

provisions as proposed, although there are technical changes to accommodate changes to the good cause and automatic suspension provisions described above.

Petition for Reinstatement. Under the proposal, a removed, suspended, or debarred "independent public accountant or accounting firm" may request reinstatement by the Agency that issued the order. The individual or firm would be able to request reinstatement at any time more than one year after the effective date of the order and, thereafter, at any time more than one year after the most recent request for reinstatement.

One commenter asked that the Agencies revise the proposal to permit a firm to petition for reinstatement of individual offices that have been removed, suspended or debarred, in addition to permitting petitions for reinstatement of individual accountants or the firm as a whole. The Agencies did not intend in the proposed rule to prohibit offices of a firm that have been removed, suspended, or debarred from petitioning for reinstatement. The proposed reinstatement provision, therefore, has been revised in the final rule to clarify that a removed, suspended, or debarred office of a firm may petition for reinstatement.

Another commenter urged the Agencies to state factors that the Agencies would consider in evaluating a reinstatement request so that affected parties would know what type of information the Agencies need to make a decision. The Agencies understand that petitioners will wish to tailor their reinstatement requests in a manner that they believe will yield them success in obtaining the relief they seek. In the past and in other contexts, the Agencies have looked at various factors in reviewing reinstatement petitions. These factors included: (1) The nature, extent, and duration of the conduct that led to the issuance of the order; (2) the period of time that an order has been outstanding, as well as any prior requests made by the petitioner; (3) activities of the petitioner since the order was issued, including evidence of rehabilitation; (4) the nature of the position or proposed action the requestor is seeking, and the scope of relief sought; (5) the likelihood of future misconduct giving good cause for removing, suspending, or debarring the petitioner; and (6) the views and opinions of other Federal banking agencies, when applicable. The Agencies will include these factors in their evaluations of petitions for reinstatement.

Second, the commenter asserted that the Agencies failed to explain the

necessity for a one-year waiting period before a suspended, removed, or debarred party could seek reinstatement. The commenter argued in favor of a case-by-case approach. In addition, the commenter argued that the Agencies' requirement of a one-year period is inconsistent with the SEC's rules, which permit a petitioner to file for reinstatement at any time.

The Agencies believe that the proposed rule made room for a case-by-case approach to reinstatement by providing that, "unless otherwise ordered" by the appropriate agency decision maker, the one-year waiting period would apply. Under the proposed rule, if a petitioner believed that the circumstances merited review prior to the expiration of the one-year period, the petitioner could seek an order from the Agency decision maker permitting the petitioner to seek such earlier review. Given the Agencies' intention, as reflected in the proposed rule, that the one-year waiting period for reinstatement have some flexibility and considering the comments received, the Agencies have amended the final rule to permit persons, firms, and offices to petition for reinstatement at any time.

The proposal reflected the view of the Agencies that petitions for reinstatement filed close in time, either to the Agency's decision or the last petition for reinstatement, are unlikely to present new issues or bases for reinstatement and would waste Agency resources. Thus, although the final rule permits a petition for reinstatement at any time, it will be unusual for the Agencies to grant such relief within one year of a removal, suspension or debarment order.³²

IV. Conforming and Technical Changes to the Rules of the Agencies

OCC

The OCC proposed adding "recklessness" to its description of "disreputable conduct" that may lead to removal, suspension, or debarment of parties or their representatives who practice or appear before the OCC.³³ This change would conform the OCC's general rules of practice with the standards in the proposal for removal, suspension, or debarment of accountants from performance of section 36-required audit services, which in turn reflects the addition of the recklessness standard to the SEC's rules of practice by the Sarbanes-Oxley Act. The purpose of adding the

³² Also, in the case of a suspension, it will be unusual for the Agencies to grant reinstatement prior to the expiration of the suspension period.

³³ See 12 CFR 19.196 (describing disreputable conduct).

recklessness standard was to clarify that conduct more culpable than incompetence, but less culpable than willful or knowing action, may form the basis for a suspension or debarment.

The OCC also proposed broadening the scope of "disreputable conduct" to allow the OCC to consider suspensions or debarments of accountants—for any reason—by the other Agencies, the SEC, the Commodity Futures Trading Commission, or any other Federal agency. This change would remove the requirement in the current § 19.196(g) that suspensions by other agencies concern "matters relating to the supervisory responsibilities of the OCC." This change takes into account the possibility that a suspension of an accountant by another agency, relating to the professional conduct of an accountant, could be grounds for removal, suspension, or debarment by the OCC, even if the suspension by the other agency did not relate to a banking matter.

Unlike the other amendments in the proposal, which would address an accountant's or a firm's ability to perform section 36-required audits, this part of the proposal concerned who may practice before the OCC in other capacities, such as in adjudications, or through preparation of documents for submission to the OCC. Under the proposed rule, the OCC also revised a number of sections within part 19 to make conforming and technical changes to implement section 36 of the FDIA and bring procedural aspects of part 19 up to date.

The OCC did not receive any comments on these proposed changes. Accordingly, the conforming and technical changes are adopted in the final rule as proposed.

Board

The Board proposed to amend its Rules of Practice Before the Board (12 CFR 263, subpart F) to expand the type of conduct for which an individual may be censured, debarred, or suspended from practice before the Board. In particular, the Board proposed to revise the description of the conduct that would warrant sanctions to include reckless violations, or reckless aiding and abetting violations, of specified laws and the reckless provision of false or misleading information, or reckless participation in the provision of false or misleading information, to the Board. The regulation currently provides for sanctions only for willful misconduct. The purpose of this proposed amendment was to clarify that conduct more culpable than incompetence, but less culpable than willful or knowing