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Robert E. Feldman, Executive Secretary

Attention: Request for Comment on Changes to Supervisory Appeals Process

Federal Deposit Insurance Corporation

550 17th Street NW

Washington, DC 20429

Mr. Feldman,

We appreciate the FDIC revisiting its process concerning supervisory appeals and offer comments to your questions. It has been an issue within the banking industry that appeals on supervisory findings have been futile in expending effort and bank resources. The previous system was set up with the staff who conducted examinations; so, the perception of supervisors supporting field examiners lingers in the minds of the bankers when trying to get a fair hearing. The best strategy employed by banks has been to settle disagreements regarding loan grades, borderline ratings, interpretations on guidance, etc. at the field office level in order to avoid excessive delays and costs to file a regulatory appeal. This should be promoted as much as possible, as it likely resolves most issues that never proceed to a formal appeal. On the other side, serious disagreements should have senior FDIC staff input. Overall, we believe the proposed changes have been vetted thoroughly and are a step forward in revamping the process while addressing industry concerns. Again, we are encouraged by your proactive approach and support your efforts. If you have any questions or need further clarification, please do not hesitate to contact us at 217-529-5555, extension 1205 for Tom Marantz, or extension 1245 for Robert Cockrell. Below are answers to questions asked in your Request for Comment.

Request for Comment:

Question 1: In contrast to the SARC, the Office would not provide representation for Board members in the review process. Should the FDIC Chairperson and/or other Board members have an opportunity to review decisions before issuance?

- Yes. With any organization, top level management should be able to review decisions. There may be a legal review process if this affects banking law, rules, and regulations. However, top level management should not be allowed to influence, alter or change the decision. Otherwise, bankers will view it negatively. Independence must be maintained.

Question 2: The FDIC proposes that the members of the Office have bank supervisory or examination experience. Does this constitute the appropriate qualifications and experience?

- Yes. We believe the FDIC employees in the Office should have some actual banking experience other than examination experience. We feel that regulatory agency employees do not understand all the complexities in the world when dealing with customers, vendors, borrowers, auditors, competitors, etc. while factoring into the equation all the requirements from laws, rules and regulations. Everything just does not fit into a regulatory box; there are some gray areas in decisions, particularly in loan classifications and CAMELS ratings. If you select career individuals with no actual in-house banking experience, the system will not be respected as you want. In addition to FDIC staff, we believe individuals outside of the FDIC staff, i.e. attorneys who have banking law experience, CPAs with banking experience, retired auditors, retired bankers, etc. would make good panel members. We like your comments regarding the need for examiners with prior banking experience.

Question 3: Are there additional steps the FDIC should take to promote independence of the Office?

- We believe it would be beneficial to hear about the process when FDIC officials talk at banker forums. Officials could talk in general terms about the number appeals granted or rejected without exposing confidential information. This exposure of the activity would give bankers and/or the public an understanding that the Office is an avenue to settle disagreements in an orderly fashion. We would utilize the experience of the Ombudsman as part of this process. The Ombudsman should be included as a non-voting member given the experience in handling disagreements and appeals.

Question 4: How many reviewing officials should be included on a panel? Is three an appropriate number? Are there situations where more or less panelists might be appropriate?

- A three-member panel issuing written decisions appears too thin for a good representation of all parties. We believe an expansion of the panel to at least five members would be a good start before considering additional members. The Ombudsman should be a non-voting member of the panel. This staff person could provide research or guidance regarding regulatory laws, rules, and regulations for other members. Their experience in appeal matters should serve well on the panel. You may want to include in policy guidance that the FDIC Chairman may expand the number of panel members to seven depending upon workload requirements. This expansion of the panel should include non-FDIC staff

members as to not give the appearance of loading the panel. If the FDIC wants buy-in from the industry, it must avoid decisions that may question the independence of the panel. The decision to expand the panel should be evaluated annually. We believe it is good that the inclusion of oral presentations is necessary for bankers to perceive that the process is independent and the FDIC is serious on hearing bankers' appeals. Oral presentations may speed the process in less complicated cases.

Question 5: Should the appellate process have any additional level(s) of review before or after the proposed three-member panel?

- No. The appeal process should follow the path defined in your plan to give lower level supervisors the opportunity to work out the issues without engaging the Office. Submission to the Office should be a last resort for serious disagreements of high importance for both the FDIC and banks. I would not have an appeal process after the Office has opined. Its decision to stand as given. If you have an appeal process after it, its view of independence shall be compromised. At some point in this process there must be an end to the discussion and disagreement. We would choose the Office to be the final and absolute arbiter.

Question 6: Do the proposed timelines properly balance the goals of resolving appeals as expeditiously as possible and providing adequate time for preparation and review?

- Overall, we believe the timeframes are acceptable. However, when an appeal involves a regulatory order or MOU, the process should be expedited. During the process, the implementation of the order or MOU should be delayed until the Office has time to review and opine. Appeals involving other circumstances should be granted additional time when both parties agree. A case by case approach may be a reasonable solution.

Question 7: What type of information would be helpful to publish about the appeals process or specific appeal decisions to promote transparency while still maintaining confidentiality?

- We believe posting the appeals and results in the FDIC Quarterly report to bankers would be a good start. The inclusion of a small article in the report could indicate appeal submissions, progress in activity, general facts surrounding the appeals, final vote count for and against, and a summary with final results without naming bank names or any specific information.

Question 8: The FDIC expects the proposed changes to the procedures and timeframes applicable to formal enforcement-related decisions to be effective for the majority of enforcement actions. How should the FDIC handle those unusual cases for which the proposed timeframes are too restrictive?

Should the parties expect to invoke the provision(s) allowing for an extension of the timeframes in these cases?

- We believe extensions for unusual cases may be necessary depending upon the severity of the situation. Appeals involving the issuance of regulatory orders and/or MOU may need additional time, too. FDIC should give banks some leeway in appealing because preparation takes time to collect information and draft an appeal. A one-time extension of 30 days should be considered at the request of the bank or FDIC.

Sincerely,



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