or bank qualify for placement in a lower risk category. As part of this review, the Basle Committee reassessed whether membership in the OECD (or the conclusion of special lending arrangements with the IMF) would, by itself, be sufficient to ensure that only countries with relatively low transfer risk would continue to be eligible for lower risk weight treatment.

On July 15, 1994, the Basle Committee made an announcement to clarify that the reference in the Basle Accord to OECD members applies to all current members of the organization. The announcement also stated that it is the Basle Committee's intention, subject to national consultation, to record a change to the Basle Accord in 1995 that would modify the definition of the OECD-based group of countries for risk-based capital purposes. The change, if adopted, would exclude from lower risk weight treatment any country within the OECD-based group of countries that has rescheduled its external sovereign debt within the previous five years. The Basle Committee announcement was endorsed by the G–10 Governors.

II. Proposed Rule

In view of the Basle Committee's announcement, the FDIC is proposing to amend its risk-based capital guidelines to modify the definition of the OECD-based group of countries. Under the proposal, the OECD-based group of countries would continue to include countries that are currently full members of the OECD, regardless of entry date, as well as countries that have concluded special lending arrangements with the IMF associated with the Fund's General Arrangements to Borrow, but would exclude any country within this group that has rescheduled its external sovereign debt within the previous five years. The effect of the proposed modification would be to clarify that membership in the OECD-based group of countries must coincide with relatively low transfer risk in order for a country to be eligible for differentiated capital treatment.

For purposes of this proposal, an event of rescheduling of external sovereign debt generally would include renegotiations of terms arising from the country's inability or unwillingness to meet its external debt service obligations. Renegotiations of debt in the normal course of business generally do not indicate transfer risk of the kind that would preclude an OECD-based country from qualifying for lower risk weight treatment. One example of such a routine renegotiation would be a renegotiation to allow the borrower to take advantage of a change in market conditions, such as a decline in interest rates.

The FDIC invites comment on all aspects of this proposal.

III. Regulatory Flexibility Act

The Board of Directors of the FDIC hereby certifies that adoption of this proposed amendment to part 325 will not have a significant economic impact on a substantial number of small business entities (in this case, small banking organizations) within the meaning of the Regulatory Flexibility Act requirements (5 U.S.C. 601 et seq.). This amendment will not necessitate the development of sophisticated recordkeeping or reporting systems by small institutions nor will small institutions need to seek out the expertise of specialized accountants, lawyers, or managers to comply with this regulation. In light of this certification, the Regulatory Flexibility Act requirements (at 5 U.S.C. 603, 604) to prepare initial and final regulatory flexibility analyses do not apply.

IV. Paperwork Reduction Act

The FDIC has determined that the proposed amendment, if adopted, would not increase the regulatory paperwork burden of state nonmember banks pursuant to the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). Consequently, no information has been submitted to the Office of Management and Budget for review.

List of Subjects in 12 CFR Part 325

Bank deposit insurance, Banks, Banking, Capital adequacy, Reporting and recordkeeping requirements, Savings Associations, State nonmember banks.

For the reasons set forth in the preamble, the Board of Directors of the Federal Deposit Insurance Corporation proposes to amend part 325 of title 12 of the Code of Federal Regulations as follows:

PART 325—CAPITAL MAINTENANCE

1. The authority citation for Part 325 continues to read as follows:

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831o, 3907, 3909; Pub. L. 102–233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831n note); Pub. L. 102–242, 105 Stat. 2236, 2355, 2386 (12 U.S.C. 1828 note).

2. Appendix A to part 325 is amended by revising footnote 12 in section II.B.2. to read as follows:

Appendix A to Part 325—Statement of Policy on Risk-Based Capital

* * * * *

II. * * *

B. * * *

2. * * *[12] * * *

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By order of the Board of Directors.

Dated at Washington, D.C. this 31st day of January, 1995.

Federal Deposit Insurance Cprporation

Robert E. Feldman,

Acting Executive Secretary.

[FR Doc. 95–3692 Filed 2–14–95; 8:45 am]

BILLING CODE 6714–01–P

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12 CFR Part 363

RIN 3064—AA83

Annual Independent Audits and Reporting Requirements

AGENCY: Federal Deposit Insurance Corporation (FDIC or Corporation).

ACTION: Notice of proposed rulemaking.

SUMMARY: Section 314 of the Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRIA) amends sections 36(i) and 36(g)(2) of the Federal Deposit Insurance Act (FDI Act). Section 36 of the FDI Act is generally intended to facilitate early identification of problems in financial management through annual independent audits, assessments of the effectiveness of internal controls and of compliance with designated laws and regulations, and more stringent reporting requirements. Section 314(a) provides relief from certain duplicative reporting under section 36 of the FDI Act for sound, well managed insured depository institutions with over $9 billion in total assets which are subsidiaries of multibank holding companies. Section 314(b) requires the Corporation to notify a large insured depository institution in writing if it decides a review by an independent public accountant of such institution's quarterly financial reports is required.

[12] The OECD-based group of countries comprises all full members of the Organization for Economic Cooperation and Development (OECD), as well as countries that have concluded special lending arrangements with the International Monetary Fund (IMF) associated with the IMF's General Arrangements to Borrow, but excludes any country that has rescheduled its external sovereign debt within the previous five years. The OECD includes the following countries: Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Japan, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States. Saudi Arabia has concluded special lending arrangements with the IMF associated with the IMF's General Arrangements to Borrow.

The Corporation's regulations governing annual independent audits implement section 36 of the FDI Act and this proposed amendment seeks to conform the regulations to the amended statute.

In addition, the FDIC proposes several minor, technical amendments to the guidelines and interpretations (Guidelines), published as an appendix concerning compliance with certain provisions of section 36. The FDIC also proposes to amend the schedule entitled, ''Agreed Upon Procedures for Determining Compliance with Designated Laws'', to implement recent amendments to the federal regulations concerning loans to insiders improve the format of the procedures, streamline the specific procedures, and eliminate ambiguities. These proposed amendments reflect the experience of the Corporation, institutions, and accountants with the existing procedures during the past year.

DATES: Comments must be received by April 17, 1995.

