

removed potentially burdensome paperwork requirements by encouraging carriers to comply with the reporting requirements through electronic means. We believe that the clarifications adopted in the *Order on Reconsideration* significantly decrease the paperwork burden on carriers. Specifically, the Commission: (1) Clarified that Completing Carriers must provide the Payphone Service Provider (PSP) with adequate notice of an alternative compensation arrangement (ACA) prior to its effective date with sufficient time for the PSP to object to an ACA, and also prior to the termination of an ACA; (2) clarified any paperwork burdens imposed on carriers and allowed Completing Carriers to provide notice of ACAs on a clearinghouse's Web site; (3) required Completing Carriers to report only completed calls in their quarterly reports; and (4) extended the time period from 18 to 27 months for Completing Carriers and Intermediate Carriers to retain certain payphone records.

Federal Communications Commission.

**Marlene H. Dortch**,  
Secretary.

[FR Doc. E8-11777 Filed 5-23-08; 8:45 am]

BILLING CODE 6712-01-P

## FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2867]

### Petition for Reconsideration of Action in Rulemaking Proceeding

May 16, 2008.

A Petition for Reconsideration has been filed in the Commission's Rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR section 1.429(e). The full text of this document is available for viewing and copying in Room CY-B402, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) (1-800-378-3160). Oppositions to this petition must be filed by *June 11, 2008*. See section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

*Subject:* In the Matter of: Federal-State Joint Board on Universal Service (CC Docket No. 96-45); Access Charge Reform (CC Docket No. 96-262) (WC Docket No. 06-122).

Number of Petitions Filed: 1.

**Marlene H. Dortch**,

Secretary.

[FR Doc. E8-11775 Filed 5-23-08; 8:45 am]

BILLING CODE 6712-01-P

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Guidelines for Appeals of Material Supervisory Determinations

**AGENCY:** Federal Deposit Insurance Corporation.

**ACTION:** Notice and request for comment.

**SUMMARY:** The Federal Deposit Insurance Corporation (FDIC) proposes to amend its Guidelines for Appeals of Material Supervisory Determinations to better align the FDIC's Supervisory Appeals Review Committee (SARC) process with the material supervisory determinations appeals procedures at the other Federal banking agencies. The proposed amendments would modify the supervisory determinations eligible for appeal to eliminate the ability of an FDIC-supervised institution to file an appeal with the SARC with respect to determinations or the facts and circumstances underlying a formal enforcement-related action or decision, including the initiation of an investigation. The proposed amendments also include limited technical amendments.

**DATES:** Written comments on the Proposal must be received by the FDIC on or before July 28, 2008 for consideration.

**ADDRESSES:** Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Agency Web Site:* <http://www.fdic.gov/regulations/laws/federal/propose.html>. Follow the instructions for submitting comments.
- *E-mail:* [comments@fdic.gov](mailto:comments@fdic.gov).

Include "Guidelines for Appeals of Material Supervisory Determinations" in the subject line of the message.

- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments/Legal ESS, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be

hand-delivered to the guard station located at the rear of the FDIC's 550 17th Street building (accessible from F Street) on business days between 7 a.m. and 5 p.m.

*Instructions:* All submissions received must include the agency name and use the title "Guidelines for Appeals of Material Supervisory Determinations."

All comments received will be posted without change to, <http://www.fdic.gov/regulations/laws/federal/propose.html>, including any personal information provided.

Comments may be inspected and photocopied in the FDIC Public Information Center, Room E-1002, 3501 North Fairfax Drive, Arlington, VA 22226 between 9 a.m. and 4:30 p.m. on business days.

**FOR FURTHER INFORMATION CONTACT:**

Frank Gray, Section Chief, FDIC, 550 17th Street, NW., Washington, DC 20429 [F-4054]; telephone: (202) 898-3508; or electronic mail: [fgray@fdic.gov](mailto:fgray@fdic.gov); or Richard Bogue, Counsel, FDIC, 550 17th Street, NW., Washington, DC 20429 [MB-3014]; telephone: (202) 898-3726; facsimile: (202) 898-3658; or electronic mail: [rbogue@fdic.gov](mailto:rbogue@fdic.gov).

