The Edge Act: Its Place and Evolution of International Banking in the United States

J.J. McGuire

Follow this and additional works at: http://repository.law.miami.edu/umialr

Recommended Citation
Available at: http://repository.law.miami.edu/umialr/vol3/iss3/2

This Article is brought to you for free and open access by Institutional Repository. It has been accepted for inclusion in University of Miami Inter-American Law Review by an authorized administrator of Institutional Repository. For more information, please contact library@law.miami.edu.
THE EDGE ACT: ITS PLACE IN THE EVOLUTION OF INTERNATIONAL BANKING IN THE UNITED STATES

John J. McGuire*

INTRODUCTION

At the end of 1956 there were seven Edge Act and Agreement corporations. As of June 30, 1970, there were 68 such organizations. The law governing their operations was passed in 1919. Why has there been such a phenomenal growth in recent years of a type of organization that was authorized by law 52 years ago (55 years ago in the case of Agreement corporations)? The answer to this question requires an examination of the history of international banking in this country going back to the turn of the century.

Briefly, an Edge Act corporation is a bank or finance company established for the purpose of engaging in international trade and finance. It is chartered by the Board of Governors of the Federal Reserve System. An Agreement corporation is chartered under state law and is required to operate in accordance with the same rules and regulations prescribed by the Board of Governors for Edge Act corporations. Such corporations, if engaged in banking, perform essentially the same functions as the international department of commercial banks. There are, however, several unique features of Edge Act and Agreement corporations.

First, this is a method by which a subsidiary may be established in a state other than that in which the parent bank is chartered. This permits banks to operate in important international trade centers such as New York, San Francisco, and more recently, Miami.

A second feature of Edge Act corporations is that they may participate in equity in foreign corporations. This is usually done as an adjunct to the process of financing a new business venture and is usually in combination with long-term debt financing. A majority of the Edge Act corporations engage in this activity.

*B.A., University of Notre Dame; M.B.A., University of Miami; Research Assistant for Marketing Department, University of Miami. Mr. McGuire plans to initiate law studies in September 1972.
A third feature is that Edge Act corporations are permitted a considerably greater degree of latitude in conducting their business than are ordinary banks. Wide and flexible powers are necessary in order that local needs in various countries can be provided for.

A fourth feature is that Edge Act corporations may not engage in any activity in the United States that is not incidental to international trade. The concept is to prevent them from competing with local banks for domestic business. This feature and the legislation governing Edge Act corporations, which will be examined in this paper, embody two broad considerations. First, the purpose of Edge Act corporations is to facilitate and expand the foreign trade of the United States. Second, the wide powers granted are subject to limitations and to supervision by the Board of Governors of the Federal Reserve System. This public control preserves geographic limitations on bank operations and maintains the traditional separation of banking and commercial activity in the United States.¹

HISTORY OF INTERNATIONAL BANKING IN THE UNITED STATES²

International Banking Before the Edge Act

Foreign operations of United States commercial banks can be traced back to 1887. However, between 1887 and 1914, "... United States banks played a minor role in foreign financing . . . , and most of our trade was financed in sterling by London banks."³ Only since the turn of the century had the United States begun to participate more extensively in foreign commerce. With this growth came a need for banking institutions to finance international trade. Prior to the passage of the Federal Reserve Act of 1913, United States banking was severely limited by the legal restrictions imposed on its operations.

The legal restrictions had not been dealt with earlier since there was no significant demand for United States participation in international banking. Foreign banks, specifically those of England, France, Germany, and Holland, were well-established in international trade. The United States had been a debtor nation. American banks were kept busy just meeting the demand of domestic trade. All these factors prevented the development of a discount market for bankers' acceptances in this country.

The condition of United States banking in international commerce was summed up in 1910 by the National Monetary Commission as follows:
The organization of such branches is necessary to the development of our foreign trade.

Banking Legislation Before the Edge Act

Until the passage of the Federal Reserve Act in 1913, there was no specific legal authorization for international banking, and there were some legal restrictions against it. An incorporated bank had traditionally been required to operate under either federal or state laws. Prior to 1913 branch banking was forbidden to national banks. Most states also forbade branch banking.

