



**6714-01-P**

**FEDERAL DEPOSIT INSURANCE CORPORATION**

**12 CFR Part 347**

**RIN 3064-AE36**

**Alternatives to References to Credit Ratings with Respect to Permissible Activities for Foreign Branches of Insured State Nonmember Banks and Pledge of Assets by Insured Domestic Branches of Foreign Banks**

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Final Rule.

**SUMMARY:** The FDIC is adopting a final rule (final rule) to amend its international banking regulations consistent with section 939A (section 939A) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) and the FDIC's authority under section 5(c) of the Federal Deposit Insurance Act (FDI Act). The final rule adopts without change the revisions and amendments that the FDIC proposed in a June 2016 notice of proposed rulemaking (NPR or proposed rule). These revisions and amendments include: replacing references to credit ratings in the regulation's definition of investment grade with an alternative standard of creditworthiness; and making changes to the eligibility criteria for the types of assets that insured branches of foreign banks may pledge for the benefit of the FDIC.

**DATES:** This rule is effective April 1, 2018.

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## **SUPPLEMENTARY INFORMATION:**

### **I. Policy Objectives**

The intent of the final rule is to conform Part 347 with section 939A's directive to reduce reliance on external credit ratings. By removing references to credit ratings in Part 347 and adopting an alternative standard of creditworthiness, the final rule encourages regular, in-depth analysis of the credit risks associated with specific types of securities held by foreign branches of state nonmember banks under subpart A of Part 347 (subpart A), or pledged for the benefit of the Deposit Insurance Fund (DIF) by the insured U.S. branches of foreign banks under subpart B of Part 347 (subpart B). The final rule supports these objectives by establishing an investment grade definition that is now applied in both subparts A and B.

The financial crisis in 2008 highlighted the importance of considering the liquidity of a security when assessing its overall risk. To address this concern, the revisions to the asset pledge requirement in subpart B include the application of a liquidity standard to the securities pledged to the FDIC by the insured U.S. branches of foreign banks, and applying a fair value discount to such pledged assets. These amendments support the objective of the asset pledge requirement, which is to ensure orderly asset liquidation at maximum value in the event such assets need to be liquidated to pay the insured deposits of the U.S. branch of the foreign bank.

## **II. Background**

In the decades prior to the financial crisis in 2008, third party credit risk assessments by nationally recognized statistical ratings organizations (NRSROs) helped to provide transparency and efficiency to the securities markets. Their assessments of creditworthiness allowed originators and investors to more accurately and readily meet their risk tolerances and investment strategies. Many financial regulations used these external credit risk ratings to set limits on the activities of regulated entities in order to foster safe and sound investment practices. However, during the run-up to the crisis many regulated institutions overly relied on the credit risk assessments of NRSROs, often neglecting to conduct a thorough, independent credit risk analysis. At the same time, flaws in the NRSROs' rating methodologies and conflicts arising from their business model (including certain commercial relationships with the originators of securities and strong competition by NRSROs for market share), undermined the accuracy of the credit ratings for a number of asset classes. Consequently, many investors, including banking organizations, experienced significant losses on securities with ratings that implied credit losses would be very unlikely and minimal. This prompted Congress to enact section 939A of the Dodd-Frank Act,<sup>1</sup> which directs each federal agency to review and modify regulations that reference credit ratings.

Section 939A requires each federal agency to review its regulations that require the use of an assessment of creditworthiness of a security or money market instrument and any references to or requirements in such regulations regarding credit ratings. Each agency must modify its regulations identified in the review by removing references to, or

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<sup>1</sup> Pub L. No. 111-203, section 939A, 124 Stat. 1376, 1887 (July 21, 2010).

requirements of reliance on, credit ratings and substituting appropriate standards of creditworthiness.

*Subpart A of Part 347 – Foreign Banking and Investment by Insured State Nonmember Banks*

Subpart A of Part 347, 12 CFR 347.101 to 347.122, addresses the international banking and investment activities of state nonmember banks, including the establishment and operations of foreign branches and subsidiaries.<sup>2</sup> In general, these regulations implement the FDIC's statutory authority under section 18(d)(2) of the FDI Act<sup>3</sup> regarding branches of insured state nonmember banks in foreign countries, and section 18(l) of the FDI Act<sup>4</sup> regarding insured state nonmember bank investments in foreign entities.

In addition to their general banking powers, banks with foreign branches are permitted to conduct a broad range of investment activities, including investment services and underwriting of debt and equity securities.<sup>5</sup> Under 12 CFR 347.115(b), a foreign branch of a bank may invest in, underwrite, distribute and deal, or trade foreign

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<sup>2</sup> A state nonmember bank may establish a non-U.S. branch with the approval of the FDIC (12 U.S.C. 1828(d)(2)). National banks must gain the approval of the Board of Governors of the Federal Reserve System (“Federal Reserve”) to open a non-U.S. branch. These branches may engage in any activity that is permitted in the United States, as well as those that are usual in connection with the banking business in the foreign country where it is located. State member banks may establish foreign branches with the approval of the Federal Reserve. U.S. banking organizations may also conduct international banking activities through Edge and agreement corporations. 12 U.S.C. 611-631 (“Edge corporations”); 12 U.S.C. 601-604(a) (“agreement corporations”).

<sup>3</sup> 12 U.S.C. 1828(d)(2).

<sup>4</sup> 12 U.S.C. 1828(l).

<sup>5</sup> The limitations on international investments and the definition of permissible activities found in the FDIC’s regulations in Part 347 are similar to, but not identical to, those found in Regulation K of the Federal Reserve.

government obligations that have an investment grade rating, up to an aggregate limit of ten percent of the bank's Tier 1 capital, as calculated under the Basel III capital rules in 12 CFR part 324, subpart C.<sup>6</sup> Section 347.102(o) currently defines investment grade to mean a security that is rated in one of the four highest categories by two or more NRSROs or one NRSRO if the security is rated by only one NRSRO.<sup>7</sup>

### *Subpart B of Part 347 – Foreign Banks*

The regulations contained in subpart B of Part 347 primarily implement provisions of the FDI Act and the International Banking Act (IBA)<sup>8</sup> concerning insured and noninsured U.S. branches of foreign banks.<sup>9</sup> Each foreign banking organization maintaining an insured branch must comply with specific FDIC asset maintenance<sup>10</sup> and asset pledge requirements under section 5(c) of the FDI Act. These requirements are separate and apart from other capital equivalency requirements of federal or state licensing authorities.<sup>11</sup> The FDIC no longer insures the deposits accepted by branches of

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<sup>6</sup> 12 CFR 324.20 through 324.22.

<sup>7</sup> An NRSRO is an entity registered with the U.S. Securities and Exchange Commission as an NRSRO under section 15E of the Securities Exchange Act of 1934. See 15 U.S.C. 78o–7, as implemented by 17 CFR 240.17g–1.

