

other nondeposit banking services. However, the proposal refines this exception somewhat by specifying that the extension of credit or provision of other nondeposit banking services had to have occurred during the past twelve months. The proposal expands the statutory language to include persons with whom the branch or foreign bank has entered into a written agreement to extend credit or provide other nondeposit banking services within the next twelve months. The Corporation is of the opinion that this addition may be a logical extension of the statutory criterion which would not provide foreign banking organizations with any unfair competitive advantage.

Section 346.6(a)(4) of the proposal adopts the exception contained in section 107(b)(2)(D) of the Riegle-Neal Act concerning foreign businesses and adds thereto "persons from whom an Edge Corporation may accept deposits under § 211.4(e)(1) of Regulation K of the Board of Governors of the Federal Reserve System". Generally, this would include foreign governments, their agencies and instrumentalities, foreign persons, organizations engaged in international business activities, other Edge corporations, foreign banks, other depository institutions, etc. Once again, the FDIC is of the opinion that the addition of this class of depositors is a natural outgrowth of section 107(b)(2)(D) of the Riegle-Neal Act and would not result in an unfair competitive advantage being given to foreign banking organizations.

Section 107(b)(2)(F) of the Riegle-Neal Act refers to "persons who are depositing funds in connection with the issuance of a financial instrument by the branch for the transmission of funds". This language is substantially similar to the exception contained in § 346.6(a)(4) of the existing regulation, except that the current regulation's reference to "draft, check or similar instrument" has been replaced by the use of the term "financial instrument". Section 346.6(a)(6) of the Proposal includes the exception for funds deposited in connection with the issuance of a financial instrument by the branch for the transmission of funds, but also includes an exception for funds deposited in connection with the transmission of such funds by any electronic means. The addition of this language in the proposal concerning funds deposited in connection with electronic transfers is intended to reflect the FDIC's established interpretation of § 346.6(a)(4) of the current regulation.

Section 107(b)(2) of the Riegle-Neal Act does not contain an exception for deposits from the federal or state

governments. Currently, initial deposits of less than \$100,000 may be accepted from any state or federal governmental unit. The FDIC has given this matter considerable thought and we are not aware of any evidence which would indicate that the ability to accept initial deposits of less than \$100,000 from state or federal governmental units confers any unfair competitive advantage on an uninsured state-licensed branch in comparison to insured domestic banking organizations. The statistics indicate that uninsured foreign branches and agencies accept virtually no deposits from domestic government entities.<sup>2</sup> Thus, it appears to the FDIC that the inclusion of this exception would not provide foreign banking organizations with an unfair competitive advantage over United States banking organizations. The FDIC is proposing a retention of the existing exception for domestic governmental units. Proposed § 346.6(a)(5).

The proposal also amends § 346.6(b), "Application for an Exemption". This section has been revised to provide that any request by an uninsured state-licensed branch to be permitted to accept initial deposits of less than \$100,000 from a depositor not included in proposed § 346.6(a) shall include information addressing how the acceptance of such deposits will maintain or improve the availability of credit to all sectors of the United States economy, including the international trade finance sector, and how it will not give the foreign bank an unfair competitive advantage over domestic banks. Proposed § 345.6(b)(3). The proposal also provides that the FDIC Board of Directors must consider these factors in making its determination. Proposed § 346.6(b)(1).

Commenters are encouraged to provide their views as to whether the exceptions incorporated into the proposed regulation are appropriate in light of the statutory objective set forth in section 6(a) of the IBA. The FDIC also encourages comment on whether additional exceptions should be added, including a discussion of how the proposed exception would satisfy the statutory objective set forth in IBA section 6(a).

<sup>2</sup> More specifically, the statistics indicate that uninsured branches and agencies receive only 2.3% of their total deposits from "Other Deposits", the category which would include domestic governmental units. It is fair to assume that domestic governmental units most likely comprise less than the entire 2.3%. The figures do not indicate what percentage of the 2.3% are initial deposits of less than \$100,000, but once again it is reasonable to assume that it is less than the total.

## Definitions

The proposal would expand § 346.1 to include definitions of the terms "foreign business", "large United States business", and "person". Proposed §§ 346.1 (s) through (u). In addition, the existing definitions of "foreign bank", "initial deposit" and "affiliate" contained in §§ 346.1 (a), (k) and (o) would be amended. Proposed §§ 346.1 (a), (k) and (o). The FDIC is of the opinion that the addition of these definitions would assist the industry in interpreting the regulation in a clear and consistent manner.

The proposal would define "large United States business" as any entity, including but not limited to a corporation, partnership, sole proprietorship, association, foundation or trust, which is organized under the laws of the United States or any state thereof and: (1) Whose securities are registered on a national securities exchange or quoted on the National Association of Securities Dealers Automated Quotation System; or (2) Has annual gross revenues in excess of \$1,000,000 for the fiscal year immediately preceding the initial deposit. The FDIC believes that this definition would meet Congress' concern expressed in IBA section 6(a) without having a negative impact on the availability of credit to all sectors of the United States economy.

The proposed definition of "foreign business" would include businesses organized under the laws of a foreign country, their United States subsidiaries and businesses owned or controlled by foreign nationals. This definition would encompass the "plain meaning" definition of foreign business as well as accommodating businesses organized under United States law, but owned or controlled by foreign entities or foreign nationals. These businesses may prefer to do business with a branch of a foreign bank from their home country regardless of whether the branch is FDIC insured.

The FDIC requests comment on the proposed definitions. We also request comment on whether certain of the proposed definitions are unnecessary or whether others should be added.

## De Minimis Exception and Transition Rule

Section 107(b)(5) of the Riegle-Neal Act permits the FDIC to establish "reasonable transition rules to facilitate any termination of any deposit-taking activities that were permissible under regulations that were in effect before the date of [its enactment]". The proposal would provide for a five year transition period, beginning on the effective date