**SUPPLEMENTARY INFORMATION:** The FDIC is publishing for notice and comment proposed amendments to the Guidelines for Appeals of Material Supervisory Determinations. The FDIC considers it desirable in this instance to garner comments regarding these amendments to the guidelines, although notice and comment is not required and may not be employed in any future amendments.

The proposed amendments would be effective upon adoption and are intended to more closely align the FDIC's Guidelines for Appeals of Material Supervisory Determinations to the material supervisory determination appeals processes of the other Federal banking agencies.

### Background

Section 309(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (Pub. L. 103-325, 108 Stat. 2160) (Riegle Act), required the FDIC (as well as the other Federal banking agencies and the National Credit Union Administration Board (NCUA)) to establish an independent intra-agency appellate process to review material supervisory determinations. The Riegle Act defines the term "independent appellate process" to mean a review by an agency official who does not directly or indirectly report to the agency official who made the material supervisory determination under review. In the appeals process, the FDIC is required to ensure that (1) an appeal of a material supervisory determination by an insured depository institution is heard and decided expeditiously; and (2) appropriate safeguards exist for

protecting appellants from retaliation by agency examiners.

The term "material supervisory determinations" is defined in the Riegle Act to include determinations relating to: (1) Examination ratings; (2) the adequacy of loan loss reserve provisions; and (3) classifications on loans that are significant to an institution. The Riegle Act specifically excludes from the definition of "material supervisory determinations" a decision to appoint a conservator or receiver for an insured depository institution or to take prompt corrective action pursuant to section 38 of the Federal Deposit Insurance Act ("FDI Act"), 12 U.S.C. 1831o. Finally, Section 309(g) (12 U.S.C. 4806(g)) expressly provides that the Riegle Act's requirement to establish an appeals process shall not affect the authority of the Federal banking agencies to take enforcement or supervisory actions against an institution.

On December 28, 1994, the FDIC published in the **Federal Register**, for a 30-day comment period, a notice of and request for comments on proposed Guidelines for Appeals of Material Supervisory Determinations ("Guidelines") (59 FR 66965). In the proposed Guidelines, the FDIC proposed that the term "material supervisory determinations," in addition to the statutory exclusions noted above, also should not include: (1) Determinations for which other appeals procedures exist (such as determinations relating to deposit insurance assessment risk classifications); (2) decisions to initiate formal enforcement actions under section 8 of the FDI Act; (3) decisions to initiate informal enforcement actions (such as memoranda of understanding); (4) determinations relating to a violation of a statute or regulation; and (5) any other determinations not specified in the Riegle Act as being eligible for appeal.

Commenters to the proposed Guidelines suggested that the proposed limitations on determinations eligible for appeal were too restrictive. In response to comments received, the FDIC modified the proposed Guidelines. The FDIC added a final clarifying sentence to the listing of "Determinations Not Eligible for Appeal" in the Guidelines as follows: "The FDIC recognizes that, although determinations to take prompt corrective action or initiate formal or informal enforcement actions are not appealable, the determinations upon which such actions may be based (e.g., loan classifications) are appealable provided they otherwise qualify." (60

FR 15929, March 28, 1995). On March 21, 1995, the FDIC's Board of Directors adopted the proposed Guidelines. (60 FR 15923).

On March 18, 2004, the FDIC published in the **Federal Register**, for a 30-day comment period, a notice and request for comments respecting proposed revisions to the Guidelines. (69 FR 12855). On July 9, 2004, the FDIC published in the **Federal Register** a notice of guidelines which, effective June 28, 2004, adopted the revised Guidelines changing the composition and procedures of the SARC. (69 FR 41479). The revised Guidelines were disseminated to FDIC-supervised financial institutions through a Financial Institution Letter, FIL-113-2004, issued October 13, 2004.

