

listed in § 303.81; add a reference to parent company in the provisions requiring a change in control notice for a state nonmember bank in § 303.82; add to § 303.83(a) exemptions for acquisitions of the voting shares of bank holding companies, and for acquisitions of the voting shares of savings and loan holding companies, and add technical conforming amendments to various sections in 12 CFR 303.80 through 303.83.

It has also been the FDIC's practice not to require a change in control notice in those cases where either the Board of Governors of the Federal Reserve System or the Office of Thrift Supervision reviews a change in control notice for the proposed transaction. For example, where a person proposes to acquire control of a bank holding company that controls a state nonmember bank, and the Board of Governors of the Federal Reserve System reviews a change in control notice for the same transaction, the FDIC considers it an unnecessary duplication for the acquirer to also file a change in control notice with the FDIC. The proposed changes would codify the FDIC's practice in that regard.

The FDIC is also proposing amendments to clarify when an acquisition subject to the Change in Bank Control Act may be consummated. Section 7(j) of the FDI Act, 12 U.S.C. 1817(j), generally provides that any person acquiring control of an insured depository institution must give the appropriate federal banking agency sixty days prior written notice of such proposed transaction. The existing § 303.85 could be interpreted to permit consummation of the proposed transaction prior to the expiration of that 60-day period. Section 303.85(a) provides that the 60-day notice period "shall commence on the date of receipt of a substantially complete notice," and further provides that the FDIC will notify the person submitting the notice of, "the date the notice is accepted for processing." Section 303.85(b) suggests that the 60 day period starts upon "submission to the regional director of a substantially complete notice." The use of this terminology in referring to the 60-day notice period could lead to confusion about when the 60-day notice period commences and about when an acquisition may be consummated. In order to eliminate the potential for misunderstandings regarding the time period available to the FDIC for considering a proposed change in bank control transaction, the FDIC proposes to amend 12 CFR 303.85 (a) and (b) to make clear that the 60-day notice period commences on the day after the date

that the appropriate regional director accepts the notice as substantially complete.

In § 303.86 the FDIC proposes to provide a more descriptive heading for paragraph (c) by including the phrase, "waiving publication, acting before close of public comment period" and to amend paragraph (c) by substituting "paragraphs (a) and (d)" for "this paragraph."

A technical correction to § 303.244 creates a cross-reference to § 359.4(a)(4) of this chapter regarding golden parachutes and severance plan payments to make clear the responsibilities of an applicant seeking approval of filings. Specifically, insured depository institutions, depository institution holding companies or institution-affiliated parties making requests for such payments often overlook the requirement that a party submitting such an application demonstrate that it does not possess and is not aware of any information, evidence, documents or other materials which would indicate that there is a reasonable basis to believe, at the time such payment is made, that the institution-affiliated party who is to benefit from a golden parachute or severance plan engaged in any breach of fiduciary duty or other misconduct which would have a material adverse effect on the bank; is substantially responsible for the bank's insolvency; violated any law which would have a material effect on the bank; or violated certain federal criminal and currency-reporting laws. In addition, with regard to part 359 of this chapter, the FDIC proposes to revise the reference in § 359.1(f)(1)(ii)(C) to part 303 to read, "303.101(c)."

III. Other Regulatory Changes

Technical corrections are being proposed to part 333.4—Conversions from mutual to stock, form to correct references to part 303 of this chapter. The old citations in § 333.4(a) and (c) would be replaced with: "subpart I of part 303 of this chapter."

A technical correction is being proposed to part 347—International Banking, § 347.108(f) to reference the correct citation with regard to procedures for applications and notices for obtaining FDIC approval to invest in foreign organizations. Procedures are set out in subpart J of part 303 of this chapter, not subpart D of part 347 as provided for in the current regulation.

A technical correction is also being proposed to part 348—Management Official Interlocks, § 348.2 regarding the definition of Management official to correct the cross-reference to part 303 of

this chapter. The correct citation should be to 12 CFR 303.101(b).

IV. Request for Public Comment as Part EGRPRA and Regulatory Flexibility Act Regulatory Review

Consistent with our obligation pursuant to Section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA, 12 U.S.C. 3311), the FDIC requests public comment to identify any areas of part 303, not merely those sections for which changes are being proposed today, that are outdated, unnecessary, or unduly burdensome. The FDIC also requests public comment on whether part 303 should be continued without change, amended or rescinded to minimize any significant economic impact it may have on a substantial number of small insured institutions (*i.e.*, those with assets of \$150 million or less) consistent with our obligation pursuant to Section 610 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

V. Regulatory Flexibility Act Analysis

Pursuant to 5 U.S.C. 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the FDIC hereby certifies that the proposed amendments set forth in this proposed rule will not, if promulgated through a final rule, have a significant economic impact on a substantial number of small entities. The proposed rule makes primarily technical changes to the existing rule.

