

before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This final rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 354

Exports, Government employees, Imports, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Travel and transportation expenses.

Accordingly, 7 CFR part 354 is amended as follows:

PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS; AND USER FEES

1. The authority citation for part 354 continues to read as follows:

Authority: 7 U.S.C. 2260; 21 U.S.C. 136 and 136a; 49 U.S.C. 1741; 7 CFR 2.22, 2.80, and 371.2(c).

2. Section 354.3 is amended by revising the tables in paragraphs (b)(1), (c)(1), (d)(1), (e)(1), and (f)(1) to read as follows:

§ 354.3 User fees for certain international services.

* * * * *
(b) * * *
(1) * * *

Effective dates	Amount
January 1, 2000 through September 30, 2000	465.50
October 1, 2000 through September 30, 2001	474.50
October 1, 2001 through September 30, 2002	480.50

* * * * *
(c) * * *
(1) * * *

Effective dates	Amount
January 1, 2000 through September 30, 2000	4.25
October 1, 2000 through September 30, 2001	4.50
October 1, 2001 through September 30, 2002	4.75

* * * * *
(d) * * *
(1) * * *

Effective dates	Amount
January 1, 2000 through September 30, 2000	6.75
October 1, 2000 through September 30, 2001	7.00

Effective dates	Amount
October 1, 2001 through September 30, 2002	7.00

* * * * *
(e) * * *
(1) * * *

Effective dates	Amount
January 1, 2000 through September 30, 2000	64.00
October 1, 2000 through September 30, 2001	64.75
October 1, 2001 through September 30, 2002	65.25

* * * * *
(f) * * *
(1) * * *

Effective dates ¹	Amount
January 1, 2000 through September 30, 2000	3.00
October 1, 2000 through September 30, 2001	3.00
October 1, 2001 through September 30, 2002	3.10

¹Persons who issue international airline tickets or travel documents are responsible for collecting the APHIS international airline passenger user fee from ticket purchasers. Issuers must collect the fee applicable at the time tickets are sold. In the event that ticket sellers do not collect the APHIS user fee when tickets are sold, the air carrier must collect the user fee from the passenger upon departure. Carriers must collect the fee applicable at the time of departure from the traveler.

* * * * *

3. In § 354.3, paragraph (c)(3)(i) would be amended by removing the words “, except, that through September 30, 1997, the amount to be paid is \$40.00”.

Done in Washington, DC, this 9th day of November 1999.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99-29868 Filed 11-15-99; 8:45 am]

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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 308 and 330

RIN 3064-AC30

Technical Amendments to FDIC Regulations Relating to Rules of Practice and Procedure and Deposit Insurance Coverage

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The FDIC is amending various sections of its Local Rules of Practice

and Procedure (Local Rules) governing administrative enforcement proceedings. The amendments are generally technical in nature, and are necessary to ensure that the rules are consistent with statutory provisions and procedural changes that have occurred since the rules were first adopted. The FDIC also is making a conforming, technical amendment that was inadvertently omitted from recent revisions to the FDIC’s deposit insurance regulations.

EFFECTIVE DATE: November 16, 1999.

FOR FURTHER INFORMATION CONTACT: On the Part 308 amendments, Andrea Winkler, Counsel, Legal Division (202) 898-3727; on the Part 330 amendment, Joseph A. DiNuzzo, Counsel, Legal Division (202) 898-7349, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION:

I. Part 308 Amendments

A. Background

On August 9, 1991, the federal banking agencies¹ published one set of final uniform rules and procedures (Uniform Rules) for formal administrative enforcement hearings required to be conducted on the record under the Administrative Procedure Act (APA)(5 U.S.C. 554-557).² In addition, each agency published separate “Local Rules” applicable to that agency to supplement the Uniform Rules in order to address some or all of the following: formal enforcement actions not within the scope of the Uniform Rules, informal actions which are not subject to the APA, and procedures to supplement or facilitate the processing of administrative enforcement actions within the FDIC and the other agencies.

B. Summary of the Amendments

The FDIC is amending various subparts of its Local Rules as described below.

Authority. The section listing the authority for the Uniform Rules and Local Rules has been amended to incorporate references to the cross guaranty provisions of the Federal Deposit Insurance Act (FDIA) (12 U.S.C. 1815(e)), which were initially omitted by technical oversight, and to the prompt corrective action and safety and

¹ The agencies were the FDIC, Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Office of Thrift Supervision and National Credit Union Administration.

² 56 FR 37975 (1991) (amended at 61 FR 20347 (1996)). The uniform rules, which are contained in subpart A of part 308 ((12 CFR part 308, subpart A), are intended to standardize procedures for actions common to at least four of the five Agencies.

soundness provisions of the FDIA (12 U.S.C. 1831o and 1831p-1), which were enacted after the Local Rules were first promulgated.

Subpart B—General Rules of Procedure

Section 308.101. As presently written, § 308.101, "Scope of Local Rules," makes clear that the rules contained in subpart A, "Uniform Rules," and subpart B of the Local Rules, "General Rules of Procedure," do not apply to subparts D through P of part 308 unless specifically provided. Since 1991, three additional subparts have been added—subpart Q, which pertains to prompt corrective action, was added in 1992 (57 FR 48426); subpart R, which pertains to safety and soundness compliance plans, was added in 1995 (60 FR 35684); and subpart S, which pertains to bank clearing agencies, was added in 1996 (61 FR 48403). Therefore, a technical amendment is made to include a reference to those subparts to indicate that subparts A and B do not apply to subparts D through S of part 308 unless specifically provided.

