

FEDERAL RESERVE BANK OF DALLAS

DALLAS, TEXAS 75222

Circular No. 79-195
December 5, 1979

RULES OF PRACTICE FOR HEARINGS

TO ALL MEMBER BANKS
AND OTHERS CONCERNED IN THE
ELEVENTH FEDERAL RESERVE DISTRICT:

Effective September 24, 1979, the Board of Governors adopted new rules for hearings because of the expansion of their supervisory and enforcement authority made by Titles I, VI, and VIII of the Financial Institutions Regulatory and Interest Rate Control Act of 1978 (P.L. 85-630). The Rules are divided into three subparts. Subpart A carries forward the general rules applicable to all formal administrative hearings. Subpart B establishes procedures applicable to proceedings for the assessment and collection of civil money penalties for violations of some provisions of law. Subpart C governs proceedings for the suspension or removal from office of a bank official charged with the commission of or convicted of a felony.

Enclosed is the pamphlet "Rules of Practice for Hearings". Member banks and others that maintain Regulations Binders should file this pamphlet in their binders. The pamphlet dated August 1, 1967 entitled "Rules of Practice for Formal Hearings" should be removed from the binder and destroyed. Any questions concerning the pamphlets should be directed to this Bank's Legal Department, Ext. 6228. Additional copies of the pamphlet will be furnished upon request to the Secretary's Office of this Bank, Ext. 6267.

Sincerely yours,

Robert H. Boykin

First Vice President

Enclosure

Banks and others are encouraged to use the following incoming WATS numbers in contacting this Bank: 1-800-442-7140 (intrastate) and 1-800-527-9200 (interstate). For calls placed locally, please use 651 plus the extension referred to above.

BOARD OF GOVERNORS
of the
FEDERAL RESERVE SYSTEM

RULES OF PRACTICE FOR HEARINGS

(12 CFR 263)

As revised effective September 24, 1979



Any inquiry relating to these rules should be addressed to the Federal Reserve Bank of the Federal Reserve District in which the inquiry arises.

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STATUTORY AUTHORITY

These rules are issued under authority of section 11(i) of the Federal Reserve Act (12 U.S.C. 248(i)), section 202 of the Financial Institutions Supervisory Act of 1966 (12 U.S.C. 1818(n)), section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)), section 8 of the Clayton Act (15 U.S.C. 19), and Titles I, VI, and VIII of the Financial Institutions Regulatory and Interest Rate Control Act of 1978 (Pub. L. 95-630).

RULES OF PRACTICE FOR HEARINGS*

(12 CFR 263)

As revised effective September 24, 1979

SUBPART A—RULES OF PRACTICE FOR FORMAL HEARINGS

SECTION 263.1— AUTHORITY, PURPOSE, AND SCOPE

(a) **Authority.** This Part is issued under sections 11(i), 19, and 29 of the Federal Reserve Act, as amended (12 U.S.C. 248(i), 504, and 505); sections 5(b) and 8(b) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1844(b) and 1847(b)); section 106(b)(2)(F) of the Bank Holding Company Act Amendments of 1970, as amended (12 U.S.C. 1972(2)(F)); sections 7(j) and 8 of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1817(j) and 1818); section 13 of the International Banking Act of 1978 (12 U.S.C. 3108); and section 15B(c)(5) of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78o-4).

(b) **Purpose and scope.** This subpart prescribes rules of practice and procedure governing adjudications as to which a formal hearing is required by law or is for other reason ordered by the Board. These adjudications include:

(1) suspension of a member bank from the use of credit facilities of the Federal Reserve System under section 4 of the Federal Reserve Act (12 U.S.C. 301);

(2) termination of a bank's membership in the Federal Reserve System under section 9 of the Federal Reserve Act (12 U.S.C. 327);

(3) issuance of a cease-and-desist order under section 11 of the Clayton Act (15 U.S.C. 21);

(4) issuance of a cease-and-desist order or a removal or suspension order under section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818);

(5) adjudications under sections 2, 3, or 4 of the Bank Holding Company Act (12 U.S.C. 1841, 1842, or 1843);

(6) issuance of a divestiture order against a bank holding company under section 5(e) of the Bank Holding Company Act (12 U.S.C. 1844(e));

(7) disapproval of a proposed acquisition of control of a State member bank or a bank holding company under section 7(j) of the Federal Deposit Insurance Act (12 U.S.C. 1817(j));

(8) imposition of sanctions upon any municipal

securities dealer for which the Board is the appropriate regulatory agency, or upon any person associated or seeking to become associated with such a municipal securities dealer, under section 15(B)(c)(5) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-4);

(9) formal adjudications on bank merger applications under section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)); and

(10) assessment of a civil money penalty for a violation of any provision of: the Bank Holding Company Act of 1956, as amended, or any order or regulation issued thereunder (12 U.S.C. 1847(b)); sections 19, 22, or 23A of the Federal Reserve Act, or any order or regulation issued thereunder (12 U.S.C. 504, 505); the terms of a final cease-and-desist order issued under the Federal Deposit Insurance Act (12 U.S.C. 1818(i)(2)); or the provisions of 106(b)(2) of the Bank Holding Company Act Amendments of 1970, as amended (12 U.S.C. 1972(2)(F)).

SECTION 263.2—DEFINITIONS

As used in this Part:

(a) "Member bank" means any bank that is a member of the Federal Reserve System.

(b) "Party" means a person or agency named or admitted as a party, or any person or agency who has filed a written request and is entitled as of right to be admitted as a party. A person or agency may be admitted for a limited purpose without being regarded as a party.

(c) "Secretary" means the Secretary of the Board of Governors of the Federal Reserve System.