ADDRESSES: Send comments to Robert E. Feldman, Acting Executive Secretary, FDIC, 550 17th Street, N.W., Washington, D.C. 20429. Comments may be hand-delivered to room 400, 1776 F Street, N.W., Washington, D.C. 20429 on business days between 8:30 a.m. and 5:00 p.m. (FAX number: (202) 898–3838.) Comments will be available for inspection in room 7118, 550 17th Street, N.W., Washington, D.C., between 9 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Doris L. Marsh, Examination Specialist, Division of Supervision, (202) 898–8905, or Sandra Comenetz, Counsel, Legal Division, (202) 898–3582, FDIC, 550 17th Street N.W., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION:

I. Background

Section 112 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) added section 36, ''Independent Annual Audits of Insured Depository Institutions'', to the FDI Act (12 U.S.C. 1831m). Section 36 requires the FDIC, in consultation with the appropriate federal banking agencies, to promulgate regulations requiring each insured depository institution over a certain asset size (covered institution) to have an annual independent audit of its financial statements performed in accordance with generally accepted auditing standards and section 37 of the FDI Act (12 U.S.C. 1831n), and to provide a management report and independent public accountant's attestation concerning both the effectiveness of the institution's internal controls for financial reporting and its compliance with designated safety and soundness laws. Section 36 also requires each covered institution to have an independent audit committee. The audit committee of each large covered institution (total assets exceeding $3 billion) must meet additional requirements.

Section 36 also requires the FDIC, in consultation with the other federal banking agencies, to designate laws and regulations concerning safety and soundness. This section requires the institution's independent public accountant to perform procedures agreed upon by the Corporation to determine an institution's compliance with these designated laws and regulations. The ''Designated Laws'' selected by the Corporation are the federal laws and regulations concerning loans to insiders and the federal and state laws and regulations concerning dividend restrictions.

In June 1993, the FDIC published 12 CFR part 363 (58 FR 31332, June 2, 1993) to implement the provisions of section 36 of the FDI Act. Under part 363, the requirements of section 36 apply to each insured depository institution with $500 million or more in total assets at the beginning of any fiscal year that begins after December 31, 1992.

Section 314 of RCDRIA amends sections 36(i) and 36(g)(2) of the FDI Act (12 U.S.C. 1831m (i) and (g)(2)). The purpose of section 314(a) is to provide relief from certain duplicative reporting under section 36 of the FDI Act for sound, well managed insured depository institutions with over $9 billion in total assets which are subsidiaries of multibank holding companies. Section 314(b) requires the Corporation to notify a large insured depository institution in writing if it decides to require a review by an independent public accountant of such institution's quarterly financial reports. In addition, the federal regulations concerning loans to insiders (Federal Reserve Regulation O, 12 CFR part 215), which are included in one of the Designated Laws, were amended during 1994.

The FDIC proposes certain amendments to 12 CFR Part 363, which conform Part 363 to the amended statute. The FDIC also proposes several minor, technical amendments to the guidelines and interpretations (Guidelines), published as Appendix A to part 363, concerning compliance with certain provisions of section 36.

In addition, a year's experience with Part 363 indicates that a clarification of certain of the specific procedures in Schedule A to Appendix A of the Guidelines would make them more efficient and less burdensome. The FDIC therefore proposes to amend Schedule A to Appendix A—Agreed Upon Procedures for Determining Compliance with Designated Laws, to reflect the recent amendments to the federal regulations concerning loans to insiders (12 CFR Part 215), improve the format of the procedures, streamline the specific procedures, and eliminate ambiguities. The proposed amendments reflect the experience of the Corporation, institutions, and accountants dealing with the existing procedures during the past year.

Section 36(g)(2) of the FDI Act authorizes the FDIC to require independent public accountants for ''large institutions'' to review such institutions' quarterly financial reports. This provision is amended by Section 314(b) of RCDRIA to add section 36(g)(3) which requires the Corporation to notify a large insured depository institution in writing if it decides to require a review of its quarterly financial reports by an independent public accountant. When the FDIC adopted Part 363, it elected not to exercise its authority in this area for reasons of cost and limited expected benefits, preferring instead to request such reviews on a case-by-case basis. The FDIC has not changed its opinion. Should the FDIC decide to request an independent public accountant's review of the quarterly financial statements of a large insured depository institution, it will make the request in writing.

II. The Proposal

The FDIC proposes to make conforming amendments to Part 363 so that it is consistent with section 36 as amended by section 314 of RCDRIA, and to make minor, technical, and clarifying changes to the Guidelines in Appendix A. In addition, the FDIC proposes to amend and reformat the specific procedures in Schedule A to Appendix A to make them more efficient and less burdensome.

A. Amendments to the Rule

Section 363.1—Scope. In § 363.1(b), the phrase ''but less than $9 billion'' would be deleted from the provisions of the regulation describing the institutions eligible to report using the holding company exception set forth in section 36(i). This revision would make the regulation consistent with the amendment to section 36(i) made by section 314 of RCDRIA. In addition, the subsection would be reformatted and another paragraph added to incorporate the provisions of section 314(a)(3) of RCDRIA which identifies the

circumstances under which the appropriate federal banking agency may require a large institution subsidiary of a holding company to have its own audit committee and report separately.

Section 363.4—Filing and notice requirements. The citation in § 363.4(b) would be corrected so that it is clear that only the annual report in § 363.4(a)(1) is available for public inspection. This correction would make the Rule consistent with section 36 of the FDI Act.

Section 363.5—Audit committees. A new sentence would be added at the end of § 363.5(b) to make the rule consistent with the amendment to section 36(i) made by section 314 of RCDRIA. The new sentence prohibits any large customers of a large insured depository institution from being members of the audit committee of the institution's holding company if the institution relies on the audit committee of the holding company to comply with this rule.

B. Amendments to Appendix A to Part 363—Guidelines and Interpretations

Guideline 4. Comparable Services and Functions—An amendment to Guideline 4(c) under ''Scope of Rule'' would replace the word ''all'' with the word ''those'' to clarify that only information pertaining to covered institutions must be included in reports filed under Part 363.

Guideline 9. Safeguarding of Assets. The third and fourth sentences of Guideline 9 and the addition of a phrase to the footnote would be revised. When Part 363 was adopted, the FDIC determined that ''safeguarding of assets'', as the term relates to internal control policies and procedures for financial reporting, should be addressed in the management report and the independent public accountant's attestation discussed in guideline 18. In May, 1994, the Committee of Sponsoring Organizations (COSO) of the Treadway Commission issued an Addendum to the ''Reporting to External Parties'' volume of COSO's September 1992 Internal Control—Integrated Framework (COSO Report). The Addendum expanded the discussion of the scope of a management report on internal controls to address additional controls pertaining to safeguarding of assets. It states that ''Such internal control can be judged effective if the board of directors and management have reasonable assurance that unauthorized acquisition, use or disposition of the entity's assets that could have a material effect on the financial statements is being prevented or detected on a timely basis''. The FDIC, therefore, believes that the concern that existed at the time of the adoption of Part 363 over the lack of criteria against which the accountant may judge safeguarding of assets for financial reporting no longer exists. Thus, the last two sentences and the footnote to this Guideline would be revised.