Section 308.102. Section 308.102 sets forth the authority of the Board of Directors and Executive Secretary. Since the enactment of the Local Rules, certain authority to act upon routine and procedural matters in enforcement cases has been delegated by Resolution of the Board of Directors to the Executive Secretary, Deputy Executive Secretary and or the Assistant Executive Secretary (Operations). In exercising such delegated authority, those persons can only act upon the advice and recommendations of the Deputy General Counsel for Litigation, or, in his absence, the Assistant General Counsel, Trial Litigation Section.

The delegation resulted from the fact that there are a variety of procedural matters that arise in enforcement cases that are of a technical legal nature, subject to well-settled case law and that do not involve important policy issues. Thus, the authority to issue rulings in the context of sections 7(j), 8, 18(j), 19, 32 and 38 of the FDIA (12 U.S.C. 1817(j), 1818, 1828(j), 1829, 1831i and 1831o concerning denials of requests for private hearing, interlocutory appeals; stays pending judicial review; reopenings of the record and/or remands of the record to the administrative law judge; supplementation of the evidence in the record; all remands from the courts of appeals not involving substantive issues; extensions of stays of orders terminating deposit insurance; and all matters, including final decisions, in proceedings under section 8(g) of the

FDIA (12 U.S.C. 1818(g)) have been delegated.

The authority to act on such matters was delegated in order to allow the Board to concentrate its limited available time upon important policy matters. A delegation, which initially was a more limited delegation concerning interlocutory and procedural matters, first became effective in 1992, and was later expanded in 1997, because it worked well in allowing the FDIC to operate more efficiently. Therefore, § 308.102 has been revised to reflect the current delegations and practice.

Subpart C—Rules of Practice Before the FDIC and Standards of Conduct

Section 308.109. This section, which pertains to suspension and disbarment, authorizes summary suspension from practice in a particular FDIC matter based upon contemptuous conduct in that matter. Section 308.109(b) of the regulations provides for mandatory and automatic suspension and disbarment of attorneys under certain circumstances and gives the Board of Directors discretion to suspend and disbar under other circumstances. The current rule is somewhat confusing insofar as it provides simply that an application to be reinstated may be filed at any time not less than one year after the applicant's most recent application. The FDIC intends that once suspended or disbarred from practice before the FDIC by the Board, a counsel may not make an application for reinstatement for at least one year, and thereafter, may make a new request for reinstatement no sooner than one year after the counsel's most recent reinstatement application. A technical, clarifying amendment reflecting this intent is made.

An applicant for reinstatement under either the discretionary or mandatory suspension and disbarment provisions may, in the Board's sole discretion, be afforded a hearing. Section 308.109(c) provides that hearings conducted pursuant to this section shall be handled in the same manner as other hearings under the Uniform Rules, except that in proceedings to terminate an existing FDIC suspension or disbarment order, the person seeking the termination shall bear the burden of going forward with the application and with proof, and the Board of Directors may limit any such hearings to written submissions. A clarifying amendment is proposed to make explicit that the applicant has the burden of proof with regard to the grounds supporting the application.

Subpart G—Rules and Procedures Applicable to Proceedings Relating to Cease-and-Desist Orders

Section 308.127. This section defines the scope of the Uniform and Local Rules as they pertain to cease-and-desist proceedings under section 8(b) of the FDIA (12 U.S.C. 1818(b)). Paragraph (a) contains a statement regarding the applicability of those rules to temporary cease-and-desist proceedings under section 8(c) of the FDIA (12 U.S.C. 1818(c)). Insofar as § 308.131 pertains specifically to temporary cease-and-desist orders, and paragraph (c) of that section indicates that the Uniform Rules and subpart B of the Local Rules do not apply to the issuance of temporary cease-and-desist orders pursuant to section 8(c) of the FDIA, that same language in § 308.127(a) is redundant, and a technical amendment deleting that phrase in § 308.127(a) has been made.

Subpart H—Rules and Procedures Applicable to Proceedings Relating to Assessment and Collection of Civil Money Penalties for Violation of Cease-and-Desist Orders and of Certain Federal Statutes, Including Call Report Penalties

Section 308.132. The FDIC is making a technical correction to § 308.132(c)(3) which inadvertently refers to the Debt Collection Act rather than the appropriate title of that law which is the Debt Collection Improvement Act.

Subpart K—Procedures Applicable to Investigations Pursuant to Section 10(c) of the FDIA

Section 308.145. A technical amendment is made to correct the citation to § 303.9, which is now codified at § 303.272.

Section 308.148. A technical amendment is made to paragraph (b) to correct the citation to § 308.6, which is incorrectly cited as § 308.06. A similar amendment is made to paragraph (d) to correct the citation to § 308.8, which is incorrectly cited as § 308.08.

Subpart L—Procedures and Standards Applicable to a Notice of Change in Senior Executive Officer or Director Pursuant to Section 32 of the FDIA

Section 308.151. Subpart L governs proceedings for the disapproval of candidates for senior executive officer and director. Section 2208 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (Pub. L. 104-208) amended the circumstances that require an insured state nonmember bank to notify the FDIC of a proposed addition or employment of a director or senior executive officer. After 1996,

there is no longer a requirement that a bank which has been chartered less than two years or which has undergone a change in control within the preceding two years submit such a notice. Instead, the law now requires that a bank must file a prior notice where (i) it is not in compliance with all minimum capital requirements applicable to it as determined by the FDIC on the basis of such institution's most recent report of condition or report of examination or inspection; (ii) the bank is in a troubled condition; or (iii) the FDIC determines, in connection with the review of a plan required under section 38 of the FDIA (12 U.S.C. 1831o) or otherwise, that such prior notice is appropriate. Section 308.151(a) has been revised to incorporate these statutory changes.

