

### *Initial Home State Selection Under the Interstate Act*

As noted, the Interstate Act for the first time requires foreign banks with only subsidiary commercial lending companies or agencies in the United States to have a home state. In order to implement this requirement, the Board proposes that any foreign bank required for the first time to have a home state because it has subsidiary commercial lending companies or agencies in more than one state, and no other U.S. banking operations, be permitted to select its home state. (Foreign banks with domestic agencies and subsidiary commercial lending companies in one state only are assigned that state as their home state by section 5(c)(2) of the IBA, as amended by section 104(d) of the Interstate Act.) Each foreign bank covered by the rule would be required to select its home state from those states in which the foreign bank established U.S. agencies and subsidiary commercial lending companies before September 29, 1994 (the date of enactment of the Interstate Act), and has continuously operated such offices. A foreign bank covered by the rule shall select its home state by filing with the Board a declaration of home state by March 31, 1996.

In the event a foreign bank required to select a home state fails to do so, the Board would exercise its authority, as contemplated by section 104(d) of the Interstate Act, to determine a foreign bank's home state. In such cases, the Board proposes to designate as a foreign bank's home state the state in which the total assets of all its offices, net of claims on affiliates or other offices of the foreign bank, is the largest, as reflected in the foreign bank's most recent report of condition.

The Board also proposes to state in its new rule that, as is provided in section 5(c)(2) of the IBA as amended by section 104(d) of the Interstate Act, a foreign bank with branches, agencies, subsidiary commercial lending companies or subsidiary banks in one state only shall have that state as its home state. A foreign bank that has already chosen a home state would not be affected by the proposed rule.

The Board intends to review other issues raised by the Interstate Act relating to the interstate operations of foreign banks in a future rule-making proceeding. The Board accordingly invites comment concerning all aspects of the application of the Interstate Act to foreign banks.

### *Deletions of Other Obsolete Sections*

The Board proposes that current §§ 211.22(a)(1),(3) and (4) be deleted. These sections governed initial selection of home states for foreign banks under the IBA as enacted in 1978 and the Board's implementing regulations, which were adopted in 1980. The foreign banks affected by these provisions selected a home state, or had one selected for them by the Board or through operation of Regulation K, several years ago. Accordingly, the Board proposes that these provisions be deleted.

### *Bank Mergers Outside Home State*

Section 211.22(c) of Regulation K provides that a foreign bank with one or more domestic banking subsidiaries outside its home state shall notify the Board if it proposes to acquire through a subsidiary bank all or substantially all of the assets of a U.S. bank which is larger than the subsidiary bank and is located outside of the foreign bank's home state under the IBA. The Board may direct the foreign bank to redesignate as its home state the state in which its subsidiary bank is located if the Board finds the proposed acquisition would be inconsistent with the foreign bank's home state selection under the IBA.

The Board adopted this rule in 1980 due to a concern that allowing a foreign bank to expand its deposit-taking capabilities both by branching in its IBA home state and through major acquisitions by merger outside its home state might permit evasion of the interstate restrictions then in place under the IBA and the BHC Act. At that time, a foreign bank with a subsidiary bank in one state (State X) and a branch in another state (State Y) which declared State Y as its home state under the IBA generally could not acquire more than 5 per cent of the shares of an additional bank in State Y, because such acquisitions were subject to the geographic restrictions of section 3(d) of the BHC Act. These restricted purchases of banks outside a foreign bank's home state for purposes of the BHC Act, in this case State X. In addition, such a foreign bank generally could not acquire more than 5 per cent of the shares of an additional bank in State X as a result of section 5(a)(5) of the IBA, which also applied the limits of section 3(d) of the BHC Act to interstate bank acquisitions by foreign banks outside their home state as determined under the IBA (in this case, State Y). The Board concluded that a foreign bank might circumvent these restrictions on interstate banking by engaging, through a subsidiary bank,

in a large merger outside its IBA home state (in this case, State X), and framed its interstate bank merger rule to allow the Board to redesignate the foreign bank's home state to prevent this circumvention.

The concerns underlying the rule no longer apply due to the changes made by the Interstate Act. The geographic limits on interstate bank purchases by foreign banks outside their IBA home state under section 5(a)(5) of the IBA have been abolished. In addition, section 3(d) of the BHC Act was amended as of September 29, 1995 to phase out the principal geographic restrictions on interstate banking acquisitions applicable to domestic and foreign acquirors under the BHC Act. As of that date, there is no need to prevent foreign banks from circumventing geographic limits that no longer apply. Accordingly, the Board proposes that the bank merger rule of § 211.22(c) be deleted effective immediately.

### *Retained Provisions*

The Board proposes that §§ 211.22(b) and (d) of Regulation K be retained with no change at this time. Section 211.22(b), which allows foreign banks to change their home states once, will be reviewed in the Board's future rule-making process discussed above. Until such time, foreign banks which have not previously changed their home states may change their home state in accordance with § 211.22(b). Section 211.22(d), which concerns attribution of home states to foreign banking organizations controlled by other foreign banking organizations, also is proposed to be retained pending future review.

### *Request for Comment*

The Board requests comment on all aspects of the proposed changes to Regulation K, and on all other aspects of the application of the Interstate Act to foreign banks which may be dealt with appropriately through rulemaking.

### *Paperwork Reduction Act*

In accordance with section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 35; 5 CFR 1320 Appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget. No collections of information pursuant to the Paperwork Reduction Act are contained in the proposed rule.

### *Regulatory Flexibility Act Analysis*

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 et seq.), the Board certifies that the proposed revisions to