

(B) The foreign company may engage in activities in the United States that consist of banking, securities, insurance or other financial operations, or types of activities permitted by regulation or order under section 4(c)(8) of the BHC Act, only under regulations of the Board or with the prior approval of the Board.

(I) Activities within Division H (Finance, Insurance, and Real Estate) of the SIC shall be considered banking or financial operations for this purpose, with the exception of acting as operators of nonresidential buildings (SIC 6512), operators of apartment buildings (SIC 6513), operators of dwellings other than apartment buildings (SIC 6514), and operators of residential mobile home sites (SIC 6515); and operating title abstract offices (SIC 6541); and

(2) The following activities shall be considered financial activities and may be engaged in only with the approval of the Board under subsection (g): Credit reporting services (SIC 7323); computer and data processing services (SIC 7371, 7372, 7373, 7374, 7375, 7376, 7377, 7378, and 7379); armored car services (SIC 7381); management consulting (SIC 8732, 8741, 8742, and 8748); certain rental and leasing activities (SIC 4741, 7352, 7353, 7359, 7513, 7514, 7515, and 7519); accounting, auditing and bookkeeping services (SIC 8721); courier services (SIC 4215 and 4513); and arrangement of passenger transportation (SIC 4724, 4725, and 4729).

(g) *Exemptions under section 4(c)(9) of the BHC Act.* A foreign banking organization that is of the opinion that other activities or investments may, in particular circumstances, meet the conditions for an exemption under section 4(c)(9) of the BHC Act may apply to the Board for such a determination by submitting to the Reserve Bank of the District in which its banking operations in the United States are principally conducted a letter setting forth the basis for that opinion.

(h) *Reports.* (1) The foreign banking organization shall inform the Board through the organization's Reserve Bank within 30 days after the close of each quarter of all shares of companies engaged, directly or indirectly, in activities in the United States that were

acquired during such quarter under the authority of this section.

(2) The foreign banking organization shall also report any direct activities in the United States commenced during such quarter by a foreign subsidiary of the foreign banking organization. This information shall (unless previously furnished) include a brief description of the nature and scope of each company's business in the United States, including the 4-digit SIC numbers of the activities in which the company engages. Such information shall also include the 4-digit SIC numbers of the direct parent of any U.S. company acquired, together with a statement of total assets and revenues of the direct parent.

(i) *Availability of information.* If any information required under this section is unknown and not reasonably available to the foreign banking organization, either because obtaining it would involve unreasonable effort or expense or because it rests peculiarly within the knowledge of a company that is not controlled by the organization, the organization shall:

(1) Give such information on the subject as it possesses or can reasonably acquire together with the sources thereof; and

(2) Include a statement either showing that unreasonable effort or expense would be involved or indicating that the company whose shares were acquired is not controlled by the organization and stating the result of a request for information.

(12 U.S.C. 3101 *et seq.*; 12 U.S.C. 1841 *et seq.*; sec. 25(a) of the Federal Reserve Act (12 U.S.C. 611 *et seq.*)

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§211.24 Approval of offices of foreign banks; procedures for applications; standards for approval; representative-office activities and standards for approval; preservation of existing authority; reports of crimes and suspected crimes; government securities sales practices.

(a) *Board approval of offices of foreign banks—(1) Prior Board approval of*

branches, agencies, or commercial lending companies of foreign banks. (i) Except as otherwise provided in paragraph (a)(3) of this section, a foreign bank shall obtain the approval of the Board before it:

(A) Establishes a branch, agency, or commercial lending company subsidiary in the United States; or

(B) Acquires ownership or control of a commercial lending company subsidiary.

(2) *Prior Board approval of representative offices of foreign banks.* Except as otherwise provided in paragraphs (a)(2) or (a)(3) of this section, a foreign bank shall obtain the approval of the Board before it establishes a representative office in the United States.

(i) *Prior notice for certain representative offices.* After providing 45 days' prior written notice to the Board, a foreign bank that is subject to the BHC Act, either directly or through section 8(a) of the IBA (12 U.S.C. 3106(a)), may establish:

(A) A regional administrative office; or

(B) A representative office, but only if the Board has previously determined that the foreign bank proposing to establish a representative office is subject to comprehensive supervision or regulation on a consolidated basis by its home country supervisor, or previously has been approved for a representative office by Board order. The Board may waive the 45-day period if it finds that immediate action is required by the circumstances presented. The notice period shall commence at the time the notice is received by the appropriate Reserve Bank. The Board may suspend the period or require Board approval prior to the establishment of such an office if the notification raises significant policy, prudential or supervisory concerns.

(ii) *General consent for representative offices.* The Board grants its general consent for a foreign bank that is subject to section 8(a) of the IBA (12 U.S.C. 3106(a)), to establish a representative office that solely engages in limited administrative functions (such as separately maintaining back office support systems) that are clearly defined, are performed in connection with the United States banking activities of the

foreign bank, and do not involve contact or liaison with customers or potential customers beyond incidental contact with existing customers relating to administrative matters (such as verification or correction of account information), provided that the foreign bank notifies the Board in writing within 30 days of the establishment of the representative office.

(3) *After-the-fact Board approval.* Where a foreign bank proposes to establish a branch, agency, representative office, or commercial lending company in the United States through the acquisition of, or merger or consolidation with, a foreign bank with an office in the United States, the Board may, in its discretion, allow the acquisition, merger, or consolidation to proceed before an application to establish the office has been filed or acted upon under this section if:

(i) The foreign bank or banks resulting from the acquisition, merger, or consolidation, will not directly or indirectly own or control more than 5 percent of any class of the voting securities of, or control, a U.S. bank;

(ii) The Board is given reasonable advance notice of the proposed acquisition, merger, or consolidation;

(iii) Prior to consummation of the acquisition, merger, or consolidation, each of the relevant foreign banks commits in writing to comply with the procedures for an application under this section within a reasonable period of time or has already filed an application; and

(iv) Each of the relevant foreign banks commits in writing to abide by the Board's decision on the application, including, if necessary, a decision to terminate the activities of any such U.S. office, as the Board or the Comptroller may require.

(4) *Notice of change in ownership or control or conversion of existing office.* A foreign bank with a U.S. office shall notify the Board in writing within 10 days of either:

(i) A change in the foreign bank's ownership or control where the foreign bank is acquired or controlled by another foreign bank or company and the acquired foreign bank with a U.S. office continues to operate in the same

corporate form as prior to the change in ownership or control; or

(ii) The conversion of a branch to an agency or representative office, an agency to a representative office, a state branch to a federal branch, or a state agency to a federal agency.

(5) *Transactions subject to approval under Regulation Y.* Subpart B of the Board's Regulation Y (12 CFR 225.11-225.14) governs the acquisition by a foreign banking organization of direct or indirect ownership or control of any voting securities of a bank or bank holding company in the United States if the acquisition results in the foreign banking organization's ownership or control of more than 5 percent of any class of voting securities of a U.S. bank or bank holding company, including through acquisition of a foreign bank or foreign banking organization that owns or controls more than 5 percent of any class of the voting securities of a U.S. bank or bank holding company.

(b) *Procedures for application*—(1) *Filing application.* An application for the Board's approval pursuant to this section shall be filed in the manner prescribed by the Board.

(2) *Publication requirement*—(i) *General.* Except with respect to a proposed transaction where more extensive notice is required by statute or as otherwise provided in paragraphs (b)(2)(ii) and (b)(2)(iii) of this section, the applicant shall publish a notice in a newspaper of general circulation in the community in which the applicant proposes to engage in business. The notice shall state that an application is being filed as of the date of the notice and provide the name of the applicant, the subject matter of the application, the place where comments should be sent, and the date by which comments are due pursuant to paragraph (b)(3) of this section. The applicant shall furnish with its application to the Board a copy of the notice, the date of its publication, and the name and address of the newspaper in which it was published.

