The Committee's meetings were widely publicized throughout the citrus industry and all interested persons were invited to attend the meetings and participate in Committee deliberations on all issues. Like all Committee meetings, the May 22, 2001, and the August 29, 2001, meetings were public meetings and all entities, both large and small, were able to express views on this issue. Interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A proposed rule concerning this action was published in the **Federal Register** on July 31, 2001 (66 FR 39459). Copies of the rule were mailed or sent via facsimile to all Committee members and to grapefruit growers and handlers. The Office of the Federal Register, the Department, and the Committee also made this rule available through the Internet.

A 10-day comment period was provided to allow interested persons to respond to the proposal. The comment period ended August 10, 2001. No comments were received.

As previously stated, subsequent to the issuance of the proposed rule, the Committee met and recommended modifying its original recommendation. The Committee recommended that the weekly percentages remain at 45 percent for the first two weeks (September 17 through September 30) and 35 percent for week three (October 1 through October 7), and that the percentages be changed from 25 percent to 30 percent for weeks 4 through 10 (October 1 through November 25), and to 40 percent for week 11 (November 26 through December 2). Because of this recommendation, the Department has determined that interested parties should be provided the opportunity to comment on the changes to the original recommendation. However, the Department has further determined that extending the comment period with no percentages in effect limiting the shipment of small red seedless grapefruit when the period of regulation begins would be detrimental to the industry. Therefore, the Department is instituting the regulations on small red seedless grapefruit through this interim final rule that allows 10 additional days to comment.

Ten days is deemed appropriate because the regulation period begins September 17, 2001, and continues for 11 weeks. Adequate time will be necessary so that any changes made to the regulations based on comments filed could be made effective during the 11 week period. All comments received will be considered before a final determination is made on this matter.

After consideration of all relevant material presented, including the information and recommendations submitted by the Committee, and other information, it is found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register**. This rule needs to be in place when the regulatory period begins September 17, 2001, and handlers begin shipping grapefruit. This issue has been widely discussed at various industry and association meetings, and the Committee has kept the industry well informed. Interested persons have had time to determine and express their positions. Further, handlers are aware of this rule, which was recommended at public meetings. Also, a 10-day comment period was provided for in the proposed rule and a 10-day comment period is provided in this rule.

**List of Subjects in 7 CFR Part 905**

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

For the reasons set forth in the preamble, 7 CFR part 905 is amended as follows:

## PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

1. The authority citation for 7 CFR part 905 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. Section 905.350 is revised to read as follows:

### § 905.350 Red seedless grapefruit regulation.

This section establishes the weekly percentages to be used to calculate each handler's weekly allotment of small sizes. Handlers can fill their allotment with size 56, size 48, or a combination of the two sizes such that the total of these shipments are within the established weekly limits. The weekly percentages for size 48 (3 9/16 inches minimum diameter) and size 56 (3 5/16 inches minimum diameter) red seedless grapefruit grown in Florida, which may be handled during the specified weeks are as follows:

| Week | Weekly Percentage |
|---|---|
| (a) 9/17/01 through 9/23/01 ..... | 45 |
| (b) 9/24/01 through 9/30/01 ..... | 45 |
| (c) 10/1/01 through 10/7/01 ..... | 35 |
| (d) 10/8/01 through 10/14/01 .... | 30 |
| (e) 10/15/01 through 10/21/01 .. | 30 |
| (f) 10/22/01 through 10/28/01 ... | 30 |
| (g) 10/29/01 through 11/4/01 .... | 30 |
| (h) 11/5/01 through 11/11/01 .... | 30 |
| (i) 11/12/01 through 11/18/01 ... | 30 |
| (j) 11/19/01 through 11/25/01 ... | 30 |
| (k) 11/26/01 through 12/2/01 .... | 40 |

Dated: September 21, 2001.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 01–24061 Filed 9–21–01; 2:00 pm]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF THE TREASURY

## Office of the Comptroller of the Currency

## 12 CFR Parts 5 and 28

**[Docket No. 01–21]**

**RIN 1557–AB92**

## Operating Subsidiaries of Federal Branches and Agencies

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

**ACTION:** Final rule.

**SUMMARY:** Consistent with the principle of national treatment for foreign banks operating in the United States established by the International Banking Act of 1978, the Office of the Comptroller of the Currency (OCC) is amending its regulations to provide that a Federal branch or agency may establish, acquire, or maintain an operating subsidiary in generally the same manner that a national bank may acquire or establish an operating subsidiary.

