

(ii) A projected timetable describing how long the divestiture or cessation is expected to take.

(3) *Additional information.* The FDIC may request additional information to complete processing.

[67 FR 79247, Dec. 27, 2002, as amended at 70 FR 17559, Apr. 6, 2005; 71 FR 20526, Apr. 21, 2006]

§§ 303.188–303.199 [Reserved]

**Subpart K—Prompt Corrective Action**

**§ 303.200 Scope.**

(a) *General.* (1) This subpart covers applications filed pursuant to section 38 of the FDI Act (12 U.S.C. 1831o), which requires insured depository institutions that are not adequately capitalized to receive approval prior to engaging in certain activities. Section 38 restricts or prohibits certain activities and requires an insured depository institution to submit a capital restoration plan when it becomes undercapitalized. The restrictions and prohibitions become more severe as an institution's capital level declines.

(2) Definitions of the capital categories referenced in this Prompt Corrective Action subpart may be found in subpart B of part 325 of this chapter, § 325.103(b) for state nonmember banks and § 325.103(c) for insured branches of foreign banks.

(b) *Institutions covered.* Restrictions and prohibitions contained in subpart B of part 325 of this chapter apply primarily to insured state nonmember banks and insured branches of foreign banks, as well as to directors and senior executive officers of those institutions. Portions of subpart B of part 325 of this chapter also apply to all insured depository institutions that are deemed to be critically undercapitalized.

**§ 303.201 Filing procedures.**

Applications shall be filed with the appropriate FDIC office. The application shall contain the information specified in each respective section of this subpart, and shall be in letter form as prescribed in § 303.3. Additional information may be requested by the FDIC. Such letter shall be signed by

the president, senior officer or a duly authorized agent of the insured depository institution and be accompanied by a certified copy of a resolution adopted by the institution's board of directors or trustees authorizing the application.

**§ 303.202 Processing.**

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

**§ 303.203 Applications for capital distributions.**

(a) *Scope.* An insured state nonmember bank and any insured branch of a foreign bank shall submit an application for capital distribution if, after having made a capital distribution, the institution would be undercapitalized, significantly undercapitalized, or critically undercapitalized.

(b) *Content of filing.* An application to repurchase, redeem, retire or otherwise acquire shares or ownership interests of the insured depository institution shall describe the proposal, the shares or obligations which are the subject thereof, and the additional shares or obligations of the institution which will be issued in at least an amount equivalent to the distribution. The application also shall explain how the proposal will reduce the institution's financial obligations or otherwise improve its financial condition. If the proposed action also requires an application under section 18(i) of the FDI Act (12 U.S.C. 1828(i)) as implemented by § 303.241 of this part regarding prior consent to retire capital, such application should be filed concurrently with, or made a part of, the application filed pursuant to section 38 of the FDI Act (12 U.S.C. 1831o).

**§ 303.204 Applications for acquisitions, branching, and new lines of business.**

(a) *Scope.* (1) Any insured state nonmember bank and any insured branch of a foreign bank which is undercapitalized or significantly undercapitalized, and any insured depository institution which is critically undercapitalized, shall submit an application to engage in acquisitions, branching or new lines of business.

(2) A new line of business will include any new activity exercised which, although it may be permissible, has not been exercised by the institution.

(b) *Content of filing.* Applications shall describe the proposal, state the date the institution's capital restoration plan was accepted by its primary federal regulator, describe the institution's status in implementing the plan, and explain how the proposed action is consistent with and will further the achievement of the plan or otherwise further the purposes of section 38 of the FDI Act. If the FDIC is not the applicant's primary federal regulator, the application also should state whether approval has been requested from the applicant's primary federal regulator, the date of such request and the disposition of the request, if any. If the proposed action also requires applications pursuant to section 18 (c) or (d) of the FDI Act (mergers and branches) (12 U.S.C. 1828 (c) or (d)), such applications should be filed concurrently with, or made a part of, the application filed pursuant to section 38 of the FDI Act (12 U.S.C. 1831o).

**§ 303.205 Applications for bonuses and increased compensation for senior executive officers.**

(a) *Scope.* Any insured state nonmember bank or insured branch of a foreign bank that is significantly or critically undercapitalized, or any insured state nonmember bank or any insured branch of a foreign bank that is undercapitalized and which has failed to submit or implement in any material respect an acceptable capital restoration plan, shall submit an application to pay a bonus or increase compensation for any senior executive officer.

(b) *Content of filing.* Applications shall list each proposed bonus or increase in compensation, and for the latter shall identify compensation for each of the twelve calendar months preceding the calendar month in which the institution became undercapitalized. Applications also shall state the date the institution's capital restoration plan was accepted by the FDIC, and describe any progress made in implementing the plan.

