

I. INTRODUCTION

Section 347 (Subpart B), issued pursuant to Sections 5(c) and 10(b)(4) of the Federal Deposit Insurance (FDI) Act and Sections 6, 7, and 15 of the International Banking Act of 1978, and Section 303 (Subpart J) of the FDIC Rules and Regulations establish the FDIC's requirements for foreign banks with branches in the U.S. The Foreign Bank Supervision Enhancement Act of 1991, Sections 201 through 215 of the Federal Deposit Insurance Corporation Improvement Act (FDICIA), precludes the establishment of new insured branches of foreign banks in the U.S. Foreign banks seeking to engage in insured domestic retail deposit-taking activities must establish a depository institution subsidiary, unless the foreign bank has U.S. branches that were insured prior to December 19, 1991.

This Section of these Procedures discusses applications related to U.S. activities of insured branches of foreign banks. U.S. activities of foreign banks that are subject to application or notification requirements include the following:

- Moving or merging an insured branch;
- Conducting activities not permissible for federal branches; and,
- Divesting an impermissible activity.

Institutions may also seek an exemption from insurance requirements for a state branch of a foreign bank.

The FDIC, the Board of Governors of the Federal Reserve System (FRB), and the Conference of State Bank Supervisors (CSBS) entered into the Nationwide State/Federal Foreign Banking Organization Supervision and Examination Coordination Agreement (State-Federal Agreement) on November 20, 1998. The State-Federal Agreement parallels the Nationwide Foreign Banking Organization Supervision and Examination Coordination Agreement (State Coordination Agreement), which was also executed on November 20, 1998. The Agreements set forth procedures for the coordination of examinations, applications, supervisory actions, and other matters relating to multi-state operations of foreign banking organizations (FBOs). The Agreements provide that all FBOs with operations in multiple states will be assigned a State Coordinator to act as a single point of contact for coordination of the supervision and examination of the particular FBO. Both Agreements are available on the CSBS website at the following link:

[CSBS Cooperative Agreements](#)

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.¹ In addition, regarding the preparation and content of the 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 instruction included within this Section.

II. MOVING AN INSURED BRANCH OF A FOREIGN BANK

Section 18(d)(1) of the FDI Act requires a foreign bank to obtain FDIC consent to move an insured branch from one location to another. Regarding such consent, the FDIC must consider the statutory factors in Section 6 of the FDI Act. Section 303, Subpart J, of the FDIC Rules and Regulations sets forth filing procedures and definitions.

¹ 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.

A. FORM OF APPLICATION

Section 303.184 of the FDIC Rules and Regulations requires an application by an insured branch of a foreign bank seeking the FDIC's consent to move from one location to another to be submitted in writing to the appropriate Regional Office (RO) on the date the notice is published, or within five days after the date of the last required publication. If the bank is filing an application with the Office of the Comptroller of the Currency that includes the information described below, the bank may submit a copy to the FDIC in lieu of a separate application. A complete application includes the following information:

1. The exact location of the proposed site, including the street address. If the site does not have a street address, a precise description of its location must be provided. For example, “the east side of U.S. Highway XX, 400 feet south of the intersection of U.S. Highway XX and State Road XX.” If the site is at the intersection of two roads, the quadrant in which the site lies will need to be designated. The location of the site must be used for publication purposes. Proposals involving the use of temporary quarters should be considered two moves.
2. Details concerning any involvement in the proposal by an insider (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. Case Managers are to assess documentation provided by the applicant to ensure that the proposed insider transactions are fair and reasonable in comparison to similar arrangements that could have been made with independent third parties;
3. Details regarding any changes in services to be offered, the community to be served, or any other effect the proposal may have on the applicant’s compliance with the Community Reinvestment Act (CRA); and,
4. A copy of the newspaper publication(s), as well as the name and address of the newspaper(s) and the date(s) of the publication(s).

The FDIC may request additional information to complete processing.

