

Regulations of Connecticut State Agencies

TITLE 36a. The Banking Law of Connecticut

Agency

Department of Banking

Subject

Foreign Banks

Inclusive Sections

§§ 36a-428c-1—36a-428c-7

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Sec. 36a-428c-1. Definitions

The definitions contained in section 36a-2 of the general statutes shall govern the interpretation of sections 36a-428-1 to 36a-428n-1, inclusive, of the Regulations of Connecticut State Agencies. In addition thereto and except as otherwise required by context, as used in sections 36a-428-1 to 36a-428n-1, inclusive, of the Regulations of Connecticut State Agencies:

(a) “Adjusted liabilities” means all liabilities of a foreign bank appearing in the books, accounts and records of its licensed state agencies and licensed state branches as liabilities of such agencies and branches, including acceptances and such other liabilities, including contingent liabilities, as the commissioner shall determine, but excluding amounts due and other liabilities to other offices, agencies, branches and affiliates of such foreign bank, including unremitted profits.

(b) “Deposit assets” means:

(1) United States dollar deposits payable in the United States, other than certificates of deposit;

(2) bonds, notes, debentures, or other obligations of the United States, or any agency or instrumentality thereof, or guaranteed by the United States, or of this state or of a county, city, town, village, school district, or instrumentality of this state or guaranteed by this state;

(3) bonds, notes, debentures or other obligations issued by the Federal Home Loan Mortgage Corporation and by the Federal National Mortgage Corporation;

(4) commercial paper payable in dollars in the United States, provided such paper is rated in one of the three highest rating categories by a rating service recognized by the commissioner. In the event that an issue of commercial paper is rated by more than one recognized rating service, it shall be rated in one of the three highest rating categories by each such rating service;

(5) negotiable certificates of deposit that are payable in the United States and issued by: (A) an unaffiliated bank or out-of-state bank other than a foreign bank, or (B) a domestic office of an unaffiliated foreign bank, provided such certificates of deposit are of equal rank with other senior liabilities of the foreign bank and are not subordinated in payment to any other liabilities of the foreign bank;

(6) bankers’ acceptances that are payable in the United States and issued by: (A) an unaffiliated bank or out-of-state bank other than a foreign bank, or (B) a domestic office of an unaffiliated foreign bank, provided such bankers’ acceptances are of equal rank with other senior liabilities of the foreign bank and are not subordinated in payment to any other liabilities of the foreign bank and the method and manner of repayment is reflected in such bankers’ acceptances;

(7) reserves held at a Federal Reserve Bank; and

(8) such other assets as determined by the commissioner upon written application. If the commissioner determines that an asset which otherwise qualifies under this section shall be valued at less than the amount otherwise provided in this section, the commissioner shall

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so notify the foreign bank which shall thereafter value such asset as directed by the commissioner.

(c) “Depository” means a Connecticut bank, federal bank, or the Federal Reserve Bank of New York or Boston.

(d) “Eligible assets” means any assets payable in the United States, or in United States funds, or with the prior approval of the commissioner, in funds freely convertible into United States funds, reduced by the amount of any specifically allocated reserves established on the books in connection with such assets, held in this state and recorded on the general ledger of a licensed state branch and licensed state agency of the foreign bank, subject to the following:

(1) marketable debt securities shall be allowed at their principal amount or market value, whichever is lower;

(2) restructured foreign debt bonds backed by United States Treasury obligations commonly known as “Brady Bonds”, whether carried on the books of the licensed state branch or licensed state agency as loans or securities, shall be allowed at their book value or market value, whichever is lower;

(3) equity securities shall be ineligible;

(4) the balance from time to time of any assets classified loss, doubtful or substandard at the preceding examination by the commissioner, any other regulatory agency, outside accountants or the bank’s internal loan review staff, shall be ineligible to the extent of one hundred per cent, fifty per cent and twenty per cent, respectively. Assets classified value impaired shall be ineligible to the extent of one hundred per cent of the amount of allocated transfer risk reserve which would be required by the appropriate federal banking regulatory agency for such exposure at a domestically chartered bank and twenty per cent of any residual exposure. For assets classified at the preceding examination by the commissioner or any other regulatory agency, if the deficiency or defect giving rise to the classification shall be removed subsequent to the examination, the department shall, upon written request supported by appropriate documentation, reconsider the classification;

(5) accrued income on assets classified loss, doubtful, substandard or value impaired shall be ineligible;

