, Washington, DC 20429.

FDIC may permit an uninsured state branch to accept additional types of deposits in an initial amount of less than $100,000. The final rule transfers the associated application procedures currently contained in § 346.6(b) to § 347.404. These procedures need no substantive revision at this time, because the procedures were recently reviewed and amended by the FDIC as a result of amendments to the IBA which were made by section 107 of the Riegle-Neal Act.

Application by Insured State Branches for FDIC Approval To Conduct Activities Not Permissible for Federal Branches

Section 347.405 of the final rule contains the application procedure for a state-licensed insured branch of a foreign bank seeking to engage in any activity which is not permissible for a federal branch of a foreign bank, as required by § 347.213 of the final rule. Section 347.405 also sets out procedures for filing divestiture plans in the event such an application is denied or the law changes and a foreign bank elects not to continue the activity. No substantive changes have been made from the current application procedures in § 346.101.

V. Technical and Conforming Changes

The FDIC's rules and regulations currently contain numerous cross-references to part 346. These have conformed to the appropriate sections of revised part 347 under the final rule. The final rule also eliminates application procedures and delegations under current part 303 of the FDIC's rules and regulations, to the extent those procedures and delegations are displaced under the final rule.

VI. Paperwork Reduction Act

The collections of information contained in this rule have been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 et seq.). The collections of information in this final rule are contained in various sections appearing in subpart A and subpart B of part 347. The collections of information into two groups, each with a separate OMB control number. The collections from subpart A (Foreign Branching and Investment by Insured State Nonmember Banks) have been assigned control number 3064–0125, and the collections from subpart B (Foreign Banks) have been assigned control number 3064–0114. Both OMB clearances will expire on July 31st, 2000. Each of the collections required by the final rule is discussed below.

Subpart A—Foreign Branching and Investment by Insured State Nonmember Banks—OMB Control No. 3064–0125

Sections 347.103(b)–(f) and 347.402 contain collections of information in the form of requirements that insured state nonmember banks (nonmember banks) (1) notify the FDIC if the bank establishes a foreign branch under certain eligibility criteria in the rule; (2) give the FDIC 45 days prior notice before establishing a branch under certain eligibility criteria in the rule; (3) file an application with the FDIC requesting authorization to establish a foreign branch or to engage in certain activities through a foreign branch; or (4) notify the FDIC if the bank closes a foreign branch. The information will be used by the FDIC to authorize foreign branching as set out in section 18(d)(2) of the Federal Deposit Insurance Act (FDI Act) (12 U.S.C. 1828(d)(2)). The estimated annual reporting burden for the collection of information is summarized as follows:

Collections (1) and (4) (notice of foreign branch establishment (347.402(a)) or foreign branch closure (347.402(d)):

Total annual responses: 4.

Average hours per response: 2.

Collection (2) (expedited processing for foreign branch establishment (347.402(b))

Total annual responses: 3.

Average hours per response: 6.

Collection (3) (application to establish a foreign branch (347.402(b))

Total annual responses: 3.

Average hours per response: 40.

Total annual burden hours: 146.

Sections 347.108 and 347.403 contain collections of information in the form of requirements that nonmember banks (1) notify the FDIC if the bank acquires stock or other evidences of ownership of foreign organizations under certain eligibility criteria in the rule; (2) give the FDIC 45 days prior notice before acquiring stock or other evidences of ownership of foreign organizations under certain eligibility criteria in the rule; or (3) file an application with the FDIC requesting authorization to acquire stock or other evidences of ownership of foreign organizations or to engage in certain activities through foreign organizations. The information will be used by the FDIC to authorize foreign investment as set out in section 18(l) of the FDI Act (12 U.S.C. 1828 (l)). The estimated annual reporting burden for the collection of information is summarized as follows:

Collection (1) (notice of foreign investment (347.403(a)).

Total annual responses: 5.

Average hours per response: 2.

Collection (2) (expedited processing for foreign investment (347.403(b)).

Total annual responses: 4.

Average hours per response: 6.

Collection (3) (application to make a foreign investment (347.403(b)).

Total annual responses: 3.

Average hours per response: 60.

Total annual burden hours: 214.

Section 347.110 contains collections of information in the form of a requirement that nonmember banks with foreign branches, or that hold 20 percent or more of a foreign organization's voting equity interests, or control a foreign organization, maintain certain records, controls, and reports on the foreign operation's business activities. Section 18(d)(2) and 18(l) of the FDI Act authorize the FDIC to govern a nonmember bank's conduct of foreign branching and investment, and the information will be used by the nonmember bank to monitor the foreign operations and control its risk. The estimated annual reporting burden for the collection of information is summarized as follows:

Total annual responses: 63.

Average hours per response: 400.

Total annual burden hours: 25,200.

Summary of Subpart A—OMB Control No. 3064–0125 Collections

Total annual responses: 85.

Total annual burden hours: 25,560.

Subpart B—Foreign Banks—OMB Control No. 3064–0114

Sections 347.206(b) and 347.404 contain a collection of information in the form of a requirement that noninsured state-licensed branches of foreign banks make an application to obtain the FDIC's permission to receive deposits of less than $100,000 if the deposits are not otherwise authorized by § 347.206(a). The information will be used by the FDIC to determine whether to authorize the deposit taking as set out in section 6(b) of the International Banking Act (12 U.S.C. 3104(b)). The estimated annual reporting burden for the collection of information is summarized as follows:

Total annual responses: 1.

Average hours per response: 6.

Total annual burden hours: 6.

Sections 347.216 and 347.405 contain collections of information in the form of requirements that insured state-licensed branches of foreign banks (1) file an application with the FDIC requesting permission to conduct activities which are not permissible for a federal branch

of a foreign bank; or (2) submit a pro forma plan of divestiture or cessation for activities which are not permissible for a federal branch of a foreign bank. The information in the application will be used by the FDIC to determine whether the activity poses a significant risk to the deposit insurance fund, as required by section 7 of the International Banking Act (12 U.S.C. 3105(h)), and the information in the plan of divestiture or cessation will be used by the FDIC to make judgments concerning the reasonableness of the branch's actions to discontinue activities deemed to pose a significant risk to the deposit insurance fund. This collection of information had previously been approved by the OMB under control no. 3064–0114. The estimated annual reporting burden for the collection of information is summarized as follows:

Total annual responses: 1.
Average hours per response: 8.
Total annual burden hours: 8.

Sections 347.209 contains a collection of information in the form of a requirement that insured branches of foreign banks maintain a set of accounts and records in English and maintain its records as a separate entity with assets and liabilities separate from the foreign bank's head office, other branches, etc. The information will be used by the insured branch in the same way any banking entity uses such records, and the FDIC will review such records in connection with examining and supervising the insured branch (which is an ''insured depository institution'' for which the FDIC is the ''appropriate Federal banking agency'' within the meaning of section 3 of the FDI Act, (12 U.S.C. 1813)). The estimated annual reporting burden for the collection of information is summarized as follows:

Total annual responses: 32.
Average hours per response: 120.
Total annual burden hours: 3,840.

Sections 347.210(e)(4) and 347.210(e)(6) contain collections of information in the form of a requirement that insured branches of foreign banks and their depositories (1) make quarterly reports to the FDIC identifying the specific securities the foreign bank has pledged to the FDIC and their value, as well as the average liabilities of the insured branch; and (2) provide the FDIC copies of documents and instruments conveyed by the insured branch to the depository to effectuate the pledge. The information will be used by the FDIC to verify compliance with the pledge of asset requirements authorized by section 5(c) of the FDI Act (12 U.S.C. 1815(c)). The collection of information under item (1) on a semiannual basis has previously been approved by the OMB, whereas the FDIC is now proposing to collect it quarterly. The OMB's previous approval was under control no. 3064–0010, but the OMB has approved the FDIC's request to regroup it under control number 3064–0114 for ease of reference. The estimated annual reporting burden for the collection of information is summarized as follows:

Collection (1)(reports (347.210(e)(6))
Total annual responses: 256.
Average hours per response: 2.
Collection (2)(copies of documents effectuating pledges (347.210(e)(4))
Total annual responses: 128.
Average hours per response: 0.25.
Total annual burden hours: 544.

Summary of Subpart B—OMB Control No. 3064–0114 Collections

Total annual responses: 418.
Total annual burden hours: 4,398.

The FDIC has a continuing interest in the public's opinion regarding collections of information. Members of the public may submit comments, at any time, regarding any aspect of these collections of information. Comments may be sent to: Steven F. Hanft, Assistant Executive Secretary (Regulatory Analysis), Federal Deposit Insurance Corporation, Room F–4080, 550 17th Street NW, Washington, DC 20429.

VII. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Title II, Pub. L. 104–121) provides generally for agencies to report rules to Congress for review. The reporting requirement is triggered when a federal agency issues a final rule. Accordingly, the FDIC will file the appropriate reports with Congress as required by SBREFA.

The Office of Management and Budget has determined that this final revision of part 347 does not constitute a ''major rule''' as defined by SBREFA.

VIII. Effective Date

Subject to certain exceptions, 12 U.S.C. 4802(b) provides that new regulations and amendments to regulations prescribed by a federal banking agency which impose additional reporting, disclosures, or other new requirements on an insured depository institution shall take effect on the first day of a calendar quarter which begins on or after the date on which the regulations are published in final form. Accordingly, compliance with the final rule is not mandatory until July 1, 1998. However, section 4802(b) also permits any person subject to the regulation to comply with the regulation voluntarily, prior to the effective date. Consequently, affected insured depository institutions and foreign banks may elect to comply voluntarily with the final rule, once the 30-day delay period required by section 553 of the Administrative Procedure Act (5 U.S.C. 552b) has passed. If an insured depository institution or foreign bank elects to comply voluntarily with any section of subparts A, B, or C of part 347, the institution or bank must comply with the entire subpart.

IX. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601 *et seq.*), it is certified that the final rule will not have a significant impact on a substantial number of small entities. With respect to subparts A and C of part 347, the FDIC's review of Call Report data indicates the rule will impact only an insubstantial number of small entities. With respect to subpart B of part 347, the revisions incorporate the legislative requirement first imposed by FBSEA that a foreign bank which intends to engage in domestic retail deposit activity in the U.S. must do so through an insured bank subsidiary. This has been the statutory standard for over five years; however, this requirement was not heretofore addressed in the FDIC's applicable regulation, part 346. Explicitly including this requirement in subpart B cannot be characterized as having a ''significant impact'' on the affected entities as they have been required to comply with this provision of FBSEA for many years. The other revisions which have been made to subpart B involve adding references to the FDIC's new supervisory approach—the Case Manager system—where applicable and simplifying the calculation of the amount of pledged assets required to comply with § 347.210(a). The formula will be based upon a quarterly calculation rather than a semi-annual calculation. In the future, the foreign bank will be required to report the calculation to the appropriate regional director every quarter. However, the additional two reports per year will not represent a significant burden on the affected banks because the foreign banks are already maintaining the information, and the time required to forward the quarterly calculation to the FDIC will be nominal. Therefore, the revisions to subpart B will not have a significant impact on a substantial number of small entities.

List of Subjects

12 CFR Part 303

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

12 CFR Part 325

Administrative practice and procedure, Banks, banking, Capital adequacy, Reporting and recordkeeping requirements, Savings associations, State non-member banks.

12 CFR Part 326

Banks, banking, Currency, Insured nonmember banks, Reporting and recordkeeping requirements, Security measures.

12 CFR Part 327

Assessments, Bank deposit insurance, Banks, banking, Financing Corporation, Savings associations.

12 CFR Part 346

Bank deposit insurance, Foreign banking, Reporting and recordkeeping requirements.

12 CFR Part 347

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

12 CFR Part 351

Foreign banking, Reporting and recordkeeping requirements.

12 CFR Part 362

Administrative practice and procedure, Authority delegations (Government agencies), Bank deposit insurance, Banks, banking, Insured depository institutions, Investments, Reporting and recordkeeping requirements.

