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§ 303.15 Certain limited liability companies deemed incorporated under State law.

(a) For purposes of the definition of ''State bank'' in 12 U.S.C. 1813(a)(2) and this Chapter, a banking institution that is chartered as a limited liability company (LLC) under the law of any State is deemed to be ''incorporated'' under the law of the State, if

(1) The institution is not subject to automatic termination, dissolution, or suspension upon the happening of some event (including, e.g., the death, disability, bankruptcy, expulsion, or withdrawal of an owner of the institution), other than the passage of time;

(2) The exclusive authority to manage the institution is vested in a board of managers or directors that is elected or appointed by the owners, and that operates in substantially the same manner as, and has substantially the same rights, powers, privileges, duties, responsibilities, as a board of directors of a bank chartered as a corporation in the State;

(3) Neither State law, nor the institution's operating agreement, bylaws, or other organizational documents provide that an owner of the institution is liable for the debts, liabilities, and obligations of the institution in excess of the amount of the owner's investment; and

(4) Neither State law, nor the institution's operating agreement, bylaws, or other organizational documents require the consent of any other owner of the institution in order for an owner to transfer an ownership interest in the institution, including voting rights.

(b) For purposes of the Federal Deposit Insurance Act and this Chapter,

(1) Each of the terms ''stockholder'' and ''shareholder'' includes an owner of any interest in a bank chartered as an LLC, including a member or participant;

(2) The term ''director'' includes a manager or director of a bank chartered as an LLC, or other person who has, with respect to such a bank, authority substantially similar to that of a director of a corporation;

(3) The term ''officer'' includes an officer of a bank chartered as an LLC, or other person who has, with respect to such a bank, authority substantially similar to that of an officer of a corporation; and

(4) Each of the terms ''voting stock,'' ''voting shares,'' and ''voting securities'' includes ownership interests in a bank chartered as an LLC, as well as any certificates or other evidence of such ownership interests.

[68 FR 7308, Feb. 13, 2003]

§§ 303.16–303.19 [Reserved]

Subpart B—Deposit Insurance

§ 303.20 Scope.

This subpart sets forth the procedures for applying for deposit insurance for a proposed depository institution or an operating noninsured depository institution under section 5 of the FDI Act (12 U.S.C. 1815). It also sets forth the procedures for requesting continuation of deposit insurance for a state-chartered bank withdrawing from membership in the Federal Reserve System and for interim institutions chartered to facilitate a merger transaction. Each bank that results from the conversion of a Federal savings association into multiple banks pursuant to section 5(i)(5) of the Home Owners' Loan Act, 12 U.S.C. 1464(i)(5), is treated as a proposed depository institution or a de novo institution, as appropriate, for purposes of this subpart.

[67 FR 79247, Dec. 27, 2002, as amended at 73 FR 2145, Jan. 14, 2008]

§ 303.21 Filing procedures.

(a) Applications for deposit insurance shall be filed with the appropriate FDIC office. The relevant application forms and instructions for applying for deposit insurance for an existing or proposed depository institution may be obtained from any FDIC regional director.

(b) An application for deposit insurance for an interim depository institution shall be filed and processed in accordance with the procedures set forth in § 303.24, subject to the provisions of § 303.62(b)(2) regarding deposit insurance for interim institutions. An interim institution is defined as a state-

or federally-chartered depository institution that does not operate independently but exists solely as a vehicle to accomplish a merger transaction.

(c) A request for continuation of deposit insurance upon withdrawing from membership in the Federal Reserve System shall be in letter form and shall provide the information prescribed in § 303.25.

§ 303.22 Processing.

(a) *Expedited processing for proposed institutions.* (1) An application for deposit insurance for a proposed institution which will be a subsidiary of an eligible depository institution as defined in § 303.2(r) or an eligible holding company will be acknowledged in writing by the FDIC and will receive expedited processing unless the applicant is notified in writing to the contrary and provided with the basis for that decision. 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. The FDIC may remove an application from expedited processing for any of the reasons set forth in § 303.11(c)(2).

(2) Under expedited processing, the FDIC will take action on an application within 60 days of receipt of a substantially complete application or 5 days after the expiration of the comment period described in § 303.23, whichever is later. Final action may be withheld until the FDIC has assurance that permission to organize the proposed institution will be granted by the chartering authority. Notwithstanding paragraph (a)(1) of this section, if the FDIC does not act within the expedited processing period, it does not constitute an automatic or default approval.

(b) *Standard processing.* For those applications that are not processed pursuant to the expedited procedures, the FDIC will provide the applicant with written notification of the final action when the decision is rendered.