SECTION 263.3—APPEARANCE AND PRACTICE BEFORE THE BOARD

(a) **Power of attorney and notice of appearance.** Any person who is a member in good standing of the bar of the highest court of any State or of the District of Columbia, or of any possession, territory, or Commonwealth of the United States, may represent others before the Board upon filing with the Secretary a written declaration that he is currently qualified as provided in this paragraph, and is authorized to represent the particular party on whose behalf he acts. Any other person desiring to appear before or transact business with the Board in a representative capacity may be required to file

* The text corresponds to the Code of Federal Regulations, Title 12, Chapter II, Part 263, cited as 12 CFR 263. The words "this Part", as used herein, mean Rules of Practice for Hearings.

with the Secretary a power of attorney showing his authority to act in such capacity, and he may be required to show to the satisfaction of the Board that he has the requisite qualifications. Attorneys and other representatives of parties to proceedings shall file a written notice of appearance with the Secretary or with the presiding officer.

(b) **Conduct during hearings.** All participants in a hearing, or a conference held in connection therewith, shall conduct themselves with dignity and in an orderly and ethical manner. The attorney or other representative of a party shall make every effort to restrain a client from improper conduct in connection with a proceeding. Improper language or conduct, refusal to comply with directions, continued use of dilatory tactics, or refusal to adhere to reasonable standards of orderly and ethical conduct constitute grounds for immediate exclusion from the proceeding at the direction of the presiding officer.

SECTION 263.4—NOTICE OF HEARING

Whenever a hearing is ordered by the Board, notice of such hearing (together with a copy of any document incorporated therein by reference) shall be given by the Secretary or other designated officer acting for the Board to the party or parties to the proceeding and to the appropriate financial institution supervisory authority where required by law. The Board may give whatever additional notice is deemed appropriate in any given hearing. Such notice shall state the time, place, and nature of the hearing, the legal authority and jurisdiction under which the hearing is to be held, and the name and address of the presiding officer, if one has been designated, and shall also contain, or incorporate by appropriate reference, a statement of the matters of fact or law constituting the grounds for the hearing. Unless otherwise provided by law or ordered by the Board, notice of any hearing shall be given not less than 20 days prior to the date set for hearing and shall be given general circulation by publication in the Federal Register and, where practical, by release to the press. The Board may amend a notice of hearing in any manner and to the extent consistent with provisions of applicable law.

SECTION 263.5—ANSWER

(a) **When required.** In any notice of hearing issued by the Board, the Board may direct the party or parties afforded the hearing to file an answer to

the allegations contained in the notice or referenced documents, and any party to any proceeding may file an answer. Except where a different period is provided by law or specified by the Board, a party directed to file an answer, or a party who elects to file an answer, shall file the same with the Secretary within 20 days after service upon him of the notice of hearing.

(b) **Requirements of answer; effect of failure to deny.** An answer filed under this section shall specifically admit, deny, or state that the party does not have sufficient information to admit or deny each allegation in the notice of hearing. A statement of lack of information shall have the effect of a denial. Any allegation not denied shall be deemed to be admitted. When the party intends to deny only a part or a qualification of an allegation, he shall admit so much of it as is true and shall deny only the remainder.

(c) **Admitted allegations.** If a party filing an answer under this section elects not to contest the allegations of fact set forth in the notice of hearing or referenced documents, his answer shall consist of a statement that he admits all of the allegations to be true. Such an answer shall constitute a waiver of hearing as to the facts alleged, and together with the notice and any referenced documents will provide a record basis on which the presiding officer shall file with the Secretary his recommended decision and his findings of fact and conclusions of law. Such admission shall not constitute a waiver of the right of such party to file with the Secretary exceptions to such recommended decision, findings and conclusions.

(d) **Effect of failure to answer.** Failure of a party to file an answer required by this section within the time provided shall constitute a waiver of his right to appear and contest the allegations of the notice of hearing and shall constitute authorization for the presiding officer, without further notice to the party, to find the facts to be as alleged in the notice and to file with the Secretary a recommended decision containing such findings and appropriate conclusions. The Board or the presiding officer may, for cause shown, permit the filing of an answer after the prescribed time.

(e) **Opportunity for informal settlement.** Any interested party may at any time submit to the Secretary, for consideration by the Board, written offers or proposals for settlement of a proceeding, without prejudice to the rights of the parties. No

offer or proposal shall be admissible in evidence over the objection of any party in any hearing in connection with such proceeding. The foregoing provisions of this paragraph shall not preclude settlement of any proceeding through the regular adjudicatory process by the filing of an answer as provided in paragraph (c) of this section, or by the submission of the case to the presiding officer on a stipulation of facts and an agreed order.

SECTION 263.6—CONDUCT OF HEARINGS

(1) When evidence is to be taken in a hearing, the Board or, when duly designated by the Board for that purpose, one or more of its members, an administrative law judge, or other hearing officer(s) lawfully appointed by the Board may preside at the hearing. Unless otherwise provided in the notice of hearing, all hearings for the taking of evidence shall be conducted as hereinafter provided.

(2) Except as authorized by law, the presiding officer shall not be responsible to, or subject to the supervision or direction of, any officer, employee, or agent of the Board engaged in the performance of investigative or prosecuting functions.

(3) A designated presiding officer who deems himself disqualified may at any time withdraw. Upon receipt of a timely and sufficient affidavit of personal bias or disqualification of such presiding officer, the Board will rule on the matter as a part of the record and decision in the case.