**EFFECTIVE DATE:** October 26, 2001.

**FOR FURTHER INFORMATION CONTACT:** Martha Clarke, Counsel, or Heidi M. Thomas, Counsel, Legislative and Regulatory Activities Division, 202–874–5090; or Carlos Hernandez, International Advisor, International

Banking and Finance Division, 202–874–4730.

**SUPPLEMENTARY INFORMATION:**

**The Proposal**

On December 5, 2000, the OCC published a notice of proposed rulemaking in the **Federal Register** (65 FR 75870) requesting comments on a proposal to clarify that a Federal branch or agency may establish and maintain an operating subsidiary in accordance with the procedures and requirements of 12 CFR 5.34.

12 CFR 5.34 sets forth application or notice procedures for national banks engaging in activities through an operating subsidiary. The procedures vary according to the condition of the bank and the character of the activities conducted through the operating subsidiary. Specifically, § 5.34(e)(5)(iv) provides that a national bank that is well capitalized and well managed may acquire or establish an operating subsidiary, or perform a new activity in an existing operating subsidiary, by filing a notice with the OCC within 10 days after acquiring or establishing the subsidiary, or commencing the activity, if the activities are listed in § 5.34(e)(5)(v). National banks that do not meet the well capitalized and well managed criteria also may acquire or establish an operating subsidiary by filing an application with, and receiving approval from, the OCC. 12 CFR 5.34(e)(5)(i). Finally, § 5.34(e)(5)(vi) provides that a national bank may acquire or establish an operating subsidiary without filing an application or providing notice to the OCC if certain conditions are satisfied. These conditions are that: (1) The bank must be at least adequately capitalized; (2) the activities of the new subsidiary must be limited to those previously reported by the bank in connection with a prior operating subsidiary; (3) the activities must continue to be legally permissible; and (4) the activities of the new subsidiary must be conducted in accordance with any conditions imposed by the OCC when it approved the activities for the prior subsidiary.

The proposal specifically provided that § 5.34 applies to a Federal branch or agency that seeks to establish or maintain any subsidiary that a national bank would be authorized to acquire or establish under § 5.34. However, the procedures of § 5.34 would apply to the Federal branch or agency with certain modifications to reflect the differences in the relationship between a Federal branch or agency and a subsidiary of the foreign bank as compared with a national bank and its operating subsidiary. Unlike a national bank, a Federal branch or agency is not a separate corporate entity but rather is an office of the parent foreign bank, separately recognized for regulatory purposes. Although a Federal branch or agency cannot directly own stock in the same manner as a national bank, the Federal branch or agency can book the stock as an asset and manage and operate the subsidiary.

However, as we noted in the proposal, the International Banking Act of 1978 (12 U.S.C. 3101 *et seq.*) (the IBA) applies the national treatment principle to the regulation of foreign bank activities in the United States. Under the national treatment principle, the operations of a foreign bank conducted through a Federal branch or agency generally are conducted with the same rights, privileges, conditions, and limitations that apply to a national bank operating at the same location, subject to the OCC's regulations or orders.[1] 12 U.S.C. 3102(b). Thus, the IBA currently provides authority for Federal branches and agencies to take advantage of powers authorized for national banks, including the power to establish an operating subsidiary.

A branch or agency may obtain various legal, business or tax advantages by conducting certain activities or holding investments through an operating subsidiary. For example, a special purpose vehicle may be useful to engage in some asset-securitization transactions. In addition, legal restrictions, including the ''securities push-out'' provisions of the Gramm-Leach-Bliley Act, may make conduct of certain activities through a subsidiary necessary or advantageous for a branch or agency of a foreign bank.[2]

**Description of Comments Received and Final Rule**

The OCC received seven comments on the proposal. These comments include three from Federal branches or foreign banks with Federal branches; two from banking trade associations; one from a law firm; and one from the Board of Governors of the Federal Reserve System (Federal Reserve Board or Board). We are adopting the rule as proposed but with several clarifications to address differences in how the standards apply to Federal branches and agencies versus domestic banks.

