

FEDERAL DEPOSIT INSURANCE CORPORATION

Applications for Deposit Insurance

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final agency policy statement; amendment.

SUMMARY: The FDIC is amending its Statement of Policy on Applications for Deposit Insurance to reflect changes resulting from an internal reorganization. The reorganization merged the Division of Supervision and the Division of Compliance and Consumer Affairs. Additional changes were made to reflect recent statutory requirements. The amended statement of policy is intended to be read in conjunction with the deposit insurance provisions of the FDIC's revised regulations governing applications filed with the FDIC, which appears elsewhere in this issue of the **Federal Register**.

EFFECTIVE DATE: December 27, 2002.

FOR FURTHER INFORMATION CONTACT: Division of Supervision and Consumer Protection: Mindy West, Examination Specialist, (202/898-7221); or Legal Division: Supervision and Legislation Branch, Robert C. Fick, Counsel, Legal Division, (202/898-8962), FDIC, 550 17th Street, NW, Washington, DC, 20429.

SUPPLEMENTARY INFORMATION: On June 30, 2002, the FDIC implemented an internal reorganization. See: 67 FR 44351, July 2, 2002. The primary purpose of the reorganization was to streamline the management and decision making process. As part of the reorganization, several divisions were merged. In particular, the Division of Supervision was merged with the Division of Compliance and Consumer Affairs to create the Division of Supervision and Consumer Protection. The reorganization has necessitated changes to the Statement of Policy on Applications for Deposit Insurance (Statement of Policy) to reflect the new structure, since there are references to the former divisions and management structure in the prior Statement of Policy.

In conjunction with the revisions to the Statement of Policy, the FDIC is also amending 12 CFR part 303 (part 303) of the FDIC's regulations governing application, notice and request procedures. The amendments to part 303 reflect the FDIC's new organizational structure. The FDIC is also removing and updating the delegations of authority previously found in part 303 to provide greater

flexibility and efficiency when making decisions throughout the application process. As a result of these changes, the amended Statement of Policy is intended to be read in conjunction with the revised deposit insurance provisions of newly-amended part 303, notice of which is published elsewhere in this issue of the **Federal Register**.

Section 307(c) of the Gramm-Leach-Bliley Act (GLBA) requires the FDIC to consult with the appropriate state insurance regulator before making any determination relating to the initial affiliation of, or the continuing affiliation of, a depository institution with a company engaged in insurance activities. On December 12, 2001, the Office of the Comptroller of the Currency, the FDIC and the Office of Thrift Supervision published a final notice in the **Federal Register** (66 FR 64341) revising the Interagency Charter and Federal Deposit Insurance Application (Application) to, in part, add an item to the form to collect information required by GLBA. The FDIC is now amending the Statement of Policy to conform to the recently updated Application to include the specified information required therein. The information that is required is the name of the affiliated insurance company, a description of its insurance activities, a list of each state and the lines of business in that state in which the company holds, or will hold, an insurance license. The applicant must also indicate the state where the company holds a resident license or charter, as applicable.

The Statement of Policy published August 20, 1998 (63 FR 44756) is hereby amended as follows:

FDIC Statement of Policy on Applications for Deposit Insurance

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Procedures

Forms and instructions for applying for deposit insurance may be obtained from any FDIC regional director. Completed applications should be filed with the appropriate FDIC office. Organizers and incorporators (collectively, "incorporators") of proposed new depository institutions should file their applications with the FDIC and the appropriate chartering authority at the same time. Information provided to the chartering authority that is also needed as part of the deposit insurance application may be provided to the FDIC by appending a copy of the information to the FDIC application. Use of the FDIC application form is optional; however, the material submitted to the FDIC must contain all

information requested in the FDIC application form, unless the FDIC otherwise indicates. In addition, all incorporators must sign and submit the signature page of the FDIC's deposit insurance application form, even if the application itself is not being used. It is strongly recommended that a representative(s) of the organizing group meet with the chartering authority and the FDIC prior to filing an application to reach an understanding of the information requirements of each agency. This practice typically facilitates processing and eliminates unnecessary delays. Information requirements may not be as extensive for applications sponsored by existing holding companies or other well-established banking groups. The FDIC may take final action prior to final action by other regulatory authorities in cases in which the FDIC has determined that there is no material disagreement on the action to be taken.

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Section 307(c) of the Gramm-Leach-Bliley Act (GLBA) requires the FDIC to consult with the appropriate State insurance regulator before making any determination relating to the initial affiliation of, or the continuing affiliation of, a depository institution with a company engaged in insurance activities. As a result of this requirement, applicants that are, or will be, affiliated with a company engaged in insurance activities that is subject to supervision by a state insurance regulator must submit the following information as part of its application: (1) The name of the insurance company; (2) a description of the insurance activities that the company is engaged in and has plans to conduct; and (3) a list of each state and the lines of business in that state which the company holds, or will hold, an insurance license. Applicants must also indicate the state where the company holds a resident license or charter, as applicable.