<sup>8</sup> Pub. L. No. 95-369, 92 Stat. 607 (Sept. 17, 1978) (codified at 12 U.S.C. 3101 *et seq.*).

<sup>9</sup> U.S. branches of foreign banks may be licensed by the Office of the Comptroller of the Currency (“OCC”) or by an individual state. The Federal Reserve is required to approve any new foreign bank branch. The Federal Reserve, among other things, is required to certify that the country from which the foreign bank is located subjects its banks, including the applicant, to comprehensive, consolidated supervision. 12 U.S.C. 3105(d).

<sup>10</sup> The FDIC requires that an insured branch of a foreign bank maintain, on a daily basis, eligible U.S. dollar-denominated assets in an amount not less than 106% of the preceding quarter's average book value of the branch's liabilities excluding those due to other offices or wholly owned subsidiaries of the foreign bank. 12 CFR 347.210.

<sup>11</sup> Although U.S. branches and agencies of foreign banks have no capital of their own, those that are federally licensed must deposit cash or eligible securities at approved insured banks to satisfy

foreign banks, except for deposits made in branches of foreign banks that are insured by operation of the grandfathering provisions of the IBA, as amended by the Foreign Bank Supervision Enhancement Act of 1991 (FBSEA).<sup>12</sup> The universe of these grandfathered branches is very limited. There are currently only ten insured U.S. branches of foreign banks in operation (four federal branches and six state branches). A foreign bank that has an insured branch must pledge assets for the benefit of the FDIC to protect the DIF in the event that the FDIC is obligated to pay the insured deposits of an insured branch under section 11(f) of the FDI Act.<sup>13</sup> Section 347.209(d) provides a list of the types of assets that a foreign bank may pledge for the benefit of the FDIC. In describing certain asset types, 12 CFR 347.209(d) references credit ratings issued by a nationally recognized rating service in connection with a determination of the credit quality of the assets that a foreign bank may pledge. Specifically, in three instances in subpart B, the references are to the highest subset of rating bands within the investment grade categories established by the ratings agencies.

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the "capital equivalency requirement" specified by the IBA. The amount of the deposit is required to be at least 5% of the total liabilities of the branch or agency office, or the capital that would be required if it were a freestanding national bank. 12 U.S.C. 3102(g)(2). The underlying purpose of the IBA provision is to ensure that branches and agencies of a foreign bank maintain a minimum level of unencumbered assets in the United States that would be available in a liquidation of the branch or agency. State-licensed branches and agencies also must meet capital equivalency requirements, which vary from state to state. *See, e.g.*, N.Y. Banking Law 202-b.

<sup>12</sup> Before FBSEA, a small number of foreign bank branches had obtained FDIC insurance under the provisions of the IBA and thus were permitted to accept retail deposits. These branches (insured branches) are "grandfathered", i.e., they may continue to receive insured retail deposits pursuant to section 6(d)(2) of the IBA. 12 U.S.C. 3104(d)(2).

<sup>13</sup> 12 U.S.C. 1821(f).

### **III. Notice of Proposed Rulemaking**

On June 28, 2016, the FDIC published the NPR in the Federal Register.<sup>14</sup> The NPR proposed amending the provisions of subparts A and B of Part 347 that reference credit ratings. The NPR proposed amending subpart A, which sets forth the FDIC's requirements for insured state nonmember banks that operate foreign branches, by replacing references to credit ratings in the definition of investment grade with a standard for determining the creditworthiness of securities and other financial instruments that has been adopted in other federal regulations that conform to section 939A. The NPR proposed amending subpart B to revise the FDIC's asset pledge requirement for insured U.S. branches of foreign banks. The NPR proposed amending the eligibility criteria for the types of assets that foreign banks may pledge by replacing the references to credit ratings with the revised definition of investment grade. This investment grade standard would be applied to each type of pledgeable asset under the NPR, which also proposed a liquidity requirement for such assets, and proposed subjecting them to a fair value discount. The NPR also proposed introducing cash as a new asset type that foreign banks may pledge under subpart B, and proposed creating a separate asset category expressly for debt securities issued by government sponsored enterprises.

The FDIC sought comments on all aspects of the June 2016 NPR and received two comment letters, one from a foreign banking organization and one from a private individual. These comments were considered in developing this final rule. The comments are discussed in the relevant sections that follow.

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<sup>14</sup> 81 FR 41877 (June 28, 2016).

#### **IV. The Final Rule**

##### **Part 347 - International Banking Subpart A - Foreign Banking and Investment by Insured State Nonmember Banks**

###### ***Section 347.102 Definitions.***

The final rule amends the definition of investment grade in 12 CFR 347.102(o) by deleting the references to credit ratings and NRSROs. This final rule defines investment grade as a security whose issuer has adequate capacity to meet all financial commitments under the security for the projected life of the exposure. Such an entity has adequate capacity to meet financial commitments if the risk of its default is low, and the full and timely repayment of principal and interest is expected.

The FDIC sought comment on whether this proposed standard of creditworthiness addressed the FDIC's objective of applying a standard that is transparent, well defined, differentiates credit risk, and provides for the timely measurement of change to the credit profile of the investment. One commenter, while generally supportive of efforts to implement an alternative to credit ratings references, expressed concern that the standard was subjective, entity-specific and possibly arbitrary. The other commenter expressed a similar concern that the standard was general and would require subjective determinations. The commenter recommended that the FDIC provide a more straightforward and objective standard.

The FDIC believes that the revised standard provides a flexible, straightforward measure of creditworthiness that is consistent with existing policy. The revised definition achieves the dual goal of reducing reliance on credit ratings and encouraging regular, in-depth analysis of the credit risks associated with specific types of securities held by foreign branches of state nonmember banks under subpart A, or pledged for the benefit of

the FDIC by the insured U.S. branches of foreign banks under subpart B. The revised definition of investment grade is also consistent with the definition of investment grade that was adopted by the FDIC, OCC, and Federal Reserve in the Basel III capital rules.<sup>15</sup> This definition is also consistent with the non-ratings based creditworthiness standard applicable to permissible corporate debt securities investments of savings associations adopted by the FDIC in 12 CFR part 362<sup>16</sup> and the credit quality standards regarding permissible investments for national banks adopted by the OCC under 12 CFR parts 1, 16, and 160.<sup>17</sup> In addition, it is consistent with the final rules adopted by the OCC that remove references to credit ratings from its regulations pertaining to foreign bank capital equivalency deposits for federal branches under 12 CFR 28.15.<sup>18</sup> Achieving consistency with other creditworthiness standards adopted by the federal banking agencies advances section 939A's directive that agencies establish, to the extent feasible, uniform standards of creditworthiness. Based on these considerations, the FDIC is

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<sup>15</sup> See 78 FR 62018 (Oct. 11, 2013) (Federal Reserve and OCC) (final rule); 78 FR 55340 (Sept. 10, 2013)(interim final rule)(FDIC); 79 FR 20754 (April 14, 2014)(final rule)(FDIC). In finalizing the Basel III capital rules, Federal Reserve and OCC issued a joint final rule, and the FDIC separately issued a substantively identical interim final rule, which was later made final without substantive changes.