### Proposed Amendments

#### *I. Amendment of Determinations Eligible for Review*

Determinations underlying enforcement actions, such as the citation of apparent violations of law or regulation, have been appealable under the FDIC's Guidelines since their enactment in 1995. Recent SARC appeals by FDIC-supervised institutions have, however, highlighted a situation where an appeal to the SARC is inconsistent with the intent of the Riegle Act that "the appeals process not impair, in any way, the agencies' litigation or enforcement authority." (Senate Report No. 103-169). Accordingly, the proposed amendments to the Guidelines would eliminate the ability of an FDIC-supervised institution to file an appeal with the SARC with respect to determinations or the facts and circumstances underlying formal enforcement-related actions or decisions, including the initiation of a formal investigation. The proposed amendments to the Guidelines satisfy the requirements of the Riegle Act and better align the FDIC's material supervisory determination appeals procedures with those of the other Federal banking agencies.

#### *A. Independent Review Requirement*

Section 309(a) of the Riegle Act required the FDIC to establish an appellate process to review material supervisory determinations. The SARC must make its decision based on "facts of record," which are limited to the Report of Examination, the FDIC-supervised institution's appeal, an FDIC staff response, and, in some cases, a brief oral presentation before the SARC. The SARC appeals process does not involve any further factual development through investigation or discovery.

Decisions to proceed with a formal enforcement action, on the other hand, must be supported by facts demonstrating both the existence of the violation at issue as well as facts that satisfy all of the required elements of the enforcement action to be pursued. All FDIC formal enforcement actions are reviewed by a number of high-level FDIC officials both prior and subsequent to their initiation. The ability to initiate (through issuance of a notice or stipulated order) routine cease-and-desist actions under section 8(b) of the FDI Act has for more than a decade been delegated to FDIC Regional Directors. Decisions to initiate enforcement actions pursuant to section 8(b) of the FDI Act must be made at the Deputy Regional Director or Regional Director level, following review and concurrence by the Regional Counsel.

All other, non-routine formal enforcement actions are generally reviewed at the highest levels of the FDIC before issuance. Ultimately, the FDIC Board of Directors (the Board) decides the outcome of any contested enforcement action and that decision is fully supported by a factual record compiled through investigation, discovery, and an administrative hearing held before an impartial administrative law judge who makes findings of facts, conclusions of law and recommends a decision to the Board. The FDIC's current procedures for initiating formal enforcement actions ensure review of material supervisory determinations by high level FDIC officials. Thus, there is no need for determinations underlying formal enforcement actions to be separately reviewable by the SARC.

#### *B. Parity With Other Federal Agencies*

As previously noted, the Riegle Act required all of the Federal banking agencies and the NCUA to establish appellate processes to review material supervisory determinations. While the various appellate processes adopted by the Federal banking agencies differ in substance and procedure, no Federal bank agency, other than the FDIC, expressly allows review of determinations that underlie formal enforcement actions.

OCC Bulletin 2002-9, National Bank Appeals Procedures (February 25, 2002) (OCC Guidelines), which governs the appeals procedure adopted at the OCC, exempts from its definition of appealable matters "any formal enforcement-related actions or decisions, including decisions to: (a) Seek the issuance of a formal agreement or cease and desist order, or the assessment of a civil money penalty

pursuant to Section 8 of the [FDI Act] \* \* \* and (d) commence formal investigations pursuant to 12 U.S.C. 481, 1818(n) and 1820(c) \* \* \*.” Additionally, OCC Guidelines define the term “formal enforcement-related actions or decisions” as including “the underlying facts that form the basis of a recommended or pending formal enforcement action, the acts or practices that are the subject of a pending formal enforcement action, and OCC determinations regarding compliance with an existing formal enforcement action.”

