

SHORT TITLE OF 1991 AMENDMENT

Section 201 of Pub. L. 102-242 provided that: “This subtitle [subtitle A (§§201-215) of title II of Pub. L. 102-242, enacting sections 3109 to 3111 of this title, amending this section and sections 1467a, 1817, 1820, 1842, 2803, 2804, 3102, 3104 to 3108, and 4009 of this title and sections 44, 57a, 1607, 1681s, 1691c, 1692l, and 1693o of Title 15, Commerce and Trade, and enacting provisions set out as a note under section 3102 of this title] may be cited as the ‘Foreign Bank Supervision Enhancement Act of 1991.’”

SHORT TITLE

Section 1(a) of Pub. L. 95-369 provided that: “This Act [enacting this chapter and sections 347d and 611a of this title, amending sections 72, 378, 614, 615, 618, 619, 1813, 1815, 1817, 1818, 1820 to 1823, 1828, 1829b, 1831b and 1841 of this title, and enacting provisions set out as notes under sections 36, 247, 601, and 611a of this title] may be cited as the ‘International Banking Act of 1978.’”

FOREIGN CONTROL OF UNITED STATES FINANCIAL INSTITUTIONS

Pub. L. 96-221, title IX, §§901, 902, Mar. 31, 1980, 94 Stat. 192, 193, provided that:

“SEC. 901. For purposes of this title enacting this provision—

“(1) the term ‘domestic financial institution’ means any bank, mutual savings bank, or savings and loan association organized under the laws of any State or of the United States;

“(2) the term ‘foreign person’ means any foreign organization or any individual resident in a foreign country or any organization or individual owned or controlled by such an organization or individual; and

“(3) the term ‘takeover’ means any acquisition of the stock or assets of any domestic financial institution if, after such acquisition, the amount of stock or assets held is 5 per centum or more of the institution’s stock or assets.

“SEC. 902. The Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Board of Directors of the Federal Deposit Insurance Corporation, and the Federal Home Loan Bank Board may not approve any application relating to the takeover of any domestic financial institution by a foreign person until July 1, 1980, unless—

“(1) such takeover is necessary to prevent the bankruptcy or insolvency of the domestic financial institution involved;

“(2) the application was initially submitted for filing on or before March 5, 1980;

“(3) the domestic financial institution has deposits of less than \$100,000,000;

“(4) the application relates to a takeover of shares or assets pursuant to a foreign person’s intrafirm reorganization of its interests in a domestic financial institution, including specifically any application to establish a bank holding company pursuant to such reorganization;

“(5) the application relates to a takeover of the assets or shares of a domestic financial institution if such assets or shares are owned or controlled by a foreign person; or

“(6) the application relates to the takeover of a domestic financial institution which is a subsidiary of a bank holding company under an order to divest by December 31, 1980.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 347d, 1813, 1817, 1828, 1843, 2804, 4009, 4402 of this title; title 7 sections 1a, 27; title 15 sections 57a, 78c, 78q, 80a-2, 1607, 1681s, 1691c, 1692l, 1693o, 6805; title 18 sections 20, 212, 213, 648, 655, 984, 1004, 1014, 1030, 1906, 1956, 2113; title 31 section 5313.

§3102. Establishment of Federal branches and agencies by foreign bank**(a) Establishment and operation of Federal branches and agencies****(1) Initial Federal branch or agency**

Except as provided in section 3103 of this title, a foreign bank which engages directly in a banking business outside the United States may, with the approval of the Comptroller, establish one or more Federal branches or agencies in any State in which (1) it is not operating a branch or agency pursuant to State law and (2) the establishment of a branch or agency, as the case may be, by a foreign bank is not prohibited by State law.

(2) Board conditions required to be included

In considering any application for approval under this subsection, the Comptroller of the Currency shall include any condition imposed by the Board under section 3105(d)(5) of this title as a condition for the approval of such application by the agency.

