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Subpart I—Submission and Review of Safety and Soundness Compliance Plans and Issuance of Orders To Correct Safety and Soundness Deficiencies

SOURCE: 60 FR 35682, July 10, 1995, unless otherwise noted.

§ 263.300 Scope.

The rules and procedures set forth in this subpart apply to State member banks that are subject to the provisions of section 39 of the Federal Deposit Insurance Act (section 39) (12 U.S.C. 1831p–1).

§ 263.301 Purpose.

Section 39 of the FDI Act requires the Board to establish safety and soundness standards. Pursuant to section 39, a bank may be required to submit a compliance plan if it is not in compliance with a safety and soundness standard established by guideline under section 39(a) or (b). An enforceable order under section 8 may be issued if, after being notified that it is in violation of a safety and soundness standard established under section 39, the bank fails to submit an acceptable compliance plan or fails in any material respect to implement an accepted plan. This subpart establishes procedures for requiring submission of a compliance plan and issuing an enforceable order pursuant to section 39.

§ 263.302 Determination and notification of failure to meet safety and soundness standard and request for compliance plan.

(a) *Determination.* The Board may, based upon an examination, inspection, or any other information that becomes available to the Board, determine that a bank has failed to satisfy the safety and soundness standards contained in the Interagency Guidelines Establishing Standards for Safety and Soundness or the Interagency Guidelines Establishing Standards for Safeguarding Customer Information, set forth in appendices D–1 and D–2 to part 208 of this chapter, respectively.

(b) *Request for compliance plan.* If the Board determines that a State member bank has failed a safety and soundness standard pursuant to paragraph (a) of this section, the Board may request, by letter or through a report of examination, the submission of a compliance plan, and the bank shall be deemed to have notice of the request three days after mailing of the letter by the Board or delivery of the report of examination.

[60 FR 35682, July 10, 1995, as amended at 63 FR 55488, Oct. 15, 1998; 66 FR 8637, Feb. 1, 2001]

§ 263.303 Filing of safety and soundness compliance plan.

(a) *Schedule for filing compliance plan*—(1) *In general.* A State member bank shall file a written safety and soundness compliance plan with the Board within 30 days of receiving a request for a compliance plan pursuant to § 263.302(b), unless the Board notifies the bank in writing that the plan is to be filed within a different period.

(2) *Other plans.* If a State member bank is obligated to file, or is currently operating under, a capital restoration plan submitted pursuant to section 38 of the FDI Act (12 U.S.C. 1831o), a cease-and-desist order entered into pursuant to section 8 of the FDI Act, a formal or informal agreement, or a response to a report of examination or report of inspection, it may, with the permission of the Board, submit a compliance plan under this section as part of that plan, order, agreement, or response, subject to the deadline provided in paragraph (a)(1) of this section.

(b) *Contents of plan.* The compliance plan shall include a description of the steps the State member bank will take to correct the deficiency and the time within which those steps will be taken.

(c) *Review of safety and soundness compliance plans.* Within 30 days after receiving a safety and soundness compliance plan under this subpart, the Board shall provide written notice to the bank of whether the plan has been approved or seek additional information from the bank regarding the plan. The Board may extend the time within which notice regarding approval of a plan will be provided.

(d) *Failure to submit or implement a compliance plan*—(1) *Supervisory actions.*

If a State member bank fails to submit an acceptable plan within the time specified by the Board or fails in any material respect to implement a compliance plan, then the Board shall, by order, require the bank to correct the deficiency and may take further actions provided in section 39(e)(2)(B). Pursuant to section 39(e)(3), the Board may be required to take certain actions if the bank commenced operations or experienced a change in control within the previous 24-month period, or the bank experienced extraordinary growth during the previous 18-month period.

(2) *Extraordinary growth.* For purposes of paragraph (d)(1) of this section, *extraordinary growth* means an increase in assets of more than 7.5 percent during any quarter within the 18-month period preceding the issuance of a request for submission of a compliance plan, by a bank that is not well capitalized for purposes of section 38 of the FDI Act. For purposes of calculating an increase in assets, assets acquired through merger or acquisition approved pursuant to the Bank Merger Act (12 U.S.C. 1828(c)) will be excluded.

(e) *Amendment of compliance plan.* A State member bank that has filed an approved compliance plan may, after prior written notice to and approval by the Board, amend the plan to reflect a change in circumstance. Until such time as a proposed amendment has been approved, the bank shall implement the compliance plan as previously approved.

§ 263.304 Issuance of orders to correct deficiencies and to take or refrain from taking other actions.

(a) *Notice of intent to issue order*—(1) *In general.* The Board shall provide a bank prior written notice of the Board's intention to issue an order requiring the bank to correct a safety and soundness deficiency or to take or refrain from taking other actions pursuant to section 39 of the FDI Act. The bank shall have such time to respond to a proposed order as provided by the Board under paragraph (c) of this section.