Further restrictions prohibited national banks from accepting bills of exchange or drafts and thereby prevented them from issuing letters of credit. This effectively prevented national banks from serving the financing needs of customers in the area of international trade. New York, Connecticut, and Massachusetts permitted their banks to accept drafts thus enabling them to serve foreign commerce free from national banks competition.

Federal Reserve Act of 1913

The first legal breakthrough for international banking came with the passage of the Federal Reserve Act in 1913.

The Federal Reserve Act, as originally enacted in 1913, rectified what were then considered to be the two major deficiencies in the powers of national banks to conduct foreign operations. First, in section 13 of the Act, member banks were authorized to accept drafts or bills of exchange drawn on them. Secondly, in section 25 of the Act, authority was provided for the establishment by national banks with a capital and surplus of $1 million or more of branches in foreign countries or dependencies or insular possessions of the United States subject to the consent of the Board of Governors of the Federal Reserve System.

Despite the new powers afforded national banks, foreign expansion of American banking was very slow in coming. Competition from European banks and discrimination against the dollar in some areas hindered American banks trying to break into the international arena. This situation, combined with a fear among some that the $1,000,000 in capital and surplus requirement would cause American foreign banking to be monopolized by a few powerful banks, led to a study by the Federal
1916 Amendment to Section 25 of the Federal Reserve Act

The Federal Reserve Board study and debate in Senate committees led to the development of the second major piece of legislation involving foreign banking. In 1916 Section 25 of the Federal Reserve Act was amended. This authorized national banks with capital and surplus of $1 million or more to establish branches in foreign countries for the benefit of American foreign trade and/or to invest an amount up to ten percent of their capital and surplus in banks or corporations chartered under either federal or state law and engaged in foreign banking. No statutory authority for federal chartering of foreign bank corporations was established. Any bank taking advantage of these provisions was required to enter into an agreement with the Federal Reserve Board to conduct its operations in accordance with the manner prescribed by the Board. This legislation gave rise to the so-called "Agreement Corporation".

"The purpose of the amendment was to enable national banks to invest in existing State corporations as a means of facilitating the development of their foreign business." This was intended to help counteract the competitive forces working against American foreign banking. The fear of monopoly was also alleviated by this amendment. It was believed that:

The proposed amendment would enable a number of banks in the United States, unable alone to enter the field of foreign banking, to join in the establishment of a bank or banks to do this business. . . .

Among the powers granted to Agreement corporations but normally prohibited to American banks was the right to issue notes in foreign countries where such activity was legal. This is only one example of the much wider latitude permitted American banks engaged in foreign banking. Further examples of this latitude will be seen in the provisions of the Edge Act and the regulations implementing it.

September 17, 1919 Amendment to the Federal Reserve Act

Despite the 1913 and 1916 legislation, the financial needs of American business were still not being met on the international front. This, combined with the extraordinary demand in Europe for American products following the First World War, caused Congress to amend the Fed-
eral Reserve Act again in 1919. This amendment authorized any national bank to apply to the Federal Reserve Board for permission to invest any amount not exceeding 5 percent of its paid-in capital and surplus in the stock of corporations chartered under either federal or state law and principally engaged in such phases of international or foreign financial operations as may be necessary to facilitate the export of goods, wares, or merchandise from the United States or any of its dependencies or insular possessions to any foreign country.9 This authorization was valid until January 1, 1921, and was without regard to the amount of capital and surplus of the applicant bank. Uniquely, this legislation permitted national banks to invest in operations of a financial nature other than banking. The September, 1919 amendment specifically attempted to facilitate the longer term credit needs of foreign trade. However, no corporations were formed under this legislation. This was partially due to the passage of the Edge Act only three months later.

