



Federal Register

Friday,
December 27, 2002

Part II

Federal Deposit Insurance Corporation

12 CFR Part 303, et al.

Filing Procedures; Unsafe and Unsound Banking Practices; Registration of Transfer Agents; International Banking; Management Official Interlocks; and Golden Parachutes and Indemnification Payments; FDIC Statement of Policy on Bank Merger Transactions; Application for Deposit Insurance; Filing Procedures; Corporate Powers; Final Rule, Proposed Rule, and Notices

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 303

RIN 3064-AC51

Filing Procedures; Unsafe and Unsound Banking Practices; Registration of Transfer Agents; International Banking; Management Official Interlocks; and Golden Parachutes and Indemnification Payments

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The FDIC is amending its regulations governing application, notice and request procedures to reflect changes from an internal reorganization order, which included the consolidation of the Division of Supervision and the Division of Compliance and Consumer Affairs into the Division of Supervision and Consumer Protection. The FDIC has also determined that the delegations of authority found in its filing procedures regulation should be removed to allow for greater flexibility in its delegation and decision making process.

EFFECTIVE DATE: December 27, 2002.

FOR FURTHER INFORMATION CONTACT: Division of Supervision and Consumer Protection: Steven D. Fritts, Associate Director, 202/898/3723, Mindy West, Examination Specialist, 202/898/7221. Legal Division: Supervision and Legislation Branch, Susan van den Toorn, Counsel, 202/898/8707, Robert C. Fick, Counsel, 202/898/8962, FDIC, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Background

On July 2, 2002, the FDIC published in the *Federal Register* a final rule implementing the decision by the FDIC, through an internal reorganization order dated June 30, 2002 to merge certain divisions of the FDIC and, as a result, to change the names of the "Division of Supervision" "DOS" and the "Division of Compliance and Consumer Affairs" "DCA" to the "Division of Supervision and Consumer Protection (DSC)" and make changes to the names of other divisions of the FDIC. 67 FR 44351, July 2, 2002. The rule made the name changes to chapter III of title 12 of the Code of Federal Regulations. Specifically, the rule changed all references to the "Division of Supervision" and the "Division of Compliance and Consumer Affairs" to the "Division of Supervision and Consumer Protection (DSC)." The FDIC

noted at that time that it intended to make further revisions to 12 CFR chapter III to reflect other changes as a result of the reorganization. This final rule constitutes those changes. In chapter III, part 303 of the FDIC's regulations (12 CFR part 303) (part 303) contains the procedures to be followed with respect to applications, notices, or requests (collectively "filings") required to be filed by statute or regulation. With the creation of the new Division of Supervision and Consumer Protection (DSC), the internal FDIC administrative scheme set forth in the previous part 303, approved by the Board in 1998 (63 FR 44686, August 20, 1998), must be amended to reflect the new organizational structure.

II. Discussion

Throughout part 303 there are numerous references to DOS and DCA and the Directors and Deputy Directors of those Divisions and an administrative scheme for the approval, denial or modification of applications, notices or requests based on the existence of two separate divisions. The FDIC's internal reorganization of those divisions thus necessitates a revision of the regulation to reflect the new structure. The new part 303 reflects that new organizational structure.

A primary purpose of the new structure was to streamline management and certain decision making processes. To support these efforts and provide greater flexibility in the future, the FDIC decided to remove the delegation authority found in part 303. The FDIC Board of Directors has affirmed and adopted the delegations of authority for DSC to act on certain supervisory applications and enforcement actions. In addition, the Board has also authorized these delegations of authority to be transferred from its regulation in part 303 and reissued in a Financial Institution Letter. The delegations of authority state which individuals within the FDIC are authorized to approve or deny specific applications and issue enforcement actions and what authority the Board has retained. While the FDIC has codified these delegations in its rules and regulations for many years, there is no statutory requirement that the agency's internal delegations authority be published in its regulation. In order to provide the maximum amount of flexibility and efficiency, the FDIC is moving its delegation of authority from the regulation to its Internet Web site (<http://www.fdic.gov>), where the delegations will be maintained. The public will be able to access the delegations of authority to determine

which individuals are authorized to act on behalf of the FDIC. Instructions relating to the filing of applications will remain in part 303 of the FDIC's regulations.

III. Public Comment Waiver and Effective Date

As noted, this final rule reflects changes in part 303 as a result of the FDIC internal reorganization and does not affect any regulatory requirement imposed by the FDIC on the public. The changes are matters of "agency organization, procedure, or practice" and are thus not subject to the general requirement of the Administrative Procedure Act (APA) for notice and comment, pursuant to 5 U.S.C. 553(b)(3)(A). The changes are technical and non-substantive in nature and impact. Thus, the FDIC finds, for good cause, that the APA notice-and-comment provisions are unnecessary. 5 U.S.C. 553(b)(3)(B). This final rule is also effective immediately, because: (a) The changes are technical and procedural; (b) the public does not need a delayed period of time to conform or adjust; and (c) the current part 303 contains references to offices that have been merged with others and which should be corrected as promptly as possible. Therefore, it is determined that good cause exists for making these amendments effective on publication in the *Federal Register*, pursuant to 5 U.S.C. 553(d)(3).

IV. Paperwork Reduction Act

This final rule does not create or modify any collection of information pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Consequently, no information has been submitted to the Office of Management and Budget for review.

V. Regulatory Flexibility Act

A regulatory flexibility analysis under the Regulatory Flexibility Act (RFA) is required only when an agency must publish a notice of proposed rulemaking. 5 U.S.C. 603 and 604. As already noted, the FDIC has determined that publication of a notice of proposed rulemaking is not necessary here. Accordingly, the RFA does not require a regulatory flexibility analysis.

VI. 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 Treasury and General Government Appropriations Act, 1999, Pub. L. 105-277, 112 Stat. 2681 (1998).

List of Subjects in 12 CFR Part 303

Administrative practice and procedure, Bank deposit insurance, Banks, banking, Bank merger, Branching, Foreign branches, Foreign investments, Golden parachute payments, Reporting and record keeping requirements.

For the reasons set forth in the preamble and under the authority of 12 U.S.C. 1819(a)(Tenth), the FDIC Board of Directors hereby revises 12 CFR part 303 as follows:

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Authority: 12 U.S.C. 378, 1813, 1815, 1816, 1817, 1818, 1819, (Seventh and Tenth), 1820, 1823, 1828, 1831e, 1831p–l, 1835a, 3104, 3105, 3108; 3207; 15 U.S.C. 1601–1607.

§ 303.0 Scope.

(a) This part describes the procedures to be followed by both the FDIC and applicants with respect to applications, requests, or notices (filings) required to be filed by statute or regulation. Additional details concerning processing are explained in related FDIC statements of policy.

(b) Additional application procedures may be found in the following FDIC regulations:

- (1) 12 CFR part 327—Assessments (Request for review of assessment risk classification);
- (2) 12 CFR part 328—Advertisement of Membership (Application for temporary waiver of advertising requirements);
- (3) 12 CFR part 345—Community Reinvestment (CRA strategic plans and requests for designation as a wholesale or limited purpose institution);

Subpart A—Rules of General Applicability**§ 303.1 Scope.**

Subpart A prescribes the general procedures for submitting filings to the FDIC which are required by statute or regulation. This subpart also prescribes the procedures to be followed by the

FDIC, applicants and interested parties during the process of considering a filing, including public notice and comment. This subpart explains the availability of expedited processing for eligible depository institutions (defined in § 303.2(r)). Certain terms used throughout this part are also defined in this subpart.

§ 303.2 Definitions.

For purposes of this part:

(a) *Act* or *FDI Act* means the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*).

(b) *Adjusted part 325 total assets* means adjusted 12 CFR part 325 total assets as calculated and reflected in the FDIC's Report of Examination.

(c) *Adverse comment* means any objection, protest, or other adverse written statement submitted by an interested party relative to a filing. The term adverse comment shall not include any comment concerning the Community Reinvestment Act (CRA), fair lending, consumer protection, or civil rights that the appropriate regional director or designee determines to be frivolous (for example, raising issues between the commenter and the applicant that have been resolved). The term adverse comment also shall not include any other comment that the appropriate regional director or designee determines to be frivolous (for example, a non-substantive comment submitted primarily as a means of delaying action on the filing).

(d) *Amended order to pay* means an order to forfeit and pay civil money penalties, the amount of which has been changed from that assessed in the original notice of assessment of civil money penalties.

(e) *Applicant* means a person or entity that submits a filing to the FDIC.

(f) *Application* means a submission requesting FDIC approval to engage in various corporate activities and transactions.

(g) *Appropriate FDIC region* and *appropriate regional director* mean, respectively, the FDIC region and the FDIC regional director which the FDIC designates as follows:

(1) When an institution or proposed institution that is the subject of a filing or administrative action is not and will not be part of a group of related institutions, the appropriate FDIC region for the institution and any individual associated with the institution is the FDIC region in which the institution or proposed institution is or will be located, and the appropriate regional director is the regional director for that region; or

(2) When an institution or proposed institution that is the subject of a filing or administrative action is or will be part of a group of related institutions, the appropriate FDIC region for the institution and any individual associated with the institution is the FDIC region in which the group's major policy and decision makers are located, or any other region the FDIC designates on a case-by-case basis, and the appropriate regional director is the regional director for that region.

(h) *Associate director* means any associate director of the Division of Supervision and Consumer Protection (DSC) or, in the event such title become obsolete, any official of equivalent authority within the division.

(i) *Book capital* means total equity capital which is comprised of perpetual preferred stock, common stock, surplus, undivided profits and capital reserves, as those items are defined in the instructions of the Federal Financial Institutions Examination Council (FFIEC) for the preparation of Consolidated Reports of Condition and Income for insured banks.

(j) *Comment* means any written statement of fact or opinion submitted by an interested party relative to a filing.

(k) *Corporation* or *FDIC* means the Federal Deposit Insurance Corporation.

(l) *CRA protest* means any adverse comment from the public related to a pending filing which raises a negative issue relative to the Community Reinvestment Act (CRA) (12 U.S.C. 2901 *et seq.*), whether or not it is labeled a protest and whether or not a hearing is requested.

(m) *Deputy director* means the deputy director of the Division of Supervision and Consumer Protection (DSC) or, in the event such title become obsolete, any official of equivalent or higher authority within the division.

(n) *Deputy regional director* means any deputy regional director of the Division of Supervision and Consumer Protection (DSC) or, in the event such title become obsolete, any official of equivalent authority within the same FDIC region of DSC.

(o) *Appropriate FDIC office* means the office designated by the appropriate regional director or designee.

(p) *DSC* means the Division of Supervision and Consumer Protection or, in the event the Division of Supervision and Consumer Protection is reorganized, such successor division.

(q) *Director* means the Director of the Division of Supervision and Consumer Protection (DSC) or, in the event such title become obsolete, any official of equivalent or higher authority within the division.

(r) *Eligible depository institution* means a depository institution that meets the following criteria:

(1) Received an FDIC-assigned composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (UFIRS) as a result of its most recent federal or state examination;

(2) Received a satisfactory or better Community Reinvestment Act (CRA) rating from its primary federal regulator at its most recent examination, if the depository institution is subject to examination under part 345 of this chapter;

(3) Received a compliance rating of 1 or 2 from its primary federal regulator at its most recent examination;

(4) Is well-capitalized as defined in the appropriate capital regulation and guidance of the institution's primary federal regulator; and

(5) Is not subject to a cease and desist order, consent order, prompt corrective action directive, written agreement, memorandum of understanding, or other administrative agreement with its primary federal regulator or chartering authority.

(s) *Filing* means an application, notice or request submitted to the FDIC under this part.

(t) *General Counsel* means the head of the Legal Division of the FDIC or any official within the Legal Division exercising equivalent authority for purposes of this part.

(u) *Insider* means a person who is or is proposed to be a director, officer, organizer, or incorporator of an applicant; a shareholder who directly or indirectly controls 10 percent or more of any class of the applicant's outstanding voting stock; or the associates or interests of any such person.

(v) *Institution-affiliated party* shall have the same meaning as provided in section 3(u) of the Act (12 U.S.C. 1813(u)).

(w) *NEPA* means the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

(x) *NHPA* means the National Historic Preservation Act of 1966 (16 U.S.C. 470 *et seq.*).

(y) *Notice* means a submission notifying the FDIC that a depository institution intends to engage in or has commenced certain corporate activities or transactions.

(z) *Notice to primary regulator* means the notice described in section 8(a)(2)(A) of the Act concerning termination of deposit insurance (12 U.S.C. 1818(a)(2)(A)).

(aa) *Regional counsel* means a regional counsel of the Legal Division or, in the event the title becomes

obsolete, any official of equivalent authority within the Legal Division.

(bb) *Regional director* means any regional director in the Division of Supervision and Consumer Protection (DSC), or in the event such title become obsolete, any official of equivalent authority within the division.

(cc) [Reserved]

(dd) *Standard conditions* means the conditions that the FDIC may impose as a routine matter when approving a filing, whether or not the applicant has agreed to their inclusion. The following conditions, or variations thereof, are standard conditions:

(1) That the applicant has obtained all necessary and final approvals from the appropriate federal or state authority or other appropriate authority;

(2) That if the transaction does not take effect within a specified time period, or unless, in the meantime, a request for an extension of time has been approved, the consent granted shall expire at the end of the specified time period;

(3) That until the conditional commitment of the FDIC becomes effective, the FDIC retains the right to alter, suspend or withdraw its commitment should any interim development be deemed to warrant such action; and

(4) In the case of a merger transaction (as defined in ¶ 303.61(a) of this part), including a corporate reorganization, that the proposed transaction not be consummated before the 30th calendar day (or shorter time period as may be prescribed by the FDIC with the concurrence of the Attorney General) after the date of the order approving the merger transaction.

(ee) *Tier 1 capital* shall have the same meaning as provided in ¶ 325.2(v) of this chapter (12 CFR 325.2(v)).

(ff) *Total assets* shall have the same meaning as provided in ¶ 325.2(x) of this chapter (12 CFR 325.2(x)).

§ 303.3 General filing procedures.

Unless stated otherwise, filings should be submitted to the appropriate FDIC office. Forms and instructions for submitting filings may be obtained from any FDIC regional director. If no form is prescribed, the filing should be in writing; be signed by the applicant or a duly authorized agent; and contain a concise statement of the action requested. For specific filing and content requirements, consult the appropriate subparts of this part. The FDIC may require the applicant to submit additional information.

§ 303.4 Computation of time.

For purposes of this part, the FDIC begins computing the relevant period on

the day after an event occurs (e.g., the day after a substantially complete filing is received by the FDIC or the day after publication begins) through the last day of the relevant period. When the last day is a Saturday, Sunday or federal holiday, the period runs until the end of the next business day.

§ 303.5 Effect of Community Reinvestment Act performance on filings.

Among other factors, the FDIC takes into account the record of performance under the Community Reinvestment Act (CRA) of each applicant in considering a filing for approval of:

(a) The establishment of a domestic branch;

(b) The relocation of the bank's main office or a domestic branch;

(c) The relocation of an insured branch of a foreign bank;

(d) A transaction subject to the Bank Merger Act; and

(e) Deposit insurance.

§ 303.6 Investigations and examinations.

The FDIC may examine or investigate and evaluate facts related to any filing under this chapter to the extent necessary to reach an informed decision and take any action necessary or appropriate under the circumstances.

§ 303.7 Public notice requirements.

(a) *General.* The public must be provided with prior notice of a filing to establish a domestic branch, relocate a domestic branch or the main office, relocate an insured branch of a foreign bank, engage in a merger transaction, initiate a change of control transaction, or request deposit insurance. The public has the right to comment on, or to protest, these types of proposed transactions during the relevant comment period. In order to fully apprise the public of this right, an applicant shall publish a public notice of its filing in a newspaper of general circulation. For specific publication requirements, consult subparts B (Deposit Insurance), C (Branches and Relocations), D (Merger Transactions), E (Change in Bank Control), and J (International Banking) of this part.

(b) *Confirmation of publication.* The applicant shall mail or otherwise deliver a copy of the newspaper notice to the appropriate FDIC office as part of its filing, or, if a copy is not available at the time of filing, promptly after publication.

(c) *Content of notice.* (1) The public notice referred to in paragraph (a) of this section shall consist of the following:

(i) *Name and address of the applicant(s).* In the case of an application for deposit insurance for a

de novo bank, include the names of all organizers or incorporators. In the case of an application to establish a branch, include the location of the proposed branch or, in the case of an application to relocate a branch or main office, include the current and proposed address of the office. In the case of a merger application, include the names of all parties to the transaction. In the case of a notice of acquisition of control, include the name(s) of the acquiring parties. In the case of an application to relocate an insured branch of a foreign bank, include the current and proposed address of the branch.

(ii) Type of filing being made;

(iii) Name of the depository institution(s) that is the subject matter of the filing;

(iv) That the public may submit comments to the appropriate FDIC regional director;

(v) The address of the appropriate FDIC office where comments may be sent (the same location where the filing will be made);

(vi) The closing date of the public comment period as specified in the appropriate subpart; and

(vii) That the nonconfidential portions of the application are on file in the appropriate FDIC office and are available for public inspection during regular business hours; photocopies of the nonconfidential portion of the application file will be made available upon request.

(2) The requirements of paragraphs (c)(1)(iv) through (vii) of this section may be satisfied through use of the following notice:

Any person wishing to comment on this application may file his or her comments in writing with the regional director of the Federal Deposit Insurance Corporation at the appropriate FDIC office [insert address of office] not later than [insert closing date of the public comment period specified in the appropriate subpart of part 303]. The nonconfidential portions of the application are on file at the appropriate FDIC office and are available for public inspection during regular business hours. Photocopies of the nonconfidential portion of the application file will be made available upon request.

(d) *Multiple transactions.* The FDIC may consider more than one transaction, or a series of transactions, to be a single filing for purposes of the publication requirements of this section. When publishing a single public notice for multiple transactions, the applicant shall explain in the public notice how the transactions are related. The closing date of the comment period shall be the closing date of the longest public comment period that applies to any of the related transactions.

(e) *Joint public notices.* For a transaction subject to public notice requirements by the FDIC and another federal or state banking authority, the FDIC will accept publication of a single joint notice containing all the information required by both the FDIC and the other federal agency or state banking authority, provided that the notice states that comments must be submitted to the appropriate FDIC office and, if applicable, the other federal or state banking authority.

(f) Where public notice is required, the FDIC may determine on a case-by-case basis that unusual circumstances surrounding a particular filing warrant modification of the publication requirements.

§ 303.8 Public access to filing.

(a) *General.* For filings subject to a public notice requirement, any person may inspect or request a copy of the non-confidential portions of a filing (the public file) until 180 days following final disposition of a filing. Following the 180-day period, non-confidential portions of an application file will be made available in accordance with § 303.8(c). The public file generally consists of portions of the filing, supporting data, supplementary information, and comments submitted by interested persons (if any) to the extent that the documents have not been afforded confidential treatment. To view or request photocopies of the public file, an oral or written request should be submitted to the appropriate FDIC office. The public file will be produced for review not more than one business day after receipt by the appropriate FDIC office of the request (either written or oral) to see the file. The FDIC may impose a fee for photocopying in accordance with § 309.5(f) of this chapter at the rates the FDIC publishes annually in the **Federal Register**.

(b) *Confidential treatment.* (1) The applicant may request that specific information be treated as confidential. The following information generally is considered confidential:

- (i) Personal information, the release of which would constitute a clearly unwarranted invasion of privacy;
- (ii) Commercial or financial information, the disclosure of which could result in substantial competitive harm to the submitter; and
- (iii) Information, the disclosure of which could seriously affect the financial condition of any depository institution.

(2) If an applicant requests confidential treatment for information that the FDIC does not consider to be confidential, the FDIC may include that

information in the public file after notifying the applicant. On its own initiative, the FDIC may determine that certain information should be treated as confidential and withhold that information from the public file.

(c) *FOIA requests.* A written request for information withheld from the public file, or copies of the public file following closure of the file 180 days after final disposition, should be submitted pursuant to the Freedom of Information Act (5 U.S.C. 552) and part 309 of this chapter to the FDIC, Attn: FOIA/Privacy Group, Legal Division, 550 17th Street, NW., Washington, DC 20429.

§ 303.9 Comments.

(a) *Submission of comments.* For filings subject to a public notice requirement, any person may submit comments to the appropriate FDIC regional director during the comment period.

(b) *Comment period*—(1) *General.* Consult appropriate subparts of this part for the comment period applicable to a particular filing.

(2) *Extension.* The FDIC may extend or reopen the comment period if:

- (i) The applicant fails to file all required information on a timely basis to permit review by the public or makes a request for confidential treatment not granted by the FDIC that delays the public availability of that information;
- (ii) Any person requesting an extension of time satisfactorily demonstrates to the FDIC that additional time is necessary to develop factual information that the FDIC determines may materially affect the application; or
- (iii) The FDIC determines that other good cause exists.

(3) *Solicitation of comments.* Whenever appropriate, the appropriate regional director may solicit comments from any person or institution which might have an interest in or be affected by the pending filing.

(4) *Applicant response.* The FDIC will provide copies of all comments received to the applicant and may give the applicant an opportunity to respond.

§ 303.10 Hearings and other meetings.

(a) *Matters covered.* This section covers hearings and other proceedings in connection with filings and determinations for or by:

- (1) Deposit insurance by a proposed new depository institution or operating non-insured institution;
- (2) An insured state nonmember bank to establish a domestic branch or to relocate a main office or domestic branch;
- (3) Relocation of an insured branch of a foreign bank;

(4)(i) Merger transaction which requires the FDIC's prior approval under the Bank Merger Act (12 U.S.C. 1828(c));

(ii) Except as otherwise expressly provided, the provisions of this § 303.10 shall not be applicable to any proposed merger transaction which the FDIC Board of Directors determines must be acted upon immediately to prevent the probable failure of one of the institutions involved, or must be handled with expeditious action due to an existing emergency condition, as permitted by the Bank Merger Act (12 U.S.C. 1828(c)(6));

(5) Nullification of a decision on a filing; and

(6) Any other purpose or matter which the FDIC Board of Directors in its sole discretion deems appropriate.

(b) *Hearing requests.* (1) Any person may submit a written request for a hearing on a filing:

(i) To the appropriate regional director before the end of the comment period; or

(ii) To the appropriate regional director, pursuant to a notice to nullify a decision on a filing issued pursuant to § 303.11(g)(2)(i) or (ii).

(2) The request must describe the nature of the issues or facts to be presented and the reasons why written submissions would be insufficient to make an adequate presentation of those issues or facts to the FDIC. A person requesting a hearing shall simultaneously submit a copy of the request to the applicant.

(c) *Action on a hearing request.* The appropriate regional director, after consultation with the Legal Division, may grant or deny a request for a hearing and may limit the issues that he or she deems relevant or material. The FDIC generally grants a hearing request only if it determines that written submissions would be insufficient or that a hearing otherwise would be in the public interest.

(d) *Denial of a hearing request.* If the appropriate regional director, after consultation with the Legal Division, denies a hearing request, he or she shall notify the person requesting the hearing of the reason for the denial. A decision to deny a hearing request shall be a final agency determination and is not appealable.

(e) *FDIC procedures prior to the hearing*—(1) *Notice of hearing.* The FDIC shall issue a notice of hearing if it grants a request for a hearing or orders a hearing because it is in the public interest. The notice of hearing shall state the subject and date of the filing, the time and place of the hearing, and the issues to be addressed. The FDIC shall send a copy of the notice of hearing to

the applicant, to the person requesting the hearing, and to anyone else requesting a copy.

(2) The presiding officer shall be the regional director or designee or such other person as may be named by the Board or the Director. The presiding officer is responsible for conducting the hearing and determining all procedural questions not governed by this section.

(f) *Participation in the hearing.* Any person who wishes to appear (participant) shall notify the appropriate regional director of his or her intent to participate in the hearing no later than 10 days from the date that the FDIC issues the Notice of Hearing. At least 5 days before the hearing, each participant shall submit to the appropriate regional director, as well as to the applicant and any other person as required by the FDIC, the names of witnesses, a statement describing the proposed testimony of each witness, and one copy of each exhibit the participant intends to present.

(g) *Transcripts.* The FDIC shall arrange for a hearing transcript. The person requesting the hearing and the applicant each shall bear the cost of one copy of the transcript for his or her use unless such cost is waived by the presiding officer and incurred by the FDIC.

(h) *Conduct of the hearing—(1) Presentations.* Subject to the rulings of the presiding officer, the applicant and participants may make opening and closing statements and present and examine witnesses, material, and data.

(2) *Information submitted.* Any person presenting material shall furnish one copy to the FDIC, one copy to the applicant, and one copy to each participant.

(3) *Laws not applicable to hearings.* The Administrative Procedure Act (5 U.S.C. 551 *et seq.*), the Federal Rules of Evidence (28 U.S.C. Appendix), the Federal Rules of Civil Procedure (28 U.S.C. Rule 1 *et seq.*), and the FDIC's Rules of Practice and Procedure (12 CFR part 308) do not govern hearings under this § 303.10.

(i) *Closing the hearing record.* At the applicant's or any participant's request, or at the FDIC's discretion, the FDIC may keep the hearing record open for up to 10 days following the FDIC's receipt of the transcript. The FDIC shall resume processing the filing after the record closes.

(j) *Disposition and notice thereof.* The presiding officer shall make a recommendation to the FDIC within 20 days following the date the hearing and record on the proceeding are closed. The FDIC shall notify the applicant and all participants of the final disposition

of a filing and shall provide a statement of the reasons for the final disposition.

(k) *Computation of time.* In computing periods of time under this section, the provisions of § 308.12 of the FDIC's Rules of Practice and Procedure (12 CFR 308.12) shall apply.

(l) *Informal proceedings.* The FDIC may arrange for an informal proceeding with an applicant and other interested parties in connection with a filing, either upon receipt of a written request for such a meeting made during the comment period, or upon the FDIC's own initiative. No later than 10 days prior to an informal proceeding, the appropriate regional director shall notify the applicant and each person who requested a hearing or oral presentation of the date, time, and place of the proceeding. The proceeding may assume any form, including a meeting with FDIC representatives at which participants will be asked to present their views orally. The regional director may hold separate meetings with each of the participants.

(m) *Authority retained by FDIC Board of Directors to modify procedures.* The FDIC Board of Directors may delegate authority by resolution on a case-by-case basis to the presiding officer to adopt different procedures in individual matters and on such terms and conditions as the Board of Directors determines in its discretion. The resolution shall be made available for public inspection and copying in the Office of the General Counsel, Executive Secretary Section under the Freedom of Information Act (5 U.S.C. 552(a)(2)).

§ 303.11 Decisions.

(a) *General procedures.* The FDIC may approve, conditionally approve, deny, or not object to a filing after appropriate review and consideration of the record. The FDIC will promptly notify the applicant and any person who makes a written request of the final disposition of a filing. If the FDIC denies a filing, the FDIC will immediately notify the applicant in writing of the reasons for the denial.

(b) *Authority retained by FDIC Board of Directors to modify procedures.* In acting on any filing under this part, the FDIC Board of Directors may by resolution adopt procedures which differ from those contained in this part when it deems it necessary or in the public interest to do so. The resolution shall be made available for public inspection and copying in the Office of the General Counsel, Executive Secretary Section under the Freedom of Information Act (5 U.S.C. 552(a)(2)).

(c) *Expedited processing.* (1) A filing submitted by an eligible depository

institution as defined in § 303.2(r) will receive expedited processing as specified in the appropriate subparts of this part unless the FDIC determines to remove the filing from expedited processing for any of the reasons set forth in paragraph (c)(2) of this section. Except for filings made pursuant to subpart J (International Banking), expedited processing will not be available for any filing that the appropriate regional director does not have delegated authority to approve.

(2) *Removal of filing from expedited processing.* The FDIC may remove a filing from expedited processing at any time prior to final disposition if:

(i) For filings subject to public notice under § 303.7, an adverse comment is received that warrants additional investigation or review;

(ii) For filings subject to evaluation of CRA performance under § 303.5, a CRA protest is received that warrants additional investigation or review, or the appropriate regional director determines that the filing presents a significant CRA or compliance concern;

(iii) For any filing, the appropriate regional director determines that the filing presents a significant supervisory concern, or raises a significant legal or policy issue; or

(iv) For any filing, the appropriate regional director determines that other good cause exists for removal.

(3) For purposes of this section, a significant CRA concern includes, but is not limited to, a determination by the appropriate regional director that, although a depository institution may have an institution-wide rating of satisfactory or better, a depository institution's CRA rating is less than satisfactory in a state or multi-state metropolitan statistical area, or a depository institution's CRA performance is less than satisfactory in a metropolitan statistical area as defined in 12 CFR 345.12 (MSA) or in the non-MSA portion of a state in which it seeks to expand through approval of an application for a deposit facility as defined in 12 U.S.C. 2902(3).

(4) If the FDIC determines that it is necessary to remove a filing from expedited processing pursuant to paragraph (c)(2) of this section, the FDIC promptly will provide the applicant with a written explanation

(d) *Multiple transactions.* If the FDIC is considering related transactions, some or all of which have been granted expedited processing, then the longest processing time for any of the related transactions shall govern for purposes of approval.

(e) *Abandonment of filing.* A filing must contain all information set forth in

the applicable subpart of this part. To the extent necessary to evaluate a filing, the FDIC may require an applicant to provide additional information. If information requested by the FDIC is not provided within the time period specified by the agency, the FDIC may deem the filing abandoned and shall provide written notification to the applicant and any interested parties that submitted comments to the FDIC that the file has been closed.

(f) *Appeals and requests for reconsideration*—(1) *General*. Appeal procedures for a denial of a change in bank control (subpart E), change in senior executive officer or board of directors (subpart F) or denial of an application pursuant to section 19 of the FDI Act (subpart L) are contained in 12 CFR part 308, subparts D, L, and M, respectively. For all other filings covered by this chapter for which appeal procedures are not provided by regulation or other written guidance, the procedures specified in paragraphs (f) (2) and (3) of this section shall apply. A decision to deny a request for a hearing is a final agency determination and is not appealable.

(2) *Filing procedures*. Within 15 days of receipt of notice from the FDIC that its filing has been denied, any applicant may file a request for reconsideration with the appropriate regional director.

(3) *Content of filing*. A request for reconsideration must contain the following information:

(i) A resolution of the board of directors of the applicant authorizing filing of the request if the applicant is a corporation, or a letter signed by the individual(s) filing the request if the applicant is not a corporation;

(ii) Relevant, substantive information that for good cause was not previously set forth in the filing; and

(iii) Specific reasons why the FDIC should reconsider its prior decision.

(4) [Reserved]

(5) [Reserved]

(6) *Processing*. The FDIC will notify the applicant whether reconsideration will be granted or denied within 15 days of receipt of a request for reconsideration. If a request for reconsideration is granted pursuant to § 303.11(f), the FDIC will notify the applicant of the final agency decision on such filing within 60 days of its receipt of the request for reconsideration.

(g) *Nullification, withdrawal, revocation, amendment, and suspension of decisions on filings*—(1) *Grounds for action*. Except as otherwise provided by law or regulation, the FDIC may nullify, withdraw, revoke, amend or suspend a decision on a filing if it becomes aware at anytime:

(i) Of any material misrepresentation or omission related to the filing or of any material change in circumstance that occurred prior to the consummation of the transaction or commencement of the activity authorized by the decision on the filing; or

(ii) That the decision on the filing is contrary to law or regulation or was granted due to clerical or administrative error.

(iii) Any person responsible for a material misrepresentation or omission in a filing or supporting materials may be subject to an enforcement action and other penalties, including criminal penalties provided in Title 18 of the United States Code.

(2) *Notice of intent and temporary order*. (i) Except as provided in § 303.11(g)(2)(ii), before taking action under this § 303.11(g), the FDIC shall issue and serve on an applicant written notice of its intent to take such action. A notice of intent to act on a filing shall include:

(A) The reasons for the proposed action; and

(B) The date by which the applicant may file a written response with the FDIC.

(ii) The FDIC may issue a temporary order on a decision on a filing without providing an applicant a prior notice of intent if the FDIC determines that:

(A) It is necessary to reevaluate the impact of a change in circumstance prior to the consummation of the transaction or commencement of the activity authorized by the decision on the filing; or

(B) The activity authorized by the filing may pose a threat to the interests of the depository institution's depositors or may threaten to impair public confidence in the depository institution.

(iii) A temporary order shall provide the applicant with an opportunity to make a written response in accordance with § 303.11(g)(3) of this section.

