

Federal Deposit Insurance Corporation

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a corporation, partnership, sole proprietorship, association, foundation or trust which is organized under the laws of the United States or any state thereof, and:

(1) Whose securities are registered on a national securities exchange or quoted on the National Association of Securities Dealers Automated Quotation System; or

(2) Has annual gross revenues in excess of \$1,000,000 for the fiscal year immediately preceding the initial deposit.

(u) *Person* means an individual, bank, corporation, partnership, trust, association, foundation, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, or any other form of entity.

(v) *Immediate family member of a natural person* means the spouse, father, mother, brother, sister, son or daughter of that natural person.

[44 FR 40060, July 9, 1979, as amended at 49 FR 49620, Dec. 21, 1984; 54 FR 14066, Apr. 7, 1989; 59 FR 60706, Nov. 28, 1994; 61 FR 5674, Feb. 14, 1996]

Subpart B—Insurance of Deposits

§ 346.2 Scope.

(a) This subpart B implements the insurance provisions of section 6 of the International Banking Act of 1978 (12 U.S.C. 3104). It sets out the FDIC's rules regarding deposit activities requiring a State branch to be an insured branch; deposit activities not requiring a State branch to be an insured branch; procedures for a State branch to apply for an exemption from the insurance requirement; and, depositor notification requirements.¹ It sets out the FDIC's policy regarding the operation of insured and noninsured branches, whether State or Federal, by a foreign bank and it provides that any branch has the option of applying for insurance.

(b) Any application for insurance under this subpart should be filed in

¹Sections 346.4, 346.5, 346.6 and 346.7 do not apply to a Federal branch; the Comptroller of the Currency's regulations establish such rules for Federal branches. Federal branches deemed by the Comptroller to require insurance must apply to the FDIC for insurance.

accordance with part 303 of the FDIC's Rules and Regulations.

§ 346.3 Restriction on operation of insured and noninsured branches.

The FDIC will not insure deposits in any branch of a foreign bank unless the foreign bank agrees that every branch established or operated by the foreign bank in the same State will be an insured branch; *Provided*, That this restriction does not apply to any branch which accepts only initial deposits in an amount of \$100,000 or greater.

§ 346.4 Insurance requirement.

General rule. Except as provided in § 346.5 or § 346.6, a foreign bank shall not establish or operate any State branch which is not an insured branch whenever:

(a) The branch is engaged in a domestic retail deposit activity; and

(b) The branch is located in a State which requires a bank organized and existing under State law to have deposit insurance whenever the bank accepts deposits from the general public. A State requirement is one imposed by statute or by State banking department regulation or policy.

[44 FR 40060, July 9, 1979, as amended at 54 FR 14067, Apr. 7, 1989]

§ 346.5 Branches established under section 5 of the International Banking Act.

A foreign bank may operate any State branch as a noninsured branch whenever the foreign bank has entered into an agreement with the Board of Governors of the Federal Reserve System to accept at that branch only those deposits as would be permissible for a corporation organized under section 25(a) of the Federal Reserve Act (12 U.S.C. 611 *et seq.*) and implementing rules and regulations administered by the Board of Governors (12 CFR part 211).

§ 346.6 Exemptions from the insurance requirement.

(a) *Deposit activities not requiring insurance.* A state branch will not be deemed to be engaged in a domestic retail deposit activity which requires the branch to be an insured branch under § 346.4 if initial deposits in an amount

of less than \$100,000 are derived solely from the following:

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

(2) Individuals who:

(i) Are not citizens of the United States;

(ii) Are residents of the United States; and

(iii) Are employed by a foreign bank, foreign business, foreign government, or recognized international organization;

(3) Persons (including immediate family members of natural persons) to whom the branch or foreign bank (including any affiliate thereof) has extended credit or provided other non-deposit banking services within the past twelve months or has entered into a written agreement to provide such services within the next twelve months;

(4) Foreign businesses, large United States businesses, and persons from whom an Edge Corporation may accept deposits under §211.4(e)(1) of Regulation K of the Board of Governors of the Federal Reserve System, 12 CFR 211.4(e)(1);

(5) Any governmental unit, including the United States government, any state government, any foreign government and any political subdivision or agency of any of the foregoing, and recognized international organizations;

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

(7) Any other depositor but only if the amount of deposits under this paragraph (a)(7) does not exceed on an average daily basis one percent of the average of the branch's deposits for the last 30 days of the most recent calendar quarter, excluding deposits in the branch of other offices, branches, agencies or wholly owned subsidiaries of the bank and 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. A foreign bank which has more than one state branch in the same state may aggregate

deposits in such branches (excluding deposits of other branches, agencies or wholly owned subsidiaries of the bank) for the purpose of this paragraph (a)(7). The average shall be computed by using the sum of the close of business figures for the last 30 calendar days ending with and including the last day of the calendar quarter divided by 30. For days on which the branch is closed, balances from the last previous business day are to be used.