**THE EDGE ACT**

Even before debate on the September, 1919 amendment to the Federal Reserve Act had ended and the Act been passed, the Edge Act was being debated and developed. Senator Walter Edge of New Jersey, sponsor of the Act carrying his name, wrote in his memoirs:

My next major legislative effort was the introduction on July 15, 1919, of an amendment to the Federal Reserve Act greatly liberalizing credits on exportation of American products to any part of the world. The fundamental purpose of this act was to provide easier credit for foreign purchase of American goods. Shortly after the close of World War I, all Europe wanted American products but did not have the ready cash in dollar credits. The bill was finally passed in December 1919 and approved by President Wilson the day before Christmas. Advantage was immediately taken of it both by international banking interests and by many local corporations . . . . at that time our object was to give the financially prostrate European nations long-term credits when we knew they could not give us dollars.9

**Provisions and Purposes**

Provisions of the Edge Act were designed to provide for the financial needs of American foreign trade in a far more comprehensive manner than any preceding legislation. The Edge Act added Section 25(a)
to the Federal Reserve Act and provided for the chartering of corporations by the Federal Reserve Board

for the purpose of engaging in international or foreign banking or other international or foreign financial operations, or in banking or other financial operations in a dependency or insular possession of the United States, either directly or through the agency, ownership or control of local institutions in foreign countries, or in such dependencies or insular possessions . . . .

The Federal Reserve Board had been highly instrumental in developing the Edge Act. A key idea was the provision for Federal incorporation of foreign banking corporations. This was favored by the Board for two reasons. First, the Board believed that the dual control of foreign banking corporations by the Federal Reserve Board and the banking department of a state was a potential source of embarrassment and could restrict their operations. Second, the Board believed that federal charters would enhance the banking corporations' ability to compete in foreign countries.

The significant provisions of the Edge Act are as follows:

1. Corporations may be organized with the approval of the Federal Reserve Board.11

2. Corporations must have a minimum capital of $2 million.

3. Control of the corporations must be in the hands of United States citizens.

4. National banks may invest in such corporations up to an amount which taken together with investments in corporations operating under Section 25 of the Act does not exceed 10 percent.

5. Subject to certain limitations and approval of the Board of Governors, the corporations may exercise banking powers, maintain branches and agencies overseas, and acquire and hold stock.

6. Such corporations may not conduct any business whatsoever in the United States except that which is incidental to its foreign business.12

7. Such corporations may not invest in any corporation conducting business in the United States except that which is incidental to its foreign or international business.
8. The Board of Governors was given the power to prescribe rules and regulations governing the operations of such corporations and to examine them.

It will be helpful at this point to examine the differences between Edge Act corporations and Agreement corporations. The significant differences are as follows:

1. Edge Act corporations are federally chartered and subject only to federal law and regulations. Agreement corporations are state chartered and are subject to both state laws and certain federal laws and regulations as set forth in Regulation K of the Board of Governors.

2. Edge Act corporations are required to have a minimum $2 million capitalization. There is no minimum for Agreement corporations.

3. Majority ownership of Edge Act corporations must be in the hands of United States citizens or legal entities controlled by United States citizens, and all directors must be citizens. Agreement corporations do not have such restrictions.

4. National and state bank members of the Federal Reserve are authorized by statute to invest in Edge Act corporations. Approval of the Board of Governors is required to invest in Agreement corporations.

5. Edge Act corporations may be organized for either banking or financing. Agreement corporations must be "principally engaged in international or foreign banking." However, the word "principally" allows them a certain latitude not available to Edge Act corporations.13

Amendments to Section 25 and Section 25(a) of the Federal Reserve Act

The record of early Edge Act corporations, as will be discussed later in this paper, indicates that the Edge Act was not needed at the time of its passage. If it was needed, it was not adequate as it did not stimulate the activity envisioned by its framers. However, it would seem that the Edge Act was and is most adequate to meet the needs of American foreign banking and finance. No significant amendments have been made to the Edge Act, Section 25(a) of the Federal Reserve Act, since its enactment in 1919.