(3) *Response to notice of intent or temporary order*. An applicant may file a written response to a notice of intent or a temporary order within 15 days from the date of service of the notice or temporary order. The written response should include:

(i) An explanation of why the proposed action or temporary order is not warranted; and

(ii) Any other relevant information, mitigating circumstance, documentation, or other evidence in support of the applicant's position. An applicant may also request a hearing under § 303.10 of this part. Failure by an applicant to file a written response with the FDIC to a notice of intent or a temporary order within the specified

time period, shall constitute a waiver of the opportunity to respond and shall constitute consent to a final order under this § 303.11(g).

(4) *Effective date*. All orders issued pursuant to this section shall become effective immediately upon issuance unless otherwise stated therein.

§§ 303.12–303.13 [Reserved]

§ 303.14 Being “engaged in the business of receiving deposits other than trust funds.”

(a) Except as provided in paragraphs (b), (c), and (d) of this section, a depository institution shall be “engaged in the business of receiving deposits other than trust funds” only if it maintains one or more non-trust deposit accounts in the minimum aggregate amount of \$500,000.

(b) An applicant for federal deposit insurance under section 5 of the FDI Act, 12 U.S.C. 1815(a), shall be deemed to be “engaged in the business of receiving deposits other than trust funds” from the date that the FDIC approves deposit insurance for the institution until one year after it opens for business.

(c) Any depository institution that fails to satisfy the minimum deposit standard specified in paragraph (a) of this section as of two consecutive call report dates (*i.e.*, March 31st, June 30th, September 30th, and December 31st) shall be subject to a determination by the FDIC that the institution is not “engaged in the business of receiving deposits other than trust funds” and to termination of its insured status under section 8(p) of the FDI Act, 12 U.S.C. 1818(p). For purposes of this paragraph, the first three call report dates after the institution opens for business are excluded.

(d) Notwithstanding any failure by an insured depository institution to satisfy the minimum deposit standard in paragraph (a) of this section, the institution shall continue to be “engaged in the business of receiving deposits other than trust funds” for purposes of section 3 of the FDI Act until the institution's insured status is terminated by the FDIC pursuant to a proceeding under section 8(a) or section 8(p) of the FDI Act, 12 U.S.C. 1818(a) or 1818(p).

§§ 303.15–303.19 [Reserved]

Subpart B—Deposit Insurance

§ 303.20 Scope.

This subpart sets forth the procedures for applying for deposit insurance for a proposed depository institution or an operating noninsured depository

institution under section 5 of the FDI Act (12 U.S.C. 1815). It also sets forth the procedures for requesting continuation of deposit insurance for a state-chartered bank withdrawing from membership in the Federal Reserve System and for interim institutions chartered to facilitate a merger transaction.

§ 303.21 Filing procedures.

(a) Applications for deposit insurance shall be filed with the appropriate FDIC office. The relevant application forms and instructions for applying for deposit insurance for an existing or proposed depository institution may be obtained from any FDIC regional director.

(b) An application for deposit insurance for an interim depository institution shall be filed and processed in accordance with the procedures set forth in § 303.24, subject to the provisions of § 303.62(b)(2) regarding deposit insurance for interim institutions. An interim institution is defined as a state- or federally-chartered depository institution that does not operate independently but exists solely as a vehicle to accomplish a merger transaction.

(c) A request for continuation of deposit insurance upon withdrawing from membership in the Federal Reserve System shall be in letter form and shall provide the information prescribed in § 303.25.

§ 303.22 Processing.

(a) *Expedited processing for proposed institutions.* (1) An application for deposit insurance for a proposed institution which will be a subsidiary of an eligible depository institution as defined in § 303.2(r) or an eligible holding company will be acknowledged in writing by the FDIC and will receive expedited processing unless the applicant is notified in writing to the contrary and provided with the basis for that decision. An eligible holding company is defined as a bank or thrift holding company that has consolidated assets of \$150 million or more, has an assigned composite rating of 2 or better, and has at least 75 percent of its consolidated depository institution assets comprised of eligible depository institutions. The FDIC may remove an application from expedited processing for any of the reasons set forth in § 303.11(c)(2).

(2) Under expedited processing, the FDIC will take action on an application within 60 days of receipt of a substantially complete application or 5 days after the expiration of the comment period described in § 303.23, whichever is later. Final action may be withheld

until the FDIC has assurance that permission to organize the proposed institution will be granted by the chartering authority. Notwithstanding paragraph (a)(1) of this section, if the FDIC does not act within the expedited processing period, it does not constitute an automatic or default approval.

(b) *Standard processing.* For those applications that are not processed pursuant to the expedited procedures, the FDIC will provide the applicant with written notification of the final action when the decision is rendered.

§ 303.23 Public notice requirements.

(a) *De novo institutions and operating noninsured institutions.* The applicant shall publish a notice as prescribed in § 303.7 in a newspaper of general circulation in the community in which the main office of the depository institution is or will be located. Notice shall be published as close as practicable to, but no sooner than five days before, the date the application is mailed or delivered to the appropriate FDIC office. Comments by interested parties must be received by the appropriate regional director within 30 days following the date of publication, unless the comment period has been extended or reopened in accordance with § 303.9(b)(2).

(b) *Exceptions to public notice requirements.* No publication shall be required in connection with the granting of insurance to a new depository institution established pursuant to the resolution of a depository institution in default, or to an interim depository institution formed solely to facilitate a merger transaction, or for a request for continuation of federal deposit insurance by a state-chartered bank withdrawing from membership in the Federal Reserve System.

§ 303.24 Application for deposit insurance for an interim institution.

(a) *Application required.* Subject to § 303.62(b)(2), a deposit insurance application is required for a state-chartered interim institution if the related merger transaction is subject to approval by a federal banking agency other than the FDIC. A separate application for deposit insurance for an interim institution is not required in connection with any merger requiring FDIC approval pursuant to subpart D of this part.

(b) *Content of separate application.* A letter application for deposit insurance for an interim institution, accompanied by a copy of the related merger application, shall be filed with the appropriate FDIC office. The letter application shall briefly describe the

transaction and contain a statement that deposit insurance is being requested for an interim institution that does not operate independently but exists solely as a vehicle to accomplish a merger transaction which will be reviewed by a federal banking agency other than the FDIC.

(c) *Processing.* An application for deposit insurance for an interim depository institution will be acknowledged in writing by the FDIC. Final action will be taken within 21 days after receipt of a substantially complete application, unless the applicant is notified in writing that additional review is warranted. If the FDIC does not act within the expedited processing period, it does not constitute an automatic or default approval.

§ 303.25 Continuation of deposit insurance upon withdrawing from membership in the Federal Reserve System.

(a) *Content of application.* To continue its insured status upon withdrawal from membership in the Federal Reserve System, a state-chartered bank shall submit a letter application to the appropriate FDIC office. A complete application shall consist of the following information:

(1) A copy of the letter, and any attachments thereto, sent to the appropriate Federal Reserve Bank setting forth the bank's intention to terminate its membership;

(2) A copy of the letter from the Federal Reserve Bank acknowledging the bank's notice to terminate membership;

(3) A statement regarding any anticipated changes in the bank's general business plan during the next 12-month period; and

(4)(i) A statement by the bank's management that there are no outstanding or proposed corrective programs or supervisory agreements with the Federal Reserve System.

(ii) If such programs or agreements exist, a statement by the applicant that its Board of Directors is willing to enter into similar programs or agreements with the FDIC which would become effective upon withdrawal from the Federal Reserve System.

(b) *Processing.* An application for deposit insurance under this section will be acknowledged in writing by the FDIC. The FDIC shall notify the applicant, within 15 days of receipt of a substantially complete application, either that federal deposit insurance will continue upon termination of membership in the Federal Reserve System or that additional review is warranted and the applicant will be notified, in writing, of the FDIC's final

decision regarding continuation of deposit insurance. If the FDIC does not act within the expedited processing period, it does not constitute an automatic or default approval.

§§ 303.26—303.39 [Reserved]

Subpart C—Establishment and Relocation of Domestic Branches and Offices

§ 303.40 Scope.

(a) *General.* This subpart sets forth the application requirements and procedures for insured state nonmember banks to establish a branch, relocate a branch or main office, and retain existing branches after the interstate relocation of the main office subject to the approval by the FDIC pursuant to sections 13(f), 13(k), 18(d) and 44 of the FDI Act.

(b) *Merger transaction.* Applications for approval of the acquisition and establishment of branches in connection with a merger transaction under section 18(c) of the FDI Act (12 U.S.C. 1828(c)), are processed in accordance with subpart D (Merger Transactions) of this part.

(c) *Insured branches of foreign banks and foreign branches of domestic banks.* Applications regarding insured branches of foreign banks and foreign branches of domestic banks are processed in accordance with subpart J (International Banking) of this part.

(d) *Interstate acquisition of individual branch.* Applications requesting approval of the interstate acquisition of an individual branch or branches located in a state other than the applicant's home state without the acquisition of the whole bank are treated as interstate bank merger transactions under section 44 of the FDI Act (12 U.S.C. 1831a(u)), and are processed in accordance with subpart D (Merger Transactions) of this part.

§ 303.41 Definitions.

For purposes of this subpart:

(a) *Branch* includes any branch bank, branch office, additional office, or any branch place of business located in any State of the United States or in any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands at which deposits are received or checks paid or money lent. A branch does not include an automated teller machine, an automated loan machine, or a remote service unit. The term branch also includes the following:

(1) A *messenger service* that is operated by a bank or its affiliate that picks up and delivers items relating to

transactions in which deposits are received or checks paid or money lent. A messenger service established and operated by a non-affiliated third party generally does not constitute a branch for purposes of this subpart. Banks contracting with third parties to provide messenger services should consult with the FDIC to determine if the messenger service constitutes a branch.

(2) A *mobile branch*, other than a messenger service, that does not have a single, permanent site and uses a vehicle that travels to various locations to enable the public to conduct banking business. A mobile branch may serve defined locations on a regular schedule or may serve a defined area at varying times and locations.

(3) A *temporary branch* that operates for a limited period of time not to exceed one year as a public service, such as during an emergency or disaster situation.

(4) A *seasonal branch* that operates at various periodically recurring intervals, such as during state and local fairs, college registration periods, and other similar occasions.

(b) *Branch relocation* means a move within the same immediate neighborhood of the existing branch that does not substantially affect the nature of the business of the branch or the customers of the branch. Moving a branch to a location outside its immediate neighborhood is considered the closing of an existing branch and the establishment of a new branch. Closing of a branch is covered in the FDIC Statement of Policy Concerning Branch Closing Notices and Policies. 1 FDIC Law, Regulations, Related Acts 5391; see § 309.4 (a) and (b) of this chapter for availability.

(c) *De novo branch* means a branch of a bank which is established by the bank as a branch and does not become a branch of such bank as a result of:

(1) The acquisition by the bank of an insured depository institution or a branch of an insured depository institution; or

(2) The conversion, merger, or consolidation of any such institution or branch.

(d) *Home state* means the state by which the bank is chartered.

(e) *Host state* means a state, other than the home state of the bank, in which the bank maintains, or seeks to establish and maintain, a branch.

§ 303.42 Filing procedures.

(a) *General.* An applicant shall submit an application to the appropriate FDIC office on the date the notice required by § 303.44 is published, or within 5 days

after the date of the last required publication.

(b) *Content of filing.* A complete letter application shall include the following information:

(1) A statement of intent to establish a branch, or to relocate the main office or a branch;

(2) The exact location of the proposed site including the street address. With regard to messenger services, specify the geographic area in which the services will be available. With regard to a mobile branch specify the community or communities in which the vehicle will operate and the manner in which it will be used;

(3) Details concerning any involvement in the proposal by an insider of the bank as defined in § 303.2(u), including any financial arrangements relating to fees, the acquisition of property, leasing of property, and construction contracts;

(4) A statement on the impact of the proposal on the human environment, including, information on compliance with local zoning laws and regulations and the effect on traffic patterns for purposes of complying with the applicable provisions of the NEPA and the FDIC Statement of Policy on NEPA (1 FDIC Law, Regulations, Related Acts 5185; see § 309.4 (a) and (b) of this chapter for availability);

(5) A statement as to whether or not the site is eligible for inclusion in the National Register of Historic Places for purposes of complying with applicable provisions of the NHPA and the FDIC Statement of Policy on NHPA (1 FDIC Law, Regulations, Related Acts 5175; see § 309.4 (a) and (b) of this chapter for availability) including documentation of consultation with the State Historic Preservation Officer, as appropriate;

(6) Comments on any changes in services to be offered, the community to be served, or any other effect the proposal may have on the applicant's compliance with the CRA;

(7) A copy of each newspaper publication required by § 303.44 of this subpart, the name and address of the newspaper, and date of the publication;

(8) When an application is submitted to relocate the main office of the applicant from one state to another, a statement of the applicant's intent regarding retention of branches in the state where the main office exists prior to relocation.

(c) *Undercapitalized institutions.* Applications to establish a branch by applicants subject to section 38 of the FDI Act (12 U.S.C. 1831o) also should provide the information required by § 303.204. Applications pursuant to sections 38 and 18(d) of the FDI Act (12

U.S.C. 1831o and 1828(d)) may be filed concurrently or as a single application.

(d) *Additional information.* The FDIC may request additional information to complete processing.

§ 303.43 Processing.

(a) *Expedited processing for eligible depository institutions.* An application filed under this subpart by an eligible depository institution as defined in § 303.2(r) will be acknowledged in writing by the FDIC and will receive expedited processing, unless the applicant is notified in writing to the contrary and provided with the basis for that decision. The FDIC may remove an application from expedited processing for any of the reasons set forth in § 303.11(c)(2). Absent such removal, an application processed under expedited processing will be deemed approved on the latest of the following:

(1) The 21st day after receipt by the FDIC of a substantially complete filing;

(2) The 5th day after expiration of the comment period described in § 303.44; or

(3) In the case of an application to establish and operate a de novo branch in a state that is not the applicant's home state and in which the applicant does not maintain a branch, the 5th day after the FDIC receives confirmation from the host state that the applicant has both complied with the filing requirements of the host state and submitted a copy of the application with the FDIC to the host state bank supervisor.

(b) *Standard processing.* For those applications which are not processed pursuant to the expedited procedures, the FDIC will provide the applicant with written notification of the final action when the decision is rendered.

§ 303.44 Public notice requirements.

(a) *Newspaper publications.* For applications to establish or relocate a branch, a notice as described in § 303.7(c) shall be published once in a newspaper of general circulation. For applications to relocate a main office, notice shall be published at least once each week on the same day for two consecutive weeks. The required publication shall be made in the following communities:

(1) *To establish a branch.* In the community in which the main office is located and in the communities to be served by the branch (including messenger services and mobile branches).

(2) *To relocate a main office.* In the community in which the main office is currently located and in the community

to which it is proposed the main office will relocate.

(3) *To relocate a branch.* In the community in which the branch is located.

(b) *Public comments.* Comments by interested parties must be received by the appropriate regional director within 15 days after the date of the last newspaper publication required by paragraph (a) of this section, unless the comment period has been extended or reopened in accordance with § 303.9(b)(2).

(c) *Lobby notices.* In the case of applications to relocate a main office or a branch, a copy of the required newspaper publication shall be posted in the public lobby of the office to be relocated for at least 15 days beginning on the date of the last published notice required by paragraph (a) of this section.

§ 303.45 Special provisions.

(a) *Emergency or disaster events.* (1) In the case of an emergency or disaster at a main office or a branch which requires that an office be immediately relocated to a temporary location, applicants shall notify the appropriate FDIC office within 3 days of such temporary relocation.

(2) Within 10 days of the temporary relocation resulting from an emergency or disaster, the bank shall submit a written application to the appropriate FDIC office, that identifies the nature of the emergency or disaster, specifies the location of the temporary branch, and provides an estimate of the duration the bank plans to operate the temporary branch.

(3) As part of the review process, the FDIC will determine on a case by case basis whether additional information is necessary and may waive public notice requirements.

(b) *Redesignation of main office and existing branch.* In cases where an applicant desires to redesignate its main office as a branch and redesignate an existing branch as the main office, a single application shall be submitted. The FDIC may waive the public notice requirements in instances where an application presents no significant or novel policy, supervisory, CRA, compliance or legal concerns. A waiver will be granted only to a redesignation within the applicant's home state.

(c) *Expiration of approval.* Approval of an application expires if within 18 months after the approval date a branch has not commenced business or a relocation has not been completed.

§§ 303.46–303.59 [Reserved]

Subpart D—Merger Transactions

§ 303.60 Scope.