Guideline 10. Standards for Internal Controls. The footnote to Guideline 10 includes a list of sources of information on safeguarding of assets and standards for internal controls for financial reporting that may be considered for use by institutions. The Addendum to the COSO Report now contains information regarding safeguarding of assets. Therefore, a reference to this standard would be added to the list in the footnote, and Guideline 10 revised appropriately.

In addition, the American Institute of Certified Public Accountants (AICPA) issued Statement on Auditing Standards No. 55 (SAS 55), ''Consideration of the Internal Control Structure in a Financial Statement Audit''. SAS 55 has superseded AICPA Statement on Auditing Standards No. 30 (SAS 30), ''Reporting on Internal Accounting Control'', which is currently listed as a standard in the footnote to Guideline 10. Therefore, SAS 30 would be deleted from the footnote and replaced with SAS 55.

Guideline 15. Peer Reviews—The footnote to Guideline 15 includes the names of the three peer and quality review programs of the AICPA. Since the AICPA is combining two of these programs into a single peer review program, the footnote to Guideline 15 would be amended to identify the two acceptable peer review programs to which an independent public accountant performing audit and attestation work may belong.

Guideline 24. Relief from Filing Deadlines—The phrase referring to section 36 of the FDI Act in the second sentence of Guideline 24 would be deleted since section 36 does not provide authority to the FDIC to provide relief to, or exempt institutions from, provisions in the statute. This Guideline has also been revised to make it more readable.

Guideline 31. Holding Company Audit Committees—The first sentence of Guideline 31 would be amended to clarify that a holding company audit committee, on which subsidiary institutions rely in order to comply with this rule, must meet the requirements for the audit committee of the largest subsidiary institution.

The proposal would revise Guideline 31 because it has been widely misunderstood. The first two sentences of this Guideline apply to the situation where an insured depository institution subsidiary has $5 billion or more in total assets, and a 3, 4, or 5 composite CAMEL rating. Such a subsidiary must have its own audit committee separate from the audit committee of the holding company. It was not clear that the third sentence of Guideline 31 addressed the situation where an insured depository institution subsidiary has either less than $5 billion in total assets, or $5 billion or more in total assets and a 1 or 2 composite CAMEL rating, and its holding company performs services and functions comparable to those required by the statute. In the latter situation, an institution may choose to rely on the holding company's audit committee. The members of the audit committee of the holding company are expected to meet the membership requirements of the largest subsidiary depository institution and may perform the duties of the audit committee for a subsidiary institution without becoming directors of the institution. This Guideline would be amended to clarify its meaning.

Guideline 32. Duties—The second sentence of Guideline 32 would be amended to complete the citation to certain sections of Part 363. The sentence states that the duties of a covered institution's audit committee should be appropriate to the size of the institution and the complexity of its operations, and should include reviewing with management and the independent public accountant the basis for the reports issued under §§ 363.2 (a) and (b) and 363.3 (a) and (b) of the rule. At present, the citation refers only to § 363.2(b) of the rule.

C. Amendments to Schedule A to Appendix A—Agreed Upon Procedures for Determining Compliance with Designated Laws

The agreed upon procedures in Schedule A would be amended to clarify the numbering system, make the procedures consistent with amendments to insider loan regulations, and adopt suggestions of institutions and accountants to make the performance of the agreed upon procedures more efficient and less burdensome.

Proposed formatting changes include renumbering the paragraphs and adding more subject titles. The procedures applicable to insider extensions of credit granted, insider extensions of credit outstanding, aggregate insider extensions of credit outstanding, overdrafts, limitations on extensions of credit to executive officers, and reports on indebtedness to correspondent banks would all be placed in separate

subsections of the procedures for more efficient performance of the procedures and ease of reference. The amendments to the Federal Reserve Board's Regulation O (12 CFR Part 215), the federal rules governing insider loans, necessitated citation changes.

The proposed revisions to the procedures should make them less burdensome for institutions and accountants since they will permit the use of the most recently completed Reports of Condition and Income (Call Report) or Thrift Financial Report (TFR) available when the procedures are being performed rather than requiring the use of only the year-end Call Report or TFR. The scope of the required reading of board and committee minutes and reports under the Securities Exchange Act of 1934 (15 U.S.C. 78a) would also be more clearly defined. Inadvertent overdrafts in an aggregate amount of $1,000 or less, which are exempt from Regulation O proscriptions (See 12 CFR 215.4(e)), would no longer need to be separately tracked by institutions, listed when certain representations are made by management, or tested by the accountant. Where accountants were expected to compare insider transactions to transactions with nonaffiliated persons, the comparison period within which nonaffiliated transactions can take place would be expanded from four to eight weeks. In addition, where no maximum number transactions to which comparisons must be made were previously included, comparisons would now be limited to a maximum of three. If no comparable transactions exist, an alternative procedure would be available to the institution.

To ensure that some tests were performed on each category of extension of credit, including overdrafts and loans from correspondent banks, accountants would be requested to obtain three separate samples. In accordance with suggestions received for the procedures covering extensions granted and outstanding during the year, the proposal would have accountants focus the testing on a sample of insiders rather than a sample of transactions.

Under the guidelines, an institution may choose to have some of the testing required in the agreed-upon procedures performed by its internal auditor with less testing performed by its independent public accountant. When the holding company exception set forth in section 36(i) is used at a holding company with more than one covered subsidiary institution, the proposal would extend to internal auditors the same testing requirements that are now applicable to independent public accountants. This would eliminate the existing requirement that internal auditors perform the procedures on each covered subsidiary every year. Thus, the testing of samples from all covered subsidiaries every two or three years that has been required of independent public accountants would now apply to internal auditors, and a requirement that the lead institution or a few very large covered subsidiary institutions be included every year has been added for both accountants and internal auditors. However, in response to the proposed reduction in testing requirements applicable to internal auditors, the FDIC would increase the size of the sample required to be tested by the independent public accountant from 20 to 30 percent of the transactions in the sample used by the internal auditor. This change would generally not result in any increase in the number of transactions tested by the independent public accountant for reports on holding companies with two or more covered subsidiary institutions. Previously, the internal auditor had to perform procedures on a sample of transactions from each covered subsidiary and the independent public accountant had to test a sample from the consolidated holding company that was at least 20 percent of the size of the aggregate samples used by the internal auditor. Under the proposal, the internal auditor may also select a sample on a consolidated holding company basis (so long as some transactions come from each covered subsidiary institution at least every two or three years), but the accountant would have to test a sample of transactions that was at least 30 percent of the size of the sample used by the internal auditor. In most cases, testing 30 percent of the number of transactions in the one sample from the consolidated entity used by the internal auditor will consist of fewer transactions to test than 20 percent of the transactions included in the samples aggregated from each covered institution.