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

PART 303—APPLICATIONS, REQUESTS, SUBMITTALS, DELEGATIONS OF AUTHORITY, AND NOTICES REQUIRED TO BE FILED BY STATUTE OR REGULATION

1. The authority citation for part 303 continues to read as follows:

Authority: 12 U.S.C. 378, 1813, 1815, 1816, 1817(j), 1818, 1819 (Seventh and Tenth), 1828, 1831e, 1831o, 1831p–1; 15 U.S.C. 1607.

§ 303.2 [Amended]

2. In § 303.2, paragraph (a) introductory text is amended by removing and reserving footnote 2.

§ 303.5 [Amended]

3. In § 303.5, paragraph (d) is removed and reserved.

4. In § 303.6, paragraphs (f)(1)(ii)(A) and (f)(1)(ii)(C) are revised to read as follows:

§ 303.6 Application procedures.

* * * * *

(f) * * *

(1) * * *

(ii) * * *

(A) *Applications to establish a branch, including a remote service facility.* In the communities in which the home office and the domestic branch to be established are located.

* * * * *

(C) *Applications for deposit insurance.* In the community in which the home bank office is or will be located.

* * * * *

5. In § 303.7, the heading for paragraph (a) and paragraphs (a)(1)(i), (a)(1)(ii)(A), (a)(1)(iii)(D), and (b)(4)(ii) are revised, the words ''; and'' are removed at the end of paragraph (f)(2)(i) and a period is added in their place, and paragraph (f)(2)(ii) is removed and reserved to read as follows:

§ 303.7 Delegation of authority to the Director (DOS) and to the associate directors, regional directors and deputy regional directors to act on certain applications, requests, and notices of acquisition of control.

* * * * *

(a) Applications for branches (including remote service facilities, courier services), relocations, and for trust and other banking powers—(1) * * *

(i) Authority is delegated to the Director (DOS), and where confirmed in writing by the director, to an associate director, or to the appropriate regional director or deputy regional director, to approve applications for consent to establish branch facilities (including remote service facilities and courier services) or relocations where the applicant satisfies the requisites listed in paragraph (a)(1)(iii) of this section and agrees in writing to comply with any condition imposed by the delegate other than those standard conditions listed in § 303.0(b)(31).

(ii) * * *

(A) To deny applications for consent to establish branch facilities (including remote service facilities and courier services) or relocations; and

* * * * *

(iii) * * *

* * * * *

(D) The requirements of the National Historic Preservation Act (16 U.S.C. 470), the National Environmental Policy Act (42 U.S.C. 4321), and the Community Reinvestment Act of 1977 (12 U.S.C. 2901–2905) and its applicable implementing regulation (part 345 of this chapter) have been considered and favorably resolved: *Provided however,* That the authority to approve an application may not be subdelegated to a regional director or deputy regional director where a protest (as that term is defined in § 303.0(b)(30)) under the Community Reinvestment Act is filed.

* * * * *

(b) * * *

(4) * * *

(ii) Where the resulting institution, upon consummation of the merger transaction, does not meet the capital requirements set forth in part 325 of this chapter and the FDIC's ''Statement of Policy on Capital''. (If the applicant is a foreign bank, the delegated authority to approve does not extend to instances where, upon consummation of the merger transaction, the foreign bank's insured branch is not in compliance with subpart B of part 347 of this chapter.)

* * * * *

§ 303.8 [Amended]

6. In § 303.8, paragraph (f) is removed and reserved.

PART 325—CAPITAL MAINTENANCE

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

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831o, 1835, 3907, 3909, 4808; Pub. L. 102–233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831n note); Pub. L. 102–242, 105 Stat. 2236, 2355, 2386 (12 U.S.C. 1828 note).

8. In § 325.103, paragraph (c) is revised to read as follows:

§ 325.103 Capital measures and capital category definitions.

* * * * *

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

(1) *Well capitalized* if the insured branch:

(i) Maintains the pledge of assets required under § 347.210 of this chapter; and

(ii) Maintains the eligible assets prescribed under § 347.211 of this chapter at 108 percent or more of the preceding quarter's average book value of the insured branch's third-party liabilities; and

(iii) Has not received written notification from:

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

(B) The FDIC to pledge additional assets pursuant to § 347.210 of this chapter or to maintain a higher ratio of eligible assets pursuant to § 347.211 of this chapter.

(2) *Adequately capitalized* if the insured branch:

(i) Maintains the pledge of assets required under § 347.210 of this chapter; and

(ii) Maintains the eligible assets prescribed under § 347.211 of this chapter at 106 percent or more of the preceding quarter's average book value of the insured branch's third-party liabilities; and

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

(3) *Undercapitalized* if the insured branch:

(i) Fails to maintain the pledge of assets required under § 347.210 of this chapter; or

(ii) Fails to maintain the eligible assets prescribed under § 347.211 of this chapter at 106 percent or more of the preceding quarter's average book value of the insured branch's third-party liabilities.

(4) *Significantly undercapitalized* if it fails to maintain the eligible assets prescribed under § 347.211 of this chapter at 104 percent or more of the preceding quarter's average book value of the insured branch's third-party liabilities.

(5) *Critically undercapitalized* if it fails to maintain the eligible assets prescribed under § 347.211 of this chapter at 102 percent or more of the preceding quarter's average book value of the insured branch's third-party liabilities.

* * * * *

PART 326—MINIMUM SECURITY DEVICES AND PROCEDURES AND BANK SECRECY ACT [1] COMPLIANCE

9. The authority citation for part 326 continues to read as follows:

Authority: 12 U.S.C. 1813, 1815, 1817, 1818, 1819 (Tenth), 1881–1833; 31 U.S.C. 5311–5324.

10. In § 326.1, paragraph (c) is amended by revising the last sentence to read as follows:

§ 326.1 Definitions.

* * * * *

(c) * * * In the case of a foreign bank, as defined in § 347.202 of this chapter, the term *branch* has the same meaning given in § 347.202 of this chapter.

11. In § 326.8, paragraph (a) and footnote 3 are revised to read as follows:

§ 326.8 Bank Secrecy Act compliance.

(a) *Purpose.* This subpart is issued to assure that all insured nonmember banks as defined in § 326.1 [3] establish and maintain procedures reasonably designed to assure and monitor their compliance with the requirements of subchapter II of chapter 53 of title 31, United States Code, and the implementing regulations promulgated thereunder by the Department of Treasury at 31 CFR part 103.

* * * * *

PART 327—ASSESSMENTS

12. The authority citation for part 327 is revised to read as follows:

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

13. In § 327.1, paragraph (b)(2) is revised to read as follows:

§ 327.1 Purpose and scope.

* * * * *

(b) * * *

(2) Deductions from the assessment base of an insured branch of a foreign bank are stated in subpart B of part 347 of this chapter.

14. In § 327.4, paragraphs (a)(1)(i)(B)(*1*), (a)(1)(i)(B)(*2*), (a)(1)(ii)(B)(*1*), and (a)(1)(ii)(B)(*2*) are revised to read as follows:

§ 327.4 Annual assessment rate.

(a) * * *

(1) * * *

(i) * * *

(B) * * *

(*1*) Maintains the pledge of assets required under § 347.210 of this chapter; and

(*2*) Maintains the eligible assets prescribed under § 347.211 of this chapter at 108 percent or more of the average book value of the insured branch's third-party liabilities for the quarter ending on the report date specified in paragraph (a)(1) of this section.

(ii) * * *

(B) * * *

(*1*) Maintains the pledge of assets required under § 347.210 of this chapter; and

(*2*) Maintains the eligible assets prescribed under § 347.211 of this chapter at 106 percent or more of the average book value of the insured branch's third-party liabilities for the quarter ending on the report date specified in paragraph (a)(1) of this section; and

* * * * *

PART 346—[REMOVED]

15. Part 346 is removed.

16. Part 347 is revised to read as follows:

PART 347—INTERNATIONAL BANKING

Subpart A—Foreign Branching and Investment by Insured State Nonmember Banks

Sec.

Subpart B—Foreign Banks

[1] In its original form, subchapter II of chapter 53 of title 31 U.S.C., was part of Pub. L. 91–508 which requires recordkeeping for and reporting of currency transactions by banks and others and is commonly known as the *Bank Secrecy Act.*

[3] In regard to foreign banks, the programs and procedures required by § 326.8 need be instituted only at an *insured branch* as defined in § 347.202 of this chapter which is a *State branch* as defined in § 347.202 of this chapter.

Authority: 12 U.S.C. 1813, 1815, 1817, 1819, 1820, 1828, 3103, 3104, 3105, 3108; Title IX, Pub. L. 98–181, 97 Stat. 1153.

Subpart A—Foreign Branching and Investment by Insured State Nonmember Banks

§ 347.101 Purpose, authority, and scope.

Under sections 18(d) and 18(l) of the Federal Deposit Insurance Act (12 U.S.C. 1828(d), 1828(l)), the Federal Deposit Insurance Corporation prescribes the regulations in this subpart relating to foreign branches of insured state nonmember banks, the acquisition and holding of stock of foreign organizations, and loans or extensions of credit to or for the account of such foreign organizations.

§ 347.102 Definitions.

For the purposes of this subpart:

(a) An *affiliate* of an insured state nonmember bank means:

(1) Any entity of which the insured state nonmember bank is a direct or indirect subsidiary or which otherwise controls the insured state nonmember bank;

(2) Any organization which is a direct or indirect subsidiary of such entity or which is otherwise controlled by such entity; or

(3) Any other organization which is a direct or indirect subsidiary of the insured state nonmember bank or is otherwise controlled by the insured state nonmember bank.

(b) *Control* means the ability to control in any manner the election of a majority of an organization's directors or trustees; or the ability to exercise a controlling influence over the management and policies of an organization. An insured state nonmember bank is deemed to control an organization of which it is a general partner or its affiliate is a general partner.

(c) *Eligible* insured state nonmember bank means an eligible depository institution as defined in § 347.401(c).

(d) *Equity interest* means any ownership interest or rights in an organization, whether through an equity security, contribution to capital, general or limited partnership interest, debt or warrants convertible into ownership interests or rights, loans providing profit participation, binding commitments to acquire any such items, or some other form of business transaction.

(e) *Equity security* means voting or nonvoting shares, stock, investment contracts, or other interests representing ownership or participation in a company or similar enterprise, as well as any instrument convertible to any such interest at the option of the holder without payment of substantial additional consideration.

(f) *FRB* means the Board of Governors of the Federal Reserve System.

(g) *Foreign bank* means an organization that is organized under the laws of a foreign country, a territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands that:

(1) Is recognized as a bank by the bank supervisory or monetary authority of the country of its organization or the country in which its principal banking operations are located;

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

(3) Has the power to accept demand deposits.

(h) *Foreign banking organization* means a foreign organization that is formed for the sole purpose of either holding shares of a foreign bank or performing nominee, fiduciary, or other banking services incidental to the activities of a foreign branch or foreign bank affiliate of the insured state nonmember bank.

(i) *Foreign branch* means an office or place of business located outside the United States, its territories, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Virgin Islands, at which banking operations are conducted, but does not include a representative office.

(j) *Foreign country* means any country other than the United States and includes any territory, dependency, or possession of any such country or of the United States.

(k) *Foreign organization* means an organization that is organized under the laws of a foreign country.

(l) *Indirectly* means investments held or activities conducted by a subsidiary of an organization.

(m) *Loan or extension of credit* means all direct and indirect advances of funds to a person, government, or entity made on the basis of any obligation of that person, government, or entity to repay funds.

(n) *Organization* or *entity* means a corporation, partnership, association, bank, or other similar entity.

(o) *Representative office* means an office that engages solely in representative functions such as soliciting new business for its home office or acting as liaison between the home office and local customers, but which has no authority to make business or contracting decisions other than those relating to the personnel and premises of the representative office.

