Penetration of the United States Market by a Foreign Bank

The purpose of this survey is to give a brief outline of the legal regulatory framework within which banks doing business in the United States, must operate. Particular attention will be given to the changes which have been made by the recent amendments to the Bank Holding Company Act, and the effect these changes will have on newly formed United States banks, or on foreign banks which seek to set up operations in the United States for the first time.

The dual and overlapping state and federal legal systems prevalent in the United States naturally have their effect on banks and banking. As a result, a charter to operate a bank in any part of the United States can be secured from the federal authorities, or from the authorities of the state where the bank is located. Hence, a bank will be either a national or a state bank depending on which body issued its charter.

The laws of a chartering state which govern the operation of a state bank, are generally administered by a single state agency having jurisdiction over banking activities of that state. Federal law on the other hand, which governs national banks, is enforced and administered by three separate agencies with overlapping responsibilities.

The three major federal governmental agencies involved are: a) the Federal Reserve Board (hereinafter the FRB) which, in addition to its monetary function, has a certain joint responsibility with the Comptroller for certain types of National banks; b) the Comptroller of the Currency (hereinafter the Comptroller), who is in charge of issuing National Bank charters and supervising National Banks; and c) the Federal Deposit Insurance Corporation (hereinafter the FCID), which insures the bank deposits of banks which qualify under its rules and regulations.

A National Bank is chartered by the Comptroller, and is required to
become a member of the Federal Reserve System which is regulated by the FRB. National banks are also required to obtain FDIC insurance, which brings certain of their operations within the regulatory control of the FDIC.

The dual federal and state regulatory systems are not strictly compartmentalized and there can be a considerable amount of interplay between the two systems. For example, state chartered banks may secure insurance from the FDIC and, as a practical matter, usually find it necessary to do so. They thus become subject to all the regulations of the FDIC. State chartered banks also have the option of becoming members of the Federal Reserve System and, by so doing, become subject to various regulations of the FRB which governs that System. It should also be noted that many of the regulations of the FRB apply, by their terms, to both national and state banks, such as Regulations U governing borrowings to purchase securities, and Regulation Z governing "truth in lending."

A state charter and a national charter each have certain advantages and certain disadvantages. For example, membership in the Federal Reserve System which is required of a national bank, entitles a bank to borrow from the System at the so-called "rediscoun rate," which is established from time to time by the Federal Reserve Board and is generally very low in comparison with other prevailing interest rates.

As a countervailing disadvantage, member banks are required to maintain an individually determined percentage of their reserves on deposit with a Federal Reserve Bank which pays no interest on such deposits. Further, national banks may form a federally chartered Edge Act corporation (to be discussed hereunder), whereas a state bank may form a similar type of corporation only if state law allows it to do so. (California law does permit the chartering of such state Edge Act corporations, see Financial Code, Chapter 19, Secs. 3500 et seq.)

Apart from the foregoing technical considerations, there exist certain basic philosophical considerations as to the properly permissible scope of "banking," that have grown up in America over the past few decades and that form an essential background to this discussion.

The most important of these precepts (which are discussed in greater detail hereunder) are the following:

a—The restriction on conglomerate banking. This is manifested in the limitations imposed by the Bank Holding Company Act [12 U.S.C. 1824 et seq.] which flatly forbids, except in compliance with extensive regulations, the acquisition by an existing bank of an interest exceeding 5% in the equity of another bank. It is further manifested in the federal anti-trust laws, and in the recent amendments to the Bank Holding Company Act, which limit the collateral business activities which can be conducted by a closely affiliated assembly of corporations that include one or more banks.
b—A special narrow manifestation of this limitation on conglomerate banking is found in the Banking Act of 1933, commonly called the Glass-Stiegel Act (12 U.S.C. 377), and its supporting regulations, which forbid a bank to engage in “investment” banking or the underwriting of securities. This law was enacted after the 1929 stock market crash, to correct abuses believed to exist prior to that time, and which, in the judgment of Congress, contributed to the crash.

c—The restrictions on the exercise of a banking franchise to the confines of a single state. This policy is carried in some states to the extreme of forbidding branch banking even within the confines of a single state.

The harsh results which would follow from a strict enforcement of these precepts are considerably relaxed, by a rather limited definition of what constitutes a “bank” or the conduct of a “banking” business for such purposes. For example, a bank chartered in one state (whether under a state or national charter) may normally make loans, take deposits or solicit business across state boundary lines, but is prevented from establishing a fixed outlet in another state or from taking deposits within the confines of the other state. Even a fixed outlet is sometimes permitted, if it is in some way identified as not being a “banking” office.

