

Subpart B—Local Rules**§ 509.100 Scope.**

The rules and procedures in this subpart B shall apply to those proceedings covered by subpart A of this part. In addition, subpart A of this part and this subpart shall apply to adjudicatory proceedings for which hearings on the record are provided for by the following statutory provisions:

(a) Proceedings under section 10(a)(2)(D) of the HOLA (12 U.S.C. 1467a(a)(2)(D)) to determine whether any person directly or indirectly exercises a controlling influence over the management or policies of a savings association or any other company, except to the extent the Director exercises his or her discretion to commence a proceeding of the kind identified in subpart C of this part;

(b) Proceedings under section 10(g)(5)(A) of the HOLA (12 U.S.C. 1467a(g)(5)(A)) to determine whether to terminate certain activities by savings and loan holding companies or to terminate ownership or control of a non-insured savings and loan holding company subsidiary; and

(c) Proceedings under section 15(c)(4) of the Securities and Exchange Act of 1934 (15 U.S.C. 78o(c)(4)) (Exchange Act) to determine whether any association or person subject to the jurisdiction of the Office pursuant to section 12(i) of the Exchange Act (15 U.S.C. 78l(i)) has failed to comply with the provisions of sections 12, 13, 14(a), 14(c), 14(d) or 14(f) of the Exchange Act.

[56 FR 38306, Aug. 12, 1991, as amended at 70 FR 10023, Mar. 2, 2005]

§ 509.101 Appointment of Office of Financial Institution Adjudication.

Unless otherwise directed by the Office, all hearings under subpart A of this part and this subpart shall be conducted by administrative law judges under the direction of the Office of Financial Institution Adjudication, 1700 G Street NW., Washington, DC 20552.

§ 509.102 Discovery.

(a) *In general.* A party may take the deposition of an expert, or of a person, including another party, who has direct knowledge of matters that are

non-privileged, relevant and material to the proceeding and where there is a need for the deposition. The deposition of experts shall be limited to those experts who are expected to testify at the hearing.

(b) *Notice.* A party desiring to take a deposition shall give reasonable notice in writing to the deponent and to every other party to the proceeding. The notice must state the time and place for taking the deposition and the name and address of the person to be deposed.

(c) *Time limits.* A party may take depositions at any time after the commencement of the proceeding, but no later than ten days before the scheduled hearing date, except with permission of the administrative law judge for good cause shown.

(d) *Conduct of the deposition.* The witness must be duly sworn, and each party shall have the right to examine the witness with respect to all non-privileged, relevant and material matters of which the witness has factual, direct and personal knowledge. Objections to questions or exhibits shall be in short form, stating the grounds for objection. Failure to object to questions or exhibits is not a waiver except where the grounds for the objection might have been avoided if the objection had been timely presented. The court reporter shall transcribe or otherwise record the witness's testimony, as agreed among the parties.

(e) *Protective orders.* At any time after notice of a deposition has been given, a party may file a motion for the issuance of a protective order. Such protective order may prohibit, terminate, or limit the scope or manner of the taking of a deposition. The administrative law judge shall grant such protective order upon a showing of sufficient grounds, including that the deposition:

- (1) Is unreasonable, oppressive, excessive in scope, or unduly burdensome;
- (2) Involves privileged, investigative, trial preparation, irrelevant or immaterial matters; or
- (3) Is being conducted in bad faith or in such manner as to unreasonably annoy, embarrass, or oppress the deponent.

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(f) *Fees.* Deposition witnesses, including expert witnesses, shall be paid the same expenses in the same manner as are paid witnesses in the district courts of the United States in proceedings in which the United States Government is a party. Expenses in accordance with this paragraph shall be paid by the party seeking to take the deposition.

(g) *Deposition subpoenas—(1) Issuance.* At the request of a party, the administrative law judge shall issue a subpoena requiring the attendance of a witness at a deposition. The attendance of a witness may be required from any place in any state or territory that is subject to the jurisdiction of the United States or as otherwise permitted by law.

(2) *Service.* The party requesting the subpoena must serve it on the person named therein or upon that person's counsel, by any of the methods identified in § 509.11(d) of this part. The party serving the subpoena must file proof of service with the administrative law judge.

(3) *Motion to quash.* A person named in the subpoena or a party may file a motion to quash or modify the subpoena. A statement of the reasons for the motion must accompany it and a copy of the motion must be served on the party that requested the subpoena. The motion must be made prior to the time for compliance specified in the subpoena and not more than ten days after the date of service of the subpoena, or if the subpoena is served within 15 days of the hearing, within five days after the date of service.

(4) *Enforcement of deposition subpoena.* Enforcement of a deposition subpoena shall be in accordance with the procedures of § 509.27(d) of this part.

[56 FR 38306, Aug. 12, 1991, as amended at 61 FR 20356, May 6, 1996]

§ 509.103 Civil money penalties.

(a) *Assessment.* In the event of consent, or if upon the record developed at the hearing the Office finds that any of the grounds specified in the notice issued pursuant to § 509.18 of this part have been established, the Office may serve an order of assessment of civil money penalty upon the party concerned. The assessment order shall be

effective immediately upon service or upon such other date as may be specified therein and shall remain effective and enforceable until it is stayed, modified, terminated, or set aside by the Office or by a reviewing court.

(b) *Payment.* (1) Civil penalties assessed pursuant to subpart A of this part and this subpart B are payable and to be collected within 60 days after the issuance of the notice of assessment, unless the Office fixes a different time for payment where it determines that the purpose of the civil money penalty would be better served thereby; however, if a party has made a timely request for a hearing to challenge the assessment of the penalty, the party may not be required to pay such penalty until the Office has issued a final order of assessment following the hearing. In such instances, the penalty shall be paid within 60 days of service of such order unless the Office fixes a different time for payment. Notwithstanding the foregoing, the Office may seek to attach the party's assets or to have a receiver appointed to secure payment of the potential civil money penalty or other obligation in advance of the hearing in accordance with section 8(i)(4) of the FDIA (12 U.S.C. 1818(i)(4)).

(2) Checks in payment of civil penalties shall be made payable to the Treasurer of the United States and sent to the Controller's Division of the Office. Upon receipt, the Office shall forward the check to the Treasury of the United States.

(c) *Inflation adjustment.* Under the Federal Civil Monetary Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note), OTS must adjust for inflation the civil money penalties in statutes that it administers. The following chart displays the adjusted civil money penalties. The amounts in this chart apply to violations that occur after October 27, 2008:

U.S. Code citation	CMP description	New maximum amount
12 U.S.C. 1464(v)(4).	Reports of Condition—1st Tier.	\$2,200
12 U.S.C. 1464(v)(5).	Reports of Condition—2nd Tier.	32,500
12 U.S.C. 1464(v)(6).	Reports of Condition—3rd Tier.	1,375,000
12 U.S.C. 1467(d)	Refusal to Cooperate in Exam.	7,500