

§ 508.10 Burden of persuasion.

The petitioner has the burden of showing, by a preponderance of the evidence, that his or her continued service to or participation in the conduct of the affairs of the association does not, or is not likely to, pose a threat to the interests of the association's depositors or threaten to impair public confidence in the association.

§ 508.11 Relevant considerations.

(a) In determining whether the petitioner has shown that his or her continued service to or participation in the conduct of the affairs of the association would not, or is not likely to, pose a threat to the interests of the association's depositors or threaten to impair public confidence in the association, in order to decide whether the Notice or Order should be continued, terminated, or otherwise modified, the Office will consider:

(1) The nature and extent of the petitioner's participation in the affairs of the association;

(2) The nature of the offense with which the petitioner has been charged;

(3) The extent of the publicity accorded the indictment and trial; and

(4) Such other relevant factors as may be entered on the record.

(b) When considering a request for the termination or modification of a Notice, the Office will not consider the ultimate guilt or innocence of the petitioner with respect to the criminal charge that is outstanding.

(c) When considering a request for the termination or modification of an Order which has been issued following a final judgment of conviction against a subject individual, the Office will not collaterally review such final judgment of conviction.

§ 508.12 Proposed findings and conclusions and recommended decision.

(a) Within 30 days after completion of oral argument or the submission of written argument where oral argument has been waived, the presiding officer shall file with the Secretary and certify to the Office for decision the entire record of the hearing, which shall include a recommended decision, the Notice or Order, and all other documents filed in connection with the hearing.

(b) The recommended decision shall contain:

(1) A statement of the issue(s) presented,

(2) A statement of findings and conclusions, and the reasons or basis therefor, on all material issues of fact, law, or discretion presented on the record, and

(3) An appropriate recommendation as to whether the suspension, removal, or prohibition should be continued, modified, or terminated.

§ 508.13 Decision of the Office.

(a) Within 30 days after the recommended decision has been certified to the Office, the Office shall issue a final decision.

(b) The Office's final decision shall contain a statement of the basis therefor. The Office may satisfy this requirement where it adopts the recommended decision of the presiding officer upon finding that the recommended decision satisfies the requirements of § 509.38 of this chapter.

(c) The Secretary shall serve upon the petitioner and the representative of the Office of Enforcement a copy of the Office's final decision and the related recommended decision.

[54 FR 49444, Nov. 30, 1989, as amended at 56 FR 38306, Aug. 12, 1991; 59 FR 53570, Oct. 25, 1994]

§ 508.14 Miscellaneous.

The provisions of §§ 509.10, 509.11, and 509.12 of this chapter shall apply to proceedings under this part.

[54 FR 49444, Nov. 30, 1989, as amended at 56 FR 38306, Aug. 12, 1991]

PART 509—RULES OF PRACTICE AND PROCEDURE IN ADJUDICATORY PROCEEDINGS

Subpart A—Uniform Rules of Practice and Procedure

Sec.

509.1 Scope.

509.2 Rules of construction.

509.3 Definitions.

509.4 Authority of Director.

509.5 Authority of the administrative law judge.

509.6 Appearance and practice in adjudicatory proceedings.

509.7 Good faith certification.

§ 509.1

12 CFR Ch. V (1–1–05 Edition)

- 509.8 Conflicts of interest.
- 509.9 Ex parte communications.
- 509.10 Filing of papers.
- 509.11 Service of papers.
- 509.12 Construction of time limits.
- 509.13 Change of time limits.
- 509.14 Witness fees and expenses.
- 509.15 Opportunity for informal settlement.
- 509.16 Office's right to conduct examination.
- 509.17 Collateral attacks on adjudicatory proceeding.
- 509.18 Commencement of proceeding and contents of notice.
- 509.19 Answer.
- 509.20 Amended pleadings.
- 509.21 Failure to appear.
- 509.22 Consolidation and severance of actions.
- 509.23 Motions.
- 509.24 Scope of document discovery.
- 509.25 Request for document discovery from parties.
- 509.26 Document subpoenas to nonparties.
- 509.27 Deposition of witness unavailable for hearing.
- 509.28 Interlocutory review.
- 509.29 Summary disposition.
- 509.30 Partial summary disposition.
- 509.31 Scheduling and prehearing conferences.
- 509.32 Prehearing submissions.
- 509.33 Public hearings.
- 509.34 Hearing subpoenas.
- 509.35 Conduct of hearings.
- 509.36 Evidence.
- 509.37 Post-hearing filings.
- 509.38 Recommended decision and filing of record.
- 509.39 Exceptions to recommended decision.
- 509.40 Review by the Director.
- 509.41 Stays pending judicial review.

Subpart B—Local Rules

- 509.100 Scope.
- 509.101 Appointment of Office of Financial Institution Adjudication.
- 509.102 Discovery.
- 509.103 Civil money penalties.
- 509.104 Additional procedures.

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SOURCE: 56 FR 38306, Aug. 12, 1991, unless otherwise noted.

Subpart A—Uniform Rules of Practice and Procedure

§ 509.1 Scope.

