

and operating statements for the previous three years (if applicable).

If the insured savings association's filing with the OTS under section 18(m)(1) of the FDI Act contains all of the information required, that filing may be submitted to the FDIC in satisfaction of this provision. In any case, the regional director may request such additional information as the regional director deems appropriate. In all such cases, the 30-day period will not begin to run until the response to the request for additional information is complete.

(2) Any Federal savings bank that was chartered prior to October 15, 1982 as a savings bank under state law, and any savings association that acquired its principal assets from such an institution, is not required to file prior notice in accordance with paragraph (f)(1) of this section.

(3) Any insured savings association that had one or more subsidiaries prior to August 9, 1989 must file a notice with the DOS regional director for the region in which the insured savings association's principal office is located within 30 days from December 29, 1989. The notice should set forth the name, location, and type of activity conducted by the subsidiary and the amount of the insured savings association's investment in the subsidiary.

(4) Section 303.13(f)(1) notwithstanding, an insured savings association may establish or acquire one or more subsidiaries whose sole purpose is to hold interests in real property acquired by the savings association that fit the description in §303.13(a)(5)(ii) provided that the savings association files a written notice, return receipt requested, with the DOS regional director for the region in which the savings association's principal office is located indicating that the association intends to establish or acquire one or more subsidiaries that will be engaged solely in the disposition of such property. Notice must be received by the regional director at least 30 days prior to the establishment or acquisition of any such subsidiary. An association that has filed a notice pursuant to this paragraph may thereafter establish or acquire additional such subsidiaries provided that each time within 14 days after doing so the association notifies

the regional director in writing. The notice shall identify the savings association, give the date of the initial notice, identify the new subsidiary, and state the value of the property at the time it was transferred to the subsidiary.

(g) *Notice by Federal savings associations conducting grandfathered activities.* Any federal savings association authorized by section 5(i)(4) of HOLA (12 U.S.C. 1464(i)(4)) to make any investment or engage in any activity not otherwise generally authorized to federal savings association by section 5 of HOLA must file a notice with the DOS regional director for the region in which the federal savings association's principal office is located within 30 days after December 29, 1989 or within 30 days after the date the federal savings association is first able to rely upon section 5(i)(4) of HOLA as a result of the acquisition of an association that is covered by such section. The notice should briefly describe the activity or investment.

(h) *Delegations.* The authority to act on applications and notices filed pursuant to §303.13, and to make any and all determinations called for in regard to the same, is delegated to the Director (DOS), and where confirmed in writing by the director, to an associate director, or to the regional director or deputy regional director.

(Approved by the Office of Management and Budget under control number 3064-0104)

[54 FR 53548, Dec. 29, 1989, as amended at 55 FR 38042, Sept. 17, 1990; 58 FR 64458, Dec. 8, 1993; 59 FR 52667, Oct. 19, 1994]

#### **§303.14 Change in senior executive officer or board of directors.**

(a) *Definitions.* For the purposes of this section:

(1) The term *individual* means any natural person, as well as any other entity and/or its employees substituted for such natural person.

(2) The term *insured nonmember bank* means any bank, including any foreign bank having an insured branch the deposits of which are insured in accordance with the provisions of the Federal Deposit Insurance Act, which is not a

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member of the Federal Reserve System. The term does not include any institution chartered by the Comptroller of the Currency, any branch licensed by the Comptroller of the Currency, any District bank, or any federal savings bank.

(3) The term *senior executive officer* means any individual who exercises significant influence over, or participates in, major policymaking decisions of an insured nonmember bank, without regard to title, salary, or compensation. The term includes, but is not limited to, the following positions: president, chief executive officer, chief managing official (in an insured state branch of a foreign bank), chief operating officer, chief financial officer, chief lending officer, or chief investment officer. The term also includes employees of entities retained by an insured nonmember bank to perform such functions in the insured nonmember bank, when such firm is hired in lieu of directly hiring the individuals.

(4) The term *troubled condition* means any insured nonmember bank that:

(i) Has been assigned a composite rating by the FDIC of 4 or 5 under the Uniform Financial Institutions Rating System, or, in the case of an insured state-licensed branch of a foreign bank (*State branch*), an equivalent rating;

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

(iii) Is subject to a written agreement which requires action to improve or maintain the safety and soundness of the institution and which is issued by either the FDIC or by the appropriate state banking authority, a cease and desist order issued by either the FDIC or the appropriate state banking authority, a cease and desist order or proceeding initiated by either the FDIC or the appropriate state banking authority, or a capital directive issued by either the FDIC or the appropriate state banking authority; or

(iv) Is informed in writing by the DOS regional director of the region in which the institution is located (*appropriate regional director*) or his or her designee, based on a visitation, examination, or report of condition, that it has been designated a *troubled institution* for the purposes of § 303.14.