On the other hand, there have been two significant amendments to Section 25 of the Federal Reserve Act. The first was in 1962 and arose
due to the restrictions on the operations of national banks and their foreign branches which prevented them from engaging in certain activities common in some countries in which they were located. The amendment authorized the Board of Governors to permit the exercise by foreign branches of such powers as may be usual in conjunction with banking activities in the countries of location. The second amendment was passed in 1966 and permits national banks directly and indirectly to hold stock in foreign banks, as well as through Edge Act or Agreement corporations. Both amendments tended to dilute somewhat the value of the Edge Act for corporations engaged in banking by granting similar powers to foreign branches of commercial banks.

Though the Edge Act itself has not been significantly amended since its passage, there have been several revisions to Regulation K. This Regulation implements the Edge Act and is issued by the Board of Governors of the Federal Reserve System under its discretionary authority. This authority is stated in part as follows:

Each corporation so organized shall have power, under such rules and regulations as the Board of Governors of the Federal Reserve System may prescribe: . . . .

This discretionary authority was confirmed in Apfel v. Mellon. Regulation K, originally issued in March 1920, has been revised or amended in 1924, 1927, 1928, 1930, 1943, 1945, 1954, 1957, 1963, 1967, 1968, 1969, and 1970. Early versions of Regulation K were essentially restatements of Section 25(a) of the Federal Reserve Act. All of the substantial revisions and amendments have been made during the past fourteen years coinciding with the phenomenal growth in Edge Act activity. Several important revisions will be discussed.

The first significant revision was made in 1957 to clarify some of the rather vague limitations on the operations of Edge Act corporations in the United States and to provide guidance regarding financing operations. The revision established a distinction between corporations engaged in banking and those engaged in financing. An Edge Act corporation was not allowed to do both. The 1957 revision also spelled out what activities could be engaged in by Edge Act corporations in the United States. Such activity must be incidental to or for the purpose of carrying out international business. Another change brought Agreement corporations under Regulation K thus eliminating the need for individual agreements to be executed between the Board and each such corporation.
The second significant revision was made to Regulation K in 1963. This revision liberalized the old provisions and contained a statement of national purpose which provided American banks and their subsidiaries with powers sufficiently broad to enable them to compete effectively with similar foreign-owned institutions and to afford to the United States exporter and importer in particular—and to United States commerce, industry, and agriculture in general—at all times a means of financing foreign trade.\(^{16}\)

This revision eliminated the distinction between banking and financing corporations which had been delineated in the 1957 revision. Any Edge Act corporation may now engage in either or both types of activity. This revision authorized the merger of Edge Act corporations owned by the same stockholder(s) but engaged in the different types of activity. Despite the change, banks owning two corporations have in most cases continued to operate both subsidiaries and to maintain the distinction between them. An important reason for this is that accepting deposits would limit a financing corporation’s loans to, or investments in, one borrower to 10 percent of its capital and surplus as opposed to 50 percent otherwise.

The third noteworthy change was an amendment made in February, 1968. Until that time Edge Act corporations had been permitted to make certain investments without the prior approval of the Board of Governors. Specific consent had not been required when a stock acquisition:

1. was incidental to an extension of credit to the foreign corporation (in making loans to foreign enterprises, Edge Act corporations frequently acquire an equity participation);

2. consists of shares in a foreign bank, but does not bring the Edge Act corporation’s holdings of the voting stock of the foreign bank to or above 25 percent; or

3. is “likely to further the development of United States foreign commerce,” provided the purchase of the stock of any one corporation does not exceed $200,000.

Under the so-called “general consent” provision, these acquisitions could be reported after the fact. The February 8, 1968 revision suspended this privilege due to the serious balance of payments conditions. The privilege was reinstated by another amendment in January, 1969.
Activity Under the Edge Act

Shortly after the Edge Act was passed, three corporations were organized under its provisions. However, their operations were quite limited. Two of them were liquidated in 1925 and the third was liquidated in 1933. Between passage of the Edge Act and 1929 fifteen Agreement corporations were chartered. All fifteen of these corporations had been liquidated or absorbed by other banks by the early 1930's. In addition to the two remaining Agreement corporations (both of which had been chartered prior to the passage of the Edge Act), only two Agreement and three Edge Act corporations were established between 1930 and 1956.

