

regulations if at all.³⁷ In addition, because Section 402 conditions the bank exemption on compliance with Regulation O, it is consistent to condition the foreign bank exemption on requirements comparable to those under Regulation O.

Comment Solicited

We solicit comment on proposed Rule 13k-1(b)(2). Should we require a foreign bank to be subject to at least one of the three prescribed insider lending restrictions in its home jurisdiction in addition to being from a jurisdiction that has enacted a deposit insurance requirement or has received a favorable CCS determination, as proposed? Should being subject to one of the three prescribed insider lending restrictions in its home jurisdiction be the sole criterion for determining whether a foreign bank is eligible for the insider lending exemption? Or should being from a jurisdiction that has received a favorable CCS determination suffice to qualify a foreign bank for the exemption?

If we should require a foreign bank to be subject to insider lending restrictions in its home jurisdiction, should we limit the alternatives to those set forth in the first two prongs of proposed Rule 13k-1(b)(2)? Should we require a foreign bank to be subject to insider lending restrictions that are substantially similar to other insider lending provisions of Regulation O in addition to the two proposed restrictions? Should we permit a foreign bank to make insider loans that comply with Regulation O requirements even if the foreign bank's home jurisdiction has not yet enacted these requirements as laws or rules?

Should we condition the Section 13(k) exemption for a foreign bank's loans to the executive officers or directors of its parent company, as proposed? If so, should we define a foreign bank's "parent company" as a corporation or other organization that directly or indirectly owns more than 50 percent of the voting securities or equity of the foreign bank, as proposed? Should the percentage of ownership be higher or lower and, if so, why? For example, should we base our definition on the definition of "subsidiary" under the Bank Holding Company Act,³⁸ which is referenced in Regulation O,³⁹ and which in part defines the subsidiary of a bank holding company as any company 25 percent or more of whose

voting shares are directly or indirectly owned or controlled by such bank holding company? Are there other indices of ownership or control that the definition of a foreign bank's "parent company" should include?

Should we permit a foreign bank to qualify for the exemption if its insider loans are subject to prior approval by the bank supervisor in its home jurisdiction, as proposed? Should we subject a foreign bank only generally to insider lending restrictions in its home jurisdiction without specifying the content of the restrictions? Are there other criteria that should be used, either as alternatives to those that have been proposed or as sole criteria? For example, should we exempt from the proposed insider lending conditions insider loans of a foreign bank that are of a *de minimis* amount and that are exempt from insider lending restrictions in its home jurisdiction? Would this type of exemption be consistent with insider lending restrictions applicable to U.S. banks?

E. The Prior Board of Directors Approval Condition

Proposed Rule 13k-1(b)(3) would require prior approval by a majority of the foreign bank's board of directors of any insider loan in an amount that, when aggregated with all other outstanding loans to a particular executive officer or director, exceeds \$500,000. The proposed rule would also require the intended loan recipient to abstain from the vote on the loan. Domestic banks are subject to a similar requirement under federal banking law.⁴⁰

We understand that some foreign banks may have a two-tier board system, with one tier designated as the management board and the other tier designated as the supervisory or non-management board. We propose that, for these banks, majority approval of the insider loan by either board will suffice to satisfy the prior board approval requirement of proposed Rule 13k-1(b)(3) as long as the individual receiving the loan has abstained from participating in the board's voting.

We have not included some of the other detailed conditions required by Regulation O in the proposed foreign

bank exemption. For example, Regulation O sets limits on the aggregate amount of credit that a subject bank may extend to any one insider as well as to all insiders. These limits are measured as a percentage of the bank's unimpaired capital and unimpaired surplus.⁴¹ The primary purpose of these limitations appears to be to ensure the safety and structural soundness of the U.S. banking system rather than to address the investor protection and corporate governance concerns underlying the federal securities laws. Accordingly, and because foreign jurisdictions can legitimately reach different conclusions regarding the necessary features of a safe and sound banking system, we have not included similar limitations in our proposed rule.

Comment Solicited

We solicit comment on proposed Rule 13k-1(b)(3). Should we require prior board approval for an insider loan that, when aggregated with all other loans to that insider, exceeds a certain amount? If so, should the amount be \$500,000, as proposed? Should it be an amount less than or greater than \$500,000 and, if so, why? Should we require that more than a majority of the board approve such a loan? For example, should we require a two-thirds vote or a unanimous vote of approval by the board?

For a foreign bank that has a two-tier board, should majority approval of the insider loan by either board suffice to satisfy the prior board approval requirement, as proposed? Should we instead require majority approval by the non-management, supervisory board?

Should proposed Rule 13k-1(b)(3) require the prior approval either of a foreign bank's board or its home jurisdiction bank supervisor? Are there other types of insider loans that should be the subject of a prior board or bank regulator approval requirement? For example, should we impose limitations on the amount that a foreign bank's directors and executive officers can borrow either on an individual basis or in the aggregate under proposed Rule 13k-1? Should we impose conditions based on specified net capital ratios?

F. Disclosure Considerations

Currently, domestic and foreign banks are subject to substantially similar disclosure requirements regarding insider loans under the federal securities laws. As long as a bank does not disclose the loans as nonaccrual, past due, restructured or potential

³⁷ While some of the Board's CCS determinations mention the presence of home country insider lending restrictions as one factor to be considered among others, others fail to discuss this factor at all.

³⁸ 12 U.S.C. 1841(d).

³⁹ See 12 C.F.R. 215.2(a) and (o).

⁴⁰ See, for example, 12 CFR 215.4(b) of Regulation O, which imposes similar board approval and insider abstention conditions for insider loans by member banks that exceed in the aggregate per insider the higher of \$25,000 or 5 percent of the member bank's unimpaired capital and unimpaired surplus. This provision further provides that in no event may a member bank extend credit to an insider that in the aggregate exceeds \$500,000 per insider without complying with the board approval and insider abstention requirements.

⁴¹ See 12 CFR 215.4(c) and (d) of Regulation O.