This subpart sets forth the application requirements and procedures for transactions subject to FDIC approval under the Bank Merger Act, section 18(c) of the FDI Act (12 U.S.C. 1828(c)). Additional guidance is contained in the FDIC "Statement of Policy on Bank Merger Transactions" (1 FDIC Law, Regulations, Related Acts 5145; see § 309.4(a) and (b) of this chapter for availability).

§ 303.61 Definitions.

For purposes of this subpart:

(a) *Merger transaction* includes any transaction:

(1) In which an insured depository institution merges or consolidates with any other insured depository institution or, either directly or indirectly, acquires the assets of, or assumes liability to pay any deposits made in, any other insured depository institution; or

(2) In which an insured depository institution merges or consolidates with any noninsured bank or institution or assumes liability to pay any deposits made in, or similar liabilities of, any noninsured bank or institution, or in which an insured depository institution transfers assets to any noninsured bank or institution in consideration of the assumption of any portion of the deposits made in the insured depository institution.

(b) *Corporate reorganization* means a merger transaction between commonly-owned institutions, between an insured depository institution and its subsidiary, or between an insured depository institution and its holding company, provided that the merger transaction would have no effect on competition or otherwise have significance under the statutory standards set forth in section 18(c) of the FDI Act (12 U.S.C. 1828(c)). For purposes of this paragraph, institutions are commonly-owned if more than 50 percent of the voting stock of each of the institutions is owned by the same company, individual, or group of closely-related individuals acting in concert.

(c) *Interim merger transaction* means a merger transaction (other than a purchase and assumption transaction) between an operating depository institution and a newly-formed depository institution or corporation that will not operate independently and that exists solely for the purpose of facilitating a corporate reorganization.

(d) *Optional conversion* (Oakar transaction) means a merger transaction

in which an insured depository institution assumes deposit liabilities insured by the deposit insurance fund (either the Bank Insurance Fund (BIF) or the Savings Association Insurance Fund (SAIF)) of which that assuming institution is not a member, and elects not to convert the insurance covering the assumed deposits. Such transactions are covered by section 5(d)(3) of the FDI Act (12 U.S.C. 1815(d)(3)).

(e) *Resulting institution* refers to the acquiring, assuming or resulting institution in a merger transaction.

§ 303.62 Transactions requiring prior approval.

(a) *Merger transactions.* The following merger transactions require the prior written approval of the FDIC under this subpart:

(1) Any merger transaction, including any corporate reorganization, interim merger transaction, or optional conversion, in which the resulting institution is to be an insured state nonmember bank; and

(2) Any merger transaction, including any corporate reorganization or interim merger transaction, that involves an uninsured bank or institution.

(b) *Related provisions.* Transactions covered by this subpart also may be subject to other provisions or application requirements, including the following:

(1) *Interstate merger transactions.* Merger transactions between insured banks that are chartered in different states are subject to the provisions of section 44 of the FDI Act (12 U.S.C. 1831u). In the case of a merger transaction that consists of the acquisition by an out of state bank of a branch without acquisition of the bank, the branch is treated for section 44 purposes as a bank whose home state is the state in which the branch is located.

(2) *Deposit insurance.* An application for deposit insurance will be required in connection with a merger transaction between a state-chartered interim institution and an insured depository institution if the related merger application is being acted upon by a federal banking agency other than the FDIC. If the FDIC is the federal banking agency responsible for acting on the related merger application, a separate application for deposit insurance is not necessary. Procedures for applying for deposit insurance are set forth in subpart B of this part. An application for deposit insurance will not be required in connection with a merger transaction (other than a purchase and assumption transaction) of a federally-chartered interim institution and an insured institution, even if the resulting

institution is to operate under the charter of the federal interim institution.

(3) *Deposit insurance fund conversions.* Procedures for conversion transactions involving the transfer of deposits from BIF to SAIF or from SAIF to BIF are set forth in subpart M of this part at § 303.246.

(4) *Branch closings.* Branch closings in connection with a merger transaction are subject to the notice requirements of section 42 of the FDI Act (12 U.S.C. 1831r-1), including requirements for notice to customers. These requirements are addressed in the "Interagency Policy Statement Concerning Branch Closings Notices and Policies" (1 FDIC Law, Regulations, Related Acts (FDIC) 5391; see § 309.4(a) and (b) of this chapter for availability.)

(5) *Undercapitalized institutions.* Applications for a merger transaction by applicants subject to section 38 of the FDI Act (12 U.S.C. 1831o) should also provide the information required by § 303.204. Applications pursuant to sections 38 and 18(c) of the FDI Act (12 U.S.C. 1831o and 1828(c)) may be filed concurrently or as a single application.

(6) *Certification of assumption of deposit liability.* An insured depository institution assuming deposit liabilities of another insured institution must provide certification of assumption of deposit liability to the FDIC in accordance with 12 CFR part 307.

§ 303.63 Filing procedures.

(a) *General.* Applications required under this subpart shall be filed with the appropriate FDIC office. The appropriate forms and instructions may be obtained upon request from any FDIC regional director.

(b) *Merger transactions.* Applications for approval of merger transactions shall be accompanied by copies of all agreements or proposed agreements relating to the merger transaction and any other information requested by the FDIC.

(c) *Interim merger transactions.* Applications for approval of interim merger transactions and any related deposit insurance applications shall be made by filing the forms and other documents required by paragraphs (a) and (b) of this section and such other information as may be required by the FDIC for consideration of the request for deposit insurance.

(d) *Optional conversions.* If the proposed merger transaction is an optional conversion, the merger application shall include a statement that the proposed merger transaction is a transaction covered by section 5(d)(3) of the FDI Act (12 U.S.C. 1815(d)(3)).

§ 303.64 Processing.

(a) *Expedited processing for eligible depository institutions—(1) General.* An application filed under this subpart by an eligible depository institution as defined in § 303.2(r) and which meets the additional criteria in paragraph (a)(4) of this section will be acknowledged by the FDIC in writing and will receive expedited processing, unless the applicant is notified in writing to the contrary and provided with the basis for that decision. The FDIC may remove an application from expedited processing for any of the reasons set forth in § 303.11(c)(2).

(2) Under expedited processing, the FDIC will take action on an application by the date that is the latest of:

(i) 45 days after the date of the FDIC's receipt of a substantially complete merger application; or

(ii) 10 days after the date of the last notice publication required under § 303.65 of this subpart; or

(iii) 5 days after receipt of the Attorney General's report on the competitive factors involved in the proposed transaction; or

(iv) For an interstate merger transaction subject to the provisions of section 44 of the FDI Act (12 U.S.C. 1831u), 5 days after the FDIC receives confirmation from the host state (as defined in § 303.41(e)) that the applicant has both complied with the filing requirements of the host state and submitted a copy of the FDIC merger application to the host state's bank supervisor.

(3) Notwithstanding paragraph (a)(1) of this section, if the FDIC does not act within the expedited processing period, it does not constitute an automatic or default approval.

(4) *Criteria.* The FDIC will process an application using expedited procedures if:

(i) Immediately following the merger transaction, the resulting institution will be "well-capitalized" pursuant to subpart B of part 325 of this chapter (12 CFR part 325); and

(ii)(A) All parties to the merger transaction are eligible depository institutions as defined in § 303.2(r); or

(B) The acquiring party is an eligible depository institution as defined in § 303.2(r) and the amount of the total assets to be transferred does not exceed an amount equal to 10 percent of the acquiring institution's total assets as reported in its report of condition for the quarter immediately preceding the filing of the merger application.

(b) *Standard processing.* For those applications not processed pursuant to the expedited procedures, the FDIC will provide the applicant with written

notification of the final action taken by the FDIC on the application when the decision is rendered.

§ 303.65 Public notice requirements.

(a) *General.* Except as provided in paragraph (b) of this section, an applicant for approval of a merger transaction must publish notice of the proposed transaction on at least three occasions at approximately equal intervals in a newspaper of general circulation in the community or communities where the main offices of the merging institutions are located or, if there is no such newspaper in the community, then in the newspaper of general circulation published nearest thereto.

(1) *First publication.* The first publication of the notice should be as close as practicable to the date on which the application is filed with the FDIC, but no more than 5 days prior to the filing date.

(2) *Last publication.* The last publication of the notice shall be on the 25th day after the first publication or, if the newspaper does not publish on the 25th day, on the newspaper's publication date that is closest to the 25th day.

(b) *Exceptions—(1) Emergency requiring expeditious action.* If the FDIC determines that an emergency exists requiring expeditious action, notice shall be published twice. The first notice shall be published as soon as possible after the FDIC notifies the applicant of such determination. The second notice shall be published on the 7th day after the first publication or, if the newspaper does not publish on the 7th day, on the newspaper's publication date that is closest to the 7th day.

(2) *Probable failure.* If the FDIC determines that it must act immediately to prevent the probable failure of one of the institutions involved in a proposed merger transaction, publication is not required.

(c) *Content of notice—(1) General.* The notice shall conform to the public notice requirements set forth in § 303.7.

(2) *Branches.* If it is contemplated that the resulting institution will operate offices of the other institution(s) as branches, the following statement shall be included in the notice required in § 303.7(b):

It is contemplated that all offices of the above-named institutions will continue to be operated (with the exception of [insert identity and location of each office that will not be operated]).

(3) *Emergency requiring expeditious action.* If the FDIC determines that an emergency exists requiring expeditious action, the notice shall specify as the

closing date of the public comment period the date that is the 10th day after the date of the first publication.

(d) *Public comments.* Comments must be received by the appropriate FDIC office within 30 days after the first publication of the notice, unless the comment period has been extended or reopened in accordance with § 303.9(b)(2). If the FDIC has determined that an emergency exists requiring expeditious action, comments must be received by the appropriate FDIC office within 10 days after the first publication.

§§ 303.66—303.79 [Reserved]

Subpart E—Change in Bank Control

§ 303.80 Scope.

This subpart sets forth the procedures for submitting a notice to acquire control of an insured state nonmember bank pursuant to the Change in Bank Control Act of 1978, section 7(j) of the FDI Act (12 U.S.C. 1817(j)).

§ 303.81 Definitions.

For purposes of this subpart:

(a) *Acquisition* means a purchase, assignment, transfer, pledge or other disposition of voting shares, or an increase in percentage ownership of an insured state nonmember bank resulting from a redemption of voting shares.

(b) *Acting in concert* means knowing participation in a joint activity or parallel action towards a common goal of acquiring control of an insured state nonmember bank, whether or not pursuant to an express agreement.

(c) *Control* means the power, directly or indirectly, to direct the management or policies of an insured bank or to vote 25 percent or more of any class of voting shares of an insured bank.

(d) *Person* means an individual, corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, and any other form of entity; and a voting trust, voting agreement, and any group of persons acting in concert.

§ 303.82 Transactions requiring prior notice.

(a) *Prior notice requirement.* Any person acting directly or indirectly, or through or in concert with one or more persons, shall give the FDIC 60 days prior written notice, as specified in § 303.84, before acquiring control of an insured state nonmember bank, unless the acquisition is exempt under § 303.83.

(b) *Acquisitions requiring prior notice—(1) Acquisition of control.* The

acquisition of control, unless exempted, requires prior notice to the FDIC.

(2) *Rebuttable presumption of control.* The FDIC presumes that an acquisition of voting shares of an insured state nonmember bank constitutes the acquisition of the power to direct the management or policies of an insured bank requiring prior notice to the FDIC, if, immediately after the transaction, the acquiring person (or persons acting in concert) will own, control, or hold with power to vote 10 percent or more of any class of voting shares of the institution, and if:

(i) The institution has registered shares under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l); or

(ii) No other person will own, control or hold the power to vote a greater percentage of that class of voting shares immediately after the transaction. If two or more persons, not acting in concert, each propose to acquire simultaneously equal percentages of 10 percent or more of a class of voting shares of an insured state nonmember bank, each such person shall file prior notice with the FDIC.

(c) *Acquisitions of loans in default.* The FDIC presumes an acquisition of a loan in default that is secured by voting shares of an insured state nonmember bank to be an acquisition of the underlying shares for purposes of this section.

(d) *Other transactions.* Transactions other than those set forth in paragraph (b)(2) of this section resulting in a person's control of less than 25 percent of a class of voting shares of an insured state nonmember bank are not deemed by the FDIC to constitute control for purposes of the Change in Bank Control Act (12 U.S.C. 1817j).

(e) *Rebuttal of presumptions.* Prior notice to the FDIC is not required for any acquisition of voting shares under the presumption of control set forth in this section, if the FDIC finds that the acquisition will not result in control. The FDIC will afford any person seeking to rebut a presumption in this section an opportunity to present views in writing or, if appropriate, orally before its designated representatives at an informal meeting.

§ 303.83 Transactions not requiring prior notice.

(a) *Exempt transactions.* The following transactions do not require notice to the FDIC under this subpart:

(1) The acquisition of additional voting shares of an insured state nonmember bank by a person who:

(i) Held the power to vote 25 percent or more of any class of voting shares of that institution continuously since

March 9, 1979, or since that institution commenced business, whichever is later; or

(ii) Is presumed, under § 303.82(b)(2), to have controlled the institution continuously since March 9, 1979, if the aggregate amount of voting shares held does not exceed 25 percent or more of any class of voting shares of the institution or, in other cases, where the FDIC determines that the person has controlled the bank continuously since March 9, 1979;

(2) The acquisition of additional shares of a class of voting shares of an insured state nonmember bank by any person (or persons acting in concert) who has lawfully acquired and maintained control of the institution (for purposes of § 303.82) after complying with the procedures of the Change in Bank Control Act to acquire voting shares of the institution under this subpart;

(3) Acquisitions of voting shares subject to approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842(a)), section 18(c) of the FDI Act (12 U.S.C. 1828(c)), or section 10 of the Home Owners' Loan Act (12 U.S.C. 1467a);

(4) Transactions exempt under the Bank Holding Company Act: foreclosures by institutional lenders, fiduciary acquisitions by banks, and increases of majority holdings by bank holding companies described in sections 2(a)(5), 3(a)(A), or 3(a)(B) respectively of the Bank Holding Company Act (12 U.S.C. 1841(a)(5), 1842(a)(A), and 1842(a)(B));

(5) A customary one-time proxy solicitation;

(6) The receipt of voting shares of an insured state nonmember bank through a pro rata stock dividend; and

(7) The acquisition of voting shares in a foreign bank, which has an insured branch or branches in the United States. (This exemption does not extend to the reports and information required under paragraphs 9, 10, and 12 of the Change in Bank Control Act of 1978 (12 U.S.C. 1817(j) (9), (10), and (12)).

(b) *Prior notice exemption.* (1) The following acquisitions of voting shares of an insured state nonmember bank, which otherwise would require prior notice under this subpart, are not subject to the prior notice requirements if the acquiring person notifies the appropriate FDIC office within 90 calendar days after the acquisition and provides any relevant information requested by the FDIC.

(i) The acquisition of voting shares through inheritance;

(ii) The acquisition of voting shares as a bona fide gift; or

(iii) The acquisition of voting shares in satisfaction of a debt previously contracted in good faith, except that the acquirer of a defaulted loan secured by a controlling amount of a state nonmember bank's voting securities shall file a notice before the loan is acquired.

(2) The following acquisitions of voting shares of an insured state nonmember bank, which otherwise would require prior notice under this subpart, are not subject to the prior notice requirements if the acquiring person notifies the appropriate FDIC office within 90 calendar days after receiving notice of the acquisition and provides any relevant information requested by the FDIC.

(i) A percentage increase in ownership of voting shares resulting from a redemption of voting shares by the issuing bank; or

(ii) The sale of shares by any shareholder that is not within the control of a person resulting in that person becoming the largest shareholder.

(3) Nothing in paragraph (b)(1) of this section limits the authority of the FDIC to disapprove a notice pursuant to § 303.85(c).

§ 303.84 Filing procedures.

(a) *Filing notice.* (1) A notice required under this subpart shall be filed with the appropriate FDIC office and shall contain all the information required by paragraph 6 of the Change in Bank Control Act, section 7 (j) of the FDI Act, (12 U.S.C. 1817(j)(6)), or prescribed in the designated interagency form which may be obtained from any FDIC regional director.

(2) The FDIC may waive any of the informational requirements of the notice if the FDIC determines that it is in the public interest.

(3) A notificant shall notify the appropriate FDIC office immediately of any material changes in a notice submitted to the FDIC, including changes in financial or other conditions.

(4) When the acquiring person is an individual, or group of individuals acting in concert, the requirement to provide personal financial data may be satisfied by a current statement of assets and liabilities and an income summary, as required in the designated interagency form, together with a statement of any material changes since the date of the statement or summary. The FDIC may require additional information if appropriate.

