

Comptroller may approve an application if the host state has in effect a non-discriminatory law that expressly permits all out-of-state banks to establish *de novo* branches in the state. The commenters in those letters said that Florida has not passed such authorizing legislation and has, in fact, passed a statute prohibiting interstate *de novo* branching. The commenters concluded by requesting that the OCC clarify in the final rule that foreign banks will not be able to branch interstate in a manner prohibited to domestic national banks.

The procedural changes we proposed do not permit this result. As we said in the NPRM, none of the proposed changes affects any legal requirements that are otherwise applicable under law with respect to a national bank's foreign activities "*or the operations of foreign banks in the United States.*" As a commenter pointed out, the IBA contains provisions that expressly apply to branching by Federal branches and agencies. See 12 U.S.C. 3102(h)(A), 3103. Section 3103(a)(1) generally references domestic national banking law to determine the interstate branching authority of Federal branches and agencies. It permits a foreign bank to establish a Federal branch or agency outside of its home state "to the extent that the establishment and operation of such branch would be permitted under section 5155(g) of the Revised Statutes (12 U.S.C. 36(g)) or section 44 of the Federal Deposit Insurance Act (12 U.S.C. 1831u) if the foreign bank were a national bank whose home State is the same State as the home State of the foreign bank." 12 U.S.C. 3103(a)(1). Moreover, the statute directs the OCC to apply not only the requirements of the IBA with respect to the establishment of a Federal branch or agency but also capital and merger requirements under domestic banking law. 12 U.S.C. 3103(a)(3). The legislative history likewise states that "a foreign bank would be permitted to establish or acquire [F]ederal branches in states other than its home state to the same extent that a national bank from the foreign bank's home state may engage in interstate branching." H. Rep. 103-448, 103d Cong., 2d Sess., 18 (1994).

The IBA, however, also authorizes branches and agencies of foreign banks to branch interstate and to upgrade interstate offices under circumstances that may be different from those permitted for domestic banks. See 12 U.S.C. 3103(a)(7). Notwithstanding the domestic bank parity provisions, a foreign bank may establish a branch or agency in a state other than its home state if the host state permits the

establishment and operation of the branch or agency and any such branch accepts only deposits permissible for Edge Act corporations.¹² Also, notwithstanding the domestic bank parity provisions, foreign banks may upgrade interstate offices subject to certain conditions.

We proposed to establish expedited procedures for eligible foreign banks to obtain OCC approval of applications to open a Federal branch or agency on an interstate basis. The proposal did not provide a new source of authority for a foreign bank to establish such an interstate office. Nor did it make any substantive changes in the legal requirements for interstate branching under the IBA.

For these reasons, we have not changed the final rule in the manner suggested by these commenters. In addition, we do not believe that it is appropriate to include a provision in the regulation clarifying that the OCC will not approve an application of a foreign bank to establish a *de novo* branch in a state in which *de novo* banking is not permitted for domestic institutions. As explained above, the statement is unnecessary. The regulation provides only for expedited approval procedures for such applications and does not address any of the substantive legal requirements for interstate branching.

Thus, the changes discussed above to shorten the period for processing notices for intrastate expansions by foreign banks and *de novo* interstate branching applications submitted by eligible foreign banks are the only changes that are made in the final rule that apply to the expedited approval procedures proposed in the NPRM.

6. 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 of certain 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 simply codify procedures that we have already adopted in our Manual.

No comments were received on this proposal and the OCC is adopting it as proposed.

7. 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 branch or agency, 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.

Proposed new § 28.12(h) provided an expedited procedure for foreign bank B if B already has banking offices in the United States. However, we would retain the discretion to require prior approval to establish the Federal branch or agency if necessary for prudential reasons.

One commenter supported streamlining this procedure in the manner proposed by the OCC. The OCC is, thus, adopting this provision without change.

8. Exceptions to Usual Filing Procedures (Revised § 28.12(j))

This technical change revised § 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.

No comments were received on this provision and we are adopting it without change.

9. Other Applications Accepted (New § 28.12(k) (Designated as § 28.12(l) in the NPRM))

This technical amendment added § 28.12(k) to codify the current OCC practice of accepting applications or notices filed with other Federal agencies that contain the necessary information required by the OCC to approve an application or act on a particular request. Under the proposal, we retained the discretion to request additional information from an applicant as deemed necessary. This amendment is adopted without change.

10. 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). In 2002, the OCC issued a final rule revising certain requirements regarding CED deposit arrangements based on a supervisory

¹² See 12 CFR 211.6.