



Procedures for Appeals of Material Supervisory Determinations March 2, 2010

Introduction

The Division of Supervision and Regulation of the Federal Reserve Bank of Atlanta (Reserve Bank) developed the following procedures consistent with the Guidelines for Appeals of Material Supervisory Determinations issued by the Board of Governors (Board) of the Federal Reserve System (Federal Reserve) on March 24, 1995. Section 309 of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4806) requires that the Board and other Federal banking agencies establish an independent, intra-agency appellate process, which will be available to review Material Supervisory Determinations made at insured depository institutions. The Board's guidelines set forth a multistep process under which an appellant may pursue an appeal, and also extend the appeals process to include financial holding companies and bank holding companies and their nonbank subsidiaries, U.S. branches and agencies of foreign banks, Edge and agreement corporations, third party servicers, and other entities examined or inspected by the Federal Reserve, in addition to state member banks.

The Board's guidelines define a Material Supervisory Determination to include, but not be limited to, material determinations related to examination or inspection composite ratings, the adequacy of loan loss reserves, and significant loan classifications. Additional items may be considered Material Supervisory Determinations if the items would have a significant effect on the composite rating assigned to the appellant or the supervisory response to the appellant. Material Supervisory Determinations do **not** include any supervisory determination for which an independent right of appeal exists. Such actions include prompt corrective action directives issued pursuant to the Federal Deposit Insurance Act, as amended (FDI Act), actions to impose administrative enforcement actions under the FDI Act and the Bank Holding Company Act of 1956, as amended (BHC Act), capital directives, and orders issued pursuant to applications under the BHC Act. In such cases, the rights of appeal provided for in the statutes and regulations concerning these actions shall govern.

The Board's guidelines further state that the Material Supervisory Determination shall remain in effect until the appeal process and any subsequent appeals to higher levels are complete. The appeal of a Material Supervisory Determination does not prevent the Federal Reserve from taking supervisory or enforcement action, formal or informal, deemed appropriate to discharge its supervisory responsibilities.

The Reserve Bank and Board continue to believe that questions about or objections to supervisory determinations made during the course of an examination or inspection are most effectively handled through the longstanding Federal Reserve practice of resolving problems informally during the course of the examination or inspection process. It is intended that the appellant's management and board of directors will view the appeals process as a solution only when this informal process does not resolve the problem.

Submission of Appeal

1. The submission of an appeal must be approved by the appellant's board of directors, or in the case of a U.S. agency or branch of a foreign bank, the senior management person(s) responsible for the bank's U.S. operations. A copy of the appeal will be forwarded by this Reserve Bank to its General Counsel, the Officer in Charge of Supervision and Regulation, and the appropriate division Director of the Board of Governors.
2. Appeals must be filed in writing with the Corporate Secretary of the Reserve Bank or the Officer in Charge of Supervision and Regulation within 30 calendar days of receipt of the written Material Supervisory Determination, unless the time for filing is extended, in writing, by the Reserve Bank. Appeals sent to the Corporate Secretary of the Reserve Bank will be forwarded to the Officer in Charge of Supervision and Regulation on the date of receipt. Any appeal shall contain all the facts and arguments that the institution wishes to present. No new or updated supporting documentation which bank management believes pertinent to the appeal will be accepted subsequent to the filing of the appeal except under unusual circumstances, and if agreed upon by the Review Panel. However, the appeal may be rejected for lack of clarity or information. In such case, the institution may refile the appeal within 30 calendar days of receipt of written notice of the rejection of any filing.
3. An appellant may request an extension of time for filing an appeal by sending a letter detailing the reason(s) for the request to the Officer in Charge of Supervision and Regulation within the thirty (30) day period for filing appeals. This Officer may, at his/her sole discretion, grant extensions arising from conditions outside the control of the appellant or where the issues involved are complex and require collecting and organizing a significant amount of documentation.
4. Upon receipt of an appeal, a copy of these procedures and the Board's March 24, 1995 guidelines shall be provided to the appellant.

Selection of Review Panel

1. The Officer in Charge of Supervision and Regulation shall approve the selection of three (3) individuals to serve as the Review Panel for the appeal. The panel members may be made up of officials or senior staff from other Reserve Banks. The chairperson of the Review Panel will be a Reserve Bank official.
2. Members of the Review Panel must meet the following criteria:
 - a) they have not participated¹ in the Material Supervisory Determination under appeal;
 - b) they do not directly or indirectly report to the person(s) who made the Material Supervisory Determination under review; and
 - c) they must be qualified to review the Material Supervisory Determination.
3. If an approved member of the Review Panel determines that he or she has knowledge of the Material Supervisory Determination subject to appeal, to the extent that it would impair his or her impartial review of the appeal, the individual must recuse themselves from the Review Panel. In such cases, the Officer in Charge of Supervision and Regulation will approve an alternate panel member.

¹ A Reserve Bank official has participated in the material supervisory determination under appeal to the extent that he or she has signed the examination or inspection report and/or report transmittal letter. Therefore, under the criteria 2b) any individual reporting directly or indirectly under the official signing the report and/or transmittal letter is automatically excluded from the Review Panel.

Rights, Responsibilities, and Activities of the Review Panel

Notifications

Within two (2) business days of the appointment of the Chair of the Review Panel, the Chair, or his/her designee, shall ensure that:

1. A letter acknowledging receipt of the appeal is sent to the appellant informing the appellant when a determination as to completeness will be made. In addition, the appellant shall be provided with a copy of the Guidelines and these procedures. The appellant will be informed of the composition of the Review Panel, including the name, title, and Reserve Bank of each panel member.
2. The person(s) who made the Material Supervisory Determination under appeal is (are) notified in writing of the receipt of the appeal and is (are) provided a copy of the appeal.
3. A copy of the appeal and these procedures are provided to the appropriate Division director of the staff of the Board of Governors.

