

federal agency under section 7(e)(5) of the IBA (12 U.S.C. 3105(e)(5));

(5) The examination of an office or affiliate of a foreign bank in the United States as provided in sections 7(c) and 10(c) of the IBA (12 U.S.C. 3105(c), 3107(c));

(6) The disclosure of supervisory information to a foreign supervisor under section 15 of the IBA (12 U.S.C. 3109);

(7) The limitations on loans to one borrower by state branches and state agencies of a foreign bank under section 7(h)(2) of the IBA (12 U.S.C. 3105(h)(2));

(8) The limitation of a state branch and a state agency to conducting only activities that are permissible for a federal branch under section (7)(h)(1) of the IBA (12 U.S.C. 3105(h)(1));

(9) The deposit insurance requirement for retail deposit taking by a foreign bank under section 6 of the IBA (12 U.S.C. 3104); and

(10) The management of shell branches (12 U.S.C. 3105(k)).

(c) *Additional requirements.* Compliance by a foreign bank with the requirements of this subpart and the laws administered and enforced by the Board does not relieve the foreign bank of responsibility to comply with the laws and regulations administered by the licensing authority.

[56 FR 19574, Apr. 29, 1991, as amended at 57 FR 12997, Apr. 15, 1992. Redesignated at 58 FR 6358, Jan. 28, 1993; Reg. K, 61 FR 39053, July 26, 1996]

#### § 211.21 Definitions.

The definitions contained in § 211.2 in subpart A of this part apply to this subpart except as a term is otherwise defined in this section:

(a) *Affiliate*, of a foreign bank or of a parent of a foreign bank, means any company that controls, is controlled by, or is under common control with, the foreign bank or the parent of the foreign bank.

(b) *Agency* means any place of business of a foreign bank, located in any state, at which credit balances are maintained, checks are paid, money is lent, or, to the extent not prohibited by state or federal law, deposits are accepted from a person or entity that is not a citizen or resident of the United

States. Obligations shall not be considered credit balances unless they are:

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

(2) To serve a specific purpose;

(3) Not solicited from the general public;

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

(5) Withdrawn within a reasonable period of time after the specific purpose for which they were placed has been accomplished; and

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

(c) *Banking subsidiary*, with respect to a specified foreign bank, means a bank that is a subsidiary as the terms *bank* and *subsidiary* are defined in section 2 of the BHC Act (12 U.S.C. 1841).

(d) *Branch* means any place of business of a foreign bank, located in any state, at which deposits are received and that is not an agency, as that term is defined in paragraph (b) of this section.

(e) *Change the status* of an office means convert a representative office into a branch or agency, or an agency into a branch, but does not include renewal of the license of an existing office.

(f) *Commercial lending company* means any organization, other than a bank or an organization operating under section 25 of the Federal Reserve Act (FRA) (12 U.S.C. 601-604a), organized under the laws of any state, that maintains credit balances permissible for an agency and engages in the business of making commercial loans. *Commercial lending company* includes any company chartered under Article XII of the banking law of the State of New York.

(g) *Comptroller* means the Office of the Comptroller of the Currency.

(h) *Control* has the same meaning assigned to it in section 2 of the BHC Act (12 U.S.C. 1841), and the terms *controlled* and *controlling* shall be construed consistently with the term *control*.

(i) *Domestic branch* means any place of business of a foreign bank, located in any state, that may accept domestic

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deposits and deposits that are incidental to or for the purpose of carrying out transactions in foreign countries.

(j) A foreign bank *engages directly in the business of banking outside of the United States* if the foreign bank engages directly in banking activities usual in connection with the business of banking in the countries where the foreign bank is organized or operating.

(k) To *establish* means to:

(1) Open and conduct business through an office;

(2) Acquire directly, through merger, consolidation, or similar transaction with another foreign bank, the operations of an office that is open and conducting business;

(3) Acquire an office through the acquisition of a foreign bank subsidiary that will cease to operate in the same corporate form following the acquisition;

(4) Change the status of an office; or

(5) Relocate an office from one state to another.

(1) *Federal agency, federal branch, state agency, and state branch* have the same meanings as in section 1 of the IBA (12 U.S.C. 3101).

(m) *Foreign bank* means an organization that is organized under the laws of a foreign country and that engages directly in the business of banking outside of the United States. The term *foreign bank* does not include a central bank of a foreign country that does not engage or seek to engage in a commercial banking business in the United States through an office.

(n) *Foreign banking organization* means a foreign bank, as defined in section 1(b)(7) of the IBA (12 U.S.C. 3101(7)), that operates a branch, agency, or commercial lending company subsidiary in the United States, or that controls a bank in the United States, and any company of which the foreign bank is a subsidiary.

(o) *Home country*, with respect to a foreign bank, means the country in which the foreign bank is chartered or incorporated.

(p) *Home country supervisor*, with respect to a foreign bank, means the governmental entity or entities in the foreign bank's home country with responsibility for the supervision and regulation of the foreign bank.

