

I. INTRODUCTION

Section 347 (Subpart A), issued pursuant to Sections 18(d) and (I) of the Federal Deposit Insurance (FDI) Act, and Section 303 (Subpart J) of the FDIC Rules and Regulations establish the FDIC's requirements for insured state nonmember bank investments in foreign organizations; permissible foreign activities; loans or extensions of credit to, or for the account of, foreign organizations;¹ and, the FDIC's recordkeeping, supervision, and approval requirements. The rules also address the permissible activities for foreign branches² of insured state nonmember banks, as well as the FDIC's requirements for establishing, operating, relocating, and closing branches in foreign countries. The Case Manager should consult with RMAS, LBS, or CISR as appropriate, regarding applications involving foreign branch or investment activity. The Washington Office (WO) Legal Division should also be consulted to determine whether the subject foreign country limits access to information for supervisory purposes. In addition, the International Affairs Branch of the Division of Insurance and Research is available to assist in the application review, and may assist in facilitating requests for information and communication with foreign regulatory agencies.

Case Managers should review and process the notices and applications discussed in this Section following the steps below, and should refer to *Applications Overview*, Section 1.1 of these Procedures, for general information regarding filings.³ In addition, regarding the preparation and content of each Summary of Investigation (SOI) for applications and notices covered in this Section, Case Managers should refer to the guidance contained in *Summary of Investigation*, Section 1.2 of these Procedures, as well as the specific instructions included in *Summary of Investigation Comments*, Part V of this Section.

II. ESTABLISHING, RELOCATING, OR CLOSING A FOREIGN BRANCH

Pursuant to Section 18(d)(2) of the FDI Act, an insured state nonmember bank seeking to establish or operate a foreign branch must receive prior written consent from the FDIC. Section 303, Subpart J, International Banking, of the FDIC Rules and Regulations contains filing procedures and definitions. Sections 347.117 – 119 of the FDIC Rules and Regulations set forth the circumstances under which consent may be obtained through general consent, expedited processing, or specific consent, as described below.

The Case Manager must review upon receipt all notices and applications for establishing, moving, or closing a foreign branch to (1) ensure that the notice or application is substantially complete, (2) determine if general or specific consent applies, (3) determine if expedited processing applies, and (4) determine if WO approval is required or if consultation is necessary.

A. GENERAL CONSENT TO ESTABLISH OR RELOCATE FOREIGN BRANCHES

General consent of the FDIC is granted under Section 347.117(a) of the FDIC Rules and Regulations. General consent applies for an insured state nonmember bank to relocate an existing foreign branch within a foreign country; and for an eligible bank⁴ to establish a foreign branch conducting activities authorized by Section 347.115 in any foreign country in which:

- The bank already operates one or more foreign branches or foreign bank subsidiaries;

¹ Case Managers should confirm that the proposed activity is permissible under Part 347 (Subpart A).

² Note that Section 3(o) of the FDI Act defines the term “foreign branch” to include any office or place of business located outside of the United States, its territories, Puerto Rico, Guam, American Samoa, or the Virgin Islands, at which banking operations are conducted.

³ Case Managers should follow the general guidance and expectations for all applications regarding receipt and acceptance, recordkeeping responsibilities, DCP notifications, WO action or input, delegations, etc. in *Applications Overview*, Section 1.1 of these Procedures.

⁴ Eligible bank means an eligible depository institution as defined in Section 303.2(r) of the FDIC Rules and Regulations, which generally sets forth the eligibility requirements for expedited processing.

- The bank's holding company operates a foreign bank subsidiary; or,
- An affiliated bank or Edge or Agreement corporation⁵ operates one or more foreign branches or foreign bank subsidiaries.

The bank is responsible for determining that it meets the criteria for general consent prior to relocating or establishing the foreign branch. General consent is not available if there are limitations on the FDIC's access to supervisory information, even if the bank meets the eligibility requirements of Sections 303.2(r) and 347.117(a) of the FDIC Rules and Regulations.

