MEMORANDUM

TO: Stewart Guerin, Chair, Valuation of Securities (E) Task Force
Members of the Valuation of Securities (E) Task Force

FROM: Bob Carcano, Senior Counsel, NAIC Investment Analysis Office

CC: Todd Sells, Director, NAIC Financial Regulatory Services
Charles Therriault, Director, NAIC Securities Valuation Office

DATE: December 22, 2014

RE: Research on the Regulation of Banks and Non-Banks in Connection with the Possible Conversion of the NAIC
(Letter of Credit) Bank List into a List of Qualified U.S. Financial Institutions (as Defined in the Credit for
Reinsurance Model Act [Model #785])

Executive Summary

Issue – The SVO was asked to assess whether qualified U.S. financial institutions, as defined in the NAIC Credit for
Reinsurance Model Act (#785) and Model Regulation (#786) (collectively the Model Law), are at least as well regulated as
banks. The request was made in connection with a proposal to expand the NAIC Bank List into a List of Qualified U.S.
Financial Institutions.

Summary – From the perspective of federal and state banking regulation, the term “financial institutions” refers to banks
(defined as entities that accept deposits and make loans) and non-banks (defined as entities that either accept deposits or
make loans but do not do both).

- Office of the Comptroller of the Currency (OCC): regulates national banks, national bank operating subsidiaries,
national bank financial holding company subsidiaries, federally chartered savings and loans associations, federal
savings banks, and U.S. federal branches of foreign banks.
- Federal Deposit Insurance Corporation (FDIC): regulates banks and savings associations (national banks, federal
savings associations, federal branches, state banks [the term includes banks, banking associations, trust companies,
savings banks, industrial banks or other banking institutions], state savings associations and insured state branches)
and state banks that are not members of the Federal Reserve System (FRS).
- National Credit Union Administration (NCUA): regulates federally chartered and most state-chartered credit unions.
- FRS: regulates bank holding companies (BHCs), certain subsidiaries of BHCs, financial holding companies (FHCs),
FHCs’ nonbank financial subsidiaries, securities holding companies (SHCs), savings and loan holding companies
(SLHC), state banks that are members of the FRS, U.S. branches of foreign banks and foreign branches of U.S.
banks.

Accordingly, the portion of the definition of qualified U.S. financial institution in the Model Law that requires that a
financial institution be regulated by a state or federal banking regulator is consistent with how the federal-state
regulatory banking framework operates. Banks organized as national banks are regulated by the OCC. State-chartered

banks are supervised jointly by their state bank regulator and either the FDIC or the FRS. Non-banks are supervised by the Board of Governors (Board) of the FRS, which also regulates state bank members and other banks. With the exception of SHCs, all of the financial institutions regulated by the identified federal bank regulators have authority to issue letters of credit (LOCs) directly or through specific subsidiaries. The research indicates that non-banks have had authority to issue LOCs for some time so that it is likely that some will have accumulated significant experience in LOC operations.

Recommendations

- Expanding the NAIC Bank List into an NAIC Qualified Financial Institutions List would not expose the reinsurance process to a lesser quality of regulation than obtained today for banks.
- The Model Law need not be amended because it already refers to an SVO list of U.S. financial institutions.
- If the Task Force moves to adopt the proposed expansion of the Bank List, more specific administrative instructions to the LOC issuer applicant are needed so the SVO can verify that an applicant meets the regulatory standard in the Model Law.

Analysis and Discussion

1. Introduction

   a. Background – This memorandum communicates an SVO assessment whether qualified U.S. financial institutions, as defined in the NAIC Model Law, are at least as experienced and well regulated as banks. The issue arises from a proposal that the Task Force expand the NAIC Bank List into a List of Qualified U.S. Financial Institutions. The NAIC Bank List contains the names of banks that issue LOCs and meet specified financial criteria for issuing LOCs in support of a reinsurer’s obligation to a ceding insurer under the Model Law.

   b. Summary – The Model Law permits an asset or a reduction from liability for reinsurance ceded by a ceding insurer to an assuming insurer in an amount held as security for payment of the reinsurance obligation.\(^1\) When the security is in the form of an LOC, the LOC must be issued or confirmed by a qualified U.S. financial institution.\(^2\) A qualified U.S. financial institution: 1) is organized or licensed under the laws of the U.S. or of any state; 2) is regulated, supervised and examined by U.S. federal or state authorities with regulatory authority over banks and trust companies; and 3) meets the financial condition standards acceptable to the commissioner or specified in the Purposes and Procedures Manual. In this assessment, we identify the various financial institutions that are: 1) authorized to issue LOCs by statute and or regulation; 2) organized and/or licensed under U.S. or state law; and 3) regulated, supervised and examined by U.S. federal or state banking regulators. We are assisted in this assessment because financial institutions are organized under special laws that strictly enumerate permissible banking or financial activities. If the activity is not enumerated, the financial institution cannot engage in the activity.\(^3\) U.S. financial institutions are regulated by one or more of four federal banking regulators: i.e., the OCC, the FDIC, the NCUA and the FRS. In addition, we examined the U.S. Securities and Exchange Commission (SEC) in relation to SHCs.\(^4\) With the exception of SHCs, all of the financial institutions that are regulated by the identified federal bank regulators are authorized to issue LOCs directly or through specific subsidiaries. All the financial institutions we identified also meet the requirement in the Model Law of being regulated, supervised and examined by U.S. federal or state banking regulators.

2. The Legal Framework Applicable to LOCs

   a. What is an LOC – An LOC is an undertaking (i.e., obligation) obtained by an applicant for the benefit of a beneficiary by which an issuer agrees to pay a stipulated amount of money against the presentation of documents that comply with the terms and conditions of the credit.\(^5\) The issuer is obligated to pay solely on the documentary presentation and may not condition payment on the status of reimbursement obligations or any legal defense based on the underlying transaction.\(^6\)

   b. Selecting the Governing Law – Parties to an LOC transaction will decide on the LOC framework that will apply to the transaction and to what extent the agreement should be customized. The parties to an LOC transaction will choose from a number of existing frameworks,\(^7\) of which perhaps the most well-known are the Uniform Custom and Practices for Documentary Credits (UCP)\(^8\) and Article 5 of the Uniform Commercial Code (UCC). Because these and other LOC legal regimes provide that the parties may, by agreement, vary how the provisions will apply to their transaction, it is also possible that the parties may pick and choose provisions from more than one legal regime to govern the transaction.\(^9\)
c. **Bank or Non-Bank Issuer** – Another core issue is the selection of the issuer and whether the issuer must be a bank or may be some other type of financial institution. While the UCP only refers to banks as issuers, the Commission on Banking Technique and Practice of the International Chamber of Commerce (Commission), which administers the UCP, has issued a formal opinion recognizing that parties who choose the UCP to govern a credit may choose a non-bank entity, — provided the entity is held to the same obligation and standard as if the LOC was issued by a bank. The UCC provides that an LOC issuer may be a bank or may be any other person.

3. **Overview of Federal – State Regulation of Financial Institutions**

a. **Dual Regulation** – Until 1863, only the states chartered banks. In that year, the federal National Bank Act created a national currency and a system of nationally chartered banks through which the federal government could conduct its business. The OCC was created to charter and regulate national banks. Would-be bankers could elect between a federal and a state banking charter. In 1913, the Federal Reserve Act required national banks to become members of the FRS. State-chartered banks could choose to do so, but few did. The federal Banking Act of 1933 (Glass-Steagall Act) created the FDIC and required national banks to obtain deposit insurance. State banks were permitted to obtain deposit insurance, and the vast majority of banks did so. Deposit insurance changed the nature of the process: While persons could still elect between a federal or state charter, neither would relieve a bank of federal oversight. In 1980, the federal Depository Institutions Deregulation and Monetary Control Act extended the benefits of Federal Reserve membership to all commercial banks and made all subject to the Federal Reserve’s reserve requirements. Commercial banks organized as national banks would be regulated by the OCC, and state-chartered banks would be supervised jointly by their state and either the FDIC or the Federal Reserve System.

b. **Regulatory Focus** – There are four components to U.S. banking regulation: 1) safety and soundness; 2) deposit insurance; 3) adequate capital; and 4) systemic risk. In the LOC context, we are predominantly concerned with safety and soundness and adequacy of capital. Safety and soundness refers to examining and regulating the probability of a firm’s default, and the magnitude of the losses that its owners and creditors would suffer if the firm defaulted. Capital means the amount by which an entity’s assets exceed its liabilities. The more capital a firm has, the greater its capacity to absorb losses and remain solvent. All federal regulators require the institutions they supervise to maintain specified minimum levels of capital—defined in various ways—to reduce failures and minimize losses to investors, customers and taxpayers when failures occur. U.S. banking capital standards are based on the Basel Accords, an international framework developed under the auspices of the Bank for International Settlements. The guiding principle of the Basel standards is that capital requirements should be risk-based. The riskier an asset, the more capital a bank should hold against possible losses. The Basel Accords provide two broad methodologies for calculating risk-based capital: 1) a standardized approach to credit risk determinations, based on external risk assessments (such as bond ratings); and 2) an alternative approach that relies on banks’ internal risk models and rating systems. Adoption of the latter method—set out in the 2004 Basel II framework—in the United States has been slow, and thus far is limited to a few large banks. In July 2010, in response to the global financial crisis, the Basel Committee proposed a more stringent set of capital requirements, called Basel III.

c. **Banks and Non-Banks** (*Banking Activities and Non-Banking Activities*) – A bank is an entity "which (1) accepts deposits that the depositor has a legal right to withdraw on demand, and (2) engages in the business of making commercial loans. A non-bank is a financial institution that performs one but not both of these functions."

4. **Identifying Banks and Non-Banks LOC Issuers in the U.S. and Their Regulation**

a. **OCC-Regulated Entities**

(i) **National Banks** – A national bank is a commercial bank chartered by the U.S. government through the OCC. National banks help structure the financial system. They are members of the FRS as investors in its district Federal Reserve Banks, they facilitate the auction process of U.S. Treasury bonds, and they are members of the FDIC. Federal law very clearly provides that national banks and their operating subsidiaries may issue LOCs.

(ii) **A Financial Subsidiary of a National Bank** – A national bank may control a financial subsidiary and may conduct, through that financial subsidiary, activities that are financial in nature, activities incidental to a financial activity and any activities that national banks may engage in directly. Activities are financial in nature or incidental to financial activity if defined as such under the federal Bank Holding Company Act (BHCA) (12 USC 1843(k)(4)) or by the Secretary of the
Treasury. Section 1843 provides that an FHC may engage in any activity that the Board determines (by regulation or order) is financial in nature or incidental to such financial activity or that is complementary to a financial activity. Section 1843 (k) (4) identifies categories of activities considered to be financial in nature. These include lending and engaging in any activity that the Board has determined to be so closely related to banking or managing or controlling banks as to be a proper incident thereto. Under the authority of these sections, a national bank financial subsidiary could issue LOCs either because national banks may do so directly or because the Board has defined issuance of LOCs to be financial in nature in applicable regulations (12 CFR Section 225.86 and 12 CFR Section 225.28). 18

(iii) U.S. federal branches or agencies of foreign banks – The OCC may, subject to some restrictions, authorize a foreign bank engaged in a banking business outside the U.S. to establish one or more federal branches or agencies in any state. Under federal law, a U.S. federal branch or agency of a foreign bank has the same rights and privileges as a national bank doing business at the same location. 19 Accordingly, the U.S. federal branch of a foreign bank may also issue LOCs. An additional ground for the conclusion is that the issuance of LOCs is deemed to be so closely related to banking or managing or controlling banks as to be a proper incident thereto.

(iv) Federally chartered savings and loans – Most savings associations 20 accept deposits and offer home loans. Savings and loan associations were regulated by the Office of Thrift Supervision (OTS) 21 until the federal Dodd-Frank Wall Street Reform and Consumer Protection Act abolished the OTS and distributed its functions among the OCC, the FDIC and the FRS. 22 Federal savings associations and federal savings banks are authorized to issue LOCs. 23

b. FDIC-Regulated Entities

(i) Federally-insured depository institutions – The term “depository institution” refers to banks and savings associations. An insured depository institution is a bank or savings association whose deposits are insured by the FDIC. Insured depository institutions could be national banks, federal savings associations and federal branches, as well as state banks, state savings association and insured state branches. 24 As discussed in this memorandum, all of these entities may issue LOCs.

(ii) State banks that are not members of the FRS – Non-member banks of the FRS can only be state-chartered because all national banks have to be members of the FRS. Banks that are not members of the FRS are nevertheless subject to reserve requirements, which they maintain by placing a percentage of their deposits at a Federal Reserve Bank. But, they are not required to purchase stock in their district Federal Reserve Bank. The term “state bank” encompasses banks, banking associations, trust companies, savings banks, industrial banks (or similar depositories), cooperative banks or unincorporated banks whose deposits are insured by the FDIC. 25 State banks may only engage in activities permissible for a national bank and their subsidiaries and, accordingly, can issue LOCs. 26

(iii) State-chartered thrift institutions – A state savings association includes building and loan associations, savings and loan associations, homestead associations, and cooperative banks. In general, a savings association chartered under state law is restricted to the same type of activities permissible for a federal savings association. Because LOC issuance is permitted to a federal savings association, it seems clear that state chartered savings associations can issue LOCs as well. 27

c. NCUA-Regulated Entities – A credit union is a cooperative chartered by the federal government or the state but owned by individuals. Federally chartered or federally insured credit unions are regulated by the NCUA, a full faith and credit agency of the U.S. government. The NCUA administers the National Credit Union Share Insurance Fund (NCUSIF), a deposit insurance fund separate from the FDIC’s that insures savings of federal credit and the majority of state-chartered credit union account holders. Federal credit unions include those chartered by the federal government and those with headquarters in Arkansas, Delaware, South Dakota, Wyoming or the District of Columbia. The definition of federally insured credit unions includes state-chartered credit unions. Credit unions are authorized to issue LOCs as an incidental power related to carrying out the business of lending. 28
d. FRS Regulated Entities

(i) **BHC and its Subsidiaries** – A BHC is any company that has control over any bank or over any company that is or becomes a BHC. A large U.S. parent BHC may own domestic bank subsidiaries engaged in lending, deposit-taking and other activities, as well as nonbank and foreign subsidiaries engaged in a broader range of business activities. The largest BHCs may have more than 2,000 subsidiaries. BHCs and their subsidiaries are authorized to issue LOCs.

(ii) **FHC** – An FHC is a BHC that meets the requirements of section 1843 of the BHCA. The federal Gramm-Leach-Bliley Act (GLBA) amended the BHCA to enable a BHC to register as an FHC. Today, virtually all large BHCs are registered as FHCs. Under 1843 (a) BHCs are restricted to banking or managing or controlling banks and activities permitted under 12 USC 1843 (c) (8) – i.e., those determined to be so closely related to banking as to be a proper incident thereto. These activities are enumerated in 12 CFR § 225.28 and include issuing LOCs. But the question is what activities a BHC registered as an FHC may engage in as an FHC. 12 USC 1841 (p) defines an FHC as a BHC that meets the requirements of section 12 USC 1843(l) (1). 1843 (l)(1) specifies that a BHC may not use 1843 (k), which permits an FHC to engage in any activity that the Board determines by regulation or order to be financial in nature or incidental or complementary thereto. 1843 (l) (1) says that notwithstanding 1843 (k), a BHC may not engage in any activity other than those permissible for BHCs under 1843 (c) (8). Given that a Bank Holding Company can issue LOCs, under the definitional construct imposed by 1841 (p) and 1843 (l) (1) a BHC that elects to become an FHC and limits its activities as an FHC to those a BHC could engage in would be authorized to issue LOCs.

(iii) **SHC** – An SHC is a non-bank securities firm that owns or controls at least one registered broker-dealer. The federal Securities Exchange Act of 1934 (Exchange Act) is the primary federal legislation governing brokers and dealers in securities. With some exceptions, Section 15 of the Exchange Act requires registration of all broker-dealers that use interstate commerce or the facilities of any national securities exchange to buy or sell securities. The SHC was created to permit broker-dealers with foreign jurisdictions that require consolidated supervision to elect FRS supervision to meet the foreign jurisdiction’s requirement. The statute replaces the Elective Investment Bank Holding Company Framework developed and supervised by the SEC. Neither the nature of SHC operations, the statutory definition or the regulatory framework suggests that SHCs are authorized to engage in the issuance of LOCs. This assessment is supported by the statutory definition, which excludes insured banks, savings associations, their affiliate and foreign banks— institutions that are permitted to issue LOCs. (Note: With some exceptions, registered SHCs are supervised and regulated as BHCs, but this refers to supervisory matters. We could not find a basis to conclude that the intent is to link permissible activities of SHCs to those of BHCs as in other cases cited in this memorandum.)

(iv) **SLHC** – An SLHC is a company that directly or indirectly controls a savings association or that controls an SLHC. A S&LHC and its (non-savings associations and non-service corporation subsidiaries) subsidiary savings associations may engage in those activities permitted to Bank Holding Company’s pursuant to Board regulations promulgated under 12 USC 1843 4 (c) of the BHCA provided, the SLHC obtain prior approval of the Board. Section 4 (c) requires a BHC to provide prior written notice before engaging in a non-bank activity and the Board to determine whether the nonbank activity is closely related to banking and, hence, a proper incident thereto. (The same reasoning applies to a BHC that is also an FHC and wants to engage in an activity complementary to a financial activity under section 4(k) (1) (B)). The Board has determined that issuance of an LOC is so closely related to banking or managing or controlling banks as to be a proper incident thereto and, therefore, an approved non-bank activity for a BHC and its subsidiaries. SLHCs are authorized to issue LOCs.

(v) **U.S. branches and agencies of foreign banks** – A federal branch and a federal agency of a foreign bank are those established and operating under 12 USC 3102. Under federal law administered by the OCC (discussed above), a foreign bank engaged directly in a banking business outside the U.S. may, with the approval of the OCC, establish one or more federal branches or agencies in any state, and such entities have the same rights and duties that a national bank at the same location would have. (With respect to nonbanking activities, a foreign bank that maintains a branch or agency in a state is subject to the BHCA, 12 USC 1850 and chapter 22 in the same manner and to the same extent as BHCs.) A federal branch or agency, therefore, can issue LOCs because national banks can. The Examination Manual for U.S. Branches and Agencies of Foreign Banking Organizations prepared by Federal Reserve Board and Reserve Bank supervision personnel defines documentary LOCs which would not be necessary if a federal branch could not issue LOCs.

(vi) **Foreign branches of U.S. Banks** – Any national bank engaged in international operations through a foreign branch may engage in any activity in the foreign country permissible for a national bank in the U.S. and usual in connection with the
business of banking in the country where it transacts business and in any activity permissible under the Board’s Regulation K (12 CFR 211). Under Section 211.10, the Board may determine which activities are usual banking activities in the foreign jurisdiction. The Board has identified commercial and other banking activities, as well as financing (including commercial financing, consumer financing, mortgage banking, and factoring), as usual in connection with the transaction of banking or other financial operations abroad. As already discussed, national banks may issue LOCs in the U.S. as an activity incidental to banking, and it is difficult to envision that LOCs activity, which is so closely associated with international finance, would not be an activity usual for foreign banks to engage in, just as it is a usual activity for banks in the U.S. 41

(vii) State Bank Members of the FRS – Any bank incorporated under state law may apply to the Board for the right to subscribe to the stock of the Federal Reserve bank in its district. State banks are permitted to issue LOCs subject consistent with the requirement that its LOCs represent an obligation to the beneficiary on the part of the issuer: to repay money borrowed by or advanced to or for the account of the account party; or to make payment on account of any evidence of indebtedness undertaken by the account party; or to make payment on account of any default by the party procuring the issuance of the LOC in the performance of an obligation. 42

5. Conclusions – What emerges from the research is that banks (entities that accept deposits and make loans) may issue LOCs as part of the business of banking.

- National banks can issue LOCs as a general lending activity. Lending is part of the business of banking under paragraph Seven of the federal National Bank Act.
- National bank operating subsidiaries can issue LOCs on the same basis as national banks.
- Financial subsidiaries of national banks may issue LOCs and engage in any other activity that the national banks may engage in directly.
- Credit unions have incidental power to issue LOCs as an activity convenient or useful in carrying out the business of a credit union.
- Federal savings associations (the term includes federal savings associations and federal savings banks) can issue LOCs as a general banking activity.
- State banks (the term includes banks, banking associations, trust companies, savings banks, industrial banks or other banking institutions) that are members of the FRS may issue standby LOCs as a general banking activity.

Non-banks (entities that either accept deposits or make loans but not both) may issue LOCs because:

1) The entity is treated as a national bank, as a bank or as a non-bank for whom issuance of LOCs is a permissible activity.
   - Financial subsidiaries of national banks may issue LOCs.
   - Federal branches and agencies of a foreign bank have the same rights and privileges as a national bank.
   - State savings associations (the term includes building and loan associations, savings and loan associations, homestead associations and cooperative banks) may engage in any activity permissible for a federal savings association.
   - Insured state banks may engage in any activity permissible for a national bank.
   - Insured bank subsidiaries may engage in any activity permissible for a national bank.
   - SLHCs or subsidiaries that are not a savings associations may engage in activities permissible for a BHC.

2) A determination that LOC issuance is permissible because it is closely related to banking.
   - FHCs may issue LOCs as an activity incidental to financial activity because such issuance is closely related to banking and a proper incident thereto.
   - BHCs and its subsidiary may issue LOCs because they are an activity financial in nature which includes any activity the Board determines to be so closely related to banking to be a proper incident thereto.

3) A determination that LOC issuance is permissible because it is closely related to non-banking.
   - BHCs and their subsidiaries (an extension of credit so closely related to banking or managing or controlling banks as to be a proper incident thereto).
   - Financial subsidiary of a national bank. (Activities deemed permissible nonbanking activities include issuing LOCs, which is an extension of credit.)

4) A determination that LOC issuance is permissible because it is financial in nature.
   - Financial subsidiaries of national banks.
   - BHCs and their subsidiaries.
   - FHCs. (Activities that are financial in nature include lending and any activity that the Board determines to be so closely related to banking to be a proper incident thereto.)
5) A determination that LOC issuance is permissible because it is permissible in the U.S. and is a usual banking activity in the foreign jurisdiction where the U.S. entity operates.

- A national bank engaged in international operations through a foreign branch may engage in an activity in a foreign country permissible for a national bank in the U.S. and usual in that country as the business of banking and in any activity in a foreign country permissible by the Federal Reserve Board under Regulation K.
## Table 1. Federal Financial Regulators and Who They Supervise

<table>
<thead>
<tr>
<th>Regulatory Agency</th>
<th>Institutions Regulated</th>
<th>Emergency/Systemic Risk Powers</th>
<th>Other Notable Authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Federal Reserve</td>
<td>Bank holding companies* and certain subsidiaries, financial holding companies, securities holding companies, savings and loan holding companies, and any firm designated as systemically significant by the FSOC</td>
<td>Lender of last resort to member banks (through discount window lending)</td>
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<td></td>
<td>State banks that are members of the Federal Reserve System, U.S. branches of foreign banks, and foreign branches of U.S. banks</td>
<td>In “unusual and exigent circumstances” the Fed may extend credit beyond member banks, for the purpose of providing liquidity to the financial system, but not to aid failing financial firms</td>
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<tr>
<td></td>
<td>Payment, clearing, and settlement systems designated as systemically significant by the FSOC, unless regulated by SEC or CFTC</td>
<td>May initiate resolution process to shut down firms that pose a grave threat to financial stability (requires concurrence of 2/3 of the FSOC)</td>
<td></td>
</tr>
<tr>
<td>Office of the Comptroller of the Currency (OCC)</td>
<td>National banks, U.S. federal branches of foreign banks, federally chartered thrift institutions</td>
<td></td>
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</tr>
<tr>
<td>Federal Deposit Insurance Corporation (FDIC)</td>
<td>Federally-insured depository institutions, including state banks that are not members of the Federal Reserve System and state-chartered thrift institutions</td>
<td>After making a determination of systemic risk, the FDIC may invoke broad authority to use the deposit insurance funds to provide an array of assistance to depository institutions, including debt guarantees</td>
<td></td>
</tr>
<tr>
<td>National Credit Union Administration (NCUA)</td>
<td>Federally-chartered or insured credit unions</td>
<td>Serves as a liquidity lender to credit unions experiencing liquidity shortfalls through the Central Liquidity Facility</td>
<td>Operates a deposit insurance fund for credit unions, the National Credit Union Share Insurance Fund (NCUSIF)</td>
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An asset or a reduction from liability for the reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of Section 2 shall be allowed in an amount not exceeding the liabilities carried by the ceding insurer. The reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the ceding insurer, under a reinsurance contract with the assuming insurer as security for the payment of obligations thereunder, if the security is held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer; or, in the case of a trust, held in a qualified U.S. financial institution, as defined in Section 4B. This security may be in the form of: C. (1) Clean, irrevocable, unconditional letters of credit, issued or confirmed by a qualified U.S. financial institution, as defined in Section 4A …

Drafting Note: Providing for the continuing acceptability of letters of credit whose issuers were acceptable when the credit support facility was first obtained is intended to avoid abrupt interruptions in the acceptability of credit support arrangements that run for specific periods of time, and thus unnecessary disruptions in the marketplace, on account of the issuing (or confirming) institution’s subsequent failure to meet applicable standards of issuer acceptability (whether by virtue of a change in the issuing institution’s ability to qualify under the original standards or as a result of revisions to the applicable standards). The provision stipulates that letters of credit acceptable when first obtained will, in the event of the subsequent nonqualification of the issuing (or confirming) institution, continue to be acceptable as security until the account party and beneficiary would first have, in the normal course of business, an opportunity to replace the credit support facility. Source: Credit for Reinsurance Model Act (785), 2012.

2 Section 4. Qualified U.S. Financial Institutions A. For purposes of Section 3C, a “qualified U.S. financial institution” means an institution that: (1) is organized or (in the case of a U.S. office of a foreign banking organization) licensed, under the laws of the United States or any state thereof; (2) is regulated, supervised and examined by U.S. federal or state authorities having regulatory authority over banks and trust companies; and (3) has been determined by either the commissioner or the SVO of the NAIC to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the commissioner.

Drafting Note: The NAIC’s SVO maintains, on a current basis, a list of all U.S. financial institutions that have, upon application to the SVO, been determined to meet the eligibility standards of its Purposes and Procedures Manual. These standards, developed by the NAIC’s Letter of Credit (EX4) Study Group, make use of nationally recognized ratings services, and are more rigorous in the case of foreign banking organizations (whose standby letters of credit must be issued or confirmed by a qualified U.S. financial institution) than those that are applicable to domestic financial institutions whose standby letters of credit would be considered acceptable. Source: Model #785, 2012.

3 The Regulation of Financial Holding Companies, Robert Charles Clark, 92 Harv. L. Rev. 787, 796; 1978-1979


5 Uniform Commercial Code (1995) § 5-102. Definitions. (a) In this article: (2) "Applicant" means a person at whose request or for whose account a letter of credit is issued. The term includes a person who requests an issuer to issue a letter of credit on behalf of another if the person making the request undertakes an obligation to reimburse the issuer. (3) "Beneficiary" means a person who under the terms of a letter of credit is entitled to have its complying presentation honored. The term includes a person to whom drawing rights have been transferred under a transferable letter of credit. (9) "Issuer" means a bank or other person that issues a letter of credit, but does not include an individual who makes an engagement for personal, family, or household purposes. (10) "Letter of credit" means a definite undertaking that satisfies the requirements of Section 5-104 by an issuer to a beneficiary at the request of or for the account of an applicant or, in the case of a financial institution, to itself or for its own account, to honor a documentary presentation by payment or delivery of an item of value.

6 Uniform Commercial Code (1995) § 5-104. Formal Requirements. A letter of credit, confirmation, advice, transfer, amendment, or cancellation may be issued in any form that is a record and is authenticated (i) by a signature or (ii) in accordance with the agreement of the parties or the standard practice referred to in Section 5-108(c), § 5-102. Definitions. (a) In this article: (14) "Record" means information that is inserted on a tangible medium, or that is stored in an electronic or other medium and is retrievable in perceivable form. § 5-108. Issuer's Rights and Obligations (e) An issuer shall observe standard practice of financial institutions that regularly issue letters of credit. Determination of the issuer's observance of the standard practice is a matter of interpretation for the court. The court shall offer the parties a reasonable opportunity to present evidence of the standard practice.

Official Comment 6 to Section 5-102 – "The label on a document is not conclusive; certain documents labelled “guarantees” in accordance with European (and occasionally, American) practice are letters of credit. On the other hand, even documents that are labelled "letter of credit" may not constitute letters of credit under the definition in Section 5-102(a). When a document labelled a letter of credit requires the issuer to pay not upon the presentation of documents, but upon the determination of an extrinsic fact such as applicant's failure to perform … and where that condition appears on its face to be fundamental and would, if ignored, leave no obligation to the issuer under the document labelled letter of credit, the issuer's undertaking is not a letter of credit. It is probably some form of suretyship or other contractual arrangement and may be enforceable as such. … undertakings whose fundamental term requires an issuer to look beyond documents and beyond conventional reference to the clock, calendar, and practices concerning the form of various documents are not governed by Article 5. … Although Section 5-108(g) recognizes that certain nondocumentary conditions can be included in a letter of credit without denying the undertaking the status of letter of credit, that section does not apply to cases where the nondocumentary condition is fundamental to the issuer's obligation. … Note, however, that no particular phrase or label is necessary to establish a letter of credit. It is sufficient if the undertaking of the issuer shows that it is a "letter of credit," but no such language is necessary … “

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consider the factors described in section 1816 of this title in determining whether to approve the application for insurance. (b) Foreign branch nonmember

by reference in an undertaking. A term in an agreement or undertaking generally excusing liability or generally limiting remedies for failure to perform

Edward V. Murphy, Dec. 8, 2010.


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Documentary Credits, to which the letter of credit, confirmation, or other undertaking is expressly made subject

the liability of an issuer, nominated person, or adviser is governed by any rules of custom or practice,

such as the Uniform Customs and Practice for

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10 International Chamber of Commerce, Department of Policy and Business Practices, Commission on Banking Technique and Practice, “When a non-bank

issues a letter of credit”, Oct. 30, 2002. The Commission recognized the prevailing assumption “… that banks have the operational expertise to handle

issuance and presentation under letters of credit in a professional manner, that they have the tradition of independence from the underlying transaction which

is the basis of the commercial reputation of the letter of credit, and that in virtually all countries banks are specially regulated with a view toward protecting

those who rely on their undertakings.” Nevertheless, the Commission noted that the UCP is a set of voluntary rules of practice, not a legislative act and as

such parties may agree to vary which provisions will and will not apply to their agreement. Accordingly, the decision to use a non-bank as issuer of an LOC

is a permitted modification. The Commission also noted that even in countries where only financial institutions can issue letters of credit, it is not clear that

banks are the only type of financial institution.

11 12 USC Section 1815. Deposit insurance (a) Application to Corporation required (1) In general Except as provided in paragraphs (2) and (3), any

depository institution which is engaged in the business of receiving deposits other than trust funds (as defined in section 1813(p) of this title), upon

application to and examination by the Corporation and approval by the Board of Directors, may become an insured depository institution. (2) Interim
depository institutions In the case of any interim Federal depository institution that is chartered by the appropriate Federal banking agency and will not open

for business, the depository institution shall be an insured depository institution upon the issuance of the institution’s charter by the agency. (3) Application

and approval not required in cases of continued insurance Paragraph (1) shall not apply in the case of any depository institution whose insured status is

continued pursuant to section 1814 of this title. (4) Review requirements In reviewing any application under this subsection, the Board of Directors shall

consider the factors described in section 1816 of this title in determining whether to approve the application for insurance. (b) Foreign branch nonmember

banks; matters considered Subject to the provisions of this chapter and to such terms and conditions as the Board of Directors may impose, any branch of a

foreign bank, upon application by the bank to the Corporation, and examination by the Corporation of the branch, and approval by the Board of Directors,
may become an insured branch. Before approving any such application, the Board of Directors shall give consideration to— …

12 Challenges to the Dual Banking System: The Funding of Bank Supervision by Christine E. Blair and Rose M. Kushmeider, FDIC Banking Review, 2006,

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8, 2010


15 The OCC was created in 1863 as part of the Department of Treasury to supervise federally chartered banks (“national” banks) and to replace the

circulation of state bank notes with a single national currency (Chapter 106, 13 STAT. 99). The OCC regulates a wide variety of financial functions, but only


Edward V. Murphy, Dec. 8, 2010.
12 USC Section 21. - Formation of national banking associations; incorporators; articles of association - Associations for carrying on the business of banking under title 62 of the Revised Statutes may be formed by any number of natural persons, not less in any case than five. They shall enter into articles of association, which shall specify in general terms the object for which the association is formed, and may contain any other provisions, not inconsistent with law, … These articles shall be signed by the persons uniting to form the association, and a copy of them shall be forwarded to the Comptroller of the Currency, to be filed and preserved in his office.

12 USC § 24. Corporate powers of associations - Upon duly making and filing articles of association and an organization certificate the [a national banking] association shall become, as from the date of the execution of its organization certificate, a body corporate, and as such, and in the name designated in the organization certificate, it shall have power – … Seventh. To exercise by its board of directors or duly authorized officers or agents, subject to law, all such incidental powers as shall be necessary to carry on the business of banking; by discounting and negotiating promissory notes, drafts, bills of exchange, and other evidences of debt; by receiving deposits; by buying and selling exchange, coin, and bullion; by loaning money on personal security; and by obtaining, issuing, and circulating notes according to the provisions of this title …

12 CFR 7.1016 - Independent undertakings to pay against documents. (a) General authority. A national bank may issue and commit to issue letters of credit and other independent undertakings within the scope of the applicable laws or rules of practice recognized by law. Under such letters of credit and other independent undertakings, the bank's obligation to honor depends upon the presentation of specified documents and not upon nondocumentary conditions or resolution of questions of fact or law at issue between the applicant and the beneficiary. A national bank may also confirm or otherwise undertake to honor or purchase specified documents upon their presentation under another person's independent undertaking within the scope of such laws or rules.

The authority to issue letters of credit is identified in an OCC Manual as payment services within the general banking activities of a national bank. “National banks may engage in activities that are part of, or incidental to, the business of banking, or are otherwise authorized for a national bank … Lending, in General. A national bank and its operating subsidiaries may make, purchase, sell, service, or warehouse house loans or other extensions of credit for its own or another’s account, including consumer loans, credit card loans, commercial loans, residential mortgage loans, commercial mortgage loans, and standby letters of credit. 12 USC 24 (Seventh), 371; 12 CFR 5.34 … Payment Services … Letters of Credit. National banks may issue and commit to issue letters of credit and other independent undertakings within the scope of the applicable laws or rules of practice recognized by law …” OCC. Activities Permissible for a National Bank, Cumulative, 2011 Annual Edition.

12 U.S. Code § 24a - Financial subsidiaries of national banks (a) Authorization to conduct in subsidiaries certain activities that are financial in nature (1) In general - Subject to paragraph (2), a national bank may control a financial subsidiary, or hold an interest in a financial subsidiary, … only if — (A) the financial subsidiary engages only in— (i) activities that are financial in nature or incidental to a financial activity pursuant to subsection (b) of this section; and (ii) activities that are permitted for national banks to engage in directly (subject to the same terms and conditions that govern the conduct of the activities by a national bank); … (b) Activities that are financial in nature (1) Financial activities (A) In general. An activity shall be financial in nature or incidental to such financial activity only if— (i) such activity has been defined to be financial in nature or incidental to a financial activity for bank holding companies pursuant to section 1843(k)(4) of this title; or (ii) the Secretary of the Treasury determines the activity is financial in nature or incidental to a financial activity in accordance with subparagraph (B). (B) Coordination between the Board and the Secretary of the Treasury (i) Proposals raised before the Secretary of the Treasury (I) Consultation - The Secretary of the Treasury shall notify the Board of, and consult with the Board concerning, any request, proposal, or application under this section for a determination of whether an activity is financial in nature or incidental to a financial activity …

12 U.S. Code § 1843 - Interests in nonbanking subsidiaries of national banks (a) Authorization to conduct in subsidiaries certain activities that are financial in nature (1) In general - Notwithstanding subsection (a) of this section, a financial holding company may engage in any activity, … that the Board determines (A) to be financial in nature or incidental to such financial activity; or (B) is complementary to a financial activity … (4) Activities that are financial in nature - For purposes of this subsection, the following activities shall be considered to be financial in nature: (A) Lending … (B) Insuring, guaranteeing, or indemnifying … (F) Engaging in any activity that the Board has determined, by order or regulation … to be so closely related to banking or managing or controlling banks as to be a proper incident thereto …

12 CFR 225.86 - What activities are permissible for any financial holding company? The following activities are financial in nature or incidental to a financial activity: (a) Activities determined to be closely related to banking. (1) Any activity that the Board had determined by regulation prior to November 12, 1999, to be so closely related to banking as to be a proper incident thereto, subject to the terms and conditions contained in this part, unless modified by the Board. These activities are listed in § 225.28.

12 CFR § 225.28 - List of permissible nonbanking activities. (a) Closely related nonbanking activities. The activities listed in paragraph (b) of this section are so closely related to banking or managing or controlling banks as to be a proper incident thereto, and may be engaged in by a bank holding company or its subsidiary in accordance with the requirements of this regulation. (b) Activities determined by regulation to be permissible—(1) Extending credit and servicing loans. Making, acquiring, brokering, or servicing loans or other extensions of credit (including factoring, issuing letters of credit and accepting drafts) for the company's account or for the account of others …

12 U.S. Code § 3102 - Establishment of Federal branches and agencies by foreign banks- (a) Establishment and operation of Federal branches and agencies (1) Initial Federal branch or agency - Except as provided in section 3103 of this title, a foreign bank which engages directly in a banking business outside the United States may, with the approval of the Comptroller, establish one or more Federal branches or agencies in any State in which (1) it is not operating a branch or agency pursuant to State law and (2) the establishment of a branch or agency, as the case may be, by a foreign bank is not prohibited by State law … (b) … Except as otherwise specifically provided in this chapter or in rules, regulations, or orders adopted by the Comptroller under this section, operations of a foreign bank at a Federal branch or agency shall be conducted with the same rights and privileges as a national bank at the same location and shall be subject to all the same duties, restrictions, penalties, liabilities, conditions, and limitations that would apply under the National Bank Act to a national bank doing business at the same location, except that … (2) A Federal branch or agency shall not be required to become a member bank, as that term is defined in section 221 of this title; and (3) A Federal agency shall not be required to become an insured bank as that term is defined in section 1813(h) of this title …
12 CFR 28.13 - Permissible activities. (a) Applicability of laws—(1) General. Except as otherwise provided by the IBA, other Federal laws or regulations, or otherwise determined by the OCC, the operations of a foreign bank at a Federal branch or agency shall be conducted with the same rights and privileges and subject to the same duties, restrictions, penalties, liabilities, conditions, and limitations that would apply if the Federal branch or agency were a national bank operating at the same location.

12 CFR 7.1016 - Independent undertakings to pay against documents. (a) General authority. A national bank may issue and commit to issue letters of credit and other independent undertakings within the scope of the applicable laws or rules of practice recognized by law. Under such letters of credit and other independent undertakings, the bank's obligation to honor depends upon the presentation of specified documents and not upon nondocumentary conditions or resolution of questions of fact or law at issue between the applicant and the beneficiary. A national bank may also confirm or otherwise undertake to honor or purchase specified documents upon their presentation under another person's independent undertaking within the scope of such laws or rules. See also, OCC, Activities Permissible for a National Bank, 2011 Annual Edition. The authority to issue letters of credit is identified as a lending activity under the General Banking Activities of a national bank.

20 12 U.S. Code § 1813 – Definitions. - As used in this chapter— (b) Definition of savings associations and related terms (1) Savings association - The term "savings association" means— (A) any Federal savings association; (B) any State savings association; and (C) any corporation (other than a bank) that the Board of Directors and the Comptroller of the Currency jointly determine to be operating in substantially the same manner as a savings association. (2) Federal savings association - The term "Federal savings association" means any Federal savings association or Federal savings bank which is chartered under section 1464 of this title. (3) State savings association. The term "State savings association" means—(A) any building and loan association, savings and loan association, or homestead association; or (B) any cooperative bank (other than a cooperative bank which is a State bank as defined in subsection (a)(2) of this section), which is organized and operating according to the laws of the State (as defined in subsection (a)(3) of this section) in which it is chartered or organized.

21 The OTS was created in 1989 during the savings and loan crisis (P.L. 101-73, 103 STAT. 183), as successor to the Federal Savings and Loan Insurance Corporation (FSLIC), created in 1934 and administered by the Federal Home Loan Bank Board. The OTS had responsibility for federal savings associations and their holding companies and also supervised federally insured state savings associations. Congressional Research Service, Who Regulates Whom? An Overview of U.S. Financial Supervision, Mark Jickling and Edward V. Murphy, December 8, 2010.

22 12 USC § 1464. Federal savings associations - (a) In general - In order to provide thrift institutions for the deposit of funds and for the extension of credit for homes and other goods and services, the Director is authorized, under such regulations as the Director may prescribe— (1) to provide for the organization, incorporation, examination, operation, and regulation of associations to be known as Federal savings associations (including Federal savings banks, and (2) to issue charters therewith, giving primary consideration of the best practices of thrift institutions in the United States. … (b) Deposits and related powers - (1) Deposit accounts (A) Subject to the terms of its charter and regulations of the Director, a Federal savings association may—(i) raise funds through such deposit, share, or other accounts, including demand deposit accounts (hereafter in this section referred to as "accounts"); and (ii) issue passbooks, certificates, or other evidence of accounts. …

23 12 CFR § 160.50 - Letters of credit and other independent undertakings—authority. A Federal savings association may issue letters of credit and may issue such other independent undertakings as are approved by the OCC, subject to the restrictions in § 160.120.

24 Federal Deposit Insurance Act, 12 USC Section 1813. (c) Definitions Relating to Depository Institutions. (1) Depository Institutions.--The term "depository institution" means any bank or savings association, (2) … The term "insured depository institution" means any bank or savings association the deposits of which are insured by the Corporation pursuant to this Act. … (4) … The term "Federal depository institution" means any national bank, any Federal savings association, and any Federal branch. (5) … The term "State depository institution" means any State bank, any State savings association, and any insured branch which is not a Federal branch.

25 Federal Deposit Insurance Act, 12 USC Section 1813. As used in this chapter — (a) … The term "bank"-- (A) means any national bank and State bank, and any Federal branch and insured branch; and (B) includes any former savings association. (2) … The term "State bank" means any bank, banking institution, trust company, savings bank, industrial bank (or similar depository institution which the Board of Directors finds to be operating substantially in the same manner as an industrial bank), or other banking institution which-- (A) is engaged in the business of receiving deposits, other than trust funds (as defined in this section); and (B) is incorporated under the laws of any State or which is operating under the Code of Law for the District of Columbia, including any cooperative bank or other unincorporated bank the deposits of which were insured by the Corporation on the day before the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. (3) … The term "State" means any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

26 12 U.S. Code § 1831a - Activities of insured State banks - (a) Permissible activities - (1) In general - … an insured State bank may not engage in any type of activity that is not permissible for a national bank unless— (A) the Corporation has determined that the activity would pose no significant risk to the Deposit Insurance Fund; and (B) the State bank is, and continues to be, in compliance with applicable Federal banking agency.
investments that are not permissible for national banks and their subsidiaries. The phrase “activity permissible for a national bank” means any activity authorized for national banks under any statute including the National Bank Act (12 U.S.C. 21 et seq.), as well as activities recognized as permissible for a national bank in regulations, official circulars, bulletins, orders or written interpretations issued by the Office of the Comptroller of the Currency (OCC).

12 CFR 7.1016 - Independent undertakings to pay against documents. (a) General authority. A national bank may issue and commit to issue letters of credit and other independent undertakings within the scope of the applicable laws or rules of practice recognized by law. Under such letters of credit and other independent undertakings, the bank's obligation to honor depends upon the presentation of specified documents and not upon nondocumentary conditions or resolution of questions of fact or law at issue between the applicant and the beneficiary. A national bank may also confirm or otherwise undertake to honor or purchase specified documents upon their presentation under another person's independent undertaking within the scope of such laws or rules. See also, OCC, Activities Permissible for a National Bank, 2011 Annual Edition. The authority to issue letters of credit is identified as a lending activity under the General Banking Activities of a national bank.

27 Federal Deposit Insurance Corporation Act, 12 USC Section 1813 (b) Definitions ... (1) ... The term “savings association” means-- (A) any Federal savings association; (B) any State savings association; and (C) any corporation (other than a bank) that the Board of Directors and the Comptroller of the Currency jointly determine to be operating in substantially the same manner as a savings association. (2) ... The term “Federal savings association” means any Federal savings association or Federal savings bank which is chartered under section 1464 of this title. (3) ... The term “State savings association” means-- (A) any building and loan association, savings and loan association, or homestead association; or (B) any cooperative bank (other than a cooperative bank which is a State bank as defined in subsection (a) (2)), which is organized and operating according to the laws of the State (as defined in subsection (a)(3)) in which it is chartered or organized.

12 USC Section 1831c - Activities of savings associations (a) In general - ... a savings association chartered under State law may not engage as principal in any type of activity ... not permissible for a savings association unless ... (b) Differences of magnitude between State and Federal powers Notwithstanding subsection (a)(1) of this section, if an activity (other than an activity described in section 1464(c)(2)(B) of this title) is permissible for a Federal savings association, a savings association chartered under State law may engage as principal in that activity in an amount greater than the amount permissible for a Federal savings association if...

12 CFR 362.9 - Activities of Insured State Savings Associations - Purpose and scope. (a) This subpart ... implements the provisions of section 28 (a) of the Federal Deposit Insurance Act (12 U.S.C. 1813(a)) that restrict and prohibit insured state savings associations ... from engaging in activities and investments of a type that are not permissible for a Federal savings association and their service corporations ... The phrase “activity permissible for a Federal savings association” means any activity authorized for a Federal savings association under any statute including ... (12 U.S.C. 1464 et seq.), as well as activities recognized as permissible for a Federal savings association in regulations issued by the Office of the Comptroller of the Currency (OCC) or in bulletins, orders or written interpretations issued by the OCC, or by the former Office of Thrift Supervision until modified, terminated, set aside, or superseded by the OCC.

12 C.F.R. § 160.50 - Letters of credit and other independent undertakings—authority. A Federal savings association may issue letters of credit and may issue such other independent undertakings as are approved by the OCC, subject to the restrictions in § 160.120.

12 CFR 160.120 - Letters of credit and other independent undertakings to pay against documents. (a) General authority. A Federal savings association may issue and commit to issue letters of credit within the scope of applicable laws or rules of practice recognized by law. It may also issue other independent undertakings within the scope of such laws or rules of practice recognized by law that have been approved by the OCC (approved undertaking). 1 Under such letters of credit and approved undertakings, the savings association's obligation to honor depends upon the presentation of specified documents and not upon nondocumentary conditions or resolution of questions of fact or law at issue between the account party and the beneficiary. A savings association may also confirm or otherwise undertake to honor or purchase specified documents upon their presentation under another person's independent undertaking within the scope of such laws or rules.

28 12 CFR 702.1 - Authority, purpose, scope and other supervisory authority. (a) Authority. Subparts ... are issued by the National Credit Union Administration pursuant to section 216 of the Federal Credit Union Act (FCUA), ... (b) Purpose. The express purpose of prompt corrective action under section 1799d is to resolve the problems of federally-insured credit unions at the least possible long-term loss to the National Credit Union Share Insurance Fund ...

12 CFR 702.2 - Definitions. Except as provided below, the terms used in this part have the same meanings as set forth in FCUA sections 101 and 216, 12 U.S.C. 1752, 1790d. ... (c) Credit union means a federally-insured, natural person credit union, whether federally- or State-chartered, as defined by 12 U.S.C. 1752(b) ... (e) NCUSIF means the National Credit Union Share Insurance Fund as defined by 12 U.S.C. 1783.

12 U.S. Code § 1752 – Definitions. As used in this chapter— (1) the term “Federal credit union” means a cooperative association organized in accordance with the provisions of this chapter for the purpose of promoting thrift among its members and creating a source of credit for provident or productive purposes; (6) The terms “State credit union” and “State-chartered credit union” mean a credit union organized and operated according to the laws of any State, the District of Columbia, the several territories and possessions of the United States, the Panama Canal Zone, or the Commonwealth of Puerto Rico, which laws provide for the organization of credit unions similar in principle and objectives to Federal credit unions; (7) The term “insured credit union” means any credit union the member accounts of which are insured in accordance with the provisions of subchapter II of this chapter, and the term “noninsured credit union” means any credit union the member accounts of which are not so insured; (8) The term “Fund” means the National Credit Union Share Insurance Fund; ...
The categories of activities in this section are preapproved as incidental to carrying on your business under § 721.2. The examples of incidental powers activities within each category are provided in this section as illustrations of activities permissible under the particular category, not as an exclusive or exhaustive list. (b) Loan-related products. Loan-related products are the products, activities, or services you provide to your members in a lending transaction that protect you against credit-related risks or are otherwise incidental to your lending authority. These products or activities may include debt cancellation agreements, debt suspension agreements, letters of credit and leases.

20 12 USC § 1841. Definitions (a)(1) Except as provided in paragraph (5) of this subsection, “bank holding company” means any company which has control over any bank or over any company that is or becomes a bank holding company by virtue of this chapter. (2) Any company has control over a bank or over any company if— (A) the company directly or indirectly or acting through one or more other persons owns, controls, or has power to vote 25 percent or more of any class of voting securities of the bank or company; (B) the company controls in any manner the election of a majority of the directors or trustees of the bank or company; or (C) the Board determines, after notice and opportunity for hearing, that the company directly or indirectly exercises a controlling influence over the management or policies of the bank or company.


22 12 U.S. Code § 1843 - Interests in nonbanking organizations (a) Ownership or control of voting shares of any company not a bank; engagement in activities other than banking. Except as otherwise provided in this chapter, no bank holding company shall— (1) after May 9, 1956, acquire direct or indirect ownership or control of any voting shares of any company which is not a bank, or (2) after two years from the date as of which it becomes a bank holding company, … after December 31, 1978, or, … as a result of the enactment of the Bank Holding Company Act Amendments of 1970, a bank holding company on December 31, 1970, after December 31, 1980, … engage in any activities other than (A) those of banking or of managing or controlling banks and other subsidiaries authorized under this chapter or of furnishing services to or performing services for its subsidiaries, and (B) those permitted under paragraph (8) of subsection (c) of this section subject to all the conditions specified in such paragraph or in any order or regulation issued by the Board under such paragraph:

12 USC 1843 (c) Exemptions … The prohibitions in this section shall not apply to … (8) shares of any company the activities of which had been determined by the Board … to be so closely related to banking as to be a proper incident thereto (subject to such terms and conditions contained in such regulation or order, unless modified by the Board);

12 CFR § 225.28 - List of permissible nonbanking activities. (a) Closely related nonbanking activities. The activities listed in paragraph (b) of this section are so closely related to banking or managing or controlling banks as to be a proper incident thereto, and may be engaged in by a bank holding company or its subsidiary in accordance with the requirements of this regulation. (b) Activities determined by regulation to be permissible—(1) Extending credit and servicing loans. Making, acquiring, brokering, or servicing loans or other extensions of credit (including factoring, issuing letters of credit and accepting drafts) for the company's account or for the account of others …

12 USC 1841 (p) - Financial Holding Company.— For purposes of this chapter, the term “financial holding company” means a bank holding company that meets the requirements of section 1843(f)(1) of this title.

12 USC 1843 (k): Engaging in activities that are financial in nature (1) In general. Notwithstanding subsection (a) of this section, a financial holding company may engage in any activity, and may acquire and retain the shares of any company engaged in any activity, that the Board, in accordance with paragraph (2), determines (by regulation or order) — (A) to be financial in nature or incidental to such financial activity; or (B) is complementary to a financial activity … (4) Activities that are financial in nature - For purposes of this subsection, the following activities shall be considered to be financial in nature: (A) Lending … (B) Insuring, guaranteeing, or indemnifying … (F) Engaging in any activity that the Board has determined, by order or regulation … to be so closely related to banking or managing or controlling banks as to be a proper incident thereto …

12 CFR 225.86 - What activities are permissible for any financial holding company? The following activities are financial in nature or incidental to a financial activity: (a) Activities determined to be closely related to banking. (1) Any activity that the Board had determined by regulation prior to November 12, 1999, to be so closely related to banking as to be a proper incident thereto, subject to the terms and conditions contained in this part, unless modified by the Board. These activities are listed in § 225.28.

1843 (f)(1): Conditions for engaging in expanded financial activities (1) In general. Notwithstanding subsection (k), (n), or (o) of this section, a bank holding company may not engage in any activity … other than activities permissible for any bank holding company under subsection (c)(8) of this section, unless … and (C) the bank holding company has filed with the Board— (i) a declaration that the company elects to be a financial holding company to engage in activities … that were not permissible for a bank holding company to engage in or acquire before the enactment of the Gramm-Leach-Bliley Act …

23 12 USC § 1850a - Securities holding companies (a) Definitions In this section—(1) the term “associated person of a securities holding company” means a person directly or indirectly controlling, controlled by, or under common control with, a securities holding company; (2) the term “foreign bank” has the same meaning as in section 3101(7) of this title; (3) the term “insured bank” has the same meaning as in section 1813 of this title; (4) the term “securities holding company”— (A) means— (i) a person (other than a natural person) that owns or controls 1 or more brokers or dealers registered with the Commission; and (ii) the associated persons of a person described in clause (i); and (B) does not include a person that is— (i) a nonbank financial company supervised by the Board under title I; (ii) an insured bank (other than an institution described in subparagraphs 2 (D), (F), or (H) of section 3(c)(2) of the
Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)) 3 or a savings association; (iii) an affiliate of an insured bank (other than an institution described in subparagraphs 2 (D), (F), or (H) of section 2(c)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)) 3 or an affiliate of a savings association; (iv) a foreign bank, foreign company, or company that is described in section 3106(a) of this title; (v) a foreign bank that controls, directly or indirectly, a corporation chartered under section 25A of the Federal Reserve Act (12 U.S.C. 611 et seq.); or (vi) subject to comprehensive consolidated supervision by a foreign regulator; (v) the term “supervised securities holding company” means a securities holding company that is supervised by the Board of Governors under this section; and (6) the terms “affiliate”, “bank”, “bank holding company”, “company”, “control”, “savings association”, and “subsidiary” have the same meanings as in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841).

Sec. 1850(b)(a) and (b) and 12 CFR Part 241 Final Rule [Regulation oo] Supervised Securities Holding Company Registration.

15 U.S.C. Code § 28k - Definitions and application (a) Definitions … (4) Broker.— (A) In general.— The term “broker” means any person engaged in the business of effecting transactions in securities for the account of others. (B) Exception for certain bank activities.— A bank shall not be considered to be a broker because the bank engages in any one or more of the following activities under the conditions described … (5) Dealer.— (A) In general.— The term “dealer” means any person engaged in the business of buying and selling securities (not including security-based swaps, other than security-based swaps with or for persons that are not eligible contract participants) for such person’s own account through a broker or otherwise. (B) Exception for person not engaged in the business of dealing.— The term “dealer” does not include a person that buys or sells securities (not including security-based swaps, other than security-based swaps with or for persons that are not eligible contract participants) for such person’s own account, either individually or in a fiduciary capacity, but not as a part of a regular business.


