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May 29, 2012

TO: Board of Directors

FROM: Sandra L. Thompson 
Director
Division of Risk Management Supervision

Michael H. Krimminger 
General Counsel

SUBJECT: Delegation of Authority to Act on Requests for Review of Notifications of Disapproval Under Section 32 of the FDI Act

EXECUTIVE SUMMARY

This Memorandum is written to request that the Director of the Division of Risk Management Supervision (Division), or her designee, be delegated authority to issue decisions on first level reviews of Notices of Disapproval (Disapproval) under Section 32 of the Federal Deposit Insurance Act (FDI Act), 12 U.S.C. 1831(i), and Section 308.154 of the FDIC's Rules and Regulations.

The Division's Regional Directors have delegated authority to issue Disapprovals of management changes proposed in a Notice of Change in Director or Senior Executive Officer ("Notice") filed pursuant to Section 32. Disapprovals by the Regional Directors are, at the bank's option, subject to two layers of review. Previous authority for the Division Director and associate directors to issue Section 32 decisions on review of the decisions of the Regional Directors was removed in 1991 when Part 308 was comprehensively amended. Thus, today, where a bank files a request for review of a Section 32 Disapproval, authority to make the decision on this first level of review is not delegated by the FDIC's Board of Directors. Especially since any second level review under Section 32 has to be decided by the Board, having the Director, or her designee, issue decisions on review at the first level of review, is both more appropriate and a more efficient use of the Board's time. Consequently, we recommend that the Board delegate to the Division Director, or her designee, authority to issue Section 32 decisions on review.

BACKGROUND AND DISCUSSION

Section 32 of the FDI Act requires, in part, that "an insured depository institution ... shall notify the appropriate Federal banking agency of the proposed addition of any individual to the board of directors or the employment of any individual as a senior executive officer ... at least 30 days

... before such addition or employment becomes effective,” if the bank is not in compliance with applicable minimum capital requirements or is otherwise in a troubled condition; or the FDIC determines, in connection with a Section 38 plan,¹ that such notice is appropriate.²

Under authority delegated from the FDIC Board³, the Division’s Director or designee is authorized to process Section 32 Notices and to issue Disapprovals. Sub-delegations have been made to the Regional Directors to process Notices and, when appropriate, issue Disapprovals.⁴ From December 5, 1989, when regulations first implementing Section 32 were issued, until August 9, 1991, when Part 308 was completely revised to implement the Uniform Rules of Practice and Procedure required by FIRREA, the Division’s Director, and where confirmed in writing by the Director, an associate director, was granted authority to issue decisions on review of Section 32 Disapprovals.⁵

In 1991, when Part 308 was amended and re-written, the authority to issue decisions on review was modified from Director and associate director to “the Board of Directors or its designee.”⁶ Despite a number of searches, the Office of the Executive Secretary has been unable to find any subsequent specific Board delegation of authority regarding Section 32 decisions on review. Thus, until the Board makes a specific delegation, Section 32 decisions on review can only be issued by the Board.

Following a decision on review, the bank can file a request for an informal hearing, have a hearing conducted by a presiding officer, who files a recommended decision with the FDIC Board, and the Board then issues the final decision in the matter.⁷

The Division has received one Section 32 decision on review request and another is expected to be filed in the near-term. In addition, other cases are expected to follow as the Division works down a large inventory of troubled banks that have similar risk profiles. The delegation of authority sought herein will facilitate disposition of these cases that would otherwise have to be brought to the Board for expedited decisions (the decision on review must be issued within 30 days from filing of the request).

PROPOSED DELEGATION OF AUTHORITY

Delegated authority should be granted to the Director, Division of Risk Management Supervision, or her designee, to process requests for review of Section 32 Notifications of Disapproval, and to issue applicable decisions on review, pursuant to 12 C.F.R. § 308.154.

¹ Concerning capital restoration plans required under Section 38(e)(2)

² 12 U.S.C. § 1831i(a).

³ Board resolution 071098, dated December 3, 2002, Section F.

⁴ Research indicates that a total of 102 Section 32 Notices of Disapproval have been issued by Regional Offices from 1990 through 2010. Furthermore, decisions on review were issued in 52 of these cases, and ten cases went through the informal hearing process leading to Adjudicated Decisions issued by the Board.

⁵ 12 C.F.R. § 308.97 (1989).

⁶ 12 C.F.R. § 154(a) (1991).

⁷ 12 C.F.R. §§ 308.154 and 155.

RECOMMENDATION

The Division and Legal Division believe the delegated authority that was deleted when Part 308 was amended in 1991 should be reinstated, and recommend that the Board adopt the attached resolution which would delegate authority to issue decisions on the first level review to the Division Director, or her designee, so that such requests can be appropriately processed and decided by the Division. The Board would continue to issue Section 32 final decisions after informal hearings.

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