B. ACCEPTING AND PROCESSING THE APPLICATION

1. Review the application upon receipt, or as soon as practical, to determine whether 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. An application filed by an eligible insured branch as defined in Section 303.181(c) will receive expedited processing, if the applicant is proposing to move within the same state (“intrastate”), unless the applicant is notified in writing prior to the deemed approved date that the application is being removed from expedited processing and provided with the basis for that decision. Absent such removal, the application will be deemed approved as described under *Time Frame for Processing* below.
2. Establish the record under Other – Miscellaneous in the appropriate internal database, select *Anything Else* as the type. 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.
3. Notify the Division of Depositor and Consumer Protection (DCP) of receipt of the application. Refer to *Applications Subject to CRA and Compliance Examinations*, Section 1.10 of these Procedures, for further instructions.

4. While processing branch applications, the FDIC must comply with the requirements of the NHPA and NEPA. Refer to Sections 1.7 and 1.8 of these Procedures for further discussion of the application processing procedures relative to the NHPA and NEPA, respectively.
5. Initially review all materials for completeness, and request additional information if necessary.
6. Analyze the application and complete the appropriate SOI form. Retrieve the Applications Summary Statement from the appropriate internal database and attach it to the SOI. In order to approve an application to move an insured branch of a foreign bank, the FDIC must evaluate and favorably resolve each requirement for approval set forth in Section 303.184(d) of the FDIC Rules and Regulations. These requirements are:
 - a. The statutory factors set forth in Section 6 of the FDI Act have been considered and favorably resolved;²
 - b. The applicant is at least adequately capitalized as defined in Part 324 of the FDIC Rules and Regulations.
 - c. Any financial arrangements with insiders made in connection with the proposed relocation are fair and reasonable in comparison to similar arrangements that could have been made with independent third parties;
 - d. Compliance with the CRA, NEPA, NHPA and any applicable related regulations has been considered and favorably resolved;
 - e. No CRA protest has been filed which remains unresolved or, if such a protest has been filed that remains unresolved, the Director or designee concurs that approval is consistent with the purposes of the CRA and the applicant agrees in writing to any conditions imposed regarding the CRA; and,
 - f. The applicant agrees in writing to any non-standard conditions.

SOI comments should address each of the above requirements and should include the address and description of the new branch, activities of the branch, the business plan and any changes to the business plan, and any other comments that may be warranted.

Special Considerations for Interstate Relocations - If the foreign bank proposes to relocate an insured state branch to a state that is outside the state where the branch is presently located, in addition to meeting the criteria for an intrastate relocation, the foreign bank must:

- a. Comply with any applicable state laws or regulations of the states affected by the proposed relocation; and,
 - b. Obtain any required regulatory approvals from the appropriate state licensing authority of the state to which the insured branch proposes to relocate before relocating the existing branch operations and surrendering its existing license to the appropriate state licensing authority of the state from which the branch is relocating.
7. If approval is being recommended, prepare an approval letter. The letter should request that the applicant notify the appropriate RO of the consummation date and 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 guidance regarding the imposition of conditions.
 8. 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

² Refer to *Establish A Domestic Branch*, Section 7 of these Procedures, for additional guidance.

decision. If recommending denial, prepare a draft disapproval letter. Refer to *Denials and Disapprovals*, Section 1.3 of these Procedures, for further guidance.

9. For applications that cannot be acted on under delegated authority, submit the SOI and draft letter to the WO for final processing. Refer to *Applications Overview*, Section 1.1 of these Procedures, for additional instructions regarding applications that require WO action or input.
10. Update the appropriate internal database to reflect the date forwarded to the WO, if applicable, the action, the date of the action, hours devoted to the application, and any other required information.

C. TIME FRAME FOR PROCESSING

Expedited Processing (Available for Intrastate Branch Relocations Only):

The RO must take action on a branch relocation application receiving expedited processing prior to the “deemed approved” date. 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. An application processed under expedited processing will be deemed approved on the latest of the following:

- The 21st day after the FDIC’s receipt of a substantially complete application; or,
- The 5th day after expiration of the comment period.

Standard Processing:

Statutory: None

RO Processing Guideline: 45 days from receipt of a substantially complete application.

