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September 22, 2004

via email to comments@FDIC.gov

Robert E. Feldman, Executive Secretary
Attention: Comments/Legal ESS
Federal Deposit Insurance Corporation
550 17th Street, NW.
Washington, DC 20429

Re: **RIN 3064-AC85**; 12 CFR Parts 303, 325, 327, and 347 - Proposed Revision of International Banking Regulations; 69 Federal Register 43060; July 17, 2004

Dear Mr. Feldman:

The Federal Deposit Insurance Corporation (FDIC) significantly revised its international banking regulations in 1998. This proposal makes minor changes to those revised regulations: first, to amend the regulations to bring them into conformity with the Federal Reserve Board's international banking regulations in Regulation K; second, to simplify and reorganize certain parts of the FDIC's regulation; and third, to make some reductions in regulatory burden arising from suggestions from bankers under the ongoing EGRPRA regulatory burden reduction initiative. These amendments may affect all nonmember state chartered banks. The American Bankers Association (ABA) brings together all categories of banking institutions to best represent the interests of this rapidly changing industry. Its membership - which includes community, regional and money center banks and holding companies, as well as savings associations, trust companies and savings banks - makes ABA the largest banking trade association in the country.

A significant portion of the proposal is a rewriting of the current regulation to improve the clarity of the regulation and to more closely approximate plain English. ABA supports such revision but has no additional comment. ABA offers comment about specific provisions, below, if they make substantive changes in the regulation.

Specific Comments

Part 303

The FDIC proposes to revise Part 303 to allow expedited processing for branch relocations of grandfathered U.S. branches of foreign banks. The FDIC treats as a closure a relocation of a branch to another location not within geographical proximity to the original location. Unfortunately, grandfathered branches may not be closed and reopened under a provision of the International Banking Act, so the

result is that grandfathered branches are essentially fixed in location. The FDIC proposes to allow grandfathered branches to be relocated without being closed, if the relocation is in the same state. ABA supports the proposal.

Part 347

Proposed Section 347.115 adopts the approach to “investment grade” obligations now in revised Regulation K, which is a substantive improvement, and the ABA supports the proposal.

The FDIC also adds a paragraph to proposed Section 347.115 providing that the FDIC may authorize foreign branches of state nonmember banks to engage in activities that are not specifically listed in the proposed rule, and a new paragraph (h) is being added to clarify when other activities may be approved under the international banking regulations or, alternatively, when they also must be authorized under section 24 of the FDI Act and its implementing regulations in Part 362.5. ABA supports this provision for additional activities.

In Section 347.117, FDIC will allow an eligible state nonmember bank to establish additional branches in a country in which the bank’s holding company operates a foreign bank subsidiary, or in which an affiliated bank or Edge or Agreement corporation operates one or more foreign branches or foreign bank subsidiaries. This will allow for after-the-fact notification to the FDIC in those circumstances, rather than requiring prior approval of the branch. ABA supports the proposed change.

The FDIC is proposing to add a new Section 347.122 that provides that the FDIC may, under Section 18(d)(2) and 18(l) of the FDI Act, condition the authority granted under this regulation as it considers appropriate. The section also provides for termination of activities or divestiture of investments permitted under the subpart, after giving the bank notice and a reasonable opportunity to be heard, if a bank is unable or fails to comply with the requirements of the subpart or any conditions imposed by the FDIC regarding transactions under the subpart. ABA does not oppose the proposed revision.

Section 347.204 is greatly revised to expand the FDIC’s authority to require a foreign bank seeking to obtain FDIC insurance to consent to service, examination, and other inspection and reporting. ABA supports the revision.

The FDIC proposes to add Section 347.206(d) to provide that the “grandfathered status of an insured branch may not be transferred, except in certain merger and acquisition transactions that the FDIC determines are not designed, or motivated by the desire, to avoid compliance with section 6(d)(1) of the International Banking Act (12 U.S.C. 3104(d)(1)).” ABA does not oppose the addition, which appears to state explicitly what has been considered to be the law implicitly.

In proposed Section 347.207, the FDIC provides for the confidential exchange of supervisory information without loss of privilege between the FDIC and foreign bank supervisors. ABA supports the addition of this provision.

Section 347.209 increases the initial length of time from one year to three years that a new branch must maintain a pledge of assets to the FDIC to protect the FDIC in the event of a failure of the branch. The FDIC argues that the longer period is necessary to ensure that the branch has at least

one safety and soundness examination and sufficient time for any problems in the examination to be addressed by the institution. Section 347.209 also provides for a risk-based assessment of the need for pledge and the amount of pledge thereafter, and for a list of financial instruments acceptable for pledge. In general, ABA supports the proposed revision but has one recommendation. The list of assets that insured foreign banks may pledge to the FDIC includes certain negotiable certificates of deposit and banker's acceptances issued by state and national banks and notes issued by banks and bank holding companies but does not specifically allow certificates of deposit and banker's acceptances issued by state and federal savings associations to be pledged by a foreign bank. The section does not specifically allow notes issued by thrift holding companies and savings associations to be considered eligible assets for pledging. We can see no basis for distinguishing between banks' and savings associations' certificates of deposit and banker's acceptances or notes issued by bank versus thrift holding companies. All of these would appear to provide the same protection to the FDIC. Accordingly, ABA recommends that the FDIC amend this section to allow qualifying assets issued by savings associations and their holding companies to be pledged by foreign banks.

Section 347.210 changes the asset maintenance calculation period from the preceding quarter's average book value to 106% of the average daily third-party liabilities of the branch. FDIC cites the examples of branches winding up their businesses having to maintain very excessive amounts of assets. ABA supports the revision.

Conclusion

ABA believes that the FDIC's proposed revision overall makes the international banking regulation much easier to understand and to use. ABA has no objection to the FDIC's substantive changes, except to recommend that the FDIC amend its list of acceptable assets for pledge as suggested above in the discussion of Section 347.209. In the FDIC has any questions about this letter, please call the undersigned.

Sincerely,

A handwritten signature in black ink that reads "Paul Alan Smith". The signature is written in a cursive, flowing style.

Paul Smith
Senior Counsel