<sup>16</sup> See Permissible Investments for Federal and State Savings Associations: Corporate Debt Securities, 77 FR 43151 (July 24, 2012).

<sup>17</sup> See Alternatives to the Use of External Credit Ratings in the Regulations of the OCC, 77 FR 35253 (June 13, 2012).

<sup>18</sup> The OCC's regulations previously allowed for the use of certificates of deposit ("CDs") or bankers' acceptances as part of the deposit if the issuer of the instrument was rated "investment grade" by an internationally recognized rating organization. Under the revised regulation, the issuer of the certificate of deposit or banker's acceptance must have "an adequate capacity to meet financial commitments under the security for the projected life of the asset or exposure." See Alternatives to the Use of External Credit Ratings in the Regulations of the OCC, 77 FR 35253 (June 13, 2012).

adopting as final the revisions in the proposed rule to the regulatory definition of investment grade.

***Section 347.115 Permissible activities for a foreign branch of an insured state nonmember bank.***

Section 347.115 defines the particular activities that a foreign branch of an insured state nonmember bank may conduct. These activities are subject to safety and soundness limitations and are limited by the extent to which the activities are consistent with banking practices in the foreign country where the bank maintains a branch. The final rule, consistent with the NPR, retains the language of 12 CFR 347.115(b), but § 347.115(b) is affected by the final rule insofar as § 347.115(b) uses the adopted definition of the term investment grade in 12 CFR 347.102(o). Subject to certain limitations and restrictions, § 347.115(b) permits a state nonmember bank's foreign branches to underwrite, distribute and deal, invest in, or trade investment grade obligations of any foreign country, its political subdivisions, and certain of its agencies and instrumentalities.<sup>19</sup> This authority is generally consistent with the provisions of the Federal Reserve's Regulation K, which governs the international operations of foreign branches of member banks.<sup>20</sup>

The regulatory definition of investment grade adopted in the final rule will remove references to credit ratings consistent with section 939A but will not affect the

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<sup>19</sup> The definition of "investment grade" for obligations of governments other than the host government was adopted in 2005 when the FDIC amended its international banking regulations, Part 347. 70 FR 17550 (April 6, 2005).

<sup>20</sup> Under the Regulation K, a foreign branch of a member bank may underwrite, distribute, buy, sell, and hold certain government debt obligations only if such obligations are rated investment grade. *See* 12 CFR 211.4(a)(2)(i)(C)-(D). The Federal Reserve adopted the definition of investment grade in its revisions to Regulation K in 2001. The investment grade rating requirement for obligations of governments other than the host government was considered appropriate because it limited cross-border transfer risk. 66 FR 54346 (Oct. 26, 2001).

general consistency between the Federal Reserve's Regulation K and the FDIC's Part 347 with regard to permissible activities. For purposes of the final rule, an issuer would satisfy this new standard if the state nonmember bank appropriately determines that the obligor presents low default risk and is expected to make timely payments of principal and interest. The definition addresses the safety and soundness concerns of this activity of foreign branches - namely the exposure of the foreign branch and the DIF to the entity issuing the security - without reference to a credit rating or an NRSRO. As noted above, the FDIC believes that the finalized standard will encourage state nonmember banks to conduct regular, in-depth analysis of the credit risks associated with specific types of securities held by their foreign branches.

#### **Part 347 - International Banking Subpart B - Foreign Banks**

##### ***Section 347.209 Pledge of assets.***

12 CFR 347.209 establishes the asset pledge requirement for insured U.S. branches of foreign banks. The amount that each foreign bank must pledge is determined by the supervisory risk posed by each U.S. branch and the U.S. branch's asset maintenance level.<sup>21</sup> The amount of assets that a U.S. branch of a foreign bank must pledge varies from two percent to eight percent of the branch's liabilities and is determined by reference to the risk-based assessment schedule provided in 12 CFR 347.209(b)(1).<sup>22</sup>

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<sup>21</sup> 12 CFR 347.209(b). Generally, an insured branch must maintain a level of assets that exceeds 106 percent of its liabilities. 12 CFR 347.210.

<sup>22</sup> The pledged assets must be placed at a depository approved by the FDIC. Generally, each insured branch of the foreign bank must meet the asset pledge requirement separately; however, a foreign bank with more than one insured branch in any state may treat all of its insured branches in the state as one entity for purposes of complying with this requirement. *See* 12 CFR 347.209(b)(5).

The current FDIC rules in 12 CFR 347.209(d) require that certain asset types have credit ratings within the top rating bands of an NRSRO. Under the existing rule, commercial paper may be eligible for pledging purposes if it is rated P-1 or P-2, or their equivalent, by an NRSRO.<sup>23</sup> Municipal general obligations are eligible if they have a credit rating within the top two rating bands of a NRSRO. Notes issued by bank and thrift holding companies, banks, or savings associations must also be rated within the top two rating bands of an NRSRO in order to be eligible. These references to the highest subset of rating bands within the investment grade categories established by the ratings agencies impose a higher credit standard than investment grade. The other types of eligible assets in the existing rules include: bank CDs with maturities of not greater than one year; Treasury bills, interest bearing bonds, notes, debentures, or other direct obligations of or fully guaranteed by the United States or any agency thereof; banker's acceptances with a maturity not greater than 180 days; and obligations of certain international development banks.<sup>24</sup>

The final rule removes the references to credit ratings issued by NRSROs in 12 CFR 347.209(d) and substitutes an investment grade standard to ensure the assets have appropriate credit quality. As proposed in the NPR, the final rule also permits only highly liquid assets to be pledged, and submits these instruments to fair value haircuts. The revised credit and liquidity standards and the comments addressing these standards are discussed below.

#### *Credit and Liquidity Standards*

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<sup>23</sup> P-1 and P-2 are Moody's top two rating bands for short-term obligations.

<sup>24</sup> See 12 CFR 347.209(d)(1), (2), (5), and (6).

Under this final rule, instruments falling within the relevant asset categories are eligible for pledging if they are investment grade. Consistent with this final rule's amendment to subpart A of Part 347, the final rule adds the same definition of investment grade to the definitions section of subpart B, 12 CFR 347.202, to define investment grade as a security issued by an entity that has adequate capacity to meet financial commitments under the security for the projected life of the exposure. To meet this standard, the insured branch of the foreign bank needs to determine that the risk of default by the obligor is low, and that full and timely repayment of principal and interest is expected. As noted earlier, this investment grade standard is consistent with other regulations amended pursuant to section 939A.

As proposed in the NPR, this final rule also provides that instruments falling within the relevant asset categories are eligible for pledging only if they are highly liquid. Highly liquid securities are those that:

- exhibit low credit and market risk;
- are traded in an active secondary two-way market that has committed market makers and independent bona fide offers to buy and sell so that a price reasonably related to the last sales price or current bona fide competitive bid and offer quotations can be determined within one day and settled at that price within a reasonable time period conforming with trade custom; and

- are a type of asset that investors historically have purchased in periods of financial market distress during which market liquidity has been impaired.<sup>25</sup>

The final rule requires a foreign bank to demonstrate that the instrument meets the highly liquid standard.