(ii) *Exception.* The Board may modify the publication requirement of paragraph (b)(2)(i) of this section in appropriate circumstances.

(iii) *Federal branch or federal agency.* In the case of an application to estab-

lish a federal branch or federal agency, compliance with the publication procedures of the Comptroller shall satisfy the publication requirement of this section. Comments regarding the application should be sent to the Board and the Comptroller.

(3) *Written comments.* Within 30 days after publication as required in paragraph (b)(2) of this section, any person may submit to the Board written comments and data on an application. The Board may extend the 30-day comment period if the Board determines that additional relevant information is likely to be provided by interested persons or if other extenuating circumstances exist.

(4) *Board action on application*—(i) *Time limits.* The Board shall act on an application from a foreign bank within 60 calendar days after the foreign bank has been notified that its application has been accepted, unless the Board determines that the public interest will be served by providing additional time to review the application and notifies the applicant that the 60-day period is being extended.

(ii) *Additional information.* The Board may request any information in addition to that supplied in the application when the Board believes that additional information is necessary for its decision.

(5) *Coordination with other regulators.* Upon receipt of an application by a foreign bank under this section, the Board shall promptly notify, consult with, and consider the views of the licensing authority.

(c) *Standards for approval*—(1) *Mandatory standards*—(i) *General.* As specified in section 7(d) of the IBA (12 U.S.C. 3105(d)), the Board may not approve an application to establish a branch or an agency, or to establish or acquire ownership or control of a commercial lending company, unless it determines that:

(A) Each of the foreign bank and any parent foreign bank engages directly in the business of banking outside the United States and is subject to comprehensive supervision or regulation on a consolidated basis by its home country supervisor; and

(B) The foreign bank has furnished to the Board the information that the

Board requires in order to assess the application adequately.

(ii) *Basis for determining comprehensive supervision or regulation on a consolidated basis.* In determining whether a foreign bank and any parent foreign bank is subject to comprehensive supervision or regulation on a consolidated basis, the Board shall determine whether the foreign bank is supervised or regulated in such a manner that its home country supervisor receives sufficient information on the worldwide operations of the foreign bank (including the relationships of the bank to any affiliate) to assess the foreign bank's overall financial condition and compliance with law and regulation. In making such a determination, the Board shall assess, among other factors, the extent to which the home country supervisor:

(A) Ensures that the foreign bank has adequate procedures for monitoring and controlling its activities worldwide;

(B) Obtains information on the condition of the foreign bank and its subsidiaries and offices outside the home country through regular reports of examination, audit reports, or otherwise;

(C) Obtains information on the dealings and relationships between the foreign bank and its affiliates, both foreign and domestic;

(D) Receives from the foreign bank financial reports that are consolidated on a worldwide basis, or comparable information that permits analysis of the foreign bank's financial condition on a worldwide, consolidated basis;

(E) Evaluates prudential standards, such as capital adequacy and risk asset exposure, on a worldwide basis.

(2) *Discretionary standards.* In acting on any application under this subpart, the Board may take into account:

(i) *Consent of home country supervisor.* Whether the home country supervisor of the foreign bank has consented to the proposed establishment of a branch, agency, or commercial lending company subsidiary;

(ii) *Financial resources.* The financial resources of the foreign bank (including the foreign bank's capital position, projected capital position, profitability, level of indebtedness, and fu-

ture prospects) and the condition of any U.S. office of the foreign bank;

(iii) *Managerial resources.* The managerial resources of the foreign bank, including the competence, experience, and integrity of the officers and directors; the integrity of its principal shareholders; management's experience and capacity to engage in international banking; and the record of the foreign bank and its management of complying with laws and regulations, and of fulfilling any commitments to, and any conditions imposed by, the Board in connection with any prior application;

(iv) *Sharing information with supervisors.* Whether the foreign bank's home country supervisor and the home country supervisor of any parent of the foreign bank share material information regarding the operations of the foreign bank with other supervisory authorities;