The FDIC invites the public to comment on whether the proposed rule reduces regulatory burden and to provide the FDIC with suggested alternatives to those set forth in the proposed rule. The FDIC will carefully review all comments received prior to issuing the final regulation.

VI. Paperwork Reduction Act

This proposed rule does not create or modify any collection of information pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Consequently, no information has been submitted to the Office of Management and Budget for review.

VII. Plain Language Requirement

Section 722 of the Gramm-Leach-Bliley Act of 1999 requires the federal banking agencies to use "plain language" in all proposed and final rules published after January 1, 2000. We invite your comments on how to make this proposal easier to understand. For example:

(1) Have we organized the material to suit your needs?

(2) Are the requirements in the rule clearly stated?

(3) Does the rule contain technical language or jargon that isn't clear?

(4) What else could we do to make the rule easier to understand?

VII. Assessment of Impact of Federal Regulation on Families

The FDIC has determined that the proposed rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Pub. L. 105-277, 112 Stat. 2681).

List of Subjects

12 CFR Part 303

Administrative practice and procedure, Banks, banking, Bank merger, Branching, Foreign investments, Golden parachute payments, Insured branches, Interstate branching, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 333

Banks, banking, Corporate powers.

12 CFR Part 347

Bank deposit insurance, Banks, Credit, Foreign banking, Foreign investments, Insured branches, Investments, Reporting and recordkeeping requirements, United States investments abroad.

12 CFR Part 348

Antitrust, Banks, banking, Holding companies, Reporting and recordkeeping requirements.

12 CFR Part 359

Bank deposit insurance, Banks, banking, Golden parachute payments, Indemnity payments.

For the reasons set out in the preamble, the FDIC hereby proposes to amend 12 CFR parts 303, 333, 347, 348 and 359.

PART 303—FILING PROCEDURES

1. The authority citation for part 303 continues to read as follows:

Authority: 12 U.S.C. 378, 1813, 1815, 1816, 1817, 1818, 1819, (Seventh and Tenth), 1820, 1823, 1828, 1828a, 1831a, 1831e, 1831o, 1831p-1, 1831w, 1835a, 3104, 3105, 3108, 3207, 15 U.S.C. 1601-1607, 6716.

§ 303.2 [Amended]

2. In § 303.2 remove the phrase, "For purposes of this part," and add in its place the phrase, "Except as modified or otherwise defined in this part, terms used in this part that are defined in the

Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*) have the meanings provided in the Federal Deposit Insurance Act. Additional definitions of terms used in this part are as follows:".

§ 303.4 [Amended]

3. In § 303.4 after the phrase, "For purposes of this part," add the words, "and except as otherwise specifically provided,".

§ 303.8 [Amended]

4. In § 303.8, in the last sentence of paragraph (a) remove "\$ 309.5(c)" and add in its place "\$ 309.5(f)".

5. In § 303.11, paragraph (g)(3)(ii) is revised to read as follows:

§ 303.11 Decisions.

* * * * *

(g) * * *

(3) * * *

(ii) (A) Any other relevant information, mitigating 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.

* * * * *

6. Section 303.12 is added to read as follows:

§ 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.

7. In § 303.22, paragraph (a)(1) is amended by adding a sentence at the end to read as follows:

§ 303.22 Processing.

(a) * * *

(1) * * * An eligible holding company is defined as a bank or thrift holding company that has consolidated

assets of at least \$150 million or more; a BOPEC rating of at least "2" for bank holding companies or an above average or "A" rating for thrift holding companies; and at least 75 percent of its consolidated depository institution assets comprised of eligible depository institutions.

* * * * *

8. Section 303.80 is revised to read as follows:

§ 303.80 Scope.

This subpart sets forth the procedures for submitting a notice to acquire control of an insured state nonmember bank or a parent company of an insured state nonmember bank pursuant to the Change in Bank Control Act of 1978, section 7(j) of the FDI Act (12 U.S.C. 1817(j)).

9. Section 303.81 is revised to read as follows:

§ 303.81 Definitions.

For purposes of this subpart:

Acquisition includes a purchase, assignment, transfer, pledge or other disposition of voting shares, or an increase in percentage ownership resulting from a redemption of voting shares of an insured state nonmember bank or a parent company.

