

approval that it deems necessary, including a condition permitting future termination of any activities based on the inability of the foreign bank to provide information on its activities or those of its affiliates, that the OCC deems necessary to determine and enforce compliance with United States banking laws.

(e) *Expedited approval.* Unless the OCC concludes that the filing presents significant supervisory or compliance concerns, or raises significant legal or policy issues, the OCC shall process the following filings by an eligible foreign bank under expedited approval procedures:

(1) *Intrastate relocations.* An application submitted by an eligible foreign bank to relocate a Federal branch or agency within a state is deemed approved by the OCC as of the seventh day after the close of the applicable public comment period in 12 CFR part 5, unless the OCC notifies the bank prior to that date that the filing is not eligible for expedited approval.

(2) *Conversions.* An application submitted by an eligible foreign bank to convert a Federal agency to a Federal branch or limited Federal branch, a Federal branch to a Federal agency or limited Federal branch, or a limited Federal branch to a Federal branch or a Federal agency is deemed approved by the OCC 45 days after filing with the OCC, unless the OCC notifies the bank prior to that date that the filing is not eligible for expedited approval.

(3) *Fiduciary powers.* An application submitted by an eligible foreign bank to exercise fiduciary powers at an established Federal branch is deemed approved by the OCC 30 days after filing with the OCC, unless the OCC notifies the bank prior to that date that the filing is not eligible for expedited approval.

(f) *Eligible foreign bank.* For purposes of this section, a foreign bank is an eligible foreign bank if each Federal branch and Federal agency of the foreign bank in the United States:

(1) Has a composite rating of 1 or 2 under the rating system for United States branches and agencies of foreign banking organizations;

(2) Is not subject to a cease and desist order, consent order, formal written agreement, Prompt Corrective Action directive (see 12 CFR part 6) or, if subject to such order, agreement, or directive, is informed in writing by the OCC that the Federal branch or Federal agency may be treated as an "eligible foreign bank" for purposes of this section; and

(3) Has, if applicable, a Community Reinvestment Act (CRA), 12 U.S.C.

2906, rating of "Outstanding" or "Satisfactory".

(g) *Procedures for approval.* A foreign bank shall file an application for approval pursuant to this section in accordance with 12 CFR part 5 and the Manual.

(h) *Additional requirements.* Nothing in this section relieves a foreign bank from obtaining the required approval of the FRB to establish a Federal branch or Federal agency in accordance with the FRB's Regulation K, 12 CFR part 211.

#### § 28.13 Permissible activities.

(a) *Applicability of laws.*—(1) *General.* Except as otherwise provided by the IBA, other Federal laws or regulations, or otherwise determined by the OCC, the operations of a foreign bank at a Federal branch or Federal agency shall be conducted with the same rights and privileges and shall be subject to the same duties, restrictions, penalties, liabilities, conditions, and limitations that would apply if the Federal branch or Federal agency were a national bank operating at the same location.

(2) *Parent foreign bank senior management approval.* Unless otherwise provided by the OCC, any provision in law, regulation, policy, or procedure that requires a national bank to obtain the approval of its board of directors will be deemed to require a Federal branch or Federal agency to obtain the approval of parent foreign bank senior management.

(b) *Offshore activities.*—(1) *Federal branches and Federal agencies.* A Federal branch or Federal agency of a foreign bank shall not manage, through an office of the foreign bank that is located outside the United States and that is managed or controlled by that Federal branch or Federal agency, any type of activity that a United States bank is not permitted to manage at any branch or subsidiary of the United States bank that is located outside the United States.

(2) *Activities managed in foreign branches or subsidiaries of United States banks.* Activities that a United States bank may manage at its branch or subsidiary abroad include those activities that the bank may engage in abroad. A United States bank may engage abroad in activities permitted by the United States bank's state or Federal charter, regulations issued by the chartering authority, and other United States banking laws.

(c) *Additional guidance regarding permissible activities.* For purposes of section 7(h) of the IBA, 12 U.S.C. 3105(h), the OCC may issue opinions, interpretations, or rulings regarding

permissible activities of Federal branches.

#### § 28.14 Limitations based upon capital of foreign banks.

(a) *General.* Any limitation or restriction based upon the capital of a national bank shall be deemed to refer, as applied to a Federal branch or agency, to the dollar equivalent of the capital of the foreign bank.

(b) *Calculation.* Unless otherwise provided by the Comptroller, a foreign bank's capital must be calculated in a manner consistent with 12 CFR part 3 of this chapter.

(c) *Aggregation.* The business transacted by all Federal branches and Federal agencies shall be aggregated with the business transacted by all state branches and state agencies in determining the foreign bank's compliance with limitations based upon the capital of the foreign bank. The foreign bank shall designate one Federal branch or Federal agency office in the United States to maintain consolidated information so that compliance can be monitored.

#### § 28.15 Capital equivalency deposits.

(a) *Capital equivalency deposits.* (1) For purposes of section 4(g) of the IBA, 12 U.S.C. 3102(g), unless otherwise provided by the OCC, a foreign bank's capital equivalency deposits shall consist of dollar deposits, including certificates of deposit and other instruments evidencing a deposit, investment securities of the type that may be held by national banks, high-grade commercial paper, bankers' acceptances, and other assets that the OCC permits for this purpose.

(2) The agreement with the depository bank to hold the capital equivalency deposit and the amount of the deposit must comply with the requirements in section 4(g) of the IBA, including the qualifying components and required minimum amount of the capital equivalency deposit. If a foreign bank has more than one Federal branch or Federal agency in a state, it shall determine the capital equivalency deposits and the amount of liabilities requiring capital equivalency coverage on an aggregate basis for all the foreign bank's Federal branches or Federal agencies.

(b) *Value of assets.* The obligations referred to in paragraph (a) of this section must be valued at principal amount or market value, whichever is lower. If no market value is available from a published source, they must be priced by an independent pricing service at least once every calendar quarter.