The supervisory determinations that may be reviewed on appeal by the OTS, as defined by Thrift Bulletin TB 68a (June 10, 2004), include examination ratings, adequacy of loan loss reserve provisions, and significant loan classifications, but does not extend to decisions relating to “formal enforcement-related action” such as “[i]nitiating a formal investigation[,]” “[f]iling a notice of charges[,]” and “[a]ssessing civil money penalties.” Both the OCC and the OTS specifically include formal investigations in the definitions of enforcement-related actions excepted from appeal.

During the adoption of its internal appeals process, the Board of Governors of the Federal Reserve System (Federal Reserve) specifically rejected a suggestion received through comment that institutions consenting to the issuance of a formal enforcement action, such as a cease-and-desist order, be allowed to use the internal appeals process to challenge the material supervisory determinations that led to the enforcement action. The Federal Reserve found this suggestion to be inconsistent with the intent of the Riegle Act, which was to “provide an avenue for the review of material supervisory determinations and not to contest enforcement actions for which an alternative appeals mechanism exists.” (60 FR 16472, March 30, 1995).

The National Credit Union Association (NCUA) limits the type of determinations eligible for review under its appeals process to the determinations expressly stated in section 309, namely: (1) Composite CAMEL rating of 3, 4, and 5 and all component ratings of those composite ratings; (2) adequacy of loan loss reserve provisions; and (3) loan classifications on loans that are significant as determined by the appealing credit union. (60 FR 14795, March 20, 1995).

Thus, in addition to satisfying the Riegle Act’s requirement that the Federal banking agencies adopt independent review processes, the proposed amendments would modify

the FDIC’s current Guidelines so as to be consistent with the other Federal banking agencies, promoting equal treatment of all banks and thrifts appealing material supervisory determinations.

#### C. Notice of Enforcement-Related Action or Decision

At present, only the OCC’s Guidelines explicitly provide that a decision to pursue a formal enforcement action will cut off rights to file a material supervisory determination appeal. In this regard, OCC Bulletin 2002–9 states that a formal enforcement-related action or decision “commences when a Supervision Review Committee determines that the OCC will pursue a formal action,” at which time the matter becomes unappealable. The OCC has Supervision Review Committees at both the Regional and Washington offices with delegations of authority to initiate different types of formal enforcement actions. The FDIC structure of enforcement matter decisionmaking is different, generally vesting authority to initiate formal enforcement actions in designated DSC officials, in some cases with concurrence requirements and in some cases following oversight by the Case Review Committee in Washington.

The essence of the OCC’s cut-off date is that a decision has been made by appropriately authorized officials that a formal enforcement action will be pursued. In order to mirror the cut-off date as closely as possible, the proposed amendments would establish the FDIC’s cut-off date as the date when “the FDIC \* \* \* provides written notice to the bank indicating its intention to pursue available formal enforcement remedies \* \* \*.” Operational procedures will be established that provide that when an FDIC official with authority to initiate a formal enforcement action decides that the facts and circumstances then known warrant initiation of such action, a letter to the bank will be sent notifying the bank of the decision to pursue formal action. Such notice will render the underlying facts and circumstances that form the basis of the enforcement action unappealable.

#### II. Additional Technical Amendments

Paragraph C of the Guidelines (Institutions Eligible to Appeal) states that the Guidelines apply to insured depository institutions that the FDIC supervises “(i.e., insured State nonmember banks (except District banks) and insured branches of foreign banks).” The 2004 District of Columbia Omnibus Authorization Act, Public Law No. 108–386, § 8, extended to the FDIC regulatory and supervisory authority

over District of Columbia banks. Consequently, the parenthetical “except District banks” would be stricken from Paragraph C of the Guidelines.

Paragraph G of the Guidelines (Appeal to the SARC) provides that the Director of the Division of Supervision and Consumer Protection may, with the approval of the SARC Chairperson, transfer a request for review directly to the SARC if the Director determines that the institution is entitled to relief that the Director lacks delegated authority to grant. This provision expedites the SARC process by eliminating the need for the Division Director to deny relief to an institution to enable it to file its appeal to the SARC. In order to further facilitate the prompt resolution of requests for review, a mechanism through which the Division Director may seek guidance from the SARC Chairperson is proposed for Paragraph G. An addition to Paragraph G would read: “The Division Director may also request guidance from the SARC Chairperson as to procedural or other questions relating to any request for review.”