A majority of the commenters strongly endorsed amending 12 CFR 5.34 to permit Federal branches and agencies to establish or maintain operating subsidiaries to the same extent as national banks. Most commenters also thought that amending the IBA is not necessary to accomplish this goal. A majority of commenters also stated that the establishment and maintenance of these operating subsidiaries should be subject only to regulation by the OCC, as are subsidiaries of national banks, unless they are subject to functional regulation by the Securities and Exchange Commission, Commodity Futures Trading Commission, or state insurance commissioners. *See* 12 U.S.C. 1831v.

The Federal Reserve Board stated that it strongly supports the principle of national treatment for both foreign and domestic banking organizations. The Board said, however, that, in its view, an investment by a Federal branch or agency in an operating subsidiary is a direct investment by the foreign bank itself and is, therefore, subject to the Bank Holding Company Act (BHC Act). The Board recommended clarifying that a foreign bank that is establishing a nonbanking subsidiary in the United States must comply with section 4 of the BHC Act, including any requirement to file a prior notice with the Board under section 4(c)(8) of the BHC Act.

The Federal Reserve Board is the agency charged with the administration and interpretation of the BHC Act. Our proposal does not relieve a foreign bank that operates a Federal branch or agency from complying with laws administered by any other regulators, including the Federal Reserve Board, that might be applicable to the establishment or operation of a nonbanking subsidiary in the United States.[3]

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[1] See *Conference of State Bank Supervisors* v. *Conover,* 715 F.2d 604, 615 (D.C. Cir. 1983), cert. denied, 466 U.S. 927 (1984) (confirming that Congress' overriding objective in enacting the IBA was to accord national treatment to foreign banks so that foreign banks are treated as competitive equals with their domestic counterparts).

[2] For similar reasons, the State of New York Banking Department authorized branches and agencies to establish subsidiaries to offer flexibility to foreign banking organizations to structure their businesses to attain efficiency and functionality. See State of New York Banking Department, Foreign Branches and Agencies Establishing Operating Subsidiaries—Guidance Letter (June 4, 2001). *http://www.banking.state.ny.us/lt010604.htm.*

[3] We note, however, the Board's procedures are similar to the OCC's in that the applicable requirements depend both on the condition of the bank and the nature of the activities to be conducted. As the Federal Reserve Board commented, under its regulations, a well capitalized and well managed foreign bank that satisfies the eligibility requirements that apply to financial holding companies is not required to file any prior notice with, or receive prior approval from, the Federal Reserve Board before investing in a nonbanking subsidiary that engages in activities that are financial in nature or incidental to a financial activity as identified in 12 CFR 225.86. This list includes many activities that could be conducted by an operating subsidiary of a national bank or Federal branch or agency. In addition, foreign banks that are not financial holding companies but that satisfy the Federal Reserve

*Qualification Criteria*

Under the proposal, a Federal branch or agency would be considered well capitalized if it meets the definition of ''well capitalized'' that the OCC uses when authorizing an extended examination cycle for certain Federal branches and agencies. *See* 12 CFR 4.7(b)(1)(iii).[4] Section 4.7(b)(1)(iii) requires that a foreign bank's most recently reported capital adequacy position consists of, or is equivalent to, Tier 1 and total risk-based capital ratios of at least 6 percent and 10 percent, respectively, on a consolidated basis; or the Federal branch or agency has maintained on a daily basis, over the past three quarters, eligible assets in an amount not less than 108 percent of the preceding quarter's average third party liabilities (determined consistently with applicable Federal and state law), and sufficient liquidity is currently available to meet obligations to third parties.

In addition, the proposal provided that a Federal branch or agency would be well managed if the Federal branch or agency had a composite Risk Management, Operational Controls, Compliance, and Asset Quality (ROCA) supervisory rating of 1 or 2 at its most recent examination; or in the case of a Federal branch or agency that has not been examined, the Federal branch or agency has and uses managerial resources that the OCC determines are satisfactory.

The Federal Reserve Board commented that the proposal might provide certain foreign banks with an advantage over U.S. banking organizations because it would allow a foreign bank to establish a subsidiary based solely on capital and managerial considerations at the local branch. The Board expressed a concern that this potentially would allow a foreign bank to expand its U.S. operations in a manner that a similarly situated national bank or bank holding company might not. It also stated that this differs from treatment under the BHC Act, which requires a foreign bank's capital and management factors to be evaluated on a consolidated basis. A number of other commenters strongly supported the proposed use of the composite ROCA rating to determine whether a Federal branch or agency is well managed, however, and at least one commenter supported the use of the rating as consistent with national treatment.