(b) **Authority of presiding officer.** All hearings governed by this Part shall be conducted in accordance with the provisions of chapter 5 of Title 5 of the United States Code. The presiding officer shall have complete charge of the hearing, and he shall have the duty to conduct it in a fair and impartial manner and to take all necessary action to avoid delay in the disposition of proceedings. Such officer shall have all powers necessary to that end, including but not limited to the following:

- (1) To administer oaths and affirmations;
- (2) To issue subpoenas and subpoenas duces tecum, as authorized by law, and to revoke, quash, or modify any such subpoena;
- (3) To receive relevant evidence and to rule upon the admission of evidence and offers of proof;
- (4) To take or cause depositions to be taken;
- (5) To regulate the course of the hearing and the conduct of the parties and their counsel;
- (6) To hold conferences for the settlement or

simplification of issues or for any other proper purpose; and

(7) To consider and rule upon, as justice may require, all procedural and other motions appropriate in an adversary proceeding, except that a presiding officer other than the Board shall not have power to decide any motion to dismiss the proceedings or other motion which would result in final determination of the merits of the proceedings.

Without limitation on the foregoing, the presiding officer shall, subject to the provisions of this Part, have all the authority set forth in section 556(c) of Title 5 of the United States Code.

(c) **Prehearing conference.** The presiding officer may, on his own initiative or at the request of Board counsel or of any party, direct all parties or counsel to meet with him at a specified time and place prior to the hearing, or to submit suggestions to him in writing, for the purpose of considering any or all of the following:

- (1) Simplification and clarification of the issues;
- (2) Stipulations and admissions of fact and of the contents and authenticity of documents;
- (3) Matters of which official notice will be taken; and
- (4) Such other matters as may aid in the orderly disposition of the proceeding, including disclosure of the names of witnesses and of documents or other physical exhibits which will be introduced in evidence in the course of the proceeding.

Such conferences, in the discretion of the presiding officer, need not be recorded, but the presiding officer shall enter in the record an order which recites the results of the conference. Such order, a copy of which shall be served on each party and Board counsel, shall include the officer's rulings upon matters considered at the conference, together with appropriate directions, if any, to the parties and Board counsel; and such order shall control the subsequent course of the proceedings, unless modified at the hearing, for good cause found, by appropriate order of the presiding officer.

(d) **Attendance at hearings; representation of the Board.** Unless otherwise specifically provided by statute or by rule of the Board, a hearing shall ordinarily be private and shall be attended only by the parties, their representatives or counsel, representatives of the Board, witnesses while testifying, and other persons having an official interest in the

proceedings: *Provided, however,* That on written request by a party or a representative of the Board, or on the Board's own motion, the Board, in its discretion and to the extent permitted by law, may permit other persons to attend or may order the hearing to be public. In connection with any such hearing or proceeding related thereto, the Board may designate as Board counsel an attorney from its staff or other attorney who shall represent the Board. For the purposes of these Rules, any attorney so designated is referred to as "Board counsel". In case of adjudication other than initial licensing proceedings, neither Board counsel nor any officer or employee of the Board who has engaged in the performance of any investigative or prosecutive function in the case, or a factually related case, may participate in or advise as to the presiding officer's recommended decision or the Board's decision, except as witness or counsel in such hearing or related proceeding. Proceedings with respect to applications for initial licenses shall include, but not be limited to, applications for Board approval under section 3 of the Bank Holding Company Act of 1956 (12 U.S.C. 1842) and such proceedings as may be ordered by the Board with respect to applications under section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)). In such initial licensing proceedings, Board counsel shall represent the Board in a nonadversary capacity for the purpose of developing for the record information relevant to the issues to be determined by the presiding officer and the Board.

(e) **Transcript of testimony.** Hearings shall be recorded and transcripts will be made available at prescribed rates to any party and, in the event the hearing is public, to any other interested persons. The presiding officer shall have authority to order the record corrected, either upon motion to correct, upon stipulation of the parties, or, following notice to the parties, upon the presiding officer's initiative. The transcript of testimony taken at any hearing, duly certified by the reporter, together with all exhibits, papers, and requests, briefs or memoranda of law filed in connection with the hearing shall be filed in duplicate with the Secretary by the presiding officer. The Secretary shall promptly serve notice upon each of the parties of such filing and transmittal. Following the service of notice of filing of the record, the record shall be returned to the presiding officer.

(f) **Continuances and changes or extensions of time and changes of place of hearing.** Except as

otherwise expressly provided by law, the Board may by the notice of hearing or subsequent order provide time limits different from those specified in this Part, and may, on its own initiative or for good cause shown, change or extend any time limit prescribed by these Rules or the notice of hearing, or change the time or place for beginning any hearing hereunder. The presiding officer may, for good cause shown, and as permitted by law, change the time or place for beginning such hearing and may continue or adjourn a hearing from time to time or from place to place. Extensions of time for making any filing or performing any act required or allowed to be done within a specified time in the course of a hearing may be granted by the presiding officer for good cause shown.

(g) **Call for further evidence, oral argument, briefs, reopening of hearing.** The presiding officer may call for the production of further evidence upon any issue, may permit oral argument, the submission of briefs at the hearing and, upon appropriate notice, may reopen any hearing at any time prior to the certification of his recommended decision to the Secretary. The Board may reopen the record at any time permitted by law.

(h) **Ex parte communications.** For the purposes of this section, "ex parte communication" means an oral or written communication that is not on the public record and for which reasonable prior notice to all parties has not been given, but does not include requests for status reports. The following prohibitions against any ex parte communication apply from the time of issuance of a notice for a formal hearing in the proceeding or from the time the person responsible for the communication has knowledge that a notice for a hearing will be issued.

