

(DOS), 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 regional director (DOS).

(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 acquirer(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 con-

trol. 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 (DOS) of the FDIC (give address of regional office) within 20 days following the required newspaper publication.

#### **§ 303.87 Delegation of authority.**

(a) Authority is delegated to the Director and the Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director, to issue a written notice of the FDIC's intent not to disapprove an acquisition of control of an insured state nonmember bank.

(b) The authority delegated by paragraph (a) of this section shall include the power to:

(1) Act in situations where information is submitted on acquisitions arising out of events beyond the person's control, as set forth in § 303.83(b);

(2) Extend notice periods;

(3) Determine whether a notice should be filed under section 7(j) of the Act (12 U.S.C. 1817(j)) by a person acquiring less than 25 percent of any class of voting shares of an insured state nonmember bank; and

(4) Delay or waive publication, waive or shorten the public comment period, or act on a proposed acquisition of control prior to the expiration of the public comment period, as provided in §§ 303.86(a)(3) and (4).

(c) Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director, to disapprove an acquisition of control of an insured state nonmember bank.

#### **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, as well as applicable delegations of authority. This subpart

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## § 303.102

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 regional director (DOS), to serve as a senior executive officer or director before filing the notice required under this subpart if the FDIC finds that: