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: Notice of proposed rulemaking.

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 is seeking public comment on its proposal to revise and consolidate 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 proposal 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 proposing to rescind 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 FDIC's proposal 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 FDIC is proposing to revise 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 proposed rule will improve efficiency, reduce costs, and eliminate outmoded requirements.

DATES: Comments must be received on or before September 15, 1997.

ADDRESSES: Send written comments to Robert E. Feldman, Executive Secretary, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, D.C. 20429. Comments may be hand delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m. (Fax number (202) 898–3838; Internet address: comments@fdic.gov). Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW, Washington, D.C. 20429, between 9:00 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Christie A. Sciacca, Assistant 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), Karen L. Main, Senior Attorney (202/898–8838), 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 has decided to consolidate its international banking rules into a single part, part 347, for ease of reference. This proposal 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 proposed revisions to part 351 have been discussed with representatives from the OCC and FRB and they are in general agreement with the changes. 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 proposed revision to part 351 in connection with its consolidation of the international banking regulations.

In addition, the FDIC is currently processing a 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. At this time, the FDIC cannot determine whether this part 347 rulemaking will be finalized before or after the FDIC's part 303 rulemaking. To deal with this uncertainty, the FDIC's part 303 proposal will contain an ''interim'' version of subpart J, which will set out application processes compatible with the FDIC's current versions of parts 346 and 347. In addition, this part 347 proposal includes, as a separate subpart D of part 347, revised ''permanent'' application procedures compatible with the substantive provisions of this part 347 proposal. These ''permanent'' application procedures will be located in subpart J without substantive change, displacing the interim procedures, once both part 303 and part 347 are issued as final rules.

The FDIC requests public comments about all aspects of the proposal. In addition, the FDIC is raising specific questions for public comment, as set out in connection with the analysis of the proposal below.

Proposed Revisions to Part 347, Foreign Branches and Investments in Foreign Banks and Other Entities

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 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, Public Law 95–630 (FIRIRCA).

When the FDIC originally adopted part 347 in 1979, to implement the Corporation's new authority under sections 18(d)(2) and 18(l), the FDIC adopted a rule which was virtually the same as the corresponding provisions of the FRB's rules and regulations at the time. Based on the above legislative history, the FDIC determined that Congress intended to bring the international activities of nonmember banks under federal controls that were similar, but not necessarily identical, to those contained in the FRB's rules governing the international activities of member banks and bank holding companies. 44 FR 25194, 25195 (April 30, 1979).

In developing its proposal to revise part 347, the FDIC has therefore maintained a parity with the substance of the FRB's corresponding rules on foreign branching and investments by member banks, contained in subpart A of Regulation K (12 CFR 211.1–211.8). The permissible activities for foreign branches of nonmember banks and for foreign entities in which nonmember banks invest are virtually identical to those authorized for member banks under Regulation K. The amount limits and extent to which nonmember banks may engage in such activities without obtaining the FDIC's specific approval are also very similar, taking into account certain variances attributable to structural differences between the types of institutions governed. Where there are substantive differences between the FDIC's proposal and the FRB's rules under subpart A of Regulation K, the differences are noted below.

In certain of the few limited instances in which the FDIC is proposing a different treatment than the FRB's under Regulation K, the difference raises 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. Where these section 24 issues arise, they are discussed below.

Subpart A—Foreign Branches

The most significant revision made by the proposal is the FDIC's grant of authority to a nonmember bank meeting certain eligibility criteria to establish foreign branches under general consent or prior notice 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 proposal also introduces expanded powers for foreign branches to underwrite, distribute, deal, invest in, and trade foreign government obligations.

The general consent and prior notice procedures are discussed in detail in the analysis of subpart D, below, but to summarize them briefly, proposed § 347.103(b) gives the FDIC's general consent for an eligible nonmember bank—one which is well-capitalized, well-rated under certain supervisory assessment benchmarks, has no supervision problems and has been in operation at least three years—to establish additional branches within a foreign country or relocate a branch within a foreign country. An eligible nonmember bank which has established its international expertise by successfully operating foreign branches or affiliates in two or more foreign countries may also establish branches in additional foreign countries upon 45 days prior notice to the FDIC. There are certain necessary limitations on these general consent and prior notice procedures, however, as discussed in the analysis of subpart D.

In an effort to modernize the list of foreign branch powers currently contained in § 347.3(c), the proposal eliminates § 347.3(c)(2), containing specific authorization for a foreign branch to accept drafts or bills of exchange, and § 347.3(c)(5), containing specific authorization for a foreign branch to make loans secured by real estate. In addition, 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 is authorizing in addition to such general banking powers.

The proposal also eliminates § 347.3(c)(6), containing 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 makes provisions for 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, proposed § 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. The proposal continues to set the limit for such investments at 1 percent of the total deposits in all the bank's branches in that country as reported in the preceding year-end 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 FDIC specifically requests public comment on whether this limit is too high or too low, or should be calculated on a different basis.

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. Proposed § 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 proposal also revises the investment limit to make it 10 percent of the nonmember bank's tier 1 capital, instead of the outdated reference to 10 percent of its capital and surplus.

Finally, the FDIC is considering whether it would be appropriate and desirable 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. Proposed § 347.103(a)(3)(ii) would permit 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 proposal presents an issue under section 24 of the FDI Act and part 362 of the FDIC's rules and regulations. If adopted as part of the final rule, § 347.103(a)(3)(ii) would represent the FDIC's determination that the activity would not create a significant risk to the deposit insurance fund.[1]

Proposed § 347.103(a)(3)(ii) would allow 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 proposal would include these activities as part of the 10 percent limit applicable to local obligation underwriting, distribution, investment and trading, and would also require the non-local obligations to be investment grade. The FDIC would expect nonmember banks to make appropriate periodic independent credit reviews to determine and monitor the investment-grade quality of issues which are unrated or rated under comparatively less-rigorous standards than the ones used by U.S. ratings agencies. The FDIC specifically requests comments on the merits of the proposal, including comments on appropriate amount limits if the activity is authorized and any appropriate safeguards which should be imposed.

[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) would require 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 would be debt obligations instead of equity interests, and could be held at the branch level.

Subpart A—Foreign Investments

Overview

The FDIC is completely revising its approach to approvals of a nonmember bank's investment in the stock or other evidences of ownership of a foreign bank or other entity. Section 347.4 has not been revised in any significant regard since the FDIC originally adopted it, shortly after Congress gave the FDIC statutory responsibility for reviewing foreign investments. It currently provides little information about the types of activities in which the FDIC would consider it to be appropriate for a foreign investment entity to engage. The rule requires specific FDIC approval of virtually every foreign investment, and limits total investment in all cases to 25 percent of a nonmember bank's capital. Nonmember banks affected by the rule have advised the FDIC that they view the current approach as an impediment to their ability to compete effectively abroad. While the FDIC must remain mindful of its supervisory obligations arising from the FDI Act and international supervisory agreements, and has a responsibility to address certain issues to ensure that international operations do not threaten the safety and soundness or financial condition of nonmember banks, the FDIC agrees that the rule can be significantly revised in light of the experience the Corporation has gained since § 347.4 was originally adopted.

The FDIC's proposal adopts an approach like that of the FRB under Regulation K. The proposed rule lists the various types of financial activities in which a nonmember bank's foreign subsidiaries and joint ventures may engage. The proposal 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 proposed 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

Proposed § 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 5 percent of the subsidiary's assets or revenues may be attributable to activities which are not on the list. Under the proposed 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 proposed definition of a subsidiary differs from the commonly-used subsidiary definitional structure based on section 2(d) of the Bank Holding Company Act (12 U.S.C. 1841(d)). Under the section 2(d) type of structure, subsidiary status typically arises upon ownership of 25 percent or more of the subsidiary's voting securities.

