May 28, 2009

TO: The Board of Directors

FROM: Sandra L. Thompson
Director, Division of Supervision and Consumer Protection

SUBJECT: Final Rule on Annual Audit and Reporting Requirements (Part 363) and Related Technical Amendment to (Part 308, Subpart U)

SUMMARY

Section 36 of the Federal Deposit Insurance Act (FDI Act) and the FDIC's implementing regulations (Part 363) are generally intended to facilitate early identification of problems in financial management at insured depository institutions with total assets above certain thresholds through annual independent audits, assessments of the effectiveness of internal control over financial reporting and compliance with designated laws and regulations, the establishment of independent audit committees, and related reporting requirements. The asset-size threshold for internal control assessments and certain audit committee membership requirements is $1 billion and the threshold for the other requirements is $500 million. Given changes in the industry; certain sound audit, reporting, and audit committee practices incorporated in the Sarbanes-Oxley Act of 2002 (SOX); and the FDIC's experience in administering Part 363 of its regulations, the FDIC proposed on November 2, 2007, to amend these regulations. The amendments to Part 363 are designed to further the objectives of Section 36 by incorporating these sound practices into Part 363 and to provide clearer and more complete guidance to institutions and independent public accountants concerning compliance with the requirements of Section 36 and Part 363.

After making certain modifications in response to the comments received on the proposed amendments, the Division of Supervision and Consumer Protection (DSC) recommends that the Board of Directors approve the attached final rule amending Part 363 of its regulations and making a technical change to Part 308. The most significant revisions included in the final rule will: (1) extend the time period for a non-public institution to file its Part 363 Annual Report by 30 days and replace the 30-day extension of the filing deadline that may be granted if an institution (public or non-public) is confronted with extraordinary circumstances beyond its reasonable control with a late filing notification requirement that would have general applicability; (2) provide relief from the annual reporting requirements for institutions that are merged out of existence before the filing deadline; (3) provide relief from reporting on internal

Concur:

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Michael Bradfield
General Counsel

control over financial reporting for businesses acquired during the fiscal year; (4) require management's assessment of compliance with the laws and regulations pertaining to insider loans and dividend restrictions to state management's conclusion regarding compliance and disclose any noncompliance with such laws and regulations; (5) require an institution's management and the independent public accountant to identify the internal control framework used to evaluate internal control over financial reporting and disclose all identified material weaknesses that have not been corrected prior to the institution's fiscal year-end; (6) clarify the independence standards with which independent public accountants must comply and enhance the enforceability of compliance with these standards; (7) specify that the duties of the audit committee include the appointment, compensation, and oversight of the independent public accountant, including ensuring that audit engagement letters do not contain unsafe and unsound limitation of liability provisions; (8) require certain communications by independent public accountants to audit committees; (9) establish retention requirements for audit working papers; (10) require boards of directors to adopt written criteria for evaluating an audit committee member's independence and provide expanded guidance for boards of directors to use in determining independence; (11) provide that ownership of 10 percent or more of any class of voting securities of an institution is not an automatic bar for considering an outside director independent of management; (12) require the total assets of a holding company's insured depository institution subsidiaries to comprise 75 percent or more of the holding company's consolidated total assets in order for an institution to be eligible to comply with Part 363 at the holding company level; and (13) provide illustrative management reports to assist institutions in complying with the annual reporting requirements.

The following is a summary of the most significant changes to the November 2007 proposal that the FDIC staff has recommended be incorporated into the final rule in response to the comments received:

- To reduce regulatory burden, the proposed requirement to file audit engagement letters has been deleted.
- Guidance has been added to explain the nature and extent of the proposed requirement to disclose noncompliance with the laws and regulations pertaining to insider loans and dividend restrictions and to clarify that the disclosure applies only to noncompliance with these two categories of laws and regulations and not every safety and soundness law and regulation.
- The proposed requirements regarding the disclosure of material weaknesses in internal control over financial reporting by management and the independent public accountant have been clarified to state that management and the accountant must disclose those material weaknesses that each has identified that have not been corrected prior to the institution's fiscal year-end.
- The proposed requirements regarding the auditor's communications with audit committees have been clarified to explain that auditors must satisfy the communication requirements set forth in the professional standards and those set forth in Part 363.
- The proposed requirement that auditors comply with the independence rules of the American Institute of Certified Public Accountants (AICPA), the U.S. Securities and Exchange Commission (SEC), and the Public Company Accounting Oversight Board (PCAOB) has

been clarified to require compliance with the most restrictive requirement when provisions addressing the same subject matter differ among the independence standards.

- The proposal has been revised to require only the public portions of PCAOB inspection reports to be filed with the FDIC.
- The provision of Part 363 that automatically deems an outside director who owns 10 percent or more of an institution's stock not to be independent of management has been revised to be consistent with the SEC's and the national securities exchanges' rules, thereby requiring the institution's board of directors to determine whether the director's stock ownership would interfere with the director's exercise of independent judgment in carrying out the responsibilities of an audit committee member.
- The proposed maximum level of compensation, other than director and committee fees, that an audit committee member may receive from an institution and be considered independent of management has been increased from $60,000 to $100,000.
- Except for the Part 363 Annual Report and independent public accountants' peer review reports and inspection reports, which the FDI Act requires to be made publicly available, Part 363 has been revised to exempt all other reports and notifications filed under Part 363 from public disclosure by the FDIC.

DELAYED EFFECTIVE AND COMPLIANCE DATES

DSC recommends that certain aspects of the final rule have a delayed effective date to provide institutions sufficient time to comply with the new requirements. More specifically, the FDIC staff recommends that institutions currently subject to Part 363 be given until December 31, 2009, for their boards of directors to develop and adopt written criteria for evaluating an audit committee member's independence. The FDIC staff also recommends that the requirement for the total assets of a holding company's insured depository institution subsidiaries to comprise 75 percent or more of the holding company's consolidated total assets in order for an institution to be eligible to comply with Part 363 at the holding company level be effective for fiscal years ending on or after June 15, 2010.

DISCUSSION

Section 112 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) added Section 36 to the FDI Act (12 U.S.C. 1831m). Section 36 is generally intended to facilitate early identification of problems in financial management at insured depository institutions above a certain asset size threshold through annual independent audits, assessments of the effectiveness of internal control over financial reporting and compliance with designated laws and regulations, and related reporting requirements. Section 36 also includes requirements for audit committees at these insured depository institutions. Sections 36(d) and (f) obligate the FDIC to consult with the other federal banking agencies in implementing these sections of the FDI Act, and the FDIC staff has performed the required consultation.