1. FORM OF GENERAL CONSENT NOTICE

Section 303.182(a) of the FDIC Rules and Regulations requires that an insured state nonmember bank eligible for general consent must provide notice in letter form to the appropriate Regional Office (RO) no later than 30 days after establishing or relocating a foreign branch permitted under general consent.

2. ACCEPTING AND PROCESSING THE GENERAL CONSENT NOTICE

- a. Establish the record under Establish a New Foreign Branch in the appropriate internal database. All notices should be entered into the system of record within three business days of receipt. In all cases, dates and comments in the record should be updated regularly to reflect the current status of the application. For notices received under general consent, the date a complete notice is received by the RO will be considered the approval date for tracking purposes.
- b. Initially review the notice for completeness and request additional information if necessary. Verify that the bank meets the eligible depository institution criteria in Section 303.2(r) of the FDIC Rules and Regulations and that the bank meets the requirements for general consent under Section 347.117(a) of the FDIC Rules and Regulations. If necessary and as appropriate, consult with RMAS, LBS, CISR, and Legal to make a determination regarding eligibility for general consent.
- c. If the notice is complete and the bank qualifies for general consent, complete the appropriate SOI form. Retrieve the Application Summary Statement from the appropriate internal database and attach to the SOI.
- d. Prepare and send a letter acknowledging receipt of the notice to the institution.
- e. If the notice is incomplete, or the bank fails to qualify for general consent, coordinate with RMAS, LBS, or CISR to review the notice and facilitate a response to the institution.
- f. Update the appropriate internal database to reflect the action, the date of the action, hours devoted to the notice and any other required information.

⁵ An Edge Act corporation is a subsidiary of a bank or bank holding company or financial holding company that is chartered by the Federal Reserve under Section 25A of the Federal Reserve Act to engage in foreign banking activities. An Agreement Corporation is a type of bank chartered by a state to engage in international banking. The bank "agrees" with the Federal Reserve Board (FRB) to limit its activities to those allowed for an Edge Act corporation.

B. FOREIGN BRANCH APPLICATIONS – SPECIFIC CONSENT AND EXPEDITED PROCESSING

A bank seeking to establish a foreign branch that does not qualify for general consent is required to submit an application to the appropriate RO. In addition, Section 347.119 of the FDIC Rules and Regulations states that general consent and expedited processing do not apply if applicable law or practice in the foreign country where the foreign branch would be located limits the FDIC's access to information for supervisory purposes. Specific consent is also required when a bank intends to engage in a type or amount of foreign branch activity not permitted by Section 347.115 of the FDIC Rules and Regulations.

1. FORM OF APPLICATION

Section 303.182(b) of the FDIC Rules and Regulations requires a letter application to the appropriate RO, which must include the following information:

- a. The exact location of the proposed foreign branch, including the street address;
- b. Details concerning any involvement in the proposal by an insider of the applicant, as defined in Section 303.2(u) of the FDIC Rules and Regulations, including any financial arrangements relating to fees, the acquisition of property, leasing of property, and construction contracts;
- c. A brief description of the applicant's business plan with respect to the foreign branch; and,
- d. A brief description of the proposed activities of the branch and, to the extent any of the proposed activities are not authorized by Section 347.115 of the FDIC Rules and Regulations, the applicant's reasons why the proposed activities should be approved.

The FDIC may request additional information to complete processing. In consultation with Legal and RMAS LBS, or CISR, the Case Manager should consider asking the applicant to provide the following information, depending on the specific circumstances of the application and the foreign country.

