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TITLE 12--BANKS AND BANKING

CHAPTER II--FEDERAL RESERVE SYSTEM

PART 211--INTERNATIONAL BANKING OPERATIONS (REGULATION K)--Table of Contents

Subpart A--International Operations of U.S. Banking Organizations

Sec. 211.5 Edge and agreement corporations.

(a) Board Authority. The Board shall have the authority to approve:

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(1) The establishment of Edge corporations;
(2) Investments in agreement corporations; and
(3) A member bank's proposal to invest more than 10 percent of its capital and surplus in the aggregate amount of stock held in all Edge and agreement corporations.

(b) Organization of an Edge corporation--(1) Permit. A proposed Edge corporation shall become a body corporate when the Board issues a permit approving its proposed name, articles of association, and organization certificate.

(2) Name. The name of the Edge corporation shall include international, foreign, overseas, or a similar word, but may not resemble the name of another organization to an extent that might mislead or deceive the public.

(3) Federal Register notice. The Board shall publish in the Federal Register notice of any proposal to organize an Edge corporation and shall give interested persons an opportunity to express their views on the proposal.

(4) Factors considered by Board. The factors considered by the Board

in acting on a proposal to organize an Edge corporation include:

(i) The financial condition and history of the applicant;
(ii) The general character of its management;
(iii) The convenience and needs of the community to be served with respect to international banking and financing services; and
(iv) The effects of the proposal on competition.

(5) Authority to commence business. After the Board issues a permit, the Edge corporation may elect officers and otherwise complete its organization, invest in obligations of the U.S. government, and maintain deposits with depository institutions, but it may not exercise any other

powers until at least 25 percent of the authorized capital stock specified in the articles of association has been paid in cash, and each shareholder has paid in cash at least 25 percent of that shareholder's stock subscription.

(6) Expiration of unexercised authority. Unexercised authority to commence business as an Edge corporation shall expire one year after issuance of the permit, unless the Board extends the period.

(c) Other provisions regarding Edge corporations--(1) Amendments to articles of association. No amendment to the articles of association shall become effective until approved by the Board.

(2) Shareholders' meeting. An Edge corporation shall provide in its bylaws that:

(i) A shareholders' meeting shall be convened at the request of the Board within five business days after the Board gives notice of the request to the Edge corporation;

(ii) Any shareholder or group of shareholders that owns or controls 25 percent or more of the shares of the Edge corporation shall attend such a meeting in person or by proxy; and

(iii) Failure by a shareholder or authorized representative to attend such meeting in person or by proxy may result in removal or barring of the shareholder or representative from further participation in the management or affairs of the Edge corporation.

(3) Nature and ownership of shares--(i) Shares. Shares of stock in an Edge corporation may not include no-par-value shares and shall be issued and transferred only on its books and in compliance with section 25A of the FRA (12 U.S.C. 611 et seq.) and this subpart.

(ii) Contents of share certificates. The share certificates of an Edge corporation shall:

(A) Name and describe each class of shares, indicating its character and any unusual attributes, such as preferred status or lack of voting rights; and

(B) Conspicuously set forth the substance of:

(1) Any limitations on the rights of ownership and transfer of shares imposed by section 25A of the FRA (12 U.S.C. 611 et seq.); and

(2) Any rules that the Edge corporation prescribes in its bylaws to ensure compliance with this paragraph (c).

(4) Change in status of shareholder. Any change in status of a shareholder that causes a violation of section 25A of the FRA (12 U.S.C.

611 et seq.) shall be reported to the Board as soon as possible, and the

Edge corporation shall take such action as the Board may direct.

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(d) Ownership of Edge corporations by foreign institutions--(1) Prior Board approval. One or more foreign or foreign-controlled domestic institutions referred to in section 25A(11) of the FRA (12 U.S.C. 619) may apply for the Board's prior approval to acquire, directly or indirectly, a majority of the shares of the capital stock of an Edge corporation.

(2) Conditions and requirements. Such an institution shall:

(i) Provide the Board with information related to its financial condition and activities and such other information as the Board may

require;

(ii) Ensure that any transaction by an Edge corporation with an affiliate\2\ is on substantially the same terms, including interest rates and collateral, as those prevailing at the same time for comparable transactions by the Edge corporation with nonaffiliated persons, and does not involve more than the normal risk of repayment or present other unfavorable features;

\2\ For purposes of this paragraph (d) (2), affiliate means any organization that would be an affiliate under section 23A of the FRA (12 U.S.C. 371c) if the Edge corporation were a member bank.

(iii) Ensure that the Edge corporation will not provide funding on a continual or substantial basis to any affiliate or office of the foreign institution through transactions that would be inconsistent with the international and foreign business purposes for which Edge corporations are organized; and

(iv) Comply with the limitation on aggregate investments in all Edge and agreement corporations set forth in paragraph (h) of this section.

