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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will be continued, terminated, or otherwise modified, or whether the order of removal or prohibition will be rescinded or otherwise modified.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