

## I. INTRODUCTION

Part 303 of the FDIC Rules and Regulations (12 CFR 303) provides a framework for filing requirements for various applications, notices, and requests (collectively, “filings” as defined in Section 303.2(s)) (12 CFR § 303(s)). The Applications Procedures Manual (Procedures) provide direction for professional staff assigned to review and process most applications, notices, and other requests (collectively, filings) submitted to the FDIC.<sup>1</sup> These Procedures apply to Case Managers, Section Chiefs, and other referenced positions including equivalent staff, when applicable. The content addressed in this overview section generally applies to all filing types unless otherwise noted in subsequent sections of these Procedures.

The Case Manager is responsible for reviewing, evaluating, and processing all filings submitted by institutions within their assigned caseloads. The Case Manager must assess whether the proposal could change an institution’s business plan, strategy, operations, and risk profile. The Case Manager is expected to use sound judgment in analyzing all filings to determine the impact of the proposal on overall safety and soundness of the institution and ultimately, the impact, if any, on the Deposit Insurance Fund (DIF).

In addition, the Case Manager will serve as the main point of contact for each assigned filing, will communicate with other FDIC staff and external parties, as appropriate, and is to ensure that all tracking and documentation systems are current. For all filings, the Case Manager shall provide notice of and access to the filing to Division of Depositor and Consumer Protection (DCP) and Legal Division (Legal) counterparts in accordance with the process provided in these Procedures. The Case Manager should also consult with the Washington Office (WO) as necessary. The WO includes, but is not limited to, the Risk Management Applications Section (RMAS), the Large Bank Supervision Branch (LBS), and the Division of Complex Institution Supervision and Resolution (CISR).

In order to ensure the timely review, consideration, and processing of filings, the Case Manager is expected to be familiar with the content of this *Applications Overview* Section, the sections of these Procedures addressing each filing type, Part 303 of the FDIC Rules and Regulations, FDIC and Division of Risk Management Supervision (RMS) delegations of authority, and pertinent laws, regulations, statements of policy, and other guidance.<sup>2</sup>

### Pre-Filing Meetings

Pre-filing meetings are encouraged in situations involving complex or novel filings, situations that present major matters, and other similar circumstances. The pre-filing process helps provide clarity for the applicant or notificant regarding regulatory expectations and the filing process, including general timelines for regulatory review and processing. In addition, the pre-filing process provides an opportunity for the applicant to obtain preliminary feedback regarding areas of a proposal that may raise supervisory questions or concerns. The goals of the pre-filing process are to facilitate a comprehensive filing that addresses the applicable statutory factors and regulatory requirements, and to minimize avoidable delays in the filing process.

Pre-filing meetings typically serve as the first line of communication between an applicant or notificant and the FDIC. The Case Manager should invite all relevant parties, including the chartering authority and, as appropriate, the Federal Reserve, as well as representatives from other divisions and the WO. Further, the applicant or notificant should be encouraged to provide appropriate materials in advance of the pre-filing meeting. The Case Manager should provide preliminary feedback regarding the anticipated filing, if any, respond to questions, and discuss the FDIC’s expectations with regard to a formal application or notice. Any matters that potentially raise questions or present concerns should be highlighted. The pre-filing

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<sup>1</sup> Refer to the *Deposit Insurance Applications Procedures Manual* for procedures specific to deposit insurance applications.

<sup>2</sup> Appendix A of these Procedures summarizes requirements provided in Part 303 of the FDIC Rules and Regulations.

meeting should be documented with a brief memorandum to the file that identifies the attendees, addresses the substance of the discussion, and describes any anticipated next steps.

### Filings Involving State Savings Associations

Title III of the Dodd-Frank Act transferred to the FDIC the functions, powers, and duties of the Office of Thrift Supervision (OTS) relating to state savings associations. The Dodd-Frank Act also amended Section 3 of the Federal Deposit Insurance (FDI) Act to designate the FDIC as the Primary Federal Regulator (PFR) for state savings associations. Consistent with this authority, the FDIC Board of Directors (FDIC Board) approved the transfer and re-designation of certain regulations of the former OTS to the FDIC. The transferred and re-designated OTS regulations were initially adopted as Parts 390 and 391 of the FDIC Rules and Regulations (12 CFR 390 and 391). Since that time, most of the provisions of Part 390, except for Subparts Q and W, and all of Part 391 have been eliminated or transferred to Part 303.

There are some differences between the filing regulations pertaining to state savings associations and those pertaining to banks. As such, the Case Manager must review the Delegations of Authority – Filings (Filings Matrix) and processing timeframes with respect to any filing related to a state savings association. Regional Office (RO) Legal and, as appropriate, the Washington Office (WO) should be consulted if questions arise regarding filings from state savings associations.

### Charter Conversions

Financial institutions choose to operate under the state or federal charter that best accommodates their business and strategic needs. Generally, institutions can change charters by providing a filing to the new chartering authority. The 2009 Federal Financial Institutions Examination Council (FFIEC) Statement on Regulatory Conversions re-affirms that charter conversions or changes in primary federal regulator are typically only conducted for legitimate business and strategic reasons. The statement also indicates that the prospective chartering authority will consult with the FDIC (NCUA when appropriate), in its role as deposit insurer and receiver, and the Federal Reserve as the consolidated holding company supervisor, on any application involving an institution for which its current supervisor has either rated or proposes to rate that institution a 3, 4, or 5 (or “Needs to Improve” or “Substantial Noncompliance” with respect to Community Reinvestment Act (CRA) performance), or has instituted or plans to institute a serious or material corrective program with respect to that institution.<sup>3</sup>

Section 612 of the Dodd-Frank Act (12 U.S.C. 214d; 12 U.S.C. 35) may impact charter conversions. Section 612 generally prohibits charter conversions by a national bank or federal savings association to a state bank or state savings association, or by a state bank or state savings association to a national bank or federal savings association, while the institution is subject to a cease and desist order (or other formal enforcement order) issued by, or a memorandum of understanding entered into with, its current PFR or state bank supervisor with respect to a significant supervisory matter. The statute includes a limited exception when the PFR that issued the cease and desist order (or other formal enforcement order) or memorandum of understanding does not object to the conversion. Following consultation with RO management and RO Legal, Case Managers should consult with the WO in the event a conversion under Section 612 is proposed. If there is a charter conversion that may result in a change in the business plan, the Case Manager should also refer to Section 22 on Change in General Character of Business.

For additional information, refer to the Interagency Statement on Section 612 of the Dodd-Frank Act Restrictions on Conversions of Troubled Banks, FIL 50-2012, dated November 26, 2012.

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<sup>3</sup> [FFIEC Statement on Regulatory Conversions.](#)

## II. TIME LIMITS FOR PROCESSING COMPLETED FILINGS

### Processing Timeframes

The FDIC's goal is to act on filings as promptly as practical, while allowing appropriate time for review and evaluation. To assist management in realizing this goal, RMS, DCP, and Legal have jointly established timeframes for processing each type of filing.<sup>4</sup> The desired timeframe for processing each type of filing reflects the timeframe from receipt of a substantially complete filing to disposition (approval/non-objection, return, withdrawal, or denial/objection). Counting begins on the day after a substantially complete filing is received in accordance with Section 303.4 of the FDIC Rules and Regulations.

While most filings are acted on at the RO pursuant to delegated authority, additional time may be needed for situations requiring WO involvement. Reviews by Legal, DCP, or any specialty areas within RMS are to be completed promptly so that such reviews do not delay action.

