

**2675.2620 QUALIFICATIONS OF EXAMINING AUTHORITY.**

Subpart 1. **Board to specify examining authority.** The board shall have the discretion to determine the method of examination used to meet the requirements of this part provided the examination is accomplished through one of the methods in subparts 2 to 5.

Subp. 2. **Examining committee.** If the requirements of this part are to be accomplished in whole or in part by an examining committee appointed by the board, the annual examination must be completed by qualified directors or their appointees who are in fact reasonably independent. A director or appointee serving as a member of the examining committee will not be considered independent if:

- A. the person is closely related to active officers or employees of the bank;
- B. the person has outstanding loans with the bank subject to criticism by state or federal supervisory agencies; or
- C. the person has other unusual relationships or affiliations with the bank that raise the question of independence.

Subp. 3. **Internal auditor.** If the requirements of this part are to be accomplished in whole or in part by an internal auditor, the examination must be completed by a qualified internal auditor who is in fact reasonably independent. An internal auditor will not be considered independent if:

- A. the person is employed or accountable to anyone other than the board of directors, and salary and annual bonus are not set by the board, unless the person is employed by the institution's holding company;
- B. the person's duties within the bank are not confined entirely to bank auditing;
- C. the person has any proprietary interest in any partnership, firm, or corporation which controls the bank, directly or indirectly;
- D. the person has outstanding loans subject to criticism by state or federal supervisory agencies;
- E. the person is a member of the immediate family of an officer, director, attorney, or employee for the bank; or
- F. the person has other unusual relationships or affiliations with the bank that raise the question of independence.

In banks of less than \$50,000,000 in total assets as of the immediately preceding calendar year end, where duties of the internal auditor cannot be confined entirely to bank auditing, the internal auditor will be considered reasonably independent only if someone else audits the areas for which the internal auditor has operational responsibilities. The

board is responsible for determining that this degree of internal audit dependence is maintained.

Subp. 4. **Certified public accountants or licensed public accountants.** If the requirements of this part are to be accomplished in whole or in part by a certified public accountant or licensed public accountant, the examination must be completed by a qualified certified public accountant or a qualified licensed public accountant who is in fact independent. A certified public accountant or licensed public accountant will not be considered independent if:

A. The certified public accountant, licensed public accountant, or any member of a firm performing the examination is connected with the bank as an officer, director, attorney, or employee or is a member of the immediate family of an officer, director, bank attorney, or employee.

B. He or she is the beneficial owner, directly or indirectly, of any of the shares of stock of the bank.

C. He or she has any proprietary interest in any partnership, firm, or corporation which controls the banks, directly or indirectly.

D. The bank under examination has outstanding loans to the certified public accountant, licensed public accountant, partners, principals of the firm, or employees of such a firm who are directly involved in the examination, unless the loans are adequately disclosed in the examination report to the board of directors of the bank. Adequate disclosure includes the name of the borrower, the amount of the loan, the security pledged, and the appraisal or market value of the security at the time of the engagement.

E. He or she makes entries or postings on the books of account or performs any other operating functions for the bank, except functions for which prior approval was requested and obtained in writing from the commissioner of commerce.

F. He or she has other unusual relationships or affiliations with the bank that raise the question of independence.

In circumstances where directors, appointees, or the internal auditor are considered not independent or qualified to perform the annual examination, the board should engage a certified public accountant or licensed public accountant.

Subp. 5. **Board of directors.** If the requirements of this part are to be accomplished by the board of directors as provided in Minnesota Statutes, section 48.10, the board must number at least five and include at a minimum one outside director.

Subp. 6. [Repealed, 21 SR 1778]

**Statutory Authority:** *MS s 45.023; 46.01*

**History:** *12 SR 623; 20 SR 168; 21 SR 1778*

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