With this regulatory background in mind, we turn to a discussion of the forms which may be utilized by foreign banks for establishing themselves in the United States. These are, listed in an increasing order of formality, as follows: representative office; an agency or branch; or a wholly or partly owned subsidiary corporation.

A foreign bank may of course do business of a “foreign commerce” variety (i.e. not a “local” business), without the necessity of going through any procedure for “local” qualification. Many foreign banks are in fact doing an international business in the United States, through the medium of correspondents and sometimes by direct contact, but these are conducted on a basis that does not give the bank any local identity.

The minimum local identification will come from the establishment of a local office. If the office does not attempt actually to carry on business, but merely acts as a contact point and public relations outlet, it is normally called a Representative Office. Some states, like California, regulate the creation and conduct of such an office (Financial Code Sec. 1780 et. seq.). Other states take no formal notice of such activities.

If the foreign bank wishes to become active locally, in the doing of a banking business, it will open a local branch office. Such an office is called “agency” in most states. However, New York, as described below, makes an important distinction between a mere agency and a branch. An agency does not constitute a separate legal entity, but the establishment of an Agency and the conduct of business thereafter, are both carefully con-
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trolled by different laws in each state (but not by the federal authorities). It is somewhat of an over-simplification, but generally accurate, to say that an agency or branch may do anything that a local bank may do except take local deposits (and see page 17 below on this point).

This general rule is also subject to a very important exception in the state of New York. New York makes a unique distinction between an agency and a local office of a foreign bank that is called a "branch." The former, as in most states, may not take local deposits (although foreign deposits are permitted as described on page 17 below), but in New York a branch may take local deposits. The opening of a New York branch causes no problems under the Bank Holding Company Law, because the branch is not a subsidiary having a separate legal identity.

Finally, the most formal mode of penetration and the one which allows the foreign bank the greatest latitude to engage in banking activities, is the establishment of a local subsidiary corporation. This, as a separate legal entity, may then apply for a state or federal banking charter and conduct all phases of a banking business.¹

The foregoing simple summary sets the stage for a discussion in considerably greater depth, of the overall pattern of federal statutory restrictions on the conduct of the banking business in this country.

The original Bank Holding Company Act as adopted in 1956 (70 Stat. 133) defined a bank holding company as a corporation (domestic or foreign) that directly or indirectly owned, controlled or held, with power to vote, twenty-five per cent. or more of the stock of two or more banks or of a company that was or became a bank holding company by virtue of the Act. That Act required that all bank holding companies: (1) register under the Act; (2) divest themselves of control of all non-banking and non-bank related corporations; and (3) submit to examination by the Federal Reserve Board. In addition, Federal Reserve Board approval was required under that Act prior to the acquisition by registered bank holding companies, of more than five per cent. of the stock of any additional banking company or other business.

The main reason for the passage of the 1956 Act, as set forth in the report of the Senate Committee on Banking and Currency, was to establish adequate safeguards to provide against undue concentration of control of banking activities. [Senate Report No. 91-1084 on "Bank Holding Co. Act

¹Note from the discussion of bank holding companies which immediately follows, that even if only a state charter is sought, approval of federal authorities has recently been made a requirement under the Bank Holding Company Act.

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Amendments of 1970" 91st Cong., 1st Sess. p. 2]. The dangers accompanying monopoly in the banking field were considered to be particularly undesirable in view of the significant part played by banking in the American economy.

The Senate Committee report indicated that there were two primary problems involved in bank holding companies. One was the unrestricted ability of such a company to obtain banking units, thereby concentrating commercial bank facilities in a particular area under a single control. The other was the combination, again under single control, of banking and non-banking enterprises. [id p. 2] This latter situation constituted a departure from the established policy of separating banking from other commercial enterprises.

These considerations led to a decision by Congress in 1956, to pass legislation to regulate holding companies controlling two or more banks. At that time, Congress concluded that there was no need to include companies controlling only one bank under the provision of the Act. When the 1956 Act was again amended in 1966, the Congress, after receiving much testimony and many statements, again concluded that there was no substantial evidence of abuses occurring in connection with a holding company that owned only one bank. [Senate Report 89th Congress, 2d Session, Report No. 1179, May 19, 1966.]

Since 1966, however, a dramatic change occurred in the nature of one-bank holding companies. Federal Reserve Board Chairman Burns testified to the Senate Banking and Currency Committee, that in 1966 there were fifty-one banks in the United States with deposits of one billion dollars or more, and of those, nine were subsidiaries of registered multi-bank holding companies.²

Beginning in late 1967, however, a great number of banks with assets in excess of one billion had become affiliated with non-regulated one-bank holding companies. By 1970, approximately twenty-three banks with a billion dollars or more in deposits were subsidiaries of one-bank holding companies. These included the six largest banks in the country, which cumulatively held more than twenty per cent of the deposits of the entire nation's banking system.

It has been estimated that the percentage of the nation's total banking deposits held by banks controlled by one-bank holding companies, grew from less than ten per cent. during 1967, to more than forty per cent. by 1970. Because of the large growth of the assets held by one-bank holding

²All statistical information in this paragraph is taken from the Staff Report for the Committee on Banking and Currency, H. R., 91st Cong., 1st Sess., Feb. 11, 1969.
companies, and because of the theoretical freedom of one-bank holding companies to engage in any business or to acquire anything they desire (subject to the antitrust laws), the Congress agreed that it was necessary to amend the Bank Holding Company Act to bring one-bank holding companies under the regulations provided by that Act.

In order to close what Congress considered to be the major loophole of the 1956 Act, the control provisions under the 1970 amendments were changed so that they applied to a company controlling one or more banks rather than two or more banks. [12 U.S.C. § 184(a)(1)]. Under the 1956 Act, a company was (considered a bank holding company) deemed to "control" two or more banks if it directly or indirectly owned, controlled or held, with power to vote, twenty-five per cent. or more of the voting shares of each of two or more banks, or if it controlled in any manner the election of a majority of the directors of each or two or more banks. [Act of May 9, 1956, 70 Stat. 133]

In 1971, the Regulations to the Act were also changed, so that the Federal Reserve Board could make a finding of control, after notice and opportunity for hearing, where the company "directly or indirectly exercises a controlling influence over the management or policies of the bank." [12 U.S.C. § 1841(a)(2)(c)]. This would be possible without regard to the twenty-five per cent. stock ownership provision.

However, a presumption was established in the 1970 amendment to the effect that a company which controlled less than five per cent of the voting stock of a bank does not control that bank. [12 U.S.C. § 1841(a)(3)]. This percentage of stock ownership of the company owned, is determined by adding stock it owns directly to the amount, if any, it owns indirectly through a subsidiary or otherwise with power to vote. [12 U.S.C. 1841(d)].

This amendment brought the majority of the existing bank holding companies, at a single stroke, under the regulatory power of the Federal Reserve Board. The Act further provides that any company which intends to become a bank holding company must obtain prior approval from the Federal Reserve Board. [12 U.S.C. § 1842(a)]. Consequently, any company which is about to acquire or form a bank subsidiary which it "controls," will require prospective approval from the Federal Reserve Board before it can do so, and thus become a bank holding company. This would, of course, apply to all foreign banks planning to form an American banking subsidiary. [U.S.C. § 1841(a) and (b)].

Once a company acquires the status of a one-bank holding company, it is

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8The Act provides certain "grandfather" rights for companies owning a single bank subsidiary at the date of the passage of the Act. These provisions are quite complicated and are beyond the scope of this article directed primarily at the creation of a new bank.
subject to the provisions of Section 4 of the Act, which provides that no bank holding company shall acquire "direct or indirect ownership or control of any voting shares of any company which is not a bank, or of a company which ... was registered under the Investment Company Act of 1940 ..." [12 U.S.C. §1843(a)]. There are certain specific and limited exemptions to the prohibitions of Section 4.

However, the major exemption is contained in Section 4(c)(8) [12 U.S.C. §1843(c)(8)] which provides that the prohibitions of Section 4 do not apply to acquisition of the shares of any company, the activities of which the Federal Reserve Board, after due notice and opportunity for hearing, has determined to be "so closely related to banking or managing or controlling banks as to be a proper incident thereto."

In determining whether a particular activity is a proper incident to banking or managing or controlling banks, the Federal Reserve Board should consider, whether performance by an affiliate of a holding company can reasonably be expected "to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects such as undue concentration of resources, decreased or unfair competition, conflicts of interest or unsound banking practices." [12 U.S.C. § 1843(c)(8)].