Subsidiary status under the section 2(d) type of structure also arises when the parent controls 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 FDIC's proposal 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 5 percent exception for going concerns.

The FDIC has proposed 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 proposed § 347.102(a), also to maintain consistency with Regulation K. The FDIC has attempted to establish activity and amount limits in this part 347 proposal which take into account any conduct of similar activities by the nonmember bank's holding company or the holding company's other affiliates as authorized by Regulation K. The use of consistent definitional thresholds is of great assistance to this end.

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' holdings are less than 20 percent of a foreign organization's voting equity interests, the nonmember bank is also 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 FDIC is contemplating whether this 20 percent limit should be somewhat higher, and specifically requests public comment on this point.

The list of authorized financial activities in proposed § 347.104(b) is modeled on the FRB's corresponding provision in Regulation K, 12 CFR 211.5(d). The proposal reorders the activities in an effort 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 proposed §§ 347.105 and 347.106. Additional activities require the FDIC's approval.

The proposal 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 proposal 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, proposed § 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 is contemplating imposing one restriction in addition to the restrictions imposed by Regulation Y at 12 CFR 225.28(b). Under proposed § 347.106(a), a foreign investment entity could not have potential liability to a mutual exchange or clearing association of which the foreign investment entity was a member exceeding an amount equal to 2 percent of the nonmember bank's tier 1 capital, unless the FDIC has granted its prior approval.

This overall approach, in which part 347 specifies an approved list of activities applicable to varying degrees depending on the nonmember bank's proportional ownership of a foreign organization, is a major change from the approach under current part 347, in which activities are evaluated on a case-by-case basis in connection with the FDIC's approval of the investment. The FDIC specifically requests public comment on this new approach, including whether the limits are appropriate.

Unlike Regulation K, the FDIC's proposal 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 the FDIC's proposed rule 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 could 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 arise 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. Moreover, 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. Under the proposal, the FDIC would permit such investments, and require them to be held through some form of U.S. or foreign majority-owned subsidiary. If adopted as part of the final rule, this would represent the FDIC's determination that dispensing with the intermediate foreign bank subsidiary or Edge subsidiary, the vehicle through which a national bank would be permitted to make this type of investment, would not create a significant risk to the deposit insurance fund.

The FDIC is also omitting 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 U.S. insured 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 to the extent 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. The question of permitting nonmember banks to underwrite annuities through a foreign organization is beyond the scope of this rulemaking.

The FDIC specifically requests public comment on the list of activities under proposed § 347.104(b), including the scope of such activities and whether any different conditions or limits would be appropriate.

Portfolio Investments in Nonfinancial Foreign Organizations

Proposed § 347.104(g) 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 FDIC is proposing the latter restriction to prevent 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 are to be on substantially the same terms as those prevailing at the time for comparable transactions with nonaffiliated organizations.

The FDIC is considering limiting these investments in nonfinancial foreign organizations to an amount equal to 15 percent of the nonmember bank's tier 1 capital. The FDIC seeks to establish a level which will permit a nonmember bank's foreign subsidiaries to compete effectively with other financial institutions in their foreign markets. The FDIC specifically requests public comment on whether this limit is too high, or too low, and whether any additional safeguards are appropriate. The FDIC is also considering whether nonmember banks should be permitted to hold somewhat more than 20 percent of the organization's voting equity interests, and specifically requests public comment on this issue.

In contrast to its approach with foreign organizations engaged primarily in financial activities authorized under § 347.104(b), proposed § 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 believes a nonmember bank's foreign bank and other financial subsidiaries must be permitted to make such investments in order to compete effectively in their foreign markets, and since such investments are permissible for a national bank, no section 24 analysis is required.

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, in its judgment, have determined are incidental to the international or foreign business of the foreign

[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 polices 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).

organization. Proposed § 347.107 addresses what activities may be engaged in within the United States. The proposal 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 5 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 5 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 FDIC is proposing to permit a foreign organization 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.

The FDIC specifically requests comments on this aspect of the proposal, including whether the thresholds and approved U.S. activities are appropriate.

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

Under the proposal, a foreign investment entity of a nonmember bank would be permitted to underwrite, distribute, and deal equity securities outside the United States. Briefly summarized, the FDIC is considering imposition of three main limits as part of proposed § 347.105:

Underwriting commitments for a single issuer could not exceed an amount equal to the lesser of $60 million or 25 percent of the nonmember bank's tier 1 capital.

Distribution and dealing shares of a single entity could not exceed an amount equal to the lesser of $30 million or 5 percent of the nonmember bank's tier 1 capital.[3]

The sum of underwriting commitments, distribution and dealing shares, and any portfolio investments in nonfinancial foreign organizations under § 347.104(g) could 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 would count 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 would also count 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 could be exceeded to the extent the commitment is covered by binding commitments from subunderwriters or purchasers. The limit could 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 would be from tier 1 capital, and the deduction would be applicable for all regulatory purposes.

The $30 million/5 percent limit on the equity securities of a single entity which may be held for distribution or dealing would be 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 would not be included in the limit. Second, up to 75 percent of the position in an equity security could 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 would expect a nonmember bank asserting netting involving derivatives to be able to 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 would apply:

The investment or trading securities would be included in calculating the 5 percent/$30 million 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 would be counted towards the general consent investment limits.

In addition, equity interests in a particular foreign organization held for distribution and dealing would be required to conform with the limits of proposed § 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)) would be 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 would be included in determining compliance with these limits. However, in order to permit 100 percent underwriting, the proposal 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 would be limited to 25% of the nonmember bank's capital, would only include 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 would only be counted net of any position reduction through netting, as permitted in connection with the 5% dealing limit.

The FDIC specifically requests public comments on the underwriting, distribution, and dealing aspects of the proposal, including comments on whether the limits and limit adjustments are too low or too high, the basis upon which limits should be calculated, and any appropriate

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

safeguards. The FDIC also requests comments on the proposed netting provisions and on the type of hedging strategies a nonmember bank might use pursuant to the proposed netting provisions concerning derivatives.

Approval of Investments

The FDIC is proposing to permit a nonmember bank meeting certain eligibility criteria to make foreign investments under the rule pursuant to general consent and prior notice procedures. These procedures are discussed in detail in the analysis of proposed subpart D below, but to summarize them briefly, proposed § 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 5 percent of their tier 1 capital in any twelve month period, plus up to an additional 5 percent in equity interests for trading purposes. A sublimit of 2 percent of tier 1 capital per foreign organization applies. The nonmember bank must already have at least one foreign organization subsidiary, and at least one nonmember bank must have a foreign organization 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. There are certain necessary limitations on these general consent and prior notice procedures, however, as discussed in the analysis of proposed subpart D.

Extensions of Credit

Proposed § 347.109(a) 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. The FDIC specifically requests public comment whether it is appropriate to continue this aspect of the rule without change, in light of the activities and investments which would be permitted under the proposal.

Debts Previously Contracted

With one exception, proposed § 347.109(b) 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 proposing to extend 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 will reduce 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 proposed 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. The FDIC specifically requests public comment on the merits of extending this time period, and the appropriate duration of the extension.

Supervision and Recordkeeping for Foreign Branches and Investments

With one exception, proposed § 347.110 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 proposal 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 prior notice 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.

