

would be required to provide written notice to the OCC within 10 days after converting a full-service Federal branch into a limited Federal branch or Federal agency. Also, as discussed in connection with proposed § 28.12(a)(2), such a downgrade in operations would not require the foreign bank to obtain a new license.

5. Eligible Foreign Bank (revised § 28.12(f))

Under current part 28, foreign banks with Federal branches and agencies that all are rated “1” or “2” under the applicable interagency rating system are eligible for expedited processing for their applications and other filings. 12 CFR 28.12(e) and (f). The proposed rule would revise § 28.12(f) to provide that a foreign bank that has no Federal branches or agencies also is eligible if it is engaging in a state-to-Federal conversion and its state offices satisfy the eligibility criteria. This change would codify procedures that the OCC already has adopted in its Licensing Manual.

6. After-the-fact Notice for Certain Acquisitions (new § 28.12(h))

Under current part 28, if foreign bank A, which has a Federal branch, merges with foreign bank B, which does not have a Federal office, an application to establish the Federal branch would have to be submitted to the OCC if B were the surviving institution. Under current § 28.12(g), the two foreign banks may proceed with their merger without approval of B’s establishment of the branch if B provides reasonable advance notice of the transaction to the OCC. Prior to the merger, B must also apply to the OCC or commit to abide by the OCC’s decision on the application.

New § 28.12(h) would provide an expedited procedure for foreign bank B if B already has banking offices in the United States. The proposed rule would further decrease the regulatory burden on foreign banks, while maintaining safety and soundness standards. The OCC would retain the discretion to require prior approval to establish the Federal branch or agency if necessary for prudential reasons.

7. Exceptions to Usual Filing Procedures (revised § 28.12(j))

For national banks, § 5.2(b) of the OCC’s rules permits the OCC to use filing procedures other than those prescribed by part 5 in “exceptional circumstances,” including “unusual transactions.” The proposed rule revises § 28.12(j) (as redesignated in this proposal) to clarify that the OCC also reserves the right to adopt different

procedures with respect to a part 28 filing or class of filings.

8. Other Applications Accepted (new § 28.12(l))

The OCC’s Licensing Manual currently states that the OCC will accept copies of applications to other Federal agencies if they contain the information that we require for a particular OCC approval requirement. The proposed rule revises § 28.12(l) to codify this practice and provide that the OCC will accept copies of applications or notices to other regulators. The OCC may, however, request additional information from an applicant as deemed necessary should the application or notice contain less information than the OCC needs to reach a decision.

9. Capital Equivalency Deposits (revised § 28.15(a)(1) and new § 28.15(a)(3))

The IBA requires Federal branches and agencies to establish and maintain a CED. 12 U.S.C. 3102(g). On June 19, 2002, the OCC issued a final rule revising certain requirements regarding CED deposit arrangements to increase flexibility for, and reduce burden on, certain Federal branches and agencies, based on a supervisory assessment of the risks presented by the particular institutions.⁴ The additional changes contained in this proposal would further reduce unnecessary burden and simplify compliance with the CED requirements.

The proposed rule amends § 28.15(a)(1) to clarify the types of assets eligible to be deposited in a CED. Currently, a CED must consist of bank-eligible securities; dollar deposits payable in the United States; certificates of deposit payable in the United States; and other assets permitted by the OCC. Under the proposed rule, the requirement that dollar deposits be payable in the United States would be amended to include dollar deposits payable in any G-10 country. It further adds repurchase agreements to the list of permissible CED assets. Finally, the proposal revises this paragraph to clarify that the OCC’s authority to permit other assets to qualify for the CED is limited to other assets that are similar to those expressly included in the statute.

The proposed rule adds a new § 28.15(a)(3) that would clarify that the OCC excludes liabilities of an international banking facility to third parties, and of a Federal branch to an international banking facility, when calculating the required amount of a CED. This is consistent with the OCC’s

current policy. Also, the proposed rule permits the OCC to exclude liabilities from repurchase agreements on a case-by-case basis. These provisions are consistent with the practice of some other regulators. See 3 NYCRR 322.1(a)(1) and (c) (exclusion of liabilities from repurchase agreements for purposes of calculating CED under New York state regulations).

10. CED Deposit Accounts (new § 28.15(e))

The statutory CED requirement specifies that “a foreign bank * * * 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.” 12 U.S.C. 3102(g)(1).

The IBA does not expressly address whether the CEDs of several Federal branches may be combined or whether a foreign bank with Federal branches and agencies in more than one state may keep CEDs in one account in a depository bank. Moreover, the IBA does not define the term “located” for purposes of determining where a depository bank is located or where the Federal branch or agency is located for purposes of the CED requirement. The proposed rule clarifies that a foreign bank with interstate offices has the discretion to consolidate all or some of its CEDs into one account. It further clarifies that, for purposes of the CED account, a foreign bank must deposit the CEDs in a depository bank that is located, *i.e.*, has its main office or a branch, in the parent foreign bank’s home state⁵ or in the state in which the Federal branch or agency is licensed.⁶

⁵ See 12 CFR 28.11(o)(definition of “home state”).

⁶ As described in the text, the IBA provides that a CED shall be “in accordance with such limitations and conditions as the Comptroller may prescribe. * * *” 12 U.S.C. 3102(g)(1). Moreover, the OCC has discretion in structuring the form and terms of the CED agreement. The IBA provides that “[t]he 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.” 12 U.S.C. 3102(g)(3). More generally, the OCC has the authority to issue appropriate rules, regulations, and orders for the establishment and administration of Federal branches. See 12 U.S.C. 3102(b) and 3108(a).