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representative of record. Failure to make proof of service shall not affect the validity of service. The presiding officer may allow the proof to be amended or supplied, unless to do so would result in material prejudice to a party.

§ 622.20 Documents in proceedings confidential.

Unless otherwise ordered by the Board or required by law, the entire record in any proceeding under this subpart, including the notice of hearing, transcript, exhibits, proposed findings and conclusions, recommended decision of the presiding officer, exceptions thereto, decision and order of the Board, and any other papers which are filed in connection with the proceeding shall not be made public, and shall be for the confidential use only of the FCA and its staff, the presiding officer, the parties, and other appropriate supervisory authorities.

§ 622.21 Computing time.

(a) *General rule.* In computing any period of time prescribed or allowed by this subpart, the date of the act or event from which the designated period of time begins to run is not to be included. The last day so computed shall be included, unless it is a Saturday, Sunday or Federal holiday, in which event the period shall run until the end of the next day which is not a Saturday, Sunday, or Federal holiday. When the period of time prescribed or allowed is 10 days or less, intermediate Saturdays, Sundays, and Federal holidays shall not be included in the computation.

(b) *Service by mail.* Whenever any party has the right or is required to do some act within the period of time prescribed in this subpart after the service upon the party of any document or other paper of any kind, and such service is made by mail, three days shall be added to the prescribed period from the date when the matter served is deposited in the United States mail.

§ 622.22 Retained authority.

Nothing in this part is in derogation of powers of examination and investigation conferred on the FCA by any provision of law.

12 CFR Ch. VI (1-1-04 Edition)

§§ 622.23-622.50 [Reserved]

Subpart B—Rules and Procedures for Assessment and Collection of Civil Money Penalties

SOURCE: 53 FR 27284, July 19, 1988, unless otherwise noted.

§ 622.51 Definitions.

Unless noted otherwise, the definitions set forth in §622.2 of subpart A shall apply to this subpart.

§ 622.52 Purpose and scope.

The rules and procedures specified in this subpart and in subpart A are applicable to proceedings by the FCA to assess and collect civil money penalties:

- (a) For a violation of the terms of a final cease and desist order issued under section 5.25 or 5.26 of the Act, or
- (b) For violation of any provision of the Act or any regulation issued under the Act.

§ 622.53 Notification of alleged violations.

Before determining whether to assess a civil money penalty and determining the amount of such penalty, the FCA shall notify the institution or person to be assessed of the violation(s) alleged to have occurred or to be occurring, and shall solicit the written views of the institution or person regarding the imposition of such penalty.

§ 622.54 Relevant considerations.

In determining the amount of any penalty assessed, the FCA shall consider the financial resources and good faith of the institution or person charged, the gravity of the violation, any previous violations, and such other matters as justice may require.

§ 622.55 Notice of assessment of civil money penalty.

(a) *Notice of assessment.* After considering any written materials submitted in accordance with §622.53 and the factors stated in §622.54, the FCA shall commence a civil money penalty proceeding with the issuance of a notice of assessment of a civil money penalty. The notice of assessment shall state:

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(1) The legal authority for the assessment;

(2) The amount of the civil money penalty being assessed;

(3) The date by which the civil money penalty shall be paid;

(4) The matter of fact or law constituting the grounds for assessment of the civil money penalty;

(5) The right of the institution or person being assessed to a formal hearing to challenge the assessment in accordance with 12 U.S.C. 2268(c) and (d);

(6) That failure to request a hearing constitutes a waiver of the opportunity for a hearing and the notice of assessment shall constitute a final and unappealable order in accordance with 12 U.S.C. 2268(c); and

(7) The time limit to request such a formal hearing.

(b) *Service.* The notice of assessment may be served upon the institution or person being assessed by personal service or by certified mail with a return receipt to the institution's or the person's last known address. Such service constitutes issuance of the notice.

§ 622.56 Request for formal hearing on assessment.

An institution or person being assessed may request a formal hearing to challenge the assessment of a civil money penalty. The request must be filed in writing, within 10 days of the issuance of the notice of assessment, with the Chairman of the Board, FCA, 1501 Farm Credit Drive, McLean, VA 22102-5090.

§ 622.57 Waiver of hearing; consent.

(a) *Waiver.* Failure to request a hearing pursuant to § 622.56 constitutes a waiver of the opportunity for a hearing and the notice of assessment issued pursuant to § 622.55 shall constitute a final and unappealable order.

(b) *Consent.* Any party afforded a hearing who does not appear at the hearing personally or by a duly authorized representative is deemed to have consented to the issuance of an assessment order.

§ 622.58 Hearing on assessment.

(a) *Time and place.* An institution or person requesting a hearing shall be in-

formed by order of the Board of the time and place set for hearing.

(b) *Answer; procedures.* The hearing order may require the institution or person requesting the hearing to file an answer as prescribed in § 622.5 of subpart A. The procedures of the Administrative Procedure Act (5 U.S.C. 554-557) and subpart A of these rules shall apply to the hearing.

§ 622.59 Assessment order.

(a) *Consent.* In the event of consent of the parties concerned to an assessment, or if, upon the record made at a hearing ordered under this subpart, the Board finds that the grounds for having assessed the penalty have been established, the Board may issue an order of assessment of civil money penalty. In its assessment order, the Board may reduce the amount of the penalty specified in the notice of assessment.

(b) *Effective date and period.* An assessment order is effective immediately upon issuance, or upon such other date as may be specified therein, and shall remain effective and enforceable unless it is stayed, modified, terminated, or set aside by action of the board or a reviewing court.

(c) *Service.* An assessment order may be served by personal service or by certified mail with a return receipt to the last known address of the institution or person being assessed. Such service constitutes issuance of the order.

§ 622.60 Payment of civil money penalty.

(a) *Payment date.* Generally, the date designated in the notice of assessment for payment of the civil money penalty will be 60 days from the issuance of the notice. If, however, the Board finds, in a specific case, that the purposes of the statute would be better served if the 60-day period were changed, the Board may shorten or lengthen the period or make the civil money penalty payable immediately upon receipt of the notice of assessment. If a timely request for a formal hearing to challenge an assessment of a civil money penalty is filed, payment of the penalty shall not be required unless and until the Board issues a final order of assessment following the hearing. If an assessment order is issued, it will specify the date