Part 363 of the FDIC's regulations (12 CFR Part 363) implements Section 36 of the FDI Act. Until the FDIC Board amended Part 363 in November 2005, each insured depository institution with $500 million or more in total assets (covered institution) was required to submit to the FDIC and other appropriate federal and state supervisory agencies an annual report comprised of audited financial statements and a management report containing a statement of management's responsibilities, assessments by management of the effectiveness of internal control over financial reporting and compliance with designated laws and regulations, and an auditor's attestation report on internal control over financial reporting. In addition, Part 363 provided that each covered institution must establish an independent audit committee of its board of directors comprised of outside directors who are independent of management of the institution. If certain conditions are met, these audit, reporting, and audit committee requirements can be satisfied by a covered institution's parent holding company rather than by the institution itself. Part 363 also includes Guidelines and Interpretations, which are intended to assist institutions and independent public accountants in understanding and complying with Section 36 and Part 363.

The November 2005 amendments to Part 363 raised the asset-size threshold from $500 million to $1 billion for the assessments of internal control over financial reporting by management and the independent public accountant. All of the other audit and reporting requirements of Part 363 continued to apply to all institutions with $500 million or more in total assets. Also, for covered institutions with between $500 million and $1 billion in total assets, the November 2005 amendments required only a majority, rather than all, of the members of the audit committee, who must be outside directors, to be independent of management. At present, approximately 740 of the more than 8,200 insured institutions have between $500 million and $1 billion in total assets and another 690 institutions have $1 billion or more in total assets.

When it amended Part 363 in November 2005, the FDIC noted that it had identified other aspects of Part 363 that may warrant revision in light of changes in the industry and the passage of the Sarbanes-Oxley Act of 2002. The recommended final rule discussed herein addresses these previously identified aspects of Part 363. Nevertheless, the amendments do not change the $500 million and $1 billion asset-size thresholds currently contained in Part 363. In addition, for those covered institutions that are public companies, the amendments to Part 363 do not affect their obligations to comply with the federal securities laws, including SOX, and the SEC's implementing rules that relate to internal control assessments by management and external auditors, audit committee structure, and other SEC reporting requirements.

Discussion of Comments Received on Proposed Amendments

The FDIC received 23 comment letters that addressed the proposed amendments to Part 363. These commenters represented 12 financial institutions, 3 bankers' trade organizations, 4 accounting firms, 1 accountants' trade organization, 1 state regulatory organization, and 2 law firms. Eight commenters expressed general support for the proposal, seven commenters were generally not supportive, and eight commenters did not express an overall view on the proposal. While comments were received on almost every aspect of the proposed amendments, no commenter specifically commented on each aspect. However, eleven commenters expressed concerns regarding the regulatory burden associated with various aspects of the proposal. In addition, commenters expressed concerns about the following aspects of the proposed amendments: disclosure of noncompliance with the designated laws and regulations; the percentage of consolidated total assets threshold for eligibility to comply with Part 363 at a holding company level; the reports on internal control over financial reporting by management and independent public accountants; the independent public accountant's communications with audit committees; the retention period for the independent public accountant's working papers; independence standards applicable to independent public accountants; the filing requirement for and public availability of AICPA peer review reports and PCAOB inspection reports of independent public accountants; the filing and public availability of audit engagement letters; and audit committee member independence.

One commenter recommended that the asset size threshold for complying with Part 363 be raised from $500 million to $1 billion. In November 2005, when the FDIC increased the asset size threshold for assessments of internal control over financial reporting from $500 million to $1 billion, it concluded that exempting all institutions below this higher size level from all of the requirements of Part 363 would not be consistent with the objective of Section 36 of the FDI Act. The federal banking agencies rely upon financial information to evaluate the condition of insured depository institutions and determine the adequacy of regulatory capital. Independent audits are an important component of an institution's overall risk management process, thus contributing to the safety and soundness of the institution. Therefore, the FDIC staff believes that, except where a higher threshold currently applies, the $500 million asset size threshold continues to be the appropriate level for requiring compliance with Part 363.

The following sections of this memorandum discuss the principal revisions to each of the major subject areas within Part 363 including changes made in response to the comments and concerns raised by the commenters. They also discuss the responses received on the two aspects of the proposed amendments for which the FDIC specifically requested comments: (1) disclosure of noncompliance with the designated safety and soundness laws and regulations pertaining to insider loans and dividend restrictions, and (2) the 75-percent-of-consolidated-total-assets threshold for eligibility to comply with the requirements of Part 363 at the holding company level. The discussion of the principal revisions follows the order of the Part 363 subject areas and not necessarily the order of priority of the proposed amendments and revisions made in response to the comments received.

Scope - Compliance by Subsidiaries of Holding Companies

At present, an insured depository institution that is a subsidiary of a holding company may use consolidated holding company financial statements to satisfy the audited financial statements requirement of Part 363 regardless of whether the assets of the insured depository institution subsidiary or subsidiaries of the holding company represent substantially all or only a minor portion of the holding company's consolidated total assets. When the assets of insured depository institution subsidiaries do not comprise a substantial portion of a holding company's consolidated total assets, the holding company's consolidated financial statements do not tend to provide sufficient information that is indicative of the financial position and results of operations of these institutions.

Therefore, the FDIC proposed to revise the criteria for determining whether the audited financial statements requirement and the other requirements of Part 363 may be satisfied at a holding company level. More specifically, to comply at the holding company level, the FDIC proposed that the consolidated total assets of the insured depository institution (or of all of the holding company's insured depository institution subsidiaries if the holding company owns or controls more than one insured institution) would have to comprise 75 percent or more of the consolidated total assets of the holding company. The FDIC staff believes that this percentage-of-assets threshold should ensure that the extent of independent audit work performed at the insured depository institution level is sufficient to satisfy the intent of Section 36 of the FDI Act, that is, the early identification of needed improvements in financial management at insured institutions. The FDIC staff also believes that this threshold would continue to provide flexibility to the vast majority of institutions that are part of a holding company structure with respect to the level at which they may comply with Part 363.

When determining an appropriate percentage-of-assets threshold, the FDIC staff considered the range of percentage-of-assets ratios for insured institutions that are part of a holding company structure. The vast majority of insured institutions subject to Part 363 that are in a holding company structure are subsidiaries of organizations where the assets of the insured depository institution subsidiaries comprise 90 percent or more of the holding company's consolidated total assets. Of the remaining institutions subject to Part 363 that are in a holding company structure, most are subsidiaries of organizations where the assets of the insured institutions comprise either between 75 and 90 percent or less than 25 percent of the top-tier parent company's consolidated total assets. Smaller numbers of institutions are subsidiaries of organizations where the assets of the insured institutions comprise from 25 to 50 percent or from 50 to 75 percent of the top-tier parent company's consolidated total assets. However, in a number of cases where the insured institution subsidiaries comprise less than 75 percent of the top-tier holding company's consolidated total assets, the insured institution subsidiaries that are subject to Part 363 currently comply with the regulation at the institution level or at a mid-tier holding company level where the assets of the insured institution subsidiaries comprise 90 percent or more of the mid-tier holding company's consolidated total assets. Thus, these institutions would not need to change how they comply with Part 363 in response to the establishment of the proposed 75 percent threshold.

The FDIC specifically requested comment as to whether 75 percent or more of consolidated total assets is an appropriate threshold. Six commenters expressed views that the 75 percent threshold is reasonable, in the public's best interest, and provides ease of application while obtaining appropriate audit coverage of the insured depository institutions. However, three commenters were opposed to the proposed 75 percent threshold. One commenter recommended that the FDIC lower the threshold and require institutions below the threshold to consult with the FDIC prior to reporting at the holding company level. Another commenter stated that compliance at the holding company level should not depend on the aggregate size of the subsidiary insured depository institutions relative to the holding company. This commenter also recommended that institutions be given until the end of their first full fiscal year after the final rule is adopted to comply with the proposed change. Another commenter stated that the 75 percent threshold is arbitrary and recommended that the FDIC use an objectives-based approach.

The FDIC staff recognizes that the limited number of institutions currently complying with Part 363 at the holding company level that will not meet the proposed 75-percent-of-consolidated-total-assets threshold will incur additional costs from having to comply with the regulation at the institution level or at a suitable mid-tier holding company level. Requiring institutions to consult with the FDIC prior to reporting at a holding company level would add a new element of regulatory burden and would not provide certainty or contribute to the ease of application of the 75 percent threshold. The FDIC staff believes that the 75 percent-of-assets threshold strikes an appropriate balance between insured institution financial data and audit coverage and the cost of compliance with Part 363.

The FDIC staff agrees that institutions that currently report at the holding company level, but do not meet the 75 percent threshold, should be afforded sufficient time to comply with this new requirement. Accordingly, the FDIC staff recommends that the effective date for implementing this threshold be delayed until fiscal years ending on or after June 15, 2010.

Annual Reporting Requirements – Management Report Contents, Institutions Merged Out of Existence, and Internal Control Reports for Acquired Businesses

Management Report Contents

The FDIC staff has noted differences in the content of management reports and the adequacy of the information in these reports regarding the results of management's assessments of the effectiveness of internal control over financial reporting and compliance with the laws and regulations pertaining to insider loans and dividend restrictions. For example, identified material weaknesses in internal control over financial reporting and instances of noncompliance with insider lending requirements and dividend restrictions have not always been disclosed.

To provide clearer guidance on the information that should be included in the management report, the FDIC staff proposed to require management's assessment of compliance with the laws and regulations pertaining to insider loans and dividend restrictions to include a clear statement as to management's conclusion regarding compliance and to disclose any noncompliance with such laws and regulations. In addition, the proposed amendments would require management's assessment of internal control over financial reporting to identify the internal control framework that management used to make its evaluation, include a statement that the evaluation included controls over the preparation of regulatory financial statements, include a clear statement as to management's conclusion regarding the effectiveness of internal control over financial reporting, disclose all material weaknesses identified by management, and preclude management from concluding that internal control over financial reporting is effective if there are any material weaknesses.

The FDIC specifically requested comments as to whether the disclosure in the management report of instances of noncompliance with the laws and regulations pertaining to insider loans and dividend restrictions should be made available for public inspection or be designated as privileged and confidential and not be made available to the public. Three commenters supported public availability only for disclosures of "material" noncompliance. However, twelve commenters were not supportive of public availability of disclosures of noncompliance and expressed concern that minor errors may be mistaken for a systemic compliance failure and stated that noncompliance should be addressed through the examination process.

The FDIC staff notes that all insured depository institutions, regardless of size, are required to comply with the designated safety and soundness laws and regulations that deal with insider loans and dividend restrictions. These laws and regulations have not substantially changed since Part 363 was first implemented. Thus, well before an insured depository institution reaches $500 million in total assets and becomes subject to Part 363, it should already have appropriate policies, procedures, controls, and systems in place to monitor insider lending activities and assess its dividend-paying capacity and thereby ensure compliance with the safety and soundness laws and regulations in these two designated areas. Public availability of disclosures of instances of noncompliance with these designated laws and regulations should act as a further stimulus to management's efforts to ensure that its policies, procedures, controls, and systems are sound and operating effectively. Therefore, the FDIC staff recommends that, to reinforce the importance of management's responsibility for complying with the laws and regulations pertaining to insider loans and dividend restrictions, instances of noncompliance with these laws and regulations should be disclosed in the management report and made available to the public. Nevertheless, to provide guidance regarding disclosure of noncompliance, the guidelines to Part 363 have been modified to state that management is not required to specifically identify the individual or individuals who were responsible for or were the subject of any noncompliance and provides general parameters for making the disclosure.

Four commenters expressed concerns about the proposed revisions applicable to management's report on internal control over financial reporting. Three of these commenters indicated that the report is not necessary, its costs exceed the benefits derived, and it is difficult for small community banks to recruit personnel to implement the accounting and reporting rules. One of these commenters also recommended that the FDIC consider a "delayed phase-in" of the requirements for assessing internal control over financial reporting similar to the phase-in utilized by the SEC in its rules implementing section 404 of SOX. This commenter also recommended that the FDIC raise the asset size threshold for this requirement from $1 billion to $3 billion to ease regulatory burden. Another commenter recommended that the FDIC clarify whether the disclosure of identified material weaknesses in internal control over financial reporting in management's report covers all identified material weaknesses, regardless of their status as of the institution's fiscal year-end, or only those in existence as of the end of the fiscal year that have not been remediated prior to that date.