- The disposition of the application filed with the foreign jurisdiction and a copy of such application;
- The disposition of any related applications filed with the FRB or the state, and a copy of such applications;
- The name, address, phone number, and email address of the foreign regulator/supervisor and licensing authorities with whom the bank has been in contact;
- Any foreign deposit insurance coverage of the proposed foreign branch; and,
- Whether there are any host country legal restrictions (such as privacy, confidentiality, or secrecy laws) or other constraints that will prevent the FDIC from directly or indirectly accessing any information needed to supervise the bank and its foreign activities, preferably expressed in the form of a legal opinion through the engagement of appropriate foreign legal counsel. The legal opinion should disclose and discuss:

- Whether any laws or practices in the host country would prevent the host supervisor from exchanging information with the FDIC concerning the foreign branch;
- Whether the foreign supervisor will allow onsite visits by the FDIC;
- Legal citations to any specific laws in the host country that would expressly permit the sharing of supervisory and customer-related information;
- Legal citations to the specific laws in the host country that limit the sharing of supervisory and customer-related information and describe the measures that the bank will take to overcome these obstacles;
- The extent to which the FDIC can access and review customer-level credit and deposit files and accounts;
- The extent to which the FDIC can access and review local auditor work papers, procedures, and findings;
- The extent to which the host country may permit the branch to alter or expand its activities or product offerings, or operate additional offices beyond those authorized; and,
- Legal citations to Bank Secrecy Act (BSA)/anti-money laundering (AML) and anti-terrorist financing laws and supervisory programs (or equivalents) that will apply to the foreign branch.

2. ACCEPTING AND PROCESSING THE APPLICATION

- a. If the application will ultimately be acted upon in the WO, notify RMAS, LBS, CISR, and Legal that a foreign branch application has been received and forward copies of the application and any related materials to the appropriate individuals.
- b. Foreign branch applications filed by an eligible depository institution, as defined in Section 303.2(r) of the FDIC Rules and Regulations, will receive expedited processing, unless the applicant is notified in writing that the application is being removed from expedited processing and provided the basis for that decision prior to the deemed approved date. Absent such removal, applications by an eligible depository institution will be deemed approved as described in *Time Frame for Processing*, Part VI of this Section. As such, branch applications should be reviewed upon receipt, or as promptly as possible, to determine if expedited processing applies, or if there are issues that would justify removal of the application from expedited processing pursuant to Section 303.11(c)(2) of the FDIC Rules and Regulations.
- c. Consult with RMAS, LBS, CISR, and Legal, as necessary and appropriate, to determine whether the application is eligible for expedited processing or if specific consent applies. Refer to *Modification or Suspension of General Consent or Expedited Processing*, Part IV of this Section, for examples of supervisory concerns that may result in the FDIC removing an application from expedited processing.
- d. Establish the record under Establish a New Foreign Branch in the appropriate internal database. All applications should be entered into the system of record within three business days of receipt. In all cases, dates and comments in the database record should be updated regularly to reflect the current status of the application.
- e. Analyze the application and complete the appropriate SOI form. Retrieve the Application Summary Statement from the appropriate internal database and attach to the SOI. The Case Manager should consult with RMAS (or LBS or CISR, as appropriate) and Legal to discuss and develop any necessary non-standard conditions, such as conditions regarding FDIC access to supervisory information.

- f. If approval is being recommended, prepare an approval letter. The letter should request that the applicant notify the appropriate RO of the consummation date. The letter should include all applicable standard conditions and any recommended non-standard conditions. The Case Manager should obtain the applicant's written agreement to any non-standard conditions prior to submitting the approval documents for signature. See *Standard and Non-standard Conditions*, Section 1.11 of these Procedures, for additional instruction regarding the imposition of conditions.
- g. If the application was processed under expedited processing, the approval letter shall state that the filing is deemed approved on a specific future date based on the expedited processing timeframe.
- h. If there are deficiencies that may result in denial of the application, the RO should advise the applicant of the deficiencies to ensure that all necessary facts are obtained prior to making a decision. If recommending denial, prepare a draft disapproval letter. Refer to *Denials and Disapprovals*, Section 1.3 of these Procedures, for further instruction.
- i. For applications that cannot be acted on under delegated authority, forward the SOI, the draft approval/denial letter, and any other relevant documentation to RMAS, LBS, or CISR for final action. Refer to *Applications Overview*, Section 1.1 of these Procedures, for additional instructions regarding applications that require WO action or input.
- j. Update the appropriate internal database to reflect the date forwarded to the WO, if applicable, the action, the date of the action, the expiration date, hours devoted to the application, and any other required information.

