

(3) For institutions with total assets of less than \$1 billion as of the beginning of their fiscal year that are public companies or subsidiaries of public companies that meet the criterion specified in §363.1(b)(1), any independent public accountant's report on the audit of internal control over financial reporting required by section 404 of SOX and the PCAOB's auditing standards; and

(4) For all institutions that are public companies or subsidiaries of public companies that meet the criterion specified in §363.1(b)(1), any independent public accountant's written communication of all deficiencies in internal control over financial reporting that are of a lesser magnitude than significant deficiencies required by the PCAOB's auditing standards.

(d) *Notice of engagement or change of accountants.* Each insured depository institution shall provide, within 15 days after the occurrence of any such event, written notice to the FDIC, the appropriate Federal banking agency, and any appropriate State bank supervisor of the engagement of an independent public accountant, or the resignation or dismissal of the independent public accountant previously engaged. The notice shall include a statement of the reasons for any such resignation or dismissal in reasonable detail.

(e) *Notification of late filing.* No extensions of time for filing reports required by §363.4 shall be granted. An insured depository institution that is unable to timely file all or any portion of its Part 363 Annual Report or any other report or notice required by §363.4 shall submit a written notice of late filing to the FDIC, the appropriate Federal banking agency, and any appropriate State bank supervisor. The notice shall disclose the institution's inability to timely file all or specified portions of its Part 363 Annual Report or any other report or notice and the reasons therefore in reasonable detail. The late filing notice shall also state the date by which the report or notice will be filed. The written notice shall be filed on or before the deadline for filing the Part 363 Annual Report or any other report or notice, as appropriate.

(f) *Place for filing.* The Part 363 Annual Report, any written notification of late filing, and any other report or notice required by §363.4 should be filed as follows:

(1) *FDIC:* Appropriate FDIC Regional or Area Office (Division of Supervision and Consumer Protection), *i.e.*, the FDIC regional or area office in the FDIC region or area that is responsible for monitoring the institution or, in the case of a subsidiary institution of a holding company, the consolidated company. A filing made on behalf of several covered institutions owned by the same parent holding company should be accompanied by a transmittal letter identifying all of the institutions covered.

(2) *Office of the Comptroller of the Currency (OCC):* Appropriate OCC Supervisory Office.

(3) *Federal Reserve:* Appropriate Federal Reserve Bank.

(4) *Office of Thrift Supervision (OTS):* Appropriate OTS District Office.

(5) *State bank supervisor:* The filing office of the appropriate State bank supervisor.

#### §363.5 Audit committees.

(a) *Composition and duties.* Each insured depository institution shall establish an audit committee of its board of directors, the composition of which complies with paragraphs (a)(1), (2), and (3) of this section. The duties of the audit committee shall include the appointment, compensation, and oversight of the independent public accountant who performs services required under this part, and reviewing with management and the independent public accountant the basis for the reports issued under this part.

(1) Each insured depository institution with total assets of \$1 billion or more as of the beginning of its fiscal year shall establish an independent audit committee of its board of directors, the members of which shall be outside directors who are independent of management of the institution.

(2) Each insured depository institution with total assets of \$500 million or more but less than \$1 billion as of the beginning of its fiscal year shall establish an audit committee of its board of directors, the members of which shall

be outside directors, the majority of whom shall be independent of management of the institution. The appropriate Federal banking agency may, by order or regulation, permit the audit committee of such an insured depository institution to be made up of less than a majority of outside directors who are independent of management, if the agency determines that the institution has encountered hardships in retaining and recruiting a sufficient number of competent outside directors to serve on the audit committee of the institution.

(3) An outside director is a director who is not, and within the preceding fiscal year has not been, an officer or employee of the institution or any affiliate of the institution.

(b) *Committees of large institutions.* The audit committee of any insured depository institution with total assets of more than \$3 billion as of the beginning of its fiscal year shall include members with banking or related financial management expertise, have access to its own outside counsel, and not include any large customers of the institution. If a large institution is a subsidiary of a holding company and relies on the audit committee of the holding company to comply with this rule, the holding company's audit committee shall not include any members who are large customers of the subsidiary institution.

(c) *Independent public accountant engagement letters.* (1) In performing its duties with respect to the appointment of the institution's independent public accountant, the audit committee shall ensure that engagement letters and any related agreements with the independent public accountant for services to be performed under this part do not contain any limitation of liability provisions that:

(i) Indemnify the independent public accountant against claims made by third parties;

(ii) Hold harmless or release the independent public accountant from liability for claims or potential claims that might be asserted by the client insured depository institution, other than claims for punitive damages; or

(iii) Limit the remedies available to the client insured depository institution.

(2) Alternative dispute resolution agreements and jury trial waiver provisions are not precluded from engagement letters provided that they do not incorporate any limitation of liability provisions set forth in paragraph (c)(1) of this section.

#### APPENDIX A TO PART 363—GUIDELINES AND INTERPRETATIONS

##### TABLE OF CONTENTS

##### Introduction

##### Scope of Rule and Definitions (§363.1)

##### 1. Measuring Total Assets

##### 2. Insured Branches of Foreign Banks

##### 3. Compliance by Holding Company Subsidiaries

##### 4. Comparable Services and Functions

##### 4A. Financial Reporting

##### Annual Reporting Requirements (§363.2)

##### 5. Annual Financial Statements

##### 5A. Institutions Merged out of Existence

##### 6. Holding Company Statements

##### 7. Insured Branches of Foreign Banks

##### 7A. Compliance with Designated Laws and Regulations

##### 8. Management Report

##### 8A. Management's Reports on Internal Control over Financial Reporting under Part 363 and Section 404 of SOX

##### 8B. Internal Control Reports and Part 363 Annual Reports for Acquired Businesses

##### 8C. Management's Disclosure of Non-compliance with the Designated Laws and Regulations

##### 9. Safeguarding of Assets

##### 10. Standards for Internal Control

##### 11. Service Organizations

##### 12. Reserved

##### Role of Independent Public Accountant (§363.3)

##### 13. General Qualifications

##### 14. Reserved

##### 15. Peer Review Guidelines

##### 16. Reserved

##### 17. Information to be Provided to the Independent Public Accountant

##### 18. Attestation Report and Management Letters

##### 18A. Internal Control Attestation Standards for Independent Auditors

##### 19. Reviews with Audit Committee and Management

##### 20. Notice of Termination

##### 21. Reliance on Internal Auditors

##### Filing and Notice Requirements (§363.4)

##### 22. Reserved

##### 23. Notification of Late Filing

##### 24. Public Availability

##### 25. Reserved

##### 26. Notices Concerning Accountants