The changes and reformatting in the procedures from the current rule to the proposal are outlined in the table below:

Subject	Old section I	New section I
Insider Loans:		
Designated Laws and Regulations	A.1	A.1
General Information	A.2.a.	A.2.a
Calculations	A.2.b	A.4
Policies and Procedures	A.2.c	A.3
Insider Transactions	A.2.d	A.5
Loans to Correspondent Banks	A.2.d.(1)	A.10
Aggregate Indebtedness	A.2.d.(2)(a)	A.2.b.(3) A.2.d.(7) A.8
Executive Officers	A.2.d.(2)(b) & (c) A.2.e.(ii)	Deleted A.7
Insider Extensions of Credit	A.2.d.(2)(d) & (e) A.2.d.(5) & (6)	A.5, A.6
Overdrafts	A.2.d.(3)	A.9
Reports on Indebtedness to. Correspondent Banks	A.2.e.	A.10
Dividend Restrictions:		
Designated Laws and Regulations	B.1	B.1
General Information	B.2	B.2
Policies and Procedures	B.2.b	B.3
Board Minutes	B.2.c	B.4
Calculation of Undercapitalization	B.2.d	B.5
Dividends Declared by Banks	B.2.e	B.6
Dividends Declared by Savings Associations	B.2.f	B.7

Subject	Old section I	New section I
Subject	Old section II	New section II
Procedures for the Independent Public Accountant:		
Designated Laws and Regulations	A. & B.1	A. & B.1
Internal Auditor's Workpapers	B.2	B.2
Testing	C.	B.3
Reports Concerning Holding Companies	D.	B.4

D. Timing and Effective Date

Since the vast majority of covered institutions have fiscal years that coincide with the calendar year, they will be or are in the process of preparing the annual reports and having the agreed-upon procedures performed. In order to make this process less burdensome for institutions and their accountants, the FDIC will raise no objection if an institution chooses to follow immediately the provisions of this proposal for any fiscal year that ends prior to such time as any final amendment is adopted. However, if an institution chooses to follow these provisions and procedures, it must do so for both of the Designated Laws.

III. Regulatory Flexibility Act

The rule expressly exempts insured depository institutions having assets of less than $500 million, and, for that reason, is inapplicable to small entities. Therefore, pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601 *et seq.*), the FDIC Board of Directors certifies that the rule would not have a significant impact on a substantial number of small entities.

IV. Paperwork Reduction Act

The proposed rule would reduce the burden in a collection of information that has been reviewed and approved by the Office of Management and Budget under control number 3064–0113, pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). The currently approved burden for this collection is 76,330 hours per year. Of the reports filed during the first year of implementation of Part 363, nearly half (500) were submitted using the holding company exception. However, institutions generally reported that the time expended was greater than had been previously estimated. For this reason, the hours per response estimated is nearly double the previous estimate.

The amended provisions of RCDRIA permit additional use of the holding company exception. Additional burden reduction is expected from the reformatted and streamlined specific procedures in Schedule A to Appendix A to Part 363. It is expected that the proposal would reduce the currently approved burden by 18,360 hours, to an industry-wide total of 57,970 hours per year.

The total estimated reporting burden for the collection under Part 363 as it is proposed to be amended would be:

Number of Respondents: 450.

Number of Responses Per Respondent: 3.19.

Total Annual Responses: 1,435.5.

Hours per Response: 40.38.

Total Annual Burden Hours: 57,970.

The proposed changes to this collection of information have been submitted to OMB for review and approval pursuant to the Paperwork Reduction Act. Comments on the accuracy of the burden estimate, and suggestions for reducing the burden, should be directed to the Office of Management and Budget, Paperwork Reduction Project 3064–0113, Washington, D.C. 20503, with copies of such comments to Steven F. Hanft, Office of the Executive Secretary, Room F–400, 550 17th St. N.W., Washington, D.C. 20429.

List of Subjects in 12 CFR Part 363

Accounting, Administrative practice and procedure, Banks, Banking, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Board of Directors of the FDIC proposes to amend part 363 of title 12, chapter III, of the Code of Federal Regulations as follows:

PART 363—ANNUAL INDEPENDENT AUDITS AND REPORTING REQUIREMENTS

1. The authority citation for part 363 continues to read as follows:

Authority: 12 U.S.C. 1831m.

2. Section 363.1 is amended by revising paragraph (b) to read as follows:

§ 363.1 Scope.

* * * * *

(b) *Compliance by subsidiaries of holding companies.* (1) The audited financial statements requirement of § 363.2(a) may be satisfied for an insured depository institution that is a subsidiary of a holding company by audited financial statements of the consolidated holding company.

(2) The other requirements of this part for an insured depository institution that is a subsidiary of a holding company may be satisfied by the holding company if:

(i) The services and functions comparable to those required of the insured depository institution by this part are provided at the holding company level; and

(ii) Either the insured depository institution has total assets as of the beginning of such fiscal year of:

(A) Less than $5 billion; or

(B) $5 billion or more and a composite CAMEL rating of 1 or 2.

(3) The appropriate federal banking agency may suspend the exception in paragraph (b)(2) of this section regarding any institution with total assets in excess of $9 billion for any period of time during which the appropriate federal banking agency determines that the institution's exemption would create a significant risk to the affected deposit insurance fund.

3. Section 363.4 is amended by revising paragraph (b) to read as follows:

§ 363.4 Filing and notice requirements.

* * * * *

(b) *Public availability.* The annual report in paragraph (a)(1) of this section shall be available for public inspection.

* * * * *

4. Section 363.5 is amended by revising paragraph (b) to read as follows:

§ 363.5 Audit committees.

* * * * *

(b) *Committees of large institutions.* The audit committee of any insured depository institution that has total assets of more than § 3 billion, measured as of the beginning of each 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 part, the holding company audit committee shall not include any members who are large customers of the subsidiary institution.

5. Appendix A to Part 363 is amended by revising guidelines 4(c), 9, footnote 2 in guideline 10, footnote 3 in guideline 15(b), 24, 31, and the introductory paragraph of guideline 32 and footnotes 2 and 3 to read as follows:

Appendix A to Part 363—Guidelines and Interpretations

* * * * *

4. *Comparable Services and Functions.* * * * (c) Prepares and submits the management assessments of the effectiveness of the internal control structure and procedures for financial reporting (internal controls), and compliance with the Designated Laws defined in guideline 12 that are based on information concerning the activities and operations of those subsidiary institutions within the scope of the rule.

