

§ 347.212

12 CFR Ch. III (1–1–05 Edition)

§ 347.212 Deductions from the assessment base.

An insured branch may deduct from its assessment base deposits in the insured branch to the credit of the foreign bank or any office, branch or agency of and any wholly owned subsidiary of the foreign bank.

§ 347.213 FDIC approval to conduct activities not permissible for Federal branches.

(a) *Scope.* A foreign bank operating an insured state branch which desires to engage in or continue to engage in any type of activity that is not permissible for a Federal branch, pursuant to the National Bank Act (12 U.S.C. 21 *et seq.*) or any other Federal statute, regulation, official bulletin or circular, written order or interpretation, or decision of a court of competent jurisdiction (each an impermissible activity), shall file a written application for permission to conduct such activity with the FDIC.

(b) *Exceptions.* A foreign bank operating an insured state branch which would otherwise be required to submit an application pursuant to paragraph (a) of this section will not be required to submit such an application if the activity it desires to engage in or continue to engage in has been determined by the FDIC not to present a significant risk to the affected deposit insurance fund pursuant to part 362 of this chapter, "Activities and Investment of Insured State Banks".

(c) *Agency activities.* A foreign bank operating an insured state branch which would otherwise be required to submit an application pursuant to paragraph (a) of this section will not be required to submit such an application if it desires to engage in or continue to engage in an activity conducted as agent which would be a permissible agency activity for a state-chartered bank located in the state which the state-licensed insured branch of the foreign bank is located and is also permissible for a state-licensed branch of a foreign bank located in that state; provided, however, that the agency activity must be permissible pursuant to any other applicable Federal law or regulation.

(d) *Conditions of approval.* Approval of such an application may be conditioned on the applicant's agreement to conduct the activity subject to specific limitations, such as but not limited to the pledging of assets in excess of the requirements of § 347.210 and/or the maintenance of eligible assets in excess of the requirements of § 347.211. In the case of an application to initially engage in an activity, as opposed to an application to continue to conduct an activity, the insured branch shall not commence the activity until it has been approved in writing by the FDIC pursuant to this part and the Board of Governors of the Federal Reserve System (Board of Governors), and any and all conditions imposed in such approvals have been satisfied.

(e) *Divestiture or cessation.* (1) If an application for permission to continue to conduct an activity is not approved by the FDIC or the Board of Governors, the applicant shall submit a plan of divestiture or cessation of the activity to the appropriate regional director.

(2) A foreign bank operating an insured state branch which elects not to apply to the FDIC for permission to continue to conduct an activity which is rendered impermissible by any change in statute, regulation, official bulletin or circular, written order or interpretation, or decision of a court of competent jurisdiction shall submit a plan of divestiture or cessation to the appropriate regional director.

(3) Divestitures or cessations shall be completed within one year from the date of the disapproval, or within such shorter period of time as the FDIC shall direct.

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

§ 347.214 Examination of branches of foreign banks.

(a) *Frequency of on-site examination.* Each branch or agency of a foreign bank shall be examined on-site at least once during each 12-month period (beginning on the date the most recent examination of the office ended) by:

- (1) The Board of Governors of the Federal Reserve System (Board);
- (2) The FDIC, if an insured branch;

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(3) The Office of the Comptroller of the Currency (OCC), if the branch or agency of the foreign bank is licensed by the Comptroller; or

(4) The state supervisor, if the office of the foreign bank is licensed or chartered by the state.

(b) *18-month cycle for certain small institutions.* (1) *Mandatory standards.* The FDIC may conduct a full-scope, on-site examination at least once during each 18-month period, rather than each 12-month period as provided in paragraph (a) of this section, if the insured branch:

(i) Has total assets of \$250 million or less;

(ii) Has received a composite ROCA supervisory rating (which rates risk management, operational controls, compliance, and asset quality) of 1 or 2 at its most recent examination;

(iii) Satisfies the requirement of either the following paragraph (b)(iii)(A) or (B):

(A) The foreign bank's most recently reported capital adequacy position consists of, or is equivalent to, Tier 1 and total risk-based capital ratios of at least 6 percent and 10 percent, respectively, on a consolidated basis; or

(B) The insured branch has maintained on a daily basis, over the past three quarters, eligible assets in an amount not less than 108 percent of the preceding quarter's average third party liabilities (determined consistent with applicable federal and state law) and sufficient liquidity is currently available to meet its obligations to third parties;

(iv) Is not subject to a formal enforcement action or order by the Board, FDIC, or the OCC; and

(v) Has not experienced a change in control during the preceding 12-month period in which a full-scope, on-site examination would have been required but for this section.

(2) *Discretionary standards.* In determining whether an insured branch that meets the standards of paragraph (b)(1) of this section should not be eligible for an 18-month examination cycle pursuant to this paragraph (b), the FDIC may consider additional factors, including whether:

(i) Any of the individual components of the ROCA supervisory rating of an insured branch is rated "3" or worse;

(ii) The results of any off-site monitoring indicate a deterioration in the condition of the insured branch;

(iii) The size, relative importance, and role of a particular insured branch when reviewed in the context of the foreign bank's entire U.S. operations otherwise necessitate an annual examination; and

(iv) The condition of the parent foreign bank gives rise to such a need.

(c) *Authority to conduct more frequent examinations.* Nothing in paragraphs (a) and (b) of this section limits the authority of the FDIC to examine any insured branch as frequently as it deems necessary.

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Subpart C—International Lending

§ 347.301 Purpose, authority, and scope.

Under the International Lending Supervision Act of 1983 (Title IX, Pub. L. 98-181, 97 Stat. 1153) (12 U.S.C. 3901 *et seq.*) (ILSA), the Federal Deposit Insurance Corporation prescribes the regulations in this subpart relating to international lending activities of insured state nonmember banks.

§ 347.302 Definitions.

For the purposes of this subpart:

(a) *Administrative cost* means those costs which are specifically identified with negotiating, processing and consummating the loan. These costs include, but are not necessarily limited to: legal fees; costs of preparing and processing loan documents; and an allocable portion of salaries and related benefits of employees engaged in the international lending function. No portion of supervisory and administrative expenses or other indirect expenses such as occupancy and other similar overhead costs shall be included.

(b) *Banking institution* means an insured state nonmember bank.

(c) *Federal banking agencies* means the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation.