

(1) Any currently effective order or other action described in § 263.402(a)(1)(vi) or §§ 263.403(a)(2) through (a)(4); or

(2) Any currently effective action by the Public Company Accounting Oversight Board under sections 105(c)(4)(C) or (G) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7215(c)(4)(C) or (G)).

(c) *Timing of notice.* Written notice required by this paragraph shall be given no later than 15 calendar days following the effective date of an order or action, or 15 calendar days before an accountant or firm accepts an engagement to provide audit services, whichever date is earlier.

#### **§ 263.405 Petition for reinstatement.**

(a) *Form of petition.* Unless otherwise ordered by the Board, a petition for reinstatement by an independent public accountant or accounting firm removed, suspended, or debarred under § 263.402 may be made in writing at any time one year after the effective date of the order of removal, suspension, or debarment and, thereafter, at any time more than one year after the accountant's or firm's most recent petition for reinstatement. The request shall contain a concise statement of the action requested. The Board may require the petitioner to submit additional information.

(b) *Procedure.* A petitioner for reinstatement under this section may, in the sole discretion of the Board, be afforded a hearing. The accountant or firm shall bear the burden of going forward with a petition and proving the grounds asserted in support of the petition. The Board may, in its sole discretion, direct that any reinstatement proceeding be limited to written submissions. The removal, suspension, or debarment shall continue until the Board, for good cause shown, has reinstated the petitioner or until the suspension period has expired. The filing of a petition for reinstatement shall not stay the effectiveness of the removal, suspension, or debarment of an accountant or firm.

By order of the Board of Governors of the Federal Reserve System, December 17, 2002.

**Jennifer J. Johnson,**  
*Secretary of the Board.*

#### **Federal Deposit Insurance Corporation**

### **PART 308—RULES OF PRACTICE AND PROCEDURE**

1. The authority citation for part 308 is revised to read as follows:

**Authority:** 5 U.S.C. 504, 554–557; 12 U.S.C. 93(b), 164, 505, 1815(e), 1817, 1818, 1820, 1828, 1829, 1829b, 1831i, 1831m(g)(4),

1831o, 1831p–1, 1832(c), 1884(b), 1972, 3102, 3108(a), 3349, 3909, 4717; 15 U.S.C. 78(h) and (i), 78o–4(c), 78o–5, 78q–1, 78s, 78u, 78u–2, 78u–3 and 78w, 6801(b), 6805(b)(1); 28 U.S.C. 2461 note; 31 U.S.C. 330, 5321; 42 U.S.C. 4012a; Sec. 3100(s), Pub. L. 104–134, 110 Stat. 1321–358.

2. Section 308.109(b)(3) is amended to add a new sentence before the last sentence to read as follows:

#### **§ 308.109 Suspension and disbarment**

\* \* \* \* \*

(b) \* \* \*

(3) \* \* \* The application must comply with the requirements of § 303.3 of this chapter. \* \* \*

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3. A new Subpart U is added to read as follows:

#### **Subpart U—Removal, Suspension, and Debarment of Accountants From Performing Audit Service**

Sec.

308.600 Scope.

308.601 Definitions.

308.602 Removal, suspension, or debarment.

308.603 Automatic removal, suspension, and debarment.

308.604 Notice of removal, suspension, or debarment.

308.605 Application for reinstatement.

#### **Subpart U—Removal, Suspension, and Debarment of Accountants From Performing Audit Service**

##### **§ 308.600 Scope.**

This subpart, which implements section 36(g)(4) of the FDIA (12 U.S.C. 1831m(g)(4)), provides rules and procedures for the removal, suspension, or debarment of independent public accountants and accounting firms from performing independent audit and attestation services required by section 36 of the FDIA (12 U.S.C. 1831m) for insured depository institutions for which the FDIC is the appropriate Federal banking agency.

##### **§ 308.601 Definitions.**

As used in this subpart, the following terms shall have the meaning given below unless the context requires otherwise:

(a) *Accounting firm* means a corporation, proprietorship, partnership, or other business firm providing audit services.

(b) *Audit services* means any service required to be performed by an independent public accountant by section 36 of the FDIA and 12 CFR part 363, including attestation services.

(c) *Independent public accountant (accountant)* means any individual who performs or participates in providing audit services.

#### **§ 308.602 Removal, suspension, or debarment.**

(a) *Good cause for removal, suspension, or debarment—(1) Individuals.* The Board of Directors may remove, suspend, or debar an independent public accountant from performing audit services for insured depository institutions for which the FDIC is the appropriate Federal banking agency under section 36 of the FDIA if, after service of a notice of intention and opportunity for hearing in the matter, the Board of Directors finds that the accountant:

(i) Lacks the requisite qualifications to perform audit services;

(ii) Has knowingly or recklessly engaged in conduct that results in a violation of applicable professional standards, including those standards and conflicts of interest provisions applicable to accountants through the Sarbanes-Oxley Act of 2002 (Pub. L. 107–204, 116 Stat. 745 (2002)) (Sarbanes-Oxley Act) and developed by the Public Company Accounting Oversight Board and the Securities and Exchange Commission;

(iii) Has engaged in negligent conduct in the form of:

(A) A single instance of highly unreasonable conduct that results in a violation of applicable professional standards in circumstances in which an accountant knows, or should know, that heightened scrutiny is warranted; or

(B) Repeated instances of unreasonable conduct, each resulting in a violation of applicable professional standards, that indicate a lack of competence to perform audit services;

(iv) Has knowingly or recklessly given false or misleading information, or knowingly or recklessly participated in any way in the giving of false or misleading information, to the FDIC or any officer or employee of the FDIC;

(v) Has engaged in, or aided and abetted, a material and knowing or reckless violation of any provision of the Federal banking or securities laws or the rules and regulations thereunder, or any other law; or

(vi) Has been removed, suspended, or debarred from practice before any Federal or state agency regulating the banking, insurance, or securities industries, other than by an action listed in § 308.603, on grounds relevant to the provision of audit services.

(2) *Accounting firms.* If the Board of Directors determines that there is good cause for the removal, suspension, or debarment of a member or employee of an accounting firm under paragraph