(b) *Other laws.* Nothing in this subpart shall affect any obligation which the acquiring person(s) may have to comply

with the federal securities laws or other laws.

§ 303.85 Processing.

(a) *Acceptance of notice.* The 60-day notice period specified in § 303.82 shall commence on the date of receipt of a substantially complete notice. The FDIC shall notify the person or persons submitting a notice under this subpart in writing of the date the notice is accepted for processing. The FDIC may request additional information at any time.

(b) *Time period for FDIC action; consummation of acquisition.* (1) The notificant(s) may consummate the proposed acquisition 60 days after submission to the appropriate FDIC office of a substantially complete notice under paragraph (a) of this section, unless within that period the FDIC disapproves the proposed acquisition or extends the 60-day period.

(2) The notificant(s) may consummate the proposed transaction before the expiration of the 60-day period if the FDIC notifies the notificant(s) in writing of its intention not to disapprove the acquisition.

(c) *Disapproval of acquisition of control.* Subpart D of 12 CFR part 308 sets forth the rules of practice and procedure for a notice of disapproval.

§ 303.86 Public notice requirements.

(a) *Publication*—(1) *Newspaper announcement.* Any person(s) filing a notice under this subpart shall publish an announcement soliciting public comment on the proposed acquisition. The announcement shall be published in a newspaper of general circulation in the community in which the home office of the state nonmember bank to be acquired is located. The announcement shall be published as close as is practicable to the date the notice is filed with the appropriate FDIC office, but in no event more than 10 calendar days before or after the filing date.

(2) *Contents of newspaper announcement.* The newspaper announcement shall conform to the public notice requirements set forth in § 303.7.

(b) *Delay of publication.* The FDIC may permit delay in the publication required by this section if the FDIC determines, for good cause, that it is in the public interest to grant such a delay. Requests for delay of publication may be submitted to the appropriate FDIC office.

(c) *Shortening or waiving notice.* The FDIC may shorten the public comment period to a period of not less than 10 days, or waive the public comment or newspaper publication requirements of

this paragraph, or act on a notice before the expiration of a public comment period, if it determines in writing either that an emergency exists or that disclosure of the notice, solicitation of public comment, or delay until expiration of the public comment period would seriously threaten the safety or soundness of the bank to be acquired.

(d) *Consideration of public comments.* In acting upon a notice filed under this subpart, the FDIC shall consider all public comments received in writing within 20 days following the required newspaper publication or, if the FDIC has shortened the public comment period pursuant to paragraph (c) of this section, within such shorter period.

(e) *Publication if filing is subsequent to acquisition of control.* (1) Whenever a notice of a proposed acquisition of control is not filed in accordance with the Change in Bank Control Act and these regulations, the acquiring person(s) shall, within 10 days of being so directed by the FDIC, publish an announcement of the acquisition of control in a newspaper of general circulation in the community in which the home office of the state nonmember bank to be acquired is located.

(2) The newspaper announcement shall contain the name(s) of the acquiror(s), the name of the depository institution involved, and the date of the acquisition of the stock. The announcement shall also contain a statement indicating that the FDIC is currently reviewing the acquisition of control. The announcement also shall state that any person wishing to comment on the change in control may do so by submitting written comments to the appropriate regional director of the FDIC (give address of appropriate FDIC office) within 20 days following the required newspaper publication.

§§ 303.87–303.99 [Reserved]

Subpart F—Change of Director or Senior Executive Officer

§ 303.100 Scope.

This subpart sets forth the circumstances under which an insured state nonmember bank must notify the FDIC of a change in any member of its board of directors or any senior executive officer and the procedures for filing such notice. This subpart implements section 32 of the FDI Act (12 U.S.C. 1831i).

§ 303.101 Definitions.

For purposes of this subpart:

(a) *Director* means a person who serves on the board of directors or board of trustees of an insured state nonmember bank, except that this term

does not include an advisory director who:

(1) Is not elected by the shareholders;

(2) Is not authorized to vote on any matters before the board of directors or board of trustees or any committee thereof;

(3) Solely provides general policy advice to the board of directors or board of trustees and any committee thereof; and

(4) Has not been identified by the FDIC as a person who performs the functions of a director for purposes of this subpart.

(b) *Senior executive officer* means a person who holds the title of president, chief executive officer, chief operating officer, chief managing official (in an insured state branch of a foreign bank), chief financial officer, chief lending officer, or chief investment officer, or, without regard to title, salary, or compensation, performs the function of one or more of these positions. *Senior executive officer* also includes any other person identified by the FDIC, whether or not hired as an employee, with significant influence over, or who participates in, major policymaking decisions of the insured state nonmember bank.

(c) *Troubled condition* means any insured state nonmember bank that:

(1) Has a composite rating, as determined in its most recent report of examination, of 4 or 5 under the Uniform Financial Institutions Rating System (UFIRS), or in the case of an insured state branch of a foreign bank, an equivalent rating; or

(2) Is subject to a proceeding initiated by the FDIC for termination or suspension of deposit insurance; or

(3) Is subject to a cease-and-desist order or written agreement issued by either the FDIC or the appropriate state banking authority that requires action to improve the financial condition of the bank or is subject to a proceeding initiated by the FDIC or state authority which contemplates the issuance of an order that requires action to improve the financial condition of the bank, unless otherwise informed in writing by the FDIC; or

(4) Is informed in writing by the FDIC that it is in troubled condition for purposes of the requirements of this subpart on the basis of the bank's most recent report of condition or report of examination, or other information available to the FDIC.

§ 303.102 Filing procedures and waiver of prior notice.

(a) *Insured state nonmember banks.* An insured state nonmember bank shall give the FDIC written notice, as

specified in paragraph (c)(1) of this section, at least 30 days prior to adding or replacing any member of its board of directors, employing any person as a senior executive officer of the bank, or changing the responsibilities of any senior executive officer so that the person would assume a different senior executive officer position, if:

(1) The bank is not in compliance with all minimum capital requirements applicable to the bank as determined on the basis of the bank's most recent report of condition or report of examination;

(2) The bank is in troubled condition; or

(3) The FDIC determines, in connection with its review of a capital restoration plan required under section 38(e)(2) of the FDI Act (12 U.S.C. 1831o(e)(2)) or otherwise, that such notice is appropriate.

(b) *Insured branches of foreign banks.* In the case of the addition of a member of the board of directors or a change in senior executive officer in a foreign bank having an insured state branch, the notice requirement shall not apply to such additions and changes in the foreign bank parent, but only to changes in senior executive officers in the state branch.

(c) *Waiver of prior notice*—(1) *Waiver requests.* The FDIC may permit an individual, upon petition by the bank to the appropriate FDIC office, to serve as a senior executive officer or director before filing the notice required under this subpart if the FDIC finds that:

(i) Delay would threaten the safety or soundness of the bank;

(ii) Delay would not be in the public interest; or

(iii) Other extraordinary circumstances exist that justify waiver of prior notice.

(2) *Automatic waiver.* In the case of the election of a new director not proposed by management at a meeting of the shareholders of an insured state nonmember bank, the prior 30-day notice is automatically waived and the individual immediately may begin serving, provided that a complete notice is filed with the appropriate FDIC office within two business days after the individual's election.

(3) *Effect on disapproval authority.* A waiver shall not affect the authority of the FDIC to disapprove a notice within 30 days after a waiver is granted under paragraph (c)(1) of this section or the election of an individual who has filed a notice and is serving pursuant to an automatic waiver under paragraph (c)(2) of this section.

(d)(1) *Content of filing.* The notice required by paragraph (a) of this section

shall be filed with the appropriate FDIC office and shall contain information pertaining to the competence, experience, character, or integrity of the individual with respect to whom the notice is submitted, as prescribed in the designated interagency form which is available from any FDIC regional director. The FDIC may require additional information.

(2) *Modification.* The FDIC may modify or accept other information in place of the requirements of paragraph (d)(1) of this section for a notice filed under this subpart.

§ 303.103 Processing.

(a) *Processing.* The 30-day notice period specified in § 303.102(a) shall begin on the date substantially all information required to be submitted by the notificant pursuant to § 303.102(c)(1) is received by the appropriate FDIC office. The FDIC shall notify the bank submitting the notice of the date on which the notice is accepted for processing and of the date on which the 30-day notice period will expire. If processing cannot be completed within 30 days, the notificant will be advised in writing, prior to expiration of the 30-day period, of the reason for the delay in processing and of the additional time period, not to exceed 60 days, in which processing will be completed.

(b) *Commencement of service—(1) At expiration of period.* A proposed director or senior executive officer may begin service after the end of the 30-day period or any other additional period as provided under paragraph (a) of this section, unless the FDIC disapproves the notice before the end of the period.

(2) *Prior to expiration of period.* A proposed director or senior executive officer may begin service before the end of the 30-day period or any additional time period as provided under paragraph (a) of this section, if the FDIC notifies the bank and the individual in writing of the FDIC's intention not to disapprove the notice.

(c) *Notice of disapproval.* The FDIC may disapprove a notice filed under § 303.102 if the FDIC finds that the competence, experience, character, or integrity of the individual with respect to whom the notice is submitted indicates that it would not be in the best interests of the depositors of the bank or in the best interests of the public to permit the individual to be employed by, or associated with, the bank. Subpart L of 12 CFR part 308 sets forth the rules of practice and procedure for a notice of disapproval.

§§ 303.104–303.119 [Reserved]

Subpart G—Activities of Insured State Banks

§ 303.120 Scope.

This subpart sets forth procedures for complying with notice and application requirements contained in subpart A of part 362 of this chapter, governing insured state banks and their subsidiaries engaging in activities which are not permissible for national banks and their subsidiaries. This subpart sets forth procedures for complying with notice and application requirements contained in subpart B of part 362 of this chapter, governing certain activities of insured state nonmember banks, their subsidiaries, and certain affiliates. This subpart also sets forth procedures for complying with the notice requirements contained in subpart E of part 362 of this chapter, governing subsidiaries of insured state nonmember banks engaging in financial activities.

§ 303.121 Filing procedures.

(a) *Where to file.* A notice or application required by subpart A, subpart B, or subpart E of part 362 of this chapter shall be submitted in writing to the appropriate FDIC office.

(b) *Contents of filing.* A complete letter notice or letter application shall include the following information:

- (1) *Filings generally.* (i) A brief description of the activity and the manner in which it will be conducted;
- (ii) The amount of the bank's existing or proposed direct or indirect investment in the activity as well as calculations sufficient to indicate compliance with any specific capital ratio or investment percentage limitation detailed in subpart A, B, or E of part 362 of this chapter;
- (iii) A copy of the bank's business plan regarding the conduct of the activity;

(iv) A citation to the state statutory or regulatory authority for the conduct of the activity;

(v) A copy of the order or other document from the appropriate regulatory authority granting approval for the bank to conduct the activity if such approval is necessary and has already been granted;

(vi) A brief description of the bank's policy and practice with regard to any anticipated involvement in the activity by a director, executive officer or principal shareholder of the bank or any related interest of such a person; and

(vii) A description of the bank's expertise in the activity.

(2) [Reserved]

(3) *Copy of application or notice filed with another agency.* If an insured state

bank has filed an application or notice with another federal or state regulatory authority which contains all of the information required by paragraph (b) (1) of this section, the insured state bank may submit a copy to the FDIC in lieu of a separate filing.

(4) *Additional information.* The FDIC may request additional information to complete processing.

§ 303.122 Processing.

(a) *Expedited processing.* A notice filed by an insured state bank seeking to commence or continue an activity under § 362.3(a)(2)(iii)(A)(2), § 362.4(b)(3)(i), or § 362.4(b)(5) of this chapter will be acknowledged in writing by the FDIC and will receive expedited processing, unless the applicant is notified in writing to the contrary and provided a basis for that decision. The FDIC may remove the notice from expedited processing for any of the reasons set forth in § 303.11(c)(2). Absent such removal, a notice processed under expedited processing is deemed approved 30 days after receipt of a complete notice by the FDIC (subject to extension for an additional 15 days upon written notice to the bank) or on such earlier date authorized by the FDIC in writing.

(b) *Standard processing for applications and notices that have been removed from expedited processing.* For an application filed by an insured state bank seeking to commence or continue an activity under § 362.3(a)(2)(iii)(A)(2), § 362.3(b)(2)(i), § 362.3(b)(2)(ii)(A), § 362.3(b)(2)(ii)(C), § 362.4(b)(1), § 362.4(b)(4), § 362.5(b)(2), or § 362.8(b) or seeking a waiver or modification under § 362.18(e) or § 362.18(g)(3) of this chapter or for notices which are not processed pursuant to the expedited processing procedures, the FDIC will provide the insured State bank with written notification of the final action as soon as the decision is rendered. The FDIC will normally review and act in such cases within 60 days after receipt of a completed application or notice (subject to extension for an additional 30 days upon written notice to the bank), but failure of the FDIC to act prior to the expiration of these periods does not constitute approval.

§§ 303.123–303.139 [Reserved]

Subpart H—Activities of Insured Savings Associations

§ 303.140 Scope.

This subpart sets forth procedures for complying with the notice and application requirements contained in subpart C of part 362 of this chapter, governing insured state savings

associations and their service corporations engaging in activities which are not permissible for federal savings associations and their service corporations. This subpart also sets forth procedures for complying with the notice requirements contained in subpart D of part 362 of this chapter, governing insured savings associations which establish or engage in new activities through a subsidiary.

§ 303.141 Filing procedures.

(a) *Where to file.* All applications and notices required by subpart C or subpart D of part 362 of this chapter are to be in writing and filed with the appropriate FDIC office.

(b) *Contents of filing—(1) Filings generally.* A complete letter notice or letter application shall include the following information:

(i) A brief description of the activity and the manner in which it will be conducted;

(ii) The amount of the association's existing or proposed direct or indirect investment in the activity as well as calculations sufficient to indicate compliance with any specific capital ratio or investment percentage limitation detailed in subpart C or D of part 362 of this chapter;

(iii) A copy of the association's business plan regarding the conduct of the activity;

(iv) A citation to the state statutory or regulatory authority for the conduct of the activity;

(v) A copy of the order or other document from the appropriate regulatory authority granting approval for the association to conduct the activity if such approval is necessary and has already been granted;

(vi) A brief description of the association's policy and practice with regard to any anticipated involvement in the activity by a director, executive officer or principal shareholder of the association or any related interest of such a person; and

(vii) A description of the association's expertise in the activity.

(2) [Reserved]

(3) *Copy of application or notice filed with another agency.* If an insured savings association has filed an application or notice with another federal or state regulatory authority which contains all of the information required by paragraph (b)(1) of this section, the insured state bank may submit a copy to the FDIC in lieu of a separate filing.

(4) *Additional information.* The FDIC may request additional information to complete processing.

§ 303.142 Processing.

(a) *Expedited processing.* A notice filed by an insured state savings association seeking to commence or continue an activity under § 362.11(b)(2)(ii) of this chapter will be acknowledged in writing by the FDIC and will receive expedited processing, unless the applicant is notified in writing to the contrary and provided a basis for that decision. The FDIC may remove the notice from expedited processing for any of the reasons set forth in § 303.11(c)(2). Absent such removal, a notice processed under expedited processing is deemed approved 30 days after receipt of a complete notice by the FDIC (subject to extension for an additional 15 days upon written notice to the bank) or on such earlier date authorized by the FDIC in writing.

(b) *Standard processing for applications and notices that have been removed from expedited processing.* For an application filed by an insured state savings association seeking to commence or continue an activity under § 362.11(a)(2)(ii), § 362.11(b)(2)(i), § 362.12(b)(1) of this chapter or for notices which are not processed pursuant to the expedited processing procedures, the FDIC will provide the insured state savings association with written notification of the final action as soon as the decision is rendered. The FDIC will normally review and act in such cases within 60 days after receipt of a completed application or notice (subject to extension for an additional 30 days upon written notice to the bank), but failure of the FDIC to act prior to the expiration of these periods does not constitute approval.

(c) *Notices of activities in excess of an amount permissible for a federal savings association; subsidiary notices.* Receipt of a notice filed by an insured state savings association as required by § 362.11(b)(3) or § 362.15 of this chapter will be acknowledged in writing by the FDIC. The notice will be reviewed at the appropriate FDIC office, which will take such action as it deems necessary and appropriate.

§§ 303.143—303.159 [Reserved]

Subpart I—Mutual-To-Stock Conversions

§ 303.160 Scope.