* * * * *

9. *Safeguarding of Assets.* ''Safeguarding of assets'', as the term relates to internal control policies and procedures regarding financial reporting, and which has precedent in accounting literature, should be addressed in the management report and the independent public accountant's attestation discussed in guideline 18. Testing the existence of and compliance with internal controls on the management of assets, including loan underwriting and documentation, represents a reasonable implementation of section 36. Management therefore should include such internal controls as part of its assertion in the management report. The accountant's attestation to management's assertion concerning the effectiveness of internal controls for financial reporting should also include safeguarding of assets against unauthorized acquisition, use or disposition.[1]

10. * * *[2]

* * * * *

15. * * *

(b) * * *[3] * * *

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24. *Relief from Filing Deadlines.* Although the reasonable deadlines for filings and other notices established by this part are specified, some institutions may occasionally be confronted with extraordinary circumstances beyond their reasonable control that may justify extensions of a deadline. In that event, upon written application from an insured depository institution, setting forth the reasons for a requested extension, the FDIC or appropriate federal banking agency may, for good cause shown, extend a deadline in this part for a period not to exceed 30 days.

* * * * *

31. *Holding Company Audit Committees.* When an insured depository institution subsidiary fails to meet the requirements for the holding company exception in § 363.1(b)(2) or maintains its own separate audit committee to satisfy the requirements of this part, members of the independent audit committee of the holding company may serve as the audit committee of the subsidiary institution if they are otherwise independent of management of the subsidiary, and, if applicable, meet any other requirements for a large subsidiary institution covered by this part. However, this would not permit officers or employees of the holding company to serve on the audit committee of its subsidiary institutions. When the subsidiary institution satisfies the requirements for the holding company exception in § 363.1(b)(2), members of the audit committee of the holding company should meet all the membership requirements applicable to the largest subsidiary depository institution and may perform all the duties of the audit committee of a subsidiary institution, even though such holding company directors are not directors of the institution.

32. *Duties.* The audit committee should perform all duties determined by the institution's board of directors. The duties should be appropriate to the size of the institution and the complexity of its operations, and include reviewing with management and the independent public accountant the basis for the reports issued under §§ 363.2 (a) and (b) and 363.3(a) and (b) of the rule. Appropriate additional duties could include:

* * * * *

6. Schedule A to Appendix A to Part 363 is revised to read as follows:

Schedule A to Appendix A—Agreed Upon Procedures for Determining Compliance With Designated Laws

i. Schedule A is attached to the Guidelines and Interpretations issued by the FDIC as an appendix to this part 363 adopted to implement section 36 of the FDI Act.

ii. The Agreed Upon Procedures set forth in this schedule are referred to in guideline 19. They should be followed by the institution's independent public accountant (or, with respect to the procedures set forth in section I of this schedule, by the institution's internal auditor if the accountant is to perform the procedures set forth in section II of this schedule) in order to permit the accountant to report on the extent of compliance with the Designated Laws (defined in guideline 12) as required by section 36(e) (1) and (2).

iii. Additional guidance concerning the role of the institution, its internal auditor, and its independent public accountant in assessing the institution's compliance with the Designated Laws is set forth in the Guidelines. All terms not defined in this schedule have the meanings given them in this part 363, the Guidelines, and professional accounting and auditing literature.

Section I—Procedures for Individual Institutions

The following procedures should be performed by the institution's independent public accountant in accordance with generally accepted standards for attestation engagements, or by the institution's internal auditor if the procedures set forth in section II of this schedule are to be performed by the independent public accountant. To the extent permitted by § 363.1(b), these procedures may be performed on a holding company basis rather than at each covered subsidiary insured depository institution. (See section II.B.3. for information concerning testing by the independent public accountant when the institution's internal auditor is performing the procedures in Section I.)

A. *Loans to Insiders.*

1. *Designated Laws.* The following federal laws and regulations (Designated Insider Laws), to the extent that they are applicable to the institution, should be read:

a. Laws: 12 U.S.C. 375, 375a, 375b, 376, 1468(b), 1828(j)(2), 1828(j)(3)(B), and 1972; and

b. Regulations: 12 CFR 23.5, 31, 215, 337.3, 349.3, and 563.43.

2. *General.*

a. *Information.* Obtain from management of the institution, the following information for the institution's fiscal year:

(1) Management's assessment of compliance with the Designated Insider Laws;

(2) All minutes (including minutes drafted, but not approved) of the meetings of the board and committees of the board which have been delegated authority pertaining to insider lending;

(3) Reports of examination, supervisory agreements, and enforcement actions issued by the institution's primary federal and state regulators, if applicable;

(4) The annual survey which identifies all insiders of the institution (*i.e.*, directors, executive officers, and principal shareholders, and includes their related interests) and/or other records maintained for insiders of the institution's affiliates (pursuant to 12 CFR 215.8(c));

(5) All Forms 10–K, 10–Q, and 8–K and proxy statements filed with the SEC and

[1] It is management's responsibility to establish policies concerning underwriting and asset management and to make credit decisions. The auditor's role is to test compliance with management's policies relating to financial reporting.

[2] In considering what information is needed on safeguarding of assets and standards for internal controls, management may review guidelines provided by its primary federal regulator; the Federal Financial Institutions Examination Council's ''Supervisory Policy Statement on Securities Activities''; the FDIC's ''Statement of Policy Providing Guidance on External Auditing Procedures for State Nonmember Banks'' (Jan. 16, 1990), ''Statement of Policy Regarding Independent External Auditing Programs of State Nonmember Banks'' (Nov. 16, 1988), and Division of Supervision Manual of Examination Policies; the Federal Reserve Board's Commercial Bank Examination Manual and other relevant regulations; the Office of Thrift Supervision's Thrift Activities Handbook; the Comptroller of the Currency's Handbook for National Bank Examiners; standards published by professional accounting organizations, such as the American Institute of Certified Public Accountant's (AICPA) Statement on Auditing Standards No. 55, ''Consideration of the Internal Control Structure in a Financial Statement Audit''; the Committee of Sponsoring Organizations (COSO) of the Treadway Commission's Internal Control—Integrated Framework, including its addendum on safeguarding of assets; and other internal control standards published by the AICPA, other accounting or auditing professional associations, and financial institution trade associations.