The timeframes generally establish the outer limits of what is considered reasonable to review and process substantially complete filings. It is recognized that filings that present or involve legal or policy issues, unusual circumstances, or CRA protests may be delayed in processing beyond these timeframes. Further, filings not delegated to the RO may require additional time. It is the FDIC's policy to process filings within the timeframe guidelines, recognizing that there will, of necessity, be exceptions for reasons such as those listed above. Any exceptions must comply with all relevant statutes and regulations. Authority to extend processing timeframes, to the extent allowed by statute or regulation, is delegated to the higher of: (a) the RMS official with authority to act on the filing, or (b) the Assistant Regional Director.<sup>5</sup>

Case Managers should monitor the status of each pending filing relative to the recommended timeframes. Filings taking longer than these guidelines require a written explanation in the Summary of Investigation (SOI) and in the appropriate internal database. In addition, the bank or person submitting the filing (the applicant) should be notified in writing that processing will extend beyond the timeframe guidelines. The applicant should also be advised by the RO in writing if a filing will not be resolved under delegated authority at the RO level so that the applicant will be aware that the publicly announced timeframes for RO processing are not applicable. However, these notifications should not disclose FDIC staff's preliminary findings or likely recommendations regarding any statutory factors.

As described in application-specific chapters of these Procedures, for certain filings (including notices of change in bank control and notices of change in director or senior executive officer), failure to comply with processing time limits set by statute or regulation may result in the FDIC being deemed to have approved or not objected to the filing. Therefore, Case Managers should ensure such filings are acted on within the appropriate timeframes.

### One-Year Limitation

Section 343(a) (12 U.S.C. 4807) of the Riegle Community Development and Regulatory Improvement Act of 1994 (Riegle Act) requires federal banking agencies to take final action on applications before the end of the one-year period beginning the day after a complete filing is received. Section 343(b) of the Riegle Act provides that the person submitting the application may, at any time, grant a waiver of the time limit. It is expected that processing timeframes approaching the one-year period for which a waiver may be appropriate will only occur in rare and unusual instances. The RO should consult with the WO prior to extending the processing time of a filing based on a waiver request. The SOI comments should discuss any

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<sup>4</sup> FDIC Re-Issues its Processing Timeframe Guidelines for Applications, Notices, and Other Requests, FIL 81-2018 (December 6, 2018).

<sup>5</sup> Authority to extend certain processing timeframes is reserved to the Board. Refer to the Filings Matrix.

contact made with the applicant regarding a waiver of the time limit and indicate whether such a waiver request has been received. Any waiver of the one-year time period by the applicant should be in writing and noted in the RO comments section in the appropriate system of record.

### III. FILING RECEIPT AND ACKNOWLEDGMENT, AND ESTABLISHMENT OF THE FILING RECORD

Filings may be submitted by applicants through various means including, for certain filing types, through *FDICconnect*, a secure, internet-based communication channel through which insured institutions can conduct business and exchange information with the FDIC. When the FDIC receives a filing, a record of that filing must be established in the appropriate internal database within three business days. The filing record must be established whether the filing is complete or not in order to maintain an accurate record of all filings received.

#### Filings Submitted Through *FDICconnect*

Currently, the types of filings listed below can be submitted through *FDICconnect*.

- Establish or Relocate Domestic Branch or Office\*
- Extension of Time\*
- Applications Pursuant to Prompt Corrective Action\*
- Brokered Deposit Waiver\*
- Consent to Exercise Trust Powers\*
- Golden Parachute and Severance Payments\*
- Reduce or Retire Capital Stock or Capital Debt\*
- Interagency Notice of Change in Control
- Change in Director or Senior Executive Officer
- Interagency Bank Merger Act Application

*\*Automatically interfaces with internal database.*

When a filing is submitted through *FDICconnect*, the appropriate Case Manager will receive an email from *FDICconnect* with the filing attached. A system record will be automatically established for any filing submitted through *FDICconnect* that interfaces with the appropriate internal database that memorializes the filing. All information provided by the applicant will be available in the record, including attachments.

For any filing not submitted through *FDICconnect* or submitted through *FDICconnect* and not interfaced with the system of record, the Case Manager<sup>6</sup> must establish a system record of the receipt of the filing within three business days. Section 303.4 of the FDIC Rules and Regulations addresses computation of time requirements with regard to filings. The FDIC begins computing the relevant period on the day after an event occurs (*e.g.*, the day after a substantially complete filing is received by the FDIC or the day after publication begins) through the last day of the relevant period. When the last day is a Saturday, Sunday, or federal holiday, the period runs until the end of the next business day.

The internal database will automatically designate whether the filing is eligible for expedited processing; however, the Case Manager must confirm the designation by reviewing the record and selecting “Yes” or “No” in the “Expedited Processing Requisites” boxes. Disagreement with the Recommended Expedited Processing flag will prompt the Case Manager to enter a reason under the Expedited Processing Comment field.

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<sup>6</sup> Some regions have established procedures whereby Applications Assistants establish records for Case Managers.

The Case Manager must ensure all filing materials submitted through *FDICconnect* or other means are scanned into the appropriate documentation and imaging system and retained in RO files in accordance with existing documentation guidelines.

### Internal Distribution

In all cases, the Case Manager is to provide the initial filing materials from the documentation and imaging system folder to regional DCP and Legal designees,<sup>7</sup> who will distribute the filing to an appropriate party for review. Any materials submitted subsequent to the initial filing should also be forwarded to facilitate a complete review of the filing. At the time the initial materials are forwarded, the Case Manager should email the designated DCP and Legal contacts to notify them of the date that the RO anticipates acting on the filing, or in the case of filings for which WO action is anticipated, the date the filing is expected to be forwarded to the WO. If a specific action or forwarding date cannot be reasonably anticipated, the Case Manager should use the delay date. The email should also request that the designated DCP and Legal contacts provide any feedback by a specified date (prior to the anticipated action or forwarding date).

### Use of Shared Mailboxes

A shared applications mailbox has been established for each RO and Area Office (AO) to receive the same email that a Case Manager receives when an electronic filing is submitted through *FDICconnect*. The email includes the contents of the filing. Individuals granted access to the shared mailbox should be assigned daily monitoring responsibility to ensure filing-related emails are routed in a timely manner. Each RO should establish back-up monitoring procedures and assignments. The following procedure is recommended, but may be tailored to accommodate regional differences:

Shared mailbox access should be given to RMS Applications Assistants and application subject matter experts (SMEs). The Applications Assistant (or a SME in his/her absence) should review the shared mailbox twice daily and create a record for filings received without any other direct interface within the appropriate internal database. The Case Manager will be apprised that a filing was received (and the corresponding record created) through the documentation and imaging system, active tasks in the system of record, or by an email from the Applications Assistant (or SME).

### State Banking Department Access

State banking departments that have opted to accept electronic filings have access to these filings through a secure web-based portal through which states may access the system of record. Participating states have designated a primary point of contact who will be notified by email when an institution submits a filing through *FDICconnect*. A copy of the entire filing is provided, including any attachments.

### Acknowledgment of Filings

All filings should be acknowledged in writing within three business days of receipt. The written acknowledgment generally should not convey a determination regarding acceptance of the filing or request additional information as these matters should be communicated separately, as appropriate. The written acknowledgment can be in the form of a letter or email communication with the applicant. Refer to Subpart A of the Filings Matrix for delegations regarding routine correspondence related to filings.<sup>8</sup> A copy of the written acknowledgment should be maintained in the documentation and imaging system, and the comments recorded in the appropriate internal database should be updated to reflect the date the

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<sup>7</sup> Each RO's DCP and Legal management will identify designees to RMS management.

<sup>8</sup> Correspondence may address both receipt and acceptance if both occur within the three business days of receipt.

acknowledgment was provided. For filings submitted via *FDICconnect*, the system will provide acknowledgement of receipt; therefore, a separate written acknowledgement is not necessary.

## V. ACCEPTANCE OF FILINGS

The Case Manager must review each filing as soon as possible after receipt. The review should determine the purpose of the filing and ensure that the applicable filing procedures (per Part 303 of the FDIC Rules and Regulations) are met. The Case Manager should also determine whether the filing qualifies for expedited processing, whether the RO has delegated authority to act on the filing, and whether the filing is substantially complete and should be accepted for processing. If authority to act on the filing is reserved to the WO, authority to determine whether the filing is substantially complete is also reserved to the WO. In such cases, the RO should consult with the WO prior to issuing a letter conveying the FDIC's determination that the filing is substantially complete or requesting additional information. Refer to the Miscellaneous Filings and Other Matters portion of the Filings Matrix.

A filing is considered substantially complete when the FDIC has the necessary information, as determined by RMS with input from DCP and Legal to fully consider each of the applicable statutory factors and any other regulatory requirements.<sup>9</sup> Generally, if the applicant has submitted the information required under Part 303 or other applicable regulation, and there are no significant follow-on questions or matters presented, the filing should be considered substantially complete as of the date of receipt of the filing.

### Substantially Complete Upon Receipt

If the filing is substantially complete when received, the Case Manager should enter the date of receipt as the acceptance date in the appropriate internal database. In addition, the Case Manager should ensure that a letter is issued to inform the applicant that the filing is substantially complete and provide the acceptance date. The letter may also request missing information; however, such requests should be limited to clarifying information, information required by rule that is expected to be provided in the near term and that does not directly impact the consideration of applicable statutory factors, or technical items or documents necessary to complete a specific component of the filing (*e.g.*, final or executed documents previously submitted in draft form). The letter should provide a short timeframe for submitting any requested materials, typically not more than 30 days. The RO should not delay the processing of a substantially complete filing while awaiting receipt of the requested information or documentation.

### Not Substantially Complete Upon Receipt

A filing that is not substantially complete lacks the substance necessary for the FDIC to evaluate the statutory factors. If the filing is not substantially complete when received, the Case Manager should consult with the ARD and Legal on whether to return the filing or issue a letter to request additional information. A request letter should only be issued for a filing that is not substantially complete when the additional information relates to a limited number of specific matters, would enable a complete analysis of the matters and the related statutory factors, and can reasonably be expected to be submitted within a short period of time.

If a decision is made to return the filing, the Case Manager should call the applicant to advise that the filing will be returned with a letter describing the deficiencies. In such circumstances, the Case Manager should update the appropriate internal database to reflect that the action taken on the filing was returned.

If a decision is made to issue a request letter, the letter should be sent to the applicant no later than within

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<sup>9</sup> "Regulatory requirements" refers to the requirements included in Part 303 of the FDIC Rules and Regulations and any other federal or state regulations, statutes, or laws applicable to the filing.

30-45 days from receipt of the filing. The letter should indicate that the filing is incomplete and has not been accepted for processing; identify the missing materials; clearly state the date by which the applicant's response must be received (within 30 days from the date of the letter); and indicate that if the FDIC determines that the filing remains incomplete after review of the applicant's response, the FDIC will return the filing and consider the file closed. Issuance of the letter should generally occur within 30 days for non-complex filings, but may be extended up to 45 days for filings that are novel, complex, or present other unusual matters.

If circumstances warrant, the ARD or the person with appropriate delegated authority, may determine to provide the applicant an extension of time to respond to the letter. The extension should only be provided if the applicant submits written justification to support the need for the extension (*e.g.*, the complexity of the requested information may require substantial compilation, processing, research, or analysis). If an extension of time is granted, the FDIC should notify the applicant in writing of the new response due date, which should generally not exceed 30 days beyond the originally provided response date.

The filing, as supplemented, should generally be considered substantially complete if the response fully addresses each matter included in the FDIC's request letter. In such circumstances, an acceptance letter should be sent to the applicant, and the filing should be reflected as accepted in the appropriate internal database as of the date the last response was received by the FDIC. As noted above, a filing is substantially complete when sufficient information has been provided to permit the FDIC to fully consider the applicable statutory factors.

If the filing remains incomplete following receipt of any responses, the FDIC will, in most cases and absent extenuating circumstances, return the filing and consider the file closed. Extenuating circumstances are those beyond the applicant's control and could include, for instance, obtaining documents from an independent third party (such as from a court in the case of a filing under Section 19 of the FDI Act), the effects of business disruptions due to inclement weather or emergency situations, or other similar challenges. Multiple requests by the FDIC for additional, clarifying, or supporting information should generally be avoided.

#### Comments in the Filing Record

The Case Manager should ensure that the filing record is complete and updated on a regular basis to reflect noteworthy developments during processing. Comments included in the record should be concise, focused on substantive issues, and, as a whole, provide the reader with an adequate understanding of the proposed transaction, processing status, any significant issues encountered, and the resolution of such issues. Because comments should address significant processing activity, the Case Manager may clarify, edit, or delete prior comments that have become irrelevant or that may cause confusion given subsequent activity.

## **VI. REVIEWING AND EVALUATING THE CONTENT OF THE FILING**

An effective review process relies on the Case Manager's sound judgment to develop an independent assessment of the proposal and its potential impact on the institution's risk profile. This process should lead to appropriate and well-supported findings and recommendations for each filing that are consistent with the applicable statutory factors and laws and regulations.

A Case Manager's review of a filing should focus primarily on consideration of the applicable statutory factors, but the Case Manager should also determine that the underlying proposal makes clear business sense; is reasonable and feasible given the applicant's business model, risk profile, financial condition, rating under the Uniform Financial Institutions Rating System (UFIRS), and operating environment; and is consistent with the applicant's strategic, operational, and financial goals. This review should also identify whether unusual features or issues are presented.

The Case Manager should maintain an open and ongoing dialogue with the applicant to facilitate the timely receipt and analysis of information. As the main point of contact throughout the review process, the Case Manager is responsible for effectively communicating all requirements, expectations, and potential issues that could impact the findings and recommendations, including any conditions to be imposed if approval or non-objection is warranted.

An important element of the review process is documenting the analysis and rationale supporting the findings and recommendations, which is done in the SOI. Refer to *Summary of Investigation*, Section 1.2 of these Procedures, for instruction on completing an SOI.

#### Requests for Comments on Filings Pending with Other Regulatory Agencies

The FDIC may receive requests for comments on filings submitted to other regulatory agencies, including the Federal Reserve, Office of the Comptroller of the Currency, and other state or Federal authorities. Such requests commonly relate to deposit insurance applications, merger applications, change in control notices, applications related to golden parachute agreements or payments, and applications filed pursuant to Section 19 of the FDI Act, but may be received in connection with other types of filings submitted to another agency. All such requests should be obtained in writing, whether through a formal letter or email. Any requests received at the field level should be immediately forwarded to the appropriate Case Manager. Any questions regarding the filing or requests for information necessary to develop the FDIC's response should be provided timely to the requesting agency. Such communication may be made by email.

In all instances, the Case Manager should prepare a recommended response. As necessary, the Case Manager should prepare a brief summary with relevant supporting information, and provide the recommended response and any supporting documentation to RO management for review. To the extent the filing raises no concerns, the FDIC's response will generally be limited to a statement that the FDIC has no comment regarding the filing, which may be conveyed to the requesting agency either by email or formal letter. Conversely, if the filing raises concerns or an objection, the FDIC's comments should be communicated through a formal and appropriately detailed letter that specifically identifies the concerns or objection. In each case, the communication should be provided or signed by an official with the authority to act if the filing required action by the FDIC (considering the applicant, the type of filing, and the proposed action).

If the FDIC does not receive the type of filing underlying the request, the recommended response should be routed to the Regional Director or Deputy Regional Director for review and disposition. The WO should be consulted prior to disposition if the filing appears to present significant supervisory concerns, policy questions, major matters, or matters of public interest. The FDIC will strive to provide timely responses to all requests, considering any processing timeframes relevant to the filing.

All correspondence and documentation, including the request, the response, and any relevant supporting information, should be maintained in the documentation and imaging system.

#### Filings Requiring Consideration of CRA and Compliance Performance

Per Parts 303 and 345 of the FDIC Rules and Regulations, DCP review is required for certain "covered" applications. Refer to Section 1.9, *Protests/Comments*, and Section 1.10, *Processing Applications Using CRA and Compliance Information*, for a discussion of the processing procedures for such filings. When a protest or adverse comment letter is received, the Case Manager must coordinate closely with DCP staff that will evaluate and process the protest. Such coordination should include collaborating on the response letter, SOI preparation, possible conditions, and development of the approval letter and Order, if applicable.