Management has been required to assess and report on the effectiveness of an institution's internal control over financial reporting since Part 363 was first implemented. In November 2005, when the FDIC increased the asset size threshold for internal control assessments from $500 million to $1 billion, it concluded, and the FDIC staff continues to believe, that the $1 billion asset size threshold is appropriate for requiring assessments and reports on internal control over financial reporting and mitigates concerns about the burden this requirement imposes on covered institutions. Therefore, the FDIC staff recommends that the $1 billion asset size threshold for requiring internal control assessments and reports be retained. Also, the FDIC staff does not believe that a "delayed phase-in" of the requirement for assessing and reporting on internal control over financial reporting is necessary or appropriate. In this regard, the FDIC staff notes that Section 36 of the FDI Act has required the management of covered institutions to perform an assessment of internal control over financial reporting as of year-end since its enactment in 1991. However, the FDIC staff has revised Part 363 to clarify that management must disclose all material weaknesses in internal control over financial reporting that it has identified and that have not been remediated prior to the end of the institution's fiscal year.

Because Part 363 and its guidelines provide only limited guidance concerning the contents of the management report and the related signature requirements for this report, institutions and auditors have expressed interest in examples of acceptable reports. To assist managements in complying with the annual reporting requirements of Part 363, the FDIC proposed to add an appendix to provide guidance regarding reporting scenarios that satisfy the annual reporting requirements of Part 363, illustrative management reports, and an illustrative cover letter for use when an institution complies with the annual reporting requirements at the holding company level. In addition, Guideline 36 would be modified to extend the DSC Director's delegated authority to make minor technical amendments to the guidelines in Appendix A and to the illustrative reports in Appendix B.

Two commenters stated that the illustrative management reports are helpful and will mitigate regulatory burden. Another commenter suggested that the illustrative management reports would be better suited in an accounting and auditing guide that could be updated regularly to reflect changes in professional standards or other requirements that would affect these reports. This commenter also expressed concern about the clarity and consistency of the illustrative management report on internal control over financial reporting at the holding company level.

Regarding the suggestion that the illustrative management reports would be better suited in an accounting and auditing guide, the FDIC staff notes that the professional standards require auditors to evaluate the elements that management is required to present in its report on internal control over financial reporting, but they do not fully address the requirements of Part 363 for management reports nor do they provide guidance to management regarding the preparation of management reports for Part 363 purposes. Given the varying degrees of familiarity of institution management with professional auditing standards as well as the lack of availability of illustrative management reports that satisfy the requirements of Part 363, the FDIC staff recommends that the illustrative management reports be maintained in an appendix to Part 363. However, the FDIC staff has revised the text in the illustrative management reports on internal control over financial reporting at the holding company level to improve their clarity and believes that the revised reports are consistent with current practices and professional auditing standards.

Institutions Merged Out of Existence

To reduce regulatory burden and provide certainty for merging institutions, the FDIC proposed to add a guideline to Part 363 to explicitly provide relief from filing a Part 363 Annual Report for an institution that is merged out of existence after the end of its fiscal year, but before the deadline for filing its Part 363 Annual Report. The three commenters who addressed this aspect of the proposal supported it.

Internal Control Reports for Acquired Businesses

Currently, Part 363 requires both management's and the related independent public accountant's evaluation of an institution's internal control over financial reporting to include controls at an institution in its entirety, including businesses acquired during the fiscal year. Consistent with guidance issued by the SEC and to reduce regulatory burden and provide certainty, the FDIC proposed to add a guideline to Part 363 to explicitly provide relief from the requirement to evaluate the internal control over financial reporting of a business acquired during an institution's fiscal year. One commenter expressed support for this proposed guideline.

Independent Public Accountant – Internal Control Over Financial Reporting, Communications with Audit Committee, Retention of Working Papers, Independence, and Peer Reviews

Internal Control Over Financial Reporting

The FDIC staff has observed that some independent public accountants' internal control attestation reports are less than sufficiently informative and, therefore, inconsistent with the objectives of Section 36 of the FDI Act. Consistent with the professional auditing and attestation standards, the FDIC proposed to amend Part 363 to specify that the accountant's attestation report on internal control over financial reporting must not be dated prior to the date of management's assessment report, identify the internal control framework that the accountant used to make the evaluation, state that the evaluation included controls over the preparation of regulatory financial statements, clearly state the accountant's conclusion regarding the effectiveness of internal control over financial reporting, disclose all material weaknesses identified by the accountant, and conclude that internal control is ineffective if there are any material weaknesses.

Four commenters expressed concerns about these proposed revisions. One commenter noted that the AICPA's proposed revisions to the internal control attestation standards for nonpublic companies are similar to the requirements for public companies, which will make the independent public accountant's assessment of internal control over financial reporting for nonpublic companies too costly. This commenter recommended that, instead of the accountant's assessment, the banking regulators should assess the adequacy of internal control over financial reporting as part of the examination process. Another commenter recommended that the FDIC consider a delayed phase-in of the requirements for assessing internal control over financial reporting similar to the phase-in set forth in the SEC's rules implementing Section 404 of SOX for certain public companies. Two other commenters stated that several changes should be made to the independent public accountant's report on internal control over financial reporting for consistency with generally accepted standards for attestation engagements, PCAOB auditing standards, and related PCAOB staff implementation guidance. They recommended that Part 363 should just refer to the auditing and attestation standards as the basis for these reports. These two commenters also recommended that the FDIC clarify whether the disclosure regarding material weaknesses in internal control over financial reporting in the independent public accountant's report covers all identified material weaknesses or only those that have not been remediated prior to the end of the fiscal year.

Independent public accountants have been required to examine, attest to, and report on management's assertion concerning the effectiveness of an institution's internal control over financial reporting since Part 363 was first implemented. This requirement is also set forth in Section 36 of the FDI Act. In November 2005, when the FDIC increased the asset size threshold for internal control assessments from $500 million to $1 billion for both management and the independent public accountant, it noted that recent and impending changes to make the auditing and attestation standards governing internal control assessments more robust had and would continue to increase the cost and burden of the audit and reporting requirements of Part 363. The FDIC concluded then that the increase to a $1 billion asset size threshold for internal control assessments achieved an appropriate balance between burden reduction and maintaining safety and soundness for institutions subject to Part 363 and the FDIC staff continues to believe today that $1 billion remains a suitable size threshold. Also, the FDIC staff does not believe that a "delayed phase-in" of the longstanding requirement for the independent public accountant to report on management's assertion regarding internal control over financial reporting is necessary or appropriate.