(1) No member of the Board nor the presiding officer nor any other person who is, or may reasonably be expected to be, involved in the decisional process in a proceeding conducted under this subpart shall make, or knowingly cause to be made, an ex parte communication relevant to the merits of the proceeding to any interested person outside the Federal Reserve System. Any member of the Board, the presiding officer, or other person who receives, makes, or knowingly causes to be made any ex parte communication prohibited by this paragraph shall place on the public record of the proceeding:

- (i) all such written communications;
- (ii) memoranda stating the substance of all such oral communications; and

(iii) all written responses, and memoranda stating the substance of all oral responses, to the materials described in clauses (i) and (ii) of this sentence.

(2) No interested person outside the Federal Reserve System shall make, or knowingly cause to be made, an *ex parte* communication relevant to the merits of a proceeding conducted under this subpart to any member of the Board, to the presiding officer or to anyone who is, or may reasonably be expected to be, involved in the decisional process in the proceeding. Upon receipt of a communication in violation of this paragraph, the Board or the presiding officer may require the party responsible for the *ex parte* communication to show cause why that party's claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of the violation. To the extent consistent with the interests of justice and the policy of the statute under which the hearing is being held, a knowing violation of this paragraph may constitute sufficient grounds for a decision adverse to the responsible party.

(3) Except as authorized by law, the presiding officer shall not consult any person or party on any fact in issue unless notice and opportunity is given for all parties to participate.

SECTION 263.7—SUBPENAS

(a) **Issuance.** Where authorized by law, subpoenas for the attendance of witnesses or for the production of documentary evidence, unless directed by the Board upon its own motion, will issue only upon application in writing to the presiding officer or, in the event he is unavailable, to the Board, except that during sessions of a hearing, such application may be made orally on the record before the presiding officer. The person seeking the subpoena may be required, as a condition precedent to the issuance of the subpoena, to show the general relevance and reasonable scope of the testimony or other evidence sought. In the event the presiding officer or the Board, after consideration of all the circumstances, determines that the requested subpoena or any of its terms is unreasonable, oppressive, excessive in scope, unduly burdensome, or otherwise improper, he or it may refuse to issue the subpoena, or issue it only upon such conditions as fairness requires.

(b) **Motion to quash.** Any person to whom a subpoena is directed may, prior to the time specified

therein for compliance, but in no event more than five days after the date of service of such subpoena, with notice to the party requesting the subpoena, apply to the presiding officer or, if he is unavailable, to the Board, to revoke, quash, or modify such subpoena, accompanying such application with a statement of the reasons therefor.

(c) **Service of subpoena.**

(1) Service of a subpoena may be made by personal service or, except as otherwise required by law, by registered mail addressed to the last known address of the person named in the subpoena and by tendering the fees for one day's attendance and mileage as specified in paragraph (d) of this section. In making personal service of a subpoena, the original shall be exhibited to, and a copy thereof left with, the person named in the subpoena. Service of the subpoena and tender of fees to a natural person may also be made by leaving a copy of the subpoena and fees at the person's dwelling place or usual place of abode with someone of suitable age or discretion. When the person to be served is not a natural person, delivery of a copy of the subpoena and tender of the fees may be effected by handing them to a registered agent for service or to an officer, director, or agent in charge of any office of the person, or by mailing them by registered mail to such representative at that person's last known address.

(2) Service made by a United States marshal or his deputy shall be evidenced by that person's return on the original subpoena. If made by any other person, that person shall make affidavit thereto, describing the manner in which service was made, and return the affidavit on or with the original subpoena. In case of failure to make service, the reasons for the failure shall be stated on the original subpoena. The original subpoena, bearing or accompanied by the required return, affidavit, or statement, shall be returned without delay to the Secretary or, if so directed on the subpoena, to the presiding officer before whom the person named in the subpoena is required to appear.

(d) **Attendance of witnesses.**

(1) The attendance of witnesses and the production of documents pursuant to a subpoena issued in connection with a hearing under this subpart may be required from any State or territory or any other place subject to the jurisdiction of the United States at any designated place where the hearing is being conducted. Any person who is compelled to appear and testify, or who appears and testifies by request

or permission, may be accompanied, represented, or advised by counsel.

(2) Subpoenaed witnesses shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States. When a subpoena is issued upon the Board's own motion or at the request of Board counsel, fees and mileage need not be tendered at the time of service of the subpoena. Fees required by this paragraph shall be paid by the person upon whose application the subpoena is issued.

SECTION 263.8—DEPOSITIONS

(a) **When permissible.** The Board or presiding officer, upon its or his own motion or upon appropriate application by a party to the proceeding or Board counsel, may, by subpoena or subpoena duces tecum, order evidence to be taken by deposition at any stage of any proceeding in which such depositions are authorized. Depositions may be taken before the presiding officer or before any person designated in the subpoena and having the power to administer oaths.

(b) **Notice and application.** Unless notice is waived, no deposition shall be taken except after at least five days' written notice to Board counsel and the parties to the proceeding or their attorneys of record and to the Board. In such notice and application to take evidence by deposition, the party desiring to take the deposition shall state the name and post office address of the witness, the subject matter concerning which the witness is expected to testify, its relevance, the time, place, and the name and post office address of the person before whom it is desired the deposition be taken, and the reason why such deposition should be taken. Thereupon, the presiding officer or the Board may, in his or its discretion, by subpoena or subpoena duces tecum, order the oral deposition to be taken. Such subpoena will name the witness whose deposition is to be taken and specify the time when, the place where, and the person before whom the witness is to testify, but such time and place, and the person before whom the deposition is ordered to be taken, may or may not be the same as those named in the notice and application. Notice of the issuance of such subpoena shall be served upon each of the parties a reasonable time in advance of the time fixed for the taking of the deposition, but in no event less than five days in advance of such time.