C. BRANCH CLOSING

An insured state nonmember bank must comply with the written notification requirements contained in Section 303.182(d) when it closes a foreign branch. The bank must provide written notice to the appropriate RO within 30 days after it closes a foreign branch. Such notification shall include the name, location, and date of closing of the branch. When a notice is received, the Case Manager should prepare and send an acknowledgment letter, and ensure a structure change form is completed. Notices of foreign branch closings are not entered in the system of record.

III. INVESTMENTS IN FOREIGN ORGANIZATIONS

Pursuant to Section 18(l) of the FDI Act, when authorized by State law, a state nonmember insured bank may, with the prior written consent of the FDIC, acquire and hold, directly or indirectly, stock or other evidences of ownership in foreign organizations. Section 303, Subpart J, International Banking, of the FDIC Rules and Regulations contains filing procedures and definitions. The FDIC's consent may be through general consent, expedited processing, or specific consent depending on the circumstances as specified in Part 347.

The Case Manager must review upon receipt all notices and applications regarding direct or indirect investments in a foreign organization to (1) ensure that the notice or application is substantially complete, (2) determine if general or specific consent applies, (3) determine if expedited processing applies, and (4) determine if WO approval is required or if consultation is necessary.

A. GENERAL CONSENT TO INVEST IN A FOREIGN ORGANIZATION

General consent of the FDIC is granted under Section 347.117(b) of the FDIC Rules and Regulations, subject to the written notification requirements contained in Section 303.183(a), for an eligible insured state nonmember bank to make direct or indirect investments in foreign organizations if:

- a. The bank operates at least one foreign bank subsidiary or foreign branch, an affiliated bank or Edge or Agreement corporation operates at least one foreign bank subsidiary or foreign branch, or the bank's holding company operates at least one foreign bank subsidiary in the country where the foreign organization will be located;
- b. In any instance where the bank and its affiliates will hold 20 percent or more of the foreign organization's voting equity interests or control the foreign organization, at least one state nonmember bank has a foreign bank subsidiary or foreign branch (other than a shell branch⁶) in the country where the foreign organization will be located; and,
- c. The investment is within one of the following limits:
 1. The investment is acquired at net asset value from an affiliate;
 2. The investment is a reinvestment of cash dividends received from the same foreign organization during the preceding 12 months; or,
 3. The total investment, directly or indirectly, in a single foreign organization in any transaction or series of transactions during a 12-month period does not exceed 2 percent of the bank's Tier 1 capital and such investments in all foreign organizations in the aggregate do not exceed:
 - 5 percent of the bank's Tier 1 capital during a 12-month period; and
 - Up to an additional 5 percent of the bank's Tier 1 capital if the investments are acquired for trading purposes.

1. FORM OF GENERAL CONSENT NOTICE

As authorized by Section 347.117(b) of the FDIC Rules and Regulations, an eligible institution that has made an investment in a foreign organization pursuant to general consent must provide a letter notice to the appropriate RO within 30 days after taking such action pursuant to Section 303.183(a).

2. ACCEPTING AND PROCESSING THE GENERAL CONSENT NOTICE

- a. Establish the record under Foreign Investments in the appropriate internal database. All notices should be entered into the system of record within three business days of receipt. In all cases, dates and comments in the record should be updated regularly to reflect the current status of the filing. For notices received under general consent, the date a complete notice is received by the RO will be considered the approval date for tracking purposes.
- b. Initially review the notice for completeness and request additional information if necessary. Verify that the bank meets the eligible depository institution criteria in Section 303.2(r) of the FDIC Rules and Regulations and that the bank meets the requirements for general consent under Section 347.117(b). If necessary and as appropriate, consult with RMAS and Legal to

⁶ The preamble to the final rule regarding Part 347 indicates that the FDIC intends the term "shell branch" to be synonymous with the term "nameplate branch." 70 F.R. 17550, 17552 (April 6, 2005). These terms are frequently used to describe branches established in a foreign country that have no physical presence or operations in that country. For example, frequently when a bank wants to establish a branch in the Cayman Islands, it will obtain a special license to operate a branch from the foreign jurisdiction but the actual banking operations of the branch will take place in the bank's home office in the U.S.