In response to the comments regarding the disclosure of material weaknesses in internal control over financial reporting, the FDIC staff has revised Part 363 to clarify that the independent auditor's report must disclose all identified material weaknesses that have not been remediated prior to the end of the institution's fiscal year.

Regarding the suggestion that the rule be revised to refer to the existing auditing and attestation standards rather than including specific requirements in the rule, Part 363 already states that the independent public accountant's report on internal control over financial reporting shall be made in accordance with generally accepted standards for attestation engagements. As previously noted, the FDIC staff has found some independent public accountants' internal control attestation reports to be less than sufficiently informative. Therefore, given the varying degrees of familiarity of institution management and audit committee members with professional auditing and attestation standards, the FDIC staff believes that the specific requirements governing the content of attestation reports in the proposed rule should be retained to assist audit committee members in the performance of their duties regarding the oversight of the external auditor. However, the FDIC staff has revised Part 363 to clarify that the auditor's report on internal control over financial reporting should satisfy the requirements set forth in both Part 363 and applicable professional standards.

Communications with Audit Committees

Section 204 of SOX and the SEC's implementing rules require an accountant to report to a public company's audit committee on the company's critical accounting policies, alternative accounting treatments discussed with management, and the accountant's written communications provided to management, such as a management letter or schedule of unadjusted differences. Auditing standards applicable to accountants who audit non-public entities include similar, but not identical, communication requirements. Consistent with current best practices and auditing standards, the FDIC proposed to amend Part 363 to set a uniform minimum requirement for auditor communications with audit committees.

Three commenters expressed concerns regarding the proposed auditor communications with audit committees. One commenter recommended that the FDIC revise the proposal to refer to the existing standards of the AICPA, the PCAOB, and the SEC rather than specifying these communication requirements in the rule. Another commenter stated that the proposed amendments overlap the AICPA's standards and do not align with the SEC's communication requirements, which may cause confusion. Another commenter stated that SOX practices and principles regarding audit committee communications should be restricted to publicly held banks. This commenter believes that management should have discretion to determine whether the auditor should report critical accounting policies, alternative accounting treatments, and schedules of unadjusted differences to the audit committee.

Although the existing auditing standards for both public and nonpublic companies set forth the requirements for the independent public accountant's communications with audit committees, the FDIC staff believes that, given the varying degrees of familiarity of audit committee members with professional auditing standards, setting forth the requirements for these communications in the final rule will assist audit committee members in the performance of their auditor oversight duties. Therefore, the FDIC staff recommends that the auditor communication requirements set forth in the proposed rule be retained. However, the FDIC staff has revised Part 363 to clarify that the auditor should satisfy the audit committee communication requirements set forth in both Part 363 and applicable professional standards. The FDIC staff also believes that the communication requirements in Part 363 are consistent with the existing professional standards.

Retention of Working Papers

Although Section 36 of the FDI Act requires an independent public accountant to agree to provide related working papers to the FDIC, any appropriate federal banking agency, and any state bank supervisor, the FDIC staff has encountered situations where working papers had been retained for only a limited number of years. The SEC's rules and the PCAOB's auditing standards specify a 7-year retention period for audit working papers. The AICPA's auditing standards provide that audit working papers should be retained for a period not shorter than five years. Because the FDIC staff believes that a uniform working paper retention period should apply to audits of all institutions (public and non-public) subject to Part 363, the proposed rule directed independent public accountants to retain audit working papers related to financial statement audits and, if applicable, evaluations of internal control over financial reporting for seven years.

One commenter stated that the five-year retention period specified by the AICPA's auditing standards is appropriate for nonpublic companies. Another commenter was concerned that the proposed seven-year retention period may cause extra burden and expense for independent public accountants of nonpublic institutions.

Since the audit and internal control evaluation requirements of Part 363 do not depend on whether institutions are public or nonpublic companies, the FDIC staff continues to believes that the retention requirement for working papers associated with auditors' performance of these services should also be independent of institutions' status as public or nonpublic companies and that a uniform retention period for audit working papers should apply to all institutions subject to Part 363. Therefore, the FDIC staff recommends that the proposed seven year retention period for working papers be retained.

Independence

Section 36 of the FDI Act states that an "independent public accountant" must perform the required audit and attestation services, but it does not define "independent." The guidelines to Part 363 identify the independence standards applicable to accountants performing services under Section 36 and Part 363. In 2003, the federal banking agencies jointly issued rules of practice to implement the enforcement provisions of Section 36, which authorize the FDIC or an appropriate federal banking agency to remove, suspend, or bar an accountant, for good cause, from performing such services for institutions subject to Section 36 and Part 363. To enhance the enforceability of the independence standards with which an accountant must comply, the FDIC proposed to move the independence requirements for accountants from the guidelines to a new subsection of Part 363 and to clarify that the accountant must comply with the independence standards and interpretations of the PCAOB as well as those of the AICPA and the SEC.

Two commenters stated that the proposed amendment with its explicit reference to compliance with the PCAOB's independence standards represents a best practice and that the coordination of the independence standards in Part 363 with the independence standards of the AICPA, the SEC, and the PCAOB will reduce uncertainty. Nevertheless, one commenter recommended that the FDIC clarify whether an independent public accountant should comply with the most restrictive independence requirement addressing a particular matter or comply with the independence requirements that pertain only to public companies. In contrast, six commenters opposed or expressed concerns about the proposed amendment. In general, these commenters were concerned with the application of the PCAOB and SEC independence rules to audits of nonpublic institutions. Their recommendations included having the FDIC individually evaluate and clarify the applicability of each new SEC and PCAOB independence standard and revising Part 363 to require that auditors of public institutions meet the independence rules of the SEC and the PCAOB and auditors of nonpublic institutions meet only the AICPA's independence rules. These commenters were also concerned about the need for education efforts to explain the auditor independence requirements of Part 363 to the many nonpublic institutions subject to Part 363 and the accountants that provide services to nonpublic institutions who may not be familiar with the independence standards of the SEC and the PCAOB. In addition, they stated that applying the independence standards of the SEC and the PCAOB to all accountants may preclude certain accountants from performing engagements for nonpublic institutions subject to Part 363 and may limit the number of accounting firms that some community banks would be able to engage because of these firms' ability to satisfy the independence requirements of the PCAOB, the SEC, and the AICPA.