(q) *Licensing authority* means:

(1) The relevant state supervisor, with respect to an application to establish a state branch, state agency, commercial lending company, or representative office of a foreign bank; or

(2) The Comptroller, with respect to an application to establish a federal branch or federal agency.

(r) *Office* or *office of a foreign bank* means any branch, agency, representative office, or commercial lending company subsidiary of a foreign bank in the United States.

(s) The *parent* of a foreign bank means any company of which the foreign bank is a subsidiary; the *immediate parent* of a foreign bank is the company of which the foreign bank is a direct subsidiary; and the *ultimate parent* of a foreign bank is the parent of the foreign bank that is not the subsidiary of any other company.

(t) *Regional administrative office* means a representative office that:

(1) Is established by a foreign bank that operates one or more branches, agencies, commercial lending companies, or banks in the United States;

(2) Is located in the same city as one or more of the foreign bank's branches, agencies, commercial lending companies, or banks in the United States; and

(3) Manages, supervises, or coordinates the operations of the foreign bank or its affiliates, if any, in a particular geographic region.

(u) *Relevant state supervisor* means the state entity that is authorized to supervise and regulate a state branch, state agency, commercial lending company, or representative office.

(v) *Representative office* means any place of business of a foreign bank, located in any state, that is not a branch, agency, or subsidiary of the foreign bank.

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

(x) *Subsidiary* means any organization 25 percent or more of whose voting shares is directly or indirectly owned, controlled, or held with the power to vote by a company, including a foreign bank or foreign banking organization, or any organization that is otherwise

controlled or capable of being controlled by a foreign bank or foreign banking organization.

[58 FR 6358, Jan. 28, 1993, as amended at Reg. K, 59 FR 55028, Nov. 3, 1994]

**§ 211.22 Interstate banking operations of foreign banking organizations.**

(a) *Determination of home state.* (1) A foreign bank (except a foreign bank to which paragraph (a)(2) of this section applies) that has any combination of domestic agencies or subsidiary commercial lending companies that were established before September 29, 1994, in more than one state and have been continuously operated shall select its home state from those states in which such offices or subsidiaries are located. A foreign bank shall do so by filing with the Board a declaration of home state by June 30, 1996. In the absence of such selection, the Board shall designate the home state for such foreign banks.

(2) A foreign bank that, as of September 29, 1994, had declared a home state or had a home state determined pursuant to the law and regulations in effect prior to that date shall have that state as its home state.

(3) A foreign bank that has any branches, agencies, subsidiary commercial lending companies, or subsidiary banks in one state, and has no such offices or subsidiaries in any other states, shall have as its home state the state in which such offices or subsidiaries are located.

(b) *Change of home State.* A foreign bank may change its home State once if:

(1) 30 days' prior notification of the proposed change is filed with the Board; and

(2) Domestic branches established and investments in banks acquired in reliance on its original home State selection are conformed to those that would have been permissible had the new home State been selected as its home State originally.

(c) *Attribution of home State.* (1) A foreign bank or organization and the other foreign banks or organizations over which it exercises actual control shall be regarded as one foreign bank and shall be entitled to one home State.

(2) Actual control shall be conclusively presumed to exist in the case of a bank or organization that owns or controls a majority of the voting shares of another bank or organization.

(3) Where it appears to the Board that a foreign bank or organization exercises actual control over the management or policies of another foreign bank or organization, the Board may inform the parties that a preliminary determination of control has been made on the basis of the facts summarized in the communication. In the event of a preliminary determination of control by the Board, the parties shall within 30 days (or such longer period as may be permitted by the Board):

(i) Indicate to the Board a willingness to terminate the control relationship; or

(ii) Set forth such facts and circumstances as may support the contention that actual control does not exist (and may request a hearing to contest the Board's preliminary determination); or

(iii) Accede to the Board's preliminary determination, in which event the parties shall be regarded as one foreign bank and shall be entitled to one home State.

(d) *Prohibition against interstate deposit production offices.* A covered interstate branch of a foreign bank may not be used as a deposit production office in accordance with the provisions in § 208.7 of the Board's Regulation H (12 CFR 208.7).

[45 FR 67058, Oct. 9, 1980, as amended at 56 FR 19574, Apr. 29, 1991. Redesignated and amended at 57 FR 12998, Apr. 15, 1992. Further Redesignated at 58 FR 6359, Jan. 28, 1993; Reg. K, 61 FR 24440, May 15, 1996; 62 FR 47736, Sept. 10, 1997; 63 FR 58621, Nov. 2, 1998]

**§ 211.23 Nonbanking activities of foreign banking organizations.**

(a) [Reserved]

(b) *Qualifying foreign banking organizations.* Unless specifically made eligible for the exemptions by the Board, a foreign banking organization shall qualify for the exemptions afforded by this section only if, disregarding its United States banking, more than half of its worldwide business is banking;