

Federal Deposit Insurance Corporation

§ 363.1

the service corporation, both equity and debt.

(2) Use such regulatory capital amount for the purposes of the insured state savings association's assessment risk classification under part 327 of this chapter.

§362.13 Approvals previously granted.

FDIC consent by order or notice. An insured state savings association that previously filed an application and obtained the FDIC's consent to engage in an activity or to acquire or retain an investment in a service corporation engaging as principal in an activity or acquiring and retaining any investment that is prohibited under this subpart may continue that activity or retain that investment without seeking the FDIC's consent, provided the insured state savings association and the service corporation, if applicable, continue to meet the conditions and restrictions of approval. An insured state savings association which was granted approval based on conditions which differ from the requirements of §§362.4(c)(2) and 362.12 (c) and (d) will be considered to meet the conditions and restrictions of the approval if the insured state savings association and any applicable service corporation meet the requirements of §§362.4(c)(2) and 362.12 (c) and (d). For the purposes of applying §362.4(c)(2), references to the terms "eligible subsidiary" and "subsidiary" in §362.4(c)(2) shall be deemed to refer, respectively, to the eligible service corporation and the service corporation.

Subpart D—Acquiring, Establishing, or Conducting New Activities Through a Subsidiary by an Insured Savings Association

§362.14 Purpose and scope.

This subpart implements section 18(m) of the Federal Deposit Insurance Act (12 U.S.C. 1828(m)) which requires that prior notice be given the FDIC when an insured savings association establishes or acquires a subsidiary or engages in any new activity in a subsidiary. For the purposes of this subpart, the term "subsidiary" does not include any insured depository institu-

tion as that term is defined in the Federal Deposit Insurance Act. Unless otherwise indicated, the definitions provided in §362.2 apply to this subpart.

§362.15 Acquiring or establishing a subsidiary; conducting new activities through a subsidiary.

No state or Federal insured savings association may establish or acquire a subsidiary, or conduct any new activity through a subsidiary, unless it files a notice in compliance with §303.142(c) of this chapter at least 30 days prior to establishment of the subsidiary or commencement of the activity and the FDIC does not object to the notice. This requirement does not apply to any Federal savings bank that was chartered prior to October 15, 1982, as a savings bank under State law or any savings association that acquired its principal assets from such an institution.

PART 363—ANNUAL INDEPENDENT AUDITS AND REPORTING REQUIREMENTS

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APPENDIX A TO PART 363—GUIDELINES AND INTERPRETATIONS

AUTHORITY: 12 U.S.C. 1831m.

SOURCE: 58 FR 31335, June 2, 1993, unless otherwise noted.

§363.0 OMB control number.

The collecting of information requirements in this part have been approved by the Office of Management and Budget under OMB control number 3064-0113.

§363.1 Scope.

(a) *Applicability.* This part applies with respect to fiscal years of insured depository institutions which begin after December 31, 1992. This part does not apply with respect to any fiscal year of any insured depository institution, the total assets of which, at the beginning of such fiscal year, are less than \$500 million.

(b) *Compliance by subsidiaries of holding companies.* (1) The audited financial statements requirement of §363.2(a) may be satisfied for an insured depository institution that is a subsidiary of a holding company by audited financial statements of the consolidated holding company.

(2) The other requirements of this part for an insured depository institution that is a subsidiary of a holding company may be satisfied by the holding company if:

(i) The services and functions comparable to those required of the insured depository institution by this part are provided at the holding company level; and

(ii) The insured depository institution has as of the beginning of its fiscal year:

(A) Total assets of less than \$5 billion; or

(B) Total assets of \$5 billion or more and a composite CAMEL rating of 1 or 2.

(3) The appropriate federal banking agency may revoke the exception in paragraph (b)(2) of this section for any institution with total assets in excess of \$9 billion for any period of time during which the appropriate federal banking agency determines that the institution's exemption would create a significant risk to the affected deposit insurance fund.

[58 FR 31335, June 2, 1993, as amended at 61 FR 6493, Feb. 21, 1996]

§363.2 Annual reporting requirements.

(a) *Audited financial statements.* Each insured depository institution shall prepare annual financial statements in accordance with generally accepted accounting principles which shall be audited by an independent public accountant.

(b) *Management report.* Each insured depository institution annually shall prepare, as of the end of the institution's most recent fiscal year, a management report signed by its chief executive officer and chief accounting or chief financial officer which contains:

(1) A statement of management's responsibilities for preparing the institution's annual financial statements, for establishing and maintaining an adequate internal control structure and

procedures for financial reporting, and for complying with laws and regulations relating to safety and soundness which are designated by the FDIC and the appropriate federal banking agency; and

(2) Assessments by management of the effectiveness of such internal control structure and procedures as of the end of such fiscal year and the institution's compliance with such laws and regulations during such fiscal year.

§363.3 Independent public accountant.

(a) *Annual audit of financial statements.* Each insured depository institution shall engage an independent public accountant to audit and report on its annual financial statements in accordance with generally accepted auditing standards and section 37 of the Federal Deposit Insurance Act (12 U.S.C. 1831n). The scope of the audit engagement shall be sufficient to permit such accountant to determine and report whether the financial statements are presented fairly and in accordance with generally accepted accounting principles.

(b) *Additional report.* Such independent public accountant shall examine, attest to, and report separately on, the assertion of management concerning the institution's internal control structure and procedures for financial reporting. The attestation shall be made in accordance with generally accepted standards for attestation engagements.

(c) *Notice by accountant of termination of services.* An independent public accountant performing an audit under this part who ceases to be the accountant for an insured depository institution shall notify the FDIC and the appropriate federal banking agency in writing of such termination within 15 days after the occurrence of such event, and set forth in reasonable detail the reasons for such termination.

[58 FR 31335, June 2, 1993, as amended at 62 FR 63257, Nov. 28, 1997]

§363.4 Filing and notice requirements.

(a) *Annual reporting.* Within 90 days after the end of its fiscal year, each insured depository institution shall file with each of the FDIC, the appropriate