

## § 347.101

## 12 CFR Ch. III (1-1-05 Edition)

AUTHORITY: 12 U.S.C. 1813, 1815, 1817, 1819, 1820, 1828, 3103, 3104, 3105, 3108; Title IX, Pub. L. 98-181, 97 Stat. 1153.

SOURCE: 63 FR 17075, Apr. 8, 1998, unless otherwise noted.

### Subpart A—Foreign Branching and Investment by Insured State Nonmember Banks

#### § 347.101 Purpose, authority, and scope.

Under sections 18(d) and 18(l) of the Federal Deposit Insurance Act (12 U.S.C. 1828(d), 1828(l)), the Federal Deposit Insurance Corporation prescribes the regulations in this subpart relating to foreign branches of insured state nonmember banks, the acquisition and holding of stock of foreign organizations, and loans or extensions of credit to or for the account of such foreign organizations.

#### § 347.102 Definitions.

For the purposes of this subpart:

(a) An *affiliate* of an insured state nonmember bank means:

(1) Any entity of which the insured state nonmember bank is a direct or indirect subsidiary or which otherwise controls the insured state nonmember bank;

(2) Any organization which is a direct or indirect subsidiary of such entity or which is otherwise controlled by such entity; or

(3) Any other organization which is a direct or indirect subsidiary of the insured state nonmember bank or is otherwise controlled by the insured state nonmember bank.

(b) *Control* means the ability to control in any manner the election of a majority of an organization's directors or trustees; or the ability to exercise a controlling influence over the management and policies of an organization. An insured state nonmember bank is deemed to control an organization of which it is a general partner or its affiliate is a general partner.

(c) *Eligible* insured state nonmember bank means an eligible depository institution as defined in § 347.401(c).

(d) *Equity interest* means any ownership interest or rights in an organization, whether through an equity security, contribution to capital, general or

limited partnership interest, debt or warrants convertible into ownership interests or rights, loans providing profit participation, binding commitments to acquire any such items, or some other form of business transaction.

(e) *Equity security* means voting or nonvoting shares, stock, investment contracts, or other interests representing ownership or participation in a company or similar enterprise, as well as any instrument convertible to any such interest at the option of the holder without payment of substantial additional consideration.

(f) *FRB* means the Board of Governors of the Federal Reserve System.

(g) *Foreign bank* means an organization that is organized under the laws of a foreign country, a territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands that:

(1) Is recognized as a bank by the bank supervisory or monetary authority of the country of its organization or the country in which its principal banking operations are located;

(2) Receives deposits to a substantial extent in the regular course of its business; and

(3) Has the power to accept demand deposits.

(h) *Foreign banking organization* means a foreign organization that is formed for the sole purpose of either holding shares of a foreign bank or performing nominee, fiduciary, or other banking services incidental to the activities of a foreign branch or foreign bank affiliate of the insured state nonmember bank.

(i) *Foreign branch* means an office or place of business located outside the United States, its territories, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Virgin Islands, at which banking operations are conducted, but does not include a representative office.

(j) *Foreign country* means any country other than the United States and includes any territory, dependency, or possession of any such country or of the United States.

(k) *Foreign organization* means an organization that is organized under the laws of a foreign country.

(l) *Indirectly* means investments held or activities conducted by a subsidiary of an organization.

(m) *Loan or extension of credit* means all direct and indirect advances of funds to a person, government, or entity made on the basis of any obligation of that person, government, or entity to repay funds.

(n) *Organization* or *entity* means a corporation, partnership, association, bank, or other similar entity.

(o) *Representative office* means an office that engages solely in representative functions such as soliciting new business for its home office or acting as liaison between the home office and local customers, but which has no authority to make business or contracting decisions other than those relating to the personnel and premises of the representative office.

(p) *Subsidiary* means any organization more than 50 percent of the voting equity interests of which are directly or indirectly held by another organization.

(q) *Tier 1 capital* means Tier 1 capital as defined in § 325.2 of this chapter.

(r) *Well capitalized* means well capitalized as defined in § 325.103 of this chapter.

**§ 347.103 Foreign branches of insured State nonmember banks.**

(a) *Powers of foreign branches.* To the extent authorized by state law, an insured state nonmember bank may establish a foreign branch. In addition to its general banking powers, and if permitted by state law, a foreign branch of an insured state nonmember bank may conduct the following activities to the extent the activities are consistent with banking practices in the foreign country in which the branch is located:

(1) *Guarantees.* Guarantee debts, or otherwise agree to make payments on the occurrence of readily ascertainable events including without limitation such things as nonpayment of taxes, rentals, customs duties, or costs of transport and loss or nonconformance of shipping documents, if:

(i) The guarantee or agreement specifies a maximum monetary liability; and

(ii) To the extent the guarantee or agreement is not subject to a separate

amount limit under State or Federal law, the amount of the guarantee or agreement is combined with loans and other obligations for purposes of applying any legal lending limits.

(2) *Local investments.* Acquire and hold the following local investments, so long as aggregate investments (other than those required by the law of the foreign country or permissible under section 5136 of the Revised Statutes (12 U.S.C. 24 (Seventh)) by all the bank's branches in one foreign country do not exceed 1 percent of the total deposits in all the bank's branches in that country as reported in the preceding year-end Report of Income and Condition (Call Report):<sup>1</sup>

(i) Equity securities of the central bank, clearing houses, governmental entities, and development banks of the country in which the branch is located;

(ii) Other debt securities eligible to meet local reserve or similar requirements; and

(iii) Shares of automated electronic payment networks, professional societies, schools, and similar entities necessary to the business of the branch.

(3) *Government obligations.* Make the following types of transactions with respect to the obligations of foreign countries, so long as aggregate investments, securities held in connection with distribution and dealing, and underwriting commitments do not exceed ten percent of the insured state nonmember bank's Tier 1 capital:

(i) Underwrite, distribute and deal, invest in, or trade obligations of:

(A) The national government of the country in which the branch is located or its political subdivisions; and

(B) An agency or instrumentality of such national government if supported by the taxing authority, guarantee, or full faith and credit of the national government.

<sup>1</sup>If a branch has recently been acquired by the state nonmember bank and the branch was not previously required to file a Call Report, branch deposits as of the acquisition date must be used.