The FRB is in the process of promulgating rules as to certain types of activities that are presumptively permissible for one bank holding companies. These rules are found in Regulation Y of the FRB which is unfortunately presently going through a series of modifications and changes as it begins to assume its final form. At the moment activities presumptively permitted as "closely related to banking" include (see § 225.4):

- Acquiring loans etc. as would be made by mortgage, finance, credit card or factoring companies.
- Operation of an industrial bank, Morris Plan bank, etc.
- Servicing loans and extensions of credit.
- Operation of a trust company.
- Acting as an investment or financial advisor.
- Leasing of personal property.
- Providing bookkeeping or data processing services.
- Acting as insurance company or broker under certain circumstances. [12 CFR § 222 et seq.]

The Federal Reserve Board adopted regulations spelling out permissible activities for foreign bank-holding (as defined above) companies doing business in the United States. [12 CFR § 222.4(f) and (g)]. The new regulations allow a foreign bank holding company which does at least half of its business outside the United States to engage in non-banking activities in the United States, "that are incidental to its activities outside" the United States.

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A foreign bank-holding company may own non-controlling interests in foreign companies engaged in non-banking activities in the United States, if the companies do more than half of their business outside of the United States and don't engage in the underwriting, selling or distribution of securities in the United States. It may also, with consent of the board, invest in companies which principally finance or facilitate transactions in international commerce, and it may own shares in any company in a fiduciary capacity.

In addition to these general limitations on banking activities, there is also a specific restriction on geographic expansion contained in Section 3(d) [12 U.S.C. § 1842(d)] of the Act which provides:

Notwithstanding any other provision of this Section, no application shall be approved under this Section which will permit any bank holding company or any subsidiary thereof to acquire, directly or indirectly, any voting shares of interest in, or all or substantially all of the assets of any additional bank located outside of the state in which the operations of such bank holding company's banking subsidiaries were principally conducted on the effective date of this amendment, or the date on which such company became a bank holding company, whichever is later, unless the acquisition of such shares or assets of a state bank by an out-of-state bank holding company is specifically authorized by the statute laws of the state in which such bank is located, by language to that effect and not merely by implication. . . .

This provision effectively operates to prevent multi-state operations by bank holding companies, since there is at present no state which has a law specifically authorizing the acquisition of shares in a local bank by an out-of-state bank holding company. It should perhaps be specially mentioned that the Bank Holding Company Act does not normally inhibit a foreign principal in the conduct of its foreign business if it holds one or more United States banking subsidiaries [12 U.S.C. § 1841(c)].

The foregoing brief summary illustrates the many considerations that will affect a foreign banking corporation seeking to do business in the United States; and these considerations will all have to be weighed carefully. It may, however, give an impression of greater restrictiveness than is in fact the case. This can be shown by various illustrations.

Although the establishment of a representative office does little more than offer the foreign entity an opportunity to "show its flag," the establishment of an agency permits the foreign entity to carry on virtually all aspects of the banking business except the taking of local deposits. Also, the opening of an agency does not require prior federal approval under the Bank Holding Company Act, because an agency is not considered to be a separate legal entity.

Despite the fact that deposits form the basic raw material of the banking business, the ability to open a local non-deposit taking agency, permits a
foreign entity to carry out a very vigorous penetration of the local market, particularly in the wholesale field—a field which will be the primary concern of many foreign entities. It should also be noted that the local agency is a vehicle which may be used to permit a foreign principal to carry on a local wholesale business in several states simultaneously, thus escaping the restriction of branch banking across state boundary lines, subjecting itself only to the penalty of forfeiting the right to accept local deposits.

Even the forfeit of the right to take deposits is, by complexities of local law, rendered somewhat less painful than it would appear. For example, no state can forbid an agency established within its boundaries from holding funds deposited with the principal outside the state and repayable outside the state. A California agency could thus presumably issue its principal's certificate of deposit to a non-California corporation, so long as the certificate is delivered and is repayable outside of California.

The subject of acceptance of deposits "in California" by a foreign bank, whether licensed to act through an agency or not, is one of some considerable uncertainty at this moment.

The California Attorney General has issued an informal opinion to the effect that advertising (by direct mail or by public journals) for foreign deposits is the doing of a banking business and is therefore improper in California for an unlicensed foreign bank. It is also understood that this issue has recently been squarely raised by a non-California United States bank, that has advertised in both California newspapers and in magazines of national circulation for non-California deposits. This activity will in all probability lead to a more formal decision on this particular subject.

As regards a foreign bank that is licensed to operate as an agency in California, that situation is even more unclear. The Attorney General has issued an informal opinion on this subject also, which is so cautiously worded as to give very little guidance except as to the need for caution. The opinion seems to conclude that the acceptance of money in California for transmission for deposit abroad, is the "first step" in the process of taking deposits.