Sections 308.152, 308.153 and 308.155. Technical amendments to correct grammatical errors or incorrect citations to other parts of the regulations are made.

Subpart M—Procedures and Standards Applicable to an Application Pursuant to Section 19 of the FDIA

Subpart M governs procedures for FDIC approval of applications filed pursuant to section 19 of the FDIA (12 U.S.C. 1829) by persons convicted of certain crimes who wish to participate in banking. This subpart has been revised in order to comply with the changes to section 19 made by the Housing and Community Development Act (Pub. L. 102-550) which added convictions for money laundering to the list of covered crimes for which an application must be filed, and to make this subpart consistent with current policy and practice, especially in light of the FDIC's Statement of Policy on Section 19 of the FDI Act which became effective December 1, 1998 (63 FR 66177 (1998)).

Sections 308.156 and 308.157. These sections pertain to the scope of the regulation and relevant considerations for granting applications. Section 308.156 has been amended to reflect that under current policy and consistent with the revised regulations, an insured depository institution may file an application on behalf of an individual, or in certain cases, an individual may directly file an application. Both sections have been amended to include convictions for money laundering consistent with the statutory language of section 19.

Section 308.158. Section 308.158(a) of subpart M directs that applications be filed with the appropriate FDIC regional office, but it is silent as to who must file the application. Longstanding FDIC policy has been that an application must

be filed by the insured depository institution at which the convicted individual intends to be employed or otherwise participate, or which the individual intends to own or control. Two recent policy changes affect filing requirements. The FDIC has adopted an approach of granting blanket approval, and not requiring an application, in cases in which an individual meets the criteria of the de minimis exception set forth in the FDIC's Statement of Policy on Section 19 of the FDI Act (63 FR 66177 (1998)). In addition, the FDIC will consider waivers of the institution filing requirement, on a case-by-case basis, in instances in which an individual can show substantial good cause why an application should be granted.

Therefore, paragraph (a) has been amended to clarify that an institution must file the application unless a waiver is granted for substantial good cause shown which allows the individual to file, or unless no application is required because the de minimis exception applies. Paragraph (b) has been amended to clarify that the prohibition pursuant to section 19 shall continue until the individual has been reinstated by the Board of Directors or its designee for good cause shown. In addition, a new paragraph (c) has been added to reflect the current policy and practice regarding the filing requirements and delegations of authority for waiver applications.

Section 308.160. This section pertains to the hearing procedure in section 19 cases. A technical correction has been made to change the reference to 308.06 to 308.6.

Subpart N—Rules and Procedures Applicable to Proceedings Relating to Suspension, Removal, and Prohibition Where a Felony Is Charged

Subpart N governs proceedings for suspension, removal, and prohibition pursuant to section 8(g) of the FDIA (12 U.S.C. 1818(g)) where a felony is charged. The changes in subpart N were made for purposes of clarity and to reflect the amendments to section 8(g) made by the Housing and Community Development Act of 1992 (1992 Amendments)(Pub. L. 102-550).

Section 308.161. This section sets forth the scope of the rules as they apply to suspension, removal and prohibition proceedings. Where an institution-affiliated party is charged in any information, indictment, or complaint with the commission of, or participation in, a crime involving dishonesty or breach of trust punishable by imprisonment exceeding one year under state or federal law, section 8(g) of the FDIA allows the FDIC to suspend that

individual or to prohibit that party, absent prior written FDIC consent, from further participation in the conduct of the affairs of the depository institution, if his or her continued service or participation poses a threat to the interests of the depository institution's depositors or threatens to impair public confidence in the depository institution. The 1992 Amendments added, as a cause justifying suspension, an individual being charged with the commission of a criminal violation involving money laundering (section 1956, 1957, or 1960 of Title 18) or violations of the Bank Secrecy Act (section 5322 or 5324 of Title 31).

In addition, where a conviction or an agreement to enter a pre-trial diversion or other similar program has been entered against an institution-affiliated party in connection with a crime involving dishonesty or breach of trust punishable by imprisonment exceeding one year under state or federal law, and the conviction is not subject to further appellate review, the FDIC may remove or prohibit the party, absent prior FDIC consent, from further participation in the conduct of the affairs of the depository institution, if continued service or participation by such party poses a threat to the interests of the depository institution's depositors or threatens to impair public confidence in the depository institution. The 1992 Amendments added as a mandatory cause of removal or prohibition, the entry of a judgment of conviction or an agreement to enter a pre-trial diversion or other similar program against such party in connection with a criminal violation of section 1956, 1957, or 1960 of Title 18 or section 5322 or 5324 of Title 31. Amendments to this section reflect these statutory changes.

Section 308.162. This section sets forth relevant considerations for the issuance of a suspension, removal or prohibition. Consistent with the statutory changes described above, whether the alleged offense is a criminal violation of section 1956, 1957, or 1960 of Title 18 or section 5322 or 5324 of Title 31 has been added as a factor.

Section 308.163. This section pertains to orders of removal or prohibition. Amendments have been proposed to incorporate the 1992 Amendments which direct that an order be entered where a final judgment of conviction is entered against the individual for a criminal violation of section 1956, 1957, or 1960 of Title 18 or section 5322 or 5324 of Title 31.

Section 308.164. A technical amendment has been made to correct the citation to § 308.6 of the Uniform Rules.

