

Sec.	
3109.	Cooperation with foreign supervisors.
3110.	Penalties.
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§ 3101. Definitions

For the purposes of this chapter—

(1) “agency” means any office or any place of business of a foreign bank located in any State of the United States at which credit balances are maintained incidental to or arising out of the exercise of banking powers, checks are paid, or money is lent but at which deposits may not be accepted from citizens or residents of the United States;

(2) “Board” means the Board of Governors of the Federal Reserve System;

(3) “branch” means any office or any place of business of a foreign bank located in any State of the United States at which deposits are received;

(4) “Comptroller” means the Comptroller of the Currency;

(5) “Federal agency” means an agency of a foreign bank established and operating under section 3102 of this title;

(6) “Federal branch” means a branch of a foreign bank established and operating under section 3102 of this title;

(7) “foreign bank” means any company organized under the laws of a foreign country, a territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands, which engages in the business of banking, or any subsidiary or affiliate, organized under such laws, of any such company. For the purposes of this chapter the term “foreign bank” includes, without limitation, foreign commercial banks, foreign merchant banks and other foreign institutions that engage in banking activities usual in connection with the business of banking in the countries where such foreign institutions are organized or operating;

(8) “foreign country” means any country other than the United States, and includes any colony, dependency, or possession of any such country;

(9) “commercial lending company” means any institution, other than a bank or an organization operating under section 25 of the Federal Reserve Act [12 U.S.C. 601 et seq.], organized under the laws of any State of the United States, or the District of Columbia which maintains credit balances incidental to or arising out of the exercise of banking powers and engages in the business of making commercial loans;

(10) “State” means any State of the United States or the District of Columbia;

(11) “State agency” means an agency of a foreign bank established and operating under the laws of any State;

(12) “State branch” means a branch of a foreign bank established and operating under the laws of any State;

(13) the terms “affiliate,”¹ “bank”, “bank holding company”, “company”, “control”, and

“subsidiary” have the same meanings assigned to those terms in the Bank Holding Company Act of 1956 [12 U.S.C. 1841 et seq.], and the terms “controlled” and “controlling” shall be construed consistently with the term “control” as defined in section 2 of the Bank Holding Company Act of 1956 [12 U.S.C. 1841];

(14) “consolidated” means consolidated in accordance with generally accepted accounting principles in the United States consistently applied;

(15) the term “representative office” means any office of a foreign bank which is located in any State and is not a Federal branch, Federal agency, State branch, or State agency;

(16) the term “office” means any branch, agency, or representative office; and

(17) the term “State bank supervisor” has the meaning given to such term in section 1813 of this title.

(Pub. L. 95-369, §1(b), Sept. 17, 1978, 92 Stat. 607; Pub. L. 102-242, title II, §202(e), Dec. 19, 1991, 105 Stat. 2290; Pub. L. 106-102, title I, §142(a), Nov. 12, 1999, 113 Stat. 1384.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 95-369, Sept. 17, 1978, 92 Stat. 607, known as the International Banking Act of 1978, which enacted this chapter and sections 347d and 611a of this title, amended sections 72, 378, 614, 615, 618, 619, 1813, 1815, 1817, 1818, 1820 to 1823, 1828, 1829b, 1831b, and 1841 of this title, and enacted provisions set out as notes under this section and sections 36, 247, 601, and 611a of this title and formerly set out as notes under sections 36, 247, and 601 of this title. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

The Bank Holding Company Act of 1956, referred to in par. (13), is act May 9, 1956, ch. 240, 70 Stat. 133, as amended, which is classified principally to chapter 17 (§1841 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1841 of this title and Tables.

AMENDMENTS

1999—Par. (15). Pub. L. 106-102 substituted “or State agency;” for “State agency, or subsidiary of a foreign bank;”.

1991—Par. (13). Pub. L. 102-242, §202(e)(1), inserted reference to affiliate after first reference to “the terms”.

Pars. (15) to (17). Pub. L. 102-242, §202(e)(2), added pars. (15) to (17).

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-102 effective 120 days after Nov. 12, 1999, see section 161 of Pub. L. 106-102, set out as a note under section 24 of this title.

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,

¹So in original. The comma probably should follow the quotation marks.

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."

§ 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.