(c) **Procedure on deposition; objections.**

(1) Each witness testifying upon oral deposition shall be duly sworn or shall affirm, and Board counsel and any adverse party shall have the right to cross-examine the witness. Objections to questions or documents shall be in short form, stating the grounds of objection relied upon. The person recording the deposition shall not have any authority to rule upon questions of competency, materiality, or relevancy of evidence. Evidence objected to shall be taken subject to the objection. Failure to object to questions or evidence shall not be deemed a waiver unless the ground of the objection is one which might have been obviated or removed if presented at the time of the question or submission of evidence.

(2) All questions, answers, and objections (but not including argument or debate) shall be recorded by, or under the direction of, the officer before whom the deposition is taken. The deposition shall be subscribed to by the witness, unless the parties by stipulation waive the signing or unless the witness is physically unable to sign, cannot be found, or refuses to sign. The person recording the deposition shall certify the transcript of the deposition as true and complete. If the deposition is not subscribed to by the witness, the person recording the testimony shall state this fact and the reason therefor on the record.

(3) The officer before whom the deposition is taken shall promptly deliver, or send by registered mail, the original of the deposition, together with the original of all exhibits, to the Secretary of the Board unless otherwise directed in the order authorizing the taking of the deposition or in the notice of its issuance. Interested parties shall make their own arrangements with the person recording the testimony for copies of the deposition and exhibits.

(d) **Introduction as evidence.** Subject to appropriate rulings by the presiding officer on such objections and answers as were noted at the time the deposition was taken or as would be valid were the witness personally present and testifying, the deposition or any part thereof may be received in evidence by the presiding officer. Only such part of a deposition as is received in evidence at a hearing shall constitute a part of the record in such proceeding upon which a decision may be based.

(e) **Payment of fees.** Deponents whose oral depositions are taken and the reporter taking the same shall be entitled to the same fees as are paid for

like services in the courts of the United States, which fees shall be paid by the person upon whose application the deposition is taken.

SECTION 263.9—RULES OF EVIDENCE

(a) **Evidence.** Every party shall have the right to present his case or defense by oral and documentary evidence, to submit rebuttal evidence and to conduct such cross-examination as may be required for a full and true disclosure of the facts. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded.

(b) **Objections.** Objections to the admission or exclusion of evidence shall be in short form, stating the grounds of objections relied upon, and the transcript shall not include argument except as ordered by the presiding officer. Rulings on such objections and on any other matters shall be a part of the transcript. Failure to object to admission or exclusion of evidence or to any ruling shall be considered a waiver of such objection, but no exception to a ruling on an objection need be noted before the presiding officer in order to urge the same in the consideration of the matter by the Board.

(c) **Stipulations.** Independently of the orders or rulings issued as provided by § 263.6 (c), the parties and Board counsel may stipulate as to any relevant matters of fact or the authenticity of any relevant documents. Such stipulations may be received in evidence at a hearing, and when so received shall be binding on the parties and Board counsel with respect to the matters therein stipulated.

(d) **Official notice.** All matters officially noticed by the presiding officer shall appear on the record.

SECTION 263.10—MOTIONS

(a) **In writing.** An application or request for an order or ruling not otherwise specifically provided for in this Part shall be made by motion. After a presiding officer has been designated and before the filing with the Secretary of his recommended decision, pursuant to § 263.11, such applications or requests shall be addressed to and filed with him. At all other times motions shall be addressed to the Board and filed with the Secretary. Motions shall be in writing, except that a motion made at a session of a hearing may be made orally upon the record unless the presiding officer directs that it be reduced to writing. All written motions shall state with particularity the order or relief sought and the

grounds therefor. When a motion is addressed to the presiding officer, an original and two copies of such motion shall be filed.

(b) **Objections.** Within five days after service of any written motion, or within such other period as may be fixed by the presiding officer or the Board, any party may file a written answer or objection to such motion, together with two copies thereof. The moving party shall have no right to reply, except as permitted by the presiding officer or the Board. The presiding officer or the Board, in his or its discretion, may waive the requirements of this section as to motions for extensions of time, and may rule upon such motions *ex parte*.

(c) **Oral argument; briefs.** No oral argument will be heard on motions except as otherwise directed by the presiding officer or the Board. Written memoranda or briefs may be filed with motions or answers or objections, stating the points and authorities relied upon in support of the position taken.

(d) **Rulings on motions.** Except as otherwise provided in this Part, the presiding officer shall rule upon all motions properly addressed to him and upon such other motions as the Board may direct, except that if the presiding officer finds that a prompt decision by the Board on a motion is essential to the proper conduct of the proceeding, he may refer such motion to the Board for decision. The Board shall rule upon all motions properly submitted to it for decision.

(e) **Appeal from rulings on motions.** All motions and answers or objections and rulings thereon shall become part of the record. The rulings of a presiding officer on any motion may not be appealed to the Board prior to its consideration of the presiding officer's recommended decision, findings, and conclusions except by special permission of the Board, but shall be considered by the Board in reviewing the record. Requests to the Board for special permission to appeal from such rulings of the presiding officer shall be filed promptly, in writing, and shall briefly state the grounds relied on.

(f) **Continuation of hearing.** Unless otherwise ordered by the presiding officer or the Board, the hearing shall continue pending the determination of any motion by the Board.

(g) **Closing of hearing.** The record of the hearing shall be closed by announcement to that effect by the presiding officer when the taking of evidence has been concluded. In the discretion of the

presiding officer, the record may be closed as of a future date in order to permit the admission into the record, under circumstances determined by the presiding officer, of exhibits to be prepared.