WO Processing Guideline: 45 days from receipt from the RO.

D. PUBLICATION REQUIREMENT

The applicant shall publish a notice of its proposal to move from one location to another in a newspaper of general circulation in the community in which the insured branch is located prior to the move, and in the community to which it is to be moved. The notice shall include the insured branch's current and proposed addresses. If the insured branch has a public lobby, a copy of the newspaper publication shall be posted in the public lobby for at least 15 days beginning on the date of the publication.

All public comments must be received by the appropriate RO within 15 days after the date of the last required newspaper publication, unless the comment period has been extended or reopened.

E. 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.

III. MERGERS INVOLVING AN INSURED BRANCH OF A FOREIGN BANK

Mergers requiring the FDIC’s prior approval, as set forth in Section 303.62 of the FDIC Rules and Regulations, are detailed in *Merge or Consolidate*, Section 4 of these Procedures, and include any merger in which the resulting institution is an insured branch of a foreign bank, or any merger that involves an insured branch and an uninsured institution.

IV. EXEMPTIONS FROM INSURANCE REQUIREMENTS

Pursuant to Section 347.213 of the FDIC Rules and Regulations, a foreign bank may establish and operate a state branch, as provided by state law, without federal deposit insurance whenever (1) the branch only accepts initial deposits in an amount equal to or greater than the Standard Maximum Deposit Insurance Amount (SMDIA) as defined at Section 347.202(v) of the FDIC Rules and Regulations; or (2) the branch meets the criteria set forth in Sections 347.214 and 347.215 of the FDIC Rules and Regulations.

If a foreign bank proposes to accept initial deposits of less than the SMDIA and such deposits are not otherwise exempted under Section 347.215(a) of the FDIC Rules and Regulations, the foreign bank must obtain FDIC consent to operate as a noninsured branch.

The FDIC Board may exempt the state branch from the insurance requirement if the branch is not engaged in domestic retail deposit activities requiring insurance protection. The FDIC Board will consider the size and nature of deposit accounts; the importance of maintaining and improving the availability of credit to all sectors of the U.S. economy, including the international trade finance sector of the U.S. economy; whether the exemption would give the foreign bank an unfair competitive advantage over U.S. banking organizations; and, any other relevant factors.

A. FORM OF APPLICATION

Section 303.186(a) of the FDIC Rules and Regulations requires a foreign bank seeking consent to operate as a noninsured state branch to submit an application in writing to the appropriate RO. Complete applications include:

1. The kinds of deposit activities in which the branch proposes to engage;
2. The expected sources of deposits;
3. The manner in which deposits will be solicited;
4. How the activity will maintain or improve the availability of credit to all sectors of the U.S. economy, including the international trade finance sector;
5. A supported statement that the activity will not give the foreign bank an unfair competitive advantage over U.S. banking organizations; and,
6. A resolution by the applicant's board of directors authorizing the filing of the application; or, if a resolution is not required pursuant to the applicant's organizational documents, evidence of approval by its senior management.

The FDIC may request additional information to complete processing.

B. ACCEPTING AND PROCESSING THE APPLICATION

1. Establish the record under Other – Miscellaneous in the appropriate internal database, and select *Applications to Operate a Noninsured Branch of a Foreign Bank* as the type. 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.
2. Initially review all materials for completeness, and request additional information if necessary.

3. Analyze the application and complete the appropriate SOI form. Retrieve the Applications Summary Statement from the appropriate internal database and attach it to the SOI. SOI comments should address the application requirements described in *Form of Application*, Part IV, Subpart A of this Section.
4. If approval is being recommended, prepare an approval letter. The letter should request that the applicant notify the appropriate RO of the consummation date and 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 guidance regarding the imposition of conditions.
5. If the application presents deficiencies that may result in its denial, the RO should advise the applicant of the concerns and deficiencies and provide the applicant an opportunity to submit additional information or withdraw the application. If denial is being recommended, prepare a disapproval letter. Refer to *Denials and Disapprovals*, Section 1.3 of these Procedures, for further guidance.
6. Submit the SOI and draft letter to the WO for final processing. The WO will finalize the review and necessary documents. Refer to *Applications Overview*, Section 1.1 of these Procedures, for additional instructions regarding applications that require WO action or input.
7. Update the appropriate internal database to reflect the date forwarded to the WO, hours devoted to the application, and any other required information.