Proposed Depository Institutions

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Where the proposed depository institution will be a subsidiary of an existing bank or thrift holding company, the FDIC will consider the financial and managerial resources of the parent organization in assessing the overall proposal and in evaluating the statutory factors prescribed in section 6 of the Act. In such circumstances, the application for deposit insurance should contain a copy of any information submitted to the holding company's primary federal regulator. Subpart B of part 303 of the FDIC's regulations (12

CFR 303.20-.25) discusses certain expedited procedures that may be available to eligible depository institutions or eligible holding companies (as those terms are defined in the regulation).

The FDIC may conduct examinations and/or investigations to develop essential information with respect to deposit insurance applications. The FDIC will determine the need to conduct an investigation and its scope. Every effort will be made to coordinate any FDIC investigation with any investigations conducted by other regulators.

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Statutory Factors

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2. Adequacy of the Capital Structure

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(b) *Wholly owned subsidiary of a holding company*—If the applicant is being established as a wholly owned subsidiary of an eligible holding company (as defined in part 303, subpart B), the FDIC will consider the financial resources of the parent organization as a factor in assessing the adequacy of the proposed initial capital injection. In such cases, the FDIC may find favorably with respect to the adequacy of capital factor, when the initial capital injection is sufficient to provide for a Tier 1 leverage capital ratio of at least 8% at the end of the first year of operation, based on a realistic business plan, or the initial capital injection meets the \$2 million minimum capital standard set forth in this Statement of Policy, or any minimum standards established by the chartering authority, whichever is greater. The holding company shall also provide a written commitment to maintain the proposed institution's Tier 1 leverage capital ratio at no less than 8% throughout the first three years of operation.

(c) *Operating insured offices*—If the proposal involves the acquisition of an insured operating office or offices, the applicant may request that the benchmark for evaluating the adequacy of capital be an amount necessary for the newly chartered institution to be classified as well capitalized, as defined by its primary federal regulator. In such cases, the FDIC may find favorably with respect to the capital factor based on a favorable finding with respect to the following:

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4. General Character and Fitness of the Management

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All proposed depository institutions shall provide at least a five member board of directors. The identity and qualifications of the proposed full-time chief executive officer should be made known to the FDIC as soon as possible, preferably when the application is filed with the appropriate FDIC office. Prior to the opening of the institution, proponents must advise the FDIC in writing of any change in the directorate, senior active management, or a change in the ownership of stock which would result in a shareholder owning 10% or more of the total shares of either the depository institution or its holding company.

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(b) *Stock benefit plans*—Stock benefit plans, including stock options, stock warrants, and other similar stock based compensation plans will be reviewed by the FDIC and must be fully disclosed to all potential subscribers. Participants in stock benefit plans may include incorporators, directors, and officers. A description of any such plans proposed must be included in the application submitted to the appropriate FDIC office. The structure of stock benefit plans should encourage the continued involvement of the participants and serve as an incentive for the successful operation of the institution. Stock benefit plans should contain no feature that would encourage speculative or high risk activities or serve as an obstacle to or otherwise impede the sale of additional stock to the general public.

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(c) *Background and biographical information*—Proposed directors, officers, and 10% shareholders must file financial and biographical information in connection with the deposit insurance application. The FDIC may request a report from the Federal Bureau of Investigation or other investigatory agencies on these individuals. Fingerprinting of individuals may be required. Background checks and fingerprinting may be waived by the FDIC for individuals who are currently associated with, or have had a recent past association with, an insured depository institution. When the proposed depository institution is being established as a wholly owned subsidiary of an eligible holding company, the FDIC may waive financial information for those persons who are being proposed as directors or officers of the applicant. Background checks conducted by other federal financial institution regulators in connection with charter applications are generally adequate for the FDIC if the other regulators agree to notify the FDIC of

instances in which further investigation is warranted.

In the event any present or prospective director, officer, employee, controlling stockholder, or agent of the applicant 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 of such offense, the applicant must obtain the FDIC's written consent under section 19 of the Act (12 U.S.C. 1829), before any such person may serve in one or more of those capacities. Guidelines regarding section 19 applications may be obtained from the appropriate FDIC office.

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5. Risk Presented to the Bank Insurance Fund or Savings Association Insurance Fund

In order to resolve this factor favorably, the FDIC must be assured that the proposed institution does not present an undue risk to the Bank Insurance Fund or the Savings Association Insurance Fund. As a general matter, the FDIC interprets this factor very broadly. In making its determination, the FDIC will rely on any information available to it, including, but not limited to the applicant's business plan. The FDIC expects that an applicant will submit a business plan commensurate with the capabilities of its management and the financial commitment of the incorporators. Any significant deviation from the business plan within the first three years of operation must be reported by the insured depository institution to the primary federal regulator before consummation of the change. Submission of an unsound business plan will unfavorably impact the finding concerning this factor. An applicant's business plan should demonstrate the following:

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Proposed Depository Institutions Formed for the Sole Purpose of Acquiring Assets and Assuming Liabilities of an Insured Institution in Default

Proponents should contact the appropriate FDIC office as soon as possible if they are interested in acquiring assets and/or assuming liabilities of an institution in default. Due to the time constraints involved with this type of transaction, information submissions and applications will be abbreviated. Generally, a letter request accompanied by copies of applications filed with

other federal or state regulatory authorities will be sufficient. Other information will be requested only as needed by the FDIC.