(b) Rules and regulations; rights and privileges; duties and liabilities; exceptions; coordination of examinations

In establishing and operating a Federal branch or agency, a foreign bank shall be subject to such rules, regulations, and orders as the Comptroller considers appropriate to carry out this section, which shall include provisions for service of process and maintenance of branch and agency accounts separate from those of the parent bank. Except as otherwise specifically provided in this chapter or in rules, regulations, or orders adopted by the Comptroller under this section, operations of a foreign bank at a Federal branch or agency shall be conducted with the same rights and privileges as a national bank at the same location and shall be subject to all the same duties, restrictions, penalties, liabilities, conditions, and limitations that would apply under the National Bank Act to a national bank doing business at the same location, except that (1) any limitation or restriction based on the capital stock and surplus of a national bank shall be deemed to refer, as applied to a Federal branch or agency, to the dollar equivalent of the capital stock and surplus of the foreign bank, and if the foreign bank has more than one Federal branch or agency the business transacted by all such branches and agencies shall be aggregated in determining compliance with the limitation; (2) a Federal branch or agency shall not be required to become a member bank, as that term is defined in section 221 of this title; and (3) a Federal agency shall not be required to become an insured bank as that term is defined in section 1813(h) of this title. The Comptroller of the Currency shall coordinate examinations of Federal branches and agencies of foreign banks with examinations conducted by the Board under section 3105(c)(1) of this title and, to the extent possible, shall participate in any simultaneous examinations of the United States operations of a foreign bank requested by the Board under such section.

(c) Application to establish Federal branch or agency; matters considered

In acting on any application to establish a Federal branch or agency, the Comptroller shall take into account the effects of the proposal on competition in the domestic and foreign commerce of the United States, the financial and managerial resources and future prospects of the applicant foreign bank and the branch or agency, and the convenience and needs of the community to be served.

(d) Receipt of deposits and exercising of fiduciary powers at Federal agency prohibited

Notwithstanding any other provision of this section, a foreign bank shall not receive deposits or exercise fiduciary powers at any Federal agency. A foreign bank may, however, maintain at a Federal agency for the account of others credit balances incidental to, or arising out of, the exercise of its lawful powers.

(e) Maintenance of Federal branch and Federal agency in same State prohibited

No foreign bank may maintain both a Federal branch and a Federal agency in the same State.

(f) Conversion of foreign bank branch, agency or commercial lending company into Federal branch or agency; approval of Comptroller

Any branch or agency operated by a foreign bank in a State pursuant to State law and any commercial lending company controlled by a foreign bank may be converted into a Federal branch or agency with the approval of the Comptroller. In the event of any conversion pursuant to this subsection, all of the liabilities of such foreign bank previously payable at the State branch or agency, or all of the liabilities of the commercial lending company, shall thereafter be payable by such foreign bank at the branch or agency established under this subsection.

(g) Deposit requirements; asset requirements

(1) Upon the opening of a Federal branch or agency in any State and thereafter, a foreign bank, in addition to any deposit requirements imposed under section 3104 of this title, shall keep on deposit, in accordance with such rules and regulations as the Comptroller may prescribe, with a member bank designated by such foreign bank, dollar deposits or investment securities of the type that may be held by national banks for their own accounts pursuant to paragraph "Seventh" of section 24 of this title, in an amount as hereinafter set forth. Such depository bank shall be located in the State where such branch or agency is located and shall be approved by the Comptroller if it is a national bank and by the Board of Governors of the Federal Reserve System if it is a State Bank.

(2) The aggregate amount of deposited investment securities (calculated on the basis of principal amount or market value, whichever is lower) and dollar deposits for each branch or agency established and operating under this section shall be not less than the greater of (1) that amount of capital (but not surplus) which would be required of a national bank being organized at this location, or (2) 5 per centum of the total

liabilities of such branch or agency, including acceptances, but excluding (A) accrued expenses, and (B) amounts due and other liabilities to offices, branches, agencies, and subsidiaries of such foreign bank. The Comptroller may require that the assets deposited pursuant to this subsection shall be maintained in such amounts as he may from time to time deem necessary or desirable, for the maintenance of a sound financial condition, the protection of depositors, and the public interest, but such additional amount shall in no event be greater than would be required to conform to generally accepted banking practices as manifested by banks in the area in which the branch or agency is located.