On balance we have concluded that the proposed qualification criteria are appropriate. The definition of ''well capitalized'' is consistent with the definition of that term that is applied for purposes of Prompt Corrective Action by the OCC to insured Federal branches and by the Federal Deposit Insurance Corporation (FDIC) to insured branches of foreign banks. See 12 CFR 6.5(c)(1) (OCC), 325.103(c)(1) (FDIC). As explained previously, it is the same definition used by all the Federal banking agencies for purposes of determining which branches and agencies of foreign banks are eligible for an extended examination cycle. See 12 CFR 4.7(b)(1)(iii); 211.26(c)(2)(i)(C), 347.214(b)(iii). We also note that the New York State Banking Department, which charters the largest number of state branches and agencies of foreign banks, permits state branches and agencies of foreign banks to establish operating subsidiaries. It has adopted the same definition of ''well capitalized'' as set forth in our proposal.[5] In addition, the definition only determines whether a notice or application procedure applies. Thus, any perceived advantage for foreign banks would be minimal. For these reasons, we are adopting the definition of ''well capitalized'' as proposed.

In addition, we do not believe that the proposal's definition of ''well-managed'' gives a competitive advantage to foreign banks. First, the definition does reflect the management of the foreign bank as a whole, because the composite ROCA supervisory rating currently takes into account the management of the foreign bank. In addition, the proposed definition is consistent with national treatment because it uses the same test as is used in 12 CFR 5.34(e)(5)(iv) for national banks acquiring or establishing an operating subsidiary or performing a new activity in an existing operating subsidiary subject to a 10-day after-the-fact notice requirement. Therefore, the final rule retains the proposal's definition of ''well-managed.''

Two commenters thought that the proposal should calculate Tier 1 and total risk-based capital ratios according to the home country standard for those international banks whose home country supervisors have adopted risk-based capital standards consistent with the Basel Capital Accord. The proposal's definition of ''well-capitalized'' is derived from the definition in 12 CFR 4.7(b)(1)(iii), which, as noted, is the standard that the Board, the FDIC, and the OCC adopted in a joint rulemaking extending the examination cycle for well-capitalized and well-managed branches and agencies of foreign banks that satisfy certain other criteria. *See* 64 FR 56949–53 (October 22, 1999). Thus, foreign banks are familiar with the standard. Moreover, in our view, it is preferable for purposes of eligibility to have an operating subsidiary, to use a standard that can be applied consistently to Federal branches and agencies rather than a standard that could vary depending on the details of implementation of the Basel Accord in different countries. We note, however, that in the examination-cycle rulemaking, the agencies stated that, in implementing the well-capitalized standard in individual cases, the home country supervisor's capital standards may be considered if those standards are in all respects consistent with the Basel Capital Accord. Id. at 56950 (preamble discussion). Similarly, for purposes of determining whether a foreign bank's consolidated capital position consists of, or is equivalent to, Tier 1 and total risk-based capital ratios of at least 6% and 10%, respectively, we may consider the capital standards of the home country supervisor if they are in all respects consistent with the Basel Accord.

Under § 5.34, an adequately capitalized national bank may acquire or establish an operating subsidiary without filing an application or notice under certain circumstances.[6] One commenter pointed out that the proposed rule does not specify how the ''adequately capitalized'' standard would be applied to foreign banks and suggests that an international bank is adequately capitalized for purposes of § 5.34 if its Tier 1 and total risk-based capital ratios, calculated under

Board's criteria may engage in certain nonbanking activities and acquisitions either subject to expedited notice procedures or without obtaining the Board's prior approval. *See* 12 CFR 225, Subpart C.

[4] 12 CFR 4.7 generally provides that the OCC may conduct a full-scope, on-site examination of certain well capitalized and well managed Federal branches and agencies at least once during each 18-month period, rather than each 12-month period. The FRB applies the same capital and management requirements when determining whether a State branch or agency will be subject to the 18-month examination schedule. 12 CFR 211.26(c)(2).

