

(i) Additional requirements. Nothing in this section relieves a foreign bank of any requirement to obtain the approval of the FRB as may be necessary under the FRB's Regulation K, 12 CFR part 211.

§ 28.13 Permissible activities.

(a) *Applicability of laws*—(1) *General*. Except as otherwise provided by the IBA, other Federal laws or regulations, or otherwise determined by the OCC, the operations of a foreign bank at a Federal branch or agency shall be conducted with the same rights and privileges and subject to the same duties, restrictions, penalties, liabilities, conditions, and limitations that would apply if the Federal branch or agency were a national bank operating at the same location.

(2) *Parent foreign bank senior management approval*. Unless otherwise provided by the OCC, any provision in law, regulation, policy, or procedure that requires a national bank to obtain the approval of its board of directors will be deemed to require a Federal branch or agency to obtain the approval of parent foreign bank senior management.

(b) *Management of shell branches*—(1) *Federal branches and agencies*. A Federal branch or agency of a foreign bank shall not manage, through an office of the foreign bank that is located outside the United States and that is managed or controlled by that Federal branch or agency, any type of activity that a United States bank is not permitted to manage at any branch or subsidiary of the United States bank that is located outside the United States.

(2) *Activities managed in foreign branches or subsidiaries of United States banks*. The types of activities referred to in paragraph (b)(1) of this section include the types of activities authorized to a United States bank by state or Federal charters, regulations issued by chartering or regulatory authorities, and other United States banking laws. However, United States procedural or quantitative requirements that may be applicable to the conduct of those activities by United States banks do not apply.

(c) *Additional guidance regarding permissible activities*. For purposes of sec-

tion 7(h) of the IBA, 12 U.S.C. 3105(h), the OCC may issue opinions, interpretations, or rulings regarding permissible activities of Federal branches.

§ 28.14 Limitations based upon capital of a foreign bank.

(a) *General*. Any limitation or restriction based upon the capital of a national bank shall be deemed to refer, as applied to a Federal branch or agency, to the dollar equivalent of the capital of the foreign bank.

(b) *Calculation*. Unless otherwise provided by the OCC, a foreign bank must calculate its capital in a manner consistent with 12 CFR part 3, for purposes of this section.

(c) *Aggregation*. The foreign bank shall aggregate business transacted by all Federal branches and agencies with the business transacted by all state branches and state agencies controlled by the foreign bank in determining its compliance with limitations based upon the capital of the foreign bank. The foreign bank shall designate one Federal branch or agency office in the United States to maintain consolidated information so that the OCC can monitor compliance.

§ 28.15 Capital equivalency deposits.

(a) *Capital equivalency deposits*—(1) *General*. For purposes of section 4(g) of the IBA, 12 U.S.C. 3102(g), unless otherwise provided by the OCC, a foreign bank's capital equivalency deposits (CED) must consist of:

(i) Investment securities eligible for investment by national banks;

(ii) United States dollar deposits payable in the United States, other than certificates of deposit;

(iii) Certificates of deposit, payable in the United States, and banker's acceptances, provided that, in either case, the issuer or the instrument is rated investment grade by an internationally recognized rating organization, and neither the issuer nor the instrument is rated lower than investment grade by any such rating organization that has rated the issuer or the instrument; or

(iv) Other assets permitted by the OCC to qualify as CED.

(2) *Legal requirements*. The agreement with the depository bank to hold the

CED and the amount of the deposit must comply with the requirements in section 4(g) of the IBA, 12 U.S.C. 3102(g). If a foreign bank has more than one Federal branch or agency in a state, it shall determine the CED and the amount of liabilities requiring capital equivalency coverage on an aggregate basis for all the foreign bank's Federal branches or agencies in that state.

(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.

(c) *Value of assets.* The obligations referred to in paragraph (a) of this section must be valued at principal amount or market value, whichever is lower.

(d) *Deposit arrangements.* A foreign bank should require its depository bank to segregate its CED on the depository bank's books and records. The funds deposited and obligations referred to in paragraph (a) of this section that are placed in safekeeping at a depository bank to satisfy a foreign bank's CED requirement:

(1) May not be reduced in aggregate value by withdrawal without the prior approval of the OCC;

(2) Must be pledged and maintained pursuant to an agreement prescribed by the OCC; and

(3) Must be free from any lien, charge, right of setoff, credit, or preference in connection with any claim of the depository bank against the foreign bank.

(e) *Maintenance of capital equivalency ledger account.* Each Federal branch or agency shall maintain a capital equivalency account and keep records of the amount of liabilities requiring capital equivalency coverage in a manner and form prescribed by the OCC.

§ 28.16 Deposit-taking by an uninsured Federal branch.

(a) *Policy.* In carrying out this section, the OCC shall consider the importance of according foreign banks competitive opportunities equal to those of United States banks and the availability of credit to all sectors of the United

States economy, including international trade finance.

(b) *General.* An uninsured Federal branch may accept initial deposits of less than \$100,000 only from:

(1) Individuals who are not citizens or residents of the United States at the time of the initial deposit;

(2) Individuals who are not citizens of the United States, but are residents of the United States, and are employed by a foreign bank, foreign business, foreign government, or recognized international organization;

(3) Persons (including immediate family members of an individual) to whom the branch or foreign bank (including any affiliate thereof) has extended credit or provided other non-deposit banking services within the past 12 months, or with whom the branch or foreign bank has a written agreement to extend credit or provide such services within 12 months after the date of the initial deposit;

(4) Foreign businesses and large United States businesses;

(5) Foreign governmental units, including political subdivisions, and recognized international organizations;

(6) Federal and state governmental units, including political subdivisions and agencies thereof;

(7) Persons who are depositing funds in connection with the issuance of a financial instrument by the branch for transmission of funds, or transmission of funds by any electronic means;

(8) Persons who may deposit funds with an Edge corporation as provided in the FRB's Regulation K, 12 CFR 211.4, including persons engaged in certain international business activities; and

(9) Any other depositor if:

(i) The aggregate amount of deposits received from those depositors does not exceed, on an average daily basis, 1 percent of the average of the branch's deposits for the last 30 days of the most recent calendar quarter, excluding deposits of other offices, branches, agencies, or wholly owned subsidiaries of the foreign bank; and

(ii) The branch does not solicit deposits from the general public by advertising, display of signs, or similar activity designed to attract the attention of the general public.