

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

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.

²In 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.

* * * * *
15. * * *
(b) * * * 3 * * *
* * * * *

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.

³These 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.

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