[5] See State of New York Banking Department, Foreign Branches and Agencies Establishing Operating Subsidiaries—Guidance Letter (June 4, 2001). *http://www.banking.state.ny.us/lt010604.htm.*

[6] To acquire or establish an operating subsidiary without filing an application or providing notice, a national bank must be at least adequately capitalized and must meet the following requirements: (A) activities of the new subsidiary must be limited to those activities previously reported by the bank in connection with the establishment or acquisition of a prior operating subsidiary; (B) activities in which the new subsidiary will engage must continue to be legally permissible for the subsidiary; and (C) activities of the new subsidiary must be conducted in accordance with any conditions imposed by the OCC in approving the conduct of these activities for any prior operating subsidiary of the bank. 12 CFR 5.34(e)(5)(vi).

applicable home country standards, are at least 4% and 8%, respectively. No OCC regulation currently defines ''adequately capitalized'' for foreign banks, nor do the Federal Reserve Board's regulations include such a definition. The OCC's regulations contain a definition of ''adequately capitalized'' that applies to insured Federal branches for purposes of Prompt Corrective Action but could not be applied to uninsured Federal branches. See 12 CFR 6.4(c)(2). Because this definition could not be applied to all of the Federal branches or agencies that may wish to have operating subsidiaries, the OCC will determine what ''adequately capitalized'' means for a Federal branch or agency in the context of acquiring, establishing, or maintaining an operating subsidiary on a case-by-case basis. Therefore, we have decided not to amend the proposal to include this definition.

*Calculation of Capital Equivalency Deposit*

In addition, one commenter thought that the final rule should state expressly that the OCC would not take into account the liabilities of an operating subsidiary in determining the amount of the capital equivalency deposit (CED) that must be pledged to the OCC. The commenter supported its request by stating that the operating subsidiary would have a separate corporate existence from the branch, and the branch would not be liable for the obligations of the operating subsidiary. Consequently, in the commenter's view, no purpose would be served by subjecting an operating subsidiary of a Federal branch to a CED requirement.

We disagree with this commenter that the CED should never reflect the liabilities of the Federal branch or agency's operating subsidiary. Consolidation of the Federal branch or agency with the operating subsidiary may increase risk under certain circumstances. For example, the Federal branch or agency could use the consolidated assets of the branch or agency and the operating subsidiary as the basis to increase a loan made to the branch or agency from a third party above the level for which it would qualify on an unconsolidated basis, or the operating subsidiary could increase its liabilities to fund operations of the Federal branch or agency as a way to avoid increasing the CED of the branch or agency.[7] In these situations, the CED may appropriately include the liabilities of the operating subsidiary. As a result, we have amended the CED provisions of 12 CFR 28.15 to permit the CED to be adjusted to include the liabilities of the operating subsidiary, if warranted for prudential or supervisory reasons. This action is consistent with national treatment since, for regulatory purposes, the capital level of a national bank is determined on a consolidated basis with its operating subsidiaries.

*Clarification of How § 5.34 Would Apply to Federal Branches and Agencies*

The proposal said that the OCC would apply other relevant regulatory standards to Federal branches and agencies that establish or maintain operating subsidiaries as appropriate in light of the differences in corporate structure between national banks and Federal branches and agencies. We have amended § 5.34 to further clarify how the regulation will apply to Federal branches and agencies.

For example, current § 5.34(e)(4) requires that pertinent book figures of the parent national bank and its operating subsidiary be combined for the purpose of applying statutory limitations when combination is needed to effect the intent of the statute, *e.g.*, for purposes of the statutory dividend restrictions, lending limits, or investments in bank premises. *See* 12 U.S.C. 56, 60, 84, and 371d. However, under the IBA, any limitation or restriction based on the capital of a national bank (e.g., the lending limit at 12 U.S.C. 84) would refer, as applied to a Federal branch or agency, to the dollar equivalent of the capital of the foreign bank. If the foreign bank has more than one Federal branch or agency, the business transacted by all of the branches and agencies is aggregated for purposes of determining compliance with the limitation. See 12 U.S.C. 3102(b). By regulation, the OCC and the Federal Reserve Board require that the transactions of *all* of a foreign bank's Federal branches and agencies and State branches and agencies be aggregated to determine compliance with the lending limits. See 12 CFR 28.14 (OCC), 211.28 (Federal Reserve Board). As a result, the final rule provides that, for purposes of the capital limitations and restrictions as applied to Federal branches and agencies under the IBA and 12 CFR 28.14, the business conducted by a foreign bank's Federal branches or agencies and its State branches and agencies, and their operating subsidiary, will be combined.