Subpart P—Rules and Procedures Relating to the Recovery of Attorney Fees and Other Expenses

Subpart P governs proceedings relating to the recovery of attorney fees and other expenses under the Equal Access to Justice Act (EAJA) (5 U.S.C. 504). The revisions to this subpart are made to conform to statutory changes made by the Small Business Regulatory Enforcement Fairness Act (1996 Amendments) (Pub. L. 104–121, 110 Stat. 857 (1996)). The EAJA allows individuals and small businesses who have been sued by the government to recover their attorneys fees and costs if they prevailed in the suit, unless the agency's position was substantially justified or special circumstances make an award unjust. The 1996 Amendments added a new grounds for recovery in an adversary adjudication arising from an agency action to enforce a party's compliance with a statutory or regulatory requirement where the demand by the agency is substantially in excess of the decision of the adjudicative officer and is unreasonable when compared with such decision under the facts or circumstances of the case. A party may seek such an award unless the party has committed a willful violation of law or otherwise acted in bad faith, or special circumstances make an award unjust. Fees and expenses awarded under the foregoing grounds shall be paid only as a consequence of appropriations paid in advance. In addition, the 1996 Amendments added "small entities" to the applicants that are eligible for an award pursuant to the new provisions and increased the maximum amount of attorneys fees for all EAJA actions from \$75.00 per hour to \$125.00 per hour.

Section 308.170. This section pertains to the filing, content, and service of documents. Proposed amendments have been made to clarify filing requirements and to include in this section a reference to applications concerning excessive demands.

Section 308.171. This section pertains to responses to applications. It has been revised to incorporate references to answers and replies in applications involving excessive demands.

Section 308.172. This section addresses the eligibility of applicants. It has been amended to add a small entity as defined in 5 U.S.C. 601 as an eligible applicant for awards based upon excessive demands.

Section 308.174. This section sets the standards for awards. It has been amended to reference applications based upon excessive awards.

Section 308.175. This section addresses the measure of awards and has been amended to change references to the maximum amount of attorneys fees that may be awarded in an EAJA claim from \$75.00 per hour to \$125.00 per hour, and to include a statement incorporating the 1996 Amendments that fees and expenses related to defending against an excessive demand shall be paid only as a consequence of appropriations paid in advance.

Section 308.176. This section contains guidelines for the contents of applications for awards. It has been amended to include requirements relevant to an application concerning an excessive award.

Section 308.179. This section pertains to settlement. It has been amended to indicate that while a statement of intent to negotiate a settlement should be filed with the Executive Secretary, a copy of a statement should also be filed with the administrative law judge. This is to ensure that, in cases in which an answer has not yet been filed, the administrative law judge will be aware of potential settlement. In addition, the time within which an answer must be filed pending settlement negotiations has been extended from 20 to 30 days. This time frame better reflects the timetable within which settlements are able to be approved.

II. Part 330 Amendment

Effective April 1, 1999, the FDIC revised its deposit insurance rules on the coverage of joint accounts and payable-on-death accounts (64 FR 15653, April 1, 1999). In amending the joint account provisions, however, the FDIC failed to revise § 330.9(a) of the FDIC's regulations (12 CFR 330.9(a)) to indicate that joint accounts comprised of community property funds would continue to be treated as any other type of qualifying joint account. The final rule makes this technical, conforming amendment to § 330.9(a).

III. Exemption From Public Notice and Comment

Chapter 6 of Title 5 of the United States Code which pertains to "The Analysis of Regulatory Functions" does not apply to the final rule. The revisions to part 308 and part 330 do not constitute a "rule" for which the FDIC is required to publish a general notice of proposed rulemaking under section 553(b) of Title 5 of the United States Code. This is because the final rule contains only clarifications and technical changes intended to bring the agency's rules of practice and procedure and deposit insurance rules into conformity with statutory changes or

current agency practices and procedures. Thus, the FDIC has determined for good cause that public notice and comment are unnecessary and that the rule should be published in final form.

IV. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires an agency to publish an initial regulatory flexibility analysis, except to the extent provided in 5 U.S.C. 605(b), whenever the agency is required to publish a general notice of proposed rulemaking for a proposed rule. For the reasons discussed above, the FDIC is publishing this rule as a final rule, for which no publication of a general notice of proposed rulemaking is necessary. No regulatory flexibility analysis is required.

V. Small Business Regulatory Enforcement Fairness Act

The Office of Management and Budget has determined that the final rule is not a "major rule" within the meaning of the relevant sections of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (5 U.S.C. 801 *et seq.*). As required by SBREFA, the FDIC will file the appropriate reports with Congress and the General Accounting Office so that the final rule may be reviewed.

VI. Paperwork Reduction Act

No collections of information pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) are contained in this rule. Consequently, no information has been submitted to the Office of Management and Budget for review.

VII. Assessment of Impact of Federal Regulation on Families

The FDIC has determined that this regulation will not affect family well-being within the meaning of section 654 of the Treasury Department Appropriations Act of 1999, enacted as part of the Omnibus Consolidated and Emergency Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681).

VIII. Effective Date

The APA (5 U.S.C. 551 *et seq.*) provides that regulations shall become effective thirty (30) days after their publication in the **Federal Register** (5 U.S.C. 553). One exception to this requirement is for a finding of "good cause" (*Id.* at 553(d)). For the final rule, the Board finds "good cause" to make the amendments effective immediately upon publication in the **Federal Register** because the amendments are

technical and conforming to pre-existing statutory and regulatory requirements.

IX. Authority for the Regulation

This regulation is authorized by the FDIC's general rulemaking authority and pursuant to its fundamental responsibilities to ensure the safety and soundness of insured depository institutions. Specifically, 12 U.S.C. 1819(a) Tenth provides the FDIC with general authority to issue such rules and regulations as it deems necessary to carry out the statutory mandates of the Federal Deposit Insurance Act and other laws that the FDIC is charged with administering or enforcing.

List of Subjects

12 CFR Part 308

Administrative practice and procedure, Banks, banking, Claims, Crime, Equal access to justice, Lawyers, Penalties, State nonmember banks.

12 CFR Part 330

Bank deposit insurance, Banks, banking, Reporting and recordkeeping requirements, Savings and loan associations, Trusts and trustees.

Adoption of Technical Amendments

For the reasons set forth in the preamble, the FDIC hereby amends chapter III of title 12 of the Code of Federal Regulations as set forth below:

PART 308—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 308 is revised to read as follows:

Authority: 5 U.S.C. 504, 554-557; 12 U.S.C. 93(b), 164, 505, 1815(e), 1817, 1818, 1820, 1828, 1829, 1829b, 1831i, 1831o, 1831p-1, 1832(c), 1884(b), 1972, 3102, 3108(a), 3349, 3909, 4717; 15 U.S.C. 78 (h) and (i), 78o-4(c), 78o-5, 78q-1, 78s 78u, 78u-2, 78u-3 and 78w; 28 U.S.C. 2461 note; 31 U.S.C. 330, 5321; 42 U.S.C. 4012a; sec. 31001(s), Pub. L. 104-134, 110 Stat. 1321-358.

2. In § 308.101, paragraph (b) is revised to read as follows:

§ 308.101 Scope of Local Rules.

* * * * *

(b) Except as otherwise specifically provided, the Uniform Rules and subpart B of the Local Rules shall not apply to subparts D through S of the Local Rules.

* * * * *

3. In § 308.102, paragraph (b) is revised to read as follows:

§ 308.102 Authority of Board of Directors and Executive Secretary.

* * * * *

(b) *The Executive Secretary.* (1) When no administrative law judge has jurisdiction over a proceeding, the Executive Secretary may act in place of, and with the same authority as, an administrative law judge, except that the Executive Secretary may not hear a case on the merits or make a recommended decision on the merits to the Board of Directors.

(2) Pursuant to authority delegated by the Board of Directors, the Executive Secretary, Deputy Executive Secretary or the Assistant Executive Secretary (Operations), upon the advice and recommendation of the Deputy General Counsel for Litigation or, in his absence, the Assistant General Counsel, Trial Litigation Section, may issue rulings in proceedings under sections 7(j), 8, 18(j), 19, 32 and 38 of the FDIA (12 USC 1817(j), 1818, 1828(j), 1829, 1831i and 1831o concerning:

- (i) Denials of requests for private hearing;
- (ii) Interlocutory appeals;
- (iii) Stays pending judicial review;
- (iv) Reopenings of the record and/or remands of the record to the ALJ;
- (v) Supplementation of the evidence in the record;
- (vi) All remands from the courts of appeals not involving substantive issues;
- (vii) Extensions of stays of orders terminating deposit insurance; and
- (viii) All matters, including final decisions, in proceedings under section 8(g) of the FDIA (12 U.S.C. 1818(g)).

* * * * *

4. In § 308.109, paragraphs (b)(3) and (c) are revised to read as follows:

§ 308.109 Suspension and disbarment.

* * * * *

(b) * * *

(3) A suspension or disbarment under paragraph (b)(1) of this section from practice before the FDIC shall continue until the applicant has been reinstated by the Board of Directors for good cause shown, provided that any person suspended or disbarred under paragraph (b)(1) of this section shall be automatically reinstated by the Executive Secretary, upon appropriate application, if all the grounds for suspension or disbarment under paragraph (b)(1) of this section are subsequently removed by a reversal of the conviction (or the passage of time since the conviction) or termination of the underlying suspension or disbarment. An application for reinstatement on any other grounds by any person suspended or disbarred under paragraph (b)(1) of this section may be filed no sooner than one year after the suspension or disbarment, and

thereafter, a new request for reinstatement may be made no sooner than one year after the counsel's most recent reinstatement application. An applicant for reinstatement under this provision may, in the Board of Directors' sole discretion, be afforded a hearing.

(c) *Hearings under this section.*

Hearings conducted under this section shall be conducted in substantially the same manner as other hearings under the Uniform Rules, provided that in proceedings to terminate an existing FDIC suspension or disbarment order, the person seeking the termination of the order shall bear the burden of going forward with an application and with the burden of proving the grounds supporting the application, and that the Board of Directors may, in its sole discretion, direct that any proceeding to terminate an existing suspension or disbarment by the FDIC be limited to written submissions.

* * * * *

§ 308.127 [Amended]

6. In § 308.127, paragraph (a) is amended by adding a period after "12 U.S.C. 1818(b)", and removing the words "; provided that the provisions of the Uniform Rules and subpart B of the Local Rules shall not apply to the issuance of temporary cease-and-desist orders pursuant to section 8(c) of the FDIA (12 U.S.C. 1818(c))".

§ 308.132 [Amended]

7. In § 308.132, the paragraph (c)(3) heading and introductory text are amended by removing the words "Debt Collection Act" and adding the words "Debt Collection Improvement Act".

§ 308.145 [Amended]

8. The first sentence of § 308.145 is amended by removing " § 303.9" and adding in its place "§ 303.272."

§ 308.148 [Amended]

9. In § 308.148, paragraph (b) is amended by removing "§ 308.06" and adding in its place "§ 308.6", and paragraph (d) is amended by removing "§ 308.08" and adding in its place "§ 308.8".

10. § 308.151 is revised to read as follows:

§ 308.151 Scope.

