

PROCEDURES FOR APPEALS OF ADVERSE MATERIAL SUPERVISORY DETERMINATIONS

To All Depository Institutions, and Others Concerned in the Second Federal Reserve District:

1. Purpose

This document sets forth Federal Reserve Bank of New York ("FRBNY") procedures for handling appeals of adverse material supervisory determinations. These procedures are designed to administer the guidelines issued on March 24, 1995 by the Board of Governors of the Federal Reserve System (the "Board") pursuant to section 309 of the Riegle Community Development and Regulatory Improvement Act of 1994, 12 U.S.C. § 4806.

2. Eligible Institutions

Any institution about which the FRBNY makes a material supervisory determination may use this appeals process. This includes state member banks, bank holding companies and their nonbank subsidiaries, U.S. branches, agencies, representative offices and nonbank subsidiaries of foreign banks, Edge and agreement corporations, third party EDP servicers and other entities examined or inspected by the FRBNY.

3. Material Supervisory Determination

(a) The term "material supervisory determination" includes, but is not limited to, material determinations relating to examination or inspection composite ratings, the adequacy of loan loss reserves and significant loan classifications. The term does not include any determination by the FRBNY for which an alternative independent right of appeal exists, such as prompt corrective action directives issued pursuant to section 38 of the Federal Deposit Insurance Act (the "FDI Act"), an order or written agreement authorized under the FDI Act or the Bank Holding Company Act of 1956 (the "BHC Act"), capital directives and orders issued pursuant to applications under the BHC Act.

(b) Whether an appealed action constitutes a material supervisory determination is a question that shall be decided by the person or persons hearing the appeal. A decision that a certain action is not a material supervisory determination may itself be appealed, in turn, to the FRBNY President and the appropriate oversight Governor of the Board, in the same manner as material supervisory determinations may be appealed.

4. Effect of Appeal on Material Supervisory Determinations

A material supervisory determination shall remain in effect while under appeal, and until such time as it is stayed, modified or overturned through the appeals process.

5. Initiation of an Appeal

Any appeal of a material supervisory determination shall be (1) approved by the board of directors of the institution or, in the case of a U.S. branch, agency, representative office or nonbank subsidiary of a foreign bank, the senior management person(s) responsible for the bank's U.S. operations and another person having general management responsibilities at the foreign bank's home office, (2) initiated by filing a "Notice of Appeal" with the FRBNY Officer-in-Charge of Financial Institution Supervision within 30 calendar days of receipt of the written material supervisory determination (e.g., in an examination, inspection report or letter), unless the time for filing is extended by the FRBNY and (3) filed in writing with any other bank supervisory agency with which the FRBNY jointly made the material supervisory determination. The Notice of Appeal shall include sufficient information to decide whether the matter satisfies the aforementioned conditions and should contain all of the facts and arguments that the institution wishes to present.

6. Preliminary Review and Acknowledgment of the Appeal

(a) Upon receipt of the Notice of Appeal, the FRBNY will promptly provide a copy to the appropriate division director of the staff of the Board. The FRBNY will then review the Notice of Appeal to ensure that it satisfies the conditions set forth in paragraph 5. If all of the conditions have been satisfied, the FRBNY will provide the appellant institution with written acknowledgment that the Notice of Appeal has been accepted, that the FRBNY plans to convene a Review Panel to consider the matter and that the institution will be contacted shortly by a representative of the Review Panel. In addition, where another U.S. bank supervisory agency is competent to exercise supervisory authority of the appellant institution's activities, the FRBNY will send a copy of the Notice of Appeal to that agency.

(b) If the Notice of Appeal fails to satisfy any of the conditions set forth in paragraph 5, the FRBNY will promptly advise the institution in writing that the Notice of Appeal is considered informationally deficient, citing the reason for such determination and, where relevant, that the appellant institution may re-file the Notice of Appeal within 30 calendar days of receipt of written notice of the deficiency. In cases where the filing is deficient because the institution exceeded the time allowed for filing the Notice of Appeal, the FRBNY may, in its sole discretion, agree to extend the timeframe and treat the appeal as though it had been timely filed.