[3] These would include standards for Performing and Reporting on Peer Reviews, codified in the SEC Practice Section Reference Manual, and Standards for Performing and Reporting on Peer Reviews, contained in Volume 2 of the AICPA's Professional Standards.

comparable documents filed with the FDIC, Federal Reserve Board, OCC, or OTS under the Securities Exchange Act of 1934 containing information pertaining to insider lending;

(6) A list of loans, including all overdrafts of executive officers and directors,[1] and other extensions of credit to insiders (including their related interests) outstanding at any time during the fiscal year (and which identifies those extensions granted during the year) as well as the amounts outstanding of such extensions of credit as of the date of the most recently completed Call Report or TFR (Insider Extensions List); and

(7) Management's written representation concerning the completeness of:

(a) Its records concerning insider loans and extensions of credit; and

(b) The Insider Extensions List.

b. *Procedures:*

(1) Read the foregoing information.

(2) If the institution has excluded any officers or directors from being considered executive officers for purposes of paragraph 2.a.(4) of this section, ascertain that any such exclusions have been approved by resolution of the board or the bylaws of the bank or company.

(3) Trace and agree each insider loan and other extension of credit disclosed in the documents listed in paragraphs 2.a. (2) through (5) of this section to see that it is included on the Insider Extensions List.

3. *Policies and Procedures.*

a. *Information.* Obtain the institution's written policies and procedures concerning its compliance with the Designated Insider Laws, including any written ''Code of Ethics'' or ''Conflict of Interest'' policy statements. If the institution has no written policies and procedures, obtain a narrative from management that describes the methods for complying with such laws and regulations, and includes provisions similar to those listed in paragraph A.3.b of this section.

b. *Procedures.* Ascertain that the policies and procedures include, or incorporate by reference, provisions consistent with the Designated Insider Laws for:

(1) Defining terms;

(2) Restricting loans to insiders;

(3) Maintaining records of insider loans;

(4) Requiring reports and/or disclosures by the institution and by executive officers, directors, and principal shareholders (and their related interests);

(5) Disseminating policy information;

(6) Revising policies to reflect subsequent changes in the law and regulations;

(7) Educating employees about the legal requirements and management's related policies and procedures;

(8) Prior approval of the board of directors; and

(9) Reporting insider loans to regulatory agencies on the institution's Call Report or TFR.

[1] Overdrafts of an executive officer or director in an aggregate amount of $1,000 or less need not be included on this list if management provides a written representation that policies and procedures are in effect to report as extensions of credit all overdrafts that do not meet the criteria listed in paragraph 9.a.(2) of this section concerning overdrafts in an aggregate amount of $1,000 or less.

4. *Calculations of Lending Limits.*

a. *Information.* Obtain management's calculation of the following items as of the date of the institution's most recently completed Call Report or TFR and as of a Call Report or TFR date six or nine months earlier:

(1) The institution's unimpaired capital and surplus (the legal lending limit for all insiders);

(2) The greater of 5 percent of the institution's unimpaired capital and surplus or $25,000; and

(3) The institution's individual lending limit (12 CFR 215.4(c)).

b. *Procedures.* Recalculate the amounts in paragraph 4.a. of this section for mathematical accuracy, and trace the amounts used in management's calculations to the most recently completed Call Report or TFR.

5. *Insider Extensions of Credit Granted.*

a. *Information.* Obtain management's written representations regarding whether the terms and creditworthiness of insider extensions of credit granted during the fiscal year are comparable to those that would have been available to unaffiliated third parties.

b. *Procedures.* Select a sample of insiders who were granted or had outstanding extensions of credit during the fiscal year from the Insider Extensions List. For each extension of credit granted during the fiscal year to each insider in the sample selected:

(1) If a credit granted during the year (aggregated with all other extensions of credit to that person and all related interests of that person) exceeds the lesser of the amounts calculated in paragraph 4.a.(2) of this section on either of the dates used in paragraph 4.a. of this section or $500,000, read the minutes of the meetings of the board of directors and determine whether the minutes indicate that:

(a) The credit was approved in advance by the board; and

(b) The insider abstained from participating directly or indirectly in voting on the transactions;

(2) Obtain management's calculation of the institution's individual lending limit for insiders pursuant to 12 CFR 215.4(c) as of the date when the extension of credit was granted and ascertain whether the amount of the extension of credit being granted to the insider, when combined with all other extensions of credit to that insider, exceeds such limit;

(3) Based on the types of extensions of credit granted during the fiscal year in the sample selected, select a sample of three (or such smaller number that exists) for each similar type of extension of credit to persons who are not insiders or employees of the institution or its affiliates that were granted within four weeks before or after the granting of the insider extension of credit:

(a) Compare the terms of the transactions with the persons not affiliated with the institution to those with the insiders, and note in the findings any material differences in the terms favorable to the insiders compared to the terms of the transactions with persons not affiliated with the institution or its affiliates;

(b) Alternatively, if no comparable transactions with persons who are not insiders exist within the time period specified in paragraph 5.b.(3) of this section, compare the terms of the insider transaction to approved policies delineating the interest rate and other terms and conditions in effect for similar extensions of credit to unaffiliated persons. Note in the findings any material differences in the terms favorable to the insiders compared to the terms of the approved policies for an extension of credit to persons not affiliated with the institution or its affiliates;

(4) For each extension of credit granted to each executive officer in the sample selected in paragraph 5.b. of this section, ascertain that each credit was:

(a) Preceded by submission of financial statements;

(b) Approved by, or promptly reported to, the board of directors, as appropriate; and

(c) Made subject to the written condition, as specified in the note or other evidence of indebtedness, that the extension of credit will become, at the option of the institution, due and payable at any time that the executive officer is indebted to other insured institutions in an aggregate amount greater than the executive officer would be able to borrow from the institution.

6. *Insider Extensions of Credit Outstanding.*

a. *Information.* Use the sample of insiders selected in paragraph 5.b. of this section.

b. *Procedure.* Trace and agree amounts outstanding from insiders in the sample to the supporting documents, as applicable, for the line item aggregating indebtedness of all insiders on the institution's most recently completed Call Report or TFR.

7. *Limitation on Extensions of Credit to Executive Officers.*

a. *Information.* From the sample selected in paragraph 5.b. of this section, select the executive officers who were granted extensions of credit during the year.

b. *Procedures.*

(1) For each executive officer selected, obtain management's calculation as of the two dates used in paragraph 4.a. of this section of:

(a) The aggregate amount of extensions of credit to the executive officer; and

(b) 2.5 percent of the institution's unimpaired capital and surplus.

(2) Ascertain whether, and report as an exception if, the aggregate amount of the extensions of credit to the executive officer exceeds the greater of $25,000 or 2.5 percent of the institution's unimpaired capital and surplus, but in no event more than $100,000. The aggregate amount should exclude the types of extensions of credit set forth in 12 CFR 215.5(c)(1) through (3).