(3) Foreign institutions not subject to the BHC Act. In the case of a foreign institution not subject to section 4 of the BHC Act (12 U.S.C. 1843), that institution shall:

(i) Comply with any conditions that the Board may impose that are necessary to prevent undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices in the United States; and

(ii) Give the Board 30 days' prior written notice before engaging in any nonbanking activity in the United States, or making any initial or additional investments in another organization, that would require prior Board approval or notice by an organization subject to section 4 of the BHC Act (12 U.S.C. 1843); in connection with such notice, the Board may impose conditions necessary to prevent adverse effects that may result from such activity or investment.

(e) Change in control of an Edge corporation--(1) Prior notice. (i) Any person shall give the Board 60 days' prior written notice before acquiring, directly or indirectly, 25 percent or more of the voting shares, or otherwise acquiring control, of an Edge corporation.

(ii) The Board may extend the 60-day period for an additional 30 days by notifying the acquiring party.

(iii) A notice under this paragraph (e) need not be filed where a change in control is effected through a transaction requiring the Board's approval under section 3 of the BHC Act (12 U.S.C. 1842).

(2) Board review. In reviewing a notice filed under this paragraph (e), the Board shall consider the factors set forth in paragraph (b) (4) of this section, and may disapprove a notice or impose any conditions that it finds necessary to assure the safe and sound operation of the

Edge corporation, to assure the international character of its operation, and to prevent adverse effects, such as decreased or unfair competition, conflicts of interest, or undue concentration of resources.

(f) Domestic branching by Edge corporations--(1) Prior notice. (i) An Edge corporation may establish branches in the United States 30 days after the Edge corporation has given written notice of its intention to do so to its Reserve Bank, unless the Edge corporation is notified to the contrary within that time.

(ii) The notice to the Reserve Bank shall include a copy of the notice of the proposal published in a newspaper of general circulation in the communities to be served by the branch.

(iii) The newspaper notice may appear no earlier than 90 calendar days prior to submission of notice of the proposal to the Reserve Bank. The newspaper notice shall provide an opportunity for the public to give written

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comment on the proposal to the appropriate Federal Reserve Bank for at least 30 days after the date of publication.

(2) Factors considered. The factors considered in acting upon a proposal to establish a branch are enumerated in paragraph (b) (4) of this section.

(3) Expiration of authority. Authority to establish a branch under prior notice shall expire one year from the earliest date on which that authority could have been exercised, unless the Board extends the period.

(g) Agreement corporations--(1) General. With the prior approval of the Board, a member bank or bank holding company may invest in a federally or state-chartered corporation that has entered into an agreement or undertaking with the Board that it will not exercise any power that is impermissible for an Edge corporation under this subpart.

(2) Factors considered by Board. The factors considered in acting upon a proposal to establish an agreement corporation are enumerated in paragraph (b) (4) of this section.

(h) (1) Limitation on investment in Edge and agreement corporations.

A member bank may invest up to 10 percent of its capital and surplus in the capital stock of Edge and agreement corporations or, with the prior approval of the Board, up to 20 percent of its capital and surplus in such stock.

(2) Factors considered by Board. The factors considered by the Board in acting on a proposal under paragraph (h) (1) of this section shall include:

(i) The composition of the assets of the bank's Edge and agreement corporations;

(ii) The total capital invested by the bank in its Edge and agreement corporations when combined with retained earnings of the Edge and agreement corporations (including amounts invested in and retained earnings of any foreign bank subsidiaries) as a percentage of the bank's capital;

(iii) Whether the bank, bank holding company, and Edge and agreement

corporations are well-capitalized and well-managed;

(iv) Whether the bank is adequately capitalized after deconsolidating and deducting the aggregate investment in and assets of all Edge or agreement corporations and all foreign bank subsidiaries; and

(v) Any other factor the Board deems relevant to the safety and soundness of the member bank.

(i) Reserve requirements and interest rate limitations. The deposits of an Edge or agreement corporation are subject to Regulations D and Q (12 CFR parts 204 and 217) in the same manner and to the same extent as if the Edge or agreement corporation were a member bank.

(j) Liquid funds. Funds of an Edge or agreement corporation that are not currently employed in its international or foreign business, if held or invested in the United States, shall be in the form of:

(1) Cash;

(2) Deposits with depository institutions, as described in Regulation D (12 CFR part 204), and other Edge and agreement corporations;

(3) Money-market instruments (including repurchase agreements with respect to such instruments), such as bankers' acceptances, federal funds sold, and commercial paper; and

(4) Short- or long-term obligations of, or fully guaranteed by, federal, state, and local governments and their instrumentalities.

(k) Reports by Edge and agreement corporations of crimes and suspected crimes. An Edge or agreement corporation, or any branch or subsidiary thereof, shall file a suspicious-activity report in accordance with the provisions of Sec. 208.62 of Regulation H (12 CFR 208.62).

(l) Protection of customer information. An Edge or agreement corporation shall comply with the Interagency Guidelines Establishing Standards for Safeguarding Customer Information prescribed pursuant to sections 501 and 505 of the Gramm-Leach-Bliley Act (15 U.S.C. 6801 and 6805), set forth in appendix D-2 to part 208 of this chapter.

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