(6) the balance from time to time of any other asset or asset category disallowed at the preceding examination or by direction of the commissioner for any other reason shall be treated as ineligible until the underlying reasons for the disallowance have been removed;

(7) all amounts due from the home office, other offices and affiliates, including income accrued but uncollected on such amounts, shall be ineligible, except that with the commissioner’s prior approval, all amounts due from other offices located within the United States shall be considered eligible;

(8) precious metals shall be considered eligible to the extent of seventy-five per cent of the market value;

(9) prepaid expenses and unamortized costs, furniture and fixtures and leasehold improvements shall be ineligible;

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(10) real estate located in this state and carried on the accounting records as an asset shall be considered eligible at net book value or appraised value, whichever is less.

(e) “FRB” means board of governors of the federal reserve system.

(f) “Licensed state agency” means a state agency of a foreign bank licensed pursuant to section 36a-428a of the general statutes.

(g) “Licensed state branch” means a state branch of a foreign bank licensed pursuant to section 36a-428a of the general statutes.

(h) “Licensed representative office” means a representative office of a foreign bank licensed pursuant to section 36a-428g of the general statutes.

(i) “ROCA” means risk management, operation controls, compliance and asset quality, the rating system used by the FRB, the Office of the Comptroller of the Currency and state banking regulatory authorities to assess the condition of a branch or agency, or a commercial lending subsidiary of a foreign bank in the United States; and

(j) “SOSA” means strength of support assessment, the rating system used by the FRB to assess a foreign bank’s ability to provide financial, liquidity and management support to its United States operations.

(Adopted effective December 23, 1997; Amended September 6, 2002)

Sec. 36a-428c-2. Maintenance of assets

The amount of eligible assets which is to be held by a foreign bank with a licensed state branch or licensed state agency is established at zero percent of its adjusted liabilities, provided the commissioner may impose specific asset maintenance requirements as deemed necessary for the protection of the public interest and the interest of depositors and creditors, and provided further the commissioner in specific cases may impose such other requirements as deemed necessary to effectuate the purpose of section 36a-428c(b) of the general statutes.

(Adopted effective December 23, 1997)

Sec. 36a-428c-3. Documentation for assets

Whether or not a foreign bank with a licensed state branch or licensed state agency is required to maintain eligible assets pursuant to section 36a-428c-2 of the Regulations of Connecticut State Agencies, such foreign bank shall maintain or make available within twenty-four hours after it is requested by the commissioner, at such branch or agency, the original of the evidence of indebtedness, or other documentation, for any asset which appears in the books, accounts and records of that branch or agency as an asset of that branch or agency.

(Adopted effective December 23, 1997)

Sec. 36a-428c-4. Assets to be deposited

(a) A foreign bank with a licensed state branch or licensed state agency shall keep deposit assets on deposit in accordance with section 36a-428c-6 of the Regulations of Connecticut

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State Agencies as follows:

(1) If at the time the foreign bank filed its application to establish the licensed state branch or licensed state agency, it did not have an existing branch or agency in the United States: (A) for the first three years that the foreign bank maintains the licensed state branch or licensed state agency, an amount, based upon the lower of principal amount or market value, equal to the greater of one million dollars, or two per cent of adjusted liabilities; and (B) thereafter, an amount, based upon the lower of principal amount or market value, equal to the greater of one million dollars, or two per cent of adjusted liabilities up to a maximum of one hundred million dollars, provided such amount shall be subject to adjustment as provided in subsection (b) of this section. Notwithstanding the time requirement in subparagraph (A) of this subdivision, the commissioner may, in the commissioner's sole discretion, allow the foreign bank to keep deposit assets on deposit in the amount specified in this subparagraph (B) if (i) there is an information-sharing agreement between the commissioner and the foreign bank's home country regulators that is satisfactory to the commissioner, (ii) the licensed state branch or licensed state agency receives a satisfactory rating at an examination by the commissioner, and (iii) allowing such amount would not be contrary to the public interest;