(3) Recalculate management's computations for mathematical accuracy and trace amounts used in management's computations to the institution's most recently completed Call Report or TFR.

(4) If the credit extended is a real estate loan, obtain documentation for the credit and note whether such documentation contains representations that:

(a) The purpose of the credit is for the purchase, construction, maintenance, or improvement of the executive officer's residence;

(b) The credit is secured by a first lien on the residence; and

(c) The executive officer owns or expects to own the residence after the extension of credit.

8. *Aggregate Insider Extensions of Credit Outstanding.*

a. *Information.* Obtain management's calculation of the aggregate extensions of credit to executive officers, directors, and principal shareholders of the institution and to their related interests as of the two dates selected in paragraph 4.a. of this section.

b. *Procedures.* Recalculate the amounts obtained in paragraph 8.a. of this section for mathematical accuracy.

(1) Compare this total with 100 percent of the institution's unimpaired capital and surplus calculated in paragraph 4.a.(1) of this section.

(2) Report any amount by which the aggregate extensions of credit exceed 100 percent of the institution's capital and surplus as an exception in the findings.

9. *Overdrafts.*

a. *Information.* Select a sample of insiders from the Insider Extensions List who had overdrafts outstanding during the fiscal year.

(1) Obtain a written history of the insider's overdrafts for the year and management's written representation concerning the completeness of that history.

(2) For overdrafts of an executive officer or director in an aggregate amount of $1,000 or less included in the sample, obtain management's written representation that:

(a) It believes the overdrafts were inadvertent;

(b) The account was overdrawn in each case for no more than 5 business days; and

(c) The institution charged the executive officer or director the same fee that it would charge any other customer in similar circumstances.

b. *Procedures.* For each overdraft by an insider in the sample selected in paragraph 9.a. of this section:

(1) Inquire whether cash items for the insider were being held by the institution during the time that the overdraft was outstanding to prevent additional overdrafts;

(2) Trace and agree subsequent payment by the insider of the insider's overdrafts to records of the account at the institution; and

(3) For overdrafts of executive officers and directors included in the sample that were paid by the institution for the executive officer and director from an account at the institution:

(a) Trace and agree to a written, pre-authorized, interest-bearing extension of credit plan that specifies a method of repayment; or

(b) Trace and agree to a written, pre-authorized transfer of funds from another account of the insider at the institution.

10. *Reports on Indebtedness to Correspondent Banks.*

a. *Information.* Obtain from management:

(1) A list of executive officers and principal shareholders and related interests thereof that filed reports of indebtedness to a correspondent bank. This list should be prepared as of the calendar year for which the management assessment and independent public accountant's attestation are being filed. If the institution is not on a calendar year fiscal year, the list should be prepared as of the end of the calendar year during its fiscal year.

(2) Its written representation concerning the completeness of the list for paragraph 10.a.(1) of this section and its written representation that all executive officers and principal shareholders have been notified of the reporting requirements for the calendar year in paragraph 10.a.(1) of this section relative to borrowings from correspondent banks by executive officers and principal shareholders and their related interests.

(3) Its representation concerning the amount each executive officer would have been able to borrow from the reporting institution.

b. *Procedures.* Select a sample of executive officers, principal shareholders, and related interests thereof from the list obtained in paragraph 10.a.(1) of this section.

(1) Ascertain that each executive officer and principal shareholder (or related interest thereof) included in the sample reported to the board of directors (on or before the January 31 following the calendar year in paragraph 10.a.(1)), indebtedness to correspondent banks and that such report states:

(a) The maximum amount of indebtedness during that calendar year;

(b) The amount of indebtedness outstanding 10 days prior to report filing; and

(c) A description of the loan terms and conditions, including the rate or range of interest rates, original amount and date, maturity date, payment terms, security, and any unusual terms or conditions.

(2) If any executive officer's extensions of credit from all correspondent banks from the list obtained in paragraph 10.a.(1) of this section exceed the total amount that management represents that the executive officer would have been able to borrow from the reporting institution during the fiscal year, note whether a report pursuant to 12 CFR 215.9 was made to the board of directors of the officer's institution within 10 days of the date the indebtedness reached such a level.

B. *Dividend Restrictions.* If the institution has declared any dividends during the fiscal year, the following procedures should be performed for each dividend declared. (These procedures are not applicable to mutual institutions and insured branches of foreign banks.)

1. *Designated Laws.* The following federal laws and regulations (Designated Dividend Laws), to the extent that they are applicable to the institution (see paragraph 2 below), should be read:

a. Laws: 12 U.S.C. 56, 60, 1467(a)(f), 1831o; and

b. Regulations: 12 CFR 5.61, 5.62, 6, 7.6120, 19, 208.19, 208.30, 263, 325.105, 563.134, and 565.

2. *General.* Although the information requirements and procedures in paragraphs 2. through 5. of this section are applicable to all institutions, paragraphs 6. and 7. of this section were designed to be applicable to national banks and federally-chartered savings associations. However, if the institution is state chartered, and the state has dividend restrictions substantially identical to those for national banks and federally-chartered savings associations, the requirements in paragraphs 6. and 7. of this section for information and procedures to be performed should be applied to the state bank or savings association.

a. *Information.* Obtain from management of the institution the following information for the institution's most recent fiscal year:

(1) Its assessment of the institution's compliance with the Designated Dividend Laws and any applicable state laws and regulations cited in its assessment.

(2) A copy of any supervisory agreements with, orders by, or resolutions of any regulatory agency (including a description of the nature of any such agreements, orders, or resolutions) containing restrictions on dividend payments by the institution.

(3) Its written representation whether dividends declared comply with any restrictions on dividend payments under any supervisory agreements with, orders by, or resolutions of any regulatory agency (including a description of the nature of any such agreements, orders, or resolutions).

b. *Procedures.*

(1) Read the foregoing information.

(2) If any restrictions on dividend payments exist in any documents obtained in paragraph 2.a.(2) of this section, test and agree dividends declared with any such quantitative restrictions.

3. *Policies and Procedures.*

a. *Information.* Obtain the institution's written policies and procedures concerning its compliance with the Designated Dividend Laws. If the institution has no written policies and procedures, obtain from the institution a narrative that describes the institution's methods for complying with the Designated Dividend Laws, and includes provisions similar to those below.

b. *Procedures:* Ascertain whether the policies and procedures include, or incorporate by reference, provisions which are consistent with the Designated Dividend Laws. These would include capital limitation tests, including section 38 of the Federal Deposit Insurance Act (12 U.S.C. 1831o), earnings limitation tests, transfers from surplus to undivided profits, and restrictions imposed under any supervisory agreements, resolutions, or orders of any federal or state bank regulatory agency. In addition, for savings associations, this would include prior notification to the OTS.