## VII. PREPARING FILING RELATED DOCUMENTS

To finalize the review process and enable the FDIC to take action, staff must condense the investigation and review process to a set of recommendation documents. Recommendation documents include the Report of Investigation (ROI), if applicable, the SOI, and all decisional documents (statements, orders, and transmittal letters) communicating the FDIC's final determination.<sup>10</sup> Refer to *Summary of Investigation*, Section 1.2 of these Procedures, for information regarding the SOI.

## VIII. DELEGATIONS OF AUTHORITY

Authority to act on any filing is vested in the FDIC Board. However, the Board, through the FDIC's amended bylaws and various resolutions, has delegated certain authority to the RMS Director and DCP Director. Under certain circumstances, the RMS Director may delegate authority to others to act on their behalf. Specific authority is re-delegated by the RMS Director to certain WO staff, the Regional Directors, Deputy Regional Directors, and other RO staff. As discussed below, certain delegated authorities are subject to Legal and/or DCP concurrence. The Filings Matrix summarizes the Board's reservations and communicates sub-delegations of authority by the RMS Director to professional staff, subject to confirmation in writing. If any provisions regarding the exercise of delegated authority at the RO level are not met, authority to act is reserved to the WO.

Among other items, the FDIC Board reserves to itself consideration of any matter that would establish or change existing FDIC policy, could attract unusual attention or publicity, or would involve a matter of first impression. This retention of authority is sometimes referred to as the Major Matters Resolution.

### Evaluating Statutory Factors

It is FDIC policy to fully consider and favorably resolve all statutory factors associated with any filing in order to act favorably under delegated authority. In order for the Case Manager to favorably resolve a statutory factor, the analysis should lead to a clear and well-supported conclusion that no material concerns exist with regard to the factor.

For statutory factors that correspond to risk management or compliance examination ratings (including those associated with any other relevant specialty area), satisfactory regulatory ratings generally support favorable resolution of the factor. Overall, the filing should support that the institution (post-consummation) will be in satisfactory financial condition with sufficient financial and managerial resources, and will operate with appropriate practices and processes, including with respect to the proposed transaction or activity.

The following items warrant close attention during the Case Manager's review of a filing:

- UFIRS component ratings of 3 or worse;
- Adverse information or less than satisfactory ratings related to compliance, CRA, Information Technology (IT), Anti-Money Laundering/Countering the Financing of Terrorist Activities (AML/CTF), or other specialty areas since the last safety and soundness examination;
- Noncompliance with any outstanding enforcement actions, other actions or agreements, or conditions imposed through a prior approval or non-objection;
- Proposed or final interim rating downgrades to 3 or worse (or equivalent) for any risk management or specialty examination;

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<sup>10</sup> Procedural guidance has been issued with respect to the preparation and development of the ROI through the Risk Management Manual of Examination Policies, and for the SOI through these Procedures.

- Material concerns identified through a pending examination, visitation, offsite review, investigation, or other similar supervisory or administrative activity, such that the institution's risk profile may be adversely impacted;
- Parent organization financial or managerial concerns; and
- Other material financial, managerial, or operational concerns, whether or not related to the filing.

Any such concerns should be thoroughly evaluated in the context of the applicable statutory factor(s) and regulatory requirements, and must be appropriately mitigated or addressed to support a favorable resolution of the applicable factor(s) and requirements. Other divisions should be consulted, as appropriate, to fully evaluate these concerns.

In determining whether a concern is appropriately mitigated or addressed, the Case Manager should consider the following items:

- The source, nature, and severity of the concern;
- Whether material progress has been made in addressing the concern, efforts yet to be completed, and the timeframe by which the concern is expected to be resolved; and
- Whether the concern is expected to adversely impact the institution's financial condition, operations, or overall risk profile.

#### *Filings from Institutions with Composite Ratings of 3*

Filings from institutions assigned a composite rating of 3 present supervisory issues given the institution's financial, managerial, and/or other shortcomings. To facilitate resolving statutory factors, the Case Manager must conclude that either: (1) the proposed transaction or activity would improve the institution's overall condition, result in improvement in the specific areas of concern (such as earnings, capital, or management), or satisfy provisions of an outstanding enforcement action; or (2) the review indicates substantial and sustained progress in resolving the institution's deficiencies, such that the institution's overall risk profile is improving and an upgrade can be reasonably expected in the near term even though not yet effected.

#### *Filings from Institutions with Composite Ratings of 4 or 5*

Given the severity of the institution's condition and underlying deficiencies, as well as concerns regarding the institution's practices, it is unlikely that all applicable statutory factors will be favorably resolved for filings from an institution assigned a composite rating of 4 or 5. In rare circumstances in which the RO believes that favorable findings on the statutory factors is warranted for an institution with a composite rating of 4 or 5, or equivalent rating for any relevant specialty areas, the recommendation must be forwarded to the WO for final action.<sup>11</sup>

#### *Filings Submitted Due to an Institution's Troubled Status*

Filings submitted due to an institution's troubled status, such as those related to management changes, golden parachutes, and brokered deposit waivers, should be reviewed and processed in accordance with the guidance included in the relevant sections of these Procedures. The Case Manager should also refer to the appropriate portion of the Filings Matrix for the filing under review.

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<sup>11</sup> This does not include filings submitted due to an institution's problem or troubled status, including actions under Sections 29, 32, or 38 of the FDI Act, or Part 359 of the FDIC Rules and Regulations for which delegated authority is otherwise provided.

*Unfavorable Findings*

Unfavorable findings with respect to one or more statutory factors will usually present circumstances that warrant a denial recommendation. At the FDIC's discretion applicants may be offered the opportunity to withdraw the filing. In rare circumstances, notwithstanding unfavorable findings relative to one or more statutory factors, there may be a business case for considering an approval recommendation. For example, a non-expansive filing to address a circumstance outside the institution's control, such as loss of a significant retail banking office due to lease termination or environmental issues, may warrant an approval recommendation. Any approval recommendation should describe the institution's action plans to address its deficiencies in a timely manner. If a business case exists, the recommendation should be forwarded to the WO for final action in accordance with delegations of authority as specified in the Filings Matrix. The Board of Directors reserves authority to act on any deposit insurance or merger application where one or more of the statutory factors is not favorably resolved.

*Favorable Subject to Conditions*

The Case Manager should not use conditions as a means to favorably resolve any statutory factors that otherwise present material concerns. For example, "favorable subject to conditions" would not be an appropriate conclusion if the situation involves weak or questionable earnings projections; an unacceptable or opaque control structure; insufficient capital levels; weak or marginal management or director candidates; apparent violations of a statute or regulation; or a higher-risk business model without compensating factors, such as a strong risk management program. In such situations, the finding would be "unfavorable."

"Favorable subject to conditions" may be used in situations where the institution can be reasonably expected to address a pending issue in a timely manner in the normal course of business. In such situations, the matter in question would generally not be a material component of the proposal and would not adversely impact the institution's overall risk profile. As an example, "favorable subject to conditions" may be appropriate with respect to the management factor on a change in control notice if the institution proposes to expand its operations to include trust services within a short time period after the change in control, but has not yet selected a senior trust officer. In this case, assuming the management factor is otherwise viewed favorably, it may be appropriate to impose a condition that the institution must appoint an acceptable senior trust officer prior to initiating trust services.

Case-Specific Concurrence from DCP and/or Legal

Certain filings require case-specific concurrence from DCP and/or Legal as indicated within the Filings Matrix. The Case Manager should determine, as timely as possible, whether case-specific concurrence will be required, and should notify the appropriate DCP and Legal counterparts. The Case Manager should ensure that any such concurrence is obtained and reflected within the final case documents prepared at the RO level. Case-specific concurrence should be documented by including a signature line on the routing notice (or similar form) for staff and each management official to review and concur with the recommended action. Legal has confirmed that concurrence may be provided through electronic mail, given a business necessity or exigency (such as absence when a time-sensitive matter must be resolved). Such circumstances are expected to be infrequent.