C. TIME FRAME FOR PROCESSING

Statutory: None

RO Processing Guideline: 60 days from receipt of a substantially complete application.

WO Processing Guideline: 60 days from receipt from the RO.

D. PUBLICATION REQUIREMENT

None

E. 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.

V. PERMISSION TO ENGAGE IN AN ACTIVITY NOT PERMISSIBLE FOR A FEDERAL BRANCH

Section 347.212 of the FDIC Rules and Regulations requires a foreign bank operating an insured state branch to file a written application with the FDIC for permission to engage in or to continue to engage in any type of activity that is not permissible for a federal branch. However, the foreign bank shall not be required to submit an application if:

- (1) The FDIC has already determined that the activity does not present a significant risk to the Deposit Insurance Fund (DIF) pursuant to Part 362 of the FDIC Rules and Regulations; or,
- (2) The activity is conducted as agent, the activity is a permissible agency activity for an insured state branch in the state in which the branch is located, the activity is a permissible agency activity for a state-licensed branch of a foreign bank located in that state, and the activity is permissible pursuant to any other applicable federal law or regulation.

A. FORM OF APPLICATION

Section 303.187 of the FDIC Rules and Regulations requires an insured state branch seeking approval to conduct activities not permissible for a federal branch to submit a letter application to the appropriate RO. If the bank has filed an application with the FRB that provides the information described below, the bank may submit a copy to the FDIC in lieu of a separate application. The application shall include the following information:

1. A brief description of the activity, including the manner in which the activity will be conducted and an estimate of the expected dollar volume associated with the activity;
2. An analysis of the impact of the proposed activity on the condition of the U.S. operations of the foreign bank in general, and of the branch in particular, including a copy of the feasibility study, management plan, financial projections, business plan, or similar document concerning the conduct of the activity;
3. A resolution by the applicant's board of directors authorizing the filing of the application or, if a resolution is not required pursuant to the applicant's organizational documents, evidence of approval by its senior management;
4. A statement by the applicant of whether the branch is in compliance with Sections 347.209 and 347.210 of the FDIC Rules and Regulations, titled *Pledge of Assets* and *Asset Maintenance*, respectively;
5. A statement by the applicant that it has complied with all requirements of the FRB concerning applications to conduct the activity in question, and the status of each such application, including a copy of the FRB's disposition of such application, if applicable; and,
6. A supported statement as to why the activity will not pose a significant risk to the DIF.

The FDIC may request additional information to complete processing.

B. ACCEPTING AND PROCESSING THE APPLICATION

1. Establish the record under Other – Miscellaneous in the appropriate internal database and select *Application by Insured State Branch of Foreign Bank to Conduct Activity Not Permissible for Federal Branches* as the type. 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.
2. Initially review all materials for completeness, and request additional information if necessary.
3. Analyze the application and complete the appropriate SOI form. Retrieve the Applications

Summary Statement from the appropriate internal database and attach it to the SOI. SOI comments should address the application requirements described in *Form of Application*, Part V, Subpart A of this Section.

4. If approval is being recommended, prepare an approval letter. The letter should include all applicable standard conditions and any recommended non-standard conditions. The application may be conditioned on the applicant's agreement to conduct the activity subject to specific limitations, such as pledging assets and/or maintaining eligible assets in excess of the requirements of Section 347.209 and Section 347.210 of the FDIC Rules and Regulations, respectively. In the case of an application to initially engage in an activity, as opposed to an application to continue to conduct an activity, the approval letter should indicate that the insured state branch shall not commence the activity until it has been approved in writing by the FDIC and the FRB, and all conditions imposed have been satisfied.
5. 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 guidance regarding the imposition of conditions.
6. If the application presents deficiencies that may result in a denial, 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 guidance.
7. Submit the SOI and draft letter to RMAS for final processing. RMAS will finalize the review and the necessary documents. Refer to *Applications Overview*, Section 1.1 of these Procedures, for additional instructions regarding applications that require WO action or input.
8. Update the appropriate internal database to reflect the date forwarded to RMAS, hours devoted to the application, and any other required information.