This subpart sets forth the notice requirements and procedures for the conversion of an insured mutual state-chartered savings bank to the stock form of ownership. The substantive requirements governing such

conversions are contained in § 333.4 of this chapter.

§ 303.161 Filing procedures.

(a) *Prior notice required.* In addition to complying with the substantive requirements in § 333.4 of this chapter, an insured state-chartered mutually owned savings bank that proposes to convert from mutual to stock form shall file with the FDIC a notice of intent to convert to stock form.

(b) *General.* (1) A notice required under this subpart shall be filed in letter form with the appropriate FDIC office at the same time as required conversion application materials are filed with the institution's state regulator.

(2) An insured mutual savings bank chartered by a state that does not require the filing of a conversion application shall file a notice in letter form with the appropriate FDIC office as soon as practicable after adoption of its plan of conversion.

(c) *Content of notice.* The notice shall provide a description of the proposed conversion and include all materials that have been filed with any state or federal banking regulator and any state or federal securities regulator. At a minimum, the notice shall include, as applicable, copies of:

(1) The plan of conversion, with specific information concerning the record date used for determining eligible depositors and the subscription offering priority established in connection with any proposed stock offering;

(2) Certified board resolutions relating to the conversion;

(3) A business plan, including a detailed discussion of how the capital acquired in the conversion will be used, expected earnings for at least a three-year period following the conversion, and a justification for any proposed stock repurchases;

(4) The charter and bylaws of the converted institution;

(5) The bylaws and operating plans of any other entities formed in connection with the conversion transaction, such as a holding company or charitable foundation;

(6) A full appraisal report, prepared by an independent appraiser, of the value of the converting institution and the pricing of the stock to be sold in the conversion transaction;

(7) Detailed descriptions of any proposed management or employee stock benefit plans or employment agreements and a discussion of the rationale for the level of benefits proposed, individually and by participant group;

(8) Indemnification agreements;

(9) A preliminary proxy statement and sample proxy;

(10) Offering circular(s) and order form;

(11) All contracts or agreements relating to solicitation, underwriting, market-making, or listing of conversion stock and any agreements among members of a group regarding the purchase of unsubscribed shares;

(12) A tax opinion concerning the federal income tax consequences of the proposed conversion;

(13) Consents from experts to use their opinions as part of the notice; and

(14) An estimate of conversion-related expenses.

(d) *Additional information.* The FDIC, in its discretion, may request any additional information it deems necessary to evaluate the proposed conversion. The institution proposing to convert from mutual to stock form shall promptly provide such information to the FDIC.

(e) *Acceptance of notice.* The 60-day notice period specified in § 303.163 shall commence on the date of receipt of a substantially complete notice. The FDIC shall notify the institution proposing to convert in writing of the date the notice is accepted.

(f) *Related applications.* Related applications that require FDIC action may include:

(1) Applications for deposit insurance, as required by subpart B of this part; and

(2) Applications for consent to merge, as required by subpart D of this part.

§ 303.162 Waiver from compliance.

(a) *General.* An institution proposing to convert from mutual to stock form may file with the appropriate FDIC office a letter requesting waiver of compliance with this subpart or § 333.4 of this chapter:

(1) When compliance with any provision of this section or § 333.4 of this chapter would be inconsistent or in conflict with applicable state law, or

(2) For any other good cause shown.

(b) *Content of filing.* In making a request for waiver under paragraph (a) of this section, the institution shall demonstrate that the requested waiver, if granted, would not result in any effects that would be detrimental to the safety and soundness of the institution, entail a breach of fiduciary duty on part of the institution's management or otherwise be detrimental or inequitable to the institution, its depositors, any other insured depository institution(s), the federal deposit insurance funds, or to the public interest.

§ 303.163 Processing.

(a) *General considerations.* The FDIC shall review the notice and other materials submitted by the institution proposing to convert from mutual to stock form, specifically considering the following factors:

(1) The proposed use of the proceeds from the sale of stock, as set forth in the business plan;

(2) The adequacy of the disclosure materials;

(3) The participation of depositors in approving the transaction;

(4) The form of the proxy statement required for the vote of the depositors/members on the conversion;

(5) Any proposed increased compensation and other remuneration (including stock grants, stock option rights and other similar benefits) to be granted to officers and directors/trustees of the bank in connection with the conversion;

(6) The adequacy and independence of the appraisal of the value of the mutual savings bank for purposes of determining the price of the shares of stock to be sold;

(7) The process by which the bank's trustees approved the appraisal, the pricing of the stock, and the proposed compensation arrangements for insiders;

(8) The nature and apportionment of stock subscription rights; and

(9) The bank's plans to fulfill its commitment to serving the convenience and needs of its community.

(b) *Additional considerations.* (1) In reviewing the notice and other materials submitted under this subpart, the FDIC will take into account the extent to which the proposed conversion transaction conforms with the various provisions of the mutual-to-stock conversion regulations of the Office of Thrift Supervision (OTS) (12 CFR part 563b), as currently in effect at the time the notice is submitted. Any non-conformity with those provisions will be closely reviewed.

(2) Conformity with the OTS requirements will not be sufficient for FDIC regulatory purposes if the FDIC determines that the proposed conversion transaction would pose a risk to the bank's safety or soundness, violate any law or regulation, or present a breach of fiduciary duty.

(c) *Notice period.* (1) The period in which the FDIC may object to the proposed conversion transaction shall be the later of:

(i) 60 days after receipt of a substantially complete notice of proposed conversion; or

(ii) 20 days after the last applicable state or other federal regulator has approved the proposed conversion.

(2) The FDIC may, in its discretion, extend the initial 60-day period for up to an additional 60 days by providing written notice to the institution.

(d) *Letter of non-objection.* If the FDIC determines, in its discretion, that the proposed conversion transaction would not pose a risk to the institution's safety or soundness, violate any law or regulation, or present a breach of fiduciary duty, then the FDIC shall issue to the institution proposing to convert a letter of non-objection to the proposed conversion.

(e) *Letter of objection.* If the FDIC determines, in its discretion, that the proposed conversion transaction poses a risk to the institution's safety or soundness, violates any law or regulation, or presents a breach of fiduciary duty, then the FDIC shall issue a letter to the institution stating its objection(s) to the proposed conversion and advising the institution not to consummate the proposed conversion until such letter is rescinded. A copy of the letter of objection shall be furnished to the institution's primary state regulator and any other state or federal banking regulator and state or federal securities regulator involved in the conversion.

(f) *Consummation of the conversion.* (1) An institution may consummate the proposed conversion upon either:

(i) The receipt of a letter of non-objection; or

(ii) The expiration of the notice period.

(2) If a letter of objection is issued, then the institution shall not consummate the proposed conversion until the FDIC rescinds such letter.

§§ 303.164–303.179 [Reserved]

Subpart J—International Banking

§ 303.180 Scope.

This subpart sets forth procedures for complying with application requirements relating to the foreign activities of insured state nonmember banks, U.S. activities of insured branches of foreign banks, and certain foreign mergers of insured depository institutions.

§ 303.181 Definitions.

For the purposes of this subpart, the following additional definitions apply:

(a) *Board of Governors* means the Board of Governors of the Federal Reserve System.

(b) *Comptroller* means the Office of the Comptroller of the Currency.

(c) *Eligible insured branch.* An insured branch will be treated as an eligible depository institution within

the meaning of § 303.2(r) if the insured branch:

(1) Received an FDIC-assigned composite ROCA supervisory rating (which rates risk management, operational controls, compliance, and asset quality) of 1 or 2 as a result of its most recent federal or state examination, and the FDIC, Comptroller, or Board of Governors have not expressed concern about the condition or operations of the foreign banking organization or the support it offers the branch;

(2) Received a satisfactory or better Community Reinvestment Act (CRA) rating from its primary federal regulator at its most recent examination, if the depository institution is subject to examination under part 345 of this chapter;

(3) Received a compliance rating of 1 or 2 from its primary federal regulator at its most recent examination;

(4) Is well-capitalized as defined in subpart B of part 325 of this chapter; and

(5) Is not subject to a cease and desist order, consent order, prompt corrective action directive, written agreement, memorandum of understanding, or other administrative agreement with any U.S. bank regulatory authority.

(d) *Federal branch* means a federal branch of a foreign bank as defined by § 347.202 of this chapter.

(e) *Foreign bank* means a foreign bank as defined by § 347.202 of this chapter.

(f) *Foreign branch* means a foreign branch of an insured state nonmember bank as defined by § 347.102 of this chapter.

(g) *Foreign organization* means a foreign organization as defined by § 347.102 of this chapter.

(h) *Insured branch* means an insured branch of a foreign bank as defined by § 347.202 of this chapter.

(i) *Noninsured branch* means a noninsured branch of a foreign bank as defined by § 347.202 of this chapter.

(j) *State branch* means a state branch of a foreign bank as defined by § 347.202 of this chapter.

§ 303.182 Establishing, moving or closing a foreign branch of a state nonmember bank; § 347.103.

(a) *Notice procedures for general consent.* Notice in the form of a letter from an eligible depository institution establishing or relocating a foreign branch pursuant to § 347.103(b) of this chapter shall be provided to the appropriate FDIC office no later than 30 days after taking such action, and include the location of the foreign branch, including a street address, and a statement that the foreign branch has not been located on a site on the World

Heritage List or on the foreign country's equivalent of the National Register of Historic Places (National Register), in accordance with section 402 of the National Historic Preservation Act Amendments of 1980 (NHPA Amendments Act) (16 U.S.C. 470a–2). The FDIC will provide written acknowledgment of receipt of the notice.

(b) Filing procedures for other branch establishments—(1) *Where to file.* An applicant seeking to establish a foreign branch other than under § 347.103(b) of this chapter shall submit an application to the appropriate FDIC office.

(2) *Content of filing.* A complete letter application shall include the following information:

(i) The exact location of the proposed foreign branch, including the street address, and a statement whether the foreign branch will be located on a site on the World Heritage List or on the foreign country's equivalent of the National Register, in accordance with section 402 of the NHPA Amendments Act;

(ii) Details concerning any involvement in the proposal by an insider of the applicant, as defined in § 303.2(u), including any financial arrangements relating to fees, the acquisition of property, leasing of property, and construction contracts;

(iii) A brief description of the applicant's business plan with respect to the foreign branch; and

(iv) A brief description of the activities of the branch, and to the extent any activities are not authorized by § 347.103(a) of this chapter, the applicant's reasons why they should be approved.

(3) *Additional information.* The FDIC may request additional information to complete processing.

(c) *Processing—(1) Expedited processing for eligible depository institutions.* An application filed under § 347.103(c) of this chapter by an eligible depository institution as defined in § 303.2(r) of this part seeking to establish a foreign branch by expedited processing will be acknowledged in writing by the FDIC and will receive expedited processing, unless the applicant is notified in writing to the contrary and provided with the basis for that decision. The FDIC may remove the application from expedited processing for any of the reasons set forth in § 303.11(c)(2). Absent such removal, an application processed under expedited processing is deemed approved 45 days after receipt of a substantially complete application by the FDIC, or on such earlier date authorized by the FDIC in writing.

(2) *Standard processing.* For those applications which are not processed pursuant to the expedited procedures, the FDIC will provide the applicant with written notification of the final action when the decision is rendered.

(d) *Closing.* Notices of branch closing under § 347.103(f) of this chapter, in the form of a letter including the name, location, and date of closing of the closed branch, shall be filed with the appropriate FDIC office no later than 30 days after the branch is closed.

§ 303.183 Investment by insured state nonmember banks in foreign organizations; § 347.108.

(a) *Notice procedures for general consent.* Notice in the form of a letter from an eligible depository institution making direct or indirect investments in a foreign organization pursuant to § 347.108(a) of this chapter shall be provided to the appropriate FDIC office no later than 30 days after taking such action. The FDIC will provide written acknowledgment of receipt of the notice.

(b) Filing procedures for other investments—(1) *Where to file.* An applicant seeking to make a foreign investment other than under § 347.108(a) of this chapter shall submit an application to the appropriate FDIC office.

(2) *Content of filing.* A complete application shall include the following information:

(i) Basic information about the terms of the proposed transaction, the amount of the investment in the foreign organization and the proportion of its ownership to be acquired;

(ii) Basic information about the foreign organization, its financial position and income, including any available balance sheet and income statement for the prior year, or financial projections for a new foreign organization;

(iii) A listing of all shareholders known to hold ten percent or more of any class of the foreign organization's stock or other evidence of ownership, and the amount held by each;

(iv) A brief description of the applicant's business plan with respect to the foreign organization;

(v) A brief description of any business or activities which the foreign organization will conduct directly or indirectly in the United States, and to the extent such activities are not authorized by subpart A of part 347, the applicant's reasons why they should be approved;

(vi) A brief description of the foreign organization's activities, and to the extent such activities are not authorized

by subpart A of part 347, the applicant's reasons why they should be approved; and

(vii) If the applicant seeks approval to engage in underwriting or dealing activities, a description of the applicant's plans and procedures to address all relevant risks.

(3) *Additional information.* The FDIC may request additional information to complete processing.

(c) *Processing*—(1) *Expedited processing for eligible depository institutions.* An application filed under § 347.108(b) of this chapter by an eligible depository institution as defined in § 303.2(r) seeking to make direct or indirect investments in a foreign organization will be acknowledged in writing by the FDIC and will receive expedited processing, unless the applicant is notified in writing to the contrary and provided with the basis for that decision. The FDIC may remove the application from expedited processing for any of the reasons set forth in § 303.11(c)(2). Absent such removal, an application processed under expedited processing is deemed approved 45 days after receipt of a complete application by the FDIC, or on such earlier date authorized by the FDIC in writing.

(2) *Standard processing.* For those applications which are not processed pursuant to the expedited procedures, the FDIC will provide the applicant with written notification of the final action when the decision is rendered.

(d) *Divestiture.* If an insured state nonmember bank holding 50 percent or more of the voting equity interests of a foreign organization or otherwise controlling the foreign organization divests itself of such ownership or control, the insured state nonmember bank shall file a notice in the form of a letter, including the name, location, and date of divestiture of the foreign organization, with the appropriate FDIC office no later than 30 days after the divestiture.

§ 303.184 Moving an insured branch of a foreign bank.

(a) *Filing procedures*—(1) *Where and when to file.* An application by an insured branch of a foreign bank seeking the FDIC's consent to move from one location to another, as required by section 18(d)(1) of the FDI Act (12 U.S.C. 1828(d)(1)), shall be submitted in writing to the appropriate FDIC office on the date the notice required by paragraph (c) of this section is published, or within 5 days after the date of the last required publication.

(2) *Content of filing.* A complete letter application shall include the following information:

(i) The exact location of the proposed site, including the street address;

(ii) Details concerning any involvement in the proposal by an insider of the applicant, as defined in § 303.2(u), including any financial arrangements relating to fees, the acquisition of property, leasing of property, and construction contracts;

(iii) A statement of the impact of the proposal on the human environment, including information on compliance with local zoning laws and regulations and the effect on traffic patterns, for purposes of complying with the applicable provisions of the NEPA, and the FDIC "Statement of Policy on NEPA" (1 FDIC Law, Regulations, Related Acts 5185; see § 309.4(a) and (b) of this chapter for availability).

(iv) A statement as to whether or not the site is eligible for inclusion in the National Register of Historic Places for purposes of complying with the applicable provisions of the NHPA, and the FDIC AStatement of Policy on NHPA" (1 FDIC Law, Regulations, Related Acts 5175; see § 309.4(a) and (b) of this chapter for availability), including documentation of consultation with the State Historic Preservation Officer, as appropriate.

(v) Comments on any changes in services to be offered, the community to be served, or any other effect the proposal may have on the applicant's compliance with the CRA; and

(vi) A copy of the newspaper publication required by paragraph (c) of this section, as well as the name and address of the newspaper and the date of the publication.

(3) *Comptroller's application.* If the applicant is filing an application with the Comptroller which contains the information required by paragraph (a)(2) of this section, the applicant may submit a copy to the FDIC in lieu of a separate application.

(4) *Additional information.* The FDIC may request additional information to complete processing.

(b) *Processing*—(1) *Expedited processing for eligible insured branches.* An application filed by an eligible insured branch as defined in § 303.181(c) will be acknowledged in writing by the FDIC and will receive expedited processing, unless the applicant is notified to the contrary and provided with the basis for that decision. The FDIC may remove an application from expedited processing for any of the reasons set forth in § 303.11(c)(2). Absent such removal, an application processed under expedited processing will be deemed approved on the latest of the following:

(i) The 21st day after the FDIC's receipt of a substantially complete application; or

(ii) The 5th day after expiration of the comment period described in paragraph (c) of this section.