(2) *Immediate issuance of final order.* If the Board finds it necessary in order to carry out the purposes of section 39 of the FDI Act, the Board may, without providing the notice prescribed in paragraph (a)(1) of this section, issue an order requiring a bank immediately to take actions to correct a safety and soundness deficiency or take or refrain from taking other actions pursuant to section 39. A State member bank that is subject to such an immediately effective order may submit a written appeal of the order to the Board. Such an appeal must be received by the Board within 14 calendar days of the issuance of the order, unless the Board permits a longer period. The Board shall consider any such appeal, if filed in a timely matter, within 60 days of receiving the appeal. During such period of review, the order shall remain in effect unless the Board, in its sole discretion, stays the effectiveness of the order.

(b) *Contents of notice.* A notice of intent to issue an order shall include:

(1) A statement of the safety and soundness deficiency or deficiencies that have been identified at the bank;

(2) A description of any restrictions, prohibitions, or affirmative actions that the Board proposes to impose or require;

(3) The proposed date when such restrictions or prohibitions would be effective or the proposed date for completion of any required action; and

(4) The date by which the bank subject to the order may file with the Board a written response to the notice.

(c) *Response to notice*—(1) *Time for response.* A bank may file a written response to a notice of intent to issue an order within the time period set by the Board. Such a response must be received by the Board within 14 calendar days from the date of the notice unless the Board determines that a different period is appropriate in light of the safety and soundness of the bank or other relevant circumstances.

(2) *Contents of response.* The response should include:

(i) An explanation why the action proposed by the Board is not an appropriate exercise of discretion under section 39;

(ii) Any recommended modification of the proposed order; and

(iii) Any other relevant information, mitigating circumstances, documentation, or other evidence in support of

the position of the bank regarding the proposed order.

(d) *Agency consideration of response.* After considering the response, the Board may:

(1) Issue the order as proposed or in modified form;

(2) Determine not to issue the order and so notify the bank; or

(3) Seek additional information or clarification of the response from the bank, or any other relevant source.

(e) *Failure to file response.* Failure by a bank to file with the Board, within the specified time period, a written response to a proposed order shall constitute a waiver of the opportunity to respond and shall constitute consent to the issuance of the order.

(f) *Request for modification or rescission of order.* Any bank that is subject to an order under this subpart may, upon a change in circumstances, request in writing that the Board reconsider the terms of the order, and may propose that the order be rescinded or modified. Unless otherwise ordered by the Board, the order shall continue in place while such request is pending before the Board.

§ 263.305 Enforcement of orders.

(a) *Judicial remedies.* Whenever a State member bank fails to comply with an order issued under section 39, the Board may seek enforcement of the order in the appropriate United States district court pursuant to section 8(i)(1) of the FDI Act.

(b) *Failure to comply with order.* Pursuant to section 8(i)(2)(A) of the FDI Act, the Board may assess a civil money penalty against any State member bank that violates or otherwise fails to comply with any final order issued under section 39 and against any institution-affiliated party who participates in such violation or noncompliance.

(c) *Other enforcement action.* In addition to the actions described in paragraphs (a) and (b) of this section, the Board may seek enforcement of the provisions of section 39 or this part through any other judicial or administrative proceeding authorized by law.

Subpart J—Removal, Suspension, and Debarment of Accountants From Performing Audit Services

SOURCE: 68 FR 48267, Aug. 13, 2003, unless otherwise noted.

§ 263.400 Scope.

This subpart, which implements section 36(g)(4) of the Federal Deposit Insurance Act (FDIA)(12 U.S.C. 1831m(g)(4)), provides rules and procedures for the removal, suspension, or debarment of independent public accountants and their accounting firms from performing independent audit and attestation services for insured state member banks and for bank holding companies required by section 36 of the FDIA (12 U.S.C. 1831m).

§ 263.401 Definitions.

As used in this subpart, the following terms shall have the meaning given below unless the context requires otherwise:

(a) *Accounting firm* means a corporation, proprietorship, partnership, or other business firm providing audit services.

(b) *Audit services* means any service required to be performed by an independent public accountant by section 36 of the FDIA and 12 CFR part 363, including attestation services. Audit services include any service performed with respect to the holding company of an insured bank that is used to satisfy requirements imposed by section 36 or part 363 on that bank.

(c) *Banking organization* means an insured state member bank or a bank holding company that obtains audit services that are used to satisfy requirements imposed by section 36 or part 363 on an insured subsidiary bank of that holding company.

(d) *Independent public accountant* (accountant) means any individual who performs or participates in providing audit services.

§ 263.402 Removal, suspension, or debarment.

(a) *Good cause for removal, suspension, or debarment*—(1) *Individuals.* The Board