

public confidence in the depository institution.

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

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

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

(ii)(A) Any other relevant information, mitigation circumstance, documentation, or other evidence in support of the applicant's position. An applicant may also request a hearing under § 303.10.

(B) Failure by an applicant to file a written response with the FDIC to a notice of intent or a temporary order within the specified time period, shall constitute a waiver of the opportunity to respond and shall constitute consent to a final order under this paragraph (g). The FDIC shall consider any such response, if filed in a timely manner, within 30 days of receiving the response.

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

[67 FR 79247, Dec. 27, 2002, as amended at 68 FR 50459, Aug. 21, 2003]

§ 303.12 Waivers.

(a) The Board of Directors, of the FDIC (Board) may, for good cause and to the extent permitted by statute, waive the applicability of any provision of this chapter.

(b) The provisions of this chapter may be suspended, revoked, amended or waived for good cause shown, in whole or in part, at any time by the Board, subject to the provisions of the Administrative Procedure Act and the provisions of this chapter. Any provision of the rules may be waived by the Board on its own motion or on petition if good cause thereof is shown.

[68 FR 50459, Aug. 21, 2003]

§ 303.13 [Reserved]

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

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

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

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

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

§ 303.15 Certain limited liability companies deemed incorporated under State law.

(a) For purposes of the definition of "State bank" in 12 U.S.C. 1813(a)(2) and this Chapter, a banking institution that is chartered as a limited liability company (LLC) under the law of any