(p) *Subsidiary* means any organization more than 50 percent of the voting equity interests of which are directly or indirectly held by another organization.

(q) *Tier 1 capital* means Tier 1 capital as defined in § 325.2 of this chapter.

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

§ 347.103 Foreign branches of insured state nonmember banks.

(a) *Powers of foreign branches.* To the extent authorized by state law, an insured state nonmember bank may establish a foreign branch. In addition to its general banking powers, and if permitted by state law, a foreign branch of an insured state nonmember bank may conduct the following activities to the extent the activities are consistent with banking practices in the foreign country in which the branch is located:

(1) *Guarantees.* Guarantee debts, or otherwise agree to make payments on the occurrence of readily ascertainable events including without limitation such things as nonpayment of taxes, rentals, customs duties, or costs of transport and loss or nonconformance of shipping documents, if:

(i) The guarantee or agreement specifies a maximum monetary liability; and

(ii) To the extent the guarantee or agreement is not subject to a separate amount limit under state or federal law, the amount of the guarantee or agreement is combined with loans and other obligations for purposes of applying any legal lending limits.

(2) *Local investments.* Acquire and hold the following local investments, so

long as aggregate investments (other than those required by the law of the foreign country or permissible under section 5136 of the Revised Statutes (12 U.S.C. 24 (Seventh)) by all the bank's branches in one foreign country do not exceed 1 percent of the total deposits in all the bank's branches in that country as reported in the preceding year-end Report of Income and Condition (Call Report): [1]

(i) Equity securities of the central bank, clearing houses, governmental entities, and development banks of the country in which the branch is located;

(ii) Other debt securities eligible to meet local reserve or similar requirements; and

(iii) Shares of automated electronic payment networks, professional societies, schools, and similar entities necessary to the business of the branch.

(3) *Government obligations.* Make the following types of transactions with respect to the obligations of foreign countries, so long as aggregate investments, securities held in connection with distribution and dealing, and underwriting commitments do not exceed ten percent of the insured state nonmember bank's Tier 1 capital:

(i) Underwrite, distribute and deal, invest in, or trade obligations of:

(A) The national government of the country in which the branch is located or its political subdivisions; and

(B) An agency or instrumentality of such national government if supported by the taxing authority, guarantee, or full faith and credit of the national government.

(ii) Underwrite, distribute and deal, invest in or trade obligations[2] rated as investment grade by at least two established international rating agencies of:

(A) The national government of any foreign country or its political subdivisions, to the extent permissible under the law of the issuing foreign country; and

(B) An agency or instrumentality of the national government of any foreign country to the extent permissible under the law of the issuing foreign country, if supported by the taxing authority, guarantee, or full faith and credit of the national government.

(4) *Insurance.* Act as an insurance agent or broker.

(5) *Other activities.* Engage in these activities in an additional amount, or in other activities, approved by the FDIC.

(b) *General consent to establish and relocate foreign branches.* (1) General consent of the FDIC is granted for an eligible insured state nonmember bank to establish foreign branches conducting activities authorized by this section in any foreign country in which the bank already operates one or more foreign branches or foreign bank subsidiaries.

(2) General consent of the FDIC is granted for an insured state nonmember bank to relocate an existing foreign branch within a foreign country.

(3) An insured state nonmember bank acting under this paragraph must provide written notice of such action to the FDIC within 30 days after establishing or relocating the branch.

(c) *Expedited processing of branch applications.* (1) Forty-five days after filing a substantially complete application with the FDIC, or upon such earlier time as authorized by the FDIC, an eligible insured state nonmember bank may establish foreign branches conducting activities authorized by this section in any foreign country in which:

(i) An affiliated bank or Edge or Agreement corporation operates one or more foreign branches or foreign bank subsidiaries; or

(ii) The bank's holding company operates a foreign bank subsidiary.

(2) If any of the following are located in two or more foreign countries, an eligible insured state nonmember bank may establish a foreign branch conducting activities authorized by this section in an additional foreign country 45 days after the bank files a substantially complete application with the FDIC, or upon such earlier time as authorized by the FDIC:

(i) Foreign branches or foreign bank subsidiaries of the eligible insured state nonmember bank;

(ii) Foreign branches or foreign bank subsidiaries of banks and Edge or Agreement corporations affiliated with the eligible insured state nonmember bank; and

(iii) Foreign bank subsidiaries of the eligible insured state nonmember bank's holding company.

(d) *Limitations on general consent and expedited processing.* General consent under paragraph (b) or expedited processing under paragraph (c) of this section does not apply:

(1) If the foreign branch would be located on a site on the World Heritage List or on the foreign country's equivalent of the National Register of Historic Places, in accordance with section 403 of the National Historic Preservation Act Amendments of 1980 (16 U.S.C. 470a–2);

(2) If the foreign branch would be located in a foreign country in which applicable law or practice would limit the FDIC's access to information for supervisory purposes; or

(3) If the FDIC at any time notifies the insured state nonmember bank that the FDIC is modifying or suspending its general consent or expedited processing procedure.

(e) *Specific consent required.* An insured state nonmember bank may not engage in a type or amount of foreign branch activity not authorized by this section, or establish a foreign branch other than as authorized by paragraphs (b) and (c) of this section, without obtaining the prior specific consent of the FDIC.

(f) *Branch closing.* An insured state nonmember bank must notify the FDIC in writing at the time it closes a foreign branch.

(g) *Procedures.* Procedures for notices and applications under this section are set out in subpart D of this part.

§ 347.104 Investment by insured state nonmember banks in foreign organizations.

(a) *Investment authorized.* To the extent authorized by state law, an insured state nonmember bank may directly or indirectly acquire and retain equity interests in foreign organizations, subject to the requirements of this subpart.

(b) *Authorized financial activities.* An insured state nonmember bank may not directly or indirectly acquire or hold equity interests of a foreign organization resulting in the insured state nonmember bank and its affiliates holding more than 50 percent of a foreign organization's voting equity interests in the aggregate, or the insured state nonmember bank or its affiliates otherwise controlling the foreign organization, unless the activities of the foreign organization are limited to the following financial activities:

(1) Commercial and other banking activities.

(2) Underwriting, distributing, and dealing debt securities outside the United States.

(3) With the prior approval of the FDIC under § 347.108(d), underwriting, distributing, and dealing equity securities outside the United States.

(4) Organizing, sponsoring, and managing a mutual fund if the fund's shares are not sold or distributed in the United States or to U.S. residents and the fund does not exercise management control over the firms in which it invests.

(5) General insurance agency and brokerage.

[1] If a branch has recently been acquired by the state nonmember bank and the branch was not previously required to file a Call Report, branch deposits as of the acquisition date must be used.

[2] If the obligation is an equity interest, it must be held through a subsidiary of the foreign branch and the insured state nonmember bank must meet its minimum capital requirements.

(6) Underwriting credit life, credit accident and credit health insurance.

(7) Performing management consulting services provided that such services when rendered with respect to the United States market must be restricted to the initial entry.

(8) Data processing.

(9) Operating a travel agency in connection with financial services offered abroad by the insured state nonmember bank or others.

(10) Engaging in activities that the FRB has determined in Regulation Y (12 CFR 225.28(b)) are closely related to banking under section 4(c)(8) of the Bank Holding Company Act.

(11) Performing services for other direct or indirect operations of a U.S. banking organization, including representative functions, sale of long-term debt, name saving, liquidating assets acquired to prevent loss on a debt previously contracted in good faith, and other activities that are permissible for a bank holding company under sections 4(a)(2)(A) and 4(c)(1)(C) of the Bank Holding Company Act.

(12) Holding the premises of a branch of an Edge corporation or insured state nonmember bank or the premises of a direct or indirect subsidiary, or holding or leasing the residence of an officer or employee of a branch or a subsidiary.

(13) Engaging in the foregoing activities in an additional amount, or in other activities, with the prior approval of the FDIC under § 347.108(d).

(c) *Going concerns.* If an insured state nonmember bank acquires equity interests of a foreign organization under paragraph (b) of this section and the foreign organization is a going concern, up to five percent of either the consolidated assets or revenues of the foreign organization may be attributable to activities that are not permissible under paragraph (b) of this section.

(d) *Joint ventures.* If an insured state nonmember bank directly or indirectly acquires or holds equity interests of a foreign organization resulting in the insured state nonmember bank and its affiliates holding 20 percent or more, but not in excess of 50 percent, of the voting equity interests of a foreign organization in the aggregate, and the insured state nonmember bank or its affiliates do not control the foreign organization, up to 10 percent of either the consolidated assets or revenues of the foreign organization may be attributable to activities that are not permissible under paragraph (b) of this section.

(e) *Portfolio investment.* If an insured state nonmember bank directly or indirectly acquires or holds equity interests of a foreign organization resulting in the insured state nonmember bank and its affiliates holding less than 20 percent of the voting equity interests of a foreign organization in the aggregate, and the insured state nonmember bank or its affiliates do not control the foreign organization:

(1) Up to ten percent of either the consolidated assets or revenues of the foreign organization may be attributable to activities that are not permissible under paragraph (b) of this section; and

(2) Any loans or extensions of credit made by the insured state nonmember bank and its affiliates to the foreign organization must be on substantially the same terms, including interest rates and collateral, as those prevailing at the same time for comparable transactions between the insured state nonmember bank or its affiliates and nonaffiliated organizations.

(f) *Indirect holding of foreign organizations which are not foreign banks or foreign banking organizations.* Any investment pursuant to the authority of paragraphs (b) through (e) of this section in a foreign organization which is not a foreign bank or foreign banking organization must be held indirectly through a U.S. or foreign subsidiary of the insured state nonmember bank if the foreign organization does not constitute a subsidiary of the insured state nonmember bank, and the insured state nonmember bank must meet its minimum capital requirements.

(g) *Indirect investments in nonfinancial foreign organizations.* An insured state nonmember bank may indirectly acquire and hold equity interests in an amount up to 15 percent of the insured state nonmember bank's Tier 1 capital in foreign organizations engaged generally in activities beyond those listed in paragraph (b) of this section, subject to the following:

(1) The equity interests must be acquired and held indirectly through a subsidiary authorized by paragraphs (b) or (c) of this section, or an Edge corporation if also authorized by the FRB;

(2) The aggregate holding of voting equity interests of one foreign organization by the insured state nonmember bank and its affiliates must be less than 20 percent of the foreign organization's voting equity interests;

(3) The aggregate holding of voting and nonvoting equity interests of one foreign organization by the insured state nonmember bank and its affiliates must be less than 40 percent of the foreign organization's equity interests;

(4) The insured state nonmember bank or its affiliates must not otherwise control the foreign organization; and

(5) Any loans or extensions of credit made by the insured state nonmember bank and its affiliates to the foreign organization must be on substantially the same terms, including interest rates and collateral, as those prevailing at the same time for comparable transactions between the insured state nonmember bank or its affiliates and nonaffiliated organizations.

(h) *Affiliate holdings.* References in this section to equity interests of foreign organizations held by an affiliate of an insured state nonmember bank includes equity interests held in connection with an underwriting or for distribution or dealing by an affiliate permitted to do so by § 337.4 of this chapter or section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)).

§ 347.105 Underwriting and dealing limits applicable to foreign organizations held by insured state nonmember banks.

If an insured state nonmember bank, in reliance on the authority of § 347.104, holds an equity interest in one or more foreign organizations which underwrite, deal, or distribute equity securities outside the United States as authorized by § 347.104(b)(3):

(a) *Underwriting commitment limits.* The aggregate underwriting commitments by the foreign organizations for the equity securities of a single entity, taken together with underwriting commitments by any affiliate of the insured state nonmember bank under the authority of 12 CFR 211.5, must not exceed the lesser of $60 million or 25 percent of the insured state nonmember bank's Tier 1 capital unless excess amounts are either:

(1) Covered by binding commitments from subunderwriters or purchasers; or

(2) Deducted from the capital of the insured state nonmember bank, with at least 50 percent of the deduction being taken from Tier 1 capital, and the insured state nonmember bank remains well capitalized after this deduction.