- make a determination regarding eligibility for general consent.
- c. If the notice is complete and the bank qualifies for general consent, complete the appropriate SOI form. Retrieve the Application Summary Statement from the appropriate internal database and attach to the SOI.
 - d. Send a letter acknowledging receipt of the notice to the institution.
 - e. If the notice is incomplete, or the bank fails to qualify for general consent, coordinate with RMAS to review the notice and facilitate a response to the institution.
 - f. Update the appropriate internal database to reflect the final action, the date of the action, hours devoted to the notice, and any other required information.

B. APPLICATIONS FOR INVESTMENT IN FOREIGN ORGANIZATIONS

A bank seeking to make an investment in a foreign organization that does not qualify for general consent is required to submit an application to the appropriate RO. In addition, Section 347.119 of the FDIC Rules and Regulations states that general consent and expedited processing do not apply if applicable law or practice in the foreign country where the foreign organization is located would limit the FDIC's access to information for supervisory purposes and the applicant would hold 20 percent or more of the voting equity interests of a foreign organization or control such organization as a result of a foreign investment.

1. FORM OF APPLICATION

Pursuant to Section 303.183(b) of the FDIC Rules and Regulations, a complete application shall include the following:

- a. Basic information about the terms of the proposed transaction, the amount of the investment in the foreign organization, and the proportion of its ownership to be acquired;
- b. Basic information about the foreign organization, its financial position and income, including any available balance sheet and income statement for the prior year, or financial projections for a new foreign organization;
- c. A listing of all shareholders known to hold ten percent or more of any class of the foreign organization's stock or other evidence of ownership, and the amount held by each;
- d. A brief description of the applicant's business plan with respect to the foreign organization;
- e. A brief description of the foreign organization's activities, including any business or activities which the foreign organization will conduct directly or indirectly in the U.S., and to the extent such activities are not authorized by Subpart A of Part 347 of the FDIC Rules and Regulations, the applicant's reasons why the activities should be approved; and,
- f. If the applicant seeks approval to engage in securities underwriting or dealing activities, a description of the applicant's plans and procedures to address all relevant risks.

The FDIC may request additional information to complete processing. In consultation with Legal, RMAS, LBS, and CISR, as appropriate, the Case Manager should consider asking the applicant to provide the following information, depending on the specific circumstances of the application and

the foreign country:

- The disposition of the application filed with the foreign jurisdiction and a copy of such application;
- The disposition of any related applications filed with the FRB or the state, and a copy of such applications;
- Financial projections for each of the three years following consummation of the transaction may be requested, particularly if plans include changes to the business model, expansion into new markets, targeting specific types of customers, or other material growth;
- The name, address, phone number, and email address of the foreign regulator/supervisor and licensing authorities with whom the bank has been in contact;
- The extent to which the foreign branch will be regulated and supervised by any foreign authorities through onsite and offsite monitoring, and a description of the licensing requirements;
- If applicable, any foreign deposit insurance coverage of the subject foreign organization; and,
- Whether any host-country legal restrictions (such as privacy, confidentiality, or secrecy laws) or other constraints will prevent the FDIC from directly or indirectly accessing any information needed to supervise the bank and its foreign activities, preferably expressed in the form of a legal opinion through the engagement of appropriate foreign legal counsel. The legal opinion should disclose and discuss:
 - Whether any laws or practices in the host country would prevent the host supervisor from exchanging information with the FDIC concerning the foreign organization;
 - Whether the foreign supervisor will allow onsite visits by the FDIC;
 - Legal citations to any specific laws in the host country that would expressly permit the sharing of supervisory and customer-related information;
 - Legal citations to the specific laws in the host country that would limit the sharing of supervisory and customer-related information and describe the measures that the institution will take to overcome these obstacles;
 - The extent to which the FDIC can access customer-level credit and deposit files and accounts;
 - The extent to which the FDIC can access and review local auditor work papers, procedures, and findings;
 - The extent to which the host country may permit the foreign organization to alter or expand its activities or product offerings, or operate additional offices beyond what was authorized; and,
 - Legal citations to BSA/AML and anti-terrorist financing laws and supervisory programs, or equivalents that will apply to the foreign organization.