The rules and procedures set forth in this subpart shall apply to the notice filed by a state nonmember bank pursuant to section 32 of the FDIA (12 U.S.C. 1831i) and § 303.102 of this chapter for the consent of the FDIC to add or replace an individual on the Board of Directors, or to employ any

individual as a senior executive officer, or change the responsibilities of any individual to a position of senior executive officer where:

(a) The bank is not in compliance with all minimum capital requirements applicable to it as determined by the FDIC on the basis of such institution's most recent report of condition or report of examination or inspection;

(b) The bank is in a troubled condition as defined in § 303.101(c) of this chapter; or

(c) The FDIC determines, in connection with the review of a capital restoration plan required under section 38(e)(2) of the FDIA (12 U.S.C. 1831o(e)(2)) or otherwise, that such prior notice is appropriate.

§ 308.152 [Amended]

11. In § 308.152, paragraph (a) is amended by adding the word "is" after the word "notice", and paragraph (b) is amended by removing the word "indicated" and adding in its place the word "indicates".

§ 308.153 [Amended]

12. In § 308.153, the section heading is amended by removing "§ 303.14" and adding in its place "§ 303.103(c)".

§ 308.155 [Amended]

13. In § 308.155, paragraph (c)(2) is amended by removing "§ 308.06" and adding in its place "§ 308.6."

§ 308.156 [Amended]

14. § 308.156 is amended by removing the words "and/or an individual" and adding in their place the words "and a person" and by adding the words "or money laundering" after the word "trust".

§ 308.157 [Amended]

15. In § 308.157, paragraph (a)(1) is amended by adding the words "or money laundering" after the word "trust".

16. § 308.158 is revised to read as follows:

§ 308.158 Filing papers and effective date.

(a) *Filing with the regional office.* Applications pursuant to section 19 shall be filed by in the appropriate regional office. Unless a waiver has been granted pursuant to paragraph (c) of this section, only an insured depository institution may file an application. Persons meeting the de minimis criteria set forth in the FDIC's Statement of Policy on Section 19 of the FDIA (63 FR 66177 (1998)) need not file an application.

(b) *Effective date.* An application pursuant to section 19 may be made in writing at any time more than one year

after the issuance of a decision denying an application pursuant to section 19. The removal and/or prohibition pursuant to section 19 shall continue until the individual has been reinstated by the Board of Directors or its designee for good cause shown.

(c) *Waiver applications.* If an institution does not file an application regarding an individual, the individual may file a request for a waiver of the institution filing requirement for section 19 of the FDIA. Such a waiver application shall be filed with the appropriate regional office and shall set forth substantial good cause why the application should be granted. The Director of the Division of Supervision and, where confirmed in writing by the director, a deputy director or an associate director may grant or deny applications requesting waivers of the institution filing requirement. The authority delegated under this section shall be exercised only upon the concurrent certification of the General Counsel or his designee that the action to be taken is not inconsistent with section 19 of the FDIA.

§ 308.160 [Amended]

17. In § 308.160, paragraph (c)(2) is amended by removing "§ 308.06" and adding in its place "§ 308.6".

18. § 308.161 is revised to read as follows:

§ 308.161 Scope.

The rules and procedures set forth in this subpart shall apply to the following:

(a) Proceedings to suspend an institution-affiliated party of an insured state nonmember bank, or to prohibit such party from further participation in the conduct of the affairs of the bank, if continued service or participation by such party poses a threat to the interests of the bank's depositors or threatens to impair public confidence in the depository institution, where the individual is charged in any state or federal information, indictment, or complaint, with the commission of, or participation in:

(1) A crime involving dishonesty or breach of trust punishable by imprisonment exceeding one year under state or federal law; or (2) A criminal violation of section 1956, 1957, or 1960 of Title 18 or section 5322 or 5324 of Title 31.

(b) Proceedings to remove from office or to prohibit an institution-affiliated party from further participation in the conduct of the affairs of the bank without the consent of the Board of Directors or its designee where:

(1) A judgment of conviction or an agreement to enter a pre-trial diversion

or other similar program has been entered against such party in connection with a crime described in paragraph (a)(1) of this section that is not subject to further appellate review, if continued service or participation by such party poses a threat to the interests of the bank's depositors or threatens to impair public confidence in the depository institution; or

(2) A judgment of conviction or an agreement to enter a pre-trial diversion or other similar program has been entered against such party in connection with a crime described in paragraph (a)(2) of this section.

19. In § 308.162, paragraph (a) is revised to read as follows:

§ 308.162 Relevant considerations.

(a)(1) In proceedings under § 308.161 (a) and (b) for a suspension, removal or prohibition order, the following shall be considered:

(i) Whether the alleged offense is a crime which is punishable by imprisonment for a term exceeding one year under state or federal law and which involves dishonesty or breach of trust; and

(ii) Whether the alleged offense is a criminal violation of section 1956, 1957, or 1960 of Title 18 or section 5322 or 5324 of Title 31; and

(iii) Whether continued service or participation by the institution-affiliated party may pose a threat to the interest of the bank's depositors, or threatens to impair public confidence in the bank.

* * * * *

20. In § 308.163, paragraph (b) is revised to read as follows:

§ 308.163 Notice of suspension, and orders of removal or prohibition.

* * * * *

(b) *Order of removal or prohibition.*

(1) The Board of Directors or its designee may issue an order removing or prohibiting from further participation in the conduct of the affairs of the bank an institution-affiliated party, when a final judgment of conviction not subject to further appellate review is entered against the individual for a crime referred to in § 308.161(a)(1) and continued service or participation by such party poses a threat to the interests of the bank's depositors or threatens to impair public confidence in the depository institution.

(2) An order of removal or prohibition shall be entered if a judgment of conviction is entered against the individual for a crime described in § 308.161(a)(ii).

