

may not be a member of an exchange or clearing association that requires members to guarantee or otherwise contract to cover losses suffered by other members unless the foreign organization's liability does not exceed two percent of the insured state nonmember bank's Tier 1 capital, or the insured state nonmember bank has obtained the prior approval of the FDIC under § 347.108(d).

§ 347.107 U.S. activities of foreign organizations held by insured State nonmember banks.

(a) An insured state nonmember bank may not directly or indirectly hold the equity interests of any foreign organization pursuant to the authority of this section if the organization engages in the general business of buying or selling goods, wares, merchandise, or commodities in the United States.

(b) An insured state nonmember bank may not directly or indirectly hold more than 5 percent of the equity interests of any foreign organization pursuant to the authority of this subpart unless any activities in which the foreign organization engages directly or indirectly in the United States are incidental to its international or foreign business.

(c) A foreign organization is not engaged in any business or activities in the United States for these purposes unless it maintains an office in the United States other than a representative office.

(d) The following activities are incidental to international or foreign business:

(1) Activities that the FRB has determined in Regulation K (12 CFR 211.4) are permissible in the United States for an Edge corporation.

(2) Other activities approved by the FDIC.

§ 347.108 Obtaining FDIC approval to invest in foreign organizations.

(a) *General consent.* General consent of the FDIC is granted for an eligible insured state nonmember bank to make direct or indirect investments in foreign organizations in conformity with the limits and requirements of this subpart if:

(1) The insured state nonmember bank presently operates at least one foreign bank subsidiary or foreign branch, an affiliated bank or Edge or Agreement corporation operates at least one foreign bank subsidiary or foreign branch, or the insured state nonmember bank's holding company operates at least one foreign bank subsidiary;

(2) In any case in which the insured state nonmember bank and its affiliates will hold 20 percent or more of the foreign organization's voting equity interests or control the foreign organization, at least one insured state nonmember bank has a foreign bank subsidiary in the relevant foreign country;³

(3) The investment is within one of the following limits:

(i) The investment is acquired at net asset value from an affiliate;

(ii) The investment is a reinvestment of cash dividends received from the same foreign organization during the preceding 12 months; or

(iii) The total investment directly or indirectly in a single foreign organization in any transaction or series of transactions during a twelve-month period does not exceed two percent of the insured state nonmember bank's Tier 1 capital, and such investments in all foreign organizations in the aggregate do not exceed:

(A) 5 percent of the insured state nonmember bank's Tier 1 capital during a 12-month period; and

(B) Up to an additional five percent of the insured state nonmember bank's Tier 1 capital if the investments are acquired for trading purposes; and

(4) Within 30 days, the insured state nonmember bank provides the FDIC written notice of the investment, unless the investment was acquired for trading purposes, in which case no notice is required.

(b) *Expedited processing.* An investment that does not qualify for general consent but is otherwise in conformity with the limits and requirements of this subpart may be made 45 days after an eligible insured state nonmember

³A list of these countries can be obtained from the FDIC's Internet Web Site at www.fdic.gov.

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bank files a substantially complete application with the FDIC, or upon such earlier time as authorized by the FDIC.

(c) *Inapplicability of general consent or expedited processing.* General consent or expedited processing under this section do not apply:

(1) For foreign investments resulting in the insured state nonmember bank holding 20 percent or more of the voting equity interests of a foreign organization or controlling such organization and the foreign organization would be located in a foreign country in which applicable law or practice would limit the FDIC's access to information for supervisory purposes; or

(2) If the FDIC at any time notifies the insured state nonmember bank that the FDIC is modifying or suspending its general consent or expedited processing procedure.

(d) *Specific consent.* Any investment that is not authorized under general consent or expedited processing procedures must not be made without the prior specific consent of the FDIC.

(e) *Computation of amounts.* In computing the amount that may be invested in any foreign organization under this section, any investments held by an affiliate of the insured state nonmember bank must be included.

(f) *Procedures.* Procedures for applications and notices under this section are set out in subpart J of part 303 of this chapter.

[63 FR 17075, Apr. 8, 1998, as amended at 68 FR 50461, Aug. 21, 2003]

§ 347.109 Extensions of credit to foreign organizations held by insured State nonmember banks; shares of foreign organizations held in connection with debts previously contracted.

(a) *Loans or extensions of credit.* An insured state nonmember bank which directly or indirectly holds equity interests in a foreign organization pursuant to the authority of this subpart may make loans or extensions of credit to or for the accounts of the organization without regard to the provisions of section 18(j) of the FDI Act (12 U.S.C. 1828(j)).

(b) *Debts previously contracted.* Equity interests acquired to prevent a loss upon a debt previously contracted in

good faith are not subject to the limitations or procedures of this subpart; however they must be disposed of promptly but in no event later than two years after their acquisition, unless the FDIC authorizes retention for a longer period.

§ 347.110 Supervision and record-keeping of the foreign activities of insured State nonmember banks.

(a) *Records, controls and reports.* An insured state nonmember bank with any foreign branch, any investment in a foreign organization of 20 percent or more of the organization's voting equity interests, or control of a foreign organization must maintain a system of records, controls and reports that, at minimum, provide for the following:

(1) *Risk assets.* To permit assessment of exposure to loss, information furnished or available to the main office should be sufficient to permit periodic and systematic appraisals of the quality of risk assets, including loans and other extensions of credit. Coverage should extend to a substantial proportion of the risk assets in the branch or foreign organization, and include the status of all large credit lines and of credits to customers also borrowing from other offices or affiliates of the insured state nonmember bank. Appropriate information on risk assets may include:

(i) A recent financial statement of the borrower or obligee and current information on the borrower's or obligee's financial condition;

(ii) Terms, conditions, and collateral;

(iii) Data on any guarantors;

(iv) Payment history; and

(v) Status of corrective measures employed.

(2) *Liquidity.* To enable assessment of local management's ability to meet its obligations from available resources, reports should identify the general sources and character of the deposits, borrowing, and other funding sources, employed in the branch or foreign organization with special reference to their terms and volatility. Information should be available on sources of liquidity-cash, balances with banks, marketable securities, and repayment