Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

December 4, 1998

Interpretive Letter #857
April 1999
12 USC 3103(a)7
12 USC 3103(a)1
12 USC 1831(u)

Dear [ ]:

This letter responds to your inquiry requesting the views of the Office of the Comptroller of the Currency ("OCC") on whether the interstate branching provisions of the International Banking Act ("IBA") permit a foreign bank, such as [ ] ("Bank"), to establish an interstate Federal branch or agency in Florida. Currently, the Bank operates a Federal branch in [*State*].

It is the view of the OCC that, pursuant to 12 U.S.C. § 3103(a)(7), the IBA permits a foreign bank, whose home state is not Florida, to establish an interstate limited Federal branch or a Federal agency in Florida. Additionally, pursuant to 12 U.S.C. §§ 3103(a)(1) and 1831u, the IBA may permit a foreign bank to establish an interstate Federal branch or Federal agency where such office results from a merger.

1. Pre-Riegle-Neal[1] interstate authority under 12 U.S.C. § 3103(a)(7)

The IBA, at 12 U.S.C. § 3103(a)(7), restates the limited interstate branching authority for foreign banks that existed prior to the enactment of Riegle-Neal. This provision now reads as follows:

> Notwithstanding paragraphs (1) and (2), a foreign bank may, with the approval of the Board and the Comptroller of the Currency, establish and operate a Federal branch or Federal agency or, with the approval of the Board and the

[1] The Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Pub. L. No. 103-328, 108 Stat. 2338 (enacted September 29, 1994) ("Riegle-Neal").

> appropriate State bank supervisor, a State branch or State agency in any State outside the foreign bank's home State if -
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> (A) the establishment and operation of a branch or agency is expressly permitted by the State in which the branch or agency is to be established; and
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> (B) in the case of a Federal or State branch, the branch receives only such deposits as would be permissible for a corporation organized under section 25A of the Federal Reserve Act [12 U.S.C. A. § 611 et seq.].

12 U.S.C. § 3103(a)(7)(1996).[2] In other words, the statute permits a foreign bank to establish an interstate branch or agency in Florida if: (a) Florida expressly permits such branches or agencies; and (b) the branch's deposit-taking activities were limited in the same manner as that of an Edge Act corporation. An analysis of the relevant statutes demonstrates that, in the case of Florida, these conditions are met. Therefore, we conclude that the IBA permits a foreign bank to establish an interstate Federal agency or a limited Federal branch in Florida pursuant to 12 U.S.C. § 3103(a)(7).

Florida law provides that foreign banks may establish "international bank agencies" in Florida.[3] However, the broad powers given to Florida's international bank agencies indicate that, in practice, Florida permits its "agencies" to engage in activities that, for the purposes of the IBA, would constitute "branches" (despite their designation as "agencies" under state law). Specifically, state-licensed international bank agencies in Florida are permitted to accept a number of types of deposits, such as those from non-resident U.S. citizens: "An international bank agency may not receive deposits in this state *except:* (a) Deposits from *nonresident entities or persons whose principal places of business or domicile are outside the United States*. . . ." Fla. Stat. ch. 663.061 (1996)(emphasis added).

Thus, Florida permits its "agencies" to receive deposits from U.S. citizens not residing in the United States. The IBA, on the other hand, defines and limits a foreign bank "agency" operation to mean " . . . any office or any place of business of a foreign bank located in any State of the United States at which credit balances are maintained incidental to or arising out of the exercise of banking powers, checks are paid, or money is lent but at which *deposits may not be accepted from citizens or residents of the United States*." 12 U.S.C. § 3101(1)

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[2] Under the plain language of the IBA it appears that the establishment of interstate federal branches in a State is permitted if the State permits the establishment of either a branch or an agency. However, this letter does not rely on that theory since, as discussed below, we have determined that under Florida law the establishment of an interstate limited branch is permitted.

[3] See, e.g., Fla. Stat. ch. 663.06 (1996) (Licenses; permissible activities), added by 1992 Fla. Laws ch. 92-303, § 160 (effective July 3, 1992).

(emphasis added). A branch, on the other hand, is defined as "any office or place of business of a foreign bank located in any State of the United States at which deposits are received." 12 U.S.C. § 3101(3).

