

described in the Interstate Act verbatim, or only just those six. Rather, the statute specifically provides that the OCC "shall consider whether to permit" uninsured branches to accept initial deposits of less than \$100,000 from the enumerated exemptions, and also consider the importance of maintaining and improving credit availability to all sectors of the United States economy, including international trade finance. By inviting the agencies to consider the enumerated exemptions, Congress intended the agencies to utilize their expertise in implementing this provision.

The Interstate Act also provides that the agencies must reduce, from the current 5 percent of average branch deposits, to no more than 1 percent, the exemption that allows uninsured branches to accept initial deposits of less than \$100,000 from any party on a *de minimis* basis. The agencies also are allowed to establish reasonable transition rules to facilitate termination of any deposit taking activity that previously was permissible.

The OCC has carefully considered Congress' concern that foreign banking organizations not receive an unfair competitive advantage over United States banking organizations. An OCC study conducted in 1994, entitled "Are Foreign Banks Out-Competing U.S. Banks in the U.S. Market?" (OCC Study), found that although the market share of foreign-owned banks (subsidiaries, branches, and agencies) in the United States grew during the 1980s and early 1990s, foreign-owned banks in the United States, including Federal branches and agencies, persistently underperformed United States banks as measured by profitability, efficiency, and, recently, credit quality. In addition, the OCC has reviewed data that updates available figures on the deposit taking activities of uninsured United States branches of foreign banks. As of year-end 1994, these offices of foreign banks held \$386 billion of total deposits, which funded just over half of the total United States assets of these offices. All available data relating to these deposits suggest that, as a group, uninsured United States offices of foreign banks do not compete for retail deposits. Of the total deposits accepted by these offices, 78 percent were accepted from other banks or non-United States entities. The data also suggests that these uninsured offices obtain less than 2 percent of their total funding from small deposits.

The proposal states the OCC policy to interpret and implement the relevant statutory provisions in view of the Congressional concerns that prompted the IBA amendment, such as ensuring

equal competitive opportunities among United States and foreign banks and credit availability to all sectors of the economy, including trade finance. The proposal provides that an uninsured Federal branch may accept initial deposits of less than \$100,000 from the six types of customers specified in the Interstate Act. The proposal also includes certain other relationships within the exemptions, where those relationships appear to be consistent with the purposes of the Act. Proposed § 28.16(b)(3) permits an uninsured branch to accept deposits from persons with whom the branch or foreign bank has a written agreement to extend credit or provide nondeposit banking services within 12 months after the date of the initial deposit. This approach recognizes that in a banking relationship, a deposit may, in some cases, precede the extension of credit or providing of other nondeposit banking services by the branch or foreign bank. Proposed § 28.16(b)(6) also permits an uninsured branch to accept deposits from Federal and state governmental units. The data described earlier suggests that the ability of uninsured branches of foreign banks to accept deposits from Federal and state governments does not confer an unfair competitive advantage to uninsured branches of foreign banks compared to domestic banking organizations. Proposed § 28.16(b)(8) permits an uninsured branch to accept deposits from persons that may deposit funds with an Edge corporation pursuant to Regulation K, 12 CFR 211.4 (generally including foreign persons, foreign governments, and other persons engaged in international business activity). This exemption is consistent with the Congressional concern not to impair international trade or trade finance.

The OCC invites comment on the proposed categories of exemptions. If additional exemptions are suggested, the commenters are requested to specify why the additional exemption is needed and its impact on the United States and foreign banks' competitive opportunities, as well as on improving credit availability in the United States.

In addition, the proposal includes the 1 percent *de minimis* exemption, and provides for criteria and procedure for requesting additional exemptions. Currently, the *de minimis* amount is based on the average daily deposits of the branch for the last thirty days of the previous calendar quarter. The OCC solicits comment on streamlining and simplifying the method for calculating the *de minimis* amount, such as basing the *de minimis* amount on the branch's average deposits calculated using the

branch's deposits at the end of each month for the previous calendar quarter. The commenters are requested to address whether that alternative approach, or any other, would reduce regulatory burden while still providing a reliable indicator of compliance with the *de minimis* amount.

The OCC also is considering extending the exemption in § 28.16(b)(3) to permit uninsured Federal branches to accept deposits from persons, *and their affiliates*, to whom the branch, foreign bank, or any financial institution affiliate thereof has extended credit or provided other non-deposit banking services within the past 12 months, or with whom the branch, bank, or financial institution affiliate has a written agreement to extend credit or provide such services. The term "affiliate" might be defined to mean any entity (including an individual) that controls, is controlled by, or is under common control with, another entity. An entity would be deemed to control another entity if the entity directly 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 election of a majority of the directors or trustees of the other entity. The term "financial institution" could be defined to mean any depository institution, depository institution holding company, or foreign bank as those terms are defined in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813, any broker or dealer, or futures commission merchant as defined in 12 U.S.C. 4402, and any investment advisor.

These additional exemptions may be warranted by the close connection among the foreign entity's various components. For instance, affiliates of the foreign bank and its depositors may prefer to do business with a branch of the foreign bank with which they have a direct or indirect relationship. This deposit relationship may, in some cases, precede the extension of credit or providing of other nondeposit banking services by the branch, foreign bank, or financial institution affiliate.

The OCC is also considering adding a new exemption, not specified in the Interstate Act, that permits uninsured branches, as a matter of convenience to its customers, to accept deposits from immediate family members of individuals that may qualify for an exemption under § 28.16(b)(1) through (b)(7).

The OCC requests comment on extending the proposed exemption in the above manner. Commenters are requested to specify the effect on competitive opportunities among