§ 308.164 [Amended]

21. In § 308.164, paragraph (b)(2) is amended by removing “§ 308.06” and adding in its place “§ 308.6.”

22. In § 308.170, paragraphs (a) and (b) are revised to read as follows:

§ 308.170 Filing, content, and service of documents.

(a) Time to file. An application and any other pleading or document related to the application shall be filed with the Executive Secretary within 30 days after service of the final order of the Board of Directors in disposition of the proceeding whenever:

(1) The applicant seeks an award pursuant to 5 U.S.C. 504(a)(1) as the prevailing party in the adversary adjudication or in a discrete significant substantive portion of the proceeding; or

(2) The applicant, in an adversary adjudication arising from an action to enforce compliance with a statutory or regulatory requirement, asserts pursuant to 5 U.S.C. 504(a)(4) that the demand by the FDIC is substantially in excess of the decision of the administrative law judge and is unreasonable when compared with such decision under the facts and circumstances of the case.

(b) Content. The application and related documents shall conform to the requirements of § 308.10(b) and (c) of the Uniform Rules.

* * * * *

23. In § 308.171, paragraph (b) is revised to read as follows:

§ 308.171 Responses to application.

* * * * *

(b) Reply to answer. The applicant may file a reply with regard to an application filed pursuant to 5 U.S.C. 504 (a)(1), if the FDIC has addressed in its answer any of the following issues: that the position of the FDIC was substantially justified, that the applicant unduly protracted the proceedings, or that special circumstances make an award unjust. The applicant may file a reply with regard to an application filed pursuant to 5 U.S.C. 504 (a)(4), if the FDIC has addressed in its answer any of the following issues: that the applicant has committed a willful violation of law or otherwise acted in bad faith, that the FDIC’s demand is reasonable when compared to the decision of the administrative law judge or that special circumstances make an award unjust. The reply shall be filed within 15 days after service of the answer. If the reply is based on any alleged facts not already in the record of the proceeding, the reply shall include either supporting affidavits or a request for further proceedings under § 308.180.

* * * * *

24. In § 308.172, paragraph (b) is amended by adding a new paragraph (b)(3) to read as follows:

§ 308.172 Eligibility of applicants.

* * * * *

(b) * * * (3) For purposes of an application filed pursuant to 5 U.S.C. 504(a)(4), a small entity as defined in 5 U.S.C. 601.

* * * * *

25. § 308.174 is revised to read as follows:

§ 308.174 Standards for awards.

(a) For applications filed pursuant to 5 U.S.C. 504(a)(1), a prevailing applicant may receive an award for fees and expenses unless the position of the FDIC during the proceeding was substantially justified or special circumstances make the award unjust. An award will be reduced or denied if the applicant has unduly or unreasonably protracted the proceedings. Awards for fees and expenses incurred before the date on which the adversary adjudication was initiated are allowable if their incurrence was necessary to prepare for the proceeding.

(b) For applications filed pursuant to 5 U.S.C. 504(a)(4), an applicant may receive an award unless the demand by the FDIC was reasonable when compared with the decision of the administrative law judge, the applicant has committed a willful violation of law or otherwise acted in bad faith, or special circumstances make an award unjust.

§ 308.175 [Amended]

26. In § 308.175, paragraph (a) is amended by removing “\$75” and adding in its place “\$125”, and by adding at the end of the paragraph the following sentence: “Fees and expenses awarded under 5 U.S.C. 504(a)(4) related to defending against an excessive demand shall be paid only as a consequence of appropriations paid in advance”.

27. In § 308.176, paragraph (a) is revised to read as follows:

§ 308.176 Application for awards.

(a) Contents. An application for an award of fees and expenses under this subpart shall contain:

(1) The name of the applicant and an identification of the proceeding;

(2) For applications filed pursuant to 5 U.S.C. 504(a)(1), a showing that the applicant has prevailed, and an identification of each issue with regard to which the applicant believes that the position of the FDIC in the proceeding was not substantially justified;

(3) For applications filed pursuant to 5 U.S.C. 504(a)(4), a showing that the

demand by the FDIC is substantially in excess of the decision of the administrative law judge and is unreasonable when compared with such decision under the facts and circumstances of the case;

(4) A statement of the amount of fees and expenses for which an award is sought;

(5) For applications filed pursuant to 5 U.S.C. 504(a)(4), a statement of the amount of fees and expenses which constitute appropriations paid in advance;

(6) If the applicant is not an individual, a statement of the number of its employees on the date the proceeding was initiated;

(7) A description of any affiliated individuals or entities, as defined in § 308.172(c)(5), or a statement that none exist;

(8) A declaration that the applicant, together with any affiliates, had a net worth not more than the ceiling established for it by § 308.172(b) as of the date the proceeding was initiated;

(9) For applications filed pursuant to 5 U.S.C. 504(a)(1), a statement whether the applicant is a small entity as defined in 5 U.S.C. 601; and

(10) Any other matters that the applicant wishes the FDIC to consider in determining whether and in what amount an award should be made.

* * * * *

§ 308.179 [Amended]

28. § 308.179 is amended by adding the words “with a copy to the administrative law judge” after the word “Secretary” and by removing “20” and in its place adding “30”.

PART 330—DEPOSIT INSURANCE COVERAGE

29. The Authority citation for part 330 continues to read as follows:

Authority: 12 U.S.C. 1813(l), 1813(m), 1817(i), 1818(q), 1819(Tenth), 1820(f), 1821(a), 1822(c).

30. In § 330.9, paragraph (a) is revised to read as follows:

§ 330.9 Joint ownership accounts.