This subpart prescribes Uniform Rules of practice and procedure applicable to adjudicatory proceedings as to

which hearings on the record are provided for by the following statutory provisions:

(a) Cease-and-desist proceedings under section 8(b) of the Federal Deposit Insurance Act (FDIA) (12 U.S.C. 1818(b));

(b) Removal and prohibition proceedings under section 8(e) of the FDIA (12 U.S.C. 1818(e));

(c) Change-in-control proceedings under section 7(j)(4) of the FDIA (12 U.S.C. 1817(j)(4)) to determine whether the Office should issue an order to approve or disapprove a person's proposed acquisition of an institution and/or institution holding company;

(d) Proceedings under section 15C(c)(2) of the Securities Exchange Act of 1934 (Exchange Act) (15 U.S.C. 78o–5), to impose sanctions upon any government securities broker or dealer or upon any person associated or seeking to become associated with a government securities broker or dealer for which the Office is the appropriate Office;

(e) Assessment of civil money penalties by the Office against institutions, institution-affiliated parties, and certain other persons for which it is the appropriate Office for any violation of:

(1) Section 5 of the Home Owners' Loan Act (HOLA) or any regulation or order issued thereunder, pursuant to 12 U.S.C. 1464 (d), (s) and (v);

(2) Section 9 of the HOLA or any regulation or order issued thereunder, pursuant to 12 U.S.C. 1467(d);

(3) Section 10 of the HOLA, pursuant to 12 U.S.C. 1467a (i) and (r);

(4) Any provisions of the Change in Bank Control Act, any regulation or order issued thereunder or certain unsafe or unsound practices or breaches of fiduciary duty, pursuant to 12 U.S.C. 1817(j)(16);

(5) Sections 22(h) and 23 of the Federal Reserve Act, or any regulation issued thereunder or certain unsafe or unsound practices or breaches of fiduciary duty, pursuant to 12 U.S.C. 1468;

(6) Certain provisions of the Exchange Act, pursuant to section 21B of the Exchange Act (15 U.S.C. 78u–2);

(7) Section 1120 of Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 U.S.C. 3349), or any order or regulation issued thereunder;

(8) The terms of any final or temporary order issued or enforceable pursuant to section 8 of the FDIA or of any written agreement executed by the Office, the terms of any conditions imposed in writing by the Office in connection with the grant of an application or request, certain unsafe or unsound practices or breaches of fiduciary duty, or any law or regulation not otherwise provided herein pursuant to 12 U.S.C. 1818(i)(2);

(9) Any provision of law referenced in section 102 of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a(f)) or any order or regulation issued thereunder; and

(10) Any provision of law referenced in 31 U.S.C. 5321 or any order or regulation issued thereunder;

(f) Remedial action under section 102 of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a(g)); and

(g) This subpart also applies to all other adjudications required by statute to be determined on the record after opportunity for an agency hearing, unless otherwise specifically provided for in the Local Rules.

[56 FR 38306, Aug. 12, 1991, as amended at 56 FR 59866, Nov. 26, 1991; 61 FR 20353, May 6, 1996]

§ 509.2 Rules of construction.

For purposes of this subpart:

(a) Any term in the singular includes the plural, and the plural includes the singular, if such use would be appropriate;

(b) Any use of a masculine, feminine, or neuter gender encompasses all three, if such use would be appropriate;

(c) The term *counsel* includes a non-attorney representative; and

(d) Unless the context requires otherwise, a party's counsel of record, if any, may, on behalf of that party, take any action required to be taken by the party.

§ 509.3 Definitions.

For purposes of this subpart, unless explicitly stated to the contrary:

(a) *Administrative law judge* means one who presides at an administrative

hearing under authority set forth at 5 U.S.C. 556.

(b) *Adjudicatory proceeding* means a proceeding conducted pursuant to these rules and leading to the formulation of a final order other than a regulation.

(c) *Decisional employee* means any member of the Office's or administrative law judge's staff who has not engaged in an investigative or prosecutorial role in a proceeding and who may assist the Office or the administrative law judge, respectively, in preparing orders, recommended decisions, decisions, and other documents under the Uniform Rules.

(d) *Director* means the Director of the Office of Thrift Supervision or his or her designee.

(e) *Enforcement Counsel* means any individual who files a notice of appearance as counsel on behalf of the Office in an adjudicatory proceeding.

(f) *Final order* means an order issued by the Office with or without the consent of the affected institution or the institution-affiliated party, that has become final, without regard to the pendency of any petition for reconsideration or review.

(g) *Institution* includes any savings association as that term is defined in section 3(b) of the FDIA (12 U.S.C. 1813(b)), any savings and loan holding company or any subsidiary thereof whether wholly or partly owned (other than a bank) as those terms are defined in section 10(a) of the HOLA (12 U.S.C. 1467(a)).

(h) *Institution-affiliated party* means any institution-affiliated party as that term is defined in section 3(u) of the FDIA (12 U.S.C. 1813(u)).

(i) *Local Rules* means those rules found in subpart B of this part.

(j) *Office* means the Office of Thrift Supervision in the case of any savings association or any savings and loan holding company, and subsidiary (other than a bank or subsidiary of that bank) of a savings and loan holding company, any service corporation of a savings association, and any subsidiary of such service corporation, whether wholly or partly owned.

(k) *Office of Financial Institution Adjudication* (OFIA) means the executive