Among the first three corporations formed under the Edge Act was the Federal International Banking Company. Senator Edge mentioned that:

One outstanding example of the local effort was the combination of a number of the small banks of seven southern states for the purpose of extending credit in order to sell their rapidly mounting surplus of cotton.\(^7\) This corporation was owned by one thousand commercial banks, had a capital of $3,250,000, maintained its home office in New Orleans, and had as its purpose the financing of the international movement of tobacco and lumber as well as of cotton as mentioned by Senator Edge.

The First Federal Foreign Banking Association was organized to finance foreign trade. It was owned by eleven commercial banks and had a capital of $2,500,000. Both this corporation and the Federal International Banking Company were liquidated in 1925.

The First Federal Foreign Investment Trust was organized to invest in foreign business in 1925. After changing its name in 1926 to the First Federal Foreign Banking Corporation, it engaged in financing foreign trade maintaining subsidiaries in Argentina, Brazil, and Switzerland as well as offices in several other countries. In 1933 it too was liquidated.

Seventeen Agreement corporations were organized prior to 1930. These corporations had capital of from $600,000 to $16,000,000. Most engaged in general foreign banking. Several operated branches in various foreign countries. One owned controlling interest in three foreign trading companies. Another was formed to acquire stock of Banque Nationale de la Republique d'Haiti.
Only two of the Agreement corporations survived beyond the early 1930's. One is the International Banking Corporation owned by the First National City Bank of New York. It was originally chartered in 1901 in Connecticut and has been involved in many diverse operations throughout its existence. The other is the First of Boston International Corporation which engages in general foreign banking.

From 1930 to 1956 only two Agreement and three Edge Act corporations were established. The Agreement corporations include: The Bankers Company of New York which owns stock of Bankers Trust and Executor Company, Ltd., which conducts trust business in London; and Morgan & Cie. which engages in general foreign banking through its Paris branch. The Edge Act corporations include: The Chase Bank which underwent a change since the early 1950's from general foreign banking to investment of available funds; Bank of America which engages in general foreign banking and until 1963 operated several foreign branches, and, American Overseas Finance Corporation which engages in medium-term financing of purchases of United States equipment and services by foreigners and in foreign lending and investment to finance establishment and expansion of productive enterprises abroad.

The Edge Act did not seem to stimulate the activity that was expected and desired by its framers. The failure of early Edge Act corporations was not so much due to inadequacy in the legislation as it was to a changing environment for international trade. The Act was intended to facilitate foreign trade by providing ways of extending medium and long-term credit. Federal charters were expected to lend prestige to these institutions. However, the international trade environment was characterized by a growing economic confusion in Europe, fear of competition by some banks, and lack of American interest in foreign financing. Passage of the Edge Act was followed by a world-wide depression. International trade diminished. The deterioration of foreign economies discouraged American exporters to sell abroad unless the obligations received were guaranteed by foreign governments. Such guarantees preempted the need for services provided by Edge Act corporations.

In addition to the growing uncertainty in international commerce, there were other factors that contributed to the problems faced by early Edge Act corporations. A desire to be a part of a new thing may have prompted too many banks to establish international corporations when many banks were also establishing and expanding their international departments. Some banks suffered from a shortage of personnel qualified in the intricacies of international banking and finance.
The continuance of the depression into the 1930's and widespread systems of exchange and trade controls further depressed foreign trade and interest in foreign banking. The Second World War was also detrimental to international trade and temporarily precluded interest in foreign expansion. Renewed interest in foreign banking began to take place some years after the end of the Second World War as foreign economies stabilized and liberalized. In summary, "...the international operations of American banks up to the mid-1950's may be characterized as essentially passive, and certainly not commensurate with the economic and financial power of the United States in the post-World War II world."18

As world economic conditions have stabilized and international trade once again has begun to prosper, there has been a new flurry of activity under the Edge Act. Several factors can be pointed to as causing this recent growth. First, economies of many European countries were in a state of chaos during the depression, World War II, and immediately thereafter. These economies have stabilized, and many restrictions on international trade and capital movement have been eliminated. Second, many under-developed countries have shown strong growth patterns in recent years and have developed a need for capital in all forms. Third, there has been a tremendous upswing in United States investment abroad. Fourth, the United States has emerged as the principal economic and financial force in the world economy with the dollar as the principal currency used in financing foreign trade.

With this growth has come a drastic change in the basic operations of Edge Act corporations as compared to their predecessors. Early Edge Act corporations were particularly interested in operating overseas branches. Today, those "engaged in banking" perform essentially the same services as the international department of commercial banks. In this way banks have been able to establish themselves and compete in major foreign trade locations such as New York, San Francisco, and more recently, Miami. Others have used the Edge Act subsidiary as a substitute for establishing foreign branches by buying into various foreign banks. Those corporations "engaged in financing" specialize in making long-term loans and equity investments in foreign business enterprises. Another group of Edge Act corporations have simply been maintained in a passive status ready to be activated when the need arises.

Activities of Edge Act corporations in banking today are, as stated above, essentially the same as those of the international departments of commercial banks. An Edge Act corporation is considered to be "engaged in banking" whenever it has aggregate demand deposits and acceptance liabilities exceeding its capital and surplus.
Such a corporation may, for instance, hold demand and time (but not savings) deposits of foreign parties; issue or confirm letters of credit; finance foreign trade by extending loans and advances, by creating bankers' acceptances, or by making other credit facilities available; receive items for collection and offer other services to customers, such as remitting funds abroad, purchasing and selling securities, or holding securities for safekeeping; issue certain guarantees; act as paying agent for securities issued by foreign governments and certain foreign corporations; and engage in both spot and forward foreign exchange transactions.

Corporations “engaged in banking” may invest in stock of other corporations engaged in banking as well.

Originally, the Edge Act was designed to provide specialized institutions for financing imports and exports. Though many Edge Act corporations perform this function, there is another relatively large group that specializes in extending long-term and equity funds to private business in foreign countries. Capital has been provided to foreign business both directly and through specialized foreign financial institutions.

As regards foreign financial intermediaries, Edge Act corporations have in numerous instances helped in the financing of foreign official or semiofficial development corporations through the purchase of shares. These institutions, as the Edge Act corporations often do themselves, help finance slowly maturing enterprises in their early stages. By channeling funds to development institutions, an Edge Act corporation can avoid the detailed studies and investigations that might render small investments impossible.

Edge Act corporations “engaged in financing” have had no trouble finding investment opportunities in recent years. The problem has been only to decide which opportunities are the best. Financing can be in the form of long-term loans or purchases of stock or combinations of both. However, equity participation is usually meant to be temporary. It is often impossible for fledgling enterprises to service any great amount of debt. Therefore, the Edge Act corporation purchases stock and intends to earn its profits in the form of a capital gain. This can be a complicated process in many foreign countries. A former president of Chase International Investment Corporation, an Edge Act corporation engaged in financing, describes the process as follows:

The Edge Act company probably does not intend to retain its investments indefinitely but rather wishes to liquidate them some day at a profit. Investments in debt are self-liquidating but shares are
quite another matter. In many cases there may be no ready market, 
no matter how successful the company may be. Thus, it is helpful 
to the Edge Act company if it can arrange a put. . . . 21

It may be helpful to describe a few investments of Edge Act cor-
porations "engaged in financing". Some of the more interesting projects 
have been undertaken by Chase International Investment Corporation 
both directly and through its Canadian subsidiary, Arcturus Investment 
and Development, Ltd. In Costa Rica, Chase has joined a group of Ameri-
cans and Costa Ricans in an agricultural project to increase rice produc-
tion in that country. Chase has an indirect interest in the construction 
of private toll roads in Spain. Through Arcturus, Chase joined a consort-
ium, including other United States and Australian investors to finance a 
nitrogen and phosphate fertilizer plant in Brisbane. 22

