

## § 347.201

flows—such as will reveal their accessibility in time and any risk elements involved.

(3) *Contingencies.* Data on the volume and nature of contingent items such as loan commitments and guarantees or their equivalents that permit analysis of potential risk exposure and liquidity requirements.

(4) *Controls.* Reports on the internal and external audits of the branch or foreign organization in sufficient detail to permit determination of conformance to auditing guidelines. Appropriate audit reports may include coverage of:

(i) Verification and identification of entries on financial statements;

(ii) Income and expense accounts, including descriptions of significant chargeoffs and recoveries;

(iii) Operations and dual-control procedures and other internal controls;

(iv) Conformance to head office guidelines on loans, deposits, foreign exchange activities, proper accounting procedures, and discretionary authority of local management;

(v) Compliance with local laws and regulations; and

(vi) Compliance with applicable U.S. laws and regulations.

(b) *Availability of information to examiners; reports.* (1) Information about foreign branches or foreign organizations must be made available to the FDIC by the insured state nonmember bank for examination and other supervisory purposes.

(2) If any applicable law or practice in a particular foreign country would limit the FDIC's access to information for supervisory purposes, no insured state nonmember bank may utilize the general consent or expedited processing procedures under §§ 347.103 and 347.108 to:

(i) Establish any foreign branch in the foreign country; or

(ii) Make any investment resulting in the state nonmember bank holding 20 percent or more of the voting equity interests of a foreign organization in the foreign country or controlling such organization.

(3) The FDIC may from time to time require an insured state nonmember bank to make and submit such reports and information as may be necessary

## 12 CFR Ch. III (1–1–05 Edition)

to implement and enforce the provisions of this subpart, and the insured state nonmember bank shall submit an annual report of condition for each foreign branch pursuant to instructions provided by the FDIC.

### Subpart B—Foreign Banks

#### § 347.201 Scope.

(a)(1) Sections 347.203 through 347.207 implement the insurance provisions of section 6 of the International Banking Act of 1978 (12 U.S.C. 3104). They set out the FDIC's rules regarding domestic retail deposit activities requiring a foreign bank to establish an insured bank subsidiary; deposit activities permissible for a noninsured branch; authority for a state branch to apply for an exemption from the insurance requirement; and, depositor notification requirements. Sections 347.204, 347.205, 347.206 and 347.207 do not apply to a Federal branch. The Comptroller of the Currency's regulations (12 CFR part 28) establish such rules for Federal branches. However, Federal branches deemed by the Comptroller to require insurance must apply to the FDIC for insurance.

(2) Sections 347.203 through 347.207 also set out the FDIC's rules regarding the operation of insured and noninsured branches, whether state or Federal, by a foreign bank.

(b) Sections 347.208 through 347.212 set 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 record-keeping, pledge of assets, asset maintenance, and deductions from the assessment base.

#### § 347.202 Definitions.

For the purposes of this subpart:

(a) *Affiliate* means any entity that controls, is controlled by, or is under common control with another entity. An entity shall be deemed to "control" another entity if the entity directly or indirectly owns, controls, or has the power to vote 25 percent or more of any class of voting securities of the other entity or controls in any manner the

## Federal Deposit Insurance Corporation

## § 347.202

election of a majority of the directors or trustees of the other entity.

(b) *Branch* means any office or place of business of a foreign bank located in any state of the United States at which deposits are received. The term does not include any office or place of business deemed by the state licensing authority or the Comptroller of the Currency to be an agency.

(c) *Deposit* has the same meaning as that term in section 3(l) of the Federal Deposit Insurance Act (12 U.S.C. 1813(l)).

(d) *Depository* means any insured state bank, national bank, or insured branch.

(e) *Domestic retail deposit activity* means the acceptance by a state branch of any initial deposit of less than \$100,000.

(f) *Federal branch* means a branch of a foreign bank established and operating under the provisions of section 4 of the International Banking Act of 1978 (12 U.S.C. 3102).