The FDIC sought comment on whether the proposed investment grade and liquidity standards for pledged assets under subpart B of Part 347 are reasonable provisions and whether the removal of references to external credit ratings should be implemented as proposed or whether there are alternatives that would achieve a creditworthiness standard that is sufficiently risk sensitive. One commenter expressed concern that the proposed investment grade and liquidity requirements will significantly increase the operational burden on the branch. This commenter expressed concern that the new standards contained in the definitions of investment grade and highly liquid are general and will require subjective determinations. The commenter also expressed the opinion that the highly liquid standard is not required under Section 939A. The commenter further noted that the introduction of this new standard is not necessary to protect the DIF against losses. This commenter contended that the types of pledgeable assets, coupled with the investment grade requirement, would provide adequate assurance that pledged assets are sufficiently low risk and liquid.

The proposed amendments in Subpart A address the permissible international banking and investment activities of state nonmember banks. Subpart A differs in scope

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<sup>25</sup> The definition of a highly liquid asset is consistent with the definition established in 12 CFR part 252, subpart O Enhanced Prudential Standards for Foreign Banking Organizations (The Federal Reserve's Regulation YY).

and purpose from subpart B, which establishes asset maintenance and pledge requirements for insured U.S. branches of foreign banks. The asset pledge requirements exist to protect the DIF by ensuring orderly asset liquidations at maximum values in the event such assets are liquidated to pay the insured deposits of the U.S. branch of the foreign bank.

Although requiring foreign banks to verify that pledged assets satisfy the proposed standards may require some initial adjustment of existing processes, the FDIC believes that it would impose minimal additional burden. The final rule adopts standards of investment grade and highly liquid assets that are already in use in other banking regulations. In addition, insured U.S. branches of foreign banks are currently expected to conduct due diligence to meet applicable standards of safety and soundness in connection with their investment activities without sole reliance on NRSRO ratings as a measure of creditworthiness. Furthermore, market data should already be accessible through an insured branch's normal data source channels, and should be used in pre-purchase and ongoing investment due diligence. Therefore, the FDIC does not believe that the final rule will significantly increase the operational burden on insured branches of foreign banks.

Existing 12 CFR 347.209(d) includes creditworthiness standards that exceed investment grade. That is, with some pledgeable asset types only the top two letter ratings (e.g., AAA, AA) within the investment grade band would be acceptable. The highly liquid standard in the final rule is necessary, in part, to ensure that the elevated quality of the pledged assets established under the current standard continues. Furthermore, complementing the investment grade requirement with the highly liquid

requirement will ensure that the pledged assets can be readily converted to cash with little impact on their values.

The FDIC believes that adopting the investment grade and highly liquid criteria, in conjunction with the fair value discount, helps ensure that pledged assets continue to support orderly asset liquidation at maximum value in the event such assets need to be liquidated to pay the insured deposits of the U.S. branch of the foreign bank. Based on these considerations, the FDIC is adopting as final the revisions in the proposed rule related to the definition of investment grade and the highly liquid requirement.

#### *Fair Value Discount*

As proposed in the NPR, the final rule requires that the fair values of the investment grade and highly liquid pledged assets be discounted to reflect the credit risk and market price volatility of such assets. Under the final rule, the discounted fair value of the assets determines the pledged dollar amount. The FDIC expects that the valuations of the pledged assets be updated at least quarterly. Further, the final rule adopts a standardized haircut table, consistent with the Basel III capital rules, to promote simplicity and ease of reference.<sup>26</sup> Under this approach, the applicable haircut is determined by reference to the asset's risk-weight and remaining maturity.<sup>27</sup> For example, a foreign insured branch may elect to pledge investment grade commercial paper with a fair value of \$100,000 and remaining maturity of less than one year. These instruments are risk-weighted at 100 percent under the Basel III capital rules. Under the

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<sup>26</sup> In 12 CFR 324.37(c)(3), the FDIC established requirements for applying standardized haircuts for market price volatility which are scheduled on Table 1 to § 324.37 – Standard Supervisory Market Price Volatility Haircuts (Table 1). A portion of Table 1 concerning haircuts for non-sovereign issuers serves as the basis for the reference table included in the proposed rule.

<sup>27</sup> See 12 CFR 324.32 for general risk weights.

reference table, the corresponding haircut is 4 percent; therefore, the amount of the \$100,000 asset that counts towards the satisfaction of the asset pledge requirement is arrived at by multiplying \$100,000 by 0.96 ( $1 - 0.04$ ), which equals \$96,000. Consistent with the haircut requirements in the risk-based capital rules, pledged assets that receive a zero percent risk weight do not receive a fair value haircut.<sup>28</sup>

The FDIC solicited comment on whether pledged assets should be discounted as proposed, or whether the full fair value of assets pledged under the existing risk-based assessment schedule already provide sufficient protection to the DIF. In addition, the FDIC sought comment on whether another method of discounting would advance the objective of ensuring that pledged assets be as free from risk and as liquid as possible. One commenter indicated that the fair value discount is burdensome and suggested that the full fair value be permitted to be pledged, contending that the benefit to the DIF of the discount requirement would likely be minimal. The commenter further cited operational burden concerns with implementing the quarterly valuation calculation. The commenter also contended that, based on its tentative calculations, the fair value discount requirement would require it to pledge a considerable amount of additional eligible assets, resulting in increased costs.

The FDIC believes the fair value haircut provides an appropriate methodology for discounting fair values which is consistent with the haircuts applied to financial collateral

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<sup>28</sup> Assets with zero percent risk weight include cash; Treasury bills, interest bearing bonds, notes, debentures, or other direct obligations of or obligations fully guaranteed as to principal and interest by the United States or any agency thereof; and obligations of the African Development Bank, Asian Development Bank, Inter-American Development Bank, and the International Bank for Reconstruction and Development.

pledged to certain transactions under the Basel III capital rules as adopted by the FDIC.<sup>29</sup> Further, the FDIC believes the expectation of quarterly updates to valuation of the pledged assets is reasonable given that quarterly valuations are currently required in the pledge agreement between each of the foreign banks and the FDIC. Moreover, the FDIC believes that applying the fair value discount results in minimal burden because the calculation of the applicable fair value discount is based on the risk weight of the applicable asset under the Basel III capital rules, which is an analysis that should already be undertaken by these institutions. Lastly, the FDIC recognized in the NPR that the haircut provision could impact foreign banks that pledge bank notes or CDs because they may need to pledge additional collateral under the proposed rule compared with the pledge requirements under the existing rule. However, the FDIC expects any additional collateral required as a result of the haircut provision to be minimal.