2. ACCEPTING AND PROCESSING THE APPLICATION

- a. If the application will ultimately be acted upon in the WO, notify RMAS, LBS, CISR, and Legal, as appropriate, that an application to invest in a foreign organization has been received

- and forward copies of the application and any related materials to the appropriate individuals.
- b. Applications filed by an eligible depository institution, as defined in Section 303.2(r) of the FDIC Rules and Regulations, will receive expedited processing, unless the applicant is notified in writing that the application is being removed from expedited processing and provided the basis for that decision prior to the deemed approved date. Absent such removal, applications by an eligible depository institution will be deemed approved as described in *Time Frame for Processing*, Part VI of this Section. As such, these applications should be reviewed upon receipt, or as promptly as possible, to determine if expedited processing applies, or if there are issues that would justify removal of the application from expedited processing pursuant to Section 303.11(c)(2) of the FDIC Rules and Regulations.
 - c. Consult with RMAS, LBS, CISR, and Legal, as necessary and appropriate, to determine whether the application is eligible for expedited processing or if specific consent applies. Refer to *Modification or Suspension of General Consent or Expedited Processing*, Part IV of this Section, for examples of supervisory concerns that may result in the FDIC removing an application from expedited processing.
 - d. Establish the record under Foreign Investments in the appropriate internal database. All applications should be entered into the system of record within three business days of receipt. In all cases, dates and comments in the record should be updated regularly to reflect the current status of the application.
 - e. Initially review all materials for completeness and request additional information if necessary. The Case Manager should consult with RMAS and Legal, as appropriate, to make a determination regarding whether the application is substantially complete.
 - f. Analyze the application and complete the appropriate SOI form. Retrieve the Application Summary Statement from the appropriate internal database and attach to the SOI. The Case Manager should consult with RMAS, LBS, CISR, and Legal, as appropriate, to discuss and develop any necessary non-standard conditions, such as conditions regarding FDIC access to supervisory information.
 - g. If approval is being recommended, prepare an approval letter in consultation with WO RMAS, large bank divisions, and Legal, as appropriate. The letter should remind the applicant to notify the RO of the consummation date. The letter should include all applicable standard conditions and any recommended non-standard conditions. The Case Manager should obtain the applicant's written agreement to any non-standard conditions prior to submitting the approval documents for signature. See *Standard and Non-standard Conditions*, Section 1.11 of these Procedures, for additional instruction regarding the imposition of conditions.
 - h. If the application was processed under expedited processing, the approval letter shall state that the filing is deemed approved on a specific future date based on the expedited processing timeframe.
 - i. If there are deficiencies that may result in denial of the application, the RO should advise the applicant of the deficiencies to ensure that all relevant facts are obtained prior to making a decision. If recommending denial, prepare a draft disapproval letter. Refer to *Denials and Disapprovals*, Section 1.3 of these Procedures, for further instruction.
 - j. For applications that cannot be acted on under delegated authority, forward the SOI, the draft letter, and any other relevant documentation to the WO for final action. Refer to *Applications*

Overview, Section 1.1 of these Procedures, for additional instructions regarding applications that require WO action or input.

- k. Update the appropriate internal database to reflect the date forwarded to the WO, if applicable, the action, the date of the action, the expiration date, hours devoted to the application, and any other required information.

C. DIVESTITURE OF INVESTMENTS IN FOREIGN ORGANIZATIONS

Section 303.183(d) of the FDIC Rules and Regulations states that if an insured state nonmember bank holding 50 percent or more of the voting equity interests in, or otherwise controls a foreign organization divests of such ownership or control, the bank shall file a notice in the form of a letter to the FDIC within 30 days after the divestiture. The notification shall include the name, location, and date of divestiture. The Case Manager should prepare and send an acknowledgement letter to the bank. Notices of divestiture are not entered in the system of record.