Review of Appeal

1. Within 15 calendar days of receipt of the appeal, the Review Panel must review the appeal for clarity and completeness, and ensure that the appeal involves a Material Supervisory Determination. If the appeal is rejected based upon this review, the chairperson of the Review Panel will notify the appellant in writing of the reason(s) for rejecting the appeal and indicate in the letter that the appellant may refile the appeal within 30 calendar days of receipt of the Reserve Bank's letter rejecting the appeal. A copy of this letter must also be provided to the appropriate Division director of the staff of the Board of Governors.
2. Once an informationally complete appeal of a Material Supervisory Determination is received, the Review Panel will evaluate the information submitted by the appellant with the appeal. The appellant may appear before the Review Panel in order to present testimony and, with the consent of the Review Panel, witnesses. If an appellant wishes to provide oral testimony, then the appeal could only be considered informationally complete after completion of such testimony. Legal transcripts may be kept at the determination of the Review Panel. Should the Review Panel not require legal transcripts, and if the appellant requests legal transcripts, this will be allowed at the appellant's expense providing a final copy is provided to the Review Panel. The Review Panel will, as necessary, also solicit the views of the Reserve Bank staff involved in the determination under appeal, Legal Department staff, appropriate Board staff with direct involvement or knowledge of the issues, and, where appropriate, the staff of other supervisory agencies (for example, in case of joint examinations or inspections). However, in reaching a decision, the Review Panel will consider only that information (i.e., data or facts) that were available to the persons making the supervisory determination under appeal at the time of the determination or the information which the appellant offered to provide at the time of determination, but which the person(s) making the determination declined to review. Subsequent information, such as information regarding payments on a classified loan after the date of the examination or a legal opinion sought and obtained after receipt of the Material Supervisory Determination, will not be considered in deciding the appeal except under unusual circumstances, and if agreed upon by the Review Panel. Nothing in this appeals process creates any discovery or other such rights.
3. The appeal will be decided, in writing, by the Review Panel within 30 calendar days of the filing of an informationally complete appeal, unless the appellant and the Review Panel jointly agree to extend the time for decision. The written decision by the Review Panel will be mailed to the appellant institution and shall include a detailed explanation outlining the rationale for the Review Panel's conclusions. The

Review Panel's decision shall also be forwarded to the Officer in Charge of Supervision and Regulation, and a copy will be provided to the Vice President in charge of the respective examination which resulted in the written Material Supervisory Determination, the Sixth District's General Counsel, the Board of Governors, and the respective State regulatory agencies, as appropriate. The Division shall maintain complete records, including minutes or transcripts, of any appeal, including updating all files, both hard copy and electronic, to reflect the results of all appeals. Transcripts of all appellant oral testimony shall also be maintained. These records shall be maintained subject to the record retention requirements in effect.

Appeals of Review Panel Decisions

1. An appellant dissatisfied with the decision of the Review Panel may, with the consent of its board of directors, or in the case of a U.S. agency or branch of a foreign bank, the senior management person(s) responsible for the bank's operations, appeal that decision to the Reserve Bank President by filing a written appeal with the Secretary of the Reserve Bank within 30 days of receipt of the Review Panel's written decision. The appeal must contain all facts and arguments that the appellant wishes to be considered. The appeal may be rejected for lack of clarity or information. In such case, the appellant may refile the appeal within 30 calendar days of receipt of written notice of the rejection. The appeal will be decided by the Reserve Bank President, in writing, within 30 calendar days of the filing of an informationally complete appeal. The written decision will be mailed to the appellant institution and a copy shall also be forwarded to all respective parties involved in the initial filing of the appeal, including the respective State regulatory agencies.
2. An appellant dissatisfied with the decision of the Reserve Bank President may, with the consent of its board of directors, or in the case of a U.S. agency or branch of a foreign bank, the senior management person(s) responsible for the bank's operations, appeal that decision to the Governor of the Federal Reserve System who serves as chairperson of the appropriate oversight committee by filing a written appeal with the Secretary of the Board within 30 days of receipt of the Reserve Bank President's written decision. The appeal may be rejected for lack of clarity or information. In such case, the appellant may refile the appeal within 30 calendar days of receipt of written notice of the rejection. The appeal will be decided, in writing, by the appropriate Governor, who will consult with the director of the appropriate division of the Board of Governors, within 60 calendar days of the filing of an informationally complete appeal.
3. Whether an appealed action constitutes a Material Supervisory Determination eligible for the appeals process shall be decided by the Review Panel hearing the appeal, and a determination that the action is not appealable under these guidelines maybe further appealed to the President of the Federal Reserve Bank of Atlanta or the Board of Governors in the same manner as any adverse decision.
4. A Material Supervisory Determination shall generally remain in effect while under appeal and until such time it is modified or overturned through the appeals process. The appeal does not prevent the Federal Reserve from taking any formal or informal supervisory or enforcement actions it deems appropriate to discharge the Federal Reserve's supervisory responsibilities.

Safeguards Against Retaliation

1. After the receipt of an appeal, the Reserve Bank will not assign persons directly involved in the Material Supervisory Determination under appeal to future examinations or inspections of the appellant for a period of at least one year. The appropriate Reserve Bank Official, at his/her discretion, may further extend the recusal period, whenever such an extension is deemed appropriate.
2. Any Reserve Bank employee found to retaliate against an appellant for filing an appeal will be subject to the Reserve Bank's Conduct and Discipline policies.

3. An appellant that believes it has suffered retaliation as the result of an appeal may contact the Board of Governors' Ombudsman.

Public Requests for Procedures

A copy of these procedures and the Board's guidelines for the appeals process are available to any member of the public who requests them.