We have also clarified that the requirements in §§ 5.34(e)(2) and (e)(5)(i)(B) that expressly require that a parent national bank must have a specific ownership interest in an operating subsidiary apply to the parent foreign bank and not to the Federal branch or agency.

Finally, a commenter suggested that we clarify that the authority of a Federal branch or agency regarding operating subsidiaries, like that of a national bank extends not only to their establishment and maintenance, but also to their acquisition. The final rule reflects this suggestion.

**Regulatory Flexibility Act Analysis**

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), the regulatory flexibility analysis otherwise required under section 603 of the RFA, 5 U.S.C. 603, is not required if the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and the agency publishes such a certification and a statement explaining the factual basis for such certification in the **Federal Register** along with its final rule.

On the basis of the information currently available, the OCC is of the opinion that this final rule will not have a significant impact on a substantial number of small entities within the meaning of those terms as used in the RFA. The final regulation requires Federal branches and agencies that would like to acquire, establish, or maintain an operating subsidiary to file a notice or application with the OCC. However, the OCC does not believe that this requirement will have a significant impact on a substantial number of small entities. Fewer than 20 Federal branches and agencies could be considered small entities, and only some of these would acquire, establish, or maintain an operating subsidiary. Accordingly, a regulatory flexibility analysis is not required.

**Unfunded Mandates Reform Act of 1995**

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (Unfunded Mandates Act) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires

[7] The statute states that ''amounts due and other liabilities to offices, branches, agencies, and subsidiaries'' of the foreign bank are excluded from calculations of the minimum amount of the CED, which is based on five percent of the total liabilities of the branch or agency. See 12 U.S.C. 3102(g)(2)(B).

an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. However, an agency is not required to assess the effects of its regulatory actions on the private sector to the extent that such regulations incorporate requirements specifically set forth in law. 2 U.S.C. 1531.

The OCC has determined that this final rule will not result in expenditures by State, local, or tribal governments or by the private sector of $100 million or more. Accordingly, the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

**Executive Order 12866 Determination**

The Comptroller of the Currency has determined that this rule does not constitute a ''significant regulatory action'' for the purposes of Executive Order 12866.

**Paperwork Reduction Act**

The OCC may not conduct or sponsor, and an organization is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

OMB has reviewed and approved the collection of information requirements contained in this rule under control number 1557–0215, in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). OMB clearance will expire on January 31, 2004.

The OCC sought comment on all aspects of the burden estimates for the information collection contained in the proposed rule. The OCC received no comments.

The collections of information are contained in 12 CFR 5.34. Section 5.34 requires that Federal branches and agencies of foreign banks obtain OCC approval prior to establishing or maintaining any subsidiary that a national bank is authorized to establish or control under section 5.34.

The respondents are Federal branches and agencies of foreign banks.

*Estimated number of respondents:* 20.

*Estimated number of responses:* 20.

*Estimated burden hours per response:* 1 hour.

*Frequency of response:* On occasion.

*Estimated total annual burden:* 20 hours.

The OCC has a continuing interest in the public's opinion regarding collections of information. Members of the public may submit comments, at any time, regarding any aspects of these collections of information. Comments may be sent to Jessie Dunaway, Clearance Officer, Office of the Comptroller of the Currency, 250 E Street, SW, Mailstop 8–4, Washington, DC 20219.

**Effective Date**

This rule is effective on October 26, 2001. The Administrative Procedure Act (APA) generally requires that a final rule take effect 30 days after date of publication in the **Federal Register**, 5 U.S.C. 553(d). In addition, section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI Act) generally requires that a final rule issued by a Federal banking agency that imposes additional reporting, disclosures, or other new requirements on insured depository institutions must take effect on the first day of a calendar quarter after the date of publication of the final rule. The OCC has determined that this rule may become effective in accordance with the APA requirement and that section 302 of the CDRI Act is not applicable. This final rule provides clarification of how existing procedures will be applied to Federal branches and agencies that choose to acquire, establish, or maintain an operating subsidiary and does not impose additional reporting, disclosure, or other new requirements.

