

Federal Deposit Insurance Corporation

§ 303.101

letter of credit, including an endorsement or standby letter of credit; and any other type of transaction that extends credit or financing to the person or group of persons.

(4) Group of persons includes any number of persons that the foreign bank or any affiliate of a foreign bank has reason to believe:

(i) Are acting together, in concert, or with one another to acquire or control voting securities of the same covered institution, including an acquisition of voting securities of the same covered institution at approximately the same time under substantially the same terms; or

(ii) Have made, or propose to make, a joint filing under section 13 or 14 of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78n), and the rules promulgated thereunder by the Securities and Exchange Commission regarding ownership of the voting securities of the same covered institution.

(c) *Exceptions.* Compliance with paragraph (a) of this section is not required if:

(1) The person or group of persons referred to in paragraph (a) has disclosed the amount borrowed and the security interest therein to the appropriate FDIC office in connection with a notice filed under the CBCA, an application filed under either 12 U.S.C. 1841, *et seq.*, or 12 U.S.C. 1467a, or any other application filed with the FDIC as a substitute for a notice under §303.82 of this subpart, including an application filed under section 18(c) of the FDI Act (Bank Merger Act, 12 U.S.C. 1828(c)) or section 5 of the FDI Act (12 U.S.C. 1815); or

(2) The transaction involves a person or group of persons that has been the owner or owners of record of the stock for a period of one year or more; or, if the transaction involves stock issued by a newly chartered bank, before the bank is opened for business.

(d) *Report requirements for purposes of paragraph (a) of this section.* (1) The consolidated report must indicate the number and percentage of voting securities securing each applicable extension of credit, the identity of the borrower, the number of voting securities held as principal by the foreign bank and any affiliate thereof, and any addi-

tional information that the FDIC may require in connection with a particular report.

(2) A foreign bank, or any affiliate of a foreign bank, shall file the consolidated report in writing within 30 days of the date on which the foreign bank or affiliate first believes that the security for any outstanding credit consists of 25 percent or more of any class of voting securities of a covered institution.

(e) *Foreign bank or affiliate not supervised by FDIC.* If the foreign bank, or any affiliate thereof, is not supervised by the FDIC, it shall file a copy of the report filed under paragraph (a) of this section with its appropriate Federal banking agency.

(f) *Reporting requirement.* After the consummation of a change in control, a covered institution must notify the FDIC in writing of any changes or replacements of its chief executive officer or of any director occurring during the 12-month period beginning on the date of consummation. This notice must be filed within 10 days of such change or replacement and must include a statement of the past and current business and professional affiliations of the new chief executive officers or directors.

§§ 303.89–303.99 [Reserved]

Subpart F—Change of Director or Senior Executive Officer

§ 303.100 Scope.

This subpart sets forth the circumstances under which an FDIC-supervised institution must notify the FDIC of a change in any member of its board of directors or any senior executive officer and the procedures for filing such notice. This subpart implements section 32 of the FDI Act (12 U.S.C. 1831i).

[85 FR 3244, Jan. 21, 2020]

§ 303.101 Definitions.

For purposes of this subpart:

(a) *Director* means a person who serves on the board of directors or board of trustees of an FDIC-supervised institution, except that this term does not include an advisory director who:

§ 303.102

12 CFR Ch. III (1–1–23 Edition)

- (1) Is not elected by the shareholders;
- (2) Is not authorized to vote on any matters before the board of directors or board of trustees or any committee thereof;
- (3) Solely provides general policy advice to the board of directors or board of trustees and any committee thereof; and
- (4) Has not been identified by the FDIC as a person who performs the functions of a director for purposes of this subpart.

(b) *Senior executive officer* means a person who holds the title of president, chief executive officer, chief operating officer, chief managing official (in an insured state branch of a foreign bank), chief financial officer, chief lending officer, chief investment officer, or, without regard to title, salary, or compensation, performs the function of one or more of these positions. *Senior executive officer* also includes any other person identified by the FDIC, whether or not hired as an employee, with significant influence over, or who participates in, major policymaking decisions of the FDIC-supervised institution.

(c) *Troubled condition* means any FDIC-supervised institution that:

- (1) Has a composite rating, as determined in its most recent report of examination, of 4 or 5 under the Uniform Financial Institutions Rating System (UFIRS), or in the case of an insured state branch of a foreign bank, an equivalent rating; or
- (2) Is subject to a proceeding initiated by the FDIC for termination or suspension of deposit insurance; or
- (3) Is subject to a cease-and-desist order or written agreement issued by either the FDIC or the appropriate state banking authority that requires action to improve the financial condition of the FDIC-supervised institution or is subject to a proceeding initiated by the FDIC or state authority which contemplates the issuance of an order that requires action to improve the financial condition of the FDIC-supervised institution, unless otherwise informed in writing by the FDIC; or
- (4) Is informed in writing by the FDIC that it is in troubled condition for purposes of the requirements of this subpart on the basis of the FDIC-supervised institution's most recent report

of condition or report of examination, or other information available to the FDIC.