Based on these and other considerations, the FDIC is adopting as final the discount methodology in the proposed rule.

#### *Assets That May Be Pledged*

As proposed in the NPR, the final rule also amends 12 CFR 347.209(d) by adding cash as a new asset type that foreign banks may pledge under subpart B, and by creating a separate asset category expressly for debt securities issued by government sponsored enterprises (GSEs). Cash and securities issued by GSEs are included in the definition of highly liquid assets in the Federal Reserve's regulation prescribing enhanced prudential

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<sup>29</sup> FDIC-supervised institutions may use the risk-mitigating effects of financial collateral, subject to a market price volatility haircut, in determining the exposure amount of such transactions for risk-weighting purposes. *See* 79 FR 20760 (April 14, 2014).

standards for foreign banking organizations.<sup>30</sup> The FDIC also understands that some insured branches of foreign banks currently pledge GSE debt securities under 12 CFR 347.209(d)(2) because they qualify as obligations of a U.S. government instrumentality. The Basel III capital rules recognize that the risk characteristics of GSE securities differ from those guaranteed by the U.S. government. The capital rules bear this out by assigning the former a twenty percent risk weight and the latter a zero percent risk weight.<sup>31</sup> Therefore, the final rule eliminates the reference to obligations of U.S. instrumentalities in 12 CFR 347.209(d)(2), and creates a separate category expressly for GSE securities. Creating a separate category for GSE securities is necessary because such securities are subject to a haircut under the final rule to account for their twenty percent risk weight under the Basel III capital rules, whereas securities guaranteed by the U.S. government are not subject to a haircut given their zero percent risk weight.

Pursuant to subpart B, all assets pledged, including cash, are required to be subject to the terms of a pledge agreement executed by the pledging foreign bank and the depository.<sup>32</sup> Subpart B requires that the pledge agreement's terms include a requirement that pledged assets be placed with a depository for safekeeping.<sup>33</sup> Subpart B also requires that the pledged assets be designated as assets subject to the pledge agreement.<sup>34</sup> In addition, the assets must be held separately from the assets of the foreign bank or depository, and must at all times be segregated on the records of the depository and

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<sup>30</sup> 12 CFR part 252 subpart O.

<sup>31</sup> 12 CFR 324.32(a) and (c).

<sup>32</sup> 12 CFR 347.209(e)(5)(i). FDIC staff is reviewing executed pledge agreements in order to determine what revisions, if any, will be necessary in light of the final rule's revisions to Part 347.

<sup>33</sup> 12 CFR 347.209(c).

<sup>34</sup> 12 CFR 347.209(e)(5)(ii).

clearly identified as assets subject to the pledge agreement.<sup>35</sup> Subpart B requires that a foreign bank obtain the FDIC's prior written approval of the depository selected.<sup>36</sup>

The FDIC solicited comment on whether the types of assets that may be pledged should be expanded to include cash as proposed. One commenter expressed support for the addition of cash as a new eligible asset type. The commenter also sought clarification as to whether an insured branch would be permitted to receive interest on any such pledged cash. While subpart B generally authorizes insured branches to retain interest earned on pledged assets,<sup>37</sup> the operation of subpart B's segregation and safekeeping requirements as applied to pledged cash would preclude the payment of interest on such cash. Most importantly, in order for pledged cash to be deemed held for safekeeping and segregated in accordance with subpart B's requirements, such cash must be held separate from the general funds of the bank and may not be commingled with any cash or other property of the depository. Accordingly, such cash may not be loaned, invested, used in operations, or used for any other purpose by the depository. Because, generally, interest is paid for the use of cash, if the depository complies with the safekeeping and segregation requirement, it cannot use the cash and, thus, there would be no basis for the payment of interest. In the event that the FDIC is appointed receiver of the depository, cash pledged and held for the purposes of, and in accordance with, the requirements of subpart B, would not be treated as property of the depository receivership.

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<sup>35</sup> *Id.*

<sup>36</sup> 12 CFR 347.209(c)

<sup>37</sup> 12 CFR 347.209(e)(10). A foreign bank may retain interest earned on pledged assets unless the FDIC by written notice prohibits such retention.

The FDIC views the amendments to the pledgeable asset criteria as consistent with other rulemakings, and as resulting in minimal impact on the insured U.S. branches of foreign banks.

Based on these, and other, considerations, the final rule adopts the pledgeable asset categories as proposed in the NPR. Accordingly, a foreign bank may pledge the assets listed below, provided that such assets are denominated in United States dollars, and satisfy both the investment grade and highly liquid standards. Further, such assets must be discounted at the rates set forth in the haircut table.

The revised pledgeable asset categories are as follows:

(1) Cash;

(2) Treasury bills, interest bearing bonds, notes, debentures, or other direct obligations of or obligations fully guaranteed as to principal and interest by the United States or any agency thereof;

(3) Obligations of U.S. GSEs;

(4) Negotiable CDs that are payable in the United States and that are issued by any state bank, national bank, state or federal savings association, or branch or agency of a foreign bank which has executed a valid waiver of offset agreement or similar debt instruments that are payable in the United States; provided, that the maturity of any certificate or issuance is not greater than one year; and provided further, that the issuing branch or agency of a foreign bank is not an affiliate of the pledging bank or from the same country as the pledging bank's domicile;

(5) Obligations of the African Development Bank, Asian Development Bank, Inter-American Development Bank, and the International Bank for Reconstruction and Development;

(6) Commercial paper;

(7) Notes issued by bank and savings and loan holding companies, banks, or savings associations organized under the laws of the United States or any state thereof or notes issued by branches or agencies of foreign banks, provided that the notes are payable in the United States, and provided further, that the issuing branch or agency of a foreign bank is not an affiliate of the pledging bank or from the same country as the pledging bank's domicile;

(8) Banker's acceptances that are payable in the United States and that are issued by any state bank, national bank, state or federal savings association, or branch or agency of a foreign bank; provided, that the maturity of any acceptance is not greater than 180 days; and provided further, that the branch or agency issuing the acceptance is not an affiliate of the pledging bank or from the same country as the pledging bank's domicile;

(9) General obligations of any state of the United States, or any county or municipality of any state of the United States, or any agency, instrumentality, or political subdivision of the foregoing or any obligation guaranteed by a state of the United States or any county or municipality of any state of the United States; and

(10) Any other asset determined by the FDIC to be acceptable.<sup>38</sup>

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<sup>38</sup> The FDIC also reserves the right to require the substitution of pledged assets with other assets deemed more acceptable to the FDIC, as currently provided in 12 CFR 347.209(d).

Cash, treasury bills or other direct obligations of or fully guaranteed by the United States or any agency thereof, and the obligations of the stated international development banks will categorically satisfy the investment grade and highly liquid standards discussed above.<sup>39</sup> Therefore, foreign banks that pledge these assets will not be required to perform individual analyses to verify that the assets meet the investment grade and highly liquid standards. Pledgeable assets that receive a zero percent risk weight will generally not require a fair value haircut.