[67 FR 79247, Dec. 27, 2002, as amended at 68 FR 50459, Aug. 21, 2003]

§ 303.23 Public notice requirements.

(a) *De novo institutions and operating noninsured institutions.* The applicant shall publish a notice as prescribed in § 303.7 in a newspaper of general circulation in the community in which the main office of the depository institution is or will be located. Notice shall be published as close as practicable to, but no sooner than five days before, the date the application is mailed or delivered to the appropriate FDIC office. Comments by interested parties must be received by the appropriate regional director within 30 days following the date of publication, unless the comment period has been extended or reopened in accordance with § 303.9(b)(2).

(b) *Exceptions to public notice requirements.* No publication shall be required in connection with the granting of insurance to a new depository institution established pursuant to the resolution of a depository institution in default, or to an interim depository institution formed solely to facilitate a merger transaction, or for a request for continuation of federal deposit insurance by a state-chartered bank withdrawing from membership in the Federal Reserve System.

§ 303.24 Application for deposit insurance for an interim institution.

(a) *Application required.* Subject to § 303.62(b)(2), a deposit insurance application is required for a state-chartered interim institution if the related merger transaction is subject to approval by a federal banking agency other than the FDIC. A separate application for deposit insurance for an interim institution is not required in connection with any merger requiring FDIC approval pursuant to subpart D of this part.

(b) *Content of separate application.* A letter application for deposit insurance for an interim institution, accompanied by a copy of the related merger

application, shall be filed with the appropriate FDIC office. The letter application shall briefly describe the transaction and contain a statement that deposit insurance is being requested for an interim institution that does not operate independently but exists solely as a vehicle to accomplish a merger transaction which will be reviewed by a federal banking agency other than the FDIC.

(c) *Processing.* An application for deposit insurance for an interim depository institution will be acknowledged in writing by the FDIC. Final action will be taken within 21 days after receipt of a substantially complete application, unless the applicant is notified in writing that additional review is warranted. If the FDIC does not act within the expedited processing period, it does not constitute an automatic or default approval.

§ 303.25 Continuation of deposit insurance upon withdrawing from membership in the Federal Reserve System.

(a) *Content of application.* To continue its insured status upon withdrawal from membership in the Federal Reserve System, a state-chartered bank shall submit a letter application to the appropriate FDIC office. A complete application shall consist of the following information:

(1) A copy of the letter, and any attachments thereto, sent to the appropriate Federal Reserve Bank setting forth the bank's intention to terminate its membership;

(2) A copy of the letter from the Federal Reserve Bank acknowledging the bank's notice to terminate membership;

(3) A statement regarding any anticipated changes in the bank's general business plan during the next 12-month period; and

(4)(i) A statement by the bank's management that there are no outstanding or proposed corrective programs or supervisory agreements with the Federal Reserve System.

(ii) If such programs or agreements exist, a statement by the applicant that its Board of Directors is willing to enter into similar programs or agreements with the FDIC which would become effective upon withdrawal from the Federal Reserve System.

(b) *Processing.* An application for deposit insurance under this section will be acknowledged in writing by the FDIC. The FDIC shall notify the applicant, within 15 days of receipt of a substantially complete application, either that federal deposit insurance will continue upon termination of membership in the Federal Reserve System or that additional review is warranted and the applicant will be notified, in writing, of the FDIC's final decision regarding continuation of deposit insurance. If the FDIC does not act within the expedited processing period, it does not constitute an automatic or default approval.

§§ 303.26–303.39 [Reserved]

Subpart C—Establishment and Relocation of Domestic Branches and Offices

§ 303.40 Scope.

(a) *General.* This subpart sets forth the application requirements and procedures for insured state nonmember banks to establish a branch, relocate a branch or main office, and retain existing branches after the interstate relocation of the main office subject to the approval by the FDIC pursuant to sections 13(f), 13(k), 18(d) and 44 of the FDI Act.

(b) *Merger transaction.* Applications for approval of the acquisition and establishment of branches in connection with a merger transaction under section 18(c) of the FDI Act (12 U.S.C. 1828(c)), are processed in accordance with subpart D (Merger Transactions) of this part.

(c) *Insured branches of foreign banks and foreign branches of domestic banks.* Applications regarding insured branches of foreign banks and foreign branches of domestic banks are processed in accordance with subpart J (International Banking) of this part.

(d) *Interstate acquisition of individual branch.* Applications requesting approval of the interstate acquisition of an individual branch or branches located in a state other than the applicant's home state without the acquisition of the whole bank are treated as