**List of Subjects**

*12 CFR Part 5*

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

*12 CFR Part 28*

Foreign banking, National banks, Reporting and recordkeeping requirements.

**Authority and Issuance**

For the reasons set forth in the preamble, the OCC amends parts 5 and 28 of chapter I of title 12 of the Code of Federal Regulations as follows:

## PART 5—RULES, POLICIES, AND PROCEDURES FOR CORPORATE ACTIVITIES

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

**Authority:** 12 U.S.C. 1 *et seq.*, 24(a), 24 (Seventh), 93a, and 3101 *et seq.*

2. In § 5.34, revise paragraphs (a), (c), (d)(2), (d)(3), and (e)(4) to read as follows:

**§ 5.34 Operating subsidiaries.**

(a) *Authority.* 12 U.S.C. 24 (Seventh), 24a, 93a, 3101 *et seq.*

* * * * *

(c) *Scope.* This section sets forth authorized activities and application or notice procedures for national banks engaging in activities through an operating subsidiary. The procedures in this section do not apply to financial subsidiaries authorized under § 5.39. Unless provided otherwise, this section applies to a Federal branch or agency that acquires, establishes, or maintains any subsidiary that a national bank is authorized to acquire or establish under this section in the same manner and to the same extent as if the Federal branch or agency were a national bank, except that the ownership interest required in paragraphs (e)(2) and (e)(5)(i)(B) of this section shall apply to the parent foreign bank of the Federal branch or agency and not to the Federal branch or agency.

(d) * * *

(2) *Well capitalized* means the capital level described in 12 CFR 6.4(b)(1) or, in the case of a Federal branch or agency, the capital level described in by 12 CFR 4.7(b)(1)(iii).

(3) *Well managed* means, unless otherwise determined in writing by the OCC:

(i) In the case of a national bank:

(A) The national bank has received a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System in connection with its most recent examination; or

(B) In the case of any national bank that has not been examined, the existence and use of managerial resources that the OCC determines are satisfactory.

(ii) In the case of a Federal branch or AGENCY:

(A) The Federal branch or agency has received a composite ROCA supervisory rating (which rates risk management, operational controls, compliance, and asset quality) of 1 or 2 at its most recent examination; or

(B) In the case of a Federal branch or agency that has not been examined, the existence and use of managerial resources that the OCC determines are satisfactory.

(e) ***

(4) *Consolidation of figures*—(i) *National banks.* Pertinent book figures of the parent national bank and its operating subsidiary shall be combined for the purpose of applying statutory or regulatory limitations when combination is needed to effect the intent of the statute or regulation, e.g., for purposes of 12 U.S.C. 56, 60, 84, and 371d.

(ii) *Federal branch or agencies.* Transactions conducted by all of a foreign bank's Federal branches and agencies and State branches and agencies, and their operating subsidiaries, shall be combined for the

purpose of applying any limitation or restriction as provided in 12 CFR 28.14.

## PART 28—INTERNATIONAL BANKING ACTIVITIES

1. The authority citation for part 28 continues to read as follows:

**Authority:** 12 U.S.C. 1 *et seq.*, 24(Seventh), 93a, 161, 602, 1818, 3101 *et seq.*, and 3901 *et seq.*

2. In § 28.15, revise paragraph (b) to read as follows:

### § 28.15 Capital equivalency deposits

* * * * *

(b) *Increase in capital equivalency deposits.* For prudential or supervisory reasons, the OCC may require, in individual cases or otherwise, that a foreign bank increase its CED above the minimum amount. For example, the OCC may require an increase if a Federal branch or agency of the foreign bank increases its leverage through the establishment, acquisition, or maintenance of an operating subsidiary.

Dated: September 18, 2001.

**John D. Hawke, Jr.,**

*Comptroller of the Currency.*

[FR Doc. 01–24005 Filed 9–25–01; 8:45 am]

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## FEDERAL RESERVE SYSTEM

## 12 CFR Part 201

**[Regulation A]**

## Extensions of Credit by Federal Reserve Banks; Change in Discount Rate

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Final rule.