Consequently, because Florida allows its state-licensed "international bank agencies" to accept deposits from U.S. citizens, beyond those permitted to "agencies" in the IBA, those Florida-licensed organizations may be regarded, for the purposes of the IBA, as "branches." In other words, for the purposes of the IBA, Florida allows the establishment of both interstate branches and agencies, and the first criterion of 12 U.S.C. § 3103(a)(7) is thus satisfied.[4]

To meet the second criterion of section 3103(a)(7), a Federal branch may only receive such deposits that are permissible for an Edge Act corporation. 12 U.S.C. § 3103(a)(7)(B). By definition, the deposit-taking activities of a "limited Federal branch" are restricted in this manner. 12 C.F.R. § 28.11(t). Thus, the Comptroller may approve an application by a foreign bank to establish an interstate limited Federal branch in Florida.[5]

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[4] It is well-established that the interpretation of federal statutes, such as the IBA, is a matter of federal law, even when federal law contains a reference to a state statute. See, e.g., Chase Manhattan Bank N.A. v. Finance Administration of City of New York, 440 U.S. 447, 449 (1979); SEC v. Variable Annuity Life Insurance Co., 359 U.S. 65, 69 (1959). The case law has also established that it is within the Comptroller's discretionary authority in making licensing decisions to make his own assessment of a state statute, based upon the plain language of the statute, rather than be bound by a state's interpretation. Cf. Decision of the Comptroller of the Currency on the Application of First National Bank of Jackson, Jackson, Tennessee (April 13, 1990); see also, e.g., Bank of North Shore v. FDIC, 743 F.2d 1178, 1184 (7th Cir. 1984) (holding that the OCC has broad authority to interpret state branching laws in the context of applying the McFadden Act [and by analogy, the IBA's interstate branching provisions].) Consequently, in this case, the Comptroller has the authority to interpret the IBA and Florida law in order to determine whether Florida permits interstate branches or agencies of foreign banks, for the purposes of 12 U.S.C. § 3103(a)(7). Moreover, the conclusion that the Comptroller may approve an interstate limited Federal branch in Florida, while Florida labels comparable offices "international bank agencies," is fully consistent with the IBA and its purpose of creating a federal option for foreign banks in the United States. In the Report to accompany H.R. 10899, the International Banking Act of 1978, Congress explained the policy objectives of the IBA:

> The bill incorporates two principal policy objectives. The first objective is to provide a system of Federal regulation of foreign banking activities. . . . The second objective is to provide to the extent possible for appropriate equal treatment for foreign and domestic banks operating in the United States. . . . . While recognizing that current regulation of foreign banks is in the hands of the States and providing a framework which will allow this to continue, the bill also provides the option of Federal chartering.

H.R. Rep. No. 910, 95th Cong., 2nd Session, Discussion, at 5 (1978).

[5] Under 12 U.S.C. § 3103(a)(7), approval would also be required by the Federal Reserve Board.

2. Post Riegle-Neal interstate authority under 12 U.S.C. § 1831u

The Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 amended the IBA to provide an additional basis for interstate operations. As amended by Riegle-Neal, 12 U.S.C. § 3103(a)(1) now provides:

> Subject to the provisions of this chapter and with the prior written approval by the Board and the Comptroller of the Currency of an application, a foreign bank may establish and operate a Federal branch or agency in any State outside the home State of such foreign bank to the extent that the establishment and operation of such branch would be permitted under section 36(g) of this title or section 1831u of this title if the foreign bank were a national bank whose home State is the same State as the home State of the foreign bank.

12 U.S.C. § 3103(a)(1).

Thus, under the IBA, 12 U.S.C. § 3103, there are three different statutory bases that authorize a foreign bank to establish interstate operations: (1) authority under 12 U.S.C. § 36(g) ("the McFadden Act"); (2) authority under 12 U.S.C. § 1831u (the Federal Deposit Insurance Act or "FDIA"); and as discussed above, (3) the pre-Riegle-Neal authority under 12 U.S.C. § 3103(a)(7) for limited interstate operations. Florida law appears to prohibit de novo branching by out-of-state banks and, therefore, de novo interstate operations under 12 U.S.C. § 36(g) are not discussed further in this letter. However, that statutory authority may be a basis for establishing de novo interstate operations in other states.

Section 1831u of Title 12, United States Code, provides that, unless a State has enacted legislation to "opt-out" prior to June 1, 1997, insured banks with different "home states" may merge, thereby establishing a single bank with interstate branches. Florida has not "opted-out" of the Riegle-Neal interstate branching provisions, and in fact specifically permits the merger of an out-of state insured bank with a Florida bank that has been in existence for at least 3 years. The resulting bank may be either an out-of-state bank with Florida branches, or a Florida bank with out-of-state branches.

Under section 3103(a)(1), the Riegle-Neal interstate provisions are to be applied to foreign banks "as if the foreign bank were a national bank whose home State is the same State as the home State of the foreign bank." However, because the specific application of these provisions is beyond the scope of your general inquiry, this letter does not address in detail the extent and circumstances to which Riegle-Neal provisions and the IBA provide for interstate operations through mergers of foreign banks. However, it appears clear that the Riegle-Neal interstate provisions provide an alternative method for foreign banks to engage in interstate operations, including interstate entry into Florida.

If you have any questions regarding this letter, please do not hesitate to call me or Raija Bettauer, Counselor for International Activities, or Maureen Cooney, Senior Attorney (both at 202-874-0680).

Sincerely,

/s/

Raymond Natter
Acting Chief Counsel