7. Formation of Review Panel

(a) For appeals satisfying the conditions set forth in paragraph 5, the FRBNY Officer-in-Charge of Financial Institution Supervision will cause the formation of a Review Panel consisting of one or more persons who (1) did not participate in the material supervisory determination, (2) are qualified to review the material supervisory determination and (3) do not have any conflicts of interest involving the institution filing the appeal. The FRBNY's General Counsel will designate an attorney in the Legal Department to advise the Review Panel. The attorney will not serve as a voting member of the Review Panel.

(b) In forming a panel consisting of people qualified to review the material supervisory determination in question, the FRBNY will generally seek to include staff from the same functional

area as that which generated the determination. For example, in the case of an appeal involving a safety and soundness examination rating, the panel would generally consist of staff from the Complex Financial Institutions Function of the FRBNY. Similarly, in the case of an appeal regarding a CRA rating, the panel would generally consist of staff from the FRBNY's Legal and Compliance Risk Function.

(c) In cases involving determinations made jointly with, or in substantial reliance on the findings of, another bank supervisory agency, the FRBNY may include a voting or non-voting representative of that agency on the Review Panel. Such a representative will meet the three criteria set forth in paragraph 7(a).

8. Determination as to Materiality

(a) The Review Panel will review the subject matter referenced in the Notice of Appeal and make a determination as to whether the matter being appealed constitutes a material supervisory determination.

(b) If the Review Panel determines that the matter does not constitute a material supervisory determination, the Review Panel shall promptly notify the institution in writing that the matter appealed will not be heard on its merits because it is not considered a material supervisory determination and advise the appellant institution that this finding may be appealed, if it so chooses, to the FRBNY President within 30 calendar days.

(c) If the Review Panel determines that the appeal lacks clarity or that there is insufficient information for it to make a determination as to whether the matter constitutes a material supervisory determination, the panel shall promptly notify the appellant institution in writing that the appeal is deficient, citing the reasons for such determination, and advise the appellant institution that it has 30 calendar days to file an amended appeal.

(d) If the Review Panel determines that the matter constitutes a material supervisory determination, the Review Panel shall conduct a thorough review of the matter being appealed.

9. Review of Matter Being Appealed

(a) With the consent of the Review Panel, the appellant institution may appear before the panel to present argument or testimony of witnesses. The hearing will be an informal proceeding and the Review Panel will not be limited by the Federal Rules of Evidence or Procedure. Appellant institutions have the right to be represented by counsel and, with the consent of the Review Panel, CPAs and expert consultants may attend and participate in such hearings.

(b) Within a reasonable time before the hearing, the Review Panel and the appellant institution shall meet or confer by telephone and discuss the following: the narrowing of issues to be reviewed, an agreed statement of the issues, witnesses, exhibits and documents to be presented at the hearing. Discovery is not permitted during the appeal. Furthermore, nothing in the appeal process shall create any discovery or other such rights.

(c) In considering the appeal, the Review Panel will consider the facts and arguments submitted with the Notice of Appeal and may solicit information from FRBNY staff involved in the determination under appeal, Board staff and, as appropriate, the staff of other bank supervisory agencies involved in making the material supervisory determination being appealed. In this regard, the Review Panel may ask FRBNY staff or other related parties to present testimony at the hearing. Staff who appear as witnesses shall not be present at the hearing except to testify.

(d) The Review Panel may ask questions of any of the witnesses. Cross examination of witnesses, however, shall not be permitted. At the close of the hearing, the appellant institution is permitted to make a closing oral argument before the Review Panel. A transcript shall be made of the hearing and filed with the Review Panel.

10. Deciding the Appeal

(a) The Review Panel will act on the appeal within 30 calendar days of its decision that the record on appeal is completed, unless the appellant institution and the Review Panel jointly agree in writing to extend the time for making the decision. The Review Panel will notify the appellant institution in writing of the panel's decision within such time frame. The written decision will include a memorandum outlining the basis for the Review Panel's conclusions, including appropriate citations to legal authority or Federal Reserve System policies and procedures. The Review Panel will use a "de novo" standard of review in reaching its decision.

