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forth in the referenced statutory sections are as follows:

(1) 12 U.S.C. 324:

(i) Inadvertently late or misleading reports, inter alia—$2,200.

(ii) Other late or misleading reports, inter alia—$27,000.

(iii) Knowingly or recklessly false or misleading reports, inter alia—$1,250,000.

(2) 12 U.S.C. 504, 505, 1817(j)(16), 1818(i)(2) and 1972(2)(F):

(i) First tier—$6,500.

(ii) Second tier—$32,500.

(iii) Third tier—$1,250,000.

(3) 12 U.S.C. 1832(c)—$1,100.

(4) 12 U.S.C. 1847(b), 3110(a)—$32,500.

(5) 12 U.S.C. 1847(d), 3110(c):

(i) First tier—$2,200.

(ii) Second tier—$27,000.

(iii) Third tier—$1,250,000.

(6) 12 U.S.C. 334, 374a, 1884—$110.

(7) 12 U.S.C. 3909(d)—$1,100.

(8) 15 U.S.C. 78u–2:

(i) 15 U.S.C. 78u-2(b)(1)—$6,500 for a natural person and $65,000 for any other person.

(ii) 15 U.S.C. 78u-2(b)(2)—$65,000 for a natural person and $325,000 for any other person.

(iii) 15 U.S.C. 78u-2(b)(3)—$130,000 for a natural person and $625,000 for any other person.

(9) 42 U.S.C. 4012a(f)(5):

(i) For each violation—$385.

(ii) For the total amount of penalties assessed under 42 U.S.C 4012a(f)(5) against an institution or enterprise during any calendar year—$125,000.

[69 FR 56930, Sept. 23, 2004]

Subpart D—Rules and Procedures Applicable to Suspension or Removal of an Institution-Affiliated Party Where a Felony is Charged or Proven

§ 263.70 Purpose and scope.

The rules and procedures set forth in this subpart apply to informal hearings afforded to any institution-affiliated party for whom the Board is the appropriate regulatory agency, who has been suspended or removed from office or prohibited from further participation in any manner in the conduct of the institution's affairs by a notice or order issued by the Board upon the grounds set forth in section 8(g) of the FDIA (12 U.S.C. 1818(g)).

§ 263.71 Notice or order of suspension, removal, or prohibition.

(a) *Grounds.* The Board may suspend an institution-affiliated party from office or prohibit an institution-affiliated party from further participation in any manner in the conduct of an institution's affairs when the person is charged in any information, indictment, or complaint authorized by a United States attorney with the commission of, or participation in, a crime involving dishonesty or breach of trust that is punishable by imprisonment for a term exceeding one year under State or Federal law. The Board may remove an institution-affiliated party from office or prohibit an institution-affiliated party from further participation in any manner in the conduct of an institution's affairs when the person is convicted of such an offense and the conviction is not subject to further direct appellate review. The Board may suspend or remove an institution-affiliated party or prohibit an institution-affiliated party from participation in an institution's affairs in these circumstances if the Board finds that continued service to the financial institution or participation in its affairs by the institution-affiliated party may pose a threat to the interests of the institution's depositors or may threaten to impair public confidence in the financial institution.

(b) *Contents.* The Board commences a suspension, removal, or prohibition action under this subpart with the issuance, and service upon an institution-affiliated party, of a notice of suspension from office, or order of removal from office, or notice or order of prohibition from participation in the financial institution's affairs. Such a notice or order shall indicate the basis for the suspension, removal, or prohibition and shall inform the institution-affiliated party of the right to request in writing, within 30 days of service of the notice or order, an opportunity to show at an informal hearing that continued service to, or participation in the conduct of the affairs of, the financial institution does not and is not likely to pose a threat to the interests

of the financial institution's depositors or threaten to impair public confidence in the financial institution. Failure to file a timely request for an informal hearing shall be deemed to be a waiver of the right to request such a hearing. A notice of suspension or prohibition shall remain in effect until the criminal charge upon which the notice is based is finally disposed of or until the notice is terminated by the Board.

(c) *Service.* The notice or order shall be served upon the affiliated financial institution concerned, whereupon the institution-affiliated party shall immediately cease service to the financial institution or further participation in any manner in the conduct of the affairs of the financial institution. A notice or order of suspension, removal, or prohibition may be served by any of the means authorized for service under § 263.11(c)(2) of subpart A.

§ 263.72 Request for informal hearing.

An institution-affiliated party who is suspended or removed from office or prohibited from participation in the institution's affairs may request an informal hearing within 30 days of service of the notice or order. The request shall be filed in writing with the Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551. The request shall state with particularity the relief desired and the grounds therefor and shall include, when available, supporting evidence in the form of affidavits. If the institution-affiliated party desires to present oral testimony or witnesses at the hearing, the institution-affiliated party must include a request to do so with the request for informal hearing. The request to present oral testimony or witnesses shall specify the names of the witnesses and the general nature of their expected testimony.

§ 263.73 Order for informal hearing.

