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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

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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;

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(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 branch's average deposits under this paragraph (a)(7) do not exceed one percent of the branch's average total deposits for the last 30 days of the most recent calendar quarter (de minimis exception). In calculating this de minimis exception, both the average deposits under this paragraph (a)(7) and the average total deposits shall be computed by summing the close of business figures for each of the last 30 calendar days, ending with and including the last day of the calendar quarter, and dividing the resulting sum by 30. For days on which the branch is closed, balances from the last previous business day are to be used. In determining its average branch deposits, the branch may exclude deposits in the branch of other offices, branches, agencies or wholly owned subsidiaries of the bank. In addition, the branch must 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).

(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 States 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) Procedures for applications under this section are set out in subpart D of this part.

(c) *Transition period.* A noninsured state branch may maintain a retail deposit lawfully accepted prior to April 1, 1996 pursuant to regulations in effect prior to July 1, 1998 (See §346.6 as contained in 12 CFR parts 300 to 499 revised as of January 1, 1998):

(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.