

and the applicable implementing regulation found in subpart A of this part 362 before the date on which any such activity became for the first time permissible for a financial subsidiary of a national bank; and

(ii) Which insured state nonmember bank and its subsidiary continue to meet the conditions and restrictions of the section 24 order or regulation approving the activity as well as other applicable law.

(2) *Continuing authority under section 24(f) of the Federal Deposit Insurance Act.* Notwithstanding §362.18(a) through (f), an insured state bank with authority under section 24(f) of the Federal Deposit Insurance Act (12 U.S.C. 1831a(f)) to hold equity securities may continue to establish new subsidiaries to engage in that investment activity.

(3) *Relief from conditions.* Any state nonmember bank that meets the requirements of paragraph (g)(1) of this section or that is subject to section 46(b) of the Federal Deposit Insurance Act (12 U.S.C. 1831w(b)) may submit an application in compliance with §303.121 of this chapter and seek the consent of the FDIC under the procedure in §303.122(b) of this chapter for modification of any conditions or restrictions the FDIC previously imposed in connection with a section 24 order or regulation approving the activity.

(4) *New financial subsidiaries.* Notwithstanding subpart A of this part 362, an insured state bank may not, on or after November 12, 1999, acquire control of, or acquire an interest in, a financial subsidiary that engages in activities as principal or commences any new activity under section 46(a) of the Federal Deposit Insurance Act (12 U.S.C. 1831w) other than as provided in this section.

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 CAMELS 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

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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 Deposit Insurance Fund.

[58 FR 31335, June 2, 1993, as amended at 61 FR 6493, Feb. 21, 1996; 70 FR 71232, Nov. 28, 2005; 71 FR 20527, Apr. 21, 2006]

§ 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) An assessment by management of the institution's compliance with such laws and regulations during such fiscal year; and

(3) For an institution with total assets of \$1 billion or more at the beginning of such fiscal year, an assessment by management of the effectiveness of such internal control structure and procedures as of the end of such fiscal year.

[58 FR 31335, June 2, 1993, as amended at 70 FR 71232, Nov. 28, 2005]

§ 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 reports.* For each insured depository institution with total assets of \$1 billion or more at the beginning of the institution's fiscal year, 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; 70 FR 71232, Nov. 28, 2005]

§ 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 federal banking agency, and any appropriate state bank supervisor, two copies of an annual report containing audited annual financial statements, the independent public accountant's report thereon, management's statements and assessments, and the independent public accountant's attestation report concerning the institution's internal control structure and procedures for financial reporting as required by §§ 363.2(a), 363.3(a), 363.2(b), and 363.3(b), respectively.

(b) *Public availability.* The annual report in paragraph (a) of this section shall be available for public inspection.

(c) *Independent accountant's reports.* Each insured depository institution