For the aforementioned reasons, the FDIC Board of Directors proposes to revise the Guidelines for Appeals of Material Supervisory Determinations as set forth below.

\* \* \* \* \*

### Proposed Amended Guidelines for Appeals of Material Supervisory Determinations

#### A. Introduction

Section 309(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (Pub. L. 103–325, 108 Stat. 2160) (“Riegle Act”) required the Federal Deposit Insurance Corporation (“FDIC”) to establish an independent intra-agency appellate process to review material supervisory determinations made at insured depository institutions that it supervises. The Guidelines for Appeals of Material Supervisory Determinations (“guidelines”) describe the types of determinations that are eligible for review and the process by which appeals will be considered and decided. The procedures set forth in these guidelines establish an appeals process for the review of material supervisory determinations by the Supervision Appeals Review Committee (“SARC”).

#### B. SARC Membership

The following individuals comprise the three (3) voting members of the SARC: (1) One inside FDIC Board member, either the Chairperson, the Vice Chairperson, or the FDIC Director

(Appointive), as designated by the FDIC Chairperson (this person would serve as the Chairperson of the SARC); and (2) one deputy or special assistant to each of the inside FDIC Board members who are not designated as the SARC Chairperson. The General Counsel is a non-voting member of the SARC. The FDIC Chairperson may designate alternate member(s) to the SARC if there are vacancies so long as the alternate member was not involved in making or affirming the material supervisory determination under review. A member of the SARC may designate and authorize the most senior member of his or her staff within the substantive area of responsibility related to cases before the SARC to act on his or her behalf.

#### C. Institutions Eligible To Appeal

The guidelines apply to the insured depository institutions that the FDIC supervises (*i.e.*, insured State nonmember banks and insured branches of foreign banks) and also to other insured depository institutions with respect to which the FDIC makes material supervisory determinations.

#### D. Determinations Subject To Appeal

An institution may appeal any material supervisory determination pursuant to the procedures set forth in these guidelines. Material supervisory determinations include:

- (a) CAMELS ratings under the Uniform Financial Institutions Rating System;
- (b) EDP ratings under the Uniform Interagency Rating System for Data Processing Operations;
- (c) Trust ratings under the Uniform Interagency Trust Rating System;
- (d) CRA ratings under the Revised Uniform Interagency Community Reinvestment Act Assessment Rating System;
- (e) Consumer compliance ratings under the Uniform Interagency Consumer Compliance Rating System;
- (f) Registered transfer agent examination ratings;
- (g) Government securities dealer examination ratings;
- (h) Municipal securities dealer examination ratings;
- (i) Determinations relating to the adequacy of loan loss reserve provisions;
- (j) Classifications of loans and other assets in dispute the amount of which, individually or in the aggregate, exceed 10 percent of an institution's total capital;
- (k) Determinations relating to violations of a statute or regulation that may impact the capital, earnings, or operating flexibility of an institution, or

otherwise affect the nature and level of supervisory oversight accorded an institution;

(l) Truth in Lending (Regulation Z) restitution;

(m) Filings made pursuant to 12 CFR 303.11(f), for which a Request for Reconsideration has been granted, other than denials of a change in bank control, change in senior executive officer or board of directors, or denial of an application pursuant to section 19 of the FDI Act (which are contained in 12 CFR 308, subparts D, L, and M, respectively), if the filing was originally denied by the DSC Director, Deputy Director or Associate Director; and

(n) Any other supervisory determination (unless otherwise not eligible for appeal) that may impact the capital, earnings, operating flexibility, or capital category for prompt corrective action purposes of an institution, or otherwise affect the nature and level of supervisory oversight accorded an institution.