(2) If the foreign bank maintains in the United States a branch or agency that has not been engaged in banking business continuously in the four years preceding the filing of the application by the foreign bank to establish the licensed state branch or licensed state agency: (A) for the first three years that the foreign bank maintains the licensed state branch or licensed state agency, or the first four years that the foreign bank maintains in the United States a branch or agency that has been engaged in banking business continuously, whichever period is shorter, an amount, based upon the lower of principal amount or market value, equal to the greater of one million dollars, or two per cent of adjusted liabilities, and (B) thereafter, an amount, based upon the lower of principal amount or market value, equal to the greater of one million dollars, or two per cent of adjusted liabilities up to a maximum of one hundred million dollars, provided such amount shall be subject to adjustment as provided in subsection (b) of this section. Notwithstanding the time requirement in subparagraph (A) of this subdivision, the commissioner may, in the commissioner's sole discretion, allow the foreign bank to keep deposit assets on deposit in the amount specified in this subparagraph (B) if (i) there is an information-sharing agreement between the commissioner and the foreign bank's home country regulators that is satisfactory to the commissioner, (ii) the licensed state branch or licensed state agency receives a satisfactory rating at an examination by the commissioner, and (iii) allowing such amount would not be contrary to the public interest;

(3) If the foreign bank maintains in the United States a branch or agency that has been engaged in banking business continuously in the four years preceding the filing of the application by the foreign bank to establish the licensed state branch or licensed state agency, an amount, based upon the lower of principal amount or market value, equal to the greater of one million dollars, or two per cent of adjusted liabilities up to a maximum of one hundred

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million dollars, provided this amount shall be subject to adjustment as provided in subsection (b) of this section.

(b) (1) If any of the following criteria is met, the commissioner may, in the commissioner's sole discretion, increase the maximum amount of deposit assets required to be kept on deposit to five hundred million dollars, and if, in addition, the adjusted liabilities are less than one hundred million dollars, the commissioner may, in the commissioner's sole discretion, require that deposit assets be kept on deposit in the minimum amount of two million dollars. If two or more of the following criteria are met, the commissioner shall increase the maximum amount of deposit assets required to be kept on deposit to five hundred million dollars, and if, in addition, the adjusted liabilities are less than one hundred million dollars, the commissioner shall require that deposit assets be kept on deposit in the minimum amount of two million dollars:

(A) the licensed state branch or licensed state agency receives a ROCA composite rating of "3-Fair" at its most recent examination;

(B) the foreign bank's operations in the United States receive a ROCA comprehensive composite rating of "3-Fair" by the FRB;

(C) the rating of any outstanding debt issued by the foreign bank is placed on watch for a possible downgrade to below investment grade, by a rating service recognized by the commissioner;

(D) the sovereign rating of the home country of the foreign bank is placed on watch for possible bank downgrade to below investment grade, by a rating service recognized by the commissioner;

(E) the SOSA rating of the foreign bank is "2"; or

(F) a formal supervisory or enforcement action is issued against the foreign bank in any jurisdiction.

(2) If any of the following criteria is met, the minimum amount of deposit assets that the foreign bank shall keep on deposit shall be five million dollars, if adjusted liabilities are less than two hundred fifty million dollars and shall be two per cent of adjusted liabilities if such liabilities are two hundred fifty million dollars or more:

(A) the licensed state branch or licensed state agency receives a ROCA composite rating of "4-Marginal" or "5-Unsatisfactory" at its most recent examination;

(B) the foreign bank's operations in the United States receive a ROCA comprehensive composite rating of "4-Marginal" or "5-Unsatisfactory" by the FRB;

(C) the rating of any outstanding debt issued by the foreign bank is rated below investment grade by a rating service recognized by the commissioner;

(D) the sovereign rating of the home country of the foreign bank is rated below investment grade, by a rating service recognized by the commissioner; or

(E) the SOSA rating of the foreign bank is "3".

(c) A foreign bank opening its initial licensed state branch or licensed state agency shall keep deposit assets on deposit based upon the branch's or agency's projection of adjusted liabilities at the end of its first year of operation.

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(d) If the commissioner determines that the protection of the public interest requires that a foreign bank should keep deposit assets on deposit in an amount greater than that required by this section, the commissioner shall so notify the foreign bank, which shall immediately thereafter keep deposit assets on deposit in such greater amount.

(e) For purposes of this section, liabilities arising from securities repurchase agreements may be excluded from the calculation of adjusted liabilities, to the extent such liabilities are secured by collateral within the meaning of section 36a-428n(i)(2)(D) of the Connecticut General Statutes unless the licensed state branch or licensed state agency has been notified otherwise by the commissioner.