DCP signatures should be included first on the routing notice, followed by Legal, then RMS. Concurrence for certain CRA-related filings (deposit insurance, merger, and office-related filings) may be provided through the appropriate internal tracking form provided that all DCP delegation requirements are met. While concurrence may not be required, the facts and circumstances of a case may warrant consultation with Legal and/or DCP staff. Unless otherwise indicated, concurrence to act on a matter related directly to a prior action (such as a request emanating from a condition imposed in the prior action) requires concurrence from DCP and/or Legal to the same extent the prior action required concurrence.

General Concurrence from Legal

The General Counsel grants general concurrence for the following types of supervisory filings:

- Continuation of insurance upon withdrawal from Federal Reserve System.
- Establishment and relocation of a domestic office and branch.
- Relocation of a foreign branch.
- Consent to exercise trust powers.
- Retire capital or subordinated debt.
- HOLA 10(l) election and revocation.
- Extension of time unless the decision on the underlying filing requires Legal concurrence.
- Determination of whether a filing is substantially complete unless the decision on the underlying filing requires Legal concurrence.
- Merger – Reorganization if each insured depository institution involved in the reorganization qualifies as a “small bank” or “intermediate small bank” under the Community Reinvestment Act (CRA) evaluation thresholds at the time of application and FDIC action.

For general concurrence to apply to a filing, each of the following must be satisfied: (1) each institution is satisfactorily rated (composite 1- or 2-rated, or equivalent, and not troubled or otherwise of concern); (2) the statutory factors and regulatory requirements have been fully considered and favorably resolved (except for a substantially complete determination made prior to the point those factors and requirements have been assessed); (3) the action is consistent with FDIC policies, procedures, and practices; and (4) staff review (including, as appropriate, DCP) has not raised significant concerns or impediments. If general concurrence from Legal applies, the Case Manager should ensure that its applicability is noted in the final case documents.

Filings Requiring Washington Office Action

If RO management determines that a filing may not satisfy the prerequisites for action under delegated authority, the Case Manager should notify the appropriate WO section of this determination and enter a comment in the system of record. RO staff should consult with WO staff on any case in which delegated authority is uncertain.

If a determination is made that a specific filing requires action by the WO, the RO should ensure the WO is apprised of the status, any related developments, and material findings or recommendations. Ongoing communication throughout the RO review will minimize processing time in the WO and ensure final disposition within published timeframe goals.

Case Managers should review the Filings Matrix to identify filings that require WO action.

Review and Processing – Filings Requiring Washington Office Action

The process below should be followed for all filings requiring WO action. Note that specific procedures apply to FDI applications (refer to the *Deposit Insurance Applications Procedures Manual*).

- As soon as practical, but no later than 10 business days following receipt, the RO will email a brief summary of the proposal to the appropriate Associate Director and a copy the appropriate Section Chief. The purpose of the summary is to notify the WO of the filing and the determination that WO action will be required.
- While leading the RO’s application review, Case Managers should be alert to situations that should be communicated timely to RO and WO RMS management. Communication is warranted when preliminary review indicates substantial concerns that may be challenged or result in unfavorable

findings relative to the applicable statutory factors; substantial, atypical investigation processes may be required; significant legal issues exist; or review and processing are expected to be materially outside prescribed timeframes.

The communication should be provided as soon as practical after a situation has been identified, even if the circumstances remain fluid and details are limited. The communication should be supplemented as more current or detailed information becomes available.

Case Managers will continue to serve as the primary point of contact during the processing of the filing, and are responsible for maintaining open and continuous communication with the applicant, state agency, and any other relevant regulator regarding the status of processing.

- In accordance with processing timeframes, the RO will forward the signed SOI and accompanying narrative, decision documents as applicable (including a draft order and transmittal letter, along with any other necessary documents), and other pertinent documentation to the WO for final review, processing, and action. Processing timeframes may be extended for good cause, depending on the status of a field investigation or extenuating circumstances that may exist for a particular case. Any delays in processing should be documented in the appropriate internal database with specific reasons for the delay.
- SOIs forwarded to the WO for action should be signed by the Regional Director; under a specific delegation of authority, SOIs may be signed by the Deputy Regional Director.
- The WO will coordinate with the RO during the final review and processing, will inform the RO of the filing's disposition, will issue any final approval documents, and will provide copies of all final documents for inclusion in the appropriate documentation and imaging system.

#### Approving or Non-Objecting to a Filing Under Delegated Authority

Authority delegated to the RO, as detailed in the Filings Matrix and in Appendix A to the Filings Matrix, requires certain criteria to be met in order to approve or non-object to a filing. The Case Manager should verify that each criteria is satisfied for any filing where action at the RO level is contemplated.

#### Expectations Regarding Elevation of Filing Matters

RMS RO and WO staff must maintain open and timely communication with RMS RO and WO management regarding filing matters or developments that are expected to have a negative impact on the filing review process, timeline, or the ultimate conclusions and recommendations related to a filing. Negative impacts may include, but are not limited to, a review period that will extend beyond the timeframe goals or unfavorable findings with respect to any statutory factor. The need for such communication is heightened when, among other examples, substantial concerns regarding a proposal may result in a request for informal review by the RMS Director or may be challenged by an applicant; atypical review and investigation processes may be required; or the circumstances may result in formal complaints or objections with respect to the FDIC's review and processing.

When circumstances similar to those described above occur, RO staff should alert appropriate RO management who will inform the RMS WO management, as well as WO Legal and DCP, as appropriate, at the earliest opportunity and ensure ongoing communication as circumstances warrant. RO staff should prepare an informational summary as soon as practical following identification of the significant matter, and forward the summary through the Regional Director to the RMS Director, Senior Deputy Director (SDD), and appropriate Associate Director.

The summary should include, as appropriate:

- Known facts and circumstances, as well as possible outcomes and potential consequences;

- The application status;
- Open questions, requests, and concerns;
- Actions taken or initiated, and anticipated consequences;
- Coordination within the FDIC;
- Coordination with other agencies;
- Anticipated timing of the next update; and
- Proposed next steps.

WO management and staff will coordinate with appropriate RO management and staff in preparing briefings for FDIC officials, coordinating next steps, and other efforts as dictated by the circumstances.

#### Use of Written Agreements

Depending on the nature and complexity of the filing, the FDIC may impose non-standard conditions that require the institution and/or other applicable parties (such as certain affiliates or investors) to enter into a written agreement. Written agreements, which are intended to address specific risks or supervisory matters, may include parent company agreements, capital and liquidity maintenance agreements, operating agreements, and passivity agreements. If a written agreement is contemplated, the RO should discuss the matter with the Risk Management and Applications Section (RMAS) and WO Legal. Refer to *Standard and Non-standard Conditions*, Section 1.11 of these Procedures, for additional details.

#### After-the-Fact Filings and Related Matters

The FDIC may receive an after-the-fact filing from an insured institution or other party (collectively, party) that has initiated, directly or indirectly, a strategy, transaction, activity, or relationship (collectively, activity), but failed to submit to the FDIC a filing required by statute or regulation and obtain the FDIC's prior approval or non-objection. An after-the-fact filing may be submitted by the party upon self-identifying the failure to submit a filing (e.g., through an internal audit or compliance review) or upon being directed by the FDIC of the need to file. In all instances, the FDIC must consider the circumstances leading to the after-the-fact filing, the review and processing considerations discussed below, and the appropriate supervisory action to address the failure to file. In situations in which the FDIC is not the party's PFR, the Case Manager should coordinate with the relevant agencies in considering or processing the after-the-fact filing, and determining the appropriate supervisory action.

This discussion does not apply to after-the-fact filings permitted by statute or regulation, such as certain situations involving changes in bank control.

#### *Review and Processing Considerations*

If the failure to file was discovered by the FDIC, the party should be informed in writing of the apparent violation of the applicable statute or regulation for failing to file, and the need to submit a filing to the RO by a specified date (generally, within 30 days from the written communication). Following submission, the filing should be reviewed and processed according to the established processes and procedures for the relevant filing type.

However, the FDIC should not direct a party to make an after-the-fact filing if, following consultation with RO management and RO Legal (and as necessary, WO RMS and Legal), it appears likely that RMS would not approve or issue a non-objection to the filing due to concerns with regard to one or more statutory factors. If approval or non-objection appears unlikely, the FDIC should advise the applicant and require conditions directing the party to develop a plan for termination, reversal, or divestiture of the activity (as discussed further below).

