

## § 35.10

## 12 CFR Ch. I (1–1–24 Edition)

the OCC, the agreement shall thereafter be unenforceable by that NGEF by operation of section 48 of the Federal Deposit Insurance Act (12 U.S.C. 1831y).

(3) The OCC may assist any insured depository institution or affiliate that is a party to a covered agreement that is unenforceable by a NGEF by operation of section 48 of the Federal Deposit Insurance Act (12 U.S.C. 1831y) in identifying a successor to assume the NGEF's responsibilities under the agreement.

(b) *Diversion of funds.* If a court or other body of competent jurisdiction determines that funds or resources received under a covered agreement have been diverted contrary to the purposes of the covered agreement for an individual's personal financial gain, the OCC may take either or both of the following actions—

(1) Order the individual to disgorge the diverted funds or resources received under the agreement;

(2) Prohibit the individual from being a party to any covered agreement for a period not to exceed 10 years.

(c) *Notice and opportunity to respond.* Before making a determination under paragraph (a)(1) of this section, or taking any action under paragraph (b) of this section, the OCC will provide written notice and an opportunity to present information to the OCC concerning any relevant facts or circumstances relating to the matter.

(d) *Inadvertent or de minimis errors.* Inadvertent or de minimis errors in annual reports or other documents filed with the OCC under §§ 35.6 or 35.7 will not subject the reporting party to any penalty.

(e) *Enforcement of provisions in covered agreements.* No provision of this part shall be construed as authorizing the OCC to enforce the provisions of any covered agreement.

### § 35.10 Transition provisions.

(a) *Disclosure of covered agreements entered into before the effective date of this part.* The following disclosure requirements apply to covered agreements that were entered into after November 12, 1999, and that terminated before April 1, 2001.

(1) *Disclosure to the public.* Each NGEF and each insured depository institution or affiliate that was a party to the agreement must make the agreement available to the public under § 35.6 until at least April 1, 2002.

(2) *Disclosure to the relevant supervisory agency.* (i) Each NGEF that was a party to the agreement must make the agreement available to the relevant supervisory agency under § 35.6 until at least April 1, 2002.

(ii) Each insured depository institution or affiliate that was a party to the agreement must, by June 30, 2001, provide each relevant supervisory agency either—

(A) A copy of the agreement under § 35.6(d)(1)(i); or

(B) The information described in § 35.6(d)(1)(ii) for each agreement.

(b) *Filing of annual reports that relate to fiscal years ending on or before December 31, 2000.* In the event that a NGEF, insured depository institution or affiliate has any information to report under § 35.7 for a fiscal year that ends on or before December 31, 2000, and that concerns a covered agreement entered into between May 12, 2000, and December 31, 2000, the annual report for that fiscal year must be provided no later than June 30, 2001, to—

(1) Each relevant supervisory agency; or

(2) In the case of a NGEF, to an insured depository institution or affiliate that is a party to the agreement in accordance with § 35.7(f)(2).

### § 35.11 Other definitions and rules of construction used in this part.

(a) *Affiliate.* “Affiliate” means—

(1) Any company that controls, is controlled by, or is under common control with another company; and

(2) For the purpose of determining whether an agreement is a covered agreement under § 35.2, an “affiliate” includes any company that would be under common control or merged with another company on consummation of any transaction pending before a Federal banking agency at the time—

(i) The parties enter into the agreement; and

(ii) The NGEF that is a party to the agreement makes a CRA communication, as described in § 35.3.