Since a foreign corporation may not take deposits, the taking of this "first step" is also apparently viewed as improper under California law (despite specific statutory authority in Sec. 1880 of the Finance Code for an agency to accept money for transmission abroad). The extremely cautious language in which this view is implied, is probably based on doubts as to whether the California law, if so interpreted, would violate the Foreign Commerce Clause of the Federal Constitution.

The Attorney General concludes quite flatly that a licensed foreign corporation may not advertise that it is accepting deposits "in this state."
This expression, however, begs the constitutional issue involved, namely, whether an "international" deposit is a deposit "in this state." The opinion, therefore, gives very little guidance.

The Attorney General does state that mere institutional advertising by a foreign bank is perfectly proper, and that a local agency of a foreign bank may sell foreign currency travelers cheques in California.

Since the issuance of the Attorney General's opinion referred to above, the statutory law has been changed in California. The Financial Code, Sections 1756, 1756.1, now permits a foreign banking corporation "to transact in this state the business of accepting deposits," subject to very stringent conditions including the procurement of federal deposit insurance—which is at present impracticable. Section 1756.2 permits a foreign corporation to accept deposits of foreign origin subject to other stringent qualifications, one of which consists of written approval from the Superintendent of Banks. None of these new sections, however, define the meaning of the phrase "in this state," or remove any constitutional limitations that apply to attempts by California to regulate foreign commerce.

In California, a local agency may establish a line of credit for a local customer, without advancing all the funds called for by the credit. A credit balance, similar to a deposit, is thus established; although the customer can not be given a checkbook and be allowed to make deposits and withdrawals as with a checking account.

A foreign entity should, therefore, be alert to the opportunities of establishing a local subsidiary within one state where the taking of deposits may be an important consideration, and the establishment of agencies in other desired locations. The unusual opportunity that this offers in the State of New York is discussed below.

If a foreign bank now establishes a subsidiary corporation in the United States that qualifies as a bank, it falls under the regulating provisions of the Bank Holding Company Act. There are certain special rules which apply under this act in the case of international entities, but here again these are complex and outside the real scope of this article [12 U.S.C. § 1842(c) and (h)]. The possibilities that exist by virtue of certain special rules on banking in the State of New York are, however, well within our perview of interest.

In the State of New York a foreign bank has the additional option of opening what is called a branch. A New York branch, unlike an agency (under the law of New York and of other states), may actually accept deposits and act in other respects in almost the same fashion as a subsidiary legal entity licensed as a bank (New York Banking Law, Article 5, Sec. 200-202a). Since a New York branch is not in fact a separate entity, a foreign parent may apparently establish a deposit-taking branch in New
York without the danger of becoming a bank holding company under existing laws.

A further important possibility also exists. If the foreign parent establishes a subsidiary banking corporation in some state other than New York (which would unfortunately make it a bank holding company), it can establish a branch in New York free of concern with the Bank Holding Company Act as the law exists today. This is possible because a New York "branch" is merely a tentacle of the foreign parent, and not a separate legal entity. In New York a foreign bank may not, however, maintain both an agency and a branch. [Section 202-d, New York Banking Law].

There is another interesting alternative available in New York, aside from the establishment of a branch. This is the establishment of what is called an "investment company" [see Article 12, Section 500, et seq., of the New York Banking Law] which is the practical equivalent of a bank. Such an investment company must have paid-up capital of at least two million dollars, and it may not engage in the business of receiving deposits except as noted below. It may, however:

- borrow and lend money to purchase and deal in bills of exchange, drafts, notes, acceptances and obligations for payment of money;
- accept bills of exchange, and drafts payable on demand or on time not exceeding one year from the date of acceptance;
- issue letters of credit authorizing the holders thereof to draw drafts upon it or its correspondents at sight or on time not exceeding one year;
- buy and sell coin, bullion and exchange;
- engage in the business of receiving deposits outside of the State of New York;
- maintain for the account of others, "credit balances, incidental to or arising out of the exercise of its lawful powers, but the Banking Board shall have the power to prescribe the extent to which and the conditions upon which such credit balances may be established, maintained and paid out." [§ 508 New York Banking Law]

There are a number of European banks at present which maintain Article 12 investment companies in New York. Among these are the European American Bank, the French American Banking Corporation and the Schroder Bank.