Proposed Revisions to Part 346, Deposit Insurance Requirements for State Branches and Foreign Banks Having Insured Branches

Background

The FDIC adopted part 346 as a final regulation on July 9, 1979. This part was originally promulgated to implement various provisions of the International Banking Act of 1978 (IBA) (Pub. L. 95–369). 12 U.S.C. 3101 *et seq.* Under the IBA, foreign banks operating in the United States through branches, agencies or commercial lending companies are subject to federal supervision and regulation similar to that imposed on like activities of domestic banks. For example, section 6 of the IBA requires certain branches of foreign banks to obtain federal deposit insurance. In particular, deposit insurance is required for a federal branch that accepts deposits of less than $100,000 and for a state branch that accepts deposits of less than $100,000 if it is located in a state which requires deposit insurance for state-chartered banks. Exemptions from the insurance requirement may be granted either by regulation or by order of the OCC, in the case of a federal branch, or the FDIC, in the case of a state branch, if the branch is not engaged in a domestic retail deposit activity requiring insurance protection. Section 6 also made numerous amendments to the FDI Act. The amendments to the FDI Act dealt with in part 346 include: (1) A requirement that the foreign bank give a commitment for examination; (2) a requirement that the foreign bank pledge assets to the FDIC; (3) rules for the maintenance of assets in the branch; and (4) rules for the assessment of deposits by the FDIC.

In 1991, the IBA was amended with the passage of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) (Pub. L. 102–242); specifically, sections 201–215 of FDICIA were enacted as the Foreign Bank Supervision Enhancement Act of 1991 (FBSEA). This legislation made numerous changes to the IBA. Section 6 of the IBA was amended to require that any foreign bank that intends to conduct domestic retail deposit activities in the United States must do so by organizing one or more insured bank subsidiaries in the United States. Until this legislative change, foreign banks were allowed to accept initial deposits of less than $100,000 in insured branches. In addition, section 7 of the IBA was amended by adding a new subsection (h) which provides that a state-licensed insured branch of a foreign bank may not engage in any activity which is not permissible for a federal branch of a foreign bank unless the FRB has determined that the activity is consistent with sound banking practice, and the FDIC has determined that the activity would pose no significant risk to the Bank Insurance Fund (BIF). The statutory amendments to section 7 of the IBA were implemented in part 346 in final form and became effective on

January 1, 1995. At that time, a new subpart D was added to address the application procedures and approval process necessary for an insured state branch to request permission from the FDIC (and the FRB) to engage in or continue an activity that is otherwise not permissible for a federal branch of a foreign bank. The statutory requirement that a foreign bank only accept domestic retail deposits in the United States through an insured bank subsidiary was not incorporated into part 346 at that time.

Finally, in 1994, with the enactment of section 107 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (Riegle-Neal Act) (Pub. L. 103–328), the federal banking agencies were charged with the obligation of revising their respective regulations adopted pursuant to section 6 of the IBA to ensure that the regulations are consistent with the legislative goal of ''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). To this end, the FDIC reviewed and revised its regulation governing the deposit insurance exemptions available to state branches under part 346. Section 346.6. The current list of excepted deposit-taking activities enumerated in § 346.6(a) became effective on April 1, 1996.

Current Part 346

Subpart A of part 346 contains the definitions of terms which are relevant to the regulatory provisions set forth in this part. Subpart B establishes rules for determining which state branches must obtain deposit insurance. Basically, branches engaged in ''retail'' deposit activity must be insured while branches engaged in ''wholesale'' deposit activity do not have to be insured. Subpart B also includes a requirement that where one branch of a foreign bank becomes insured, every branch of that bank in the same state must become insured (except for branches which accept only initial deposits in an amount of $100,000 or greater). This restriction on the operation of insured branches applies to both federal and state branches. Section 346.6 of this subpart lists the types of excepted deposit-taking activities which will not be deemed to be ''domestic retail deposit activity'' and describes the procedures for a state branch to apply for an exemption from the deposit insurance requirement; § 346.7 provides depositor notification requirements for those noninsured branches.

Subpart C of part 346 establishes rules that apply to foreign banks which operate insured state or federal branches. These rules require a foreign bank having an insured branch to: (1) Provide the FDIC with information regarding the bank's activities outside of the United States and allow the FDIC to examine the foreign bank's activities in the United States; (2) maintain records in an appropriate manner; (3) pledge assets under terms acceptable to the FDIC; and (4) maintain assets at the branch equal in value to the branch's liabilities. Rules for assessing the deposits of an insured branch are also set out. As mentioned above, a new subpart D was added in 1995 which provides that a foreign bank operating an insured state branch which desires to engage in or continue an activity that is not permissible for a federal branch, pursuant to statute, regulation, official bulletin or circular, or any other order or interpretation issued in writing by the OCC, shall file with the FDIC (and the FRB) a prior written application for permission to conduct or continue such activity. Subpart D describes the application contents, the filing procedures and the circumstances under which a plan of divestiture or cessation must be submitted to the FDIC.

Subpart B Proposal

Former part 346 will become subpart B of the new, consolidated part 347. Unlike former part 347, former part 346 has been revised several times since its original adoption to implement various provisions of the IBA which were amended by FBSEA and the Riegle-Neal Act in 1991 and 1994, respectively. However, one significant change to section 6 of the IBA which was effected by FBSEA in 1991 has not been implemented by a revision of the FDIC's regulations. FBSEA amended section 6 of the IBA to require that foreign banks which intend to conduct domestic retail deposit activities in the United States must organize insured bank subsidiaries to conduct those deposit activities after December 19, 1991. (Section 6(c) of the IBA; however, in 1994, the section was re-designated as section 6(d).) 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 retail deposit activities (grandfathered insured branches). IBA section 6(d) also provides an exception to the definition of ''foreign bank'' which excludes ''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]''. IBA section 6(d)(3). This definitional ''carve out'' has the effect of allowing banks organized under the laws of the territories included therein to continue to conduct domestic retail deposit activities in the United States through insured branches rather than be required to charter an insured bank subsidiary. This statutory framework to authorize and regulate the domestic retail deposit activities of foreign banks in the United States has been implemented in proposed § 347.204. Moreover, corresponding revisions to other relevant sections in subpart B are also being made to recognize this statutory change to the deposit insurance requirements for foreign banks.

Proposed § 347.206 addresses exemptions from the deposit insurance requirement. Paragraph (a)(7) has been revised in an effort to simplify and clarify the calculation of the regulatory de minimis exception. The transition rule applicable to time deposits has been revised by the deletion of the reference to 90 days after the effective date of the regulation which has been rendered moot with the passage of time. Finally, the FDIC is proposing to rescind former § 346.8 of its rules and regulations. Former § 346.8 provides foreign banks with the opportunity to apply for deposit insurance for their U.S. branches which would not otherwise be required to be insured pursuant to proposed § 347.204.

In the portion of former part 346 that addressed the examination and supervisory requirements for foreign banks having insured branches, several proposed changes have been made. First, in proposed § 347.210 which sets out the requirements for foreign banks to pledge assets for the benefit of the FDIC, the formula for calculating the amount of assets to be pledged has been simplified and clarified. Proposed § 347.210(b). Other revisions have been made throughout proposed § 347.210 to incorporate the FDIC DOS's new supervision program—the Case Manager approach.

Finally, in connection with the FDIC's CDRI review of part 303 of its rules and regulations, the application procedures for the exemption from domestic retail deposit activities for a noninsured branch which were formerly found in § 346.6(b) of part 346 will be temporarily transferred to § 347.404, and the application and divestiture plan procedures set forth in the current section governing FDIC approval for state insured branches to conduct

activities not permissible for federal branches will be temporarily relocated to § 347.405 of this part. Because former part 346 will become subpart B of the proposed part 347, the two separate scope sections of the former part have been combined to create a more cohesive and integrated subpart B. Some technical and non-substantive changes have been made to several of the definitions in proposed § 347.202, and the terms have been alphabetized for the reader's ease of reference.