(b) *Distribution and dealing limits.* The equity securities of any single entity held for distribution or dealing by the foreign organizations, taken together with equity securities held for distribution or dealing by any affiliate of the insured state nonmember bank under the authority of 12 CFR 211.5:

(1) Must not exceed the lesser of $30 million or 5 percent of the insured state nonmember bank's Tier 1 capital, subject to the following:

(i) Any equity securities acquired pursuant to any underwriting commitment extending up to 90 days

after the payment date for the underwriting may be excluded from this limit;

(ii) Any equity securities of the entity held under the authority of § 347.104 or 12 CFR 211.5(b) for purposes other than distribution or dealing must be included in this limit; and

(iii) Up to 75 percent of the position in an equity security may be reduced by netting long and short positions in the same security, or offsetting cash positions against derivative instruments referenced to the same security so long as the derivatives are part of a prudent hedging strategy; and

(2) Must be included in calculating the general consent limits under § 347.108(a)(3) if the insured state nonmember bank relies on the general consent provisions as authority to acquire equity interests of the same foreign entity for investment or trading.

(c) *Additional distribution and dealing limits.* With the exception of equity securities acquired pursuant to any underwriting commitment extending up to 90 days after the payment date for the underwriting, equity securities of a single entity held for distribution or dealing by all affiliates of the state nonmember bank (this includes shares held in connection with an underwriting or for distribution or dealing by an affiliate permitted to do so by § 337.4 of this chapter or section 4(c)(8) of the Bank Holding Company Act), combined with any equity interests held for investment or trading purposes by all affiliates of the state nonmember bank, must conform to the limits of § 347.104.

(d) *Combined limits.* The aggregate of the following may not exceed 25 percent of the insured state nonmember bank's Tier 1 capital:

(1) All equity interests of foreign organizations held for investment or trading under § 347.104(g) or by an affiliate of the insured state nonmember bank under the corresponding paragraph of 12 CFR 211.5;

(2) All underwriting commitments under paragraph (a) of this section, taken together with all underwriting commitments by any affiliate of the insured state nonmember bank under the authority of 12 CFR 211.5, after excluding the amount of any underwriting commitment:

(i) Covered by binding commitments from subunderwriters or purchasers under paragraph (a)(1) of this section or the comparable provision of 12 CFR 211.5; or

(ii) Already deducted from the insured state nonmember bank's capital under paragraph (a)(2) of this section, or the appropriate affiliate's capital under the comparable provisions of 12 CFR 211.5; and

(3) All equity securities held for distribution or dealing under paragraph (b) of this section, taken together with all equity securities held for distribution or dealing by any affiliate of the insured state nonmember bank under the authority of 12 CFR 211.5, after reducing by up to 75 percent the position in any equity security by netting and offset, as permitted by paragraph (b)(1)(iii) of this section or the comparable provision of 12 CFR 211.5.

§ 347.106 Restrictions on certain activities applicable to foreign organizations held by insured state nonmember banks.

Futures commission merchant. If an insured state nonmember bank, in reliance on the authority of § 347.104, acquires or retains an equity interest in one or more foreign organizations which acts as a futures commission merchant as authorized by § 347.104(b)(10), the foreign organization may not be a member of an exchange or clearing association that requires members to guarantee or otherwise contract to cover losses suffered by other members unless the foreign organization's liability does not exceed two percent of the insured state nonmember bank's Tier 1 capital, or the insured state nonmember bank has obtained the prior approval of the FDIC under § 347.108(d).

§ 347.107 U.S. activities of foreign organizations held by insured state nonmember banks.

(a) An insured state nonmember bank may not directly or indirectly hold the equity interests of any foreign organization pursuant to the authority of this section if the organization engages in the general business of buying or selling goods, wares, merchandise, or commodities in the United States.

(b) An insured state nonmember bank may not directly or indirectly hold more than 5 percent of the equity interests of any foreign organization pursuant to the authority of this subpart unless any activities in which the foreign organization engages directly or indirectly in the United States are incidental to its international or foreign business.

(c) A foreign organization is not engaged in any business or activities in the United States for these purposes unless it maintains an office in the United States other than a representative office.

(d) The following activities are incidental to international or foreign business:

(1) Activities that the FRB has determined in Regulation K (12 CFR 211.4) are permissible in the United States for an Edge corporation.

(2) Other activities approved by the FDIC.

§ 347.108 Obtaining FDIC approval to invest in foreign organizations.

(a) *General consent.* General consent of the FDIC is granted for an eligible insured state nonmember bank to make direct or indirect investments in foreign organizations in conformity with the limits and requirements of this subpart if:

(1) The insured state nonmember bank presently operates at least one foreign bank subsidiary or foreign branch, an affiliated bank or Edge or Agreement corporation operates at least one foreign bank subsidiary or foreign branch, or the insured state nonmember bank's holding company operates at least one foreign bank subsidiary;

(2) In any case in which the insured state nonmember bank and its affiliates will hold 20 percent or more of the foreign organization's voting equity interests or control the foreign organization, at least one insured state nonmember bank has a foreign bank subsidiary in the relevant foreign country; [3]

(3) The investment is within one of the following limits:

(i) The investment is acquired at net asset value from an affiliate;

(ii) The investment is a reinvestment of cash dividends received from the same foreign organization during the preceding 12 months; or

(iii) The total investment directly or indirectly in a single foreign organization in any transaction or series of transactions during a twelve-month period does not exceed two percent of the insured state nonmember bank's Tier 1 capital, and such investments in all foreign organizations in the aggregate do not exceed:

(A) 5 percent of the insured state nonmember bank's Tier 1 capital during a 12-month period; and

(B) Up to an additional five percent of the insured state nonmember bank's Tier 1 capital if the investments are acquired for trading purposes; and

(4) Within 30 days, the insured state nonmember bank provides the FDIC written notice of the investment, unless the investment was acquired for trading purposes, in which case no notice is required.

(b) *Expedited processing.* An investment that does not qualify for general consent but is otherwise in conformity with the limits and

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

requirements of this subpart may be made 45 days after an eligible insured state nonmember bank files a substantially complete application with the FDIC, or upon such earlier time as authorized by the FDIC.

(c) *Inapplicability of general consent or expedited processing.* General consent or expedited processing under this section do not apply:

(1) For foreign investments resulting in the insured state nonmember bank holding 20 percent or more of the voting equity interests of a foreign organization or controlling such organization and the foreign organization would be located in a foreign country in which applicable law or practice would limit the FDIC's access to information for supervisory purposes; or

(2) If the FDIC at any time notifies the insured state nonmember bank that the FDIC is modifying or suspending its general consent or expedited processing procedure.

(d) *Specific consent.* Any investment that is not authorized under general consent or expedited processing procedures must not be made without the prior specific consent of the FDIC.

(e) *Computation of amounts.* In computing the amount that may be invested in any foreign organization under this section, any investments held by an affiliate of the insured state nonmember bank must be included.

(f) *Procedures.* Procedures for applications and notices under this section are set out in subpart D of this part.

§ 347.109 Extensions of credit to foreign organizations held by insured state nonmember banks; shares of foreign organizations held in connection with debts previously contracted.

(a) *Loans or extensions of credit.* An insured state nonmember bank which directly or indirectly holds equity interests in a foreign organization pursuant to the authority of this subpart may make loans or extensions of credit to or for the accounts of the organization without regard to the provisions of section 18(j) of the FDI Act (12 U.S.C. 1828(j)).

(b) *Debts previously contracted.* Equity interests acquired to prevent a loss upon a debt previously contracted in good faith are not subject to the limitations or procedures of this subpart; however they must be disposed of promptly but in no event later than two years after their acquisition, unless the FDIC authorizes retention for a longer period.

§ 347.110 Supervision and recordkeeping of the foreign activities of insured state nonmember banks.

(a) *Records, controls and reports.* An insured state nonmember bank with any foreign branch, any investment in a foreign organization of 20 percent or more of the organization's voting equity interests, or control of a foreign organization must maintain a system of records, controls and reports that, at minimum, provide for the following:

(1) *Risk assets.* To permit assessment of exposure to loss, information furnished or available to the main office should be sufficient to permit periodic and systematic appraisals of the quality of risk assets, including loans and other extensions of credit. Coverage should extend to a substantial proportion of the risk assets in the branch or foreign organization, and include the status of all large credit lines and of credits to customers also borrowing from other offices or affiliates of the insured state nonmember bank. Appropriate information on risk assets may include:

(i) A recent financial statement of the borrower or obligee and current information on the borrower's or obligee's financial condition;

(ii) Terms, conditions, and collateral;

(iii) Data on any guarantors;

(iv) Payment history; and

(v) Status of corrective measures employed.

(2) *Liquidity.* To enable assessment of local management's ability to meet its obligations from available resources, reports should identify the general sources and character of the deposits, borrowing, and other funding sources, employed in the branch or foreign organization with special reference to their terms and volatility. Information should be available on sources of liquidity–cash, balances with banks, marketable securities, and repayment flows—such as will reveal their accessibility in time and any risk elements involved.

(3) *Contingencies.* Data on the volume and nature of contingent items such as loan commitments and guarantees or their equivalents that permit analysis of potential risk exposure and liquidity requirements.

(4) *Controls.* Reports on the internal and external audits of the branch or foreign organization in sufficient detail to permit determination of conformance to auditing guidelines. Appropriate audit reports may include coverage of:

(i) Verification and identification of entries on financial statements;

(ii) Income and expense accounts, including descriptions of significant chargeoffs and recoveries;

(iii) Operations and dual-control procedures and other internal controls;

(iv) Conformance to head office guidelines on loans, deposits, foreign exchange activities, proper accounting procedures, and discretionary authority of local management;

(v) Compliance with local laws and regulations; and

(vi) Compliance with applicable U.S. laws and regulations.

(b) *Availability of information to examiners; reports.* (1) Information about foreign branches or foreign organizations must be made available to the FDIC by the insured state nonmember bank for examination and other supervisory purposes.

(2) If any applicable law or practice in a particular foreign country would limit the FDIC's access to information for supervisory purposes, no insured state nonmember bank may utilize the general consent or expedited processing procedures under §§ 347.103 and 347.108 to:

(i) Establish any foreign branch in the foreign country; or

(ii) Make any investment resulting in the state nonmember bank holding 20 percent or more of the voting equity interests of a foreign organization in the foreign country or controlling such organization.

(3) The FDIC may from time to time require an insured state nonmember bank to make and submit such reports and information as may be necessary to implement and enforce the provisions of this subpart, and the insured state nonmember bank shall submit an annual report of condition for each foreign branch pursuant to instructions provided by the FDIC.

Subpart B—Foreign Banks

§ 347.201 Scope.

(a)(1) Sections 347.203 through 347.207 implement the insurance provisions of section 6 of the International Banking Act of 1978 (12 U.S.C. 3104). They set out the FDIC's rules regarding domestic retail deposit activities requiring a foreign bank to establish an insured bank subsidiary; deposit activities permissible for a noninsured branch; authority for a state branch to apply for an exemption from the insurance requirement; and, depositor notification requirements. Sections 347.204, 347.205, 347.206 and 347.207 do not apply to a federal branch. The Comptroller of the Currency's regulations (12 CFR part 28) establish such rules for federal branches. However, federal branches deemed by the Comptroller to require

insurance must apply to the FDIC for insurance.

(2) Sections 347.203 through 347.207 also set out the FDIC's rules regarding the operation of insured and noninsured branches, whether state or federal, by a foreign bank.

(b) Sections 347.208 through 347.212 set out the rules that apply only to a foreign bank that operates or proposes to establish an insured state or federal branch. These rules relate to the following matters: an agreement to provide information and to be examined and provisions concerning recordkeeping, pledge of assets, asset maintenance, and deductions from the assessment base.