(3) The deposit shall be maintained with any such member bank pursuant to a deposit agreement in such form and containing such limitations and conditions as the Comptroller may prescribe. So long as it continues business in the ordinary course such foreign bank shall, however, be permitted to collect income on the securities and funds so deposited and from time to time examine and exchange such securities.

(4) Subject to such conditions and requirements as may be prescribed by the Comptroller, each foreign bank shall hold in each State in which it has a Federal branch or agency, assets of such types and in such amount as the Comptroller may prescribe by general or specific regulation or ruling as necessary or desirable for the maintenance of a sound financial condition, the protection of depositors, creditors and the public interest. In determining compliance with any such prescribed asset requirements, the Comptroller shall give credit to (A) assets required to be maintained pursuant to paragraphs (1) and (2) of this subsection, (B) reserves required to be maintained pursuant to section 3105(a) of this title, and (C) assets pledged, and surety bonds payable, to the Federal Deposit Insurance Corporation to secure the payment of domestic deposits. The Comptroller may prescribe different asset requirements for branches or agencies in different States, in order to ensure competitive equality of Federal branches and agencies with State branches and agencies and domestic banks in those States.

(h) Additional branches or agencies**(1) Approval of agency required**

A foreign bank with a Federal branch or agency operating in any State may (A) with the prior approval of the Comptroller establish and operate additional branches or agencies in the State in which such branch or agency is located on the same terms and conditions and subject to the same limitations and restrictions as are applicable to the establishment of branches by a national bank if the principal office of such national bank were located at the same place as the initial branch or agency in such State of such foreign bank and (B) change the designation of its initial branch or agency to any other branch or agency subject to the same limitations and restrictions as are applicable to a change in the designation of the principal office of a national bank if such principal office were located at the same place as such initial branch or agency.

(2) Notice to and comment by Board

The Comptroller of the Currency shall provide the Board with notice and an opportunity for comment on any application to establish an additional Federal branch or Federal agency under this subsection.

(i) Termination of authority to operate Federal branch or agency

Authority to operate a Federal branch or agency shall terminate when the parent foreign bank voluntarily relinquishes it or when such parent foreign bank is dissolved or its authority or existence is otherwise terminated or canceled in the country of its organization. If (1) at any time the Comptroller is of the opinion or has reasonable cause to believe that such foreign bank has violated or failed to comply with any of the provisions of this section or any of the rules, regulations, or orders of the Comptroller made pursuant to this section, or (2) a conservator is appointed for such foreign bank or a similar proceeding is initiated in the foreign bank's country of organization, the Comptroller shall have the power, after opportunity for hearing, to revoke the foreign bank's authority to operate a Federal branch or agency. The Comptroller may, in his discretion, deny such opportunity for hearing if he determines such denial to be in the public interest. The Comptroller may restore any such authority upon due proof of compliance with the provisions of this section and the rules, regulations, or orders of the Comptroller made pursuant to this section.

(j) Receivership over assets of foreign bank in United States

(1) Whenever the Comptroller revokes a foreign bank's authority to operate a Federal branch or agency or whenever any creditor of any such foreign bank shall have obtained a judgment against it arising out of a transaction with a Federal branch or agency in any court of record of the United States or any State of the United States and made application, accompanied by a certificate from the clerk of the court stating that such judgment has been rendered and has remained unpaid for the space of thirty days, or whenever the Comptroller shall become satisfied that such foreign bank is insolvent, he may, after due consideration of its affairs, in any such case, appoint a receiver who shall take possession of all the property and assets of such foreign bank in the United States and exercise the same rights, privileges, powers, and authority with respect thereto as are now exercised by receivers of national banks appointed by the Comptroller.