The most interesting feature of a New York investment company, is an old ruling by the State of New York that these companies do not constitute banks within the meaning of the Federal Reserve Act because they cannot unrestrictedly accept deposits. This would presumably mean that Article 12 investment companies, because they are not "banks," would not be covered by the limitation of Section 3(d) of the Bank Holding Company Act which presents a bank holding company from owning subsidiary banks which are located in more than one state.
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The Federal Reserve Board, in a letter dated November 8, 1971, has impliedly concurred with this state ruling, by stating that an investment company is not a bank within the meaning of the Bank Holding Company Act, because it does not accept deposits as defined in Section 2(c) of the Act.\(^4\) There are other qualifications on this opinion requiring that credit balances held by investment companies be related to foreign commerce, but the full meaning of these subsidiary issues will have to await further exposition by the FRB.\(^5\)

The otherwise strict prohibition on multi-state banking may also be escaped under the provisions of the Federal Edge Act (Section 25(a) Federal Reserve Act), and counterparts that exist under the laws of numerous states. (In California see California Financial Code § 3500, \textit{et seq.}).

The Edge Act, and its state counterparts, are primarily designed to permit a domestic banking corporation to conduct a somewhat limited type of international banking. This is done through the incorporation by a United States bank of a subsidiary which is, by the relevant statutes, given most of the powers of a normal bank. The Edge Act subsidiary may be incorporated under the law of any state, and may have offices for the conduct of its business in any part of the world.

The Edge Act subsidiary may incidentally also, under some circumstances, be a subsidiary of a locally incorporated subsidiary of a foreign bank. Such a corporation may only take deposits in the United States which are incidental to, or for the purpose of, carrying out the conduct of its international business as spelled out more particularly in Regulation K of the FRB. The general conduct of its business is also subject to limitations prescribed by the Board of Governors of The Federal Reserve System.

The overlapping of the law providing for the Edge Act corporations and the One Bank Holding Company law presents an interesting picture. An Edge Corporation is specifically excluded from the definition of a bank in the latter statute [12 U.S.C. 1841(c)], so the acquisition of an Edge Act corporation will not constitute the parent of a bank holding company. The Bank Holding Company Act does, however, require that the FRB approval be secured before a bank holding company can acquire any non-bank subsidiary [12 U.S.C. 1843(a)].

\(^4\) The Federal Reserve Board has recently implemented this interpretation by the grant of authority to a foreign bank, which owns a controlling interest in a New York Article 12 investment company, to establish a wholly owned subsidiary banking corporation in a State other than New York.

\(^5\) The mere fact that an investment company is not a "bank" within the meaning of the Bank Holding Company Act, does not automatically deprive it of "bank" status under other statutes such as the Interest Equalization Tax Act or the Bank Secrecy Act, and it is understood that investment Companies have requested rulings on these issues from the appropriate agencies.
Since the foreign parent and the domestic subsidiary are treated as a single entity for this purpose [12 U.S.C. 1841(g)], the act of the subsidiary in forming its Edge Act subsidiary, is the act of a bank holding company. While advance approval is required, [12 U.S.C. § 1843(c)(8)] it should not be unduly difficult to secure in most instances. However any final answer to this problem will have to await the issuance of more definitive regulations by the FRB under Regulation Y.

As a result of the limitations and restrictions discussed above, which are placed on banking activities by both state and federal law, it can be seen that prior to the establishment of any banking activity within the United States, the foreign bank must give careful thought to its overall plans for development within the United States in order not to run afoul of any of the provisions discussed above. With careful advance planning, it should however be possible in most cases, for a foreign bank to structure its operations within the United States to enable it to realize a great many of the objectives which it may desire.

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6On September 27, 1971, the FRB issued the following regulation affecting foreign operations of one-bank holding companies, which is of very limited application but is significant of the Board’s thinking:

The Board nevertheless retains authority to impose conditions regarding the operations of foreign subsidiaries of domestic bank holding companies similar to those conditions that it deems prudent to impose upon Edge Act corporations and their foreign subsidiaries. Bank holding company subsidiaries engaged in foreign activities would, in any case, specifically be required to obtain the Board’s approval for the establishment of branches or agencies in the United State or of banking branch offices in any foreign country new to their operations and for the issuance in the United States of any debentures, bonds promissory notes, or similar obligations, other than instruments or obligations due within one year.

As a matter of policy, the Board considers that, in general, bank holding companies seeking to engage in foreign banking activities that involve the receipt of deposits in the United States should do so through Edge Act corporations or Agreement corporations.