Proposed Rules

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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 346

RIN 3064–AB62

Foreign Banks

AGENCY: Federal Deposit Insurance Corporation (FDIC or Corporation).

ACTION: Notice of proposed rulemaking.

SUMMARY: Section 107 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (Riegle-Neal Act) amended section 6 of the International Banking Act of 1978 (IBA) to provide that the FDIC shall amend its regulation concerning domestic retail deposit activities by state-licensed branches of foreign banks. The proposal would amend the FDIC's regulations to restrict the amount and types of initial deposits of less than $100,000 which could be accepted by an uninsured state-licensed branch of a foreign bank. The proposal is intended to afford equal competitive opportunity to foreign and domestic banks.

DATES: Comments must be received by September 11, 1995.

ADDRESSES: Send comments to Jerry L. Langley, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429. Comments may be hand-delivered to room 400, 1776 F Street, N.W., Washington, D.C. 20429, on business days between 8:30 a.m. and 5:00 p.m. [FAX number: (202) 898–3838; Internet address: comments@fdic.gov]

FOR FURTHER INFORMATION CONTACT: Charles V. Collier, Assistant Director, Division of Supervision, (202) 898–6850; Jeffrey M. Kopchik, Counsel, Legal Division, (202) 898–3872, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C., 20429.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

No collection of information pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is contained in the proposed rule. Consequently, no information was submitted to the Office of Management and Budget for review.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601 *et seq.*), it is certified that the proposed rule will not have a significant impact on a substantial number of small entities.

Background

Section 107 of the Riegle-Neal Act (Pub. L. 103–328, 108 Stat. 2358) amended section 6 of the IBA (12 U.S.C. 3104) to provide that the FDIC shall amend its regulation concerning domestic retail deposit activity by state-licensed branches of foreign banks (state-licensed branches).[1] Section 6 of the IBA, 12 U.S.C. 3104, concerns the insurance of deposits maintained at domestic branches and subsidiaries of foreign banks. Generally, section 6 provides that United States branches of foreign banks may not accept domestic retail deposits unless the branch is insured by the FDIC. Section 6 goes on to state that, after December 19, 1991, foreign banks may not establish any *de novo* insured branches in the United States. Section 107 of the Riegle-Neal Act added a new subsection (a) to section 6 of the IBA. This new subsection provides that:

> In implementing this section, the Comptroller and the Federal Deposit Insurance Corporation shall each, by affording equal competitive opportunities to foreign and United States banking organizations in their United States operations, ensure that foreign banking organizations do not receive an unfair competitive advantage over United States banking organizations.

12 U.S.C. 3104(a).

In revising section 6 of the IBA, Congress made it clear that foreign banks operating in the United States should not have an unfair competitive advantage over domestically chartered banks. Thus, Congress directed the FDIC and the OCC to revise their respective regulations implementing IBA section 6 to ensure that foreign banks do not receive an unfair competitive advantage over United States banks by affording equal competitive opportunities to both.

The Current Regulatory Scheme

Section 346.4 of the FDIC's regulations (12 CFR 346.4) requires that any state-licensed branch which is engaged in ''domestic retail deposit activity'' shall be an insured branch. Section 346.6 provides that a state-licensed branch will not be deemed to be engaged in domestic retail deposit activity which requires the branch to be insured if initial deposits of less than $100,000 are derived solely from certain enumerated sources. The acceptance of initial deposits of $100,000 or more is not considered to be retail deposit activity and, thus, deposit insurance is not required for a state-licensed branch which accepts only these types of initial deposits.

Section 346.6 delineates five categories of depositors from which a state-licensed branch may accept initial deposits of less than $100,000 without triggering the insurance requirement. The five categories of depositors are:

(1) Any business entity, including any corporation, partnership, sole proprietorship, association or trust, which engages in commercial activity for profit;

(2) Any governmental unit, including the United States government, any state government, any foreign government and any political subdivision or agency of the foregoing;

(3) Any international organization which is comprised of two or more nations;

(4) Funds received in connection with any draft, check, or similar instrument issued by the branch for the transmission of funds; and

(5) Any depositor who is not a citizen of the United States and who is not a resident of the United States at the time of the initial deposit.

This section of the regulation also includes a general exception (commonly referred to as the ''*de minimis* exception'') which provides that an uninsured state-licensed branch may accept initial deposits of less than $100,000 from any depositor if the amount of such deposits does not exceed on an average daily basis five percent of the average of the branch's deposits for the last 30 days of the most recent calendar quarter.

[1] The Riegle-Neal Act requires the FDIC to consult with the Office of the Comptroller of the Currency (OCC) in the process of making these amendments in order to assure uniformity. The FDIC has worked in close consultation with the OCC in order to achieve substantive uniformity.