

Subpart Q—Issuance and Review of Orders Pursuant to the Prompt Corrective Action Provisions of the Federal Deposit Insurance Act

SOURCE: 57 FR 44897, Sept. 29, 1992, unless otherwise noted.

§ 308.200 Scope.

The rules and procedures set forth in this subpart apply to banks, insured branches of foreign banks and senior executive officers and directors of banks that are subject to the provisions of section 38 of the Federal Deposit Insurance Act (section 38) (12 U.S.C. 1831o) and subpart B of part 325 of this chapter.

[57 FR 44897, Sept. 29, 1992; 57 FR 48426, Oct. 23, 1992]

§ 308.201 Directives to take prompt corrective action.

(a) *Notice of intent to issue directive—*(1) *In general.* The FDIC shall provide an undercapitalized, significantly undercapitalized, or critically undercapitalized bank prior written notice of the FDIC's intention to issue a directive requiring such bank to take actions or to follow proscriptions described in section 38 that are within the FDIC's discretion to require or impose under section 38 of the FDI Act, including sections 38 (e)(5), (f)(2), (f)(3), or (f)(5). The bank shall have such time to respond to a proposed directive as provided by the FDIC under paragraph (c) of this section.

(2) *Immediate issuance of final directive.* If the FDIC finds it necessary in order to carry out the purposes of section 38 of the FDI Act, the FDIC may, without providing the notice prescribed in paragraph (a)(1) of this section, issue a directive requiring a bank immediately to take actions or to follow proscriptions described in section 38 that are within the FDIC's discretion to require or impose under section 38 of the FDI Act, including section 38 (e)(5), (f)(2), (f)(3), or (f)(5). A bank that is subject to such an immediately effective directive may submit a written appeal of the directive to the FDIC. Such an appeal must be received by the FDIC within 14 calendar days of the

issuance of the directive, unless the FDIC permits a longer period. The FDIC shall consider any such appeal, if filed in a timely matter, within 60 days of receiving the appeal. During such period of review, the directive shall remain in effect unless the FDIC, in its sole discretion, stays the effectiveness of the directive.

(b) *Contents of notice.* A notice of intention to issue a directive shall include:

(1) A statement of the bank's capital measures and capital levels;

(2) A description of the restrictions, prohibitions or affirmative actions that the FDIC proposes to impose or require;

(3) The proposed date when such restrictions or prohibitions would be effective or the proposed date for completion of such affirmative actions; and

(4) The date by which the bank subject to the directive may file with the FDIC a written response to the notice.

(c) *Response to notice—*(1) *Time for response.* A bank may file a written response to a notice of intent to issue a directive within the time period set by the FDIC. The date shall be at least 14 calendar days from the date of the notice unless the FDIC determines that a shorter period is appropriate in light of the financial condition of the bank or other relevant circumstances.

(2) *Content of response.* The response should include:

(i) An explanation why the action proposed by the FDIC is not an appropriate exercise of discretion under section 38;

(ii) Any recommended modification of the proposed directive; and

(iii) Any other relevant information, mitigating circumstances, documentation, or other evidence in support of the position of the bank regarding the proposed directive.

(d) *FDIC consideration of response.* After considering the response, the FDIC may:

(1) Issue the directive as proposed or in modified form;

(2) Determine not to issue the directive and so notify the bank; or

(3) Seek additional information or clarification of the response from the bank or any other relevant source.