(d) *FDIC-supervised institution* means any entity for which the FDIC is the appropriate Federal banking agency pursuant to section 3(q) of the FDI Act, 12 U.S.C. 1813(q).

[67 FR 79247, Dec. 27, 2002, as amended at 85 FR 3244, Jan. 21, 2020]

§ 303.102 Filing procedures and waiver of prior notice.

(a) *FDIC-supervised institutions.* An FDIC-supervised institution shall give the FDIC written notice, as specified in paragraph (c)(1) of this section, at least 30 days prior to adding or replacing any member of its board of directors, employing any person as a senior executive officer of the institution, or changing the responsibilities of any senior executive officer so that the person would assume a different senior executive officer position, if the FDIC-supervised institution:

- (1) Is not in compliance with all minimum capital requirements applicable to the FDIC-supervised institution as determined on the basis of the institution's most recent report of condition or report of examination;
- (2) Is in troubled condition; or
- (3) The FDIC determines, in connection with its review of a capital restoration plan required under section 38(e)(2) of the FDI Act (12 U.S.C. 1831o(e)(2)) or otherwise, that such notice is appropriate.

(b) *Insured branches of foreign banks.* In the case of the addition of a member of the board of directors or a change in senior executive officer in a foreign bank having an insured state branch, the notice requirement shall not apply to such additions and changes in the foreign bank parent, but only to changes in senior executive officers in the state branch.

(c) *Waiver of prior notice—*(1) *Waiver requests.* The FDIC may permit an individual, upon petition by the FDIC-supervised institution to the appropriate FDIC office, to serve as a senior executive officer or director before filing the notice required under this subpart if the FDIC finds that:

Federal Deposit Insurance Corporation

§ 303.120

(i) Delay would threaten the safety and soundness of the FDIC-supervised institution;

(ii) Delay would not be in the public interest; or

(iii) Other extraordinary circumstances exist that justify waiver of prior notice.

(2) *Automatic waiver.* The prior 30-day notice is automatically waived in the case of the election of a new director not proposed by management at a meeting of the shareholders of an FDIC-supervised institution, and the individual immediately may begin serving, provided that a complete notice is filed with the appropriate FDIC office within two business days after the individual's election.

(3) *Effect on disapproval authority.* A waiver shall not affect the authority of the FDIC to disapprove a notice within 30 days after a waiver is granted under paragraph (c)(1) of this section or the election of an individual who has filed a notice and is serving pursuant to an automatic waiver under paragraph (c)(2) of this section.

(d)(1) *Content of filing.* The notice required by paragraph (a) of this section shall be filed with the appropriate FDIC office and shall contain information pertaining to the competence, experience, character, or integrity of the individual with respect to whom the notice is submitted, as prescribed in the designated interagency form which is available from any FDIC regional director. The FDIC may require additional information.

(2) *Modification.* The FDIC may modify or accept other information in place of the requirements of paragraph (d)(1) of this section for a notice filed under this subpart.

[67 FR 79247, Dec. 27, 2002, as amended at 85 FR 3245, Jan. 21, 2020]

§ 303.103 Processing.

(a) *Processing.* The 30-day notice period specified in §303.102(a) shall begin on the date substantially all information required to be submitted by the notificant pursuant to §303.102(c)(1) is received by the appropriate FDIC office. The FDIC shall notify the FDIC-supervised institution submitting the notice of the date on which the notice is accepted for processing and of the

date on which the 30-day notice period will expire. If processing cannot be completed with 30 days, the notificant will be advised in writing, prior to expiration of the 30-day period, of the reason for the delay in processing and of the additional time period, not to exceed 60 days, in which processing will be completed.

(b) *Commencement of service—(1) At expiration of period.* A proposed director or senior executive officer may begin service after the end of the 30-day period or any other additional period as provided under paragraph (a) of this section, unless the FDIC disapproves the notice before the end of the period.

(2) *Prior to expiration of the period.* A proposed director or senior executive officer may begin service before the end of the 30-day period or any additional time period as provided under paragraph (a) of this section, if the FDIC notifies the FDIC-supervised institution and the individual in writing of the FDIC's intention not to disapprove the notice.

(c) *Notice of disapproval.* The FDIC may disapprove a notice filed under §303.102 if the FDIC finds that the competence, experience, character, or integrity of the individual with respect to whom the notice is submitted indicates that it would not be in the best interests of depositors of the FDIC-supervised institution or in the best interests of the public to permit the individual to be employed by, or associated with the FDIC-supervised institution. Subpart L of 12 CFR part 308 sets forth the rules of practice and procedure for a notice of disapproval.

[85 FR 3245, Jan. 21, 2020]

§§ 303.104–303.119 [Reserved]

Subpart G—Activities of Insured State Banks

§ 303.120 Scope.

This subpart sets forth procedures for complying with notice and application requirements contained in subpart A of part 362 of this chapter, governing insured state banks and their subsidiaries engaging in activities which are not permissible for national banks and their subsidiaries. This subpart sets forth procedures for complying with