Similar considerations apply if the failure to file was self-identified by the party, and the party submits an after-the-fact filing without the FDIC's prior knowledge. If, following consultation with RO management and RO Legal (and as necessary, WO RMS and Legal), approval or non-objection is likely, the filing should be reviewed and processed according to the established processes and procedures for the relevant filing type. If denial or objection is warranted, the Case Manager should develop an appropriate recommendation that includes a condition to be imposed requiring termination, reversal, or divestiture of the activity.

#### *Plan for Termination, Reversal, or Divestiture*

The FDIC should instruct a party to file a plan for termination, reversal, or divestiture if approval or non-objection cannot be granted. This instruction should be communicated in writing with a specified due date for the plan to be submitted (generally, within 30 days from the written communication). The plan should include a reasonable timeframe for execution and appropriate milestones to achieve full implementation. If any areas of the submitted plan are deficient, the Case Manager should promptly request additional supporting information or modifications to the plan. Upon receiving an acceptable plan, the FDIC should instruct the party in writing to fully implement the plan within the prescribed timeframe. Depending on the nature of the activity and the extent of any related supervisory concerns, the party may be required to immediately terminate, reverse, or divest the activity.

#### *Supervisory Actions*

The FDIC must also consider the appropriate supervisory action in any circumstance in which a party failed to submit to the FDIC a filing required by statute or regulation, or if a party failed to implement a plan of termination, reversal, or divestiture within the prescribed time frame. Generally, the options for supervisory actions include: 1) issuance of a supervisory letter, 2) assessment of civil money penalties, or 3) formal or informal enforcement action. The Case Manager should consult with RO management and RO Legal (and, as necessary, WO RMS and Legal) to develop the appropriate supervisory response.

#### *Impact on Determinations related to Statutory Factors, Regulatory Requirements, or Supervisory Ratings*

RMS may determine that the failure to submit a required filing reflects negatively on management. If so, the failure to file should be considered when evaluating the statutory factors and regulatory requirements relevant to the filing. Further, because the failure to submit a required filing may be an apparent violation of Part 303 or other parts of the FDIC Rules and Regulations, such circumstances should be considered when assigning ratings to the institution, particularly when considering the ratings assigned to the management component.

## **IX. REFERENCES**

### *Part 303 of the FDIC Rules and Regulations*

*Resolution and Delegations of Authority for Supervisory Filings, Enforcement Matters, Capital Determinations, and Information Sharing Agreements, Board Resolution Seal No. 086825*

*Major Matters Resolution, Board Resolution, Seal No. 074956*

*Statement of FDIC Corporate Governance for Supervisory Matters*

*Interagency Statement on Section 612 of the Dodd-Frank Act Restrictions on Conversions of Troubled Banks, FIL-50-2012*

*FDIC Statement of Policy on Applications for Deposit Insurance*

*FDIC Statement of Policy on Bank Merger Transactions*

*Policy Statement Regarding Minority Depository Institutions*

*Minority Depository Institution Designations, FIL 24-2022*

*Legal Concurrence Requirements Pursuant to the FDIC Board's Revised Delegations of authority to Act on DCP and RMS, February 18, 2021*

*FDIC Re-Issues its Processing Timeframe Guidelines for Applications, Notices, and Other Requests FIL 81-2018*



Appendix A**PART 303, SUBPART A - RULES OF GENERAL APPLICABILITY**

Part 303, Subpart A of the FDIC Rules and Regulations, Rules of General Applicability (12 CFR 303), sets forth general procedures for submitting various notices, applications, and requests (collectively, filings) to the FDIC. These are summarized below. The subparts of Part 303 provide specific filing and processing guidance for individual filing types, which are incorporated into the sections of these Procedures, as applicable.

Standard Conditions

The term *standard conditions* refers to the conditions that the FDIC may impose as a routine matter when approving a filing, whether or not the applicant has agreed to their inclusion. The following conditions, or variations thereof, are standard conditions:

- (1) That the applicant has obtained all necessary and final approvals from the primary federal or state authority or other appropriate authority;
- (2) That if the transaction does not take effect within a specified time period, or unless, in the meantime, a request for an extension of time has been approved, the consent granted shall expire at the end of the specified time period;
- (3) That until the conditional commitment of the FDIC becomes effective, the FDIC retains the right to alter, suspend or withdraw its commitment should any interim development be deemed to warrant such action; and
- (4) In the case of a merger transaction (as defined in § 303.61(a) of this part), including a corporate reorganization, that the proposed transaction not be consummated before the 30th calendar day (or shorter time period as may be prescribed by the FDIC with the concurrence of the Attorney General) after the date of the order approving the merger transaction.

Minor variations may be made with concurrence of RO Legal. Refer to *Standard and Non-standard Conditions*, Section 1.11 of these Procedures, for additional details.

General Filing Procedures

Unless stated otherwise, filings should be submitted to the appropriate FDIC RO.<sup>12</sup> Forms and instructions for submitting filings may be obtained from any FDIC RO or AO and the external FDIC website. The FDIC encourages filings to be submitted through *FDICconnect*. However, if *FDICconnect* is not an option and no specific filing form is prescribed, then the filing should be submitted in writing, be signed by the applicant or a duly authorized agent, and include a concise statement of the action requested. Filing and content requirements are set forth in the specific subparts of Part 303. The FDIC may require the applicant to submit additional information.

Public Notice Requirements

General public notice requirements are set forth in Section 303.7 of the FDIC Rules and Regulations. Specific publication requirements are set forth in Part 303, Subparts B (deposit insurance), C (branches and relocations), D (mergers), E (change in bank control), and J (foreign bank activities), and in the applicable sections of these Procedures.

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<sup>12</sup> Although Part 303 provides for submission to the RO, some applications will not fall under regional jurisdiction and should instead be submitted to the WO.

**Multiple transactions** - For purposes of the publication requirements, Section 303.7(d) of the FDIC Rules and Regulations permits the FDIC to consider more than one transaction, or a series of transactions, to be a single filing. When publishing a single public notice for multiple transactions, the applicant must explain in the public notice how the transactions are related and state that the closing date of the longest public comment period will apply to all of the related transactions.

**Joint public notices** - For a transaction subject to public notice requirements by the FDIC and another federal or state banking authority, Section 303.7(e) of the FDIC Rules and Regulations indicates that the FDIC will accept publication of a single joint notice that includes all the information required by the FDIC and the other federal or state banking authority provided that the notice states that comments must be submitted to the FDIC and, as applicable, the other federal or state banking authority.

### Public Access and Freedom of Information Act Requests

Any person may inspect or request a copy of the non-confidential portions (the public file) of a filing subject to a public notice requirement until 180 days following the final disposition of the filing, in accordance with Sections 303.7 and 303.8 of the FDIC Rules and Regulations. The FDIC will provide the requested public file, regardless of whether the filing has been accepted as substantially complete.

Requests for copies of the public file following closure of the file 180 days after final disposition require a request under the Freedom of Information Act (FOIA). Further, any request for confidential portions of a filing, regardless of when the request is made, must be submitted in writing under the FOIA and Part 309 of the FDIC Rules and Regulations.

Regardless of the nature of the request, the filing should be closely reviewed to ensure that the content of the filing is appropriately categorized as either “public” or “confidential.” The Case Manager must ensure that the public portion includes only information and documents reasonably considered public, and the confidential section includes only information and documents reasonably determined to be confidential. As appropriate, redactions of confidential information embedded in documents otherwise considered public or publication of information that the applicant has requested to be treated as confidential should be discussed with RMS’ FOIA contacts, RO Legal, and WO RMS and Legal. Refer to *Public Information*, Section 1.4 of these Procedures, for additional information.

### Submission of Comments

For filings subject to a public notice requirement, any person may submit comments to the appropriate Regional Director during the comment period. Comment periods applicable to a particular filing can be found in the appropriate subparts of Part 303 and the individual sections of these Procedures.