§ 347.202 Definitions.

For the purposes of this subpart:

(a) *Affiliate* means any entity that controls, is controlled by, or is under common control with another entity. An entity shall be deemed to ''control'' another entity if the entity directly or indirectly owns, controls, or has the power to vote 25 percent or more of any class of voting securities of the other entity or controls in any manner the election of a majority of the directors or trustees of the other entity.

(b) *Branch* means any office or place of business of a foreign bank located in any state of the United States at which deposits are received. The term does not include any office or place of business deemed by the state licensing authority or the Comptroller of the Currency to be an agency.

(c) *Deposit* has the same meaning as that term in section 3(l) of the Federal Deposit Insurance Act (12 U.S.C. 1813(l)).

(d) *Depository* means any insured state bank, national bank, or insured branch.

(e) *Domestic retail deposit activity* means the acceptance by a state branch of any initial deposit of less than $100,000.

(f) *Federal branch* means a branch of a foreign bank established and operating under the provisions of section 4 of the International Banking Act of 1978 (12 U.S.C. 3102).

(g) *Foreign bank* means any company organized under the laws of a foreign country, any territory of the United States, Puerto Rico, Guam, American Samoa, the Northern Mariana Islands, or the Virgin Islands, which engages in the business of banking. The term includes foreign commercial banks, foreign merchant banks and other foreign institutions that engage in banking activities usual in connection with the business of banking in the countries where such foreign institutions are organized and operating. Except as otherwise specifically provided by the Federal Deposit Insurance Corporation, banks organized under the laws of a foreign country, any territory of the United States, Puerto Rico, Guam, American Samoa, the Northern Mariana Islands, or the Virgin Islands which are insured banks other than by reason of having an insured branch are not considered to be foreign banks for purposes of §§ 347.208, 347.209, 347.210, and 347.211.

(h) *Foreign business* means any entity including, but not limited to, a corporation, partnership, sole proprietorship, association, foundation or trust, which is organized under the laws of a foreign country or any United States entity which is owned or controlled by an entity which is organized under the laws of a foreign country or a foreign national.

(i) *Foreign country* means any country other than the United States and includes any colony, dependency or possession of any such country.

(j) *Home state* of a foreign bank means the state so determined by the election of the foreign bank, or in default of such election, by the Board of Governors of the Federal Reserve System.

(k) *Immediate family member of a natural person* means the spouse, father, mother, brother, sister, son or daughter of that natural person.

(l) *Initial deposit* means the first deposit transaction between a depositor and the branch. The initial deposit may be placed into different deposit accounts or into different kinds of deposit accounts, such as demand, savings or time. Deposit accounts that are held by a depositor in the same right and capacity may be added together for the purposes of determining the dollar amount of the initial deposit. ''First deposit'' means any deposit made when there is no existing deposit relationship between the depositor and the branch.

(m) *Insured bank* means any bank, including a foreign bank having an insured branch, the deposits of which are insured in accordance with the provisions of the Federal Deposit Insurance Act.

(n) *Insured branch* means a branch of a foreign bank any deposits of which branch are insured in accordance with the provisions of the Federal Deposit Insurance Act.

(o) *Large United States business* means any entity including, but not limited to, a corporation, partnership, sole proprietorship, association, foundation or trust which is organized under the laws of the United States or any state thereof, and:

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

(2) Has annual gross revenues in excess of $1,000,000 for the fiscal year immediately preceding the initial deposit.

(p) A *majority owned subsidiary* means a company the voting stock of which is more than 50 percent owned or controlled by another company.

(q) *Noninsured branch* means a branch of a foreign bank deposits of which branch are not insured in accordance with the provisions of the Federal Deposit Insurance Act.

(r) *Person* means an individual, bank, corporation, partnership, trust, association, foundation, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, or any other form of entity.

(s) *Significant risk to the deposit insurance fund* shall be understood to be present whenever there is a high probability that the Bank Insurance Fund administered by the FDIC may suffer a loss.

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

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

(v) A *wholly owned subsidiary* means a company the voting stock of which is 100 percent owned or controlled by another company except for a nominal number of directors' shares.

§ 347.203 Restriction on operation of insured and noninsured branches.

The FDIC will not insure deposits in any branch of a foreign bank unless the foreign bank agrees that every branch established or operated by the foreign bank in the same state will be an insured branch; provided, that this restriction does not apply to any branch which accepts only initial deposits in an amount of $100,000 or greater.

§ 347.204 Insurance requirement.

(a) *Domestic retail deposit activity.* In order to initiate or conduct domestic retail deposit activity which requires deposit insurance protection in any state a foreign bank shall:

(1) Establish one or more insured bank subsidiaries in the United States for that purpose; and

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

(b) *Exception.* For purposes of paragraph (a) of this section, ''foreign bank'' does not include any bank organized under the laws of any

territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands the deposits of which are insured by the Corporation pursuant to the Federal Deposit Insurance Act.

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

(d) *Noninsured branches.* A foreign bank may establish or operate a state branch which is not an insured branch whenever:

(1) The branch only accepts initial deposits in an amount of $100,000 or greater; or

(2) The branch meets the criteria set forth in § 347.205 or § 347.206.

§ 347.205 Branches established under section 5 of the International Banking Act.

A foreign bank may operate any state branch as a noninsured branch whenever the foreign bank has entered into an agreement with the Board of Governors of the Federal Reserve System to accept at that branch only those deposits as would be permissible for a corporation organized under section 25(a) of the Federal Reserve Act (12 U.S.C. 611 *et seq.*) and implementing rules and regulations administered by the Board of Governors (12 CFR part 211).

§ 347.206 Exemptions from the insurance requirement.

(a) Deposit activities not requiring insurance. A state branch will not be deemed to be engaged in domestic retail deposit activity which requires the foreign bank parent to establish an insured bank subsidiary in accordance with § 347.204(a) if the state branch only accepts initial deposits in an amount of less than $100,000 which are derived solely from the following:

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

(2) Individuals who:

(i) Are not citizens of the United States;

(ii) Are residents of the United States; and

(iii) Are employed by a foreign bank, foreign business, foreign government, or recognized international organization;

(3) Persons (including immediate family members of natural persons) to whom the branch or foreign bank (including any affiliate thereof) has extended credit or provided other nondeposit banking services within the past twelve months or has entered into a written agreement to provide such services within the next twelve months;

(4) Foreign businesses, large United States businesses, and persons from whom an Edge Corporation may accept deposits under § 211.4(e)(1) of Regulation K of the Board of Governors of the Federal Reserve System, 12 CFR 211.4(e)(1);

(5) Any governmental unit, including the United States government, any state government, any foreign government and any political subdivision or agency of any of the foregoing, and recognized international organizations;

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

(7) Any other depositor, but only if the branch's average deposits under this paragraph (a)(7) do not exceed one percent of the branch's average total deposits for the last 30 days of the most recent calendar quarter (de minimis exception). In calculating this de minimis exception, both the average deposits under this paragraph (a)(7) and the average total deposits shall be computed by summing the close of business figures for each of the last 30 calendar days, ending with and including the last day of the calendar quarter, and dividing the resulting sum by 30. For days on which the branch is closed, balances from the last previous business day are to be used. In determining its average branch deposits, the branch may exclude deposits in the branch of other offices, branches, agencies or wholly owned subsidiaries of the bank. In addition, the branch must not solicit deposits from the general public by advertising, display of signs, or similar activity designed to attract the attention of the general public. A foreign bank which has more than one state branch in the same state may aggregate deposits in such branches (excluding deposits of other branches, agencies or wholly owned subsidiaries of the bank) for the purpose of this paragraph (a)(7).

(b) *Application for an exemption.* (1) Whenever a foreign bank proposes to accept at a state branch initial deposits of less than $100,000 and such deposits are not otherwise excepted under paragraph (a) of this section, the foreign bank may apply to the FDIC for consent to operate the branch as a noninsured branch. The Board of Directors may exempt the branch from the insurance requirement if the branch is not engaged in domestic retail deposit activities requiring insurance protection. The Board of Directors will consider the size and nature of depositors and deposit accounts, the importance of maintaining and improving the availability of credit to all sectors of the United States economy, including the international trade finance sector of the United States economy, whether the exemption would give the foreign bank an unfair competitive advantage over United States banking organizations, and any other relevant factors in making this determination.

(2) Procedures for applications under this section are set out in subpart D of this part.

(c) *Transition period.* A noninsured state branch may maintain a retail deposit lawfully accepted prior to April 1, 1996 pursuant to regulations in effect prior to July 1, 1998 (See § 346.6 as contained in 12 CFR parts 300 to 499 revised as of January 1, 1998):

(1) If the deposit qualifies pursuant to paragraph (a) or (b) of this section; or

(2) If the deposit does not qualify pursuant to paragraph (a) or (b) of this section, no later than:

(i) In the case of a non-time deposit, five years from April 1, 1996; or

(ii) In the case of a time deposit, the first maturity date of the time deposit after April 1, 1996.

§ 347.207 Notification to depositors.

Any state branch that is exempt from the insurance requirement pursuant to § 347.206 shall:

(a) Display conspicuously at each window or place where deposits are usually accepted a sign stating that deposits are not insured by the FDIC; and

(b) Include in bold face conspicuous type on each signature card, passbook, and instrument evidencing a deposit the statement ''This deposit is not insured by the FDIC''; or require each depositor to execute a statement which acknowledges that the initial deposit and all future deposits at the branch are not insured by the FDIC. This acknowledgment shall be retained by the branch so long as the depositor maintains any deposit with the branch. This provision applies to any negotiable certificates of deposit made in a branch on or after July 6, 1989, as well as to any renewals of such deposits which become effective on or after July 6, 1989.

§ 347.208 Agreement to provide information and to be examined.

(a) A foreign bank that applies for insurance for any branch shall agree in writing to the following terms:

(1)(i) The foreign bank will provide the FDIC with information regarding the affairs of the foreign bank and its affiliates which are located outside of

the United States as the FDIC from time to time may request to:

(A) Determine the relations between the insured branch and the foreign bank and its affiliates; and

(B) Assess the financial condition of the foreign bank as it relates to the insured branch.

(ii) If the laws of the country of the foreign bank's domicile or the policy of the Central Bank or other banking authority prohibit or restrict the foreign bank from entering into this agreement, the foreign bank shall agree to provide information to the extent permitted by such law or policy. Information provided shall be in English and in the form requested by the FDIC and shall be made available in the United States. The Board of Directors will consider the existence and extent of this prohibition or restriction in determining whether to grant insurance and may deny the application if the information available is so limited in extent that an unacceptable risk to the insurance fund is presented.

(2)(i) The FDIC may examine the affairs of any office, agency, branch or affiliate of the foreign bank located in the United States as the FDIC deems necessary to:

(A) Determine the relations between the insured branch and such offices, agencies, branches or affiliates; and

(B) Assess the financial condition of the foreign bank as it relates to the insured branch.

(ii) The foreign bank shall also agree to provide the FDIC with information regarding the affairs of such offices, agencies, branches or affiliates as the FDIC deems necessary. The Board of Directors will not grant insurance to any branch if the foreign bank fails to enter into an agreement as required under this paragraph (a).

(b) The agreement shall be signed by an officer of the foreign bank who has been so authorized by the foreign bank's board of directors. The agreement and the authorization shall be included with the foreign bank's application for insurance. Any agreement not in English shall be accompanied by an English translation.

§ 347.209 Records.

(a) Each insured branch shall keep a set of accounts and records in the words and figures of the English language which accurately reflect the business transactions of the insured branch on a daily basis.

(b) The records of each insured branch shall be kept as though it were a separate entity, with its assets and liabilities separate from the other operations of the head office, other branches or agencies of the foreign bank and its subsidiaries or affiliates. A foreign bank which has more than one insured branch in a state may treat such insured branches as one entity for record keeping purposes and may designate one branch to maintain records for all the branches in the state.

§ 347.210 Pledge of assets.

(a) *Purpose.* A foreign bank that has an insured branch shall pledge assets for the benefit of the FDIC or its designee(s). Whenever the FDIC is obligated under section 11(f) of the Federal Deposit Insurance Act (12 U.S.C. 1821(f)) to pay the insured deposits of an insured branch, the assets pledged under this section shall become the property of the FDIC to be used to the extent necessary to protect the deposit insurance fund.

(b) *Amount of assets to be pledged.* (1) A foreign bank shall pledge assets equal to five percent of the average of the insured branch's liabilities for the last 30 days of the most recent calendar quarter. This average shall be computed by using the sum of the close of business figures for the 30 calendar days of the most recent calendar quarter, ending with and including the last day of the calendar quarter, divided by 30.[4] In determining its average liabilities, the insured branch may exclude liabilities to other offices, agencies, branches, and wholly owned subsidiaries of the foreign bank. The value of the pledged assets shall be computed based on the lesser of the principal amount (par value) or market value of such assets at the time of the original pledge and thereafter as of the last day of the most recent calendar quarter.

(2) The initial five-percent deposit for a newly established insured branch shall be based on the branch's projection of liabilities at the end of the first year of its operation.

(3) The FDIC may require a foreign bank to pledge additional assets or to compute its pledge on a daily basis whenever the FDIC determines that the foreign bank's or any insured branch's condition is such that the assets pledged under paragraph (b)(1) or (b)(2) of this section will not adequately protect the deposit insurance fund. In requiring a foreign bank to pledge additional assets, the FDIC will consult with the insured branch's primary regulator. Among the factors to be considered in imposing these requirements are the concentration of risk to any one borrower or group of related borrowers, the concentration of transfer risk to any one country, including the country in which the foreign bank's head office is located or any other factor the FDIC determines is relevant.

(4) Each insured branch shall separately comply with the requirements of this section. However, a foreign bank which has more than one insured branch in a state may treat all of its insured branches in the same state as one entity and shall designate one insured branch to be responsible for compliance with this section.

(c) *Depository.* A foreign bank shall place pledged assets for safekeeping at any depository which is located in any state. However, a depository may not be an affiliate of the foreign bank whose insured branch is seeking to use the depository. A foreign bank must obtain the FDIC's prior written approval of the depository selected, and such approval may be revoked and dismissal of the depository required whenever the depository does not fulfill any one of its obligations under the pledge agreement. A foreign bank shall appoint and constitute the depository as its attorney in fact for the sole purpose of transferring title to pledged assets to the FDIC as may be required to effectuate the provisions of paragraph (a) of this section.

(d) *Assets that may be pledged.* Subject to the right of the FDIC to require substitution, a foreign bank may pledge any of the kinds of assets listed in this paragraph (d); such assets must be denominated in United States dollars. A foreign bank shall be deemed to have pledged any such assets for the benefit of the FDIC or its designees at such time as any such asset is placed with the depository, as follows:

(1) Certificates of deposit that are payable in the United States and that are issued by any state bank, national bank, or branch of a foreign bank which has executed a valid waiver of offset agreement or similar debt instruments that are payable in the United States and that are issued by any agency of a foreign bank which has executed a valid waiver of offset agreement; provided, that the maturity of any certificate or issuance is not greater than one year; and provided further, that the issuing branch or agency of a foreign bank is not an affiliate of the pledging bank or from the same country as the pledging bank's domicile;

(2) Interest bearing bonds, notes, debentures, or other direct obligations of or obligations fully guaranteed as to principal and interest by the United States or any agency or instrumentality thereof;

(3) Commercial paper that is rated P–1 or P–2, or their equivalent by a

[4] For days on which the branch is closed, balances from the previous business day are to be used.

nationally recognized rating service; provided, that any conflict in a rating shall be resolved in favor of the lower rating;

(4) Banker's acceptances that are payable in the United States and that are issued by any state bank, national bank, or branch or agency of a foreign bank; provided, that the maturity of any acceptance is not greater than 180 days; and provided further, that the branch or agency issuing the acceptance is not an affiliate of the pledging bank or from the same country as the pledging bank's domicile;

(5) General obligations of any state of the United States, or any county or municipality of any state of the United States, or any agency, instrumentality, or political subdivision of the foregoing or any obligation guaranteed by a state of the United States or any county or municipality of any state of the United States; provided, that such obligations have a credit rating within the top two rating bands of a nationally-recognized rating service (with any conflict in a rating resolved in favor of the lower rating);

(6) Obligations of the African Development Bank, Asian Development Bank, Inter-American Development Bank, and the International Bank for Reconstruction and Development;

(7) Notes issued by bank holding companies or banks organized under the laws of the United States or any state thereof or notes issued by United States branches or agencies of foreign banks, provided, that the notes have a credit rating within the top two rating bands of a nationally-recognized rating service (with any conflict in a rating resolved in favor of the lower rating) and that they are payable in the United States, and provided further, that the issuer is not an affiliate of the foreign bank pledging the note; or

(8) Any other asset determined by the FDIC to be acceptable.

(e) *Pledge agreement.* A foreign bank shall not pledge any assets unless a pledge agreement in form and substance satisfactory to the FDIC has been executed by the foreign bank and the depository. The agreement, in addition to other terms not inconsistent with this paragraph (e), shall give effect to the following terms:

(1) *Original pledge.* The foreign bank shall place with the depository assets of the kind described in paragraph (d) of this section, having an aggregate value in the amount as required pursuant to paragraph (b) of this section.

(2) *Additional assets required to be pledged.* Whenever the foreign bank is required to pledge additional assets for the benefit of the FDIC or its designees pursuant to paragraph (b)(3) of this section, it shall place (within two business days after the last day of the most recent calendar quarter, unless otherwise ordered) additional assets of the kind described in paragraph (d) of this section, having an aggregate value in the amount required by the FDIC.

(3) *Substitution of assets.* The foreign bank, at any time, may substitute any assets for pledged assets, and, upon such substitution, the depository shall promptly release any such assets to the foreign bank. Provided, that:

(i) The foreign bank pledges assets of the kind described in paragraph (d) of this section having an aggregate value not less than the value of the pledged assets for which they are substituted and certified as such by the foreign bank; and

(ii) The FDIC has not by written notification to the foreign bank, a copy of which shall be provided to the depository, suspended or terminated the foreign bank's right of substitution.

(4) *Delivery of other documents.* Concurrently with the pledge of any assets, the foreign bank shall deliver to the depository all documents and instruments necessary or advisable to effectuate the transfer of title to any such assets and thereafter, from time to time, at the request of the FDIC, deliver to the depository any such additional documents or instruments. The foreign bank shall provide copies of all such documents described in this paragraph (e)(4) to the appropriate regional director concurrently with their delivery to the depository.

(5) *Acceptance and safekeeping responsibilities of the depository.* (i) The depository shall accept and hold any assets pledged by the foreign bank pursuant to the pledge agreement for safekeeping free and clear of any lien, charge, right of offset, credit, or preference in connection with any claim the depository may assert against the foreign bank and shall designate any such assets as a special pledge for the benefit of the FDIC or its designees. The depository shall not accept the pledge of any such assets unless concurrently with such pledge the foreign bank delivers to the depository the documents and instruments necessary for the transfer of title thereto as provided in this part.

(ii) The depository shall hold any such assets separate from all other assets of the foreign bank or the depository. Such assets may be held in book-entry form but must at all times be segregated on the records of the depository and clearly identified as assets subject to the pledge agreement.

(6) *Reporting requirements of the insured branch and the depository.* (i) *Initial reports.* Upon the original pledge of assets as provided in paragraph (e)(1) of this section:

(A) The depository shall provide to the foreign bank and to the appropriate regional director a written report in the form of a receipt identifying each asset pledged and specifying in reasonable detail with respect to each such asset the complete title, interest rate, series, serial number (if any), principal amount (par value), maturity date and call date; and

(B) The foreign bank shall provide to the appropriate regional director a written report certified as correct by the foreign bank which sets forth the value of each pledged asset and the aggregate value of all such assets, and which states that the aggregate value of all such assets is the amount required pursuant to paragraph (b) of this section and that all such assets are of the kind described in paragraph (d) of this section.

(ii) *Quarterly reports.* Within ten calendar days after the end of the most recent calendar quarter:

(A) The depository shall provide to the appropriate regional director a written report specifying in reasonable detail with respect to each asset currently pledged (including any asset pledged to satisfy the requirements of paragraph (b)(3) of this section and identified as such), as of two business days after the end of the most recent calendar quarter, the complete title, interest rate, series, serial number (if any), principal amount (par value), maturity date, and call date, provided, that if no substitution of any asset has occurred during the reporting period, the report need only specify that no substitution of assets has occurred; and

(B) The foreign bank shall provide as of two business days after the end of the most recent calendar quarter to the appropriate regional director a written report certified as correct by the foreign bank which sets forth the value of each pledged asset and the aggregate value of all such assets, which states that the aggregate value of all such assets is the amount required pursuant to paragraph (b) of this section and that all such assets are of the kind described in paragraph (d) of this section, and which states the average of the liabilities of each insured branch of the foreign bank computed in the manner and for the period prescribed in paragraph (b) of this section.

(iii) *Additional reports.* The foreign bank shall, from time to time, as may be required, provide to the appropriate regional director a written report in the form specified containing the

information requested with respect to any asset then currently pledged.

(7) *Access to assets.* With respect to any asset pledged pursuant to the pledge agreement, the depository will provide representatives of the FDIC or the foreign bank access (during regular business hours of the depository and at the location where any such asset is held, without other limitation or qualification) to all original instruments, documents, books, and records evidencing or pertaining to any such asset.

(8) *Release upon the order of the FDIC.* The depository shall release to the foreign bank any pledged assets, as specified in a written notification of the appropriate regional director, upon the terms and conditions provided in such notification, including without limitation the waiver of any requirement that any assets be pledged by the foreign bank in substitution of any released assets.

(9) *Release to the FDIC.* Whenever the FDIC is obligated under section 11(f) of the Federal Deposit Insurance Act (12 U.S.C. 1821(f)) to pay insured deposits of an insured branch, the FDIC by written certification shall so inform the depository; and the depository, upon receipt of such certification, shall thereupon promptly release and transfer title to any pledged assets to the FDIC or release such assets to the foreign bank, as specified in the certification. Upon release and transfer of title to all pledged assets specified in the certification, the depository shall be discharged from any further obligation under the pledge agreement.

(10) *Interest earned on assets.* The foreign bank may retain any interest earned with respect to the assets currently pledged unless the FDIC by written notice prohibits retention of interest by the foreign bank, in which case the notice shall specify the disposition of any such interest.

(11) *Expenses of agreement.* The FDIC shall not be required to pay any fees, costs, or expenses for services provided by the depository to the foreign bank pursuant to, or in connection with, the pledge agreement.

(12) *Substitution of depository.* The depository may resign, or the foreign bank may discharge the depository, from its duties and obligations under the pledge agreement by giving at least 60 days' written notice thereof to the other party and to the appropriate regional director. The FDIC, upon 30 days' written notice to the foreign bank and the depository, may require the foreign bank to dismiss the depository if the FDIC in its discretion determines that the depository is in breach of the pledge agreement. The depository shall continue to function as such until the appointment of a successor depository becomes effective and the depository has released to the successor depository the pledged assets and documents and instruments to effectuate transfer of title in accordance with the written instructions of the foreign bank as approved by the FDIC. The appointment by the foreign bank of a successor depository shall not be effective until:

(i) The FDIC has approved in writing the successor depository; and

(ii) A pledge agreement in form and substance satisfactory to the FDIC has been executed.

(13) *Waiver of terms.* The FDIC may by written order waive compliance by the foreign bank or the depository with any term or condition of the pledge agreement.