IV. MODIFICATION OR SUSPENSION OF GENERAL CONSENT OR EXPEDITED PROCESSING

Under the general consent provisions of Sections 303.182 and 347.117 of the FDIC Rules and Regulations, a state nonmember bank is required to provide the FDIC written notice of actions to establish, move or close a foreign branch, or make investments in foreign organizations within 30 days after taking such action. The FDIC is to provide written acknowledgement of the notice. If the institution seeks to establish, move or close a foreign branch, or make investments in foreign organizations other than as provided for in Section 347.117, the institution must file an appropriate application with the FDIC.

Section 347.119(c) of the FDIC Rules and Regulations provides for the modification or suspension of general consent related to a notice, or removal of an application from expedited processing procedures. While such actions could be taken in situations where the FDIC has supervisory concerns regarding the institution's foreign banking activities, the FDIC has no record of taking such actions to date. Therefore, under Section 347.119(c), modification or suspension of general consent, or removal of an application from expedited processing, would likely be a matter of first impression. Consequently, any such actions must be determined in consultation with WO RMAS, LBS, CISR, and Legal, as appropriate.

V. SUMMARY OF INVESTIGATION COMMENTS

The level of detail included in SOI comments should be commensurate with the volume and nature of the activities proposed by the institution in relation to its existing activities and expertise, the level of projected growth at the foreign branch or the level of projected growth related to the proposed foreign investment, and the financial condition of the applicant.

The SOI comments should include a summary of the notice or application, the legal framework applicable to the notice or application, discussion of foreign activities of the applicant, an assessment of management, a summary of the bank's overall financial condition, host country supervisory issues, a conclusion, and the RO recommendation. If other related applications are pending, the status of these actions should also be discussed.

SUMMARY

The summary of the notice or application should at a minimum:

- Describe the terms of the transaction or activity, including any contingencies related to the proposal

and the expiration date of the agreement;

- Discuss and assess the applicant's due diligence process, results, and findings;
- Describe and assess any insider involvement;
- Describe the major business lines and primary market areas of the proposed foreign branch or foreign organization;
- List the locations of any branches or other offices of the foreign organization;
- Describe any particular risks unique to the proposed activity or investment, address management's plans to control these risks, and how each may impact the institution's overall safety and soundness; and,
- Indicate whether the foreign organization conducts business in the U.S. or with U.S. citizens, and the type of business. Discuss whether such business is incidental to the international or foreign business conducted or proposed pursuant to Section 18(*I*) of the FDI Act.

LEGAL FRAMEWORK

In consultation with Legal, describe the legal framework under which the activity is being proposed. Incorporate any legal opinions obtained from FDIC or bank counsel. Examples of FDIC and state statutes pertinent to the respective application types, are:

- Foreign Branch: Section 18(d) of the FDI Act, and Section 303.182 and Part 347 of the FDIC Rules and Regulations.
- Foreign Organization: Section 18(*I*) of the FDI Act, Section 303.183 and Part 347 of the FDIC Rules and Regulations and specific state statutes.

Comments should also note any indicants of potential noncompliance with any applicable regulations.

APPLICANT'S FOREIGN ACTIVITIES

- Identify and describe the applicant's existing or prior foreign branches, investments in foreign organizations, or any other foreign activities.
- Indicate if the applicant has complied with the approval conditions for prior branches or investments in foreign organizations.
- List the aggregate investment in foreign organizations as a percentage of the applicant's Tier 1 Capital, both currently and prospectively, including the proposed transaction. Include corporations organized under Section 25A of the Federal Reserve Act (Edge Act corporations).
- Indicate if the dollar amount of the proposed foreign organization investment is within supervisory limits and the bank's policy limits.

MANAGEMENT

- Describe and evaluate current and proposed management involved in proposed and existing foreign

activities.