The foundation for auditor independence standards is the principle that auditors who provide audit services must be independent in fact and appearance with respect to their audit clients. The independence rules of the SEC and the AICPA have been applicable to audits of both public and nonpublic institutions subject to Part 363 since its implementation in 1993. More recently, SOX granted additional authority to set independence standards for accounting firms auditing public companies to the PCAOB. The PCAOB's independence standards do not become effective unless and until they are approved by the SEC, which means that they are tantamount to SEC independence standards.

The FDIC staff acknowledges that both the AICPA's and the SEC's auditor independence standards, including those of the PCAOB, have evolved over time. The FDIC staff recognizes that the effect of periodic changes in these auditor independence standards carries over to accountants with insured depository institution audit clients subject to Part 363 regardless of whether these clients are public or nonpublic institutions. While changes in independence standards can be burdensome to auditors and their clients, given the importance of the independence of the accountants who provide audit services to institutions subject to Part 363, which in number comprise the largest 17 percent of insured depository institutions, the FDIC staff believes that it is in the public interest for the independence standards of the AICPA, the

SEC, and the PCAOB to apply uniformly to all accountants performing these services rather than to apply these standards on a selective or exclusionary basis. Therefore, the FDIC staff recommends adoption of the proposed amendments to the auditor independence provisions of Part 363.

As recommended by a commenter, the FDIC staff has revised the proposed rule to clarify that if a provision within one of the applicable independence standards is more restrictive than a provision addressing the same subject matter in one of the other independence standards, the independent public accountant must comply with the more restrictive independence requirement.

Peer Reviews

Section 36 of the FDI Act requires an independent public accountant to have received a peer review or be enrolled in a peer review program that meets acceptable guidelines and to file the peer review report with the FDIC, which the FDIC must make available for public inspection. Since Part 363 was originally adopted, the PCAOB has been created and conducts inspections of registered public accounting firms and issues reports on its inspections, which serve a similar purpose as peer reviews. In light of the federal banking agencies' issuance of rules implementing the enforcement provisions of Section 36, the FDIC proposed to move the requirements for peer reviews, retention of peer review working papers, and the filing of peer review reports from the guidelines to a new subsection of Part 363; clarify that acceptable peer reviews include peer reviews performed in accordance with the AICPA's Peer Review Standards and inspections conducted by the PCAOB; and provide that the FDIC would not make available for public inspection any nonpublic portion of a peer review report or inspection report.

While five commenters did not object to filing AICPA peer review reports and the public portions of PCAOB inspection reports, they opposed filing the nonpublic portions of these reports. These commenters also stated that the PCAOB cannot disclose the nonpublic portion of an inspection report unless criticisms of the accounting firm's quality controls remain unremediated 12 months after the issuance of the report; an accounting firm should be required to submit the nonpublic portion of a PCAOB inspection report to the FDIC only if it is made public by the PCAOB; and since AICPA peer review reports and the public portions of the PCAOB inspection reports are available to the FDIC on the AICPA and PCAOB websites, there should not be a requirement for auditors to submit reports directly to the FDIC.

In response to these concerns, the FDIC staff has revised the proposed amendment to require independent public accountants to file only the public portions of PCAOB inspection reports. Independent public accountants would be required to file the previously nonpublic portion of any PCAOB inspection report within 15 days of the PCAOB making it public. Regarding AICPA peer review reports, the FDIC staff notes that these reports are publicly available on the AICPA website for some, but not all, independent public accountants and accounting firms. The AICPA's standards for performing and reporting on peer reviews and other applicable requirements do not require all independent public accountants or accounting firms to post their peer review reports on the AICPA website. Furthermore, since Section 36 of the FDI Act requires peer review reports to be filed with the FDIC and made available for public inspection, the FDIC cannot override this statutory requirement.

Filing and Notice Requirements – Annual Reporting, External Audit Engagement Letters, and Notification of Late Filing

Annual Reporting

Currently, each covered institution is required to file its Part 363 Annual Report within 90 days after the end of its fiscal year. A conflicting provision of Part 363 requires each institution to file the reports by the independent public accountant that are components of the Part 363 Annual Report within 15 days of receipt. The FDIC staff has also noted that earlier filing deadlines established by the SEC for annual reports filed by certain public companies under the federal securities laws and more robust auditing standards related to internal control over financial reporting have had an impact on management, the resources of independent public accountants, and auditing costs. To reduce cost and burden, the FDIC proposed to amend Part 363 by extending the time period within which an institution that is not a public company or a subsidiary of a public company must file its Part 363 Annual Report from within 90 days to within 120 days after the end of its fiscal year. An institution that is a public company or a subsidiary of a public company generally would continue to be required to file its Part 363 Annual Report within 90 days after the end of its fiscal year, which is consistent with the maximum time frame that public companies have for filing annual reports under the federal securities laws. The proposed amendment would also eliminate the ambiguity concerning the filing deadline for the components of the Part 363 Annual Report that are prepared by the independent public accountant.

Five commenters expressed support for the proposed extension of the filing deadline and stated that the additional 30 days will help to ensure that auditors are able to devote sufficient resources to nonpublic engagements, provide nonpublic institutions with the additional time needed to comply with the filing requirements, and may help to reduce the cost of independent audits.

At present, Section 36 the FDI Act and Part 363 specify that Part 363 Annual Reports and reports on peer reviews shall be available for public inspection. Except for management letters, which are exempt from public disclosure pursuant to an existing guideline, Part 363 does not address the availability of other reports and notifications required to be filed under Part 363. Consistent with the FDIC's longstanding practice, the FDIC staff has revised the proposed rule to clarify that, except for the Part 363 Annual Reports, AICPA peer review reports, and PCAOB inspection reports, all other required reports and notifications are exempt from public disclosure by the FDIC.

External Audit Engagement Letters

In the *Interagency Advisory on the Unsafe and Unsound Use of Limitation of Liability Provisions in External Audit Engagement Letters*, issued in 2006, the federal banking agencies expressed their concerns about limitation of liability provisions included in external audit engagement letters and advised institutions against entering into engagement letters containing them. To facilitate the timely review of institutions' external audit engagement letters, the FDIC proposed to amend Part 363 to require that copies of external audit engagement letters be filed with the FDIC, the appropriate federal banking agency, and any appropriate state bank supervisor within 15 days of acceptance by the institution. Eight commenters opposed this proposed filing requirement and were concerned about the public availability of engagement letters that would be filed with the agencies.