Acting in concert means knowing participation in a joint activity or parallel action towards a common goal of acquiring control of an insured state nonmember bank or a parent company, whether or not pursuant to an express agreement.

Control means the power, directly or indirectly, to direct the management or policies of an insured bank or a parent company or to vote 25 percent or more of any class of voting shares of an insured bank or a parent company.

Parent Company means any company that controls, directly or indirectly, an insured state nonmember bank.

Person means an individual, corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, and any other form of entity; and a voting trust, voting agreement, and any group of persons acting in concert. 10. Section 303.82 is amended by revising paragraphs (a), (b), (c) and (d) to read as follows:

§ 303.82 Transactions requiring prior notice.

(a) *Prior notice requirement.* Any person acting directly or indirectly, or through or in concert with one or more persons, shall give the FDIC 60 days prior written notice, as specified in § 303.84, before acquiring control of an

insured state nonmember bank or any parent company, unless the acquisition is exempt under § 303.83.

(b) *Acquisitions requiring prior notice*— (1) *Acquisition of control*. The acquisition of control, unless exempted, requires prior notice to the FDIC.

(2) *Rebuttable presumption of control*. The FDIC presumes that an acquisition of voting shares of an insured state nonmember bank or a parent company constitutes the acquisition of the power to direct the management or policies of an insured bank or a parent company requiring prior notice to the FDIC, if, immediately after the transaction, the acquiring person (or persons acting in concert) will own, control, or hold with power to vote 10 percent or more of any class of voting shares of the institution, and if:

(i) The institution has registered shares under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l); or

(ii) No other person will own, control or hold the power to vote a greater percentage of that class of voting shares immediately after the transaction. If two or more persons, not acting in concert, each propose to acquire simultaneously equal percentages of 10 percent or more of a class of voting shares of an insured state nonmember bank or a parent company, each such person shall file prior notice with the FDIC.

(c) *Acquisitions of loans in default*. The FDIC presumes an acquisition of a loan in default that is secured by voting shares of an insured state nonmember bank or a parent company to be an acquisition of the underlying shares for purposes of this section.

(d) *Other transactions*. Acquisitions other than those set forth in paragraph (b)(2) of this section resulting in a person's control of less than 25 percent of a class of voting shares of an insured state nonmember bank or a parent company are not deemed by the FDIC to constitute control for purposes of the Change in Bank Control Act (12 U.S.C. 1817j).

* * * * *

11. Section 303.83 is amended by revising paragraphs (a)(1) through (a)(2), (a)(6) and (a)(7), (b)(1) and (b)(2), and adding paragraph (a)(8) to read as follows:

§ 303.83 Transactions not requiring prior notice.

(a) * * *

(1) The acquisition of additional voting shares of an insured state nonmember bank or a parent company by a person who:

(i) Held the power to vote 25 percent or more of any class of voting shares of the institution continuously since the

later of March 9, 1979, or the date that the institution commenced business as an insured state nonmember bank or a parent company; or

(ii) Is presumed, under § 303.82(b)(2), to have controlled the institution continuously since March 9, 1979, if the aggregate amount of voting shares held does not exceed 25 percent or more of any class of voting shares of the institution or, in other cases, where the FDIC determines that the person has controlled the institution continuously since March 9, 1979;

(2) The acquisition of additional shares of a class of voting shares of an insured state nonmember bank or a parent company by any person (or persons acting in concert) who has lawfully acquired and maintained control of the institution (for purposes of § 303.82) after complying with the procedures of the Change in Bank Control Act to acquire voting shares of the institution under this subpart;

* * * * *

(6) The receipt of voting shares of an insured state nonmember bank or a parent company through a pro rata stock dividend;

(7) The acquisition of voting shares in a foreign bank, which has an insured branch or branches in the United States. (This exemption does not extend to the reports and information required under paragraphs 9, 10, and 12 of the Change in Bank Control Act of 1978 (12 U.S.C. 1817(j)(9), (10), and (12)); and

(8) The acquisition of voting shares of a depository institution holding company that either the Board of Governors of the Federal Reserve System or the Office of Thrift Supervision reviews pursuant to the Change in Bank Control Act (12 U.S.C. 1817(j)).

(b) *Prior notice exemption*. (1) The following acquisitions of voting shares of an insured state nonmember bank or a parent company, which otherwise would require prior notice under this subpart, are not subject to the prior notice requirements if the acquiring person notifies the appropriate FDIC office within 90 calendar days after the acquisition and provides any relevant information requested by the FDIC:

(i) The acquisition of voting shares through inheritance;

(ii) The acquisition of voting shares as a bona fide gift; or

(iii) The acquisition of voting shares in satisfaction of a debt previously contracted in good faith, except that the acquirer of a defaulted loan secured by a controlling amount of a state nonmember bank's voting securities or a parent company's voting securities shall file a notice before the loan is acquired.

(2) The following acquisitions of voting shares of an insured state nonmember bank or a parent company, which otherwise would require prior notice under this subpart, are not subject to the prior notice requirements if the acquiring person notifies the appropriate FDIC office within 90 calendar days after receiving notice of the acquisition and provides any relevant information requested by the FDIC.

(i) A percentage increase in ownership of voting shares resulting from a redemption of voting shares by the issuing bank or a parent company; or

(ii) The sale of shares by any shareholder that is not within the control of a person resulting in that person becoming the largest shareholder.

* * * * *

12. Section 303.85 is amended by revising paragraphs (a) and (b)(1) to read as follows:

§ 303.85 Processing.

(a) *Acceptance of notice, additional information*. The FDIC shall notify the person or persons submitting a notice under this subpart in writing of the date the notice is accepted as substantially complete. The FDIC may request additional information at any time.

(b) *Commencement of the 60-day notice period: consummation of acquisition*. (1) The 60-day notice period specified in § 303.82 shall commence on the day after the date of acceptance of a substantially complete notice by the appropriate regional director. The notificant(s) may consummate the proposed acquisition after the expiration of the 60-day notice period, unless the FDIC disapproves the proposed acquisition or extends the notice period.

* * * * *

13. Section 303.86 is amended by revising paragraph (c) to read as follows:

§ 303.86 Public notice requirements.

* * * * *

(c) *Shortening or waiving public comment period, waiving publication; acting before close of public comment period*. 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 paragraph (a) of this section, 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 and soundness of the bank to be acquired.

* * * * *

14. In § 303.244, paragraphs (c)(4) and (c)(5) are revised and new paragraph (c)(6) is added to read as follows:

§ 303.244 Golden parachute and severance plan payments.

* * * * *

(c) * * *

(4) The cost of the proposed payment and its impact on the institution's capital and earnings;

(5) The reasons why the consent to the payment should be granted; and

(6) Certification and documentation as to each of the points cited in § 359.4(a)(4).

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PART 333—EXTENSION OF CORPORATE POWERS

15. The authority citation for part 333 continues to read as follows:

Authority: 12 U.S.C. 1816, 1818, 1819 (“Seventh”, “Eighth” and “Tenth”), 1828, 1828(m), 1831p–1(c).

§ 333.4 [Amended]

16. In § 333.4, paragraphs (a) and (c) are amended by removing the words “§ 303.15 of this chapter” and adding in their place the words “subpart I of part 303 of this chapter.”

PART 347—INTERNATIONAL BANKING

17. The authority citation for part 347 continues to read as follows:

Authority: 12 U.S.C. 1813, 1815, 1817, 1819, 1820, 1828, 3103, 3104, 3105, 3108; Title IX, Pub. L. 98–181, 97 Stat. 1153.

18. Section 347.108 is amended by revising paragraph (f) to read as follows:

§ 347.108 Obtaining FDIC approval to invest in foreign organizations.

* * * * *

(f) *Procedures.* Procedures for applications and notices under this section are set out in subpart J of part 303 of this chapter.

PART 348—MANAGEMENT OFFICIAL INTERLOCKS

19. The authority citation for part 348 continues to read as follows:

Authority: 12 U.S.C. 1823(k), 3207.

20. In § 348.2, paragraph (j)(1)(iii) is revised to read as follows:

§ 348.2 Definitions.

* * * * *

(j) * * *

(1) * * *

(iii) A senior executive officer as that term is defined in 12 CFR 303.101(b).

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PART 359—GOLDEN PARACHUTE AND INDEMNIFICATION PAYMENTS

21. The authority citation for part 359 continues to read as follows:

Authority: 12 U.S.C. 1828(k).

§ 359.1 [Amended]

22. In § 359.1(f)(1)(ii)(C) remove the reference to “§ 303.14(a)(4)” and add in its place, “§ 303.101(c)”.

Dated at Washington, DC, this 3rd day of December, 2002.

By order of the Board of Directors,
Federal Deposit Insurance Corporation.

Valerie Best,

Assistant Executive Secretary.

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