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the amount of brokered CDs, as defined in § 337.6(a)(5)(v)(I)(3) of this chapter, being placed by that third party;

(F) Revenue generated from the third party's activities related to the placement, or facilitating the placement, of deposits, with respect to the particular business line;

(G) Revenue generated from the third party's activities not related to the placement, or facilitating the placement, of deposits, with respect to the particular business line;

(H) A description of the marketing activities provided by the third party, with respect to the particular business line;

(I) The reasons the third party meets the primary purpose exception;

(J) Any other information the applicant deems relevant; and

(K) Any other information that the FDIC requires to initiate its review and render the application complete.

(iii) *Additional information for applications.* The FDIC may request additional information from the applicant at any time during processing of the application.

(iv) *Application timing.* (A) An applicant that submits a complete application under this section will receive a written determination by the FDIC within 120 days of receipt of a complete application.

(B) If an application is submitted that is not complete, the FDIC will, within 45 days of submission, notify the applicant and explain what is needed to render the application complete.

(C) The FDIC may extend the 120-day timeframe, if necessary, to complete its review of a complete application, with notice to the applicant, for a maximum of 120 additional days.

(v) *Application approvals.* The FDIC will approve an application—

(A) Submitted under paragraph (b)(4)(i) of this section if the FDIC finds that the third party's marketing materials indicate that the primary purpose of placing customer deposits at insured depository institutions is to enable transactions, and;

(I) Nominal interest, fees, or other remuneration is being paid on any customer accounts, or

(2) The third party's customers make, on average, more than 6 transactions a month.

(B) Submitted under paragraph (b)(4)(ii) of this section if the FDIC finds that the applicant demonstrates that, with respect to the particular business line under which the third party places or facilitates the placement of deposits, the primary purpose of the third party's business relationship with its customers is a purpose other than the placement or facilitation of the placement of deposits.

(vi) *Ongoing reporting for applications.*

(A) The FDIC will describe any reporting requirements, if applicable, as part of its written approval for a primary purpose exception.

(B) Applicants that receive a written approval for the primary purpose exception, shall provide reporting to the FDIC and, in the case of an insured depository institution, to its primary Federal regulator, if required under this section.

(vii) *Requesting additional information, requiring re-application, imposing additional conditions, and withdrawing approvals.* At any time after approval of an application for the primary purpose exception, the FDIC may at its discretion, with written notice and adequate justification:

(A) Require additional information from an applicant to ensure that the approval is still appropriate, or for purposes of verifying the accuracy and correctness of the information provided to an insured depository institution or submitted to the FDIC as part of the application under this section;

(B) Require the applicant to reapply for approval;

(C) Impose additional conditions on an approval; or

(D) Withdraw an approval.

[86 FR 6787, Jan. 22, 2021]

§ 303.244 Golden parachute and severance plan payments.

(a) *Scope.* Pursuant to section 18(k) of the FDI Act (12 U.S.C. 1828(k)) and part 359 of this chapter, an insured depository institution or depository institution holding company may not make golden parachute payments or excess nondiscriminatory severance plan payments unless the depository institution

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or holding company obtains permission to make such payments in accordance with the rules contained in part 359 of this chapter. This section contains the procedures to file for the FDIC's consent when such consent is necessary under part 359 of this chapter.

(1) *Golden parachute payments.* A troubled insured depository institution or a troubled depository institution holding company is prohibited from making golden parachute payments (as defined in §359.1(f)(1) of this chapter) unless it obtains the consent of the appropriate federal banking agency and the written concurrence of the FDIC. Therefore, in the case of golden parachute payments, the procedures in this section apply to all troubled insured depository institutions and troubled depository institution holding companies.

(2) *Excess nondiscriminatory severance plan payments.* In the case of excess nondiscriminatory severance plan payments as provided by §359.1(f)(2)(v) of this chapter, the FDIC's consent is necessary for state nonmember banks that meet the criteria set forth in §359.1(f)(1)(ii) of this chapter. In addition, the FDIC's consent is required for all insured depository institutions or depository institution holding companies that meet the same criteria and seek to make payments in excess of the 12-month amount specified in §359.1(f)(2)(v).

(b) *Where to file.* Applicants shall submit a letter application to the appropriate FDIC regional director.

(c) *Content of filing.* The application shall contain the following:

(1) The reasons why the applicant seeks to make the payment;

(2) An identification of the institution-affiliated party who will receive the payment;

(3) A copy of any contract or agreement regarding the subject matter of the filing;

(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).

(d) *Additional information.* The FDIC may request additional information at

any time during processing of the filing.

(e) *Processing.* The FDIC will provide the applicant with a subsequent written notification of the final action taken as soon as the decision is rendered.

[67 FR 79247, Dec. 27, 2002, as amended at 68 FR 50461, Aug. 21, 2003]

§ 303.245 Waiver of liability for commonly controlled depository institutions.

(a) *Scope.* Section 5(e) of the FDI Act (12 U.S.C. 1815(e)) creates liability for commonly controlled insured depository institutions for losses incurred or anticipated to be incurred by the FDIC in connection with the default of a commonly controlled insured depository institution or any assistance provided by the FDIC to any commonly controlled insured depository institution in danger of default. In addition to certain statutory exceptions and exclusions contained in sections 5(e)(6), (7) and (8), the FDI Act also permits the FDIC, in its discretion, to exempt any insured depository institution from this liability if it determines that such exemption is in the best interests of the Deposit Insurance Fund. This section describes procedures to request a conditional waiver of liability pursuant to section 5 of the FDI Act (12 U.S.C. 1815(e)(5)(A)).

(b) *Definition.* Conditional waiver of liability means an exemption from liability pursuant to section 5(e) of the FDI Act (12 U.S.C. 1815(e)) subject to terms and conditions.

(c) *Where to file.* Applicants shall submit a letter application to the appropriate FDIC office.

(d) *Content of filing.* The application shall contain the following information:

(1) The basis for requesting a waiver;

(2) The existence of any significant events (e.g., change in control, capital injection, etc.) that may have an impact upon the applicant and/or any potentially liable institution;

(3) Current, and if applicable, pro forma financial information regarding the applicant and potentially liable institution(s); and