

Federal Reserve System

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AUTHORITY: 12 U.S.C. 221 *et seq.*, 1818, 1835a, 1841 *et seq.*, 3101 *et seq.*, and 3901 *et seq.*

Subpart A—International Operations of United States Banking Organizations

SOURCE: 56 FR 19565, Apr. 29, 1991, unless otherwise noted.

§ 211.1 Authority, purpose, and scope.

(a) *Authority.* This subpart is issued by the Board of Governors of the Fed-

eral Reserve System (“Board”) under the authority of the Federal Reserve Act (“FRA”) (12 U.S.C. 221 *et seq.*); the Bank Holding Company Act of 1956 (“BHC Act”) (12 U.S.C. 1841 *et seq.*); and the International Banking Act of 1978 (“IBA”) (12 U.S.C. 3101 *et seq.*). Requirements for the collection of information contained in this regulation have been approved by the Office of Management and Budget under the provision of 44 U.S.C. 3501, *et seq.* and have been assigned OMB numbers 7100-0107; 7100-0109; 7100-0110; 7100-0069; 7100-0086; and 7100-0073.

(b) *Purpose.* This subpart sets out rules governing the international and foreign activities of U.S. banking organizations, including procedures for establishing foreign branches and Edge corporations to engage in international banking and for investments in foreign organizations.

(c) *Scope.* This subpart applies to:

(1) Corporations organized under section 25(a) of the FRA (12 U.S.C. 611-631), “Edge corporations”;

(2) Corporations having an agreement or undertaking with the Board under section 25 of the FRA (12 U.S.C. 601-604a), “Agreement corporations”;

(3) Member banks with respect to their foreign branches and investments in foreign banks under section 25 of the FRA (12 U.S.C. 601-604a);¹ and

(4) Bank holding companies with respect to the exemption from the nonbanking prohibitions of the BHC Act afforded by section 4(c)(13) of the BHC Act (12 U.S.C. 1843(c)(13)).

§ 211.2 Definitions.

Unless otherwise specified, for the purposes of this subpart:

(a) An *affiliate* of an organization means:

(1) Any entity of which the organization is a direct or indirect subsidiary; or

(2) Any direct or indirect subsidiary of the organization or such entity.

(b) *Capital Adequacy Guidelines* means the Capital Adequacy Guidelines for

¹Section 25 of the FRA, which refers to national banking associations, also applies to state member banks of the Federal Reserve System by virtue of section 9 of the FRA (12 U.S.C. 321).

State Member Banks: Risk-Based Measure (12 CFR part 208, app. A).

(c) *Capital and surplus* means paid-in and unimpaired capital and surplus, and includes undivided profits but does not include the proceeds of capital notes or debentures.

(d) *Directly or indirectly*, when used in reference to activities or investments of an organization, means activities or investments of the organization or of any subsidiary of the organization.

(e) *Eligible country* means a country that, since 1980, has restructured its sovereign debt held by foreign creditors, and any other country that the Board deems to be eligible.

(f) An Edge corporation is *engaged in banking* if it is ordinarily engaged in the business of accepting deposits in the United States from nonaffiliated persons.

(g) *Engaged in business* or *engaged in activities* in the United States means maintaining and operating an office (other than a representative office) or subsidiary in the United States.

(h) *Equity* means an ownership interest in an organization, whether through:

- (1) Voting or nonvoting shares;
- (2) General or limited partnership interests;
- (3) Any other form of interest conferring ownership rights, including warrants, debt, or any other interests that are convertible into shares or other ownership rights in the organization; or
- (4) Loans that provide rights to participate in the profits of an organization, unless the investor receives a determination that such loans should not be considered equity in the circumstances of the particular investment.

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

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

- (1) Is organized under the laws of a foreign country;
- (2) Engages in the business of banking;

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

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

(5) Has the power to accept demand deposits.

(k) *Foreign branch* means an office of an organization (other than a representative office) that is located outside the country under the laws of which the organization is established, at which a banking or financing business is conducted.

(l) *Foreign person* means an office or establishment located, or individual residing, outside the United States.

(m) *Investment* means: (1) The ownership or control of equity;

(2) Binding commitments to acquire equity;

(3) Contributions to the capital and surplus of an organization; and

(4) The holding of an organization's subordinated debt when the investor and the investor's affiliates hold more than 5 percent of the equity of the organization.

