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## DEPARTMENT OF THE TREASURY

### Office of Thrift Supervision

#### 12 CFR Part 562

[No. 2003-45]

RIN 1550-AB54

#### Regulatory Reporting Standards: Qualifications for Independent Public Accountants Performing Audit Services for Voluntary Audit Filers

**AGENCY:** Office of Thrift Supervision, Treasury.

**ACTION:** Final rule.

**SUMMARY:** The Office of Thrift Supervision (OTS) is adopting as final an interim final rule that amended its annual independent audit requirements for small, non-public, highly rated savings associations that voluntarily obtain independent audits. This change made OTS's requirements more consistent with those of the other federal banking agencies and avoided the potential regulatory burden from imposing unnecessary additional restrictions.

**EFFECTIVE DATE:** September 8, 2003.

**FOR FURTHER INFORMATION CONTACT:** Christine Smith, Project Manager, (202) 906-5740, Examination Policy Division, or Teresa A. Scott, Counsel (Banking & Finance), (202) 906-6478, Regulations and Legislation Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

#### SUPPLEMENTARY INFORMATION:

#### Background

Savings associations that are publicly traded,<sup>1</sup> have assets of \$500 million or

more<sup>2</sup>, or have a 3, 4, or 5 CAMEL rating<sup>3</sup> must obtain and file an annual independent audit. Small, non-public, 1- or 2-rated savings associations are not required to obtain an independent audit. OTS regulations had required that public accountants conducting these independent audits (whether required or voluntary) follow the SEC independence rules, including those governing outsourcing of non-audit services. 12 CFR 562.4 (d) and (e) (2002).

On July 30, 2002, Congress passed the Sarbanes-Oxley Act of 2002.<sup>4</sup> Title II of that act sets forth standards for auditor independence. The standards include section 201(g)(5), which prohibits a registered public accountant from performing an audit for a public company contemporaneously with providing that company with delineated non-audit services, including internal audit outsourcing services. This congressional mandate affected a change in the SEC independence rules.

As reflected in the interim final rule, OTS believed that if its rules remained unchanged, a savings association obtaining a voluntary audit may not use its external auditors to perform non-auditing services.<sup>5</sup> Although OTS encourages non-publicly held savings associations that voluntarily file audits with the agency to follow the prohibition from Sarbanes-Oxley, OTS was concerned that an absolute prohibition in this manner may be unnecessarily detrimental to some voluntary filers. Specifically, OTS believed that small institutions with less complex operations and limited staff, may, in some instances, use their independent public accountant to perform both an external audit and some or all of an audit client's non-audit activities consistent with the OTS's safety and soundness objectives. Some of these institutions may not have access to a full range of qualified public accountants such that they could engage

both an external auditor and a different outside firm to perform non-audit functions. Other institutions may reasonably have determined that the costs of having a full time in-house staff to perform those services exceed the benefits.

Since OTS issued the interim rule, the SEC, based on provisions from the Sarbanes-Oxley Act, added new provisions to its independence rules, including ones governing prohibited non-audit services (such as the prohibition on internal audit outsourcing), pre-approval requirements, auditor partner rotation, auditor reports to the audit committee, and conflict of interest. Without the OTS rule change, voluntary filers would also be subject to these SEC provisions on independence. The OTS is equally concerned that these additional SEC independence rules may unnecessarily burden voluntary filers.

Moreover, none of the other banking agencies require that institutions that file voluntary audits follow the SEC independence rules. OTS believed that requiring savings associations to do so might place these savings associations at an unnecessary competitive disadvantage as these requirements became more restrictive.

For all of these reasons, OTS is finalizing its interim rule that amended its regulation to eliminate the requirement that institutions voluntarily filing audits comply with the SEC independence rules while retaining the requirement that institutions filing voluntary audits comply with the AICPA Professional Conduct Code, including those sections that address independence.<sup>6</sup>

#### Discussion of Comments

OTS received two public comments, both from trade associations. Both trade associations strongly supported the interim rule, noting that the rule change encourages voluntary filers to continue to file audits with the OTS. Moreover, the commenters heralded the fact that the same rule that applies to smaller banks by other federal banking regulators would now apply to smaller savings associations.

<sup>6</sup> OTS understands that passage of the Sarbanes-Oxley Act may place increased responsibilities on small publicly held savings associations, including the prohibitions against outsourcing internal non-audit services to the association's external auditor. Nothing in this rule affects those requirements.

<sup>1</sup> 17 U.S.C. 78m (West 2002). Generally, federally-chartered publicly traded savings associations file annual audits with OTS, while generally publicly traded federally-chartered thrift holding companies file audits with the Securities and Exchange Commission (SEC).

<sup>2</sup> 12 CFR 363.2 (2002). These institutions file annual audits with the Federal Deposit Insurance Corporation and OTS.

<sup>3</sup> 12 CFR 562.4(b). These savings associations file annual audits with OTS.

<sup>4</sup> Sarbanes-Oxley Act of 2002, Pub. L. 107-204, section 201, 116 Stat. 745 (2002).