(f)(1) Authority is delegated to the Director (DOS), the Deputy Director (DOS), and where confirmed in writing by the Director, to an associate director, or to the appropriate regional director or deputy regional director, to enter into pledge agreements with foreign banks and depositories in connection with the pledge of asset requirements pursuant to this section. This authority shall also extend to the power to revoke such approval and require the dismissal of the depository.

(2) Authority is delegated to the General Counsel or designee to modify the terms of the model pledge agreement used for such deposit agreements.

§ 347.211 Asset maintenance.

(a) An insured branch of a foreign bank shall maintain on a daily basis eligible assets in an amount not less than 106 percent of the preceding quarter's average book value of the insured branch's liabilities or, in the case of a newly-established insured branch, the estimated book value of its liabilities at the end of the first full quarter of operation, exclusive of liabilities due to the foreign bank's head office, other branches, agencies, offices, or wholly owned subsidiaries. The Director of the Division of Supervision or his designee may impose a computation of total liabilities on a daily basis in those instances where it is found necessary for supervisory purposes. The Board of Directors, after consulting with the insured branch's primary regulator, may require that a higher ratio of eligible assets be maintained if the financial condition of the insured branch warrants such action. Among the factors which will be considered in requiring a higher ratio of eligible assets are the concentration of risk to any one borrower or group of related borrowers, the concentration of transfer risk to any one country, including the country in which the foreign bank's head office is located or any other factor the FDIC determines is relevant. Eligible assets shall be payable in United States dollars.

(b) In determining eligible assets for the purposes of compliance with paragraph (a) of this section, the insured branch shall exclude the following:

(1) Any asset due from the foreign bank's head office, other branches, agencies, offices or affiliates;

(2) Any asset classified ''Value Impaired,'' to the extent of the required Allocated Transfer Risk Reserves or equivalent write down, or ''Loss'' in the most recent state or federal examination report;

(3) Any deposit of the insured branch in a bank unless the bank has executed a valid waiver of offset agreement;

(4) Any asset not supported by sufficient credit information to allow a review of the asset's credit quality, as determined at the most recent state or federal examination, as follows:

(i) Whether an asset has sufficient credit information will be a function of the size of the borrower and the location within the foreign bank of the responsibility for authorizing and monitoring extensions of credit to the borrower. For large, well known companies, when credit responsibility is located in an office of the foreign bank outside the insured branch, the insured branch must have adequate documentation to show that the asset is of good quality and is being supervised adequately by the foreign bank. In such cases, copies of periodic memoranda that include an analysis of the borrower's recent financial statements and a report on recent developments in the borrower's operations and borrowing relationships with the foreign bank generally would constitute sufficient information. For other borrowers, periodic memoranda must be supplemented by information such as copies of recent financial statements, recent correspondence concerning the borrower's financial condition and repayment history, credit terms and collateral, data on any guarantors, and where necessary, the status of any corrective measures being employed;

(ii) Subsequent to the determination that an asset lacks sufficient credit information, an insured branch may not include the amount of that asset among eligible assets until the FDIC determines that sufficient documentation exists. Such a determination may be made either at the next federal examination, or upon request of the insured branch, by the appropriate regional director;

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

(6) Any intangible asset;

(7) Any other asset not considered bankable by the FDIC.

(c) A foreign bank which has more than one insured branch in a state may treat all of its insured branches in the same state as one entity for purposes of compliance with paragraph (a) of this section and shall designate one insured branch to be responsible for maintaining the records of the insured branches' compliance with this section.

(d) The average book value of the insured branch's liabilities for a quarter shall be, at the insured branch's option, either an average of the balances as of the close of business for each day of the quarter or an average of the balances as of the close of business on each Wednesday during the quarter. Quarters end on March 31, June 30, September 30, and December 31 of any given year. For days on which the insured branch is closed, balances from the previous business day are to be used. Calculations of the average book value of the insured branch's liabilities for a quarter shall be retained by the insured branch until the next federal examination.

§ 347.212 Deductions from the assessment base.

An insured branch may deduct from its assessment base deposits in the insured branch to the credit of the foreign bank or any office, branch or agency of and any wholly owned subsidiary of the foreign bank.

§ 347.213 FDIC approval to conduct activities not permissible for federal branches.

(a) *Scope.* A foreign bank operating an insured state branch which desires to engage in or continue to engage in any type of activity that is not permissible for a federal branch, pursuant to the National Bank Act (12 U.S.C. 21 *et seq.*) or any other federal statute, regulation, official bulletin or circular, written order or interpretation, or decision of a court of competent jurisdiction (each an impermissible activity), shall file a written application for permission to conduct such activity with the FDIC.

(b) *Exceptions.* A foreign bank operating an insured state branch which would otherwise be required to submit an application pursuant to paragraph (a) of this section will not be required to submit such an application if the activity it desires to engage in or continue to engage in has been determined by the FDIC not to present a significant risk to the affected deposit insurance fund pursuant to part 362 of this chapter, ''Activities and Investment of Insured State Banks'.

(c) *Agency activities.* A foreign bank operating an insured state branch which would otherwise be required to submit an application pursuant to paragraph (a) of this section will not be required to submit such an application if it desires to engage in or continue to engage in an activity conducted as agent which would be a permissible agency activity for a state-chartered bank located in the state which the state-licensed insured branch of the foreign bank is located and is also permissible for a state-licensed branch of a foreign bank located in that state; provided, however, that the agency activity must be permissible pursuant to any other applicable federal law or regulation.

(d) *Conditions of approval.* Approval of such an application may be conditioned on the applicant's agreement to conduct the activity subject to specific limitations, such as but not limited to the pledging of assets in excess of the requirements of § 347.210 and/or the maintenance of eligible assets in excess of the requirements of § 347.211. In the case of an application to initially engage in an activity, as opposed to an application to continue to conduct an activity, the insured branch shall not commence the activity until it has been approved in writing by the FDIC pursuant to this part and the Board of Governors of the Federal Reserve System (Board of Governors), and any and all conditions imposed in such approvals have been satisfied.

(e) *Divestiture or cessation.* (1) If an application for permission to continue to conduct an activity is not approved by the FDIC or the Board of Governors, the applicant shall submit a plan of divestiture or cessation of the activity to the appropriate regional director.

(2) A foreign bank operating an insured state branch which elects not to apply to the FDIC for permission to continue to conduct an activity which is rendered impermissible by any change in statute, regulation, official bulletin or circular, written order or interpretation, or decision of a court of competent jurisdiction shall submit a plan of divestiture or cessation to the appropriate regional director.

(3) Divestitures or cessations shall be completed within one year from the date of the disapproval, or within such shorter period of time as the FDIC shall direct.

(f) *Procedures.* Procedures for applications under this section are set out in subpart D of this part.

Subpart C—International Lending

§ 347.301 Purpose, authority, and scope.

Under the International Lending Supervision Act of 1983 (Title IX, Pub. L. 98–181, 97 Stat. 1153) (12 U.S.C. 3901 *et seq.*) (ILSA), the Federal Deposit Insurance Corporation prescribes the regulations in this subpart relating to international lending activities of insured state nonmember banks.

§ 347.302 Definitions.

For the purposes of this subpart:

(a) *Administrative cost* means 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. No portion of supervisory and administrative expenses or other indirect expenses such as occupancy and other similar overhead costs shall be included.

(b) *Banking institution* means an insured state nonmember bank.

(c) *Federal banking agencies* means the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation.

(d) *International assets* means those assets required to be included in banking institutions' ''Country Exposure Report'' form (FFIEC No. 009).

(e) *International loan* means a loan as defined in the instructions to the ''Report of Condition and Income'' for the respective banking institution (FFIEC Nos. 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.

(f) *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) Either:

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

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

(g) *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.

§ 347.303 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 FDIC 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 obligers 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; or

(*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 ten 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 fifteen percent of the principal amount of each specified international asset, or such greater or lesser percentage determined by the federal banking agencies.

(3) *FDIC notification.* Based on the joint agency determinations under paragraph (b)(1) of this section, the FDIC 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 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 Loan and Lease 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. For banks, 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 Nos. 031, 032, 033 and 034).

(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 (c)(4), international assets may be written down by a charge to the Allowance for Loan and Lease Losses or a reduction in the principal amount of the asset by application of interest payments or other collections on the asset; provided, that only those international assets that may be charged to the Allowance for Loan and Lease Losses pursuant to generally accepted accounting principles may be written down by a charge to the Allowance for Loan and Lease Losses. However, the Allowance for Loan and Lease 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 and lease portfolio.

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

§ 347.304 Accounting for fees on international loans.

(a) *Restrictions on fees for restructured international loans.* No banking institution shall charge, in connection with the restructuring of an international loan, any fee exceeding the administrative cost of the restructuring unless it amortizes the amount of the fee exceeding the administrative cost over the effective life of the loan.

(b) *Accounting treatment.* Subject to paragraph (a) of this section, banking institutions shall account for fees on international loans in accordance with generally accepted accounting principles.

§ 347.305 Reporting and disclosure of international assets.

(a) *Requirements.* (1) Pursuant to section 907(a) of ILSA, a banking institution shall submit to the FDIC, at least quarterly, information regarding the amounts and composition of its holdings of international assets.

(2) Pursuant to section 907(b) of ILSA, a banking institution shall submit to the FDIC 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 FDIC 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 federal banking agencies may include changes to existing forms (such as revisions to the Country Exposure Report, Form FFIEC No. 009) or such other requirements as the federal banking agencies deem appropriate. The federal banking agencies also may determine to exempt from the requirements of paragraph (a) of this section banking institutions that, in the

federal banking agencies' judgment, have de minimis holdings of international assets.

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

Subpart D—Applications and Delegations of Authority

§ 347.401 Definitions.

For the purposes of this subpart, the following definitions apply:

(a) *Appropriate regional director or appropriate deputy regional director* means the appropriate regional director or appropriate deputy regional director as defined by § 303.0 of this chapter.

(b) *Board of Governors* means the Board of Governors of the Federal Reserve System.

(c) *Eligible depository institution* means an insured state nonmember bank that has an FDIC-assigned composite rating of 1 or 2 under the Uniform Financial Institutions Rating System as a result of its most recent federal or state examination; received a satisfactory or better Community Reinvestment Act (CRA) rating from the FDIC at its most recent examination, if the bank is subject to examination under part 345 of this chapter; received a compliance rating of 1 or 2 from the FDIC at its most recent examination; is well capitalized; and is not subject to a cease and desist order, consent order, prompt corrective action directive, written agreement, memorandum of understanding, or other administrative agreement with its primary federal regulator or its chartering authority.

(d) *Federal branch* means a federal branch of a foreign bank as defined by § 347.202.

(e) *FDIC* means the Federal Deposit Insurance Corporation.

(f) *Foreign bank* means a foreign bank as defined by § 347.202.

(g) *Foreign branch* means a foreign branch of an insured state nonmember bank as defined by § 347.102.

(h) *Foreign organization* means a foreign organization as defined by § 347.102.

(i) *Insider* means a person who is or is proposed to be a director, officer, or incorporator of an application; a shareholder who directly or indirectly controls ten percent or more of any class of the applicant's outstanding voting stock; or the associates or interests of any such person.

(j) *Insured branch* means an insured branch of a foreign bank as defined by § 347.202.

(k) *Noninsured branch* means a noninsured branch of a foreign bank as defined by § 347.202.

(l) *State branch* means a state branch of a foreign bank as defined by § 347.202.

§ 347.402 Establishing, moving or closing a foreign branch of a state nonmember bank; § 347.103.

(a) *Notice procedures for general consent.* Notice in the form of a letter from an eligible depository institution establishing or relocating a foreign branch pursuant to § 347.103(b) shall be provided to the appropriate regional director (DOS) no later than 30 days after taking such action, and include the location of the foreign branch, including a street address, and a statement that the foreign branch has not been located on a site on the World Heritage List or on the foreign country's equivalent of the National Register of Historic Places (National Register), in accordance with section 402 of the National Historic Preservation Act Amendments of 1980 (NHPA Amendments Act) (16 U.S.C. 470a–2). The appropriate regional director will provide written acknowledgment of receipt of the notice.