(v) *Assurances to Board.* Whether the foreign bank has provided the Board with adequate assurances that information will be made available to the Board on the operations or activities of the foreign bank and any of its affiliates that the Board deems necessary to determine and enforce compliance with the IBA, the BHC Act, and other applicable federal banking statutes; these assurances shall include a statement from the foreign bank describing the laws that would restrict the foreign bank or any of its parents from providing information to the Board;

(vi) *Compliance with U.S. law.* Whether the foreign bank and its U.S. affiliates are in compliance with applicable U.S. law, and whether the applicant has established adequate controls and procedures in each of its offices to ensure continuing compliance with U.S. law, including controls directed to detection of money laundering and other unsafe or unsound banking practices.

(3) *Additional factor.* In acting on an application, the Board may consider the needs of the community and the history of operation of the foreign bank and its relative size in its home country, provided, however, that the size of the foreign bank shall not be the sole factor in determining whether an office of a foreign bank should be approved.

(4) *Board conditions on approval.* The Board may impose such conditions on its approval as it deems necessary, including a condition which may permit future termination of any activities by the Board or, in the case of a federal branch or a federal agency, by the Comptroller, based on the inability of the foreign bank to provide information on its activities or those of its affiliates that the Board deems necessary to determine and enforce compliance with U.S. banking laws.

(d) *Representative offices—(1) Activities.* A representative office may engage in:

(i) Representational and administrative functions in connection with the banking activities of the foreign bank which may include soliciting new business for the foreign bank, conducting research, acting as liaison between the foreign bank's head office and customers in the United States, performing any of the activities described in 12 CFR 250.141(h), or performing back office functions, but shall not include contracting for any deposit or deposit-like liability, lending money, or engaging in any other banking activity for the foreign bank; and

(ii) Other functions for or on behalf of the foreign bank or its affiliates, such as operating as a regional administrative office of the foreign bank, but only to the extent that such other functions are not banking activities and are not prohibited by applicable federal or state law or by ruling or order of the Board.

(2) *Standards for approval of representative offices.* As specified in section 10(a)(2) of the IBA (12 U.S.C. 3107(a)(2)), in acting on the application of a foreign bank to establish a representative office, the Board shall take into account to the extent it deems appropriate the standards for approval set out in paragraph (c) of this section.

(3) *Special purpose foreign government banks.* A foreign government-owned organization engaged in banking activities in its home country that are not commercial in nature may apply to the Board for a determination that the organization is not a *foreign bank* for purposes of this section. A written request setting forth the basis for such a determination may be submitted to the Reserve Bank of the District in which the

foreign organization's representative office is located in the United States or to the Board in the case of a proposed establishment of a representative office. The Board will review and act upon each such request on a case-by-case basis.

(4) *Additional requirements.* The Board may impose any additional requirements that it determines to be necessary to carry out the purposes of the IBA.

(e) *Preservation of existing authority.* Nothing in this subpart shall be construed to relieve any foreign bank or foreign banking organization from any otherwise applicable requirement of federal or state law, including any applicable licensing requirement.

(f) *Reports of crimes and suspected crimes.* Except for a federal branch or a federal agency or a state branch that is insured by the Federal Deposit Insurance Corporation, a branch or agency or a representative office of a foreign bank operating in the United States shall file a suspicious activity report in accordance with the provisions of § 208.62 of the Board's Regulation H, 12 CFR 208.62.

(g) *Management of shell branches.* (1) A state-licensed branch or agency shall not manage, through an office of the foreign bank which is located outside the United States and is managed or controlled by such state-licensed branch or agency, any type of activity that a bank organized under the laws of the United States or any State is not permitted to manage at any branch or subsidiary of such bank which is located outside the United States.

(2) For purposes of this paragraph (g), an office of a foreign bank located outside the United States is "managed or controlled" by a state-licensed branch or agency if a majority of the responsibility for business decisions, including but not limited to decisions with regard to lending or asset management or funding or liability management, or the responsibility for recordkeeping in respect of assets or liabilities for that non-U.S. office, resides at the state-licensed branch or agency.