Insurance of Deposits Sections

As presented above in the general discussion of the proposed subpart B, one legislative change which must be incorporated throughout the applicable sections addressing deposit insurance requirements for state branches is the mandate that domestic deposit retail activity be conducted through an insured bank subsidiary. The first section in subpart B which is affected by this statutory change is proposed § 347.201 which discusses the scope of the new subpart. Proposed § 347.204, ''Insurance requirement'', is being completely reorganized to incorporate the statutory requirement that a foreign bank must organize an insured bank subsidiary to initiate or conduct domestic retail deposit activity in the United States. This requirement is set forth in proposed § 347.204(a). Paragraph (b) of that section sets out the exclusion to the definition of ''foreign bank'' discussed above, which will allow banks organized under the laws of the U.S. territories included therein to conduct domestic retail deposit activities through insured branches rather than being required to charter an insured bank subsidiary. This exception reflects the fact that banks organized in these jurisdictions are already subject to more comprehensive examination and supervision by the U.S. banking regulatory agencies, and therefore, these banks can engage in retail deposit-taking in the U.S. through their branch networks. Paragraph (c) recognizes that there are grandfathered insured branches that are authorized to continue domestic retail deposit activities because they were operating prior to the effective date of the FBSEA legislation. And finally, paragraph (d) authorizes foreign banks to establish or operate noninsured branches if such branch (i) is only conducting a ''wholesale'' deposit operation, (ii) is only accepting deposits that are permissible for an Edge Act corporation (pursuant to § section 347.205); or (iii) meets the requirements for an exemption from the definition of ''domestic retail deposit activity'' pursuant to proposed § 347.206.

The FDIC is proposing to make minor revisions to § 346.6 (proposed § 347.206)—the section which enumerates the exemptions to the definition of ''domestic retail deposit activities'' for state branches of foreign banks. Proposed § 347.206(a) will be amended to provide that if the state branch conducts deposit-taking activities which do not fall within the enumerated exceptions in proposed § 347.206(a), then the parent foreign bank will be required to organize an insured bank subsidiary to engage in such retail deposit activities in the U.S. (The foreign bank will still have the option, however, to operate a noninsured branch which accepts initial deposits of less than $100,000 that do not otherwise fall within the exceptions enumerated in paragraphs (a)(1)–(a)(7) of this section by applying for the FDIC's consent pursuant to proposed § 347.206(b)). Paragraph (a)(7) of the proposed section, the regulatory de minimis exception, is being revised to clarify the calculation methodology and to delete the ''average daily basis'' reference. As stated in the preamble to the final rule when the current exceptions were adopted on April 1, 1996:

> [t]he FDIC wishes to make it clear that the numerator is comprised of the total amount of deposits accepted under the de minimis exception, not just the amount of the initial deposits of less than $100,000 which were accepted to open the accounts.

61 FR 5671, 5674 (February 14, 1996). The de minimis calculation methodology remains unchanged from the current rule. See FDIC Legal Division Staff Advisory Opinion (unpublished) dated December 16, 1985 from Katharine H. Haygood, Esq. Paragraph (b) of proposed § 347.206 will be revised by transferring the application for an exemption procedure set forth therein to § 347.404 of proposed subpart D until the FDIC's proposed part 303 is finalized. Lastly, the transition rule for time deposits set forth in proposed paragraph (c) is being revised by deleting the reference to 90 days after April 1, 1996—which was the effective date of these particular regulatory changes. This transition period was originally included to afford branches the requisite time to reclassify or divest time deposits that would mature very soon after the regulation's effective date. This transition period has expired, and therefore, this reference will be deleted. The FDIC invites public comment on the clarification of the calculation methodology.

The FDIC proposes to rescind former § 346.8 which permits a foreign bank to apply to the FDIC for deposit insurance for a noninsured federal or state branch when it is not otherwise required to be insured. When the IBA was initially enacted in 1978, certain provisions thereof amended the FDI Act to provide that ''[s]ubject to the provisions of [the FDI Act] and to such terms and conditions as the Board of Directors may impose, any branch of a foreign bank * * * may become an insured branch.'' 12 U.S.C. 1815(b). Although the statutory mandate of FBSEA now requires a foreign bank that proposes to engage in domestic retail deposit activity to organize an insured bank subsidiary, noninsured branches are still authorized to operate in the U.S. because they are not engaged in domestic retail deposit activity. (Noninsured branches are permitted to conduct wholesale deposit activities, and are authorized to operate under §§ 347.205 and 347.206 of the proposed subpart B.) Section 5(b) of the FDI Act is still, in theory, applicable to these U.S. branches of foreign banks. 12 U.S.C. 1815(b). Because of this statutory underpinning, rescinding the regulation does not really affect a foreign bank's discretion to apply to the FDIC for insurance. Former § 346.8 added nothing substantive to the statutory authorization and, therefore, is redundant and unnecessary.

Since the enactment of FBSEA in 1991, there can be no de novo insured branches to conduct domestic retail deposit-taking activities. It was Congress' intent that foreign banks wishing to conduct domestic retail deposit activities in the U.S. must do so through an insured bank subsidiary. The FDIC recognizes that there are regulatory exemptions which allow noninsured branches to accept initial deposits of less than $100,000 without being deemed to be engaged in domestic retail deposit activities. See, proposed § 347.206. Although a technical reading of section 5(b) of the FDI Act suggests that a foreign bank may still apply to the FDIC for deposit insurance for a noninsured branch, as a practical matter the FDIC does not foresee many circumstances in which it could be appropriate for the FDIC Board of Directors (Board) to approve such an application. The Board would review the facts and circumstances in each case, in addition to the pertinent legal and policy considerations, and would have to determine whether to actually approve an application for deposit insurance for a noninsured branch. The FDIC is requesting public comment on its proposed rescission of former § 346.8 as well as any possible effects on U.S.

branches of foreign banks of such an action.

Proposed Sections Addressing Foreign Banks Having Insured Branches

Proposed § 347.210(a) sets forth the FDIC's requirement that an insured branch pledge assets for the benefit of the FDIC or its designee. Paragraph (b) of the proposed section will contain a revised formula for calculating the amount of assets that the insured branch will be required to pledge to satisfy the requirement in paragraph (a) of proposed § 347.210. Currently, in order to satisfy the pledge of assets requirement, an insured branch must pledge assets equal to five percent of the average of the insured branch's liabilities for the last 30 days of the second and fourth calendar quarters, respectively. Paragraph (b) then provides detailed instructions for making this calculation. Proposed § 347.210(b) will provide 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. However, the foreign bank will be required to provide the appropriate FDIC regional director with a written report regarding the pledged assets on a quarterly basis rather than semi-annually, in accordance with proposed § 347.210(e)(6)(ii). This new reporting requirement will be 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 the quarterly reporting requirement will not impose a significant additional burden on affected foreign banks because the information is already being collected and maintained by the bank. Submitting it to the FDIC will not require much additional preparation by the affected banks. However, the FDIC is soliciting public comment regarding this proposal to require these reports on pledged assets to be submitted on a quarterly basis rather than semi-annually.

In proposed § 347.210(c), the restriction that a depository may not be an affiliate of the foreign bank whose insured branch is seeking to use the depository has been moved from the definition of ''depository'', proposed § 347.202(d), to this substantive provision. A requirement that the foreign bank shall concurrently provide copies of all the documents and instruments delivered to the depository to the appropriate FDIC regional director has been added in paragraph (e)(4) of the proposed section. Many of the provisions in proposed § 347.210(e) will be revised to incorporate references to the appropriate FDIC regional office or official to fully integrate DOS's new Case Manager approach to bank supervision. 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 rules and regulations has been transferred to proposed § 347.210, and will become new paragraph (f) of that section.

Proposed § 347.213 will retain the substantive requirements and standards regarding the necessity for an insured state branch to apply to the FDIC (and the FRB) for their 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 temporarily transferred to new § 347.405 of subpart D until the FDIC's proposed part 303 is finalized.