(a) *Issuance of hearing order.* Upon receipt of a timely request for an informal hearing, the Secretary shall promptly issue an order directing an informal hearing to commence within 30 days of the receipt of the request. At the request of the institution-affiliated party, the Secretary may order the hearing to commence at a time more than 30 days after the receipt of the request for hearing. The hearing shall be held in Washington, DC, or at such other place as may be designated by the Secretary, before presiding officers designated by the Secretary to conduct the hearing. The presiding officers normally will include representatives from the Board's Legal Division and the Division of Banking Supervision and Regulation and from the appropriate Federal Reserve Bank.

(b) *Waiver of oral hearing.* A institution-affiliated party may waive in writing his or her right to an oral hearing and instead elect to have the matter determined by the Board solely on the basis of written submissions.

(c) *Hearing procedures.* (1) The institution-affiliated party may appear at the hearing personally, through counsel, or personally with counsel. The institution-affiliated party shall have the right to introduce relevant written materials and to present an oral argument. The institution-affiliated party may introduce oral testimony and present witnesses only if expressly authorized by the Board or the Secretary. Except as provided in § 263.11, the adjudicative procedures of the Administrative Procedure Act (5 U.S.C. 554-557) and of subpart A of this part shall not apply to the informal hearing ordered under this subpart unless the Board orders that subpart A of this part applies.

(2) The informal hearing shall be recorded and a transcript shall be furnished to the institution-affiliated party upon request and after the payment of the cost thereof. Witnesses need not be sworn, unless specifically requested by a party or the presiding officers. The presiding officers may ask questions of any witness.

(3) The presiding officers may order the record to be kept open for a reasonable period following the hearing (normally five business days), during which time additional submissions to the record may be made. Thereafter, the record shall be closed.

(d) *Authority of presiding officers.* In the course of or in connection with any proceeding under this subpart, the Board or the presiding officers are authorized to administer oaths and affirmations, to take or cause to be taken depositions, to issue, quash or modify

subpoenas and subpoenas duces tecum, and, for the enforcement thereof, to apply to an appropriate United States district court. All action relating to depositions and subpoenas shall be in accordance with the rules provided in §§ 263.34 and 263.53.

(e) *Recommendation of presiding officers.* The presiding officers shall make a recommendation to the Board concerning the notice or order of suspension, removal, or prohibition within 20 calendar days following the close of the record on the hearing.

§ 263.74 Decision of the Board.

(a) Within 60 days following the close of the record on the hearing, or receipt of written submissions where a hearing has been waived, the Board shall notify the institution-affiliated party whether the notice of suspension or prohibition will be continued, terminated, or otherwise modified, or whether the order of removal or prohibition will be rescinded or otherwise modified. The notification shall contain a statement of the basis for any adverse decision by the Board. In the case of a decision favorable to the institution-affiliated party, the Board shall take prompt action to rescind or otherwise modify the order of suspension, removal or prohibition.

(b) In deciding the question of suspension, removal, or prohibition under this subpart, the Board shall not rule on the question of the guilt or innocence of the individual with respect to the crime with which the individual has been charged.

Subpart E—Procedures for Issuance and Enforcement of Directives To Maintain Adequate Capital

§ 263.80 Purpose and scope.

This subpart establishes procedures under which the Board may issue a directive or take other action to require a state member bank or a bank holding company to achieve and maintain adequate capital.

§ 263.81 Definitions.

(a) *Bank holding company* means any company that controls a bank as defined in section 2 of the BHC Act, 12 U.S.C. 1841, and in the Board's Regulation Y (12 CFR 225.2(b)) or any direct or indirect subsidiary thereof other than a bank subsidiary as defined in section 2(c) of the BHC Act, 12 U.S.C. 1841(c), and in the Board's Regulation Y (12 CFR 225.2(a)).

(b) *Capital Adequacy Guidelines* means those guidelines for bank holding companies and state member banks contained in appendices A and D to the Board's Regulation Y (12 CFR part 225), and in Appendix A to the Board's Regulation H (12 CFR part 208), or any succeeding capital guidelines promulgated by the Board.

(c) *Directive* means a final order issued by the Board pursuant to ILSA (12 U.S.C. 3907(b)(2)) requiring a state member bank or bank holding company to increase capital to or maintain capital at the minimum level set forth in the Board's Capital Adequacy Guidelines or as otherwise established under procedures described in § 263.85 of this subpart.

(d) *State member bank* means any state-chartered bank that is a member of the Federal Reserve System.

§ 263.82 Establishment of minimum capital levels.

The Board has established minimum capital levels for state member banks and bank holding companies in its Capital Adequacy Guidelines. The Board may set higher capital levels as necessary and appropriate for a particular state member bank or bank holding company based upon its financial condition, managerial resources, prospects, or similar factors, pursuant to the procedures set forth in § 263.85 of this subpart.

§ 263.83 Issuance of capital directives.

(a) *Notice of intent to issue directive.* If a state member bank or bank holding company is operating with less than the minimum level of capital established in the Board's Capital Adequacy Guidelines, or as otherwise established under the procedures described in § 263.85 of this subpart, the Board may issue and serve upon such state member bank or bank holding company written notice of the Board's intent to issue a directive to require the bank or