SECTION 263.11—PROPOSED FINDINGS AND CONCLUSIONS AND RECOMMENDED DECISION

(a) **Proposed findings and conclusions and supporting briefs.** Board counsel or any party who may wish to file with the presiding officer proposed findings and conclusions of law shall file the same, with two copies thereof, within 15 days after the receipt of written notice from the Secretary advising that the transcript has been filed with the Secretary. Proposed findings and conclusions shall be supported by citation to any relevant authorities and by page references to any relevant portions of the record and, in addition, may be accompanied by a brief in support thereof. In initial licensing proceedings, in lieu of proposed findings and conclusions of law, and within such time as the presiding officer may allow, Board counsel may submit comments with respect to the evidence of record and/or proposed findings and conclusions of law submitted by any party. All such proposed findings and conclusions of law, briefs and other submissions shall become part of the record.

(b) **Recommended decision and filing of record.** In a proceeding in which the Board or one or more of its members has not presided at the reception of evidence, the presiding officer shall, within 45 days after the expiration of the time allowed for the filing of proposed findings and conclusions, or within such other time as the Board for good cause shall prescribe, file with the Secretary and certify to the Board for decision the entire record of the hearing, which shall include his recommended decision and findings of fact and conclusions of law, the transcript, exhibits (including on request of any of the parties any exhibits excluded from evidence or tenders of proof), exceptions, rulings, and all briefs and memoranda filed in connection with the hearing. Promptly upon such filing the Secretary shall serve upon each party to the proceeding a copy of the presiding officer's recommended decision, and findings and conclusions.

(c) **Board as presiding officer.** In proceedings in which the Board or one or more of its members has presided at the reception of evidence, the presiding officer's recommended decision, findings of

fact, and conclusions of law will be omitted. In such proceedings the proposed findings and conclusions of law, briefs and other submissions permitted under § 263.11(a) shall be filed with the Secretary for consideration by the Board.

SECTION 263.12—EXCEPTIONS

(a) **Filing.** Within 15 days after service of the recommended decision and findings and conclusions of the presiding officer, or such further time as the Board for good cause shall determine, any party or Board counsel may file with the Secretary exceptions thereto or to any part thereof, or to the failure of the presiding officer to make any recommendation, finding, or conclusion, or to the admission or exclusion of evidence, or other ruling of the presiding officer, supported by such brief as may appear advisable. In any proceeding where the Board or one or more of its members is the presiding officer, the provisions of this section will not be applicable.

(b) **Waiver.** Failure to file exceptions to the recommended decision of the presiding officer or any portion thereof, or to his failure to adopt a proposed finding or conclusion, or the admission or exclusion of evidence or other ruling of the presiding officer, within the time prescribed in paragraph (a) of this section, shall be deemed to be a waiver of objection.

SECTION 263.13—BRIEFS

(a) **Contents.** All briefs shall be confined to the particular matters in issue. Each proposed finding, conclusion, or exception which is briefed shall be supported by a concise supporting statement or by citation of relevant statutes, regulations, decisions, or other authorities and by page reference of relevant portions of the record or recommended decision of the presiding officer. If the exception relates to the admission or exclusion of evidence, the substance of the evidence admitted or excluded shall be set forth in the brief with appropriate page references to the transcript.

(b) **Answering briefs.** Answering briefs may be filed within 10 days after service of briefs and shall be confined to matters in the original briefs of opposing parties. Further briefs may be filed with the presiding officer only with his permission or that of the Board, and may be filed with the Board only with its permission.

SECTION 263.14—ORAL ARGUMENT BEFORE THE BOARD

Upon its own initiative, or upon written request by any party or Board counsel, the Board, in its discretion, may order the matter to be set down for oral argument before the Board or one or more members thereof. Any request for oral argument by a party filing exceptions shall be made within the time prescribed for filing such exceptions, or, by any other party, within the time prescribed for the filing of an answering brief. Oral argument before the Board shall be recorded unless otherwise ordered by the Board.

SECTION 263.15—DECISION OF BOARD

Appropriate members of the Board's staff who are not engaged in the performance of investigative or prosecuting functions in the case, or in a factually related case, may advise and assist the Board in the consideration of the case and in the preparation of appropriate documents for its disposition. Copies of the decision and order of the Board shall be served by the Secretary upon the parties to the proceedings and furnished to such other persons as the Board may direct or the law may require.

SECTION 263.16—FILING PAPERS

Recommended decisions, exceptions, briefs and other papers required to be filed with the Board or Secretary in any proceedings shall be filed with the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. Any such papers may be sent to the Secretary by mail or express but must be received in the office of the Board in Washington, D.C., within the time limit for such filing.

SECTION 263.17—SERVICE

(a) **By the Board.** All documents or papers required to be served by the Board shall be served by the Secretary unless some other person shall be designated for such purpose by the Board. Such service, except for service on Board counsel, shall be made by personal service or by registered mail on the attorney or representative of record of the party, addressed to the last known address as shown on the records of the Board, provided that if there is no attorney or representative of record, such service shall be made upon such party at the last known

address as shown on the records of the Board. Such service may also be made in such other manner reasonably calculated to give actual notice as the Board may by regulation or otherwise provide.

(b) **By the parties.** All documents or papers filed in a proceeding under this Part shall be served by the party filing the same upon Board counsel and the attorneys or representatives of record of all other parties, or, if any party is not so represented, then upon such party. Such service may be made by personal service or by registered, certified, or regular first-class mail addressed to the last known address of such parties, or their attorneys or representatives of record. All such documents or papers, when tendered to the Board or the presiding officer for filing, shall contain a certificate of service.