Definitions

Some technical and non-substantive changes have been made to various definitions in proposed § 347.202. As mentioned above, the definition of ''depository'' has been amended by deleting the restriction that a depository cannot be an affiliate of the foreign bank whose insured branch is seeking to use the depository. This limitation has been moved to proposed § 347.210(c), the substantive provision which addresses the requirements for a depository which must be contained in the pledge agreement. In addition, the definition of ''foreign bank'' has been revised by deleting the exclusionary language which ''carves out'' any banks that are organized under the laws of U.S. territories from the requirement that a foreign bank organize an insured bank subsidiary to conduct domestic retail deposit activities in the U.S. This exclusionary language has been re-located and designated as proposed § 347.204(b). In this way, the exclusion, which is found in section 6(d)(3) of the IBA, will be read in conjunction with the other regulatory language which implements sections 6(c) and (d) of the IBA in proposed § 347.204. Finally, the terms in the definitional section have been alphabetized for the reader's ease of reference.

Subpart C—International Lending

The International Lending Supervision Act of 1983 (ILSA), 12 U.S.C. 3901, *et. seq.*, 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 examination and supervision of such banks. 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 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). In keeping with the requirements of ILSA, on February 13, 1984, the FDIC, the Office of the Comptroller of the Currency and the Board of Governors of the Federal Reserve System (collectively, the federal banking agencies) issued a joint notice of final rulemaking requiring banks to establish special reserves, the allocated transfer risk reserve (ATRR), against the risks presented in certain international assets.

The current regulation sets forth specific instructions on the accounting treatment for the ATRR. The instructions for the preparation of Consolidated Reports of Condition and Income (Call Reports) provide that a bank which is required by ILSA and the regulations of the federal banking agencies to establish an ATRR must report the reserve separately in its Call Report. Currently, persons preparing Call Reports have to look to the regulations for guidance on the accounting treatment of ATRRs. In an effort to simplify the task of preparing Call Reports by gathering all accounting information in one place, some of the federal banking agencies have been considering whether to amend the Call Report instructions to include a full description of the accounting treatment of ATRRs. The agencies are further considering whether to replace the existing provision in the regulation with a reference to the amended Call Report instructions or to maintain a full description of the accounting treatment in both the regulation and the amended

Call Report instructions. At present, as ILSA specifically directs the federal banking agencies to require banks to account for ATRRs in a particular manner and the instructions for the Call Report do not currently include such detailed instructions for treatment of ATRRs, the FDIC has decided to retain the description of the accounting treatment of the ATRR in its revised regulation. The FDIC is requesting comment as to whether the instructions for the Call Report should be amended to include a description of the accounting treatment for ATRRs. The FDIC is requesting further 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 part 351 or to replace the existing regulation language with a requirement to follow the accounting treatment outlined in amended Call Report instructions.

ILSA also requires the federal banking agencies to promulgate regulations for accounting for fees charged by banks in connection with international loans. Section 906(a) of ILSA (12 U.S.C. 3905(a)) deals specifically with the restructuring of international loans to avoid excessive debt service burden on debtor countries. This section requires banks, in connection with the restructuring of an international loan, to amortize any fee exceeding the administrative cost of the restructuring over the effective life of the loan. Section 906(b) of ILSA (12 U.S.C. 3905(b)) deals with all international loans and requires the federal banking agencies to promulgate regulations for accounting for agency, commitment, management and other fees in connection with such loans to assure that the appropriate portion of such fees is accrued in income over the effective life of each such loan. The current regulation provides a separate accounting treatment for each type of fee charged by banks in connection with their international lending. When ILSA was enacted in 1983 and the current regulation on accounting for international loan fees was promulgated on March 29, 1984, Congress and the federal banking agencies considered that the application of the broad fee accounting principles for banks contained in GAAP were insufficient to accomplish adequate uniformity in accounting principles in this area. Since that time, the Financial Accounting Standards Board has revised the GAAP rules for fee accounting for international loans in a manner that accommodates the specific requirements of section 906 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 staff from the other federal banking agencies, to eliminate from the revised version of part 351 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.

Subpart D—Application Procedures and Delegations of Authority

Overview

This proposed rule includes a separate subpart D containing application procedures and delegations of authority for the substantive matters covered by the proposal.[4] As discussed above, the FDIC is currently preparing a complete revision of 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. It is the FDIC's intent that at such time as part 347 and part 303 are both final, the application procedures proposed in subpart D of this proposal will be relocated to subpart J of part 303, in order to centralize all international banking application procedures in one convenient place.

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 FDIC proposes to treat 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 as proposed, the FDIC would give its general consent for an eligible nonmember bank to establish additional foreign branches in any country in which the bank already operates a branch, or to relocate a branch within the country. The proposal only requires an eligible nonmember bank to notify the FDIC of its actions within thirty days. In addition, an eligible nonmember bank that operates branches or affiliates in two or more foreign jurisdictions may establish additional branches conducting approved activities in additional foreign jurisdictions upon 45 days prior notice to the FDIC.

To be eligible, the nonmember bank must be well capitalized, not be subject to a cease and desist order, consent order, prompt corrective action directive, formal written agreement, memorandum of understanding, or other administrative agreement with any U.S. bank regulatory agency, and must have been chartered and operating for at least three years. The nonmember bank must also have received an FDIC-assigned composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (UFIRS); have received a rating of 1 or 2 under the ''management'' component of the UFIRS at its most recent examination; have a compliance rating of 1 or 2; and have a satisfactory or better Community Reinvestment Act rating. 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 prior notice procedures.

The FDIC is proposing these general consent and prior notice provisions because a nonmember bank meeting the proposed requirements should 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 these procedures as to any institutions for which this is not the case. If the FDIC suspends its general consent or prior notice 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 prior notice does not, in and of itself, require closure of existing foreign branches, and cases necessitating actual closure of branches would be handled

[4] 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.

under section 8 of the FDI Act (12 U.S.C. 1818) or other relevant authority. For nonmember banks seeking to establish a branch in an additional jurisdiction under the prior notice procedure, the FDIC may remove an applicant from the prior notice process if the FDIC's review of the notice indicates significant concerns related to supervision, law or policy, and the nonmember bank will be required to complete the full application process.

General consent and prior notice 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 prior notice do not apply if the law or practice of the foreign jurisdiction 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 and whether it would, in light of all the circumstances, impair the FDIC's ability to carry out the FDIC's responsibilities as a bank supervisor. In addition, if the proposed foreign branch would be 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 proposal in light of section 402 of the National Historic Preservation Act Amendments of 1989 (16 U.S.C. 470a-2).

The proposal 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, proposed § 347.402 sets out the procedures for applications which are not eligible for the general consent or prior notice provisions.

This proposal is a major change from the FDIC's current procedures under which an application is required for each foreign branch. The FDIC specifically requests public comment on the merits of proposed procedure, and whether its parameters are appropriately designed.

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% of the bank's capital and surplus. The FDIC is proposing to eliminate this general limit, and 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 proposal, the FDIC would give 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.[6] The proposal permits investments in a single foreign organization of up to 2 percent of the nonmember bank's tier 1 capital during any twelve-month period. Aggregate investments for investment purposes may total as much as 5 percent of the nonmember bank's tier 1 capital during any twelve-month period, and an additional 5 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 proposal 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 affiliate must already have at least one foreign organization subsidiary. In addition, if the investment will constitute a joint venture or a subsidiary, the proposal requires that at least one other nonmember bank already have a foreign organization 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 proposal also permits an eligible nonmember bank to make any investment which complies with the activity and other limits of subpart A upon 45 days prior notice to the FDIC. The FDIC may remove an applicant from the prior notice process if the FDIC's review of the notice indicates significant concerns related to supervision, law or policy, and a complete application would be required.

As is the case in connection with the foreign branch proposal, the FDIC is proposing these general consent and prior notice procedures because a nonmember bank meeting the requirements of the provisions is of 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 prior notice are also not available in any foreign jurisdiction 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, proposed § 347.403 sets out the procedures for applications which are not eligible for the general consent or prior notice provisions.

This proposal is a major change from the FDIC's current procedures under which an application is required for each foreign investment and total investment is subject to a 25% limit. The FDIC specifically requests public comment on the merits of proposed procedure, and whether its parameters are appropriately designed.