**Comment period extension** - Section 303.9(b)(2) of the FDIC Rules and Regulations permits the FDIC to extend or reopen the comment period if:

- The applicant fails to submit all required information on a timely basis to permit review by the public or requests confidential treatment not granted by the FDIC that delays the public availability of the information;
- Any person requesting an extension of time satisfactorily demonstrates to the FDIC that additional time is necessary to develop factual information that the FDIC determines may materially affect the filing; or
- The FDIC determines that other good cause exists. Note, it is RMS policy that in the case of deposit insurance applications, good cause will automatically be determined to exist when the public portion of the filing is not immediately available. In such cases, the 30-day public comment period will begin on the date that the public portion of the filing is first made available.

The Case Manager should review the Filings Matrix and consult with Legal to determine the appropriate delegations for extending the comment period. The WO (RMS and Legal) should be consulted in the event specific delegations are in question.

**Solicitation of comments** - Whenever appropriate, the Regional Director may solicit comments from any person or entity that might have an interest in or be affected by the pending filing.

**Applicant response** - The FDIC will provide to the applicant copies of all comments received and may offer the applicant an opportunity to respond.

**Hearings and other meetings** - Section 303.10 of the FDIC Rules and Regulations addresses hearings and other proceedings in connection with filings involving:

- A deposit insurance application for a proposed new depository institution or an operating non-insured institution;
- An insured state nonmember bank application seeking to establish a domestic branch or to relocate a main office or domestic branch;
- A relocation application of an insured branch of a foreign bank;
- A merger or consolidation application that requires the FDIC's prior approval under the Bank Merger Act, except in cases of mergers that the FDIC Board determines must be acted on immediately to prevent the probable default of one of the institutions involved, or that must be acted on expeditiously due to an emergency condition;
- Nullification of a decision or filing; and
- Any other purpose or matter which the FDIC Board in its sole discretion deems appropriate.

### Expedited Processing

Processing timeframes for a filing may be shortened when an eligible depository institution qualifies for expedited processing. Additionally, Part 303 of the FDIC Rules and Regulations provides that certain filings submitted by eligible institutions will be deemed approved after a defined number of days following receipt or publication if no action is taken by the FDIC. Therefore, the Case Manager should review filings as soon after receipt as possible to determine whether expedited processing is applicable and whether there are any matters that may result in a filing being removed from expedited processing. Legal should be consulted prior to removing a filing from expedited processing. The specific expedited processing timeframes vary by type of filing and appear in each of the relevant Subparts.

An eligible depository institution is not required to request expedited treatment; rather, expedited treatment follows from Section 303.2(r) of the FDIC Rules and Regulations, which defines an eligible depository institution as one that meets the following criteria:

- Has an FDIC-assigned composite rating of 1 or 2 under the UFIRS;
- Has a Compliance rating of 1 or 2;
- Has a Satisfactory or better CRA rating;
- Is "well capitalized" as defined by the appropriate capital regulations of the institution's PFR; and
- Is not subject to a cease and desist order, consent order, prompt corrective action directive, written agreement, memorandum of understanding, or other administrative agreement with its PFR or chartering authority.

The FDIC-assigned UFIRS composite rating is the rating assigned by the FDIC after reviewing the most recent Report of Examination. For FDIC-supervised institutions, this can be an intervening state rating if the rating has been accepted by the FDIC. The assigned rating could also be a rating assigned as the result of an interim rating change.

The Case Manager should note that expedited processing is only available when authority has been delegated to the Regional Director (Section 303.11(c) of the FDIC Rules and Regulations), except for filings made pursuant to Part 303 Subpart J (International Banking). Therefore, a review of the Filings Matrix is also required in determining whether expedited processing is available.

Section 303.11(c)(2) of the FDIC Rules and Regulations states that the FDIC may remove a filing from expedited processing for any of the following reasons prior to final disposition:

- An “adverse comment” (Section 303.2(c)) or “CRA Protest” (Section 303.2(l)) is received that warrants additional investigation or review (for filings subject to public notice).
- The Regional Director determines that the filing presents significant supervisory, compliance, or CRA concerns, or raises significant legal or policy issues.<sup>13</sup>
- Other “good cause” exists, as determined by the Regional Director. Good cause may be based on, for example, adverse information concerning the applicant’s financial condition, compliance posture, or CRA assessment, or may result from concerns with respect to management, IT, AML/CFT compliance, or other supervisory matters. Further, removal from expedited processing is necessary if the nature of the intended activity or transaction presents a matter of controversy or first impression, establishes or changes existing FDIC policy, or could attract unusual attention or publicity. This authority should not be employed merely to lengthen processing time.

Further, Section 303.11(c)(2), authorizes the FDIC to remove certain filings from expedited processing at any time prior to final disposition if the filing is subject to (i) public notice and the FDIC receives an adverse comment that warrants additional investigation or (ii) evaluation of CRA performance and the FDIC receives a CRA protest that warrants additional investigation or review or the Regional Director determines the filing presents significant CRA or compliance concerns. In such circumstances, the filing should be removed from expedited processing unless the issue is fully and immediately resolved. However, there is no provision for removing a filing from expedited processing if a CRA protest is received for a filing not subject to evaluation of CRA performance or if an adverse comment is received for a filing not subject to public comment.

While the power to remove a filing from expedited processing allows for very broad discretion, this authority should be carefully exercised to ensure filings for sound, well-operated institutions are considered in a timely manner. If significant supervisory or other issues are evident, the filing should be removed from expedited processing to allow the time necessary to fully analyze and consider all relevant issues. If a filing is removed from expedited processing, the applicant must be informed promptly in writing of the determination and the reason(s) for removal. In addition, the Case Manager should document support within the appropriate system of record.

### Computation of Time

Section 303.4 of the FDIC Rules and Regulations states that computation of time begins on the day after an event occurs (for example, the day after a substantially complete filing is received or the day after publication begins), and continues through the last day of the relevant period. The computation of time is based on calendar days. However, if the last day of the relevant period is a Saturday, Sunday, or federal holiday, the relevant period is extended to the end of the next business day. Section 308.12 addresses the calculation of time limits.

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<sup>13</sup> Significant CRA concerns may include a determination by the Regional Director that although the applicant has an institution-wide CRA rating of satisfactory or better, its CRA rating is less than satisfactory in a state, certain metropolitan statistical area (MSA), or non-MSA portion of the state in which it seeks to expand (Section 303.11(c)(3)).

### Abandonment of Filings

Section 303.11(e) of the FDIC Rules and Regulations specifically provides that applicants must provide the FDIC with all specified information and such additional information as is necessary for the FDIC to fully evaluate the filing. When required information is not submitted, the FDIC may consider the filing abandoned, provide written notice of the abandonment to the applicant and any interested parties that submitted comments to the FDIC, and close its files on the matter.

### Decisions on and Disposition of Filings

In general, with respect to filings, the FDIC may approve (or not object), conditionally approve (or conditionally not object), or deny (or object to) a filing after appropriate review and consideration of the record. The applicant may also withdraw a filing or, as noted above, the FDIC may deem a filing abandoned. Section 303.11(a) of the FDIC Rules and Regulations requires the FDIC to promptly notify the applicant and any other person who makes a written request of the final disposition of a filing. If a filing is denied, the FDIC will immediately notify the applicant in writing of the reasons for the denial.

Unless provided otherwise by statutes, consistent with longstanding RMS practice, the FDIC will act on filings that may be deemed approved after a defined number of days (as previously discussed under Expedited Processing), and not simply allow the filing to be automatically approved.

### Availability of Informal Review Process

If an applicant develops concerns regarding the FDIC's review of its filing, including concerns with respect to processing timeframes or other pre-decisional matters, the applicant may request a review by the RMS Division Director similar to the informal review process discussed in FIL-51-2016, *Reminder on FDIC Examination Findings* (July 29, 2016). The informal review process is available solely for pre-decisional processing matters, as processes regarding decisional matters are captured by Parts 303 and 308 of the FDIC Rules and Regulations. As such, applicants may not use the informal review process to request a review of the FDIC's analyses or preliminary findings with regard to any statutory factor or the overall filing, or situations in which the FDIC has offered the applicant an opportunity to withdraw the filing. Case Managers, after consulting with regional management, should consult with the appropriate WO Section Chief regarding these matters.

