

or circular, written order or interpretation, or decision of a court of competent jurisdiction, the foreign bank shall submit a written plan of divestiture or cessation, in conformance with paragraph (f)(1) of this section, within 60 days of January 1, 1995 or of such change or decision.

[Reg. K, 59 FR 55028, Nov. 3, 1994]

§ 211.30 Criteria for evaluating the U.S. operations of foreign banks not subject to consolidated supervision.

(a) *General.* Pursuant to the Foreign Bank Supervision Enhancement Act, Pub.L. 102-242, 105 Stat. 2286 (1991), the Board shall develop and publish criteria to be used in evaluating the operations of any foreign bank in the United States that the Board has determined is not subject to comprehensive supervision or regulation on a consolidated basis.

(b) *Criteria.* Following a determination by the Board that, having taken into account the standards set forth in § 211.24(c)(1) of this subpart, a foreign bank is not subject to comprehensive, consolidated supervision by its home country supervisor, the Board shall consider the following criteria in determining whether the foreign bank's U.S. operations should be permitted to continue and, if so, whether any supervisory constraints should be placed upon the bank in connection with those operations:

(1) The proportion of the foreign bank's total assets and total liabilities that are located or booked in its home country, as well as the distribution and location of its assets and liabilities that are located or booked elsewhere;

(2) The extent to which the operations and assets of the foreign bank and any affiliates are subject to supervision by its home country supervisor;

(3) Whether the appropriate authorities in the home country of such foreign bank are actively working to establish arrangements for the comprehensive, consolidated supervision of such bank and whether demonstrable progress is being made;

(4) Whether the foreign bank has effective and reliable systems of internal controls and management information and reporting, which enable its man-

agement properly to oversee its worldwide operations;

(5) Whether the foreign bank's home country supervisor has any objection to the bank continuing to operate in the United States;

(6) 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;

(7) The relationship of the U.S. operations to the other operations of the foreign bank, including whether the foreign bank maintains funds in its U.S. offices that are in excess of amounts due to its U.S. offices from the foreign bank's non-U.S. offices;

(8) The soundness of the foreign bank's overall financial condition;

(9) The managerial resources of the foreign bank, including the competence, experience, and integrity of the officers and directors and the integrity of its principal shareholders;

(10) The scope and frequency of external audits of the foreign bank;

(11) The operating record of the foreign bank generally and its role in the banking system in its home country;

(12) The foreign bank's record of compliance with relevant laws, as well as the adequacy of its money laundering controls and procedures, in respect of its worldwide operations;

(13) The operating record of the U.S. offices of the foreign bank;

(14) The views and recommendations of the Office of the Comptroller of the Currency or the state banking regulators in those states in which the foreign bank has operations, as appropriate;

(15) Whether the foreign bank, if requested, has provided the Board with adequate assurances that such information will be made available on the operations or activities of the foreign bank and any of its affiliates as the Board deems necessary to determine and enforce compliance with the International Banking Act, the Bank Holding Company Act, and other applicable federal banking statutes; and

(16) Any other information relevant to the safety and soundness of the U.S. operations of the foreign bank.

(c) *Restrictions on U.S. operations.*—(1) *Terms of agreement.* Any foreign bank that the Board determines is not subject to comprehensive supervision or regulation on a consolidated basis by its home country supervisor may be required to enter into an agreement to conduct its U.S. operations subject to such restrictions as the Board, having considered the criteria set forth in paragraph (b) of this section, determines to be appropriate in order to assure the safety and soundness of its U.S. operations.

(2) *Failure to enter into or comply with agreement.* A foreign bank that is required by the Board to enter into an agreement pursuant to paragraph (c)(1) of this section and either fails to do so or fails to comply with the terms of such agreement may be subject to enforcement action in order to assure safe and sound banking operations under 12 U.S.C. 1818, or to termination or a recommendation for termination of its U.S. operations under §211.25 (a) and (e) of this subpart and section (7)(e) of the IBA (12 U.S.C. 3105(e)).

[Reg. K, 61 FR 6921, Feb. 23, 1996]

Subpart C—Export Trading Companies

SOURCE: 56 FR 19575, Apr. 29, 1991, unless otherwise noted.

§211.31 Authority, purpose, and scope.

(a) *Authority.* This subpart is issued by the Board of Governors of the Federal Reserve System (“Board”) under the authority of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841 *et seq.*) (“BHC Act”), the Bank Export Services Act (Title II, Pub. L. 97-290, 96 Stat. 1235 (1982)) (“BESA”), and the Export Trading Company Act Amendments of 1988 (Title III, Pub. L. 100-418, 102 Stat. 1384 (1988)) (“ETC Act Amendments”).

(b) *Purpose and scope.* This subpart is in furtherance of the purposes of the BHC Act, the BESA, and the ETC Act Amendments, the latter two statutes being designed to increase U.S. exports by encouraging investments and participation in export trading companies by bank holding companies and the specified investors. The provisions of

this subpart apply to the following (hereinafter referred to as “eligible investors”):

(1) Bank holding companies as defined in section 2 of the BHC Act (12 U.S.C. 1841(a));

(2) Edge and Agreement corporations, as described in §211.1(c) of this part, that are subsidiaries of bank holding companies but are not subsidiaries of banks;

(3) Bankers’ banks as described in section 4(c)(14)(F)(iii) of the BHC Act (12 U.S.C. 1843(c)(14)(F)(iii)); and

(4) Foreign banking organizations as defined in §211.21(n) of this part.

[56 FR 19575, Apr. 29, 1991, as amended at 58 FR 46076, Sept. 1, 1993]

§211.32 Definitions.

The definitions of §211.2 in subpart A apply to this subpart subject to the following:

(a) *Export trading company* means a company that is exclusively engaged in activities related to international trade and, by engaging in one or more export trade services, derives:

(1) At least one-third of its revenues in each consecutive four-year period from the export of, or from facilitating the export of, goods and services produced in the United States by persons other than the export trading company or its subsidiaries; and

(2) More revenues in each four-year period from export activities as described in paragraph (a)(1) of this section than it derives from the import, or facilitating the import, into the United States of goods or services produced outside the United States.

For purposes of this section, *revenues* shall include net sales revenues from exporting, importing, or third party trade in goods by the export trading company for its own account, and gross revenues derived from all other activities of the export trading company.

(b) The terms *bank*, *company* and *subsidiary* have the same meanings as those contained in section 2 of the BHC Act (12 U.S.C. 1841).

§211.33 Investments and extensions of credit.

(a) *Amount of investments.* In accordance with the procedures of §211.34 of