26 See the underlined text in 12 USC Section 1850a above. The definitions corresponding to the underlined exclusions in 12 USC Section 1841 (c)(2) are identified below. (c) BANK DEFINED … Except as provided in paragraph (2), the term “bank” means any of the following: (A) An insured bank as defined in section 3(h) of the Federal Deposit Insurance Act [12U.S.C. 1813(b)]. (B) An institution organized under the laws of the United States, any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands which both— (i) accepts demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties or others; and (ii) is engaged in the business of making commercial loans. (2) EXCEPTIONS.— The term “bank” does not include any of the following: (D) An institution that functions solely in a trust or fiduciary capacity; if— (i) all or substantially all of the deposits of such institution are in trust funds and are received in a bona fide fiduciary capacity; (ii) no deposits of such institution which are insured by the Federal Deposit Insurance Corporation are offered or marketed by or through an affiliate of such institution; (iii) such institution does not accept demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties or others; and (iv) such institution does not— (I) obtain payment or payment related services from any Federal Reserve bank, including any service referred to in section 11A of the Federal Reserve Act [12U.S.C. 248a]; or (II) exercise discount or borrowing privileges pursuant to section 19(b)(7) of the Federal Reserve Act [12 U.S.C. 461(b)(7)]. (F) An institution, including an institution that accepts collateral for extensions of credit by holding deposits under $100,000, and by other means which— (i) engages only in credit card operations; (ii) does not accept demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties or others; (iii) does not accept any savings or time deposit of less than $100,000; (iv) maintains only one office that accepts deposits; and (H) An industrial loan company, industrial bank, or other similar institution which is— (i) an institution organized under the laws of a State which, on March 5, 1987, had in effect or had under consideration in such State’s legislature a statute which required or would require such institution to obtain insurance under the Federal Deposit Insurance Act [12 U.S.C. 1811 et seq.];— (I) which does not accept demand deposits that the depositor may withdraw by check or similar means for payment to third parties; (II) which has total assets of less than $100,000,000; or (III) the control of which is not acquired by any company after August 10, 1987; or (ii) an institution which does not, directly, indirectly, or through an affiliate, engage in any activity in which it was not lawfully engaged as of March 5, 1987, except that this subparagraph shall cease to apply to any institution which permits any overdraft (including any intraday overdraft), or which incurs any such overdraft in such institution’s account at a Federal Reserve bank, on behalf of an affiliate if such overdraft is not the result of an inadvertent computer or accounting error that is beyond the control of both the institution and the affiliate, or that is otherwise permissible for a bank controlled by a company described in section 1843(f)(1) of this title.

37 12 CFR § 241.3 Registration as a supervised securities holding company. (a) Registration. (1) Filing Requirement. A securities holding company may elect to register to become a supervised securities holding company by filing the appropriate form with the responsible Reserve Bank. … (3) Supervision and regulation of securities holding companies. (i) Upon an effective registration and except as otherwise provided by order of the Board, a supervised securities holding company shall be treated, and shall be subject to supervision and regulation by the Board, as if it were a bank holding company, or as otherwise appropriate to protect the safety and soundness of the supervised securities holding company and address the risks posed by such company to financial stability. (ii) The provisions of section 4 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) do not apply to a supervised securities holding company.

38 “This treatment will generally mean that supervised securities holding companies will, among other things, be required to submit the same reports and be subject to the same examination procedures, supervisory guidance, and capital standards that currently apply to bank holding companies. However, the Board anticipates that there will be a period of time before the Board becomes fully acquainted with supervised securities holding companies (and their operations) because they are a new class of entities the Dodd-Frank Act requires the Board to supervise. As a result, the proposed rule provides the Board with flexibility to supervise and regulate supervised securities holding companies in a manner that is consistent with safety and soundness and that addresses the risks they pose to financial stability.” Federal Register / Vol. 76, No. 171 / Friday, September 2, 2011 / Proposed Rules [Page 54717]; 12 CFR Part 241 [Regulation oo; Docket No. R-1430]; RIN 7100-AD 81

39 12 USC Section 1467a – Regulation of holding companies … (D) … Except as provided in clause (ii), the term “savings and loan holding company” means any company that directly or indirectly controls a savings association or that controls any other company that is a savings and loan holding company. (ii) … The term “savings and loan holding company” does not include— (I) a bank holding company … registered under, … (the 12 U.S.C. 1841 et seq.), or to any company directly or indirectly controlled by such company (other than a savings association); (II) a company that controls a savings association that functions solely in a trust or fiduciary capacity as described in … (12 U.S.C. 1841(c)(2)(D)); …
12 CFR § 584.2 Prohibited activities. (b) Unrelated business activity. No savings and loan holding company or subsidiary thereof that is not a savings association shall commence any business activity at any time, … subject to the limitations of this paragraph (b), except (in either case) (6) Any other activity: (ii) Is set forth in § 584.2-1 of this part, subject to the limitations therein;

12 CFR § 584.2-1 - Prescribed services and activities of savings and loan holding companies. (a) General. For the purpose of § 584.2(b)(6)(b) of this part, the activities set forth in paragraph (b) of this section are … permissible … activities for savings and loan holding companies or subsidiaries thereof that are neither savings associations … (b) Prescribed services and activities. Subject to the provisions of paragraph (c) of this section, a savings and loan holding company subject to restrictions on its activities pursuant to § 584.2(b) of this part, or a subsidiary thereof which is neither a savings association … may … engage in the following activities … (1) Originating, purchasing, selling and servicing any of the following: (i) Loans, and participation interests in loans, … (ii) Manufactured home chattel paper … (iii) Loans, with or without security, for the altering, repairing, improving, equipping or furnishing of any residential real estate; (iv) Educational loans; and (v) Consumer loans …

12 CFR § 584.2-2 Permissible bank holding company activities of savings and loan holding companies. (a) General. For purposes of § 584.2(b)(6)(i) of this part, the services and activities permissible for bank holding companies pursuant to regulations that the Board … has promulgated pursuant to section 4(c) of the Bank Holding Company Act are permissible for savings and loan holding companies, or subsidiaries thereof that are neither savings associations … Provided, That no savings and loan holding company shall commence any activity described in this paragraph (a) without the prior approval of this Office …

§ 584.2 Prohibited activities. (b) Unrelated business activity. No savings and loan holding company or subsidiary thereof that is not a savings association shall commence any business activity at any time, … that is subject to the limitations of this paragraph (b), except (in either case) the following: (6) Any other activity: (i) That the Board of Governors of the Federal Reserve System has permitted for bank holding companies pursuant to regulations promulgated under section 4(c) of the Bank Holding Company Act;

46 12 U.S.C. § 3101 – Definitions - For the purposes of this chapter— (3) “branch” means any office or any place of business of a foreign bank located in any State of the United States at which deposits are received; (5) “Federal agency” means an agency of a foreign bank established and operating under section 3102 of this title; (6) “Federal branch” means a branch of a foreign bank established and operating under section 3102 of this title;

12 U.S.C. § 3102 - Establishment of Federal branches and agencies by foreign bank (a) Establishment and operation of Federal branches and agencies (1) Initial Federal branch or agency Except as provided in section 3103 of this title, a foreign bank which engages directly in a banking business outside the United States may, with the approval of the Comptroller, establish one or more Federal branches or agencies in any State in which (1) it is not operating a branch or agency pursuant to State law and (2) the establishment of a branch or agency, as the case may be, by a foreign bank is not prohibited by State law … (b) Rules and regulations; rights and privileges; duties and liabilities; exceptions; coordination of examinations - Except as otherwise specifically provided in this chapter or in rules, regulations, or orders adopted by the Comptroller under this section, operations of a foreign bank at a Federal branch or agency shall be conducted with the same rights and privileges as a national bank at the same location and shall be subject to all the same duties, restrictions, penalties, liabilities, conditions, and limitations that would apply under the National Bank Act to a national bank doing business at the same location, …

12 U.S.C. § 3106 - Nonbanking activities of foreign banks - (a) Applicability of Bank Holding Company Acts - Except as otherwise provided in this section (1) any foreign bank that maintains a branch or agency in a State, (2) any foreign bank or foreign company controlling a foreign bank that controls a commercial lending company organized under State law, and (3) any company of which any foreign bank or company referred to in (1) and (2) is a subsidiary shall be subject to the provisions of the Bank Holding Company Act of 1956 [12 U.S.C. 1841 et seq.], and to section 1850 of this title and chapter 22 of this title in the same manner and to the same extent that bank holding companies are subject to such provisions.

12 CFR 28.10 Authority, purpose, and scope. (a) Authority. This subpart is issued pursuant to the authority in the International Banking Act of 1978 (IBA), 12 U.S.C. 3101 et seq., and 12 U.S.C. 93a. (b) Purpose—Purpose and scope. This subpart implements the IBA pertaining to the licensing, supervision, and operations of Federal branches and agencies in the United States. For corporate procedures pertaining to Federal branches and agencies, refer to 12 CFR part 5. (c) Scope. This subpart applies to all Federal branches and agencies of foreign banks. Nothing in the OCC’s rules relieves a Federal branch or agency from complying with requirements that are imposed by the FRB under Regulation K (12 CFR part 211) or otherwise imposed in accordance with applicable law.