(f) (1) With the approval of the commissioner, a foreign bank may satisfy up to twenty-five per cent of the amount that such foreign bank is required to keep on deposit in accordance with this section by obtaining and retaining a fidelity insurance bond for such amount from a monoline fidelity insurance company that is licensed by the insurance department to sell fidelity insurance in Connecticut and is rated in the two highest rating categories by a rating service recognized by the commissioner. Such bond shall be in a form satisfactory to the commissioner, shall name the commissioner as the beneficiary and provide that the fidelity insurance company issuing the bond shall make payment on the bond not later than twenty-four hours after the commissioner presents an order taking possession of the business and property of the foreign bank pursuant to section 36a-428n of the Connecticut General Statutes. The foreign bank shall file the fidelity insurance bond and proof of the authority of the fidelity insurance company to engage in business in Connecticut with the commissioner.

(2) If a fidelity insurance company that has issued a fidelity insurance bond to a foreign bank no longer meets any of the requirements of this subsection, such foreign bank, not later than five days of becoming aware of the failure to meet such requirements, shall notify the commissioner of such failure, and obtain a replacement fidelity insurance bond from a fidelity insurance company that meets such requirements, or place on deposit assets as required by this section.

(3) The commissioner shall revoke any approval issued under this subsection if the commissioner determines that the protection of the public interest so requires.

(Adopted effective December 23, 1997; Amended May 26, 2000; Amended September 6, 2002)

Sec. 36a-428c-5. Record of assets and liabilities

(a) Each foreign bank with one or more licensed state branches or licensed state agencies shall record, at the close of each business day, the liabilities of the foreign bank appearing in the books, accounts and records of such branches and agencies as liabilities of such branches and agencies as determined in accordance with section 36a-428c(b) of the general statutes and section 36a-428c-1(a) of the Regulations of Connecticut State Agencies and the assets as determined in accordance with section 36a-428c(b) of the general statutes and section 36a-428c-1(d) of the Regulations of Connecticut State Agencies. The daily record shall include a computation of the daily ratio of eligible assets to adjusted liabilities. The

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daily record shall be maintained in permanent legible form and be retained until the conclusion of the next examination by the commissioner. A foreign bank authorized to maintain more than one licensed state branch or licensed state agency shall maintain the daily record on a consolidated basis. The daily record shall contain such information in sufficient detail as will permit ready verification of its accuracy.

(b) Each foreign bank with a licensed state branch or licensed state agency shall maintain, in addition to the daily record required to be maintained by subsection (a) of this section, a daily itemized record of assets deposited pursuant to section 36a-428c(a) of the general statutes and section 36a-428c-4 of the Regulations of Connecticut State Agencies. The record shall include the value of assets deposited at principal or market value, whichever is lower, and the ratio of the aggregate of such values to adjusted liabilities.

(c) The records required to be maintained by this section shall be authenticated by the signature of a duly authorized officer of the licensed state agency or licensed state branch.

(Adopted effective December 23, 1997)

Sec. 36a-428c-6. Deposit agreement

No deposit by a foreign bank with a licensed state branch or licensed state agency with a depository pursuant to section 36a-428c(a) of the general statutes shall be made until the foreign bank and the depository shall have executed a deposit agreement satisfactory to the commissioner. The commissioner may by written authorization relieve the foreign bank or the depository from compliance with any term or condition of the deposit agreement, including any term or condition prescribed by this section, if the commissioner finds such action necessary and proper to give effect to the purpose of section 36a-428c(a) of the general statutes or of sections 36a-428c-6 and 36a-428c-7 of the Regulations of Connecticut State Agencies. The deposit agreement, in addition to any other terms and considerations not inconsistent with this section, shall contain the following provisions:

(a) **Assets to be held as special deposit.** Assets deposited by a foreign bank with a depository under the deposit agreement shall be held by the depository as a special deposit free of any lien, charge, right of set-off, credit or preference in connection with any claim of the depository against the foreign bank. The depository shall not accept, as a deposit by the foreign bank pursuant to the deposit agreement, any asset that is not accompanied by documentation necessary to facilitate transfer of title.

(b) **Depository to furnish receipt.** The depository shall furnish to the foreign bank, upon deposit of any assets pursuant to the deposit agreement, a receipt or statement evidencing such deposit. Such receipt or statement shall identify the deposit as having been made by the foreign bank pursuant to section 36a-428c(a) of the general statutes and under the deposit agreement, and it shall provide the amount of the deposit and, with respect to deposits of securities, a description of each security so deposited.

(c) **Release of assets by depository.** The depository shall release deposited assets to the foreign bank upon written request (1) when accompanied by a certificate, as described in subsection (e) of this section, signed by a duly authorized officer of the foreign bank, or (2)

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upon receipt of a written authorization of the commissioner to release to the foreign bank such part of the assets on deposit under such conditions and terms as the authorization may specify.