- Discuss ownership and affiliation of the proposed foreign organization.
- Discuss the strategic operating plan and how it relates to the application, as well as the expected benefits and inherent risks related to the proposed transaction.
- Summarize the proposed operational controls, and audit program and standards, for the foreign branch or foreign organization.
- Discuss the compatibility of the applicant's management information systems with those of the foreign branch or foreign organization.
- Describe management's plans to overcome any differences in accounting procedures or language/translation issues.

FINANCIAL CONDITION

- Summarize the applicant's year-end financial performance for the preceding three years and the most recent interim quarter.
- Provide the applicant's CAMELS ratings, SCOR data, and specialty examination ratings.
- Identify any significant prior regulatory criticisms relevant to the proposed activity, including those related to applicable specialty areas, and indicate whether the applicant satisfactorily addressed these issues.
- If the applicant is owned by a holding company, provide the current FRB rating, total assets and capital ratios of the holding company as of the most recent quarter-end.
- Discuss how the foreign branch or investment in the foreign organization will affect the applicant's overall condition, risk profile and future prospects.
- If appropriate, summarize pro-forma financial projections for each of the three years following consummation of the transaction. Financial projections for each of the three years following consummation of the transaction may be requested, particularly if plans include changes to the business model, expansion into new markets, targeting specific types of customers, or other material growth.

HOST COUNTRY SUPERVISORY ISSUES

Identify which foreign authorities, if any, supervise the proposed foreign branch or foreign organization. Consult with WO RMAS, LBS, CISR, and Legal, as necessary, to research and comment on any potential host country supervisory issues or concerns. If the foreign branch or foreign organization is regulated, describe the following items as applicable:

- Supervisory powers of the host country authorities and any onsite examinations and offsite monitoring conducted by foreign supervisory authorities.
- If the application involves a foreign organization or proposed branch that is not subject to foreign supervision, state so and discuss whether this presents a supervisory concern or if the activity

warrants a specialized supervisory strategy.

- Whether the foreign organization is in compliance with established supervisory standards of the host country and if any enforcement actions are outstanding, pending, or recently terminated or otherwise settled.
- Any deposit insurance coverage that exists in the host country and whether such coverage applies to the proposed branch or foreign organization.

CONCLUSION

Discuss whether the proposed transaction poses any undue risk to the Deposit Insurance Fund or to the applicant.

REGIONAL OFFICE RECOMMENDATION

State the RO's recommendation for approval or denial of the application. Indicate if the RO recommends any non-standard conditions. Summarize comments from other applicable supervisory authorities, both foreign and domestic, and state whether these authorities expressed any concerns regarding the application.

VI. TIME FRAME FOR PROCESSING

Expedited Processing for Eligible Institutions:

The RO must take action on a branch application or application for investment in a foreign organization receiving expedited processing prior to the "deemed approved" date. An application submitted by an eligible depository institution will be "deemed approved" 45 days after receipt of a substantially complete application by the FDIC. The FDIC may remove an application from expedited processing prior to the "deemed approved" date for any of the reasons set forth in Section 303.11(c)(2) of the FDIC Rules and Regulations.

Standard Processing:

Statutory: None

RO Processing Guideline:

Within 60 days of receipt of a substantially complete branch application.

Within 75 days of receipt of a substantially complete foreign investment application.

VII. PUBLICATION REQUIREMENT

None.

VIII. DELEGATED AUTHORITY

The Case Manager should refer to the delegations of authority matrices; additional information is provided in *Applications Overview*, Section 1.1 of these Procedures. On a case-by-case basis, the Division of Risk Management Supervision (RMS) Director, Deputy Director, or Associate Director may delegate approval authority for applications to the RMS Regional Director or Deputy Regional Director. This delegated authority may be exercised only after determining, with input from Legal, that any issues related to the foreign operations have been addressed, including the imposition of any necessary non-standard conditions.

IX. REFERENCES

Bank Holding Company Act (FRB Regulation Y)

Section 25A of the Federal Reserve Act

Parts 303 and 347 of the FDIC Rules and Regulations

Sections 18(d)(2) and 18(l) of the FDI Act