Foreign banks pledging assets that do not categorically satisfy the investment grade and highly liquid standards will need to demonstrate that the assets being pledged meet the investment grade and highly liquid standards. Foreign banks can find the appropriate haircut by identifying the risk weight associated with the asset in the capital rules.

#### *Other Technical Revisions*

As proposed in the NPR, the final rule adds a definition of agency to the definitions section of subpart B, 12 CFR 347.202, which already contains a definition of branch under the existing regulation, in order to clarify that negotiable CDs, banker's acceptances, and notes issued by a branch or agency of a foreign bank located only in the United States are eligible for pledging. The definition was not previously in subpart B. The term agency is used in 12 CFR 347.209(d)(1), (d)(4), and (d)(7) to describe the types of bank CDs, banker's acceptances, and notes issued by a branch or agency of a foreign bank that are eligible for pledging by a U.S. branch of a foreign bank. The final

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<sup>39</sup> A direct debt obligation issued by a U.S. government-sponsored enterprise or an asset-backed security guaranteed by a U.S. GSE will categorically satisfy the investment grade standard only if the GSE is operating with capital support or another form of direct financial assistance from the U.S. government. All GSEs will categorically satisfy the liquidity standard.

rule incorporates the definition of agency found in section 1(b)(1) of the IBA, which defines agency to mean “any office or any place of business of a foreign bank located in any State of the United States at which credit balances are maintained incidental to or arising out of the exercise of banking powers, checks are paid, or money is lent but at which deposits may not be accepted from citizens or residents of the United States.”<sup>40</sup> This definition makes clear that only negotiable CDs, banker’s acceptances, or notes issued by an agency of a foreign bank located in the United States are eligible pledged assets. The FDIC does not allow for the pledging of these instruments unless they are issued by an agency of a foreign bank located in the United States. It is also consistent with the definition of branch in subpart B, which means any office or place of business of a foreign bank located in any state of the United States.<sup>41</sup> The final rule also amends 12 CFR 347.209(d)(7) by removing the reference to United States in the description of branches or agencies of foreign banks because those terms as defined in existing subpart B necessarily mean an office or place of business of a foreign bank located in the United States. Furthermore, as proposed, the final rule amends 12 CFR 347.209(d)(7) to clarify that, consistent with requirements associated with pledging CDs and banker’s acceptances in paragraphs (d)(1) and (d)(4), a pledging U.S. branch of a foreign bank may not pledge a note issued by a branch or agency of a foreign bank that has the same country of domicile as the pledging bank. This requirement avoids potential same-country risks represented by the branches and agencies as direct extensions of foreign banks.

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<sup>40</sup>12 U.S.C. 3101(1). The proposed definition is also consistent with the definition of agency in the Federal Reserve’s and OCC’s international banking regulations. *See* 12 CFR 211.21(b) (Federal Reserve) and 12 CFR 28.11(g) (OCC).

<sup>41</sup> 12 CFR 347.202(b).

One commenter expressed concern with the proposal to amend 12 CFR 347.209(d)(7) to clarify that a pledging U.S. branch of a foreign bank may not pledge a note issued by a branch or agency of a foreign bank that has the same country of domicile as the pledging bank. In particular, the commenter contended that in some instances the same-country risk would be very low in certain jurisdictions and recommended the implementation of an objective standard when evaluating same-country risks given that the risk profiles of different countries can vary significantly. The FDIC believes the requirement as proposed is an important safeguard against potential same-country risks represented by issuing branches and agencies as direct extensions of foreign banks. The requirement as proposed is also consistent with the existing requirements for pledging CDs and banker's acceptances under 12 CFR 347.209(d)(1) and (d)(4). The FDIC is adopting the proposed requirement related to this and all other proposed technical revisions as final.

As proposed in the NPR, the final rule amends the list of eligible collateral to eliminate the obsolete exception for non-negotiable CDs that were pledged as collateral to the FDIC on March 18, 2005, until maturity according to the original terms of the existing deposit agreement. The maturity date for any non-negotiable CD that was grandfathered under this provision has passed. Consequently, the provision by its terms is obsolete and no longer serves a useful purpose.

## **V. Expected Effects**

### ***a. Subpart A***

The applicability of the revision to subpart A of Part 347 in the final rule is limited to state nonmember banks that operate branches in foreign countries. As of June

30, 2017, there were seven state nonmember banks operating 13 foreign branches in six countries. All but one of the state nonmember banks with foreign branches are large, multi-billion dollar financial institutions with commensurate systems and capabilities. The revision to subpart A will therefore apply to a small number of mostly larger state nonmember banks with more sophisticated operations, and the effect of the revision to the definition of investment grade is expected to impose negligible additional burden relative to the size and capabilities of these banks. The FDIC also notes that prior to the enactment of the Dodd-Frank Act and implementation of section 939A, state nonmember banks were expected to have a credit risk management framework for securities and investments that included robust pre-purchase analysis and ongoing monitoring by the banking organization. The revision to the definition of investment grade in Part 347 will encourage regular, in-depth analysis by the banking organization of credit risks of securities, which is a prudent practice already expected of banks. This will likely result in little or no additional costs associated with credit risk analysis over those currently expended. However, potential credit losses will likely decline as covered institutions are more diligent in assessing their credit risk exposure, which would provide a benefit.

***b. Subpart B***

The revisions to subpart B of Part 347 in the final rule will apply only to the insured U.S. branches of foreign banks. As of June 30, 2017, there were ten insured branches of foreign banks. The FDIC expects the revisions to subpart B to have the effect of ensuring that collateral pledged by these institutions is very low risk and as liquid as possible in order to provide protection to the DIF. For purposes of carrying out the section 939A review related to subpart B, the FDIC surveyed the insured U.S.

branches of foreign banks to examine the composition of assets pledged. At the time of the review, treasury bills, bank notes, and CDs were the primary instruments pledged. Consequently, the haircut provision could impact foreign banks that choose to continue pledging a predominance of bank notes or CDs, as this may require pledging some measure of additional collateral under the proposed rule compared with the pledge requirements under the existing rule. Additionally, the final rule may alter to some extent the nature of the recordkeeping and reporting requirements associated with subpart B. Information developed through prudent investment practices will need to evidence satisfaction of the new standards. That information will be retained for supervisory review, but additional time should be negligible. Therefore, the FDIC views the proposed amendments to the pledgeable asset criteria as resulting in minimal impact on the insured U.S. branches of foreign banks.

## **VI. Alternatives Considered**

Section 939A requires that agencies adopt standards of creditworthiness that, to the extent feasible, are uniform. The adoption of an alternative definition of investment grade would be inconsistent with section 939A's directive to adopt uniform standards.

