

registration or a temporary or permanent suspension or bar from further association with any registered public accounting firm issued by the Public Company Accounting Oversight Board under sections 105(c)(4)(A) or (B) of the Sarbanes-Oxley Act (15 U.S.C. 7215(c)(4)(A) or (B));

(3) Is subject to an order of suspension or denial of the privilege of appearing or practicing before the Securities and Exchange Commission; or

(4) Is suspended or debarred for cause from practice as an accountant by any duly constituted licensing authority of any state, possession, commonwealth, or the District of Columbia.

(b) Upon written request, the FDIC, for good cause shown, may grant written permission to such accountant or firm to perform audit services for insured depository institutions for which the FDIC is the appropriate Federal banking agency. The written request must comply with the requirements of § 303.3 of this chapter.

§ 308.604 Notice of removal, suspension, or debarment.

(a) *Notice to the public.* Upon the issuance of a final order for removal, suspension, or debarment of an independent public accountant or accounting firm from providing audit services, the FDIC will make the order publicly available and provide notice of the order to the other Federal banking agencies.

(b) *Notice to the FDIC by accountants and firms.* An accountant or accounting firm that provides audit services to any insured depository institution for which the FDIC is the appropriate Federal banking agency must provide the FDIC with written notice of:

(1) any currently effective order or other action described in § 308.602(a)(1)(vi) or §§ 308.603(b) through (d); 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 (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 accounting firm accepts an engagement to provide audit services, whichever date is earlier.

§ 308.605 Application for reinstatement.

(a) *Form of petition.* Unless otherwise ordered by the Board of Directors, an application for reinstatement by an independent public accountant or accounting firm removed, suspended, or

debarred under § 308.602 may be made in writing at any time more than one year after the effective date of the removal, suspension, or debarment and, thereafter, at any time more than one year after the accountant's or accounting firm's most recent application for reinstatement. The application must comply with the requirements of § 303.3 of this chapter.

(b) *Procedure.* An applicant for reinstatement under this section may, in the sole discretion of the Board of Directors, be afforded a hearing. In reinstatement proceedings, the person seeking reinstatement shall bear the burden of going forward with an application and proving the grounds asserted in support of the application, and the Board of Directors 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 of Directors, for good cause shown, has reinstated the applicant or until the suspension period has expired. The filing of an application for reinstatement will not stay the effectiveness of the removal, suspension, or debarment of an accountant or firm.

Dated: December 17, 2002.

By order of the Board of Directors of the Federal Deposit Insurance Corporation.

Robert Feldman,
Executive Secretary.

Office of Thrift Supervision

12 CFR Chapter V

Authority and Issuance

For the reasons set out in the preamble, the Office of Thrift Supervision proposes to amend part 513 of chapter V of title 12 of the Code of Federal Regulations as follows:

1. The authority citation for part 513 is revised to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467a, 1813, 1831m, and 15 U.S.C. 78.

2. Add § 513.8 to read as follows:

§ 513.8 Removal, suspension, or debarment of independent public accountants and accounting firms performing audit services.

(a) *Scope.* This subpart, which implements section 36(g)(4) of the Federal Deposit Insurance Act (FDIA) (12 U.S.C. 1831m(g)(4)), provides rules and procedures for the removal, suspension, or debarment of independent public accountants and their accounting firms from performing independent audit and attestation services required by section 36 of the FDIA (12 U.S.C. 1831m) for insured

savings associations and savings and loan holding.

(b) *Definitions.* As used in this section, the following terms have the meaning given below unless the context requires otherwise:

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

(2) *Audit services.* The term *audit services* means any service required to be performed by an independent public accountant by section 36 of the FDIA Act and 12 CFR part 363, including attestation services. Audit services include any service performed with respect to a savings and loan holding company of a savings association that is used to satisfy requirements imposed by section 36 or part 363 on that savings association.

(3) *Independent public accountant.* The term *independent public accountant* means any individual who performs or participates in providing audit services.

(c) *Removal, suspension, or debarment of independent public accountants.* The Office may remove, suspend, or debar an independent public accountant from performing audit services for savings associations that are subject to section 36 of the FDIA if, after service of a notice of intention and opportunity for hearing in the matter, the Office finds that the independent public accountant:

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

(2) 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 independent public 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 Oversight Board and the Securities and Exchange Commission;

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

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

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

(4) Has knowingly or recklessly given false or misleading information or knowingly or recklessly participated in