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''. 44 FR 23869 (April 23, 1979), 44 FR 40056 (July 9, 1979). ''Domestic retail deposit activity'' refers to the acceptance by a state branch of any initial deposit of less than $100,000. In

[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.

[6] As is the case under the proposed 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 prior notice procedures, since an application to make a foreign investment is not an ''application for a deposit facility'' covered by the CRA.

1979, the significance of the distinction between ''retail'' deposit-taking and non-retail deposit activities resulted in the organization of insured and noninsured state branches, respectively. A state branch which conducted retail deposit activities was required to be insured by the FDIC. However, a state branch which limited its deposit-taking activities to those entities and/or circumstances enumerated in § 346.6 was not deemed to be engaged in domestic retail deposit activities and, therefore, was not required to be an insured branch.

With the passage of FBSEA, the significance of the distinction between retail and non-retail deposit activities became more pronounced. FBSEA amended section 6 of the IBA to require that foreign banks that intend to conduct domestic retail deposit activities in the United States shall organize an insured bank subsidiary for such purpose. Domestic retail deposit activities can no longer be conducted through an insured state branch (except for a grandfathered branch).

As originally developed, § 346.6 provided two alternative means for a state branch to operate as a noninsured branch. This bifurcated approach to authorizing a state branch to operate as a noninsured branch was not affected by the enactment of FBSEA which mandated the chartering of an insured bank subsidiary to engage in retail deposit taking. 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. Second, a state branch can operate as an noninsured branch when it is engaged in deposit-taking activities which are not otherwise excepted under paragraph (a) of § 346.6, (proposed § 347.206), if the FDIC Board approves its application for consent to operate the branch as a noninsured branch pursuant to § 346.6(b), which has been carried forward as proposed § 347.206(b). The Board may exempt the state branch from the insurance requirement if the Board finds that the branch is not engaged in domestic retail deposit activities requiring insurance protection. (After FBSEA, if the state branch is engaged in domestic retail deposit activities, then the foreign bank parent must charter an insured bank subsidiary to conduct its domestic deposit-taking activities—not an insured branch.)

The proposal transfers the application procedures currently contained in § 346.6(b) to proposed § 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 202 of FDICIA amended section 7 of the IBA by adding a new subsection (h) which provides that after December 19, 1992, a state-licensed insured branch of a foreign bank may not engage in any activity which is not permissible for a federal branch of a foreign bank unless the FRB has determined that the activity is consistent with sound banking practice, and the FDIC has determined that the activity would pose no significant risk to the Bank Insurance Fund (BIF). The legislative amendments also addressed application procedures and plans of divestiture or cessation. The FDIC and the FRB both promulgated regulations to implement the applicable provisions of the IBA. The FDIC adopted a new subpart D to part 346, Applications Seeking Approval for Insured State Branches to Conduct Activities Not Permissible for Federal Branches, which became effective on January 1, 1995.

Foreign banks are required to seek both the FDIC's and the FRB's approval for an insured state branch to engage in or continue to engage in an activity which is not permissible for a federal branch of a foreign bank. In the event such an application is denied or the foreign bank elects not to continue the activity, a plan of divestiture or cessation must be submitted and such divestiture or cessation must be completed within one year or sooner if the FDIC so directs. As discussed in the preamble to the final regulation, the FDIC deliberately chose to model many substantive provisions of current § 346.101 upon its (then) recently adopted part 362, ''Activities and Investments of Insured State Banks'' (58 FR 64462, December 8, 1993). 59 FR 60703 (November 28, 1994). For example, the preamble states that, ''[t]he FDIC is of the opinion that [section] 346.101(a) of the final regulation should parallel [section] 362.2(b) concerning the activities of state banks with regard to the determination of permissible activities.'' Moreover, the FDIC took the position in the final regulation that activities approved as exceptions for state-chartered domestic banks on the basis that they pose no significant risk to the BIF should also be permissible for state-licensed insured branches of foreign banks without the necessity of filing an application or notice pursuant to § 346.101 (provided the activity in question is also permissible for a state licensed branch of a foreign bank under state law and any other applicable federal law or regulation). And finally, the definition of ''significant risk to the deposit insurance fund'' parallels the part 362 definition.

As part of the FDIC's ongoing CDRI review of all of its regulations and written policies, the FDIC is also conducting a thorough review of part 362, and is preparing a proposed notice of rulemaking on this regulation for publication in the **Federal Register** in the near term. In view of the many and substantive similarities between § 346.101 and the FDIC's part 362, the proposed § 347.213 makes no substantive changes from the requirements of § 346.101 at this time. The application procedures proposed in § 347.405 also contain no substantive changes. After the closing of the comment period and the completion of the final part 362, § 347.213 and/or § 347.405 may be amended, if necessary, to reflect any changes made to the underlying regulatory scheme governing the permissible activities of insured state banks.

Technical and Conforming Changes

The FDIC's rules and regulations currently contain numerous cross-references to part 346. These would be conformed to the proposed sections of revised part 347 under the proposal. The proposal would also eliminate 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 proposal.

Paperwork Reduction Act

The collections of information contained in this proposed rule have been submitted to the Office of Management and Budget (OMB) for review and approval in accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*). Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated

collection techniques or other forms of information technology.

Comments should be addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer Alexander Hunt, New Executive Office Building, Room 3208, Washington, DC 20503, with copies of such comments to Steven F. Hanft, Assistant Executive Secretary (Regulatory Analysis), Federal Deposit Insurance Corporation, Room F–400, 550 17th Street NW, Washington, DC 20429. All comments should refer to ''Part 347—International Banking.'' OMB is required to make a decision concerning the collections of information contained in the proposed regulations between 30 and 60 days after the publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of this publication. This does not affect the deadline for the public to comment to the FDIC on the proposed regulation.

The collections of information in this proposed rule are contained in various proposed sections appearing in subpart A and subpart B of proposed part 347. The FDIC has asked the OMB to divide the collections of information into two groups, each with a separate OMB control number, with one group containing the collections from subpart A (Foreign Branching and Investment by Insured State Nonmember Banks) and the other containing the collections from subpart B (Foreign Banks). For the subpart A group, the FDIC has requested a new OMB control number. For the subpart B group the FDIC has requested the revision of one collection already approved by OMB (OMB No. 3064–0114) and the elimination of a second OMB approved collection (OMB No. 3064–0010). Each of the collections required by the proposed part 347 is discussed below.

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

Sections 347.103(b) 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(c)):
Total annual responses: 4
Average hours per response: 2
Collection (2) (prior notice of 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(d))
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) (prior notice of foreign investment (347.403(b)).
Total annual responses: 4
Average hours per response: 6
Collection (3) (application to make a foreign investment (347.403(c)).
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. Sections 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 Collections

Total annual responses: 85
Total annual burden hours: 25,560

Subpart B—Foreign Banks

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 has 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 FDIC is requesting that it be regrouped under the subpart B control number 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 Collections

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

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 proposed rule will not have a significant impact on a substantial number of small entities. With respect to subparts A and C of the proposed rule, the FDIC's review of call report data indicates the proposal will impact only an insubstantial number of small entities. With respect to subpart B of proposed part 347, the proposed revisions basically 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 15 years; however, this requirement was not heretofore addressed in the FDIC's applicable regulation, part 346. Explicitly including this requirement in subpart B can not 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 proposed 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 proposed § 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 proposed 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

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 proposes to amend 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:

[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.*

§ 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 this paragraph (a)(1).

(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 this paragraph (a)(1); and

* * * * *

[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.