C. TIME FRAME FOR PROCESSING

Statutory: None

RO Processing Guideline: 60 days from receipt of a substantially complete application.

WO Processing Guideline: 60 days from receipt from the RO.

D. 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.

VII. DIVESTITURE OR CESSATION

Section 347.212(e) of the FDIC Rules and Regulations requires a foreign bank operating an insured state branch to submit a plan of divestiture or cessation of an activity to the appropriate Regional Director when (1) an application for permission to continue to conduct an activity is not approved by the FDIC or the FRB; or, (2) the foreign bank elects not to apply to the FDIC for permission to continue to conduct an activity that is rendered impermissible by any change in statute, regulation, official bulletin or circular, written order or interpretation, or decision of a court of competent jurisdiction. The divestiture plan should be submitted

to the appropriate RO no later than 60 days after the disapproval or the triggering event. Divestitures or cessations must be completed within one year from the date of the disapproval, or within a shorter period of time as directed by the FDIC.

A. FORM OF APPLICATION

Section 303.187(b) of the FDIC Rules and Regulations states that divestiture plans necessitated by a change in law or other authority shall be submitted in writing to the appropriate RO and shall include the following information:

1. A detailed description of the manner in which the applicant proposes to divest itself of or cease the activity in question; and,
2. A projected timetable describing how long the divestiture or cessation is expected to take.

The FDIC may request additional information to complete processing.

B. ACCEPTING AND PROCESSING THE APPLICATION

1. Establish the record under Other – Miscellaneous in the appropriate internal database and select *Divestiture Plans for Nonpermissible Activities* as the type. 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.
2. Initially review all materials for completeness, and request additional information if necessary.
3. Analyze the divestiture plan and complete the appropriate SOI form. Retrieve the Applications Summary Statement from the system of record and attach it to the SOI. The SOI narrative should include a description of the activity in question, the manner in which the applicant proposes to divest itself of or cease the activity in question, a projected timetable describing the time required to complete the divestiture or cessation, the recommended action, and the analysis that led to the recommended action.
4. If approval is being recommended, prepare an approval letter. 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 guidance regarding the imposition of conditions.
5. If there are concerns or deficiencies that may result in denial, 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 guidance.
6. If denial is recommended, coordinate with RMAS and submit the SOI and draft denial letter to RMAS for final processing. RMAS will finalize the review and the necessary documents. Refer to *Applications Overview*, Section 1.1 of these Procedures, for additional instructions regarding applications that require WO action or input.
7. Update the appropriate internal database to reflect the date of final action, the date forwarded to RMAS, if applicable, hours devoted to the application, and any other required information.

C. TIME FRAME FOR PROCESSING

Statutory: None

RO Processing Guideline: 45 days from receipt of a substantially complete application.

WO Processing Guideline: 45 days from receipt from the RO.

D. 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.

VIII. PLEDGE AGREEMENTS

A foreign bank that operates an insured branch must pledge assets for the benefit of the FDIC or its designee(s). Whenever the FDIC is obligated under section 11(f) of the FDI Act to pay the insured deposits of an insured branch, the assets pledged under this section must become the property of the FDIC and be used to the extent necessary to protect the DIF.

Section 347.209(d) of the FDIC Rules and Regulations identifies the types of assets that a foreign bank may pledge for the benefit of the FDIC and the standards that must be met.

IX. REFERENCES

Federal Deposit Insurance Act Section 5(b), 11(f), 18(d)(1)

Parts 303 (Subpart J), and 347 of the FDIC Rules and Regulations

Foreign Bank Super Enhancement Act of 1991 (Sections 201-215 of FDICIA)

Nationwide Foreign Banking Organization and Examination Coordination Agreements (“CSBS Coordination Agreement” and “CSBS State/Federal Agreement”)