SECTION 263.18—COPIES

Unless otherwise specifically provided in the notice of hearing, an original and seven copies of all documents and papers required or permitted to be filed or served upon the Secretary under this Part shall be furnished to the Secretary, except that an original and only one copy of the transcript of testimony and exhibits shall be filed with the Secretary by the presiding officer. All documents and papers filed with the presiding officer shall be filed in duplicate.

SECTION 263.19—COMPUTING TIME

(a) **General rule.** In computing any period of time prescribed or allowed by this Part, the date of the act, event or default from which the designated period of time begins to run is not to be included. The last day so computed is to be included, unless it is a Saturday, Sunday or legal holiday in the District of Columbia, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday nor legal holiday. Intermediate Saturdays, Sundays, and legal holidays shall be included in the computation unless the time within which the act is to be performed is 10 days or less, in which event Saturdays, Sundays, and legal holidays shall not be included. Half holidays shall not be considered as holidays.

(b) **Service by mail.** Whenever any party has the right or is required to do some act within a period of time prescribed in this Part, after the service upon him of any document or other paper of any kind, and such service is made by mail, three

days shall be added to the prescribed period from the date when the matter served is deposited in the United States mail.

SECTION 263.20—DOCUMENTS IN PROCEEDINGS CONFIDENTIAL

Unless and until otherwise ordered by the Board or unless otherwise provided by statute or by Board regulation, the notice of hearing, the transcript, the proposed findings and conclusions, the recommended decision of the presiding officer, exceptions thereto, the findings and conclusions of the Board and other papers which are filed in connection with any hearing shall not be made public, and shall be for the confidential use only of the Board and its staff, the presiding officer, the parties and, where appropriate, other supervising authorities.

SECTION 263.21—FORMAL REQUIREMENTS AS TO PAPERS FILED

(a) **Forms.** All papers filed under this subpart shall be printed, typewritten, or otherwise reproduced. All copies shall be clear and legible.

(b) **Signature.** All papers shall be dated and signed by the party filing the same, or his duly authorized agent or attorney, or Board counsel, and, except in the case of Board counsel, shall indicate the address of the signer.

(c) **Caption.** All papers filed must include at the head thereof, or on a title page, the name of the Board and of the filing party, the title of the proceeding, and the subject of the particular paper.

SUBPART B—RULES AND PROCEDURES FOR ASSESSMENT AND COLLECTION OF CIVIL PENALTIES

SECTION 263.22—PURPOSE AND SCOPE

The rules and procedures specified in this subpart and in Subpart A are applicable to proceedings by the Board to assess and collect civil money penalties for a violation of: (a) the terms of a final cease-and-desist order issued under the Federal Deposit Insurance Act (12 U.S.C. 1818(i)(2)); (b) the provisions of sections 19, 22, or 23A of the Federal Reserve Act, or any regulation or order issued there-

under, (12 U.S.C. 504 and 505); (c) any provision of the Bank Holding Company Act of 1956, as amended, or any regulation or order issued thereunder, (12 U.S.C. 1847(b)); or (d) the provisions of section 106(b)(2) of the Bank Holding Company Act Amendments of 1970, as amended (12 U.S.C. 1972(2)(F)). The rules and procedures of this subpart do not apply to the assessment of a civil penalty for a violation of the Change in Bank Control Act, (12 U.S.C. 1817(j)). A civil money penalty for a violation of that statute may be assessed in accordance with the procedures set forth in 12 U.S.C. 1817 (j)(15).

SECTION 263.23—NOTICE OF ASSESSMENT OF CIVIL PENALTY

Civil penalty proceedings commence with the issuance by the Board of a notice of assessment of civil penalty. The notice of assessment shall state: (a) the legal authority for the assessment; (b) the amount of the civil penalty being assessed; (c) the date by which the civil penalty shall be paid; (d) the matters of fact or law constituting the grounds for assessment of the civil penalty; (e) the right of the person being assessed to a formal hearing to challenge the assessment; and (f) the time limit to request such a formal hearing. The notice of assessment may be served upon the person being assessed by personal service, by registered or certified mail to the person's last known address, or by other appropriate means. Such service constitutes issuance of the notice.

SECTION 263.24—OPPORTUNITY FOR INFORMAL PROCEEDING

In the sole discretion of the Board's General Counsel, the General Counsel may, prior to the issuance by the Board of a notice of assessment of civil penalty, advise the affected person that the issuance of a notice of assessment of civil penalty is being considered and the reasons and authority for the proposed assessment. The General Counsel may provide the person an opportunity to present written materials or request a conference with members of the Board's staff to show that the penalty would not be assessed or, if assessed, should be reduced in amount.

SECTION 263.25—RELEVANT
CONSIDERATIONS FOR
ASSESSMENT OF
CIVIL PENALTY

In determining the amount of the penalty to be assessed, the Board will take into account the appropriateness of the penalty with respect to the financial resources and good faith of the person charged, the gravity of the violation, the history of previous violations, the economic benefit derived by the person from the violation, and such other matters as justice may require.

SECTION 263.26—REQUEST FOR
FORMAL HEARING ON
ASSESSMENT

A person being assessed may request a formal hearing to challenge the assessment of a civil penalty. The request must be made within ten business days after issuance of the notice of assessment and any such request must be filed in writing with the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. If a request for a formal hearing is not filed within this ten-day period, the person being assessed shall be deemed to have waived the right to a formal hearing, and the notice of assessment shall constitute a final and unappealable assessment order.

SECTION 263.27—HEARING
ORDER ON ASSESSMENT

After the receipt of a timely request for a hearing with respect to the assessment of a civil penalty, the Secretary will promptly issue an order directing a hearing to commence within 30 days from the date of the hearing order at such place as the Secretary may designate with due regard for the interests of all parties. The hearing order may require the person requesting the hearing to file an answer as prescribed in section 263.5 of Subpart A. The procedures of the Administrative Procedure Act (5 U.S.C. §§ 554-557) and Subpart A of these Rules shall apply to the hearing.