Since the publication of the proposed rule, the AICPA's Professional Ethics Executive Committee has adopted an ethics interpretation that essentially provides that if an independent public accountant includes any prohibited limitation of liability provision in its audit engagement letter with an insured depository institution, the accountant would be considered to have committed an act discreditable to the profession and could be subject to disciplinary action. This ethics interpretation is applicable to engagement letters to perform audit and attest services for all insured depository institutions, not just those institutions subject to Part 363.

In consideration of the comments received and the issuance of the ethics interpretation, the FDIC staff has reevaluated this aspect of the proposal and recommends that the proposed requirement to file audit engagement letters be removed, which will also eliminate the burden that would have been associated with this filing requirement.

Notification of Late Filing

The guidelines to Part 363 currently provide that, for good cause, the filing deadline for the Part 363 Annual Report and other required reports and notices may be extended for not more than 30 days in the occasional situation when an institution is confronted with extraordinary circumstances beyond its reasonable control. The FDIC staff's experience with extension requests for Part 363 Annual Reports indicates that the reasons for the requests frequently do not meet the extraordinary circumstances criterion. Also, several extension requests have been repeats of requests from the same institutions from the previous year. Based upon this experience and given the proposed amendment to extend the filing deadline for non-public institutions, the FDIC proposed to amend Part 363 to replace the availability of extensions of time for filing reports in extraordinary circumstances with a requirement that an institution file a written notice of late filing by a report's prescribed due date.

One commenter suggested that the proposed rule be revised to provide for extensions of the filing due date for up to 60 days for institutions that are not public companies or subsidiaries of public companies instead of establishing a late filing notification requirement. In this regard, the FDIC staff notes that it is not uncommon for institutions that are unable to file their Part 363 Annual Reports by the filing deadline specified in the current rule, whether or not they seek extensions of the deadline, to experience delays in their ability to file these reports that extend well in excess of 60 days after the filing deadline. Therefore, the FDIC staff believes that establishing a late filing notification requirement is a more practical approach for addressing the broad range of situations when institutions are unable to timely file reports required under Part 363 rather than providing for longer extensions of the filing deadline in those cases where an institution meets an extraordinary circumstances standard. Accordingly, the FDIC staff recommends that this aspect of the rule be adopted as proposed.

Audit Committees – Composition, "Independent of Management" Considerations, Duties, and Transition Period for Forming and Restructuring Audit Committees

Composition of Audit Committees

Section 36 of the FDI Act requires each covered institution to have an independent audit committee comprised entirely of outside directors. Directors who serve on the audit committee must be "independent of management," although a minority of the audit committee members at institutions with $500 million or more but less than $1 billion in total assets need not be "independent of management." The guidelines to Part 363 currently provide that each institution's board of directors is responsible for determining at least annually whether existing and potential audit committee members satisfy these requirements governing audit committee composition. In order for a board of directors to perform its evaluation of audit committee members in a consistent, effective, and reviewable manner, the FDIC staff believes the board should be guided by an approved policy or set of criteria that identifies the factors to be taken into account by the board. Accordingly, the FDIC proposed to amend the guidelines to require each institution's board of directors to maintain and use an approved set of written criteria for evaluating audit committee member independence and to record the results of these determinations in the board's minutes.

Two commenters expressed support for this aspect of the proposal and view it as a best practice. However, three commenters were not supportive of the proposed amendments. As an alternative to written criteria for determining audit committee members' independence and documentation of these determinations in the board of directors' minutes, two of these commenters recommended that audit committees be permitted to survey existing and potential members and make the survey available to examiners, but not reflect the survey results in the board of directors' minutes.

As a best practice, the FDIC staff believes that the adoption and implementation by an institution's board of directors of an approved policy or set of criteria that identifies the factors to be taken into account for evaluating audit committee member independence improves corporate governance. Applying an approved policy or set of criteria and documenting the results of and basis for determinations with respect to the independence of existing and potential audit committee members in the board's minutes further supports good corporate governance and provides evidence that the board is properly discharging its responsibilities under Part 363, which a survey of audit committee members for examiner review would not achieve. Therefore, the FDIC staff recommends adopting the revised guideline as proposed.

"Independent of Management" Considerations for Audit Committee Members

Although the existing guidelines to Part 363 set forth certain factors for boards of directors to consider in determining whether an outside director is "independent of management," the FDIC staff believes that some of these factors are so general that they fail to provide meaningful guidance. The FDIC's proposed amendments would expand the guidance for a board of directors' assessment of whether an existing or potential audit committee member is "independent of management." For example, the proposed amendments include criteria that boards of directors should consider when evaluating an outside director's independence. The proposed amendments would also provide flexibility by permitting an institution that is a public company or a subsidiary of a public company that is listed on a national securities exchange to apply the audit committee provisions of the exchange's listing standards for purposes of determining audit committee member independence. Similarly, all other institutions may elect, but would not be required, to use the audit committee provisions of the listing standards of a national securities exchange as its criteria for determining audit committee member independence.

While two commenters supported the proposed amendments, five commenters expressed concerns or suggested changes to the proposal. These commenters recommended that the FDIC (1) reconsider the prohibition on outside directors serving on the audit committee when they own 10 percent or more of the institution's voting stock; (2) raise the proposed compensation limitation threshold from $60,000 to $100,000; (3) clarify the meaning of "financial services" as it relates to indirect compensation; (4) remove loans and other services extended to directors in the ordinary course of an institution's business as well as payments arising solely from investments in the bank's securities and payments made under non-discretionary charitable contribution matching programs from the definition of "payment"; and (5) measure the $200,000 or 5 percent gross revenues test for payments against the revenues of the recipient of the payment, and not the outside director's employer. One commenter stated that applying the director independence standards of the national securities exchanges to privately held banks will impose challenges for community banks located in areas where it is difficult to find competent directors to serve on the audit committee. Another commenter recommended that audit committee independence criteria should consider an individual institution's complexity and risk profile, noting that audit committee member independence can be difficult to accomplish and maintain for community banks.

In response to these comments and concerns, the FDIC staff has carefully reviewed the proposed revisions regarding the "independent of management" considerations that should be applied to audit committee members. As to the existing 10 percent stock ownership limit for audit committee members, the FDIC staff notes that the rules of the SEC and the national securities exchanges do not impose such a limit on audit committee members. Therefore, the FDIC staff revised the guidelines to provide that ownership of 10 percent or more of any class of voting securities of an institution would not be an automatic bar for considering an outside director to be independent of management. As revised, the guideline provides that when an outside director's stock ownership equals or exceeds the 10 percent threshold, the institution's board of directors would be required to determine and document its determination as to whether such ownership would interfere with the outside director's exercise of independent judgment in carrying out the responsibilities of an audit committee member.