12 CFR 28.13 - Permissible activities. (a) Applicability of laws—(1) General. Except as otherwise provided by the IBA, other Federal laws or regulations, or otherwise determined by the OCC, the operations of a foreign bank at a Federal branch or agency shall be conducted with the same rights and privileges and subject to the same duties, restrictions, penalties, liabilities, conditions, and limitations that would apply if the Federal branch or agency were a national bank operating at the same location. (2) Parent foreign bank senior management approval. Unless otherwise provided by the OCC, any provision in law, regulation, policy, or procedure that requires a national bank to obtain the approval of its board of directors will be deemed to require a Federal branch or agency to obtain the approval of parent foreign bank senior management. (b) Management of branch or agency—(1) Federal branches and agencies. A Federal branch or agency of a foreign bank shall not manage, through an office of the foreign bank that is located outside the United States and that is managed or controlled by that Federal branch or agency, any type of activity that a United States bank is not permitted to manage at any branch or subsidiary of the United States bank that is located outside the United States. (2) Activities managed in foreign branches or subsidiaries of United States banks. The types of activities referred to in paragraph (b)(1) of this section include the types of activities authorized to a United States bank by state or Federal charters, regulations issued by chartering or regulatory authorities, and other United States banking laws. However, United States procedural or quantitative requirements that may be applicable to the conduct of those activities by United States banks do not apply. (c) Additional guidance regarding permissible activities. For purposes of section 7(h) of the IBA, 12 U.S.C. 3105(h), the OCC may issue opinions, interpretations, or rulings regarding permissible activities of Federal branches.

12 CFR 7.1016 - Independent undertakings to pay against documents. (a) General authority. A national bank may issue and commit to issue letters of credit and other independent undertakings within the scope of the applicable laws or rules of practice recognized by law. Under such letters of credit and other independent undertakings, the bank's obligation to honor depends upon the presentation of specified documents and not upon non documentary conditions or resolution of questions of fact or law at issue between the applicant and the beneficiary. A national bank may also confirm or otherwise undertake to honor or purchase specified documents upon their presentation under another person's independent undertaking within the scope of such laws or rules. See also, OCC, Activities Permissible for a National Bank, 2011 Annual Edition. The authority to issue letters of credit is identified as a lending activity under the General Banking Activities of a national bank.
Section 3320.1, Letters of Credit, Branch and Agency Examination Manual, September 1997 (Examination Manual for U.S. Branches and Agencies of Foreign Banking Organizations prepared by) Federal Reserve Board and Reserve Bank Supervision Personnel. The Manual defines commercial documentary letters of credit as issued by a bank (issuing bank) on behalf of its customer (account party), a buyer of merchandise, to a seller (beneficiary), authorizing the seller to draw drafts up to a stipulated amount, under specified terms and undertaking to provide eventual payment for drafts drawn. The beneficiary will be paid when the terms of the letter of credit are met and the required supporting documents are submitted to the paying or negotiating bank. A standby letter of credit provides for payment to the beneficiary by the issuing bank in the event of default or nonperformance by the account party (the issuing bank’s customer) upon the presentation of a draft or the documentation, as required in the letter of credit. Although a standby letter of credit may arise from a commercial transaction, it is usually not linked directly to the distribution of goods from seller to buyer. For reporting purposes, standby letters of credit are shown as contingent liabilities in the branch’s Report of Assets and Liabilities. Depending on any applicable state and federal laws and regulations, standby letters of credit may be subject to prudential limitations.

12 CFR 28.1 Authority, purpose, and scope. (a) Authority. This subpart is issued pursuant to 12 U.S.C. 1 et seq., 24 (Seventh), 93a, and 602.
(b) Purpose. This subpart … clarifies permissible foreign activities of national banks. (c) Scope. This subpart applies to any national bank that engages in international operations through a foreign branch, or acquires an interest in an Edge corporation, Agreement corporation, foreign bank, or certain other foreign organizations.

12 CFR 28.2 Definitions. For purposes of this subpart: (a) Foreign bank means an organization that: (1) Is organized under the laws of a foreign country; (2) Engages in the business of banking; (3) Is recognized as a bank by the bank supervisory or monetary authority of the country of its organization or principal banking operations; (4) Receives deposits to a substantial extent in the regular course of its business; and (5) Has the power to accept demand deposits. (d) Foreign branch means an office of a national bank (other than a representative office) that is located outside the United States at which banking or financing business is conducted. (e) Foreign country means one or more foreign nations, and includes the overseas territories, dependencies, and insular possessions of those nations and of the United States, and the Commonwealth of Puerto Rico.

12 CFR 28.4 Permissible activities. (a) General. Subject to the applicable approval process, if any, a national bank may engage in any activity in a foreign country that is: (1) Permissible for a national bank in the United States; and (2) Usual in connection with the business of banking in the country where it transacts business. (b) Additional activities. In addition to its general banking powers, a national bank may engage in any activity in a foreign country that is permissible under the FRB’s Regulation K, 12 CFR part 211.

12 CFR 211.3 - Foreign branches of U.S. banking organizations. (a) General—(1) Definition of banking organization. For purposes of this section, a banking organization is defined as a member bank and its affiliates. (2) A banking organization is considered to be operating a branch in a foreign country if it has an affiliate that is a member bank, Edge or agreement corporation, or foreign bank that operates an office (other than a representative office) in that country. (3) For purposes of this subpart, a foreign office of an operating subsidiary of a member bank shall be treated as a foreign branch of the member bank and may engage only in activities permissible for a branch of a member bank. (4) A bank may not operate a foreign branch in a country where it is unauthorized to conduct banking business.

12 CFR Section 211.4 Permissible activities and investments of foreign branches of member banks. (a) Permissible activities and investments. In addition to its general banking powers, and to the extent consistent with its charter, a foreign branch of a member bank may engage in the following activities … so far as is usual in connection with the business of banking in the country where it transacts business: (b) Other activities. With the Board’s prior approval, engage in other activities that the Board determines are usual in connection with the transaction of the business of banking in the places where the member bank’s branches transact business.

12 CFR 211.10 Permissible activities abroad. (a) Activities usual in connection with banking. The Board has determined that the following activities are usual in connection with the transaction of banking or other financial operations abroad: (1) Commercial and other banking activities; (2) Financing, including commercial financing, consumer financing, mortgage banking, and factoring; …

12 U.S. Code § 321 - Application for membership - Any bank incorporated by special law of any State, operating under the Code of Law for the District of Columbia, or organized under the general laws of any State or of the United States, … desiring to become a member of the Federal Reserve System, may make application to the Board of Governors of the Federal Reserve System, under such rules and regulations as it may prescribe, for the right to subscribe to the stock of the Federal Reserve Bank organized within the district in which the applying bank is located. Such application shall be for the same amount of stock that the applying bank would be required to subscribe to as a national bank … The Board of Governors of the Federal Reserve System, subject to the provisions of this chapter and to such conditions as it may prescribe pursuant thereto may permit the applying bank to become a stockholder of such Federal Reserve bank …

12 CFR 208.1 Authority, purpose, and scope. (a) Authority. Subpart A of Regulation H (12 CFR part 208, subpart A) is issued by the Board … Under 12 U.S.C. 24, 36; sections 9, 11, 21, 25 and 25A of the Federal Reserve Act (12 U.S.C. 321–338a, 248a), 248c, 481–486, 601 and 611); sections 1814, 1816, 1818, 1831o, 1831p–1, 1831r–1 and 1835a of the Federal Deposit Insurance Act (FDI Act) (12 U.S.C. 1814, 1816, 1818, 1831o, 1831p–1, 1831r–1, and 1835); and 12 U.S.C. 3906–3909. (b) Purpose and scope of part 208. The requirements of this part 208 govern State member banks and state banks applying for admission to membership in the Federal Reserve System (System) under section 9 of the Federal Reserve Act (Act), except for § 208.7, which also applies to certain foreign banks licensed by a State. … (c) Purpose and scope of subpart A. This subpart A describes the eligibility requirements for membership of state chartered banking institutions in the System, the general conditions imposed upon members, including capital and dividend requirements, as well as the requirements for establishing and maintaining branches.

12 CFR 208.2 Definitions. For the purposes of this part: (c) Branch. (1) Branch means any bank branch, branch office, branch agency, additional office, or any branch place of business that receives deposits, pays checks, or lends money. A branch may include a temporary, seasonal, or mobile facility that meets these criteria. (g) State member bank or member bank means a state bank that is a member of the Federal Reserve System.
12 CFR 208.3 Application and conditions for membership in the Federal Reserve System. (a) Applications for membership and stock. (1) State banks applying for membership in the Federal Reserve System shall file with the appropriate Federal Reserve Bank an application for membership in the Federal Reserve System and for stock in the Reserve Bank, in accordance with this part …

Subpart B—Investments and Loans

12 CFR 208.20 Authority, purpose, and scope. … (b) Purpose and scope. This subpart B describes certain investment limitations on member banks, statutory requirements for amortizing losses on agricultural loans and extending credit in areas having special flood hazards, as well as the requirements for issuing letters of credit and acceptances.

12 CFR 208.24 Letters of credit and acceptances. (a) Standby letters of credit. For the purpose of this section, standby letters of credit include every letter of credit (or similar arrangement however named or designated) that represents an obligation to the beneficiary on the part of the issuer: (1) To repay money borrowed by or advanced to or for the account of the account party; or (2) To make payment on account of any evidence of indebtedness undertaken by the account party; or (3) To make payment on account of any default by the party procuring the issuance of the letter of credit in the performance of an obligation. (c) Bank’s lending limits. Standby letters of credit and ineligible acceptances count toward member banks’ lending limits imposed by state law.