<sup>5</sup> These services include bookkeeping, financial information systems design, appraisal, valuation, and actuarial services, and internal audit outsourcing services. For a complete list of prohibited activities, see *id.* at section 201.

**Findings and Certifications***A. Executive Order 12866*

The Director of OTS has determined that this final rule does not constitute a significant regulatory action for the purposes of Executive Order 12866.

*B. Regulatory Flexibility Act*

Under the Regulatory Flexibility Act, OTS must either provide an Initial Regulatory Flexibility Analysis (IRFA) with this final rule, or certify that the rule would not have a significant economic impact on a substantial number of small entities. Pursuant to section 605(b) of the Regulatory Flexibility Act, OTS certifies that this final rule will not have a significant economic impact on a substantial number of small entities. It removes a requirement that could, if left unchecked, inadvertently lead to potential additional regulatory burden. The final rule, which is written in plain language, reduces regulatory burden.

*C. Unfunded Mandates Act of 1995*

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104-4 (Unfunded Mandates Act) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. OTS has determined that the effect of this rule will not result in expenditures by State, local, or tribal governments or by the private sector of \$100 million or more. Rather, the rule imposes no new requirements and makes only burden reducing amendments to current OTS regulations. Accordingly, OTS has not prepared a budgetary impact statement for this rule or specifically addressed the regulatory alternatives considered.

*D. Effective Date*

For the reasons stated in the interim rule, published on November 25, 2002 (67 FR 70529), OTS is making this final rule effective immediately.

*E. Paperwork Reduction Act*

The OTS has determined that this interim final rule does not involve a change to collections of information previously approved under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

**List of Subjects in 12 CFR Part 562**

Accounting, Reporting and recordkeeping requirements, Savings associations.

**PART 562—REGULATORY REPORTING STANDARDS**

■ Accordingly, the Office of Thrift Supervision adopts as final, without change, the interim rule published on November 25, 2002 at 67 FR 70529 amending part 562 in Title 12, Chapter V, Code of Federal Regulations.

Dated: *September 2, 2003.*

By the Office of Thrift Supervision.

**James E. Gilleran,**

*Director.*

[FR Doc. 03-22779 Filed 9-5-03; 8:45 am]

**BILLING CODE 6720-01-P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 39**

**[Docket No. 2002-SW-53-AD; Amendment 39-13294; AD 2003-18-03]**

**RIN 2120-AA64**

**Airworthiness Directives; Eurocopter France Model EC 155B, SA-365N and N1, AS-365N2, and AS 365 N3 Helicopters**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) for the specified Eurocopter France (Eurocopter) model helicopters that requires inspecting the hydraulic brake hose (hose) for crazing, pinching, distortion, or leaks at the torque link hinge and replacing the hose, if necessary. This amendment also requires inspecting the hose and the emergency flotation gear pipe to ensure adequate clearance, and adjusting the landing gear leg, if necessary. This amendment is prompted by a report of a hose compression due to interference with a clamp that attaches the emergency flotation gear pipe. The actions specified by this AD are intended to prevent failure of the hose, resulting in failure of hydraulic pressure to the brakes on the affected landing gear wheel, and subsequent loss of control of the helicopter during a run-on landing.

**DATES:** Effective October 14, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 14, 2003.

**ADDRESSES:** The service information referenced in this AD may be obtained

from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053-4005, telephone (972) 641-3460, fax (972) 641-3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:**

Uday Garadi, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Safety Management Group, Fort Worth, Texas 76193-0110, telephone (817) 222-5123, fax (817) 222-5961.

**SUPPLEMENTARY INFORMATION: A**

proposal to amend 14 CFR part 39 to include an AD for Eurocopter Model EC 155B, SA-365N and N1, AS-365N2, and AS 365 N3 helicopters was published in the **Federal Register** on April 7, 2003 (68 FR 16735). That action proposed to require, within the next 10 hours time-in-service (TIS), inspecting the hose for crazing, pinching, distortion, or leaks at the torque link hinge and replacing the hose before further flight, if necessary. It also proposed to require, at the next 100-hour TIS inspection, inspecting the hose and the emergency flotation gear pipe to ensure adequate clearance, and adjusting the landing gear leg, if necessary.

The Direction Generale De L'Aviation Civile (DGAC), the airworthiness authority for France, notified the FAA that an unsafe condition may exist on Eurocopter Model EC 155B, SA-365N and N1, AS-365N2, and AS 365 N3. The DGAC advises of receiving a report of a hose compression due to interference with a clamp that attaches the emergency flotation gear pipe.

Eurocopter has issued Alert Telex No. 32.00.09, for Model AS 365N, N1, N2, and N3 helicopters, and Alert Telex No. 32A004, for Model EC 155B helicopters, both dated July 31, 2002. These alert telexes specify checks of the condition of the hose, as well as ensuring that there is no interference between the hose and the emergency flotation gear pipe when the landing gear is retracted. The DGAC classified these alert telexes as mandatory and issued AD No. 2002-475-007(A) for Model EC 155 B helicopters, and AD No. 2002-474-058(A), for Model AS 365 N, N1, N2, and N3 helicopters, both dated September 18, 2002, to ensure the continued airworthiness of these helicopters in France.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the