(n) *Investor* means an Edge corporation, Agreement corporation, bank holding company, or member bank.

(o) *Joint venture* means an organization that has 20 percent or more of its voting shares held directly or indirectly by the investor or by an affiliate of the investor under any authority, but which is not a subsidiary of the investor.

(p) *Loans and extensions of credit* means all direct and indirect advances of funds to a person made on the basis of any obligation of that person to repay funds.

(q) *Organization* means a corporation, government, partnership, association, or any other entity.

(r) *Person* means an individual or an organization.

(s) *Portfolio investment* means an investment in an organization other than a subsidiary or joint venture.

(t) *Representative office* means an office that:

- (1) Engages solely in representational and administrative functions, such as soliciting new business or acting as liaison between the organization's head

office and customers in the United States; and

(2) Does not have authority to make any business decision (other than decisions relating to the premises or personnel of the representative office) for the account of the organization it represents, including contracting for any deposit or deposit-like liability on behalf of the organization.

(u) *Strongly capitalized* means:

(1) In relation to a parent member bank, that the standards set out in 12 CFR 208.43(b)(1) are satisfied; and

(2) In relation to an Edge or Agreement corporation or a bank holding company, that it has a total risk-based capital ratio of 10.0 percent or greater.

(v) *Subsidiary* means an organization more than 50 percent of the voting shares of which is held directly or indirectly, or which is otherwise controlled or capable of being controlled, by the investor or an affiliate of the investor under any authority. Among other circumstances, an investor is considered to control an organization if the investor or an affiliate is a general partner of the organization or if the investor and its affiliates directly or indirectly own or control more than 50 percent of the equity of the organization.

(w) *Tier 1 capital* has the same meaning as provided under the Capital Adequacy Guidelines (12 CFR part 208, appendix A).

(x) *Well managed* means that the Edge or Agreement corporation, its parent member bank, if any, and the bank holding company have each received a composite rating of 1 or 2 at its most recent examination or review and are not subject to any supervisory enforcement action.

[56 FR 19565, Apr. 29, 1991, as amended at 57 FR 12997, Apr. 15, 1992; 58 FR 6358, Jan. 28, 1993; 60 FR 67054, Dec. 28, 1995; 63 FR 58621, Nov. 2, 1998]

§ 211.3 Foreign branches of U.S. banking organizations.

(a) *Establishment of foreign branches—*

(1) *Right to establish branches.* Foreign branches may be established by any member bank having capital and surplus of \$1,000,000 or more, an Edge corporation, an Agreement corporation, or a subsidiary held pursuant to this subpart. Unless otherwise provided in this

section, the establishment of a foreign branch requires the specific prior approval of the Board.

(2) *Branching within a foreign country.* Unless the organization has been notified otherwise, no prior Board approval is required for an organization to establish additional branches in any foreign country where it operates one or more branches.²

(3) *Branching into additional foreign countries.* After giving the Board 45 days' prior written notice, an organization that operates branches in two or more foreign countries may establish a branch in an additional foreign country, unless notified otherwise by the Board.²

(4) *Expiration of branching authority.* Authority to establish branches through prior approval or prior notice shall expire one year from the earliest date on which the authority could have been exercised, unless the Board extends the period.

(5) *Reporting.* Any organization that opens, closes, or relocates a branch shall report such change in a manner prescribed by the Board.

(b) *Further powers of foreign branches of member banks.* In addition to its general banking powers, and to the extent consistent with its charter, a foreign branch of a member bank may engage in the following activities so far as usual in connection with the business of banking in the country where it transacts business:

(1) *Guarantees.* Guarantee debts, or otherwise agree to make payments on the occurrence of readily ascertainable events,³ if the guarantee or agreement specifies a maximum monetary liability; but except to the extent that the member bank is fully secured, it may not have liabilities outstanding for any person on account of such guarantees or agreements which, when aggregated

²For the purpose of this paragraph, a subsidiary other than a bank or an Edge or Agreement corporation is considered to be operating a branch in a foreign country if it has an affiliate that operates an office (other than a representative office) in that country.

³*Readily ascertainable events* include, but are not limited to, events such as nonpayment of taxes, rentals, customs duties, or costs of transport and loss or nonconformance of shipping documents.