*Material supervisory determinations do not include:*

- (a) Decisions to appoint a conservator or receiver for an insured depository institution;
- (b) Decisions to take prompt corrective action pursuant to section 38 of the Federal Deposit Insurance Act, 12 U.S.C. 1831o;
- (c) Determinations for which other appeals procedures exist (such as determinations of deposit insurance assessment risk classifications and payment calculations);
- (d) Decisions to initiate informal enforcement actions (such as memoranda of understanding); and
- (e) Formal enforcement-related actions and decisions, including determinations and the underlying facts and circumstances that form the basis of a recommended or pending formal enforcement action, and FDIC determinations regarding compliance with an existing formal enforcement action.

A formal enforcement-related action or decision commences, and therefore becomes unappealable, when the FDIC initiates a formal investigation under 12 U.S.C. 1820(c) or provides written notice to the bank indicating its intention to pursue available formal enforcement remedies under applicable statutes or published enforcement-related policies of the FDIC, including written notice of a referral to the Attorney General or a notice to the Secretary of Housing and Urban Development for violations of the Equal Credit Opportunity Act or the Fair Housing Act. For the purposes of these guidelines, remarks in a Report of

Examination do not constitute written notice of intent to pursue formal enforcement remedies.

#### E. Good Faith Resolution

An institution should make a good faith effort to resolve any dispute concerning a material supervisory determination with the on-site examiner and/or the appropriate Regional Office. The on-site examiner and the Regional Office will promptly respond to any concerns raised by an institution regarding a material supervisory determination. Informal resolution of disputes with the on-site examiner and/or the appropriate Regional Office is encouraged, but seeking such a resolution is not a condition to filing a request for review with the Division of Supervision and Consumer Protection or an appeal to the SARC under these guidelines.

#### F. Filing a Request for Review With the FDIC Division of Supervision and Consumer Protection

An institution may file a request for review of a material supervisory determination with the Director, Division of Supervision and Consumer Protection, 550 17th Street, NW., Room F-4076, Washington, DC 20429, within 60 calendar days following the institution's receipt of a report of examination containing a material supervisory determination or other written communication of a material supervisory determination. A request for review must be in writing and must include:

- (a) A detailed description of the issues in dispute, the surrounding circumstances, the institution's position regarding the dispute and any arguments to support that position (including citation of any relevant statute, regulation, policy statement or other authority), how resolution of the dispute would materially affect the institution, and whether a good faith effort was made to resolve the dispute with the on-site examiner and the Regional Office; and
- (b) A statement that the institution's board of directors has considered the merits of the request and authorized that it be filed.

The Director, Division of Supervision and Consumer Protection, will issue a written determination of the request for review, setting forth the grounds for that determination, within 30 days of receipt of the request. No appeal to the SARC will be allowed unless an institution has first filed a timely request for review with the Division of Supervision and Consumer Protection.

### *G. Appeal to the SARC*

An institution that does not agree with the written determination rendered by the Director of the Division of Supervision and Consumer Protection must appeal that determination to the SARC within 30 calendar days from the date of that determination. The Director's determination will inform the institution of the 30-day time period for filing with the SARC and will provide the mailing address for any appeal the institution may wish to file. Failure to file within the 30-day time limit may result in denial of the appeal by the SARC. If the Director of the Division of Supervision and Consumer Protection determines that an institution is entitled to relief that the Director lacks delegated authority to grant, the Director may, with the approval of the Chairperson of the SARC, transfer the matter directly to the SARC without issuing a determination. Notice of such a transfer will be provided to the institution. The Division Director may also request guidance from the SARC Chairperson as to procedural or other questions relating to any request for review.

### *H. Filing With the SARC*

An appeal to the SARC will be considered filed if the written appeal is received by the FDIC within 30 calendar days from the date of the division director's written determination or if the written appeal is placed in the U.S. mail within that 30-day period. If the 30th day after the date of the division director's written determination is a Saturday, Sunday or Federal holiday, filing may be made on the next business day. The appeal should be sent to the address indicated on the determination being appealed.

### *I. Contents of Appeal*

The appeal should be labeled to indicate that it is an appeal to the SARC and should contain the name, address, and telephone number of the institution and any representative, as well as a copy of the determination being appealed. If oral presentation is sought, that request should be included in the appeal. Only matters previously reviewed at the division level, resulting in a written determination or direct referral to the SARC, may be appealed to the SARC. Evidence not presented for review to the DSC Director may be submitted to the SARC only if authorized by the SARC Chairperson. The institution should set forth all of the reasons, legal and factual, why it disagrees with the determination. Nothing in the SARC administrative

process shall create any discovery or other such rights.

### *J. Burden of Proof*

The burden of proof as to all matters at issue in the appeal, including timeliness of the appeal if timeliness is at issue, rests with the institution.

### *K. Oral Presentation*

The SARC may, in its discretion, whether or not a request is made, determine to allow an oral presentation. The SARC generally grants a request for oral presentation only if it determines that oral presentation is likely to be helpful or would otherwise be in the public interest. Notice of the SARC's determination to grant or deny a request for oral presentation will be provided to the institution. If oral presentation is held, the institution will be allowed to present its positions on the issues raised in the appeal and to respond to any questions from the SARC. The SARC may also require that FDIC staff participate as the SARC deems appropriate.

### *L. Dismissal and Withdrawal*

An appeal may be dismissed by the SARC if it is not timely filed, if the basis for the appeal is not discernable from the appeal, or if the institution moves to withdraw the appeal.

### *M. Scope of Review and Decision*

The SARC will review the appeal for consistency with the policies, practices and mission of the FDIC and the overall reasonableness of and the support offered for the positions advanced, and notify the institution, in writing, of its decision concerning the disputed material supervisory determination(s) within 60 days from the date the appeal is filed, or within 60 days from oral presentation, if held. SARC review will be limited to the facts and circumstances as they existed prior to or at the time the material supervisory determination was made, even if later discovered, and no consideration will be given to any facts or circumstances that occur or corrective action taken after the determination was made. The SARC may reconsider its decision only on a showing of an intervening change in the controlling law or the availability of material evidence not reasonably available when the decision was issued.

### *N. Publication of Decisions*

SARC decisions will be published. Published SARC decisions will be redacted to avoid disclosure of exempt information. Published SARC decisions may be cited as precedent in appeals to the SARC.

### *O. SARC Guidelines Generally*

Appeals to the SARC will be governed by these guidelines. The SARC will retain the discretion to waive any provision of the guidelines for good cause; the SARC may adopt supplemental rules governing SARC operations; the SARC may order that material be kept confidential; and the SARC may consolidate similar appeals.

### *P. Limitation on Agency Ombudsman*

The subject matter of a material supervisory determination for which either an appeal to the SARC has been filed or a final SARC decision issued is not eligible for consideration by the Ombudsman.

### *Q. Coordination With State Regulatory Authorities*

In the event that a material supervisory determination subject to a request for review is the joint product of the FDIC and a State regulatory authority, the Director, Division of Supervision and Consumer Protection, will promptly notify the appropriate State regulatory authority of the request, provide the regulatory authority with a copy of the institution's request for review and any other related materials, and solicit the regulatory authority's views regarding the merits of the request before making a determination. In the event that an appeal is subsequently filed with the SARC, the SARC will notify the institution and the State regulatory authority of its decision. Once the SARC has issued its determination, any other issues that may remain between the institution and the State authority will be left to those parties to resolve.

### *R. Effect on Supervisory or Enforcement Actions*

The use of the procedures set forth in these guidelines by any institution will not affect, delay, or impede any formal or informal supervisory or enforcement action in progress or affect the FDIC's authority to take any supervisory or enforcement action against that institution.