(d) **Termination of right to substitute or withdraw assets.** The right to substitute or withdraw assets provided in this section may be terminated or suspended by the commissioner at any time.

(e) **Model certificate.** The following or similar certificate shall be executed by a duly authorized officer of the foreign bank where withdrawals are made pursuant to subdivision (1) of subsection (c) of this section:

It is hereby certified that the aggregate of assets remaining on deposit pursuant to the Deposit Agreement after this withdrawal or substitution amounts to \$ _____, valued at the lower of principal amount or market value, and that such amount is at least equal to the amount required to be deposited pursuant to section 36a-428c(a) of the Connecticut General Statutes and Section 36a-428c-4 of the Regulations of Connecticut State Agencies. The amount required to be maintained on deposit, as calculated pursuant to Section 36a-428c-4 of the Regulations of Connecticut State Agencies is \$ _____ as of this date.

(f) **Depository to furnish monthly statements of all transactions.** The depository shall furnish to the foreign bank, at least once in each calendar month, a statement of all transactions in the special deposit account since the closing date of the previous such statement. The statement shall include a listing of the assets on deposit, as of the closing date of the statement. A copy of such statement shall be simultaneously forwarded by the depository to the commissioner.

(g) **Depository may pay interest earned upon assets.** The depository may pay to the foreign bank interest earned on assets deposited in accordance with such arrangements as may be made between the depository and the foreign bank. The commissioner is authorized to revoke this provision.

(h) **Responsibility of depository with respect to deposited securities.** Except as provided in this subsection, a depository shall hold the securities deposited by a foreign bank under the deposit agreement separate and apart from all other securities and shall permit examination and comparison thereof by duly authorized representatives of the foreign bank or of the commissioner. A depository may utilize a central depository, clearing corporation or book entry system to hold securities deposited pursuant to a deposit agreement, provided the records of the central depository, clearing corporation or book entry system show that the securities are held for the depository as principal, agent or custodian for its customers. The depository shall maintain adequate records to demonstrate the disposition of such book entry deposits.

(i) **Depository shall safeguard securities.** The depository shall give to the safekeeping, handling and shipping of securities deposited with it by the foreign bank the same degree of care given by such depository to its own securities.

(j) **Commissioner shall not pay for services rendered.** The commissioner shall not be required to pay for any of the services rendered or any expenses incurred by the depository or the foreign bank under or in connection with this section or the deposit agreement.

(k) **Termination of deposit agreement.** The foreign bank or the depository may terminate the deposit agreement by giving the other party thereto at least 60 days written notice of such termination, or such shorter notice as the commissioner may approve, provided no termination by the foreign bank shall be effective until (1) another depository has been designated by the foreign bank, (2) such other depository has been approved by the commissioner, (3) a deposit agreement has been executed in conformity with this section, and (4) the depository has released to the foreign bank all the assets on deposit in accordance with written instructions from the foreign bank, approved by the commissioner.

(l) **Termination of deposit agreement by action of commissioner.** If the conditions provided in subsection (k) of this section are not met within 60 days after notice of termination, or such shorter period as the commissioner may approve, the commissioner may require the depository to release the assets on such terms as the commissioner specifies. The depository, in such case, shall release the assets upon the terms so specified, and the deposit agreement shall terminate upon such release.

(Adopted effective December 23, 1997; Amended September 6, 2002)

Sec. 36a-428c-7. Record of deposits

(a) Each foreign bank shall retain until completion of its next examination by the commissioner the originals of all receipts or statements obtained from a depository pursuant to subsection (b) of section 36a-428c-6 of the Regulations of Connecticut State Agencies, copies of withdrawal requests and the certificate provided for in subsection (c) of section 36a-428c-6 of the Regulations of Connecticut State Agencies.

(b) Coincident with any withdrawal request, the foreign bank shall furnish to the commissioner a copy of the withdrawal request and the certificate provided for in subsection (c) of section 36a-428c-6 of the Regulations of Connecticut State Agencies.

(c) The amount of assets remaining on deposit and the amount of adjusted liabilities as certified pursuant to subsection (c) of section 36a-428c-6 of the Regulations of Connecticut State Agencies shall be supported by data contained in the daily record required to be maintained pursuant to section 36a-428c-5 of the Regulations of Connecticut State Agencies.

(Adopted effective December 23, 1997)