(2) *Standard processing.* For those applications that are not processed pursuant to the expedited procedures, the FDIC will provide the applicant with written notification of the final action as soon as the decision is rendered.

(c) *Publication requirement and comment period*—(1) *Newspaper publications.* The applicant shall publish a notice of its proposal to move from one location to another, as described in § 303.7(b), in a newspaper of general circulation in the community in which the insured branch is located prior to its being moved and in the community to which it is to be moved. The notice shall include the insured branch's current and proposed addresses.

(2) *Public comments.* All public comments must be received by the appropriate regional director within 15 days after the date of the last newspaper publication required by paragraph (c)(1) of this section, unless the comment period has been extended or reopened in accordance with § 303.9(b)(2).

(3) *Lobby notices.* If the insured branch has a public lobby, a copy of the newspaper publication shall be posted in the public lobby for at least 15 days beginning on the date of the publication required by paragraph (c)(1) of this section.

(d) *Other approval criteria.* (1) The FDIC may approve an application under this section if the criteria in paragraphs (d)(1)(i) through (d)(1)(vi) of this section is satisfied.

(i) The factors set forth in section 6 of the FDI Act (12 U.S.C. 1816) have been considered and favorably resolved;

(ii) The applicant is at least adequately capitalized as defined in subpart B of part 325 of this chapter;

(iii) Any financial arrangements which have been made in connection with the proposed relocation and which involve the applicant's directors, officers, major shareholders, or their interests are fair and reasonable in comparison to similar arrangements that could have been made with independent third parties;

(iv) Compliance with the CRA, the NEPA, the NHPA and any applicable related regulations, including 12 CFR part 345, has been considered and favorably resolved;

(v) No CRA protest as defined in § 303.2(l) has been filed which remains unresolved or, where such a protest has

been filed and remains unresolved, the Director or designee concurs that approval is consistent with the purposes of the CRA and the applicant agrees in writing to any conditions imposed regarding the CRA; and

(vi) The applicant agrees in writing to comply with any conditions imposed by the FDIC, other than the standard conditions defined in § 303.2(dd) which may be imposed without the applicant's written consent.

§ 303.185 Merger transactions involving foreign banks or foreign organizations.

(a) *Merger transactions involving an insured branch of a foreign bank.* Merger transactions requiring the FDIC's prior approval as set forth in § 303.62 include any merger transaction in which the resulting institution is an insured branch of a foreign bank which is not a federal branch, or any merger transaction which involves any insured branch and any uninsured institution. In such cases:

(1) References to an eligible depository institution in subpart D of this part include an eligible insured branch as defined in § 303.181;

(2) The definition of a corporate reorganization in § 303.61(b) includes a merger transaction between an insured branch and other branches, agencies, or subsidiaries in the United States of the same foreign bank; and

(3) For the purposes of § 303.62(b)(1) on interstate mergers, a merger transaction involving an insured branch is one involving the acquisition of a branch of an insured bank without the acquisition of the bank for purposes of section 44 of the FDI Act (12 U.S.C. 1831u) only when the merger transaction involves fewer than all the insured branches of the same foreign bank in the same state.

(b) *Certain merger transactions with foreign organizations outside any State.* Merger transactions requiring the FDIC's prior approval as set forth in § 303.62 include any merger transaction in which an insured depository institution becomes directly liable for obligations which will, after the merger transaction, be treated as deposits under section 3(l)(5)(A)(i)–(ii) of the FDI Act (12 U.S.C. 1813(l)(5)(A)(i)–(ii)), as a result of a merger or consolidation with a foreign organization or an assumption of liabilities of a foreign organization.

§ 303.186 Exemptions from insurance requirement for a state branch of a foreign bank; § 347.206.

(a) *Filing procedures—(1) Where to file.* An application by a state branch for consent to operate as a noninsured state branch, as permitted by § 347.206(b) of

this chapter, shall be submitted in writing to the appropriate FDIC office.

(2) *Content of filing.* A complete letter application shall include the following information:

(i) The kinds of deposit activities in which the state branch proposes to engage;

(ii) The expected source of deposits;

(iii) The manner in which deposits will be solicited;

(iv) How the activity will maintain or improve the availability of credit to all sectors of the United States economy, including the international trade finance sector;

(v) That the activity will not give the foreign bank an unfair competitive advantage over United States banking organizations; and

(vi) A resolution by the applicant's board of directors, or evidence of approval by senior management if a resolution is not required pursuant to the applicant's organizational documents, authorizing the filing of the application.

(3) *Additional information.* The FDIC may request additional information to complete processing.

(4) *Processing.* The FDIC will provide the applicant with written notification of the final action taken.

§ 303.187 Approval for an insured state branch of a foreign bank to conduct activities not permissible for federal branches; § 347.213.

(a) *Filing procedures—(1) Where to file.* An application by an insured state branch seeking approval to conduct activities not permissible for a federal branch, as required by § 347.213(a) of this chapter, shall be submitted in writing to the appropriate FDIC office.

(2) *Content of filing.* A complete letter application shall include the following information:

(i) A brief description of the activity, including the manner in which it will be conducted and an estimate of the expected dollar volume associated with the activity;

(ii) An analysis of the impact of the proposed activity on the condition of the United States operations of the foreign bank in general and of the branch in particular, including a copy of the feasibility study, management plan, financial projections, business plan, or similar document concerning the conduct of the activity;

(iii) A resolution by the applicant's board of directors, or evidence of approval by senior management if a resolution is not required pursuant to the applicant's organizational documents, authorizing the filing of the application;

(iv) A statement by the applicant of whether it is in compliance with §§ 347.210 and 347.211 of this chapter, Pledge of assets and Asset maintenance, respectively;

(v) A statement by the applicant that it has complied with all requirements of the Board of Governors concerning applications to conduct the activity in question and the status of each such application, including a copy of the Board of Governors' disposition of such application, if applicable; and

(vi) A statement of why the activity will pose no significant risk to the Bank Insurance Fund.

(3) *Board of Governors application.* If the application to the Board of Governors contains the information required by paragraph (a) of this section, the applicant may submit a copy to the FDIC in lieu of a separate letter application.

(4) *Additional information.* The FDIC may request additional information to complete processing.

(b) *Divestiture or cessation—(1) Where to file.* Divestiture plans necessitated by a change in law or other authority, as required by § 347.213(e) of this chapter, shall be submitted in writing to the appropriate FDIC office.

(2) *Content of filing.* A complete letter application shall include the following information:

(i) A detailed description of the manner in which the applicant proposes to divest itself of or cease the activity in question; and

(ii) A projected timetable describing how long the divestiture or cessation is expected to take.

(3) *Additional information.* The FDIC may request additional information to complete processing.

§§ 303.188–303.199 [Reserved]

Subpart K—Prompt Corrective Action

§ 303.200 Scope.

(a) *General.* (1) This subpart covers applications filed pursuant to section 38 of the FDI Act (12 U.S.C. 1831o), which requires insured depository institutions that are not adequately capitalized to receive approval prior to engaging in certain activities. Section 38 restricts or prohibits certain activities and requires an insured depository institution to submit a capital restoration plan when it becomes undercapitalized. The restrictions and prohibitions become more severe as an institution's capital level declines.

(2) Definitions of the capital categories referenced in this Prompt Corrective Action subpart may be found in subpart B of part 325 of this chapter,

§ 325.103(b) for state nonmember banks and § 325.103(c) for insured branches of foreign banks.

(b) *Institutions covered.* Restrictions and prohibitions contained in subpart B of part 325 of this chapter apply primarily to insured state nonmember banks and insured branches of foreign banks, as well as to directors and senior executive officers of those institutions. Portions of subpart B of part 325 of this chapter also apply to all insured depository institutions that are deemed to be critically undercapitalized.

§ 303.201 Filing procedures.

Applications shall be filed with the appropriate FDIC office. The application shall contain the information specified in each respective section of this subpart, and shall be in letter form as prescribed in § 303.3. Additional information may be requested by the FDIC. Such letter shall be signed by the president, senior officer or a duly authorized agent of the insured depository institution and be accompanied by a certified copy of a resolution adopted by the institution's board of directors or trustees authorizing the application.

§ 303.202 Processing.

The FDIC will provide the applicant with a subsequent written notification of the final action taken as soon as the decision is rendered.

§ 303.203 Applications for capital distributions.

(a) *Scope.* An insured state nonmember bank and any insured branch of a foreign bank shall submit an application for capital distribution if, after having made a capital distribution, the institution would be undercapitalized, significantly undercapitalized, or critically undercapitalized.

(b) *Content of filing.* An application to repurchase, redeem, retire or otherwise acquire shares or ownership interests of the insured depository institution shall describe the proposal, the shares or obligations which are the subject thereof, and the additional shares or obligations of the institution which will be issued in at least an amount equivalent to the distribution. The application also shall explain how the proposal will reduce the institution's financial obligations or otherwise improve its financial condition. If the proposed action also requires an application under section 18(i) of the FDI Act (12 U.S.C. 1828(i)) as implemented by § 303.241 of this part regarding prior consent to retire capital, such application should be filed

concurrently with, or made a part of, the application filed pursuant to section 38 of the FDI Act (12 U.S.C. 1831o).

§ 303.204 Applications for acquisitions, branching, and new lines of business.

(a) *Scope.* (1) Any insured state nonmember bank and any insured branch of a foreign bank which is undercapitalized or significantly undercapitalized, and any insured depository institution which is critically undercapitalized, shall submit an application to engage in acquisitions, branching or new lines of business.

(2) A new line of business will include any new activity exercised which, although it may be permissible, has not been exercised by the institution.

(b) *Content of filing.* Applications shall describe the proposal, state the date the institution's capital restoration plan was accepted by its primary federal regulator, describe the institution's status in implementing the plan, and explain how the proposed action is consistent with and will further the achievement of the plan or otherwise further the purposes of section 38 of the FDI Act. If the FDIC is not the applicant's primary federal regulator, the application also should state whether approval has been requested from the applicant's primary federal regulator, the date of such request and the disposition of the request, if any. If the proposed action also requires applications pursuant to section 18 (c) or (d) of the FDI Act (mergers and branches) (12 U.S.C. 1828 (c) or (d)), such applications should be filed concurrently with, or made a part of, the application filed pursuant to section 38 of the FDI Act (12 U.S.C. 1831o).

§ 303.205 Applications for bonuses and increased compensation for senior executive officers.

(a) *Scope.* Any insured state nonmember bank or insured branch of a foreign bank that is significantly or critically undercapitalized, or any insured state nonmember bank or any insured branch of a foreign bank that is undercapitalized and which has failed to submit or implement in any material respect an acceptable capital restoration plan, shall submit an application to pay a bonus or increase compensation for any senior executive officer.

(b) *Content of filing.* Applications shall list each proposed bonus or increase in compensation, and for the latter shall identify compensation for each of the twelve calendar months preceding the calendar month in which the institution became undercapitalized. Applications also shall state the date the

institution's capital restoration plan was accepted by the FDIC, and describe any progress made in implementing the plan.

§ 303.206 Application for payment of principal or interest on subordinated debt.

(a) *Scope.* Any critically undercapitalized insured depository institution shall submit an application to pay principal or interest on subordinated debt.

(b) *Content of filing.* Applications shall describe the proposed payment and provide an explanation of action taken under section 38(h)(3)(A)(ii) of the FDI Act (action other than receivership or conservatorship). The application also shall explain how such payments would further the purposes of section 38 of the FDI Act (12 U.S.C. 1831o). Existing approvals pursuant to requests filed under section 18(i)(1) of the FDI Act (12 U.S.C. 1828(i)(1)) (capital stock reductions or retirements) shall not be deemed to be the permission needed pursuant to section 38.

§ 303.207 Restricted activities for critically undercapitalized institutions.

(a) *Scope.* Any critically undercapitalized insured depository institution shall submit an application to engage in certain restricted activities.

(b) *Content of filing.* Applications to engage in any of the following activities, as set forth in sections 38(i)(2) (A) through (G) of the FDI Act, shall describe the proposed activity and explain how the activity would further the purposes of section 38 of the FDI Act (12 U.S.C. 1831o):

(1) Enter into any material transaction other than in the usual course of business including any action with respect to which the institution is required to provide notice to the appropriate federal banking agency. Materiality will be determined on a case-by-case basis;

(2) Extend credit for any highly leveraged transaction (as defined in part 325 of this chapter);

(3) Amend the institution's charter or bylaws, except to the extent necessary to carry out any other requirement of any law, regulation, or order;

(4) Make any material change in accounting methods;

(5) Engage in any covered transaction (as defined in section 23A(b) of the Federal Reserve Act (12 U.S.C. 371c(b)));

(6) Pay excessive compensation or bonuses. Part 364 of this chapter provides guidance for determining excessive compensation; or

(7) Pay interest on new or renewed liabilities at a rate that would increase the institution's weighted average cost

of funds to a level significantly exceeding the prevailing rates of interest on insured deposits in the institution's normal market area. Section 337.6 of this chapter (Brokered deposits) provides guidance for defining the relevant terms of this provision; however this provision does not supersede the general prohibitions contained in § 337.6.

§§ 303.208—303.219 [Reserved]

Subpart L—Section 19 of the FDI Act (Consent to Service of Persons Convicted of Certain Criminal Offenses)

§ 303.220 Scope.

This subpart covers applications under section 19 of the FDI Act (12 U.S.C. 1829). Pursuant to section 19, any person who has been convicted of any criminal offense involving dishonesty, breach of trust, or money laundering, or has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such offense, may not become, or continue as, an institution-affiliated party of an insured depository institution; own or control, directly or indirectly, any insured depository institution; or otherwise participate, directly or indirectly, in the conduct of the affairs of any insured depository institution without the prior written consent of the FDIC.

§ 303.221 Filing procedures.

(a) *Where to file.* An application under section 19 of the FDI Act shall be filed with the appropriate FDIC office.

(b) *Contents of filing.* Application forms may be obtained from any FDIC regional director. The FDIC may require additional information beyond that sought in the form, as warranted, in individual cases.

§ 303.222 Service at another insured depository institution.

In the case of a person who has already been approved by the FDIC under this subpart or section 19 of the FDI Act in connection with a particular insured depository institution, such person may not become an institution affiliated party, or own or control directly or indirectly another insured depository institution, or participate in the conduct of the affairs of another insured depository institution, without the prior written consent of the FDIC.

§ 303.223 Applicant's right to hearing following denial.

An applicant may request a hearing following a denial of an application in

accordance with the provisions of part 308 of this chapter.

§§ 303.224—303.239 [Reserved]

Subpart M—Other Filings

§ 303.240 General.

This subpart sets forth the filing procedures to be followed when seeking the FDIC's consent to engage in certain activities or accomplish other matters as specified in the individual sections contained herein. For those matters covered by this subpart that also have substantive FDIC regulations or related statements of policy, references to the relevant regulations or statements of policy are contained in the specific sections.

§ 303.241 Reduce or retire capital stock or capital debt instruments.

(a) *Scope.* This section contains the procedures to be followed by an insured state nonmember bank to seek the prior approval of the FDIC to reduce the amount or retire any part of its common or preferred stock, or to retire any part of its capital notes or debentures pursuant to section 18(i)(1) of the Act (12 U.S.C. 1828(i)(1)).

(b) *Where to file.* Applicants shall submit a letter application to the appropriate FDIC office.

(c) *Content of filing.* The application shall contain the following:

(1) The type and amount of the proposed change to the capital structure and the reason for the change;

(2) A schedule detailing the present and proposed capital structure;

(3) The time period that the proposal will encompass;

(4) If the proposal involves a series of transactions affecting Tier 1 capital components which will be consummated over a period of time which shall not exceed twelve months, the application shall certify that the insured depository institution will maintain itself as a well-capitalized institution as defined in part 325 of this chapter, both before and after each of the proposed transactions;

(5) If the proposal involves the repurchase of capital instruments, the amount of the repurchase price and the basis for establishing the fair market value of the repurchase price;

(6) A statement that the proposal will be available to all holders of a particular class of outstanding capital instruments on an equal basis, and if not, the details of any restrictions; and

(7) The date that the applicant's board of directors approved the proposal.

(d) *Additional information.* The FDIC may request additional information at

any time during processing of the application.