In addition to adopting the definition of investment grade, the final rule, consistent with the proposed rule, amends subpart B of Part 347 to impose liquidity and discounting requirements for assets pledged by insured branches of foreign banks operating in the United States. Alternatives to the proposed definition of highly liquid would contradict the definition of highly liquid assets as adopted in other Dodd-Frank Act rulemakings, thereby creating different treatment of the same securities. Similarly, the calculation of fair value discounts for pledged assets is based on the risk weights

assigned to such assets in the capital rules. The FDIC did not receive any comments with specific recommendations for alternatives.

## **VII. Effective Date**

The Administrative Procedure Act (APA) generally requires that a final rule be published in the Federal Register no less than 30 days before its effective date.<sup>42</sup> Section 302 of Riegle Community Development and Regulatory Improvement Act (RCDRIA)<sup>43</sup> generally requires that regulations prescribed by Federal banking agencies which impose additional reporting, disclosures or other new requirements on insured depository institutions take effect on the first day of a calendar quarter which begins on or after the date on which the regulations are published in final form unless an agency finds good cause that the regulations should become effective sooner. The effective date of the Rule is April 1, 2018, which is the first day of the calendar quarter which begins on or after the date on which the regulations are published in final form, as required by RCDRIA. 12 CFR 347.209(b) requires that a foreign bank with an insured branch pledge assets equal to the appropriate percentage of the insured branch's average liabilities for the last 30 days of the most recent calendar quarter. The FDIC expects foreign banks with insured branches to comply with Part 347 Subpart B's asset pledge requirements, as amended by the final rule, beginning in the calendar quarter commencing on April 1, 2018. This provides foreign banks and their insured branches with adequate time to transition to Subpart B's amended asset pledge requirements.

## **VIII. Regulatory Analyses**

### ***Paperwork Reduction Act***

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<sup>42</sup> 5 U.S.C. 553(d).

<sup>43</sup> 12 U.S.C. 4802.

In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA)<sup>44</sup> the FDIC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The collection of information associated with subpart A is entitled Foreign Banking and Investment by Insured State Nonmember Banks (OMB No. 3064-0125). This information collection consists of applications related to establishing and closing a foreign branch; applications related to acquiring stock of a foreign organization; and records and reports which a nonmember bank must maintain once it has established a foreign branch or foreign organization. As described above, the final rule's revision to subpart A consists of a change to the definition of investment grade and imposes no additional recordkeeping or reporting burden on insured state nonmember banks. Therefore, the FDIC expects that the PRA burden estimates of this collection will not be affected by this final rule. Accordingly, the FDIC will not be submitting any information collection request to OMB relating to the information collection associated with subpart A (OMB 3064-0125).

The collection of information associated with subpart B is entitled Foreign Banks (OMB No. 3064-0114). This information collection consists of, among other things, internal recordkeeping by insured branches of foreign banks, and reporting requirements related to an insured branch's pledge of assets to the FDIC. Under the final rule, all assets pledged to the FDIC under subpart B must be investment grade, highly liquid, and subject to a fair value discount. Several types of assets pledged by banks under subpart B would be categorically investment grade and highly liquid, and subject to a zero percent

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<sup>44</sup> 44 U.S.C. 3501 *et seq.*

discount under the final rule. Insured branches of foreign banks will be able to continue to pledge these assets without any adjustment to their reporting and recordkeeping requirements. To the extent that an insured branch of a foreign bank pledges an asset that would not be categorically investment grade, highly liquid, or that would not receive a zero percent discount, the FDIC expects minimal additional burden to accompany such a pledge of assets. Recordkeeping associated with the diligence that will be required for determining that an asset is highly liquid and investment grade is already expected of these institutions as part of their pre-purchase and ongoing investment due diligence. Similarly, the calculation of the applicable fair value discount is based on the risk weight of the applicable asset under the Basel III capital rules, which is an analysis that should already be undertaken by these institutions. Therefore, the FDIC expects that any resulting changes in burden will be so minimal that they will not alter the existing PRA burden estimates of this collection. Notwithstanding the fact that the FDIC does not expect a change in burden, the final rule may alter to some extent the nature of the recordkeeping requirements associated with subpart B. Accordingly, the FDIC will be submitting an information collection request to OMB relating to the information collection associated with subpart B (OMB 3064-0114). The existing burden estimates for the information collection associated with subpart B are as follows:

<b>Title</b>	<b>Times/year</b>	<b>Respondents per year</b>	<b>Hours per response</b>	<b>Total Burden Hours</b>
moving a branch	1	1	8	8
consent to operate	1	1	8	8
conduct activities	1	1	8	8
recordkeeping	1	10	120	1,200

pledge of assets				
documents	4	10	0.25	10
reports	4	10	2	80
Total Burden				1,314

The FDIC has a continuing interest in the public's opinions of our existing information collections. At any time, comments are invited on:

- Whether the collections of information are necessary for the proper performance of the Agencies' functions, including whether the information has practical utility;
- The accuracy of the estimates of the burden of the information collections, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, utility, and clarity of the information to be collected;
- Ways to minimize the burden of the information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and
- Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

All comments will become a matter of public record. A copy of the comments may also be submitted to the OMB desk officer for the FDIC by mail to U.S. Office of Management and Budget, 725 17<sup>th</sup> Street NW, #10235, Washington, DC 20503, by facsimile to 202-395-5806, or by e-mail to [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov), Attention, Federal Banking Agency Desk Officer.

### ***Regulatory Flexibility Act Analysis***

The Regulatory Flexibility Act (RFA) generally requires that, in connection with a notice of final rulemaking, an agency prepare a Final Regulatory Flexibility Act analysis describing the impact of the rule on small entities (defined in regulations promulgated by the Small Business Administration to include banking organizations with total assets of less than or equal to \$550 million). A Final Regulatory Flexibility Act analysis, however, is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities, and publishes its certification and a short explanatory statement in the **Federal Register** together with the final rule. For the reasons provided below, the FDIC certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

The final rule makes revisions to the existing rules in subpart A of Part 347 consistent with section 939A of the Dodd-Frank Act.<sup>45</sup> The rules in subpart A of Part 347 address issues related to the international activities and investments of insured state nonmember banks. In general, they implement the FDIC's statutory authority under section 18(d)(2) of the FDI Act regarding branches of insured state nonmember banks in

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<sup>45</sup> Subpart J of part 303 contains the procedural rules that implement Part 347. No revisions are proposed to these rules.

foreign countries, and section 18(*l*) of the FDI Act regarding insured state nonmember bank investments in foreign entities. As of June 30, 2017, there were seven state nonmember banks with 13 foreign branches. Available information indicates that state nonmember banks with foreign investments or foreign branches are not small entities.

The final rule also amends subpart B of Part 347 as applied to insured U.S. branches of foreign banks. As of September 30, 2016, there were ten insured branches of foreign banks, only one of which qualifies as a small entity. Therefore, the revisions to subpart B of Part 347 will not have a significant impact on a substantial number of small entities.

***Small Business Regulatory Enforcement Fairness Act***

The OMB has determined that the final rule is not a major rule within the meaning of the relevant sections of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).<sup>46</sup> As required by SBREFA, the FDIC will submit the final rule and other appropriate reports to Congress and the Government Accountability Office for review.