Regarding the compensation limit on audit committee members' direct and indirect compensation, the FDIC staff concurs with the commenters and has revised the guideline to increase the limit from $60,000 to $100,000. Additionally, in response to the comments seeking greater clarity concerning the meaning of indirect compensation and the types of payments deemed to be compensation, the FDIC has revised the guideline to provide examples and specify that certain payments would not be included within the meaning of the terms direct and indirect compensation. As to the suggestion regarding the basis of the measurement for the $200,000 or 5 percent of gross revenue test, the FDIC staff recommends that this requirement be retained as proposed to maintain consistency with similar requirements in the listing standards of the national securities exchanges and thereby minimize confusion in the application of this test.

The FDIC staff acknowledges that some community banks may encounter challenges in accomplishing and maintaining audit committee member independence. In recognition of these challenges, the FDIC amended the audit committee provisions of Part 363 in 2005 to allow a minority of the outside directors who serve on the audit committees of covered institutions with less than $1 billion in total assets not to be independent of management. After reviewing the "independent of management" criteria in the proposed guideline, as modified in response to comments, the FDIC staff believes that the nature and types of relationships included in these criteria represent a reasonable framework for evaluating audit committee member independence at public and nonpublic institutions of all sizes. As mentioned, the criteria include a $100,000 limit on certain forms of compensation. In contrast, the SEC's and the national securities exchanges' rules currently limit the compensation of audit committee members to fees received as a director and audit committee member and prohibit all other compensation. The FDIC staff recommended against imposing this prohibition on all institutions subject to Part 363. The absence of this prohibition on compensation from the criteria in the "independent of management" criteria should benefit nonpublic community institutions subject to Part 363. Similarly, the removal of the 10 percent stock ownership limit from the audit committee independence criteria should benefit community institutions. Therefore, the FDIC staff believes that the proposed amendments to the "independent of management" guideline, as modified, will provide institutions' boards of directors with appropriate guidance and sufficient flexibility for establishing their institutions' criteria for making independence determinations for audit committee members.

Audit Committee Duties

It is critical for accountants who perform audit and attestation services for covered institutions to have an appropriate incentive to conduct an objective review and raise concerns about the need for improvements in financial management. In this regard, the FDIC staff believes that a sound corporate governance practice that promotes such an incentive is for an institution's audit committee, rather than its management, to be responsible for the appointment, compensation, and oversight of the accountant, regardless of whether the institution is a public company. Therefore, consistent with the requirements of Section 301 of SOX for public companies, the FDIC proposed to amend Part 363 and its guidelines to specify that, in addition to reviewing with management and the accountant the basis for the reports issued under Part 363, the audit committee's duties should include the appointment, compensation, and oversight of the independent public accountant. In discharging these duties, the audit committee should review and satisfy itself as to the independent public accountant's compliance with the independence, peer review, and other qualifications under Part 363.

Three commenters expressed support for the proposed amendments and stated that they represent a best practice regardless of an entity's size. However, another commenter recommended that the proposal be revised to remove the mandate for the audit committee to appoint and oversee the independent accountants in cases where the bank is highly rated, has few shareholders, and the shareholders authorize procedures to be followed with respect to the appointment and oversight of the independent accountants. This commenter also stated that requiring an institution with few shareholders to have an audit committee adds nothing to safety and soundness, but adds additional bureaucracy and cost.

Although the FDIC staff has considered these comments, it appears that the commenter's primary concern relates to the statutory requirement for covered institutions, including those that are privately owned, to establish independent audit committees. As a statutory requirement, the FDIC lacks the authority to eliminate this requirement for certain covered institutions through rulemaking. In this regard, in enacting Section 36, Congress recognized the significant public interest in sound financial management and controls at covered institutions, including the important role of an independent audit committee, regardless of their ownership structure. Therefore, the FDIC staff recommends adoption of the proposed amendment regarding audit committee duties without revision.

Other Changes

There were several aspects of the proposed amendments to Part 363 for which the FDIC received no comments, only comments expressing support, or comments recommending technical changes or clarifications. These aspects of the proposal, and related revisions recommended by the FDIC staff, include:

- The definition of financial reporting in Section 363.1(c) and Guideline 4A, which would be clarified to state that it may include holding company financial statements and regulatory reports and that, for recognition and measurement purposes, regulatory reporting requirements shall conform to GAAP.
- The definitions of common terms used in Part 363 and the guidelines.
- The meaning of the phrase "material correcting adjustments identified by the independent public accountant," which would be revised to explain that these adjustments are those necessary for the financial statements to conform with GAAP.
- The proposed amendment to specify which corporate officers must sign the management report.
- The proposed description of the reporting flexibility that public institutions with $1 billion or more in total assets have in determining how best to satisfy the SEC's requirements for management's assessment of internal control over financial reporting and the FDIC's similar requirements in Part 363.
- Guidance regarding the attributes of a suitable internal control framework.
- The ability of an independent public accountant to satisfy the notification requirement in Part 363 for the termination of its audit services to an institution by using a report filed with the SEC concerning a change in accountant.
- Information on where to file reports and notices required under Part 363.
- The proposed requirement that audit committees ensure that audit engagement letters do not contain any unsafe and unsound limitation of liability provisions.
- The requirement for audit committee members at large institutions to have "banking or related financial management expertise," which would be clarified to explain that persons with the attributes of an "audit committee financial expert" as described in the SEC's rules will satisfy this requirement.

- The proposed guideline providing a one-year transition period for forming or restructuring the audit committee when an institution first becomes subject to Part 363 or its assets first reach other asset-size thresholds at which committee membership requirements change.
- Certain technical changes to Part 363 to correct outdated titles, terms, and references in the regulation and its appendix.
- The technical change to the rules and procedures in Part 308, Subpart U, for the removal, suspension, or debarment of accountants from performing audit services required by Part 363 that identifies the location for filing required notices of orders and actions.

RECOMMENDATION

DSC recommends that the Board of Directors approve the amendments to Parts 308 and 363 and the publication of the attached Federal Register notice setting forth the FDIC's final rule amending Parts 308 and 363.

Attachments

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