(2) In any receivership proceeding ordered pursuant to this subsection (j), whenever there has been paid to each and every depositor and creditor of such foreign bank whose claim or claims shall have been proved or allowed, the full amount of such claims arising out of transactions had by them with any branch or agency of such foreign bank located in any State of the United States, except (A) claims that would not represent an enforceable legal obligation against such branch or agency if such branch or agency were a separate legal entity, and (B) amounts due and other liabilities to other of-

fices or branches or agencies of, and wholly owned (except for a nominal number of directors' shares) subsidiaries of, such foreign bank, and all expenses of the receivership, the Comptroller or the Federal Deposit Insurance Corporation, where that Corporation has been appointed receiver of the foreign bank, shall turn over the remainder, if any, of the assets and proceeds of such foreign bank to the head office of such foreign bank, or to the duly appointed domiciliary liquidator or receiver of such foreign bank.

(Pub. L. 95-369, § 4, Sept. 17, 1978, 92 Stat. 610; Pub. L. 102-242, title II, §§ 202(b), (c), 203(b), Dec. 19, 1991, 105 Stat. 2290, 2291; Pub. L. 106-569, title XII, § 1234, Dec. 27, 2000, 114 Stat. 3037.)

REFERENCES IN TEXT

For definition of "this chapter", referred to in subsec. (b), see References in Text note set out under section 3101 of this title.

The National Bank Act, referred to in subsec. (b), is act June 3, 1864, ch. 106, 13 Stat. 99, as amended, which is classified principally to chapter 2 (§ 21 et seq.) of this title. For complete classification of this Act to the Code, see References in Text note set out under section 38 of this title.

Section 3104 of this title, referred to in subsec. (g)(1), was in the original a reference to section 6 of Pub. L. 95-369, which enacted section 3104 of this title and amended sections 1813, 1815, 1817, 1818, 1820 to 1823, 1828, 1829b, and 1831b of this title.

AMENDMENTS

2000—Subsec. (b), Pub. L. 106-569 redesignated cls. (2) to (4) as (1) to (3), respectively, and struck out former cl. (1) which read as follows: "the requirements of section 481 of this title shall be met with respect to a Federal branch or agency if it is examined at least once in each calendar year;"

1991—Subsec. (a), Pub. L. 102-242, § 202(b), inserted heading, designated existing provisions as par. (1) and inserted heading, and added par. (2).

Subsec. (b), Pub. L. 102-242, § 203(b), inserted at end: "The Comptroller of the Currency shall coordinate examinations of Federal branches and agencies of foreign banks with examinations conducted by the Board under section 3105(c)(1) of this title and, to the extent possible, shall participate in any simultaneous examinations of the United States operations of a foreign bank requested by the Board under such section."

Subsec. (h), Pub. L. 102-242, § 202(c), amended heading, designated existing provisions as par. (1), inserted par. (1) heading, redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, and added par. (2).

STUDY AND REPORT ON SUBSIDIARY REQUIREMENTS FOR FOREIGN BANKS

Section 215 of Pub. L. 102-242, as amended by Pub. L. 102-550, title XVI, § 1604(a)(14), Oct. 28, 1992, 106 Stat. 4083, directed Secretary of the Treasury, jointly with Board of Governors of the Federal Reserve System and in consultation with Comptroller of the Currency, Federal Deposit Insurance Corporation, and Attorney General, to conduct a study of whether foreign banks should be required to conduct banking operations in United States through subsidiaries rather than branches and, not later than 1 year after Dec. 19, 1991, to transmit to Congress a report on the results of the study.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3101, 3105 of this title.