(3) The types of activities that a state-licensed branch or agency may manage through an office located outside the United States that it manages

or controls include the types of activities authorized to a U.S. bank by state or federal charters, regulations issued by chartering or regulatory authorities, and other U.S. banking laws, including the Federal Reserve Act, and the implementing regulations, but U.S. procedural or quantitative requirements that may be applicable to the conduct of such activities by U.S. banks shall not apply.

(h) *Government securities sales practices.* An uninsured state-licensed branch or agency of a foreign bank that is required to give notice to the Board under section 15C of the Securities Exchange Act of 1934 (15 U.S.C. 78o–5) and the Department of the Treasury rules under section 15C (17 CFR 400.1(d) and part 401) shall be subject to the provisions of 12 CFR 208.37 to the same extent as a state member bank that is required to give such notice.

[58 FR 6359, Jan. 28, 1993, as amended at 58 FR 47209, Sept. 8, 1993; Reg. K, 61 FR 2901, Jan. 30, 1996; 61 FR 4344, Feb. 5, 1996; 61 FR 39053, July 26, 1996; 62 FR 13286, Mar. 19, 1997; 63 FR 58621, Nov. 2, 1998]

§ 211.25 Termination of offices of foreign banks.

(a) *Grounds for termination*—(1) *General.* Under sections 7(e) and 10(b) of the IBA (12 U.S.C. 3105(e), 3107(b)), the Board may order a foreign bank to terminate the activities of its representative office, state branch, state agency, or commercial lending company subsidiary if the Board finds that:

(i) The foreign bank is not subject to comprehensive supervision or regulation on a consolidated basis by its home country supervisor in accordance with § 211.24(c)(1) of this subpart; or

(ii)(A) There is reasonable cause to believe that the foreign bank or any of its affiliates has committed a violation of law or engaged in an unsafe or unsound banking practice in the United States; and

(B) As a result of such violation or practice, the continued operation of the foreign bank's representative office, state branch, state agency, or commercial lending company subsidiary would not be consistent with the public interest or with the purposes of the IBA, the BHC Act, or the Federal

Deposit Insurance Act (FDI Act) (12 U.S.C. 1811 *et seq.*).

(2) *Additional ground.* The Board may also enforce any condition imposed in connection with an order issued under § 211.24 of this subpart.

(b) *Factor.* In making its findings under this section, the Board may take into account the needs of the community as well as the history of operation of the foreign bank and its relative size in its home country, provided, however, that the size of the foreign bank shall not be the sole determining factor in a decision to terminate an office.

(c) *Consultation with relevant state supervisor.* Except in the case of termination pursuant to paragraph (d)(3) of this section, before issuing an order terminating the activities of a state branch, state agency, representative office, or commercial lending company subsidiary under this section, the Board shall request and consider the views of the relevant state supervisor.

(d) *Termination procedures*—(1) *Notice and hearing.* Except as otherwise provided in paragraph (d)(3) of this section, an order issued under paragraph (a)(1) of this section shall be issued only after notice to the relevant state supervisor and the foreign bank and after an opportunity for a hearing.

(2) *Procedures for hearing.* Hearings under this section shall be conducted pursuant to the Board's Rules of Practice for Hearings (12 CFR part 263).

(3) *Expedited procedure.* The Board may act without providing an opportunity for a hearing if it determines that expeditious action is necessary in order to protect the public interest. When the Board finds that it is necessary to act without providing an opportunity for a hearing, the Board, solely in its discretion, may provide the foreign bank that is the subject of the termination order with notice of the intended termination order, grant the foreign bank an opportunity to present a written submission opposing issuance of the order, or take any other action designed to provide the foreign bank with notice and an opportunity to present its views concerning the order.

(e) *Termination of federal branch or federal agency.* The Board may transmit to the Comptroller a recommendation that the license of a federal branch or