(a) Separate insurance coverage. Qualifying joint accounts, whether owned as joint tenants with the right of survivorship, as tenants in common or as tenants by the entirety, shall be insured separately from any individually owned (single ownership) deposit accounts maintained by the co-owners. (Example: If A has a single ownership account and also is a joint owner of a qualifying joint account, A’s interest in the joint account would be insured separately from his or her

interest in the individual account.) Qualifying joint accounts in the names of both husband and wife which are comprised of community property funds shall be added together and insured up to \$200,000, separately from any funds deposited into accounts bearing their individual names.

* * * * *
By order of the Board of Directors.

Dated at Washington, D.C., this 8th day of November, 1999.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 99-29830 Filed 11-15-99; 8:45 am]

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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 343

RIN 3064-AC19

Insured State Nonmember Banks Which Are Municipal Securities Dealers

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) published a notice of proposed rescission of a rule in the *Federal Register* on May 16, 1997, which proposed to rescind its regulation entitled "Insured State Nonmember Banks Which Are Municipal Securities Dealers". The regulation requires insured state nonmember banks which are municipal securities dealers to file with the FDIC certain information about those persons who are or seek to be associated with these dealers as municipal securities principals or municipal securities representatives. The FDIC has determined for a number of reasons, as set forth in the original notice and discussed in **SUPPLEMENTARY INFORMATION**, that the regulation is unnecessary and duplicative, and therefore, the FDIC is rescinding it.

EFFECTIVE DATE: The rescission of this regulation will be effective December 16, 1999.

FOR FURTHER INFORMATION CONTACT: Amy A. Mitchell, Senior Capital Markets Specialist, Division of Supervision (202) 898-3670, or Karen L. Main, Counsel, Legal Division (202) 898-8838.

SUPPLEMENTARY INFORMATION:

I. Background

Part 343 of the FDIC's rules and regulations requires insured state nonmember banks and certain of their subsidiaries, departments and divisions which are municipal securities dealers, as defined in section 3(a)(30) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(30)) (Exchange Act), to file certain information with the FDIC. State nonmember banks must file information about persons who are associated with their subsidiaries, departments and divisions as municipal securities principals or municipal securities representatives. The Exchange Act delegates responsibility to the Municipal Securities Rulemaking Board (MSRB) to formulate rules regulating the activities of municipal securities dealers. The FDIC is authorized, pursuant to section 3(a)(34)(A)(iii) of the Exchange Act, to enforce compliance with MSRB rules by any insured state nonmember bank, as well as a subsidiary or a department or a division thereof, which is a municipal securities dealer (hereafter referred to as a state nonmember bank municipal securities dealer).

One of the areas in which the Exchange Act directs the MSRB to promulgate rules is the qualification of persons associated with municipal securities dealers. Under paragraph (b) of MSRB Rule G-7, persons who are or seek to be associated with municipal securities dealers as municipal securities principals or municipal securities representatives must provide certain background information and conversely, the municipal securities dealers must obtain the information from such persons. The FDIC, the Office of the Comptroller of the Currency (OCC), and the Board of Governors of the Federal Reserve System (FRB) (collectively, the Banking Agencies) developed Form MSD-4 to satisfy this requirement. The FDIC requires state nonmember bank municipal securities dealers to file Form MSD-4 with the FDIC. 12 CFR 343.3(a).

Under paragraph (c) of MSRB Rule G-7, a person who is or seeks to be associated with a municipal securities dealer is required to provide the dealer with a statement correcting information furnished under paragraph (b), to the extent that such information becomes materially inaccurate or incomplete. The FDIC requires state nonmember bank municipal securities dealers to file with the FDIC copies of MSRB Rule G-7 paragraph (c) statements and Form MSD-5s. Form MSD-5, also developed by the Banking Agencies, is a notification by a municipal securities

dealer that a municipal securities principal or a municipal securities representative has terminated association with the dealer and the reasons for such termination. 12 CFR 343.3 (b) and (c).

Paragraphs (e) and (f) of the MSRB Rule G-7 contain record retention requirements. The FDIC has imposed substantially the same requirements on state nonmember bank municipal securities dealers. 12 CFR 343.3(d).

Paragraph (g) of the MSRB's Rule G-7 requires every bank municipal securities dealer to file with the appropriate regulatory agency for such bank dealer the information prescribed by the MSRB's Rule G-7, as the appropriate regulatory agency shall require by rule or regulation. As noted above, the FDIC requires that each state nonmember bank municipal securities dealer file Form MSD-4, MSRB Rule G-7 paragraph (c) statement, and Form MSD-5 with the FDIC for each person associated with the dealer as a municipal securities principal or municipal securities representative.

II. Basis for Rescission of Part 343

The reasons supporting the rescission of part 343 of the FDIC's rules and regulations were thoroughly discussed in the original proposal to rescind. (62 FR 26994, May 16, 1997). A summary of the most compelling justifications are provided below.

A. MSRB's Rule G-7 Requires the Provision of Much of the Same Information as § 343.3

The requirements of § 343.3 are largely duplicative of those requirements in MSRB Rule G-7. Therefore, there is no need to retain these redundant requirements in part 343 of the FDIC's rules and regulations. Paragraph (b) of the MSRB's Rule G-7 requires bank municipal securities dealers to obtain certain information from persons who are or seek to be associated with them as municipal securities principals or municipal securities representatives. Paragraph (c) requires filing of statements to correct materially inaccurate or incomplete information. MSRB's Rule G-7 paragraphs (e) and (f) provide recordkeeping requirements, including that the information required in paragraphs (b) and (c) be maintained for three years after the associated person's employment with the municipal securities dealer or broker has terminated.

In order to implement MSRB Rule G-7, the FDIC will continue to provide the Forms MSD-4 and MSD-5 to state nonmember bank municipal securities