(b) In the event of adverse decisions, the Review Panel shall advise the appellant institution that it may further appeal the matter to the FRBNY President within 30 calendar days of receiving written notice of the Review Panel's decision. In addition, in communicating its decision to the appellant institution, the Review Panel will also advise the appellant institution of any specific safeguards that will be put in place to protect the appellant institution from possible retaliation (see paragraph 12).

11. Subsequent Appeals

(a) Any appellant institution dissatisfied with the Review Panel's decision may appeal the decision to the FRBNY President or his or her appointed delegate (e.g., the FRBNY's Management Committee). Appeals to the FRBNY President must be (1) approved by the institution's board of directors or, in the case of a U.S. branch, agency, representative office or nonbank subsidiary of a foreign bank, the senior management person(s) responsible for the bank's U.S. operations and another person having general management responsibilities at the foreign bank's home office and (2) initiated by filing a Notice of Appeal with the FRBNY President through the FRBNY Officer-in-Charge of Financial Institution Supervision within 30 calendar days of the date of receipt of written notice of the disposition of the initial appeal. Notices of Appeal made under this paragraph should contain all of the facts and arguments that the appellant institution wishes to be considered.

(b) If the Notice of Appeal filed with the FRBNY President fails to satisfy any of the conditions set forth above, the FRBNY President will promptly advise the institution in writing that the Notice of Appeal is considered deficient and cite the reasons for such determination. If the

Notice of Appeal filed with the FRBNY President is found to lack clarity or contain insufficient information, the appellant institution will be notified promptly in writing that the Notice of Appeal is considered deficient. The reasons for such determination will be cited. The appellant institution will be advised that it has 30 calendar days to file an amended Notice of Appeal.

(c) For Notices of Appeal that are considered informationally complete, the FRBNY President or his or her designee will review the information contained in the Notice of Appeal and any other information deemed relevant to the determination in question and will decide the appeal within 30 calendar days of the filing of such appeal. The FRBNY President's decision will be communicated to the appellant institution in writing within the 30 day timeframe and, in the case of adverse decisions, the appellant institution will be advised that it may further appeal the matter to the appropriate oversight Governor of the Board by filing a written appeal with the Secretary of the Board within 30 calendar days of receipt of the FRBNY President's written decision.

12. Safeguards Against Retaliation

(a) The FRBNY's existing processes provide sufficient safeguards against retaliation. In particular, the existence of an independent area within Financial Examinations that is responsible for reviewing all examination results and proposed supervisory actions serves to ensure that examination conclusions are adequately supported and that there is a high level of consistency in the treatment accorded to similarly situated institutions.

(b) In addition to the existence of these safeguards, however, after considering the appeal, the Review Panel will determine whether any additional safeguards should be put in place to protect the appellant institution from retaliation (e.g., in certain cases, the Review Panel may decide that certain FRBNY staff member(s) personally and substantially involved in making a determination that was appealed should be excluded from further FRBNY supervisory involvement with the appellant institution for a certain time period following the date of the initial written appeal). Appellant institutions will be advised of any additional safeguard that will be put in place in the letter transmitting the Review Panel's decision on the appeal.

(c) In addition, any appellant institution that believes that the FRBNY has, in any way, retaliated against it as a result of an appeal should report the matter to the FRBNY Officer-in-Charge of Financial Institution Supervision and the General Counsel of the FRBNY.

13. Communication with Other Supervisory Agencies

In cases involving appeals of determinations made jointly with, or in substantial reliance on the findings of, another U.S. bank supervisory agency, copies of all appeal-related correspondence between the FRBNY and the appellant institution will be forwarded to the other agency except as may be prohibited by the Board's Rules Regarding Availability of Information.

Similarly, in cases where a substantial portion of an appellant institution's activities is supervised by another U.S. bank supervisory agency, copies of all appeal-related correspondence between the FRBNY and the appellant institution will be forwarded to such other agency.

14. Savings Provision

The appeal of a material supervisory determination will not prevent the Board or the FRBNY, pursuant to delegated authority, from taking a supervisory or enforcement action - formal or informal - that it might take in the absence of such an appeal.