4. *Board Minutes.*

a. *Information.* Obtain the minutes of the meetings of the board of directors for the most recent fiscal year to ascertain whether dividends (either paid or unpaid) have been declared.

b. *Procedures.* Trace and agree total dividend amounts to the general ledger records and the institution's most recently completed Call Report or TFR.

5. *Calculation of Undercapitalization.*

a. *Information.* Obtain management's computation of the amount at which declaration of a dividend would cause the institution to be undercapitalized as of each date on which a dividend was declared during the fiscal year.

b. *Procedures:* Recalculate management's computation (for mathematical accuracy) and

compare management's calculations to the amount of any dividend declared to determine whether it exceeded the amount.

6. *Dividends Declared by Banks.*

a. *Information.* Obtain the computations by the management of each national and state member bank concerning the bank's compliance with 12 U.S.C. 56, ''Capital Limitation Test'', 12 U.S.C. 60, ''The Earnings Limitation Test'', and transfers from surplus to undivided profits after declaration of the dividends referenced in paragraph 4.a. of this section. In a state with substantially similar laws, obtain the corresponding computations by the management of each state nonmember bank.

b. *Procedures.* Recalculate management's computations (for mathematical accuracy) and compare management's calculations to the standards defined in the tests set forth in paragraph 6.a. of this section to ascertain whether the dividends declared fall within the permissible levels under these standards. If dividends are not permissible in the amounts declared under such standards, ascertain whether the dividends were declared with the approval of the appropriate federal banking agency or under any other exception to the standards. If not, report the findings.

7. *Dividends Declared by Savings Associations.*

a. *Information.* Obtain management's documentation of the OTS determination whether the institution is a Tier 1, Tier 2, or Tier 3 savings association and management's computations of its capital ratio after declarations of dividends under the Tier determined by the OTS. For dividends declared, obtain copies of the savings association's notifications to the OTS to ascertain whether notifications were made at least 30 days before payment of any dividends.

b. *Procedures:* Recalculate management's computations (for mathematical accuracy) and trace amounts used by management in its calculations to the institution's TFRs.

Section II—Procedures for the Independent Public Accountant

If the internal auditor has performed the procedures set forth in section I for either or both Designated Laws, the following procedures may be performed by the independent public accountant for the appropriate designated law(s) if neither the FDIC nor the appropriate federal banking agency has objected in writing. The report of procedures performed and list of exceptions found by the internal auditor, identifying the institution with respect to which any exception was found, should be submitted to the audit committee of the board of directors. Management should file a summary of the internal auditor's significant findings and management's response to those findings with the FDIC at the same time as the independent public accountant's attestation report is filed.[2]

[2] Since this summary supplements the independent public accountant's attestation on the Designated Laws, the FDIC has determined that the summary is exempt from public disclosure consistent with the guidance in Guideline 18 in Appendix A to this part 363.

A. *Review of Designated Laws.* Read either or both of the Designated Insider Laws and Designated Dividend Laws applicable to the institution, as appropriate to the engagement.

B. *Information and Procedures.* Perform the procedures indicated as follows:

1. *Designated Laws.* Read Section I of this schedule. Obtain management's assessment contained in its management report on the institution's or holding company's compliance with the Designated Laws for the fiscal year.

2. *Internal Auditor's Workpapers.*

a. *Information.* If an internal auditor performed the procedures in Section I, obtain the internal auditor's workpapers documenting the performance of those procedures on the institution and the chief internal auditor's written representation that:

(1) The internal auditor or audit staff, if applicable, performed the procedures listed in section I on the institution;

(2) The internal auditor tested a sufficient number of transactions governed by the Designated Laws so that the testing was representative of the institution's volume of transactions;

(3) The workpapers accurately reflect the work performed by the internal auditor and, if applicable, the internal audit staff;

(4) The workpapers obtained are complete; and

(5) The internal auditor's report, which describes the procedures performed for the fiscal year as well as the internal auditor's findings and exceptions noted, has been presented to the institution's audit committee.

b. *Procedures.*

(1) Compare the workpapers to the procedures that are required to be performed under section I. Report as an exception any procedures not documented and any procedures for which the sample size is not sufficient.

(2) Compare the exceptions and errors listed by the internal auditor in its report to the audit committee to those found in the workpapers, and report as an exception any exception or error found in the internal auditor's workpapers and not listed in the internal auditor's list of exceptions.

3. *Testing.* a. The independent public accountant should perform the procedures listed in Section I on representative samples of the insiders and/or transactions of the institution to which the Designated Law applies. If the institution's internal auditor is performing the procedures in Section I, the samples tested by the independent public accountant should be at least 30 percent of the size of the samples tested by the internal auditor although samples selected by the accountant should be from the population at large. However, if there are so few transactions in any area that the internal auditor cannot use sampling, but must test all transactions, the independent public accountant should also test all transactions.

b. If the testing is being performed on a holding company with more than one subsidiary institution that is subject to this part 363 (covered subsidiary), the samples tested should include a combination of insiders and transactions from each covered subsidiary with total assets (after deductions of intercompany amounts that would be eliminated in consolidation) in excess of 25 percent of the holding company's total assets every fiscal year. Samples should be tested for each smaller covered subsidiary at least every other fiscal year unless the holding company has more than eight covered subsidiaries, in which case the samples to be tested for each Designated Law should be drawn from each smaller covered subsidiary at least every third fiscal year.

4. *Reports Concerning Holding Companies.* Only one report of any exceptions noted from application of the procedures in section II performed by the independent public accountant should be filed as required by guideline 3 in Appendix A to this part 363, but the report should identify, for each exception or error noted, the identity of the covered subsidiary to which it relates.

By order of the Board of Directors.

Dated at Washington, D.C. this 31st day of January, 1995.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary.

[FR Doc. 95–3176 Filed 2–14–95; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–251–AD]

Airworthiness Directives; Boeing Model 747–400 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 747–400 series airplanes, that currently requires a revision to the input wiring for the flap control unit. This action would require a new systems test for the wiring of the trailing edge flap. The proposal would also expand the applicability of the existing AD to include additional airplanes. This proposal is prompted by a report indicating that a wiring error was not detected by the system test required by the existing AD. The actions specified by the proposed AD are intended to prevent the possibility of an all-flaps-up landing due to the loss of control of all flap operations.

DATES: Comments must be received by April 10, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103,