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.
347.101 Purpose, authority, and scope.
347.102 Definitions.
347.103 Foreign branches of insured state nonmember banks.
347.104 Investment by insured state nonmember banks in foreign organizations.
347.105 Underwriting and dealing limits applicable to foreign organizations held by insured state nonmember banks.
347.106 Restrictions on certain activities applicable to foreign organizations held by insured state nonmember banks.
347.107 U.S. activities of foreign organizations held by insured state nonmember banks.
347.108 Obtaining FDIC approval to invest in foreign organizations.
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.
347.110 Supervision and recordkeeping of the foreign activities of insured state nonmember banks.

Subpart B—Foreign Banks

347.201 Scope.
347.202 Definitions.
347.203 Restriction on operation of insured and noninsured branches.
347.204 Insurance requirement.
347.205 Branches established under section 5 of the International Banking Act.
347.206 Exemptions from the insurance requirement.
347.207 Notification to depositors.
347.208 Agreement to provide information and to be examined.
347.209 Records.
347.210 Pledge of assets.
347.211 Asset maintenance.
347.212 Deductions from the assessment base.
347.213 FDIC approval to conduct activities not permissible for federal branches.

Subpart C—International Lending

347.301 Allocated transfer risk reserve.
347.302 Accounting for fees on international loans.
347.303 Reporting and disclosure of international assets.

Subpart D—Applications and Delegations of Authority

347.401 Definitions.
347.402 Establishing, moving or closing a foreign branch of a state nonmember bank; § 347.103.
347.403 Investment by insured state nonmember banks in foreign organizations; § 347.108.
347.404 Exemptions from insurance requirement for a state branch of a foreign bank; § 347.206(b).
347.405 Approval for an insured state branch of a foreign bank to conduct activities not permissible for federal branches; § 347.213.

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 one that has an FDIC-assigned composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (UFIRS); is well-capitalized; received a rating of 1 or 2 under the ''management'' component of the UFIRS at its most recent examination; has a compliance rating of 1 or 2; has a satisfactory or

better Community Reinvestment Act rating; is not subject to a cease and desist order, consent order, prompt corrective action directive, formal or informal written agreement (excluding any board of directors resolution addressing corrective action taken pursuant to regulatory recommendations), or other administrative agreement with any U.S. bank regulatory authority; and has been chartered and operating for at least three years.

(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 a foreign organization 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 of an insured state nonmember bank located in a foreign country 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, and the Commonwealth of Puerto Rico.

(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 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 10 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 investment-grade obligations [2] 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) *Establishment of foreign branches.* (1) General consent of the FDIC is

[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.

granted for an eligible insured state nonmember bank to establish additional foreign branches conducting activities authorized by this section in any foreign country in which the bank already operates one or more foreign branches, or to relocate an existing foreign branch within a foreign country. The insured state nonmember bank must provide written notice of such action to the FDIC within 30 days of establishment or relocation.

(2) An eligible insured state nonmember bank with foreign branches or affiliates in two or more foreign countries may establish a foreign branch conducting activities authorized by this section in an additional foreign country 45 days after the insured state nonmember bank files a completed notice with the FDIC, or upon such earlier time as authorized by the FDIC.

(3) General consent or prior notice under this paragraph does not apply:

(i) 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 1989 (16 U.S.C. 470a–2);

(ii) 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

(iii) If the FDIC at any time notifies the insured state nonmember bank that the FDIC is modifying or suspending its general consent or prior notice procedure.

(4) An insured state nonmember bank may not otherwise establish a foreign branch, or engage in a type or amount of foreign branch activity not authorized by this section, without obtaining the prior specific consent of the FDIC.

(5) An insured state nonmember bank must notify the FDIC at the time it closes a foreign branch.

(6) 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, 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.

(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.

(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 5 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 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; 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,[3] 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 2 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

[3] 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.

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 or an affiliate presently have at least one foreign organization 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, at least one insured state nonmember bank has a foreign organization subsidiary in the relevant foreign country;

(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 twelve months; or

(iii) The total investment directly or indirectly in a single foreign organization in any transaction or series of transactions during a twelve-month period does not exceed 2 percent of the 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 twelve-month period; and

(B) Up to an additional 5 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) *Prior notice.* An investment that does not qualify for general consent but is otherwise in conformity with the limits and requirements of this subpart may be made 45 days after an eligible insured state nonmember bank files a completed notice with the FDIC, or upon such earlier time as authorized by the FDIC.

(c) *Inapplicability of general consent or prior notice.* General consent or prior notice 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 prior notice procedure.

(d) *Specific consent.* Any investment that is not authorized under general consent or prior notice 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. Information on risk assets should 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. Such reports should cover:

(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 prior notice 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 of this subpart 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 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 of this subpart 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 of this subpart 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, a foreign bank shall:

(1) Establish 1 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) of this section 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) of this section 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*. 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 pursuant to § 347.404. 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.

(c) *Transition period.* A noninsured state branch may maintain a retail deposit lawfully accepted pursuant to this section prior to April 1, 1996:

(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

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

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 below; 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.

(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 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 § 347.210(d), having an aggregate value in the amount as required pursuant to § 347.210(b).

(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 (2) 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 (10) 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 sixty (60) days' written notice thereof to the other party and to the appropriate regional director. The FDIC, upon thirty (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% 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; [5]

(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 pursuant to § 347.405.

(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 12 CFR Part 362, ''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 in accordance with the terms set forth in § 347.405(d).

(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 in accordance with the terms set forth in § 347.405(d).

(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.

---

[5] 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.

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.

Subpart C—International Lending

§ 347.301 Allocated transfer risk reserve.

(a) *Definitions.* For the purposes of this subpart:

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

(2) *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.

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

(4) *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.

(b) *Allocated Transfer Risk Reserve*—(1) *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.

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

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

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

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

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

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

(*i*) Such obligors have failed to make full interest payments on external indebtedness; or

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

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

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

(B) *Determination of amount of ATRR.* (*1*) In determining the amount of the ATRR, the federal banking agencies shall consider:

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

(*ii*) Recent actions taken to restore debt service capability;

(*iii*) Prospects for restored asset quality; and

(*iv*) Such other factors as the federal banking agencies may consider relevant to the quality of the asset.

(*2*) 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.

(iii) *FDIC notification.* Based on the joint agency determinations under paragraph (b)(2)(i) of this section, the FDIC shall notify each banking institution holding assets subject to an ATRR:

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

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

(3) *Accounting treatment of ATRR*—(i) *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.

(ii) *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.

(iii) *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).

(iv) *Alternative accounting treatment.* A banking institution need not establish an ATRR if it writes down in the period in which the ATRR is required, or has written down in prior periods, the value of the specified international assets in the requisite amount for each such asset. For purposes of this paragraph, international assets may be written down by a charge to the Allowance for 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. 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.

(v) *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.

§ 347.302 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.

§ 347.303 Reporting and disclosure of international assets.

(a) *Requirements.* (1) Pursuant to section 907(a) of the International Lending Supervision Act of 1983 (Title IX, Pub. L. 98–181, 97 Stat. 1153) (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) *Comptroller* means the Office of the Comptroller of the Currency.

(d) *Eligible insured state nonmember bank* means an eligible insured state nonmember bank as defined by § 347.102.

(e) *Federal branch* means a federal branch of a foreign bank as defined by § 347.201.

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

(g) *Foreign bank* means a foreign bank as defined by § 347.201.

(h) *Foreign branch* means a foreign branch of an insured state nonmember bank as defined by § 347.201.

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

(j) *Insured branch* means an insured branch of a foreign bank as defined by § 347.201.

(k) *Noninsured branch* means a noninsured branch of a foreign bank as defined by § 347.201.

(l) *State branch* means a state branch of a foreign bank as defined by § 347.201.

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

(a) *General consent.* Written notice under § 347.103(b)(1) from an eligible insured state nonmember bank establishing or relocating a foreign branch pursuant to the FDIC's general consent procedure must be provided to the appropriate regional director within thirty days of such action, and include the location of the foreign branch, including a street address, and a statement that the foreign branch will not 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 402 of the National Historic Preservation Act Amendments of 1989 (16 U.S.C. 470a–2). The appropriate regional director will provide written acknowledgment of receipt of the notice.

