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pro rata portion of fees paid other participants in the syndication, an amount necessary for an interest yield adjustment shall be recognized. This amount shall at least be equivalent (on a pro rata basis) to the largest fee received by a loan participant in the syndication that is not a managing banking institution. The remaining portion of the syndication fee may be recognized as income at the loan closing date to the extent that it is identified and documented as compensation for services in arranging the loan. Such documentation shall include the loan agreement. Otherwise, the fee shall be deemed an adjustment of yield.

(e) *Loan commitment fees.* (1) Fees which are based upon the unfunded portion of a credit for the period until it is drawn and represent compensation for a binding commitment to provide funds or for rendering a service in issuing the commitment shall be recognized as income over the term of the commitment period using the straight-line method of amortization. Such fees for revolving credit arrangements, where the fees are received periodically in arrears and are based on the amount of the unused loan commitment, may be recognized as income when received provided the income result would not be materially different.

(2) If it is not practicable to separate the commitment portion from other components of the fee, the entire fee shall be amortized over the term of the combined commitment and expected loan period. The straight-line method of amortization should be used during the commitment period to recognize the fee revenue. The interest method should be used during the loan period to recognize the remaining fee revenue in relation to the outstanding loan balance. If the loan is funded before the end of the commitment period, any unamortized commitment fees shall be recognized as revenue at that time.

(f) *Agency fees.* Fees paid to an agent banking institution for administrative services in an international syndicated loan shall be recognized at the time of the loan closing or as the service is performed, if later.

[49 FR 12197, Mar. 29, 1984]

12 CFR Ch. II (1-1-03 Edition)

INTERPRETATIONS

§211.601 Status of certain offices for purposes of the International Banking Act restrictions on interstate banking operations.

The Board has considered the question of whether a foreign bank's California office that may accept deposits from certain foreign sources (e.g., a United States citizen residing abroad) is a branch or an agency for the purposes of the grandfather provisions of section 5 of the International Banking Act of 1978 (12 U.S.C. 3103(b)). The question has arisen as a result of the definitions in the International Banking Act of *branch* and *agency*, and the limited deposit-taking capabilities of certain California offices of foreign banks.

The International Banking Act defines *agency* as "any office * * * at which deposits may not be accepted from citizens or residents of the United States," and defines *branch* as "any office * * * of a foreign bank * * * at which deposits are received" (12 U.S.C. 3101(1) and (3)). Offices of foreign banks in California prior to the International Banking Act were generally prohibited from accepting deposits by the requirement of State law that such offices obtain Federal deposit insurance (Cal. Fin. Code 1756); until the passage of the International Banking Act an office of a foreign bank could not obtain such insurance. California law, however, permits offices of foreign banks, with the approval of the Banking Department, to accept deposits from any person that resides, is domiciled, and maintains its principal place of business in a foreign country (Cal. Fin. Code 1756.2). Thus, under a literal reading of the definitions of *branch* and *agency* contained in the International Banking Act, a foreign bank's California office that accepts deposits from certain foreign sources (e.g., a U.S. citizen residing abroad), is a branch rather than an agency.

Section 5 of the International Banking Act establishes certain limitations on the expansion of the domestic deposit-taking capabilities of a foreign bank outside its home State. It also grandfathers offices established or applied for prior to July 27, 1978, and permits a foreign bank to select its home

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State from among the States in which it operated branches and agencies on the grandfather date. If a foreign bank's office that was established or applied for prior to June 27, 1978, is a *branch* as defined in the International Banking Act, then it is grandfathered as a branch. Accordingly, a foreign bank could designate a State other than California as its home State and subsequently convert its California office to a full domestic deposit-taking facility by obtaining Federal deposit insurance. If, however, the office is determined to be an *agency*, then it is grandfathered as such and the foreign bank may not expand its deposit-taking capabilities in California without declaring California its home State.

In the Board's view, it would be inconsistent with the purposes and the legislative history of the International Banking Act to enable a foreign bank to expand its domestic interstate deposit-taking capabilities by grandfathering these California offices as branches because of their ability to receive certain foreign source deposits. The Board also notes that such deposits are of the same general type that may be received by an Edge Corporation and, hence in accordance with section 5(a) of the International Banking Act, by branches established and operated outside a foreign bank's home State. It would be inconsistent with the structure of the interstate banking provisions of the International Banking Act to grandfather as full deposit-taking offices those facilities whose activities have been determined by Congress to be appropriate for a foreign bank's out-of-home State branches.

Accordingly, the Board, in administering the interstate banking provisions of the IBA, regards as agencies those offices of foreign banks that do not accept domestic deposits but that may accept deposits from any person that resides, is domiciled, and maintains its principal place of business in a foreign country.

[45 FR 67309, Oct. 10, 1980]

§ 211.602 Investments by United States Banking Organizations in foreign companies that transact business in the United States.

Section 25(a) of the Federal Reserve Act (12 U.S.C. 611, the "Edge Act") provides for the establishment of corporations to engage in international or foreign banking or other international or foreign financial operations ("Edge Corporations"). Congress has declared that Edge Corporations are to serve the purpose of stimulating the provision of international banking and financing services throughout the United States and are to have powers sufficiently broad to enable them to compete effectively with foreign-owned institutions in the United States and abroad. The Board was directed by the International Banking Act of 1978 (12 U.S.C. 3101) to revise its regulations governing Edge Corporations in order to accomplish these and other objectives and was further directed to modify or eliminate any interpretations that impede the attainment of these purposes.

One of the powers of Edge Corporations is that of investing in foreign companies. Under the relevant statutes, however, an Edge Corporation is prohibited from investing in foreign companies that engage in the general business of buying or selling goods, wares, merchandise or commodities in the United States. In addition, an Edge Corporation may not invest in foreign companies that transact any business in the United States that is not, in the Board's judgment, "incidental" to its international or foreign business. The latter limitation also applies to investments by bank holding companies (12 U.S.C. 1843(c)(13)) and member banks (12 U.S.C. 601).

The Board has been asked to determine whether an Edge Corporation's minority investment (involving less than 25 percent of the voting shares) in a foreign company would continue to be permissible after the foreign company establishes or acquires a United States subsidiary that engages in domestic activities that are closely related to banking. The Board has also been asked to determine whether an