(b) *Prior Notice Requirement.* An insured nonmember bank shall give the FDIC written notice at least 30 days prior to the effective date of any addition or replacement of a member of the board of directors (or a member of the board of trustees in an insured nonmember bank held in a mutual form of ownership) or the employment or change in responsibilities of any individual to a position as a senior executive officer if:

(1) The bank has been chartered or the insured state branch has been licensed less than two years;

(2) Within the two years preceding the proposed addition or employment;

(i) The insured nonmember bank or any of its parents has undergone a change in control which required a notice under section 7(j) of the Federal Deposit Insurance Act or regulations issued pursuant to that statute; or

(ii) The insured nonmember bank has undergone a transaction subject to section 3 of the Bank Holding Company Act or section 10 of the Home Owners Loan Act or regulations issued pursuant to either of those statutes;

(3) The insured nonmember bank is not in compliance with the minimum capital requirements applicable to it and which are imposed by 12 CFR part 325 or by other regulatory action of the FDIC or the appropriate state banking authority; or

(4) The insured nonmember bank is otherwise in a troubled condition.

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. The notice requirement also does not apply in the case of an advisory director who is not elected by the shareholders of the bank or any of its parents, who is not authorized to vote on matters before the board of directors, and who provides solely general policy advice to the board of directors.

(c) *Procedures for notice of proposed change in Director or Senior Executive Officer*—(1) *Filing and acceptance.* Notices shall be filed with the appropriate

regional director 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 FDIC form, subject to the authority of the regional director or his or her designee to require additional information. Each individual on whose behalf the notice is filed must attest to the validity of the information filed which pertains to that individual. At the option of the individual, the information may be forwarded to the regional director by the individual; however, in such cases, the insured nonmember bank must file a notice to that effect. The 30-day notice period will begin to run on the date all required information is received by the appropriate regional director. The bank submitting the notice shall be notified of the date on which all such required information is received and the notice is accepted for processing.

(2) *Waiver of prior notice requirement—*

(i) *Procedure for obtaining.* Parties may petition the appropriate regional director for a waiver of the prior notice required under this section. Waiver may be granted if it is found that delay could harm the bank or the public interest. Any waiver shall not affect the authority of the FDIC to issue a notice of disapproval within 30 days of the waiver.

(ii) *Election of directors.* In the case of the election of a new member of the board of directors at a meeting of the shareholders of an insured nonmember bank, such waiver is hereby granted, but a completed notice must be filed with the appropriate regional director within 48 hours of the election.

(3) *Notice of intent not to disapprove.* A proposed director or senior executive officer may begin service before the expiration of the 30-day period if the FDIC notifies the bank and the individual in writing of the FDIC's intention not to disapprove the proposed addition or employment.

(4) *Commencement of service.* A proposed senior executive officer or director may begin service upon the expiration of the 30-day period following acceptance of a complete notice, unless

the FDIC issues a notice of disapproval before the end of the 30-day period.

(d) *Notice of disapproval.* The FDIC may disapprove the individual's serving as a director or senior executive officer if it finds that the competence, experience, character, or integrity of the individual with respect to whom a notice under this section 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. The notice of disapproval will advise the parties of their rights of appeal.

(e) *Delegations.* The authority to issue notices of disapproval or notices of intent not to disapprove under this section; to grant waivers of the prior notice requirement; to determine the informational adequacy of a notice; to designate an insured nonmember bank as a troubled institution; and to determine when the 30-day period begins to run is delegated to the Director (DOS), and where confirmed in writing by the director, to an associate director, or to the regional director or deputy regional director.

[54 FR 53042, Dec. 27, 1989 as amended by 59 FR 52667, Oct. 19, 1994]

**§ 303.15 Mutual-to-stock conversions of mutually owned state-chartered savings banks.**

(a) *Prior notice requirement.* 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 and copies of all documents filed with state and federal banking and/or securities regulators in connection with the proposed conversion. An institution that is in the process of converting to stock form that has filed a proposed stock conversion application with the applicable state and federal regulators (or otherwise has initiated a stock conversion) prior to the effective date of this section shall file the required materials with the FDIC as soon as practicable. An insured mutual savings bank chartered by a state that does not