Examples of Edge Act financing by other corporations include such 
diverse projects as the following: Continental Illinois Finance Corporation 
has made a $17 million loan, together with the Export-Import Bank, to an 
oil firm building a catalytic cracking plant in Rumania; Bankers Inter-
national Corporation has made a medium-term loan to finance the develop-
ment of iron ore in Africa; Chemical International Finance participated 
in an international consortium to finance an iron mine in Australia's 
island state of Tasmania. 23

As can be deduced from the examples named, the most frequent 
borrowers are manufacturing firms. In underdeveloped countries there 
tends to be a concentration in enterprises that process the countries' nat-
ural resources and primary materials. There is no particular geographic 
concentration in Edge Act financing activity.

SUMMARY AND IMPLICATIONS FOR THE FUTURE

Summary

Though it was passed in 1919, the Edge Act can be viewed as the 
"latest development" in the legislation regarding international operations 
of American banks. It was the culmination of what had been in progress 
during the development of the Federal Reserve Act of 1913 and the amend-
ments to Section 25 of that Act in 1916 and 1919. Since 1919 there 
have been no substantial amendments to the law pertaining to foreign 
banking operations of United States banks, few revisions of substance to 
regulations implementing that law, and no litigation of significance con-
testing international banking legislation.
The durability of the Edge Act is particularly remarkable in view of the fact that operations under the Edge Act have changed from those essentially intended to rebuild Europe after the First World War and provide a medium for export-import financing to a group of operations that include not only export-import financing but also a great many more activities.

Despite the variety of the current operations of the corporations . . . , they fall into four groups, or basic functions, namely:

1. Foreign banking operations in the United States;
2. Direct overseas operations;
3. Specialized financing, including underwriting, and
4. Equity investments.24

Activity under the Edge Act was vigorous in the years immediately following its passage, but by 1930, it had practically disappeared. There was a dearth of activity until the late 1950's when renewed interest began to develop. Since that time there has been nothing less than a phenomenal growth in the number of corporations operating under the Edge Act and in the scale of their operations. There are approximately 70 Edge Act and Agreement corporations presently in operation.

Why Have Edge Act Corporations Today?

Though this question has been answered throughout this paper, a summary of reasons is in order. Some of the reasons are essentially defensive. In general, these reasons center around the things that cannot be done by other banks. Edge Act corporations make it possible for banks to offer a more complete range of services to their customers. They allow banks to skirt some of the restrictions applicable to various aspects of commercial banking such as making it possible to bridge state boundaries and to buy stock in foreign corporations. They also facilitate the strengthening of relations with present customers. They can bring in new overseas customers for the parent bank’s services. Besides defensive motives some banks hope for increased profits. The going interest rate in some countries and the potential capital gains on equity investments at least make possible much higher returns than could ordinarily be realized by banks in this country.

In addition to the reasons enumerated above, there is a rather recent development that has precipitated some Edge Act activity. This has been the growth of the Eurodollar market. Some of the more recently organized
Edge Act corporations have been developed primarily to engage in the Eurodollar market.

In its Eurodollar activities, the corporation itself generally does not acquire Eurodollars. It serves primarily as a clearing agent for the transmission of the funds obtained by the parent bank through its overseas branches.25

The question asked about Edge Act corporations can also be directed to Agreement corporations. Though Agreement corporations far outnumbered Edge Act corporations before and during the 1920's, there have only been three to five Agreement corporations active at any one time since 1930. Today Agreement corporations are outnumbered by Edge Act corporations by more than twelve to one.