**§ 303.206 Application for payment of principal or interest on subordinated debt.**

(a) *Scope.* Any critically undercapitalized insured depository institution shall submit an application to pay principal or interest on subordinated debt.

(b) *Content of filing.* Applications shall describe the proposed payment and provide an explanation of action taken under section 38(h)(3)(A)(ii) of the FDI Act (action other than receivership or conservatorship). The application also shall explain how such payments would further the purposes of section 38 of the FDI Act (12 U.S.C. 1831o). Existing approvals pursuant to requests filed under section 18(i)(1) of the FDI Act (12 U.S.C. 1828(i)(1)) (capital stock reductions or retirements) shall not be deemed to be the permission needed pursuant to section 38.

**§ 303.207 Restricted activities for critically undercapitalized institutions.**

(a) *Scope.* Any critically undercapitalized insured depository institution shall submit an application to engage in certain restricted activities.

(b) *Content of filing.* Applications to engage in any of the following activities, as set forth in sections 38(i)(2) (A) through (G) of the FDI Act, shall describe the proposed activity and explain how the activity would further the purposes of section 38 of the FDI Act (12 U.S.C. 1831o):

(1) Enter into any material transaction other than in the usual course of business including any action with respect to which the institution is required to provide notice to the appropriate federal banking agency. Materiality will be determined on a case-by-case basis;

(2) Extend credit for any highly leveraged transaction (as defined in part 325 of this chapter);

(3) Amend the institution's charter or bylaws, except to the extent necessary to carry out any other requirement of any law, regulation, or order;

(4) Make any material change in accounting methods;

(5) Engage in any covered transaction (as defined in section 23A(b) of the Federal Reserve Act (12 U.S.C. 371c(b)));

(6) Pay excessive compensation or bonuses. Part 364 of this chapter provides guidance for determining excessive compensation; or

(7) Pay interest on new or renewed liabilities at a rate that would increase the institution's weighted average cost of funds to a level significantly exceeding the prevailing rates of interest on insured deposits in the institution's normal market area. Section 337.6 of this chapter (Brokered deposits) provides guidance for defining the relevant terms of this provision; however this provision does not supersede the general prohibitions contained in §337.6.

§§ 303.208–303.219 [Reserved]

**Subpart L—Section 19 of the FDI Act (Consent to Service of Persons Convicted of Certain Criminal Offenses)**

**§ 303.220 Scope.**

This subpart covers applications under section 19 of the FDI Act (12 U.S.C. 1829). Pursuant to section 19, any person who has been convicted of any criminal offense involving dishonesty, breach of trust, or money laundering, or has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such offense, may not become, or continue as, an institution-affiliated party of an insured depository institution; own or control, directly or indirectly, any insured depository institution; or otherwise participate, directly or indirectly, in the conduct of the affairs of any insured depository institution without the prior written consent of the FDIC.

**§ 303.221 Filing procedures.**

(a) *Where to file.* An application under section 19 of the FDI Act shall be filed with the appropriate FDIC office.

(b) *Contents of filing.* Application forms may be obtained from any FDIC regional director. The FDIC may require additional information beyond that sought in the form, as warranted, in individual cases.

**§ 303.222 Service at another insured depository institution.**

In the case of a person who has already been approved by the FDIC under this subpart or section 19 of the FDI Act in connection with a particular insured depository institution, such person may not become an institution affiliated party, or own or control directly or indirectly another insured depository institution, or participate in the conduct of the affairs of another insured depository institution, without the prior written consent of the FDIC.

**§ 303.223 Applicant's right to hearing following denial.**

An applicant may request a hearing following a denial of an application in accordance with the provisions of part 308 of this chapter.

§§ 303.224–303.239 [Reserved]

**Subpart M—Other Filings**

**§ 303.240 General.**

This subpart sets forth the filing procedures to be followed when seeking the FDIC's consent to engage in certain activities or accomplish other matters as specified in the individual sections contained herein. For those matters covered by this subpart that also have substantive FDIC regulations or related statements of policy, references to the relevant regulations or statements of policy are contained in the specific sections.

**§ 303.241 Reduce or retire capital stock or capital debt instruments.**

(a) *Scope.* This section contains the procedures to be followed by an insured state nonmember bank to seek the prior approval of the FDIC to reduce the amount or retire any part of its common or preferred stock, or to retire any part of its capital notes or debentures pursuant to section 18(i)(1) of the Act (12 U.S.C. 1828(i)(1)).

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

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

(1) The type and amount of the proposed change to the capital structure and the reason for the change;