SECTION 263.28—ASSESSMENT ORDER

(a) In the event of consent of the parties concerned to an assessment, or if, upon the record made at a hearing ordered under this subpart, the Board finds that the grounds for having assessed the penalty have been established, the Board may issue an order of assessment of civil penalty. In its order, the Board may reduce the amount of the penalty specified in the notice of assessment. Any party afforded a hearing under this subpart who does not appear at the hearing (personally or by a duly authorized representative) shall be considered to have waived the right to a formal hearing and to have consented to the assessment of the civil penalty specified in the notice of assessment.

(b) An assessment order is effective immediately upon issuance, 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 action of the Board or a reviewing court.

(c) An assessment order may be served by personal service, by registered or certified mail to the last known address of the person being assessed, or by other appropriate means.

SECTION 263.29—PAYMENT OF
CIVIL PENALTY

(a) The date designated in the notice of assessment for payment of the civil penalty will normally be 60 days from the issuance of the notice. If, however, the Board finds, in a specific case, that the purposes of the authorizing statute would be better served if the 60 day period is changed, the Board may shorten or lengthen the period or make the civil penalty payable immediately upon receipt of the notice of assessment. If a timely request for a formal hearing to challenge an assessment of civil penalty is filed, payment of the penalty shall not be required unless and until the Board issues a final order of assessment following the hearing. If an assessment order is issued, it will specify the date by which the civil penalty should be paid or collected.

(b) Checks in payment of civil penalties should be made payable to the "Board of Governors of the Federal Reserve System." Upon collection, the Board shall forward the amount of the penalty to the Treasury of the United States.

**SUBPART C—RULES AND PROCEDURES
APPLICABLE TO SUSPENSION OR
REMOVAL OF A BANK OFFICIAL WHERE
A FELONY IS CHARGED OR PROVEN**

SECTION 263.30—PURPOSE AND SCOPE

The rules and procedures set forth in this subpart apply to informal hearings afforded to any officer, director, or other person participating in the conduct of the affairs of a State member bank ("bank official"), who has been suspended or removed from office or prohibited from further participation in any manner in the conduct of the bank's affairs by a notice or order issued by the Board upon the grounds set forth in section 8(g) of the Federal Deposit Insurance Act (12 U.S.C. 1818(g)).

**SECTION 263.31—NOTICE OR
ORDER OF SUSPENSION,
REMOVAL, OR PROHIBITION**

(a) **Grounds.** The Board may suspend a bank official from office or prohibit a bank official from further participation in any manner in the conduct of a bank'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 a bank official from office or prohibit a bank official from further participation in any manner in the conduct of a bank'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 a bank official or prohibit a bank official from participation in a bank's affairs in these circumstances if the Board finds that continued service to the bank or participation in its affairs by the bank official may pose a threat to the interests of the bank's depositors or may threaten to impair public confidence in the bank.

(b) **Contents.** The Board commences a suspension, removal, or prohibition action with the issuance, and service upon a bank official, of a notice of suspension from office, or order of removal from office, or notice or order of prohibition from participation in the bank's affairs. Such a notice or order shall indicate the basis for the sus-

pension, removal, or prohibition and shall inform the bank official 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 bank does not and is not likely to pose a threat to the interests of the bank's depositors or threaten to impair public confidence in the bank. 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 bank concerned, whereupon the bank official shall immediately cease service to the bank or further participation in any manner in the conduct of the affairs of the bank. A notice or order of suspension, removal, or prohibition may be served by personal service, by registered or certified mail to the last known address of the person being served, or by other appropriate means.

**SECTION 263.32—REQUEST FOR
INFORMAL HEARING**

A bank official who is suspended or removed from office or prohibited from participation in the bank's affairs may request an informal hearing. The request shall be filed in writing with the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The request shall state with particularity the relief desired and the grounds therefor and shall include, when available, supporting evidence. If the bank official desires to present oral testimony or witnesses at the hearing, the bank official must include a request to do so with the request for informal hearing. The request to present oral testimony or witnesses should specify the names of the witnesses and the general nature of their expected testimony.

**SECTION 263.33—ORDER FOR
INFORMAL HEARING**

(a) **Issuance of hearing order.** Upon receipt of a timely request for an informal hearing, the Secretary will promptly issue an order directing an informal hearing to commence within 30 days of the receipt of the request. At the request of the bank official, 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, D.C., 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 Banking Supervision and Regulation Division and from the appropriate Federal Reserve Bank.

(b) **Waiver of oral hearing.** A bank official may waive in writing the official's 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.**

(i) The bank official may appear at the hearing personally, through counsel, or personally with counsel. The bank official shall have the right to introduce relevant written materials and to present an oral argument. The bank official may introduce oral testimony and present witnesses only if expressly authorized by the Board or the Secretary. Neither the formal rules of evidence nor the adjudicative procedures of the Administrative Procedure Act (5 U.S.C. §§ 554—557) or Subpart A of these Rules shall apply to the informal hearing ordered under this subpart unless the Board orders that they apply.

(ii) The proceedings shall be recorded and a transcript shall be furnished to the bank official 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.

(iii) The presiding officers may order the record to be kept open for a reasonable period following the hearing (normally 5 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, revoke, 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 sections 263.7 and 263.8 of Subpart A of these Rules.

(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.

SECTION 263.34—DECISION OF THE BOARD

(a) Within 60 calendar 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 bank official 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 bank official, 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 will 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.