### *S. Effect on Applications or Requests for Approval*

Any application or request for approval made to the FDIC by an institution that has appealed a material supervisory determination which relates to or could affect the approval of the application or request will not be considered until a final decision concerning the appeal is made unless otherwise requested by the institution.

### T. Prohibition on Examiner Retaliation

The FDIC has an experienced examination workforce and is proud of its professionalism and dedication. FDIC policy prohibits any retaliation, abuse, or retribution by an agency examiner or any FDIC personnel against an institution. Such behavior against an institution that appeals a material supervisory determination constitutes unprofessional conduct and will subject the examiner or other personnel to appropriate disciplinary or remedial action. Institutions that believe they have been retaliated against are encouraged to contact the Regional Director for the appropriate FDIC region. Any institution that believes or has any evidence that it has been subject to retaliation may file a complaint with the Director, Office of the Ombudsman, Federal Deposit Insurance Corporation, 550 17th Street, Washington, DC 20429, explaining the circumstances and the basis for such belief or evidence and requesting that the complaint be investigated and appropriate disciplinary or remedial action taken. The Office of the Ombudsman will work with the Division of Supervision and Consumer Protection to resolve the allegation of retaliation.

By order of the Board of Directors.

Dated at Washington, DC, the 15th day of April, 2008.

Federal Deposit Insurance Corporation.

**Valerie J. Best,**

*Assistant Executive Secretary.*

[FR Doc. E8-11416 Filed 5-23-08; 8:45 am]

**BILLING CODE 6714-01-P**

---

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested

persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at [www.ffiec.gov/nic/](http://www.ffiec.gov/nic/).

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 20, 2008.

**A. Federal Reserve Bank of Chicago** (Burl Thornton, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. *Capitol Bancorp, Ltd.*, and Capitol Development Bancorp Limited VII, both of Lansing, Michigan, to acquire 51 percent of the voting shares of Central Arizona Bank (in organization), Casa Grande, Arizona.

2. *Capitol Bancorp, Ltd.*, and Capitol Development Bancorp Limited VII, both of Lansing, Michigan, to acquire 51 percent of the voting shares of Sunrise Bank of Norman (in organization), Norman, Oklahoma.

Board of Governors of the Federal Reserve System, May 21, 2008.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. E8-11743 Filed 5-23-08; 8:45 am]

**BILLING CODE 6210-01-S**

---

## FEDERAL RESERVE SYSTEM

### Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at [www.ffiec.gov/nic/](http://www.ffiec.gov/nic/).

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 10, 2008.

**A. Federal Reserve Bank of Atlanta** (Steve Foley, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. *Bancolumbia, S.A.*, and *Suramerica de Inversiones S.A.*, *Inversiones Argos S.A.*, both of Medellin, Colombia, and *Cementos Argos S.A.* Barranquilla, Colombia, to retain 50 percent of their direct and indirect interests in *Todo 1 Services, Inc.*, Medley, Florida, and thereby engage in providing data processing and data transmission services, pursuant to section 225.28(b)(14)(ii) of Regulation Y.

**B. Federal Reserve Bank of Chicago**

(Burl Thornton, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. *First Community Financial Partners, Inc.*, Joliet, Illinois; to continue to engage *de novo* in extending credit and servicing loans, pursuant to section 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, May 21, 2008.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. E8-11746 Filed 5-23-08; 8:45 am]

**BILLING CODE 6210-01-S**

---

## GENERAL SERVICES ADMINISTRATION

### Multiple Award Schedule Advisory Panel; Notification of Public Advisory Panel Meeting

**AGENCY:** U.S. General Services Administration (GSA).

**ACTION:** Notice.

**SUMMARY:** The U.S. General Services Administration (GSA) Multiple Award Schedule Advisory Panel (MAS Panel), a Federal Advisory Committee, will hold a public meeting on Monday, June 16, 2008. GSA utilizes the Schedules program to establish long-term Governmentwide contracts with responsible firms to provide Federal,