(b) *Filing procedures for other branch establishments*—(1) *Where to file.* An applicant seeking to establish a foreign branch other than under § 347.103(b) shall submit an application to the appropriate regional director (DOS).

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

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

(ii) Details concerning any involvement in the proposal by an insider of the applicant, as defined in § 347.401(i), including any financial arrangements relating to fees, the acquisition of property, leasing of property, and construction contracts;

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

(iv) A brief description of the activities of the branch, and to the extent any activities are not authorized by § 347.103(a) , the applicant's reasons why they should be approved.

(3) *Additional information.* The appropriate regional director (DOS) may request additional information to complete processing.

(c) *Processing*—(1) *Expedited processing for eligible depository institutions.* An application filed under § 347.103(c) by an eligible depository institution as defined in § 347.401(c) seeking to establish a foreign branch by expedited processing will be acknowledged in writing by the FDIC and will receive expedited processing, unless the applicant is notified in writing to the contrary and provided with the basis for that decision. The FDIC may remove the application from expedited processing at any time before the approval date if the appropriate regional director (DOS) determines the application presents a significant supervisory concern, raises a significant legal or policy issue, or other good cause exists for removal, and will promptly notify the applicant in writing of the reason for such action. Absent such removal, an application processed under expedited processing is deemed approved 45 days after receipt of a complete application by the FDIC, or on such earlier date authorized by the FDIC in writing.

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

(d) *Closing.* Notices of branch closing under § 347.103(f) , in the form of a letter including the name, location, and date of closing of the closed branch, shall be filed with the appropriate regional director (DOS) no later than 30 days after the branch is closed.

(e) *Delegation of authority.* Authority is delegated to the Director and Deputy Director (DOS) and, if confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director to approve an application under paragraph (c) of this section if the following criteria are satisfied:

(1) The requirements of section 402 the NHPA Amendments Act have been favorably resolved;

(2) The applicant will only conduct activities authorized by § 347.103(a); and

(3) If the foreign branch will be located in a foreign country in which applicable law or practice would limit the FDIC's access to information for supervisory purposes, the delegate is satisfied that adequate arrangements have been made (through conditions imposed in connection with the approval and agreed to in writing by the applicant) to ensure that the FDIC will have necessary access to information for supervisory purposes.

§ 347.403 Investment by insured state nonmember banks in foreign organizations; § 347.108.

(a) *Notice procedures for general consent.* Notice in the form of a letter from an eligible depository institution making direct or indirect investments in a foreign organization pursuant to § 347.108(a) shall be provided to the appropriate regional director (DOS) no later than 30 days after taking such action. The appropriate regional director will provide written acknowledgment of receipt of the notice.

(b) *Filing procedures for other investments.* (1) *Where to file.* An applicant seeking to make a foreign investment other than under § 347.108(a) shall submit an application to the appropriate regional director (DOS).

(2) *Content of filing.* A complete application shall include the following information:

(i) Basic information about the terms of the proposed transaction, the amount of the investment in the foreign organization and the proportion of its ownership to be acquired;

(ii) Basic information about the foreign organization, its financial position and income, including any available balance sheet and income statement for the prior year, or financial projections for a new foreign organization;

(iii) A listing of all shareholders known to hold ten percent or more of any class of the foreign organization's stock or other evidence of ownership, and the amount held by each;

(iv) A brief description of the applicant's business plan with respect to the foreign organization;

(v) A brief description of any business or activities which the foreign organization will conduct directly or indirectly in the United States, and to the extent such activities are not authorized by subpart A of part 347, the applicant's reasons why they should be approved;

(vi) A brief description of the foreign organization's activities, and to the extent such activities are not authorized by subpart A of part 347, the applicant's reasons why they should be approved; and

(vii) If the applicant seeks approval to engage in underwriting or dealing activities, a description of the applicant's plans and procedures to address all relevant risks.

(3) *Additional information.* The appropriate regional director (DOS) may request additional information to complete processing.

(c) *Processing*—(1) *Expedited processing for eligible depository institutions.* An application filed under § 347.108(b) by an eligible depository institution as defined in § 347.401(c) seeking to make direct or indirect investments in a foreign organization by expedited processing will be acknowledged in writing by the FDIC and will receive expedited processing, unless the applicant is notified in writing to the contrary and provided with the basis for that decision. The FDIC may remove the application from expedited processing at any time before the approval date if the appropriate regional director (DOS) determines the application presents a significant supervisory concern, raises a significant legal or policy issue, or other good cause exists for removal, and will promptly notify the applicant in writing of the reason for such action. Absent such removal, an application processed under expedited processing is deemed approved 45 days after receipt of a complete application by the FDIC, or on such earlier date authorized by the FDIC in writing.

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

(d) *Delegations of authority.* Authority is delegated to the Director and Deputy Director (DOS) and, if confirmed in writing by the Director, to an associate director and the appropriate regional director and appropriate deputy regional director to approve applications under paragraph (c) of this section so long as:

(1) The investment complies with the amount limits in §§ 347.104 through 347.107 and is in a foreign organization which only conducts such activities as authorized in §§ 347.104 through 347.107; and

(2) For foreign investments resulting in the applicant holding 20 percent or more of the voting equity interests of the foreign organization or controlling such organization, if the organization is located in a foreign country in which applicable law or practice would limit the FDIC's access to information for supervisory purposes, the delegate is satisfied that adequate arrangements have been made (through conditions imposed in connection with the approval and agreed to in writing by the applicant) to ensure that the FDIC will have necessary access to information for supervisory purposes.

§ 347.404 Exemptions from insurance requirement for a state branch of a foreign bank; § 347.206(b).

(a) *Filing procedures for consent to operate as a noninsured branch*—(1) *Where to file.* A foreign bank seeking consent to operate a branch as a noninsured branch under § 347.206(b) shall submit an application to the appropriate regional director (DOS).

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

(i) The kinds of deposit activities in which the branch proposes to engage;

(ii) The expected source of deposits;

(iii) The manner in which deposits will be solicited;

(iv) How this activity will maintain or improve the availability of credit to all sectors of the United States economy, including the international trade finance sector;

(v) That the activity will not give the foreign bank an unfair competitive advantage over United States banking organizations; and

(vi) A resolution by the foreign bank's board of directors authorizing the filing of the application; or if a resolution is not required by the applicant's organizational documents, the request shall include evidence of approval by the applicant's senior management.

(3) *Additional information.* The appropriate regional director (DOS) may request additional information to complete processing.

(b) *Processing.* The FDIC will provide the applicant with written notification of the final action as soon as the decision is rendered.

§ 347.405 Approval for an insured state branch of a foreign bank to conduct activities not permissible for federal branches; § 347.213.

(a) *Filing procedures*—(1) *Where to file.* An application by an insured state branch seeking approval to conduct activities not permissible for a federal branch, as required by § 347.213(a), shall be submitted in writing to the appropriate regional director (DOS).

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

(i) A brief description of the activity, including the manner in which it will be conducted and an estimate of the expected dollar volume associated with the activity;

(ii) An analysis of the impact of the proposed activity on the condition of the United States operations of the foreign bank in general and of the branch in particular, including a copy of the feasibility study, management plan, financial projections, business plan, or

similar document concerning the conduct of the activity;

(iii) A resolution by the applicant's board of directors, or evidence of approval by senior management if a resolution is not required pursuant to the applicant's organizational documents, authorizing the filing of the application;

(iv) A statement by the applicant of whether it is in compliance with §§ 347.210 and 347.211, Pledge of assets and Asset maintenance, respectively;

(v) A statement by the applicant that it has complied with all requirements of the Board of Governors concerning applications to conduct the activity in question and the status of each such application, including a copy of the Board of Governors' disposition of each such application, if applicable; and

(vi) A statement of why the activity will pose no significant risk to the Bank Insurance Fund.

(3) *Board of Governors application.* If the application to the Board of Governors contains the information required by paragraph (a) of this section, the applicant may submit a copy to the FDIC in lieu of a separate letter application.

(4) *Additional information.* The appropriate regional director (DOS) may request additional information to complete processing.

(b) *Divestiture or cessation*—(1) *Where to file.* Divestiture plans necessitated by a change in law or other authority, as required by § 347.213(e), shall be submitted in writing to the appropriate regional director (DOS) no later than 60 days after the disapproval or the triggering event.

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

(i) A detailed description of the manner in which the applicant proposes to divest itself of or cease the activity in question; and

(ii) A projected timetable describing how long the divestiture or cessation is expected to take.

(3) *Additional information.* The appropriate regional director (DOS) may request additional information to complete processing.

(c) *Delegation of authority.* Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director, to approve plans of divestiture and cessation submitted pursuant to paragraph (b) of this section.

PART 351—[REMOVED]

17. Part 351 is removed.

PART 362—ACTIVITIES AND INVESTMENTS OF INSURED STATE BANKS

18. The authority citation of part 362 continues to read as follows:

Authority: 12 U.S.C. 1816, 1818, 1819 (tenth), 1831a.

19. In § 362.4, paragraph (c)(3)(i)(A) is revised to read as follows.

§ 362.4 Activities of insured state banks and their subsidiaries.

* * * * *

(c) * * *

(3) * * *

(i) * * *

(A) Directly guarantee the obligations of others as provided for in § 347.103(a)(1) of this chapter; and

* * * * *

By order of the Board of Directors.

Dated at Washington, D.C. this 24th day of March, 1998.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 98–8858 Filed 4–7–98; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM145; Special Conditions No. 25–137–SC]

Special Conditions: Lockheed-Martin Model 382J, Automatic Thrust Control System

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Lockheed-Martin Model 382J airplane. This airplane will have a novel or unusual design feature associated with an automatic thrust control system. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

EFFECTIVE DATE: May 8, 1998.

FOR FURTHER INFORMATION CONTACT: Connie Beane, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW, Renton, Washington 98055–4056; telephone (425) 227–2796.

SUPPLEMENTARY INFORMATION:

Background

On August 28, 1992, Lockheed-Martin applied for an amendment to Type Certificate No. A1S0 to include the new Model 382J. The Model 382J, which is a derivative of the Model 382G currently approved under Type Certificate No. A1S0, is a high wing/low tail configured four-engine turboprop airplane derived from the Lockheed C–130 Hercules military transport. The Model 382J incorporates a new Full Authority Digital Engine Control (FADEC), Allison engines with six blade composite propellers, a modernized cockpit including Electronic Flight Instrument Systems (EFIS), Engine Indication and Crew Alerting Systems (EICAS), and a Head Up Display (HUD) of primary flight information.

The increased thrust provided by the new engine/propeller installation would result in the Model 382J being limited by ground minimum control speed (VMCG) over a large part of the proposed takeoff operating envelope, which in turn would result in unbalanced takeoff field lengths that Lockheed-Martin finds unacceptable. In order to remedy this situation, Lockheed-Martin has developed an electronically controlled system that will monitor engine and propeller performance, and in the event of a failure of an outboard propulsion unit, will reduce the power setting on the functioning outboard engine to a level that permits compliance with the requirements of § 25.149(e); the operation of this system will thus optimize takeoff field lengths for the Model 382J.

Type Certification Basis

Under the provisions of § 21.101, Lockheed-Martin must show that the Model 382J meets the applicable provisions of the regulations incorporated by reference in Type Certificate No. A1SO or the applicable regulations in effect on the date of application for the change to the Model 382J. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The regulations incorporated by reference in Type Certificate No. A1SO are as follows:

The certification basis for the present Model 382 series airplanes is Civil Aviation Regulations (CAR) 9a, which references CAR 4b, effective December 31, 1953, including Amendments 4b–1 through 4b–11, SR422B, SR450A, and Amendment 4b–12 as related to CAR 4b.307(a).