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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 5

[Docket No. 00-32]

RIN 1557-AB92

Operating Subsidiaries of Federal Branches and Agencies

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Proposed rule.

SUMMARY: Consistent with the principle of national treatment for foreign banks operating in the United States established by the International Banking Act of 1978, the Office of the Comptroller of the Currency (OCC) proposes to enable a Federal branch or agency to establish or maintain an operating subsidiary in generally the same manner that a national bank may establish or control an operating subsidiary.

DATES: Comments must be received by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Please direct comments to: Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW, Third Floor, Washington, DC, 20219, Attention: Docket No. 00-32. In addition, comments may be sent by facsimile transmission to fax number 202-874-5274, or by electronic mail to regs.comments@occ.treas.gov. Comments may be inspected and photocopied at the OCC's Public Reference Room, 250 E. Street, SW, Washington, DC, between 9 a.m. and 4:30 p.m. on business days. You can make an appointment to inspect the comments by calling 202-874-5043.

FOR FURTHER INFORMATION CONTACT: Martha Clarke, Senior Attorney, International Activities Division, 202-874-0680; Stuart Feldstein, Assistant Director, Legislative and Regulatory Activities Division, 202-874-5090; Heidi M. Thomas, Senior Attorney, Legislative and Regulatory Activities Division, 202-874-5090, or Carlos Hernandez, Senior International Advisor, International Banking and Finance Division, 202-874-4730.

SUPPLEMENTARY INFORMATION:

Background

The International Banking Act of 1978 (12 U.S.C. 3101 *et seq.*) (the IBA) applies the national treatment principle to the regulation of foreign bank activities in the United States. Specifically, under the national treatment principle established by the IBA, the operations of a foreign bank conducted through a Federal branch or agency shall be conducted with the same rights, privileges, conditions, and limitations that apply to a national bank operating at the same location, subject to the OCC's regulations.¹ 12 U.S.C. 3102(b). For example, the powers of national banks that are set forth in the National Bank Act, such as lending money and engaging in certain securities and insurance sales activities, are not expressly repeated in the IBA but are provided to Federal branches and agencies by operation of section 3102(b).

Congress has subsequently enacted other legislation that confirms that the IBA need not be amended each time there is a change to the banking laws that affects national banks, unless the IBA prohibits or limits that specific activity. For example, when Congress authorized broader leasing authority for national banks in 1987, Federal branches and agencies could avail

¹ See Conference of State Bank Supervisors v. Conover, 715 F. 2d 604, 615 (D.C. Cir. 1983) (confirming the OCC's interpretation of how the national treatment principle applies).

themselves of this authority by operation of section 3102(b) of the IBA. Thus, it is not necessary to amend the IBA to authorize Federal branches and agencies to take advantage of powers authorized for national banks. Consistent with these principles, this proposal provides that a Federal branch or agency may establish an operating subsidiary to the same extent as a similarly situated national bank.

Description of the Proposal

12 CFR 5.34 sets forth application or notice procedures for national banks engaging in activities through an operating subsidiary and lists the activities that qualify for the notice procedures. The proposal provides that § 5.34 applies to a Federal branch or agency that seeks to establish or maintain any subsidiary that a national bank would be authorized to establish or control under § 5.34. The procedures of § 5.34 apply to the Federal branch or agency with certain modifications that reflect the differences in the nature of Federal branches and agencies compared to national banks.

Section 5.34(e)(5)(iv) provides that a national bank that is well capitalized and well managed may acquire or establish an operating subsidiary, or perform a new activity in an existing operating subsidiary, by filing a notice with the OCC within 10 days after acquiring or establishing the subsidiary, or commencing the activity, if the activities are listed in § 5.34(e)(5)(v). National banks that do not meet the well capitalized and well managed criteria also may acquire or establish an operating subsidiary by filing an application with, and receiving approval from, the OCC. 12 CFR 5.34(e)(5)(i). Finally, § 5.34(e)(5)(vi) provides that a national bank may acquire or establish an operating subsidiary without filing an application or providing

notice to the OCC, if the bank is adequately capitalized or well capitalized and the activities of the new subsidiary meet certain conditions.

Under the proposal, a Federal branch or agency is considered well capitalized for purposes of § 5.34 if it meets the definition of “well capitalized” that the OCC uses when authorizing an extended examination cycle for certain Federal branches and agencies. *See* 12 CFR 4.7(b)(1)(iii).² Section 4.7(b)(1)(iii) requires that: a 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* the Federal branch or agency 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 obligations to third parties.

Under the proposal, a Federal branch or agency is well managed if: the Federal branch or agency has a composite Risk Management, Operational Controls, Compliance, and Asset Quality (ROCA) supervisory rating of 1 or 2 at its most recent examination; *or* in the case of a Federal branch or agency that has not been examined, the Federal branch or agency has and uses managerial resources that the OCC determines are satisfactory.

The OCC will apply other relevant regulatory standards to Federal branches and agencies that establish and maintain operating subsidiaries as appropriate in light of the differences in

² 12 CFR 4.7 generally provides that the OCC may conduct a full-scope, on-site examination of certain well capitalized and well managed Federal branches and agencies at least once during each 18-month period, rather than each 12-month period. The FRB applies the same capital and management requirements when determining whether a State branch or agency will be subject to the 18-month examination schedule. 12 CFR 211.26(c)(2).

corporate structure between national banks and Federal branches and agencies. For example, current § 5.34(e)(4) requires that pertinent book figures of the parent bank and its operating subsidiary to be combined for the purpose of applying statutory limitations when combination is needed to effect the intent of the statute, *e.g.*, for purposes of the statutory dividend restrictions, lending limits, or investments in bank premises. *See* 12 U.S.C. 56, 60, 84, and 371d. Any limitation or restriction based on the capital of a national bank (*e.g.*, the lending limit at 12 U.S.C. 84) refers, as applied to a Federal branch or agency, to the dollar equivalent of the capital of the foreign bank. *See* 12 U.S.C. 3102(b). For purposes of determining compliance with the limitation or restriction, pertinent book figures of the Federal branch or agency and its operating subsidiary shall be combined. If the foreign bank has more than one Federal branch or agency, pertinent book figures of all its Federal branches and agencies and their operating subsidiaries shall be combined.

Comment Solicitation

The OCC requests comment on all aspects of this proposal.

The OCC requests comment on whether the proposal is written clearly and is easy to understand. On June 1, 1998, the President issued a Memorandum directing each agency in the Executive branch to write its rules in plain language. This directive applies to all new proposed and final rulemaking documents issued on or after January 1, 1999. In addition, Public Law 106-102 requires each Federal agency to use plain language in all proposed and final rules published after January 1, 2000. The OCC invites comment on how to make this rule clearer. For example, you may wish to discuss:

- (1) Whether we have organized the material to suit your needs;

(2) Whether the requirements of the rule are clear; or

(3) Whether there is something else we could do to make the rule easier to understand.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, the Comptroller of the Currency certifies that this proposal will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104-4 (Unfunded Mandates Act) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC has determined that the proposal will not result in expenditures by State, local, or tribal governments or by the private sector of \$100 million or more. Accordingly, the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

Executive Order 12866 Determination

The Comptroller of the Currency has determined that this rule does not constitute a “significant regulatory action” for the purposes of Executive Order 12866.

Paperwork Reduction Act

Respondents are not required to respond to these collections of information unless they

display a currently valid Office of Management and Budget (OMB) control number.

The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Alexander Hunt, Desk Officer, Office of Management and Budget, Paperwork Reduction Project (1557-0215), Washington, DC 20503, with copies to the Jessie Dunaway, Legislative and Regulatory Activities Division (1557-0215, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

The collection of information requirements in this proposal are found in 12 CFR 5.34. The likely respondents are Federal branches and agencies of foreign banks.

Estimated average annual burden hours per Federal branch and agency respondent: 1 hour

Estimated number of Federal branch and agency respondents: 20

Estimated total annual reporting burden: 20 hours

The OCC invites comment on:

- (1) Whether the collections of information contained in this notice of proposed rulemaking are necessary for the proper performance of the agency's functions, including whether the information has practical utility;
 - (2) The accuracy of the estimate of the burden of the proposed information collections;
 - (3) Ways to enhance the quality, utility, and clarity of the information to be collected;
 - (4) Ways to minimize the burden of the information collections on respondents, including the use of automated collection techniques or other forms of information technology;
- and

(5) Estimates of capital or start-up costs and costs of operation, maintenance, and purchases of services to provide information.

List of Subjects in 12 CFR Part 5

Administrative practice and procedure, National banks, Reporting and recordkeeping requirements, Securities.

Authority and Issuance

For the reasons set forth in the preamble, the OCC proposes to amend part 5 of chapter I of Title 12 of the Code of Federal Regulations as follows:

PART 5--RULES, POLICIES, AND PROCEDURES FOR CORPORATE ACTIVITIES

1. The authority citation for part 5 continues to read as follows:

Authority: 12 U.S.C. 1 et seq., 93a; and section 5136A of the Revised Statutes (12 U.S.C. 24a).

2. In § 5.34:

A. Revise paragraph (c); and

B. Revise paragraphs (d)(2) and (d)(3) to read as follows:

§ 5.34 Operating subsidiaries.

* * * * *

(c) Scope. This section sets forth authorized activities and application or notice procedures for national banks engaging in activities through an operating subsidiary. The procedures in this section do not apply to financial subsidiaries authorized under § 5.39. This section applies to a Federal branch or agency that establishes or maintains any subsidiary that a national bank is authorized to establish or control under this section.

(d) * * *

(2) Well capitalized means the capital level described in 12 CFR 6.4(b)(1) or, in the case of a Federal branch or agency, the capital level required by 12 CFR 4.7(b)(1)(iii).

(3) Well managed means, unless otherwise determined in writing by the OCC:

(i) In the case of a national bank:

(A) The national bank has received a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System in connection with its most recent examination; or

(B) In the case of any national bank that has not been examined, the existence and use of managerial resources that the OCC determines are satisfactory.

(ii) In the case of a Federal branch or agency:

(A) The Federal branch or agency 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; or

(B) In the case of a Federal branch or agency that has not been examined, the existence and use of managerial resources that the OCC determines are satisfactory.

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Dated: November 28, 2000

John D. Hawke, Jr.,
Comptroller of the Currency.