By order of the Board of Directors.

Dated at Washington, DC, this 3rd day of December, 2002.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

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FEDERAL DEPOSIT INSURANCE CORPORATION

FDIC Statement of Policy on Bank Merger Transactions

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final agency policy statement; amendment.

SUMMARY: The FDIC is amending its Statement of Policy on Bank Merger Transactions to reflect changes made pursuant to an internal reorganization. The reorganization merged the Division of Supervision and the Division of Compliance and Consumer Affairs. The amended Statement of Policy is intended to be read in conjunction with the merger provisions of the FDIC's revised regulations governing applications filed with the FDIC, which appears elsewhere in this issue of the **Federal Register**.

EFFECTIVE DATE: December 27, 2002.

FOR FURTHER INFORMATION CONTACT: Mindy West, Examination Specialist, Division of Supervision and Consumer Protection, (202/898-7221); Robert C. Fick, Counsel, Legal Division, (202/898-8962), FDIC, Washington, DC 20429.

SUPPLEMENTARY INFORMATION: On June 30, 2002, the FDIC implemented an internal reorganization. The primary purpose of the reorganization was to streamline the management and decision making processes. As part of the reorganization, several divisions were merged. In particular, the Division of Supervision was merged with the Division of Compliance and Consumer Affairs to create the Division of Supervision and Consumer Protection. The reorganization has necessitated changes to the Statement of Policy on Bank Merger Transactions (Statement of Policy), to reflect the new structure since there are references to the former divisions and management structure in the prior Statement of Policy.

In conjunction with the revisions to the Statement of Policy, the FDIC is also amending 12 CFR part 303 (part 303) of

the FDIC's regulations governing application, notice, and request procedures. The amendments to part 303 reflect the FDIC's new organizational structure. The FDIC is also removing and updating the delegations of authority previously found in part 303 to provide greater flexibility when making decisions throughout the application process. As a result of these changes, the revised Statement of Policy is intended to be read in conjunction with the revised merger provisions of newly-amended part 303, notice of which is published in this issue of the **Federal Register**.

Section 307(c) of the Gramm-Leach-Bliley Act (GLBA) requires the FDIC to consult with the appropriate state insurance regulator before making any determination relating to the initial affiliation of, or the continuing affiliation of, a depository institution with a company engaged in insurance activities. On April 29, 2002, the Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, FDIC and the Office of Thrift Supervision published a final notice in the Federal Register (67 FR 21014) revising the Interagency Bank Merger Act Application (Application) to add an item to the form to collect information required by GLBA. The FDIC is now amending the Statement of Policy to conform to the recently updated Application to include the specified information required therein. The information that is required is the name of the affiliated insurance company, a description of its insurance activities, a list of each state and the lines of business in that state in which the company holds, or will hold, an insurance license. The applicant must also indicate the state where the company holds a resident license or charter, as applicable.

The Statement of Policy published December 1, 1998 (63 FR 66184) is hereby amended as follows:

FDIC Statement of Policy on Bank Merger Transactions

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II. Application Procedures

1. *Application filing.* Application forms and instructions may be obtained from the appropriate FDIC office. Completed applications and any other pertinent materials should be filed with the appropriate FDIC office. The application and related materials will be reviewed by the FDIC for compliance with applicable laws and FDIC rules and regulations. When all necessary information has been received, the

application will be processed and a decision rendered by the FDIC.

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3. *Publication of notice.* The FDIC will not take final action on a merger application until notice of the proposed merger transaction is published in a newspaper or newspapers of general circulation in accordance with the requirements of section 18(c)(3) of the Federal Deposit Insurance Act. See § 303.65 of the FDIC rules and regulations (12 CFR 303.65). The applicant must furnish evidence of publication of the notice to the appropriate FDIC office following compliance with the publication requirement. See § 303.7(b) of the FDIC rules and regulations (12 CFR 303.7(b)).

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6. *Merger decisions available.* Applicants for consent to engage in a merger transaction may find additional guidance in the reported bases for FDIC approval or denial in prior merger transaction cases compiled in the FDIC's annual "Merger Decisions" report. Reports may be obtained from the FDIC Public Information Center, Room 100, 801 17th Street NW., Washington, DC 20434. Reports may also be viewed at <http://www.fdic.gov>.

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III. Evaluation of Merger Applications

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Special Information requirement if applicant is affiliated with or will be affiliated with an insurance company.

If the institution that is the subject of the application is, or will be, affiliated with a company engaged in insurance activities that is subject to supervision by a state insurance regulator, the applicant must submit the following information as part of its application: (1) The name of insurance company; (2) a description of the insurance activities that the company is engaged in and has plans to conduct; and (3) a list of each state and the lines of business in that state which the company holds, or will hold, an insurance license. Applicant must also indicate the state where the company holds a resident license or charter, as applicable.

By order of the Board of Directors.

Dated at Washington, DC, this 3rd day of December, 2002.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

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