Today, both types of Corporations are subject to the same regulations, with the scope of activities of an Agreement Corporation being somewhat more restrictive. Because of this there are now only two basic reasons for choosing an Agreement rather than an Edge Corporation, both being of a technical or legal nature. One is where State banking laws have provisions for State banks to acquire the stock of a State-chartered international banking company, but not that of an Edge Corporation. Until recently this was true in California. The other reason for choosing an Agreement Corporation is where the purpose of the Corporation does not require a capital of $2,000,000, which is the required minimum for an Edge Act Corporation. This latter is illustrated by Bankers Company of New York, The Gallatin Co., Inc., and First Foreign Investment Corporation owned by the First National Bank of Miami, each of which was utilized to acquire and hold a single stock issue.26

Prospects for Continued Growth

Several reasons can be proffered as to why there should be continued growth of Edge Act corporations. The continued growth of international trade will probably be the most important reason for growth. However, an analysis of the prospects for such growth is well beyond the scope of this paper. Another reason for growth is the competitive nature of banking. This precludes a bank from allowing itself to stand still while others innovate.

An interesting point in case with regard to the competitive pressure to establish Edge Act corporations is the activity in Miami during the last two years. In 1969 the Citizens and Southern National Bank of Savannah established an Edge Act bank, Citizens and Southern Interna-
tional Bank, in Miami. In March, 1971, Bank of America established an Edge Act bank in Miami. This was followed in May, 1971, by First National City Bank (Interamerica). Irving Interamerican Bank will be in operation by July, 1971. Already Miami has become second only to New York in the number of Edge Act corporations. It is reported that a number of other leading banks in New York, Chicago, Philadelphia, and elsewhere are seriously studying the feasibility of setting up Edge Act subsidiaries in Miami. The reasons for this sudden flurry of activity in Miami are as follows:

1. a desire to service the rapidly expanding import-export business between Miami and Latin America;

2. a desire to do business with the many national corporations that have established headquarters for Latin American operations in Miami and Coral Gables;

3. a desire for an increased share of Latin American deposits in United States banks which the convenience of a Miami location is expected to stimulate;

4. an abundant supply of well-educated, bilingual personnel.

Additionally, it must be inferred that no bank hoping to do extensive business in Latin America can afford not to have an Edge Act bank in Miami in the face of the recent activity. There is also one Agreement corporation in Miami, The First Foreign Investment Corporation owned by The First National Bank of Miami. However, it is not in competition with the Edge Act banks as it was organized to acquire and hold a single stock issue.27

What has happened in Miami is a small-scale repetition of what happened in New York shortly after the Edge Act was passed and again in recent years. The Edge Act provides a way for banks to locate in international trade centers. Other cities may very well experience a similar growth. The Citizens and Southern National Bank is presently establishing an Edge Act bank, their second, in New Orleans. Any city with significant international activity is a prime target for Edge Act banks.

Geographic dispersion is much less likely for Edge Act corporations engaged in financing. The nature of their operations does not require a location chosen for the convenience of the customer as does a bank. In numbers, the financing corporations have been in the majority. As more-and-more financing ventures result in success, reasonable profits, and an expanded expertise in international financing for Edge Act cor-
porations, it seems likely that there will be a continued growth in their operations.

FOOTNOTES


11 This point was litigated in Apfel v. Mellon, 33 F.2d 805 (D.C. Cir. 1929), cert. denied, 280 U.S. 585, (1929). Mandamus brought against the Board of Governors was refused to persons seeking an Edge Act corporation. The denial of the application by the Board had been on the grounds that the applicants lacked sufficient qualifications and experience in banking and finance. “Mandamus does not lie to control the Federal Reserve Board’s discretion in refusing to approve articles of incorporation of foreign banking corporations.”

12 Despite the far-reaching implications of the Edge Act and preceding legislation, no curtailing of operations of commercial banks was intended. In Travis v. National City Bank, 23 F. Supp. 363 (E.D.N.Y. 1938), it was held that the Edge Act was not intended to limit the scope of the basic powers of national banks. “The Edge Act governing formation of corporations to do foreign banking does not restrict powers of national banks, but manifests intent to extend powers of some national banks to the new kind of corporations.”


14 U.S. Code sec. 615.


16 12 Code of Federal Regulations sec. 211.1(b)(1).


20 Ibid., 90.


23 These examples and others were reported in Business International, May, 1970, p. 143.


27 Ibid., 42.