(b) *Prior notice.* (1) Prior notice under § 347.103(b)(2) from an eligible insured state nonmember bank establishing a foreign branch pursuant to the FDIC's prior notice procedure must be filed with the appropriate regional director and contain the following information:

(i) The exact location of the foreign branch, including a street address, and a statement that the foreign branch will not 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 402 of the National Historic Preservation Act Amendments of 1989 (16 U.S.C. 470a–2);

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

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

(iv) A brief description of the activities of the branch.

(2) The appropriate regional director will provide written acknowledgment of the date of receipt of the notice and the bank may establish the foreign branch 45 days after such date, or upon such earlier time as authorized by the FDIC, unless the FDIC promptly provides the bank written notification that the application will be processed under paragraph (d) of this section because:

(i) The application presents a significant supervisory concern; or

(ii) The application presents a significant legal or policy issue.

(c) *Closing.* The notice of closing required by § 347.103(b)(5) should be in letter form to the appropriate regional director and include the name, location, and date of closing of the closed branch.

(d) *Content of branch application.* (1) An application by an insured state nonmember bank required by § 347.103(b) and which is not eligible for treatment under general consent or prior notice, must be in writing and contain the following information:

(i) The exact location of the foreign branch, including a street address;

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

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

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

(v) A statement whether 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 402 of the National Historic Preservation Act Amendments of 1989 (16 U.S.C. 470a–2).

(2) The appropriate regional director may request additional information to complete processing.

(3) The application must be filed with the appropriate regional director.

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

(1) the requirements of section 402 the National Historic Preservation Act Amendments of 1989 have been favorably resolved; and

(2) the applicant will only conduct activities authorized by § 347.103(a).

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

(a) *General consent.* Written notice under § 347.108(a) from an eligible insured state nonmember bank making direct or indirect investments in a foreign organization pursuant to the FDIC's general consent procedure must be provided to the appropriate regional director within thirty days of such action. The appropriate regional director will provide written acknowledgment of receipt of the notice.

(b) *Prior notice.* (1) Prior notice under § 347.108(b) from an eligible insured state nonmember bank making direct or indirect investments in a foreign organization pursuant to the FDIC's prior notice procedure must be filed with the appropriate regional director and contain the following information:

(i) Basic information about the terms of the 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, and a brief description of the foreign organization's activities, including any incidental activities in the United States;

(iii) A listing of all shareholders known to hold 10 percent or more of any class of the foreign bank's or other financial entity's stock or other evidence of ownership, and the amount held by each; and

(iv) A brief description of the bank's business plan with respect to the foreign organization, and if the bank seeks approval to engage in underwriting or dealing activities, a description of the bank's plans and procedures to address all relevant risks.

(2) The appropriate regional director will provide written acknowledgment of the date of receipt of the notice and the bank may make the investment 45 days after such date, or upon such earlier time as authorized by the FDIC, unless the FDIC promptly provides the bank written notification that the application will be processed under paragraph (c) of this section because:

(i) The application presents a significant supervisory concern; or

(ii) The application presents a significant legal or policy issue.

(c) *Content of application.* (1) An application by an insured state nonmember bank which is not eligible for treatment under general consent or prior notice required by § 347.108(d), must be in writing and contain the following information:

(i) Basic information about the terms of the 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 10 percent or more of any class of the foreign bank's or other financial entity's stock or other evidence of ownership, and the amount held by each;

(iv) A brief description of the bank's business plan with respect to the foreign organization, and if the bank seeks approval to engage in underwriting or dealing activities, a description of the bank's plans and procedures to address all relevant risks;

(v) 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 bank's reasons why they should be approved; and

(vi) 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 bank's reasons why they should be approved.

(2) The appropriate regional director may request additional information to complete processing.

(3) The application must be filed with the appropriate regional director.

(d) *Delegations of authority.* Authority is delegated to the Director (DOS) and the deputy director, and if confirmed in writing by the director, to an associate director, appropriate regional director, or appropriate deputy regional director to approve or deny applications under paragraph (c) of this section so long as the investment complies with the activities restrictions, investment limits, and other requirements of § 347.104 through § 347.107.

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

(a) *Application for an exemption.* A foreign bank may apply to the FDIC for consent to operate a branch as a noninsured branch as required by § 347.206(b).

(b) *Contents of application.* The application must be in writing and include the following information and documentation:

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

(2) The expected source of deposits;

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

(4) 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;

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

(6) 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 foreign bank's senior management.

(c) *Application filing.* The request must be filed with the appropriate regional director.

(d) *Additional information.* The appropriate regional director may request additional information to complete the application processing.

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

(a) *Application for permission.* 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 shall file a written application for permission to conduct such activity with the FDIC as required by § 347.213.

(b) *Contents of application.* An application submitted pursuant to paragraph (a) of this section shall be in letter form and shall include the following information and documentation:

(1) 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;

(2) 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, if available, of any feasibility study, management plan, financial projections, business plan, or similar document concerning the conduct of the activity;

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

(4) A statement by the applicant of whether or not it is in compliance with §§ 347.210 and 347.211, Pledge of Assets and Asset Maintenance, respectively;

(5) 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 such application, including a copy of the Board of Governors' disposition of such application, if applicable; and

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

(c) *Board of Governors application.* An applicant may submit to the FDIC a copy of its application to the Board of Governors, provided that such application contains the information

described in paragraph (b) of this section.

(d) *Divestiture or cessation.* (1) An applicant that is required to submit a plan of divestiture or cessation for any of the reasons set forth in § 347.213(e) shall submit a detailed written plan of divestiture or cessation within 60 days of the disapproval or the triggering event.

(2) The divestiture or cessation plan shall:

(i) Describe in detail the manner in which the applicant will divest itself of or cease the activity in question; and

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

(e) *Filing procedures.* Applications and divestiture plans pursuant to this section shall be filed with the appropriate regional director.

(f) *Additional information.* The appropriate regional director may request additional information to complete the application or divestiture plan processing.

(g) *Delegation of authority.* Authority is hereby delegated to the Director (DOS) and the deputy director and, where confirmed in writing by the Director, to an associate director, or to the appropriate regional director or deputy regional director, to approve plans of divestiture and cessation submitted pursuant to paragraph (d) 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 June, 1997.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 97–17270 Filed 7–14–97; 8:45 am]

BILLING CODE 6174–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–81–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727 Series Airplanes Modified in Accordance with Supplemental Type Certificate SA1444SO, SA1509SO, SA1543SO, SA1896SO, SA1740SO, or SA1667SO

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 727 series airplanes that have been converted from a passenger to a cargo-carrying (''freighter'') configuration. This proposal would require limiting the payload on the main cargo deck by revising the Limitations Sections of all Airplane Flight Manuals (AFM), AFM Supplements, and Airplane Weight and Balance Supplements for these airplanes. This proposal also provides for the submission of data and analysis that substantiates the strength of the main cargo deck, or modification of the main cargo deck, as optional terminating action for these payload restrictions. This proposal is prompted by the FAA's determination that unreinforced floor structure of the main cargo deck is not strong enough to enable the airplane to safely carry the maximum payload that is currently allowed in this area. The actions specified by the proposed AD are intended to prevent failure of the floor structure, which could lead to loss of the airplane.

DATES: Comments must be received by August 22, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–81–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Steven C. Fox, Senior Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (425) 227–2777; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–NM–81–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–81–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has issued supplemental type certificates (STC) for converting certain Boeing Model 727 and 747 series airplanes from a passenger to a cargo-carrying (''freighter'') configuration. These freighter conversions entail such modifications as removal of the passenger interior, the installation of systems to handle cargo containers (such as pallets and other unit load