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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

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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 Edge Corporation's minority investment in a foreign bank would continue to be permissible after the foreign bank establishes a branch in the United States that engages in domestic banking activities. In the latter case, the branch would be located outside the State in which the Edge Corporation and its parent bank are located.

In the past the Board, in exercising its discretionary authority to determine those activities that are permissible in the United States, has followed the policy that an Edge Corporation could not hold even a minority interest in a foreign company that engaged, directly or indirectly, in any purely domestic business in the United States. The United States activities considered permissible were those internationally related activities that Edge Corporations may engage in directly. If this policy were applied to the subject requests, the Edge Corporations would be required to divest their interests in the foreign companies notwithstanding the fact that, in each case, the Edge Corporation, as a minority investor, did not control the decision to undertake activities in the United States, and that even after the United States activities are undertaken the business of the foreign company will remain predominantly outside the United States.

International banking and finance have undergone considerable growth and change in recent years. It is increasingly common, for example, for United States institutions to have direct or indirect offices in foreign countries and to engage in activities at those offices that are domestically as well as internationally oriented. In this climate, United States banking organizations would be placed at a competitive disadvantage if their minority

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investments in foreign companies were limited to those companies that do no domestic business in the United States. Moreover, continued adherence to the existing policy would be contrary to the declaration in the International Banking Act of 1978 that Edge Corporations' powers are to be sufficiently broad to enable them to compete effectively in the United States and abroad. Furthermore, where the activities to be conducted in the United States by the foreign company are banking or closely related to banking, it does not appear that any regulatory or supervisory purpose would be served by prohibiting a minority investment in the foreign firm by a United States banking organization.

In view of these considerations, the Board has reviewed its policy relating to the activities that may be engaged in the United States by foreign companies (including foreign banks) in which Edge Corporations, member banks, and bank holding companies invest. As a result of that review, the Board has determined that it would be appropriate to interpret sections 25 and 25(a) of the Federal Reserve Act (12 U.S.C. 601, 611) and section 4(c)(13) of the Bank Holding Company Act (12 U.S.C. 1843(c)(13)) generally to allow United States banking organizations, with the prior consent of the Board, to acquire and hold investments in foreign companies that do business in the United States subject to the following conditions:

- (1) The foreign company is engaged predominantly in business outside the United States or in internationally related activities in the United States;*
- (2) The direct or indirect activities of the foreign company in the United States are either banking or closely related to banking; and
- (3) The United States banking organization does not own 25 percent or more of the voting stock of, or otherwise control, the foreign company.

*This condition would ordinarily not be met where a foreign company merely maintains a majority of its business in international activities. Each case will be scrutinized to ensure that the activities in the United States do not alter substantially the international orientation of the foreign company's business.

In considering whether to grant its consent for such investments, the Board would also review the proposals to ensure that they are consistent with the purposes of the Bank Holding Company Act and the Federal Reserve Act.

[46 FR 8437, Jan. 27, 1981]

§211.603 Commodity swap transactions.

For text of interpretation relating to this subject, see §208.128 of this chapter.

[56 FR 63408, Dec. 4, 1991]

§211.604 Data processing activities.

(a) *Introduction.* As a result of a recent proposal by a bank holding company to engage in data processing activities abroad, the Board has considered the scope of permissible data processing activities under Regulation K (12 CFR part 211). This question has arisen as a result of the fact that §211.5(d)(10) of Regulation K does not specifically indicate the scope of data processing as a permissible activity abroad.

(b) *Scope of data processing activities.*
(1) Prior to 1979, the Board authorized specific banking organizations to engage in data processing activities abroad with the expectation that such activity would be primarily related to financial activities. When Regulation K was issued in 1979, data processing was included as a permissible activity abroad. Although the regulation did not provide specific guidance on the scope of this authority, the Board has considered such authority to be coextensive with the authority granted in specific cases prior to the issuance of Regulation K, which relied on the fact that most of the activity would relate to financial data. Regulation K does not address related activities such as the manufacture of hardware or the provision of software or related or incidental services.

(2) In 1979, when the activity was included in Regulation K for the first time, the data processing authority in Regulation K was somewhat broader than that permissible in the United States under Regulation Y (12 CFR part 225) at that time, as the Regulation K authority permitted limited