### Nullification of Decisions

Except as provided by law or regulations, Section 303.11(g) of the FDIC Rules and Regulations permits the FDIC to nullify, withdraw, revoke, amend, or suspend a decision on a filing if the FDIC becomes aware at any time:

- Of any material misrepresentation or omission related to a filing or any material change in circumstances that occurred prior to the consummation of the transaction or commencement of the activity authorized by the decision on the filing; after the agency has rendered a final determination, the FDIC may nullify, withdraw, revoke, amend, or suspend its decision by providing written notification to the applicant of the determination and the reason(s) for the nullification, or
- That the decision on the filing is contrary to law or regulation or was granted due to clerical or administrative error.

Any person responsible for a material misrepresentation or omission in a filing or supporting information may be subject to an enforcement action and other penalties, including criminal penalties provided in Title 18 of the United States Code.

This authority permits the FDIC, under the identified circumstances, to nullify, withdraw, revoke, amend, or suspend a decision related to a filing, whether or not the filing was evaluated using expedited processing. RO Legal should be contacted as soon as possible to discuss any consideration to nullify, withdraw, revoke, amend, or suspend any decision on a filing. Before taking any of the actions described above, the FDIC must issue and serve on an applicant written notice of its intent to take such action. The applicant is permitted to file a written response to the FDIC within 15 days of the date of service.

Under certain circumstances, the FDIC may issue a temporary order on a decision without providing the applicant with a prior notice of its intent to nullify, withdraw, revoke, amend, or suspend a decision on a filing. For example, such action is permitted if the activity may pose a threat to depositors or impair public confidence, or when it is necessary to reevaluate the impact of a change of circumstances prior to consummation or commencement of the transaction or activity. With temporary orders, as with notices of intent to nullify, withdraw, revoke, amend, or suspend a decision on a filing, the applicant must be provided an opportunity to respond. The applicant's failure to file a written response to a notice of intent or to a temporary order constitutes the applicant's waiver of the opportunity to respond and its consent to the action taken by the FDIC (303.11(g)(3) of the FDIC Rules and Regulations).

#### Appeals and Petitions for Reconsideration

Section 303.11(f) of the FDIC Rules and Regulations provides information regarding appeals and requests for reconsideration. This paragraph does not apply to filings for change in control, change in senior executive officers or directors, or Section 19 denials, which are covered by relevant subparts of Part 308 of the FDIC Rules and Regulations (Subparts D, L, and M, respectively). However, for all other filings, Section 303.11(f) applies and requires the applicant to file a petition within 15 days of receipt of a notice of denial.

#### Investigations and Examinations

Section 303.6 of the FDIC Rules and Regulations states "The FDIC may examine or investigate and evaluate facts related to any filing under this chapter to the extent necessary to reach an informed decision and take any action necessary or appropriate under the circumstances." It is expected that the FDIC will fully analyze all relevant information with respect to a filing. It is further expected that investigations and examinations generally will be necessary in limited circumstances, such as deposit insurance applications (whether submitted on behalf of a *de novo* institution or an operating non-insured entity), and change in control notices if the filing involves parties not familiar to the FDIC or a higher-risk proposal. With the approval of the Regional Director or Deputy Regional Director, investigations may be conducted in other situations, such as merger applications involving a non-insured entity. The field investigation for a *de novo* institution will be documented in the ROI. Other investigations or examinations should be documented in a detailed memorandum or Report of Visitation.

**Appendix B****List of Acronyms and Abbreviations**

The following is a list of acronyms and abbreviations that are used throughout these Procedures.

<b>Abbreviation</b>	<b>Definition</b>
<b>ALLL</b>	Allowance for Loan and Lease Losses
<b>ACL</b>	Allowance for Credit Losses
<b>AML</b>	Anti-Money Laundering
<b>ARD</b>	Assistant Regional Director
<b>BHCA</b>	Bank Holding Company Act
<b>BSA</b>	Bank Secrecy Act
<b>C Corp</b>	C Corporation
<b>CALMAs</b>	Capital and Liquidity Maintenance Agreements
<b>CBC Act</b>	Change in Bank Control Act of 1978
<b>CCS</b>	Comprehensive Consolidated Supervision
<b>CDFI</b>	Community Development Financial Institution
<b>CEBA</b>	Competitive Equality Banking Act
<b>CEO</b>	Chief Executive Officer
<b>CFT</b>	Countering the Financing of Terrorist Activities
<b>CISR</b>	Division of Complex Institution Supervision and Resolution
<b>CRA</b>	Community Reinvestment Act
<b>CRE</b>	Commercial Real Estate
<b>CSBS</b>	Conference of State Bank Supervisors
<b>DCP</b>	Division of Depositor and Consumer Protection
<b>DRR</b>	Division of Resolutions and Receiverships
<b>DIF</b>	Deposit Insurance Fund
<b>DIR</b>	Division of Insurance and Research
<b>Dodd-Frank Act</b>	Dodd-Frank Wall Street Reform and Consumer Protection Act
<b>DEA</b>	Drug Enforcement Agency
<b>ESS</b>	Executive Secretary Section
<b>FBI</b>	Federal Bureau of Investigation
<b>FDI</b>	Federal Deposit Insurance
<b>FDI Act</b>	Federal Deposit Insurance Act
<b>FDIC</b>	Federal Deposit Insurance Corporation
<b>FDICIA</b>	Federal Deposit Insurance Corporation Improvement Act
<b>FFIEC</b>	Federal Financial Institutions Examination Council
<b>FIL</b>	Financial Institution Letter
<b>FIRREA</b>	Financial Institution Reform, Recovery, and Enforcement Act of 1989
<b>FO</b>	Field Office
<b>FRB</b>	Federal Reserve Board
<b>FRS</b>	Federal Reserve System
<b>FSA</b>	Federal Savings Association

<b>Abbreviation</b>	<b>Definition</b>
<b>FSOC</b>	Financial Stability Oversight Council
<b>FOIA</b>	Freedom of Information Act
<b>HOLA</b>	Home Owners' Loan Act
<b>ICE</b>	Immigration & Customs Enforcement
<b>IDI</b>	Insured Depository Institution
<b>IAB</b>	International Affairs Branch
<b>IAP</b>	Institution-Affiliated Party
<b>IBFR</b>	Interagency Biographical and Financial Report
<b>ILC</b>	Industrial Loan Company
<b>IT</b>	Information Technology
<b>LBS</b>	Large Bank Supervision Branch
<b>LLC</b>	Limited Liability Company
<b>LPO</b>	Loan Production Office
<b>MDI</b>	Minority Depository Institution
<b>MDIP</b>	Minority Depository Institution Program
<b>MSA</b>	Metropolitan Statistical Area
<b>Mutual</b>	Mutually Owned Institution
<b>NCUA</b>	National Credit Union Administration
<b>OCC</b>	Office of the Comptroller of the Currency
<b>OTS</b>	Office of Thrift Supervision
<b>PBO</b>	Parallel-Owned Banking Organization
<b>PFR</b>	Primary Federal Regulator
<b>RMSA</b>	Relevant Metropolitan Statistical Area
<b>RMAS</b>	Risk Management and Applications Section
<b>RMS</b>	Division of Risk Management Supervision
<b>RO</b>	Regional Office
<b>ROI</b>	Report of Investigation
<b>S Corp</b>	S Corporation
<b>SDD</b>	Senior Deputy Director
<b>SME</b>	Subject Matter Expert
<b>SOI</b>	Summary of Investigation
<b>SOP-ADI</b>	FDIC Statement of Policy on Applications for Deposit Insurance
<b>SOP-QFBA</b>	FDIC Statement of Policy on Qualifications for Failed Bank Acquisitions
<b>UFIRS</b>	Uniform Financial Institutions Rating System
<b>WO</b>	Washington Office