***The Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999: Assessment of Federal Regulations and Policies on Families***

The FDIC has determined that this final rule will not affect family well-being within the meaning of section 654 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999.<sup>47</sup>

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<sup>46</sup> 5 U.S.C. 801, *et seq.*

<sup>47</sup> Public Law 105-277, 112 Stat. 2681 (1998).

### ***Plain Language***

Section 722 of the Gramm-Leach-Bliley Act requires the FDIC to use plain language in all proposed and final rules published after January 1, 2000. The FDIC sought to present the final rule in a simple and straightforward manner. The FDIC did not receive any comment on its use of plain language.

## List of Subjects in 12 CFR Part 347

Bank deposit insurance, Banks, Banking, Foreign banking, Investments, Insured foreign branches, Reporting and recordkeeping requirements, United States investments abroad.

### Authority and Issuance

■ For the reasons stated in the preamble, the Federal Deposit Insurance Corporation amends part 347 of chapter III of Title 12, Code of Federal Regulations as follows:

### PART 347—INTERNATIONAL BANKING

1. The authority citation for part 347 is revised to read as follows:

AUTHORITY: 12 U.S.C. 1813, 1815, 1817, 1819, 1820, 1828, 3103, 3104, 3105, 3108, 3109; Pub L. No. 111-203, section 939A, 124 Stat. 1376, 1887 (July 21, 2010) (codified 15 U.S.C. 78o-7 note).

2. In § 347.102, paragraph (o) is revised to read as follows:

#### §347.102 Definitions.

\* \* \* \* \*

(o) *Investment grade* means a security issued by an entity that has adequate capacity to meet financial commitments for the projected life of the exposure.

Such an entity has adequate capacity to meet financial commitments if the risk of its default is low and the full and timely repayment of principal and interest is expected.

\* \* \* \* \*

3. In § 347.202, paragraphs (p) through (y) are redesignated as paragraphs (s) through (bb); paragraphs (k) through (o) are redesignated as paragraphs (m)

through (q); paragraphs (b) through (j) are redesignated as paragraphs (c) through (k); and new paragraphs (b), (l), and (r) are added to read as follows:

**§347.202 Definitions.**

\* \* \* \* \*

(b) Agency means any office or any place of business of a foreign bank located in any State of the United States at which credit balances are maintained incidental to or arising out of the exercise of banking powers, checks are paid, or money is lent but at which deposits may not be accepted from citizens or residents of the United States.

\* \* \* \* \*

(l) Highly liquid means, with respect to a security, that the security has low credit and market risk; is traded in an active secondary two-way market that has committed market makers and independent bona fide offers to buy and sell so that a price reasonably related to the last sales price or current bona fide competitive bid and offer quotations can be determined within one day and settled at that price within a reasonable time period conforming with trade custom; is a type of asset that investors historically have purchased in periods of financial market distress during which market liquidity has been impaired.

\* \* \* \* \*

(r) Investment grade means a security issued by an entity that has adequate capacity to meet financial commitments for the projected life of the exposure. Such an entity has adequate capacity to meet financial commitments if the risk of

its default is low and the full and timely repayment of principal and interest is expected.

\* \* \* \* \*

4. In § 347.209, paragraph (d) is revised and Table 1 is added to the end of the section to read as follows:

**§347.209 Pledge of assets.**

\* \* \* \* \*

(d) *Assets that may be pledged.* (1) This paragraph sets forth the kinds of assets that may be pledged to satisfy the requirements of this section. A foreign bank shall be deemed to have pledged any such assets for the benefit of the FDIC or its designee at such time as any such asset is placed with the depository. The FDIC reserves the right to require the substitution of pledged assets with other assets deemed acceptable to the FDIC.

(2) A foreign bank may pledge the kinds of assets set forth in this paragraph (d)(2), provided that: such assets are denominated in United States dollars; such assets are investment grade, as that term is defined in § 347.202(r); and such assets are highly liquid, as that term is defined in § 347.202(1). Furthermore, for the purposes of calculating the amount of assets required to be pledged under paragraph (b) of this section, the assets that are eligible for pledging under this paragraph (d)(2) must be discounted at the rates set forth in Table 1 to § 347.209.

(i) Cash;

- (ii) Treasury bills, interest bearing bonds, notes, debentures, or other direct obligations of or obligations fully guaranteed as to principal and interest by the United States or any agency thereof;
- (iii) Obligations of United States government-sponsored enterprises;
- (iv) Negotiable certificates of deposit that are payable in the United States and that are issued by any state bank, national bank, state or federal savings association, or branch of a foreign bank which has executed a valid waiver of offset agreement or similar debt instruments that are payable in the United States and that are issued by any agency of a foreign bank which has executed a valid waiver of offset agreement; provided, that the maturity of any certificate or issuance is not greater than one year; and provided further, that the issuing branch or agency of a foreign bank is not an affiliate of the pledging bank or from the same country as the pledging bank's domicile;
- (v) Obligations of the African Development Bank, Asian Development Bank, Inter-American Development Bank, and the International Bank for Reconstruction and Development;
- (vi) Commercial paper;
- (vii) Notes issued by bank and savings and loan holding companies, banks, or savings associations organized under the laws of the United States or any state thereof or notes issued by branches or agencies of foreign banks, provided that the notes are payable in the United States, and provided further, that the issuing branch or agency of a foreign bank is not an affiliate of the pledging bank or from the same country as the pledging bank's domicile;

(viii) Banker’s acceptances that are payable in the United States and that are issued by any state bank, national bank, state or federal savings association, or branch or agency of a foreign bank; provided, that the maturity of any acceptance is not greater than 180 days; and provided further, that the branch or agency issuing the acceptance is not an affiliate of the pledging bank or from the same country as the pledging bank’s domicile;

(ix) General obligations of any state of the United States, or any county or municipality of any state of the United States, or any agency, instrumentality, or political subdivision of the foregoing or any obligation guaranteed by a state of the United States or any county or municipality of any state of the United States;

(x) Any other asset determined by the FDIC to be acceptable.

\* \* \* \* \*

TABLE 1 TO § 347.209 – SUPERVISORY HAIRCUTS FOR ASSETS PLEDGED UNDER § 347.209(d).

Remaining Maturity	Haircut % Assigned Based on Maturity and Risk Weight			
	Risk Weight (%) by Issuer as specified in Part 324.32			
	0%	20%	50%	100%
<= to 1 Year	0	1.0	2.0	4.0
> 1 Year but <= 5 Years	0	4.0	6.0	8.0
> 5 years	0	8.0	12.0	16.0

Dated at Washington, DC, on February 14, 2018.

By order of the Board of Directors.  
Federal Deposit Insurance Corporation.

**Robert E. Feldman,**  
*Executive Secretary.*

[FR Doc. 2018-04255 Filed: 3/2/2018 8:45 am; Publication Date: 3/5/2018]