(g) *Foreign bank* means any company organized under the laws of a foreign country, any territory of the United States, Puerto Rico, Guam, American Samoa, the Northern Mariana Islands, or the Virgin Islands, which engages in the business of banking. The term includes foreign commercial banks, foreign merchant banks and other foreign institutions that engage in banking activities usual in connection with the business of banking in the countries where such foreign institutions are organized and operating. Except as otherwise specifically provided by the Federal Deposit Insurance Corporation, banks organized under the laws of a foreign country, any territory of the United States, Puerto Rico, Guam, American Samoa, the Northern Mariana Islands, or the Virgin Islands which are insured banks other than by reason of having an insured branch are not considered to be foreign banks for purposes of §§ 347.208, 347.209, 347.210, and 347.211.

(h) *Foreign business* means any entity including, but not limited to, a corporation, partnership, sole proprietorship, association, foundation or trust, which is organized under the laws of a foreign country or any United States entity which is owned or controlled by

an entity which is organized under the laws of a foreign country or a foreign national.

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

(j) *Home state* of a foreign bank means the state so determined by the election of the foreign bank, or in default of such election, by the Board of Governors of the Federal Reserve System.

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

(l) *Initial deposit* means the first deposit transaction between a depositor and the branch. The initial deposit may be placed into different deposit accounts or into different kinds of deposit accounts, such as demand, savings or time. Deposit accounts that are held by a depositor in the same right and capacity may be added together for the purposes of determining the dollar amount of the initial deposit. "First deposit" means any deposit made when there is no existing deposit relationship between the depositor and the branch.

(m) *Insured bank* means any bank, including a foreign bank having an insured branch, the deposits of which are insured in accordance with the provisions of the Federal Deposit Insurance Act.

(n) *Insured branch* means a branch of a foreign bank any deposits of which branch are insured in accordance with the provisions of the Federal Deposit Insurance Act.

(o) *Large United States business* means any entity including, but not limited to, 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.

(p) A *majority owned subsidiary* means a company the voting stock of which is

**§ 347.203**

more than 50 percent owned or controlled by another company.

(q) *Noninsured branch* means a branch of a foreign bank deposits of which branch are not insured in accordance with the provisions of the Federal Deposit Insurance Act.

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

(s) *Significant risk to the deposit insurance fund* shall be understood to be present whenever there is a high probability that the Bank Insurance Fund administered by the FDIC may suffer a loss.

(t) *State* means any state of the United States or the District of Columbia.

(u) *State branch* means a branch of a foreign bank established and operating under the laws of any state.

(v) A *wholly owned subsidiary* means a company the voting stock of which is 100 percent owned or controlled by another company except for a nominal number of directors' shares.

**§ 347.203 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.

**§ 347.204 Insurance requirement.**

(a) *Domestic retail deposit activity.* In order to initiate or conduct domestic retail deposit activity which requires deposit insurance protection in any state a foreign bank shall:

(1) Establish one or more insured bank subsidiaries in the United States for that purpose; and

(2) Obtain deposit insurance for any such subsidiary in accordance with the Federal Deposit Insurance Act.

(b) *Exception.* For purposes of paragraph (a) of this section, "foreign bank" does not include any bank organized under the laws of any territory of

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

the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands the deposits of which are insured by the Corporation pursuant to the Federal Deposit Insurance Act.

(c) *Grandfathered insured branches.* Domestic retail deposit accounts with balances of less than \$100,000 that require deposit insurance protection may be accepted or maintained in a branch of a foreign bank only if such branch was an insured branch on December 19, 1991.

(d) *Noninsured branches.* A foreign bank may establish or operate a state branch which is not an insured branch whenever:

(1) The branch only accepts initial deposits in an amount of \$100,000 or greater; or

(2) The branch meets the criteria set forth in § 347.205 or § 347.206.

**§ 347.205 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).

**§ 347.206 Exemptions from the insurance requirement.**

(a) Deposit activities not requiring insurance. A state branch will not be deemed to be engaged in domestic retail deposit activity which requires the foreign bank parent to establish an insured bank subsidiary in accordance with § 347.204(a) if the state branch only accepts initial deposits in an amount of less than \$100,000 which 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;