**SUMMARY:** The Board of Governors has amended its Regulation A, Extensions of Credit by Federal Reserve Banks to reflect its approval of a decrease in the basic discount rate at each Federal Reserve Bank. The Board acted on requests submitted by the Boards of Directors of the twelve Federal Reserve Banks.

**DATES:** The amendments to part 201 (Regulation A) were effective September 17, 2001. The rate changes for adjustment credit were effective on the dates specified in 12 CFR 201.51.

**FOR FURTHER INFORMATION CONTACT:** Jennifer J. Johnson, Secretary of the Board, at (202) 452–3259, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551.

**SUPPLEMENTARY INFORMATION:** Pursuant to the authority of sections 10(b), 13, 14, 19, *et al.,* of the Federal Reserve Act, the Board has amended its Regulation A (12 CFR part 201) to incorporate changes in discount rates on Federal Reserve Bank extensions of credit. The discount rates are the interest rates charged to depository institutions when they borrow from their district Reserve Banks.

The ''basic discount rate'' is a fixed rate charged by Reserve Banks for adjustment credit and, at the Reserve Banks' discretion, for extended credit for up to 30 days. In decreasing the basic discount rate from 3.00 percent to 2.5 percent, the Board acted on requests submitted by the Boards of Directors of the twelve Federal Reserve Banks. The new rates were effective on the dates specified below. The 50-basis-point decrease in the discount rate was associated with a similar decrease in the federal funds rate approved by the Federal Open Market Committee (FOMC) and announced at the same time.

In a joint press release announcing these actions, the FOMC and the Board of Governors stated that the Federal Reserve will continue to supply unusually large volumes of liquidity to the financial markets, as needed, until more normal market functioning is restored. As a consequence, the FOMC recognizes that the actual federal funds rate may be below its target on occasion in these unusual circumstances.

Even before the tragic events of last week, employment, production, and business spending remained weak, and last week's events have the potential to damp spending further. Nonetheless, the long-term prospects for productivity growth and the economy remain favorable and should become evident once the unusual forces restraining demand abate. For the foreseeable future, the Board and the FOMC continue to believe that against the background of their long-run goals of price stability and sustainable economic growth and of the information currently available, the risks are weighted mainly toward conditions that may generate economic weakness.

### Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Board certifies that the change in the basic discount rate will not have a significant adverse economic impact on a substantial number of small entities. The rule does not impose any additional requirements on entities affected by the regulation.

### Administrative Procedure Act

The provisions of 5 U.S.C. 553(b) relating to notice and public participation were not followed in connection with the adoption of the amendment because the Board for good cause finds that delaying the change in the basic discount rate in order to allow notice and public comment on the change is impracticable, unnecessary, and contrary to the public interest in fostering price stability and sustainable economic growth.

The provisions of 5 U.S.C. 553(d) that prescribe 30 days prior notice of the effective date of a rule have not been followed because section 553(d) provides that such prior notice is not necessary whenever there is good cause for finding that such notice is contrary to the public interest. As previously stated, the Board determined that delaying the changes in the basic discount rate is contrary to the public interest.

### List of Subjects in 12 CFR Part 201

Banks, Banking, Credit, Federal Reserve System.

For the reasons set out in the preamble, 12 CFR part 201 is amended as set forth below:

## PART 201—EXTENSIONS OF CREDIT BY FEDERAL RESERVE BANKS (REGULATION A)

1. The authority citation for 12 CFR part 201 continues to read as follows:

**Authority:** 12 U.S.C. 343 *et seq.*, 347a, 347b, 347c, 347d, 348 *et seq.*, 357, 374, 374a and 461.

2. Section 201.51 is revised to read as follows:

### § 201.51 Adjustment credit for depository institutions.

The rates for adjustment credit provided to depository institutions under § 201.3(a) are:

| Federal Reserve Bank | Rate | Effective |
|---|---|---|
| Boston | 2.5 | September 17, 2001. |
| New York | 2.5 | September 17, 2001. |
| Philadelphia | 2.5 | September 17, 2001. |
| Cleveland | 2.5 | September 17, 2001. |
| Richmond | 2.5 | September 17, 2001. |
| Atlanta | 2.5 | September 17, 2001. |
| Chicago | 2.5 | September 17, 2001. |
| St. Louis | 2.5 | September 18, 2001. |