(b) *Application for an exemption.* (1) Whenever a foreign bank proposes to accept at a state branch initial deposits of less than \$100,000 and such deposits are not otherwise excepted under paragraph (a) of this section, the foreign bank may apply to the FDIC for consent to operate the branch as a non-insured branch. The Board of Directors may exempt the branch from the insurance requirement if the branch is not engaged in domestic retail deposit activities requiring insurance protection. The Board of Directors will consider the size and nature of depositors and deposit accounts, the importance of maintaining and improving the availability of credit to all sectors of the United States economy, including the international trade finance sector of the United State economy, whether the exemption would give the foreign bank an unfair competitive advantage over United States banking organizations, and any other relevant factors in making this determination.

(2) Any request for an exemption under this paragraph should be in writing and authorized by the board of directors of the foreign bank. If a resolution is not required pursuant to the applicant's organizational documents, the request shall include evidence of approval by the bank's senior management. The request should be filed with the Regional Director of the Division of Supervision for the region where the state branch is located.

(3) The request should detail the kinds of deposit activities in which the branch proposes to engage, the expected source of deposits, the manner in which deposits will be solicited, how this activity will maintain or improve the availability of credit to all sectors

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of the United States economy, including the international trade finance sector, that the activity will not give the foreign bank an unfair competitive advantage over United States banking organizations and any other relevant information.

(c) *Transition period.* An uninsured state branch may maintain a retail deposit lawfully accepted pursuant to this section prior to April 1, 1996:

(1) If the deposit qualifies pursuant to paragraph (a) or (b) of this section; or

(2) If the deposit does not qualify pursuant to paragraph (a) or (b) of this section, no later than:

(i) In the case of a non-time deposit, five years from April 1, 1996; or

(ii) In the case of a time deposit, the first maturity date of the time deposit after April 1, 1996 or the date that is 90 days after April 1, 1996, whichever is later.

[61 FR 5674, Feb. 14, 1996]

§ 346.7 Notification to depositors.

Any State branch that is exempt from the insurance requirement pursuant to § 346.6 shall—

(a) Display conspicuously at each window or place where deposits are usually accepted a sign stating that deposits are not insured by the FDIC; and

(b) Include in bold face conspicuous type on each signature card, passbook, and instrument evidencing a deposit the statement “This deposit is *not* insured by the FDIC”; or require each depositor to execute a statement which acknowledges that the initial deposit and all future deposits at the branch are not insured by the FDIC. This acknowledgment shall be retained by the branch so long as the depositor maintains any deposit with the branch. This provision applies to any negotiable certificates of deposit made in a branch on or after July 6, 1989, as well as to any renewals of such deposits which become effective on or after July 6, 1989.

[54 FR 14067, Apr. 7, 1989]

§ 346.8 Optional insurance.

A foreign bank may apply to the FDIC for deposit insurance for any State branch that is not otherwise required to be insured under § 346.4 or for

any Federal branch that is not otherwise required to be insured under the rules and regulations of the Comptroller of the Currency.

§§ 346.9—346.15 [Reserved]

Subpart C—Foreign Banks Having Insured Branches

§ 346.16 Scope.

This subpart C sets out the rules that apply only to a foreign bank that operates or proposes to establish an insured State or Federal branch. These rules relate to the following matters: an agreement to provide information and to be examined and provisions concerning recordkeeping, pledge of assets, asset maintenance, and deductions from the assessment base.

[44 FR 40060, July 9, 1979, as amended at 54 FR 14067, Apr. 7, 1989]

§ 346.17 Agreement to provide information and to be examined.

(a) A foreign bank that applies for insurance for any branch shall agree in writing to the following terms:

(1) The foreign bank will provide the FDIC with information regarding the affairs of the bank and its affiliates which are located outside of the United States as the FDIC from time to time may request to:

(i) Determine the relations between the insured branch and the bank and its affiliates and

(ii) Assess the financial condition of the bank as it relates to the insured branch.

If the laws of the country of the bank's domicile or the policy of the Central Bank or other banking authority prohibit or restrict the foreign bank from entering into this agreement, the foreign bank shall agree to provide information to the extent permitted by such law or policy. Information provided shall be in the form requested by the FDIC and shall be made available in the United States. The Board of Directors will consider the existence and extent of this prohibition or restriction in determining whether to grant insurance and may deny the application if the information available is so limited