§ 3103. Interstate banking by foreign banks**(a) Interstate branching and agency operations****(1) Federal branch or agency**

Subject to the provisions of this chapter and with the prior written approval by the Board and the Comptroller of the Currency of an application, a foreign bank may establish and operate a Federal branch or agency in any State outside the home State of such foreign bank to the extent that the establishment and operation of such branch would be permitted under section 36(g) of this title or section 1831u of this title if the foreign bank were a national bank whose home State is the same State as the home State of the foreign bank.

(2) State branch or agency

Subject to the provisions of this chapter and with the prior written approval by the Board and the appropriate State bank supervisor of an application, a foreign bank may establish and operate a State branch or agency in any State outside the home State of such foreign bank to the extent that such establishment and operation would be permitted under section 1828(d)(4) or 1831u of this title if the foreign bank were a State bank whose home State is the same State as the home State of the foreign bank.

(3) Criteria for determination

In approving an application under paragraph (1) or (2), the Board and (in the case of an application under paragraph (1)) the Comptroller of the Currency—

(A) shall apply the standards applicable to the establishment of a foreign bank office in the United States under section 3105(d) of this title;

(B) may not approve an application unless the Board and (in the case of an application under paragraph (1)) the Comptroller of the Currency—

(i) determine that the foreign bank's financial resources, including the capital level of the bank, are equivalent to those required for a domestic bank to be approved for branching under section 36 of this title and section 1831u of this title; and

(ii) consult with the Secretary of the Treasury regarding capital equivalency; and

(C) shall apply the same requirements and conditions to which an application for an interstate merger transaction is subject under paragraphs (1), (3), and (4) of section 1831u(b) of this title.

(4) Operation

Subsections (c) and (d)(2) of section 1831u of this title shall apply with respect to each branch and agency of a foreign bank which is established and operated pursuant to an application approved under this subsection in the same manner and to the same extent such provisions of such section apply to a domestic branch of a national or State bank (as such terms are defined in section 1813 of this title) which resulted from a merger transaction under such section 1831u of this title.

(5) Exclusive authority for additional branches

Except as provided in this section, a foreign bank may not, directly or indirectly, acquire, establish, or operate a branch or agency in any State other than the home State of such bank.

(6) Requirement for a separate subsidiary

If the Board or the Comptroller of the Currency, taking into account differing regulatory or accounting standards, finds that adherence by a foreign bank to capital requirements equivalent to those imposed under section 36 of this title and section 1831u of this title could be verified only if the banking activities of such bank in the United States are carried out in a domestic banking subsidiary within the United States, the Board and (in the case of an application under paragraph (1)) the Comptroller of the Currency may approve an application under paragraph (1) or (2) subject to a requirement that the foreign bank or company controlling the foreign bank establish a domestic banking subsidiary in the United States.

(7) Additional authority for interstate branches and agencies of foreign banks, upgrades of certain foreign bank agencies and branches

Notwithstanding paragraphs (1) and (2), a foreign bank may—

(A) with the approval of the Board and the Comptroller of the Currency, establish and operate a Federal branch or Federal agency or, with the approval of the Board and the appropriate State bank supervisor, a State branch or State agency in any State outside the foreign bank's home State if—

(i) the establishment and operation of such branch or agency is permitted by the State in which the branch or agency is to be established; and

(ii) in the case of a Federal or State branch, the branch receives only such deposits as would be permitted for a corporation organized under section 25A of the Federal Reserve Act [12 U.S.C. 611 et seq.]; or

(B) with the approval of the Board and the relevant licensing authority (the Comptroller in the case of a Federal branch or the appropriate State supervisor in the case of a State branch), upgrade an agency, or a branch of the type referred to in subparagraph (A)(ii), located in a State outside the foreign bank's home State, into a Federal or State branch if—

(i) the establishment and operation of such branch is permitted by such State; and

(ii) such agency or branch—

(I) was in operation in such State on the day before September 29, 1994; or

(II) has been in operation in such State for a period of time that meets the State's minimum age requirement permitted under section 1831u(a)(5) of this title.