(e) *Undercapitalized institutions.* Procedures regarding applications by an undercapitalized insured depository institution to retire capital stock or capital debt instruments pursuant to section 38 of the FDI Act (12 U.S.C. 1831o) are set forth in subpart K (Prompt Corrective Action), § 303.203. Applications pursuant to sections 38 and 18(i) may be filed concurrently, or as a single application.

(f) *Expedited processing for eligible depository institutions.* An application filed under this section by an eligible depository institution as defined in § 303.2(r) will be acknowledged in writing by the FDIC and will receive expedited processing, unless the applicant is notified in writing to the contrary and provided with the basis for that decision. The FDIC may remove an application from expedited processing for any of the reasons set forth in § 303.11(c)(2). Absent such removal, an application processed under expedited processing will be deemed approved 20 days after the FDIC's receipt of a substantially complete application.

(g) *Standard processing.* For those applications that are not processed pursuant to expedited procedures, the FDIC will provide the applicant with written notification of the final action as soon as the decision is rendered.

§ 303.242 Exercise of trust powers.

(a) *Scope.* This section contains the procedures to be followed by a state nonmember bank to seek the FDIC's prior consent to exercise trust powers. The FDIC's prior consent to exercise trust powers is not required in the following circumstances:

(1) Where a state nonmember bank received authority to exercise trust powers from its chartering authority prior to December 1, 1950; or

(2) Where an insured depository institution continues to conduct trust activities pursuant to authority granted by its chartering authority subsequent to a charter conversion or withdrawal from membership in the Federal Reserve System.

(b) *Where to file.* Applicants shall submit to the appropriate FDIC office a completed form, "Application for Consent To Exercise Trust Powers". This form may be obtained from any FDIC regional director.

(c) *Content of filing.* The filing shall consist of the completed trust application form.

(d) *Additional information.* The FDIC may request additional information at any time during processing of the filing.

(e) *Expedited processing for eligible depository institutions.* An application filed under this section by an eligible depository institution as defined in § 303.2(r) will be acknowledged in writing by the FDIC and will receive expedited processing, unless the applicant is notified in writing to the contrary and provided with the basis for that decision. The FDIC may remove an application from expedited processing for any of the reasons set forth in § 303.11(c)(2). Absent such removal, an application processed under expedited procedures will be deemed approved 30 days after the FDIC's receipt of a substantially complete application.

(f) *Standard processing.* For those applications that are not processed pursuant to the expedited procedures, the FDIC will provide the applicant with written notification of the final action when the decision is rendered.

§ 303.243 Brokered deposit waivers.

(a) *Scope.* Pursuant to section 29 of the FDI Act (12 U.S.C. 1831f) and part 337 of this chapter, an adequately capitalized insured depository institution may not accept, renew or roll over any brokered deposits unless it has obtained a waiver from the FDIC. A well-capitalized insured depository institution may accept brokered deposits without a waiver, and an undercapitalized insured depository institution may not accept, renew or roll over any brokered deposits under any circumstances. This section contains the procedures to be followed to file with the FDIC for a brokered deposit waiver. The FDIC will provide notice to the depository institution's appropriate federal banking agency and any state regulatory agency, as appropriate, that a request for a waiver has been filed and will consult with such agency or agencies, prior to taking action on the institution's request for a waiver. Prior notice and/or consultation shall not be required in any particular case if the FDIC determines that the circumstances require it to take action without giving such notice and opportunity for consultation.

(b) *Where to file.* Applicants shall submit a letter application to the appropriate FDIC office.

(c) *Content of filing.* The application shall contain the following:

- (1) The time period for which the waiver is requested;
- (2) A statement of the policy governing the use of brokered deposits in the institution's overall funding and liquidity management program;
- (3) The volume, rates and maturities of the brokered deposits held currently and anticipated during the waiver

period sought, including any internal limits placed on the terms, solicitation and use of brokered deposits;

(4) How brokered deposits are costed and compared to other funding alternatives and how they are used in the institution's lending and investment activities, including a detailed discussion of asset growth plans;

(5) Procedures and practices used to solicit brokered deposits, including an identification of the principal sources of such deposits;

(6) Management systems overseeing the solicitation, acceptance and use of brokered deposits;

(7) A recent consolidated financial statement with balance sheet and income statements; and

(8) The reasons the institution believes its acceptance, renewal or rollover of brokered deposits would pose no undue risk.

(d) *Additional information.* The FDIC may request additional information at any time during processing of the application.

(e) *Expedited processing for eligible depository institutions.* An application filed under this section by an eligible depository institution as defined in this paragraph will be acknowledged in writing by the FDIC and will receive expedited processing, unless the applicant is notified in writing to the contrary and provided with the basis for that decision. For the purpose of this section, an applicant will be deemed an eligible depository institution if it satisfies all of the criteria contained in § 303.2(r) except that the applicant may be adequately capitalized rather than well-capitalized. The FDIC may remove an application from expedited processing for any of the reasons set forth in § 303.11(c)(2). Absent such removal, an application processed under expedited procedures will be deemed approved 21 days after the FDIC's receipt of a substantially complete application.

(f) *Standard processing.* For those filings which are not processed pursuant to the expedited procedures, the FDIC will provide the applicant with written notification of the final action as soon as the decision is rendered.

(g) *Conditions for approval.* A waiver issued pursuant to this section shall:

- (1) Be for a fixed period, generally no longer than two years, but may be extended upon refiling; and
- (2) May be revoked by the FDIC at any time by written notice to the institution.

§ 303.244 Golden parachute and severance plan payments.

(a) *Scope.* Pursuant to section 18(k) of the FDI Act (12 U.S.C. 1828(k)) and part

359 of this chapter, an insured depository institution or depository institution holding company may not make golden parachute payments or excess nondiscriminatory severance plan payments unless the depository institution or holding company obtains permission to make such payments in accordance with the rules contained in part 359 of this chapter. This section contains the procedures to file for the FDIC's consent when such consent is necessary under part 359 of this chapter.

(1) *Golden parachute payments.* A troubled insured depository institution or a troubled depository institution holding company is prohibited from making golden parachute payments (as defined in § 359.1(f)(1) of this chapter) unless it obtains the consent of the appropriate federal banking agency and the written concurrence of the FDIC. Therefore, in the case of golden parachute payments, the procedures in this section apply to all troubled insured depository institutions and troubled depository institution holding companies.

(2) *Excess nondiscriminatory severance plan payments.* In the case of excess nondiscriminatory severance plan payments as provided by § 359.1(f)(2)(v) of this chapter, the FDIC's consent is necessary for state nonmember banks that meet the criteria set forth in § 359.1(f)(1)(ii) of this chapter. In addition, the FDIC's consent is required for all insured depository institutions or depository institution holding companies that meet the same criteria and seek to make payments in excess of the 12-month amount specified in § 359.1(f)(2)(v).

(b) *Where to file.* Applicants shall submit a letter application to the appropriate FDIC regional director.

(c) *Content of filing.* The application shall contain the following:

- (1) The reasons why the applicant seeks to make the payment;
- (2) An identification of the institution-affiliated party who will receive the payment;
- (3) A copy of any contract or agreement regarding the subject matter of the filing;
- (4) The cost of the proposed payment and its impact on the institution's capital and earnings; and
- (5) The reasons why consent to the payment should be granted.

(d) *Additional information.* The FDIC may request additional information at any time during processing of the filing.

(e) *Processing.* The FDIC will provide the applicant with a subsequent written notification of the final action taken as soon as the decision is rendered.

§ 303.245 Waiver of liability for commonly controlled depository institutions.

(a) *Scope.* Section 5(e) of the FDI Act (12 U.S.C. 1815(e)) creates liability for commonly controlled insured depository institutions for losses incurred or anticipated to be incurred by the FDIC in connection with the default of a commonly controlled insured depository institution or any assistance provided by the FDIC to any commonly controlled insured depository institution in danger of default. In addition to certain statutory exceptions and exclusions contained in sections 5(e)(6), (7) and (8), the FDI Act also permits the FDIC, in its discretion, to exempt any insured depository institution from this liability if it determines that such exemption is in the best interests of the Bank Insurance Fund (BIF) or the Savings Association Insurance Fund (SAIF). This section describes procedures to request a conditional waiver of liability pursuant to section 5 of the FDI Act (12 U.S.C. 1815(e)(5)(A)).

(b) *Definition.* Conditional waiver of liability means an exemption from liability pursuant to section 5(e) of the FDI Act (12 U.S.C. 1815(e)) subject to terms and conditions.

(c) *Where to file.* Applicants shall submit a letter application to the appropriate FDIC office.

(d) *Content of filing.* The application shall contain the following information:

- (1) The basis for requesting a waiver;
- (2) The existence of any significant events (e.g., change in control, capital injection, etc.) that may have an impact upon the applicant and/or any potentially liable institution;

(3) Current, and if applicable, pro forma financial information regarding the applicant and potentially liable institution(s); and

(4) The benefits to the appropriate FDIC insurance fund resulting from the waiver and any related events.

(e) *Additional information.* The FDIC may request additional information at any time during the processing of the filing.

(f) *Processing.* The FDIC will provide the applicant with written notification of the final action as soon as the decision is rendered.

(g) *Failure to comply with terms of conditional waiver.* In the event a conditional waiver of liability is issued, failure to comply with the terms specified therein may result in the termination of the conditional waiver of liability. The FDIC reserves the right to revoke the conditional waiver of liability after giving the applicant written notice of such revocation and a

reasonable opportunity to be heard on the matter pursuant to § 303.10.

§ 303.246 Insurance fund conversions.

(a) *Scope.* This section contains the procedures to be followed by an insured depository institution to seek the FDIC's prior approval to engage in an insurance fund conversion that involves the transfer of deposits between the SAIF and the BIF. Optional conversion transactions, commonly referred to as Oakar transactions, pursuant to section 5(d)(3) of the FDI Act (12 U.S.C. 1815(d)(3)), which do not involve the transfer of deposits between the SAIF and the BIF, are governed by the procedures set forth in subpart D (Merger Transactions) of this part.

(b) *Where to file.* Applicants shall submit a letter application to the appropriate FDIC regional director. The filing shall be signed by representatives of each institution participating in the transaction. Insurance fund conversions which are proposed in conjunction with a merger application filed by a state nonmember bank pursuant to section 18(c) of the FDI Act (12 U.S.C. 1828(c)) should be included with that filing.

(c) *Content of filing.* The application shall include the following information:

- (1) A description of the transaction;
- (2) The amount of deposits involved in the conversion transaction;
- (3) A pro forma balance sheet and income statement for each institution upon consummation of the transaction; and
- (4) Certification by each party to the transaction that applicable entrance and exit fees will be paid pursuant to part 312 of this chapter.

(d) *Additional information.* The FDIC may request additional information at any time during processing of the filing.

(e) *Processing.* The FDIC will provide the applicant with written notification of the final action as soon as the decision is rendered.

§ 303.247 Conversion with diminution of capital.

(a) *Scope.* This section contains the procedures to be followed by an insured federal depository institution seeking the prior written consent of the FDIC pursuant to section 18(i)(2) of the FDI Act (12 U.S.C. 1828(i)(2)) to convert from an insured federal depository institution to an insured state nonmember bank (except a District bank) where the capital stock or surplus of the resulting bank will be less than the capital stock or surplus, respectively, of the converting institution at the time of the shareholders' meeting approving such conversion.

(b) *Where to file.* Applicants shall submit a letter application to the appropriate FDIC office.

(c) *Content of filing.* The application shall contain the following information:

- (1) A description of the proposed transaction;
- (2) A schedule detailing the present and proposed capital structure; and
- (3) A copy of any documents submitted to the state chartering authority with respect to the charter conversion.

(d) *Additional information.* The FDIC may request additional information at any time during the processing.

(e) *Processing.* The FDIC will provide the applicant with written notification of the final action when the decision is rendered.

§ 303.248 Continue or resume status as an insured institution following termination under section 8 of the FDI Act.

(a) *Scope.* This section relates to an application by a depository institution whose insured status has been terminated under section 8 of the FDI Act (12 U.S.C. 1818) for permission to continue or resume its status as an insured depository institution. This section covers institutions whose deposit insurance continues in effect for any purpose or for any length of time under the terms of an FDIC order terminating deposit insurance, but does not cover operating non-insured depository institutions which were previously insured by the FDIC, or any non-insured, non-operating depository institution whose charter has not been surrendered or revoked.

(b) *Where to file.* Applicants shall submit a letter application to the appropriate FDIC office.

(c) *Content of filing.* The filing shall contain the following information:

- (1) A complete statement of the action requested, all relevant facts, and the reason for such requested action; and
- (2) A certified copy of the resolution of the depository institution's board of directors authorizing submission of the filing.

(d) *Additional information.* The FDIC may request additional information at any time during processing of the filing.

(e) *Processing.* The FDIC will provide the applicant with written notification of the final action as soon as the decision is rendered.

§ 303.249 Truth in Lending Act—Relief from reimbursement.

(a) *Scope.* This section applies to requests for relief from reimbursement pursuant to the Truth in Lending Act (15 U.S.C. 1601 *et seq.*) and Regulation Z (12 CFR part 226). Related delegations of authority are also set forth.

(b) *Procedures to be followed in filing initial requests for relief.* Requests for relief from reimbursement shall be filed with the appropriate FDIC office or within 60 days after receipt of the compliance report of examination containing the request to conduct a file search and make restitution to affected customers. The filing shall contain a complete and concise statement of the action requested, all relevant facts, the reasons and analysis relied upon as the basis for such requested action, and all supporting documentation.

(c) *Additional information.* The FDIC may request additional information at any time during processing of any such requests.

(d) *Processing.* The FDIC will acknowledge receipt of the request for reconsideration and provide the applicant with written notification of its determination within 60 days of its receipt of the request for reconsideration.

(e) *Procedures to be followed in filing requests for reconsideration.* Within 15 days of receipt of written notice that its request for relief has been denied, the requestor may petition the appropriate FDIC office for reconsideration of such request in accordance with the procedures set forth in § 303.11(f).

§ 303.250 Management official interlocks.

(a) *Scope.* This section contains the procedures to be followed by an insured state nonmember bank to seek the approval of FDIC to establish an interlock pursuant to the Depository Institutions Management Interlocks Act (12 U.S.C. 3207), section 13 of the FDI Act (12 U.S.C. 1823(k)) and part 348 of this chapter (12 CFR part 348).

(b) *Where to file.* Applicants shall submit a letter application to the appropriate FDIC office.

(c) *Content of filing.* The application shall contain the following:

(1) A description of the proposed interlock;

(2) A statement of reason as to why the interlock will not result in a monopoly or a substantial lessening of competition; and

(3) If the applicant is seeking an exemption set forth in § 348.5 or 348.6 of this chapter, a description of the particular exemption which is being requested and a statement of reasons as to why the exemption is applicable.

(d) *Additional information.* The FDIC may request additional information at any time during processing of the filing.

(e) *Processing.* The FDIC will provide the applicant with written notification of the final action when the decision is rendered.

§ 303.251 Modification of conditions.

(a) *Scope.* This section contains the procedures to be followed by an insured depository institution to seek the prior consent of the FDIC to modify the requirement of a prior approval of a filing issued by the FDIC.

(b) *Where to file.* Applicants should submit a letter application to the appropriate FDIC regional director.

(c) *Content of filing.* The application should contain the following information:

(1) A description of the original approved application;

(2) A description of the modification requested; and

(3) The reason for the request.

(d) *Additional information.* The FDIC may request additional information at any time during processing of the filing.

(e) *Processing.* The FDIC will provide the applicant with a written notification of the final action as soon as the decision is rendered.

§ 303.252 Extension of time.

(a) *Scope.* This section contains the procedures to be followed by an insured depository institution to seek the prior consent of the FDIC for additional time to fulfill a condition required in an approval of a filing issued by the FDIC or to consummate a transaction which was the subject of an approval by the FDIC.

(b) *Where to file.* Applicants shall submit a letter application to the appropriate FDIC office.

(c) *Content of filing.* The application shall contain the following information:

(1) A description of the original approved application;

(2) Identification of the original time limitation;

(3) The additional time period requested; and

(4) The reason for the request.

(d) *Additional information.* The FDIC may request additional information at any time during processing of the filing.

(e) *Processing.* The FDIC will provide the applicant with written notification of the final action as soon as the decision is rendered.

§§ 303.253–303.259 [Reserved]

By order of the Board of Directors.

Dated at Washington, DC, this 3rd day of December, 2002.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 02–31922 Filed 12–26–02; 8:45 am]

BILLING CODE 6714–01–P