

Federal Deposit Insurance Corporation

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serve upon each party the recommended decision, findings, conclusions, and proposed order.

(b) *Filing of index.* At the same time the administrative law judge files with and certifies to the Executive Secretary for final determination the record of the proceeding, the administrative law judge shall furnish to the Executive Secretary a certified index of the entire record of the proceeding. The certified index shall include, at a minimum, an entry for each paper, document or motion filed with the administrative law judge in the proceeding, the date of the filing, and the identity of the filer. The certified index shall also include an exhibit index containing, at a minimum, an entry consisting of exhibit number and title or description for: Each exhibit introduced and admitted into evidence at the hearing; each exhibit introduced but not admitted into evidence at the hearing; each exhibit introduced and admitted into evidence after the completion of the hearing; and each exhibit introduced but not admitted into evidence after the completion of the hearing.

[61 FR 20350, May 6, 1996]

§ 308.39 Exceptions to recommended decision.

(a) *Filing exceptions.* Within 30 days after service of the recommended decision, findings, conclusions, and proposed order under § 308.38, a party may file with the Executive Secretary written exceptions to the administrative law judge's recommended decision, findings, conclusions or proposed order, to the admission or exclusion of evidence, or to the failure of the administrative law judge to make a ruling proposed by a party. A supporting brief may be filed at the time the exceptions are filed, either as part of the same document or in a separate document.

(b) *Effect of failure to file or raise exceptions.* (1) Failure of a party to file exceptions to those matters specified in paragraph (a) of this section within the time prescribed is deemed a waiver of objection thereto.

(2) No exception need be considered by the Board of Directors if the party taking exception had an opportunity to raise the same objection, issue, or ar-

gument before the administrative law judge and failed to do so.

(c) *Contents.* (1) All exceptions and briefs in support of such exceptions must be confined to the particular matters in, or omissions from, the administrative law judge's recommendations to which that party takes exception.

(2) All exceptions and briefs in support of exceptions must set forth page or paragraph references to the specific parts of the administrative law judge's recommendations to which exception is taken, the page or paragraph references to those portions of the record relied upon to support each exception, and the legal authority relied upon to support each exception.

§ 308.40 Review by Board of Directors.

(a) *Notice of submission to Board of Directors.* When the Executive Secretary determines that the record in the proceeding is complete, the Executive Secretary shall serve notice upon the parties that the proceeding has been submitted to the Board of Directors for final decision.

(b) *Oral argument before the Board of Directors.* Upon the initiative of the Board of Directors or on the written request of any party filed with the Executive Secretary within the time for filing exceptions, the Board of Directors may order and hear oral argument on the recommended findings, conclusions, decision, and order of the administrative law judge. A written request by a party must show good cause for oral argument and state reasons why arguments cannot be presented adequately in writing. A denial of a request for oral argument may be set forth in the Board of Directors' final decision. Oral argument before the Board of Directors must be on the record.

(c) *Final decision.* (1) Decisional employees may advise and assist the Board of Directors in the consideration and disposition of the case. The final decision of the Board of Directors will be based upon review of the entire record of the proceeding, except that the Board of Directors may limit the issues to be reviewed to those findings

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and conclusions to which opposing arguments or exceptions have been filed by the parties.

(2) The Board of Directors shall render a final decision within 90 days after notification of the parties that the case has been submitted for final decision, or 90 days after oral argument, whichever is later, unless the Board of Directors orders that the action or any aspect thereof be remanded to the administrative law judge for further proceedings. Copies of the final decision and order of the Board of Directors shall be served upon each party to the proceeding, upon other persons required by statute, and, if directed by the Board of Directors or required by statute, upon any appropriate state or Federal supervisory authority.

§ 308.41 Stays pending judicial review.

The commencement of proceedings for judicial review of a final decision and order of the FDIC may not, unless specifically ordered by the Board of Directors or a reviewing court, operate as a stay of any order issued by the FDIC. The Board of Directors may, in its discretion, and on such terms as it finds just, stay the effectiveness of all or any part of its order pending a final decision on a petition for review of that order.

Subpart B—General Rules of Procedure

§ 308.101 Scope of Local Rules.

(a) Subparts B and C of the Local Rules prescribe rules of practice and procedure to be followed in the administrative enforcement proceedings initiated by the FDIC as set forth in § 308.01 of the Uniform Rules.

(b) Except as otherwise specifically provided, the Uniform Rules and subpart B of the Local Rules shall not apply to subparts D through T of the Local Rules.

(c) Subpart C of the Local Rules shall apply to any administrative proceeding initiated by the FDIC.

[56 FR 37975, Aug. 9, 1991, as amended at 64 FR 62100, Nov. 16, 1999; 66 FR 9189, Feb. 7, 2001]

12 CFR Ch. III (1–1–04 Edition)

§ 308.102 Authority of Board of Directors and Executive Secretary.

(a) *The Board of Directors.* (1) The Board of Directors may, at any time during the pendency of a proceeding, perform, direct the performance of, or waive performance of, any act which could be done or ordered by the Executive Secretary.

(2) Nothing contained in this part 308 shall be construed to limit the power of the Board of Directors granted by applicable statutes or regulations.

(b) *The Executive Secretary.* (1) When no administrative law judge has jurisdiction over a proceeding, the Executive Secretary may act in place of, and with the same authority as, an administrative law judge, except that the Executive Secretary may not hear a case on the merits or make a recommended decision on the merits to the Board of Directors.

(2) Pursuant to authority delegated by the Board of Directors, the Executive Secretary and Assistant Executive Secretary, upon the advice and recommendation of the Deputy General Counsel for Litigation or, in his absence, the Assistant General Counsel, Trial Litigation Section, may issue rulings in proceedings under sections 7(j), 8, 18(j), 19, 32 and 38 of the FDIA (12 USC 1817(j), 1818, 1828(j), 1829, 1831i and 1831o concerning:

(i) Denials of requests for private hearing;

(ii) Interlocutory appeals;

(iii) Stays pending judicial review;

(iv) Reopenings of the record and/or remands of the record to the ALJ;

(v) Supplementation of the evidence in the record;

(vi) All remands from the courts of appeals not involving substantive issues;

(vii) Extensions of stays of orders terminating deposit insurance; and

(viii) All matters, including final decisions, in proceedings under section 8(g) of the FDIA (12 U.S.C. 1818(g)).

[56 FR 37975, Aug. 9, 1991, as amended at 64 FR 62100, Nov. 16, 1999; 67 FR 71071, Nov. 29, 2002]

§ 308.103 Appointment of administrative law judge.

(a) *Appointment.* Unless otherwise directed by the Board of Directors or as