

At 6566

June 30, 1970

To the Addressee:

Enclosed is a reprint, in the new size, of the Rules of Practice for Formal Hearings of the Board of Governors of the Federal Reserve System, as revised effective August 1, 1967, to replace your small-size printing of the rules bearing the same date.

Circulars Division
Federal Reserve Bank of New York

at 6566

**BOARD OF GOVERNORS
of the
FEDERAL RESERVE SYSTEM**

RULES OF PRACTICE FOR FORMAL HEARINGS

(12 CFR 263)

As revised effective August 1, 1967



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)), and section 8 of the Clayton Act (15 U.S.C. 19).

RULES OF PRACTICE FOR FORMAL HEARINGS*

(12 CFR 263)

As revised effective August 1, 1967

SUBPART A—RULES OF PRACTICE APPLICABLE TO ALL FORMAL HEARINGS

SECTION 263.1—SCOPE

This subpart prescribes rules of practice and procedure followed by the Board with respect to adjudications as to which a hearing is required by law or is for other reason ordered by the Board. Among such adjudications are those relating to: 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); termination of a bank's membership in the System pursuant to section 9 of the Federal Reserve Act (12 U.S.C. 327); issuance of a cease-and-desist order under section 11 of the Clayton Act (15 U.S.C. 21); 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); applications pursuant to sections 3 and 4 of the Bank Holding Company Act of 1956 (12 U.S.C. 1842, 1843) as to which a hearing is required by the Act, or for other reason is ordered by the Board; and such proceedings as may be ordered by the Board with respect to bank merger applications under section 18 (c) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)).

SECTION 263.2—DEFINITIONS

As used in this Part—

(a) The term "Secretary" means the Secretary of the Board;

(b) The term "presiding officer" means the Board, one or more members thereof, or a duly designated hearing examiner or other duly designated hearing officer, and as used in this Part the term shall be construed to refer to whichever of these shall preside at a hearing hereunder, except as otherwise specified in the text;

* 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 Formal Hearings.

(c) The term "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; but a person or agency may be admitted for a limited purpose.

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 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) **Summary suspension.** Contemptuous conduct at any hearing to which these Rules are applicable, by any person, shall be ground for exclusion from any such hearing and for such further period as the Board may prescribe.

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 a 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

(a) **Designation of presiding officer.** When evidence is to be taken in a hearing, either the Board or, when duly designated for that purpose, one or more of its members, a hearing examiner, or other lawfully appointed hearing officer may preside at the hearing. All such hearings, unless otherwise provided in the notice of hearing, shall be conducted as hereinafter provided. Except as authorized by law, the presiding officer shall not consult any person or party on any fact in issue

unless upon notice and opportunity for all parties to participate, nor shall he 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 prosecutive functions. A designated presiding officer may at any time withdraw if he deems himself disqualified; and, upon filing of a timely and sufficient affidavit of personal bias or disqualification of such presiding officer, the Board will determine 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.

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.** In making service of a subpoena, a copy thereof shall be exhibited to and left with the person named therein. If service

is made by a United States marshal or his deputy, such service shall be evidenced by his return thereon. If made by any other person, such person shall make affidavit thereto, describing the manner in which service was made, and return such 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.** The attendance of witnesses and the production of documents pursuant to a subpoena, issued in connection with a hearing provided for in subparts B and C of this Part, may be required from any place in any State or in any territory at any designated place where the hearing is being conducted. Witnesses subpoenaed in any proceeding under this Part shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States, except that 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.** Each witness testifying upon oral deposition shall be duly sworn, and Board counsel and any adverse party shall have the right to cross-examine. Objections to questions or documents shall be in short form, stating the grounds of objection relied upon; but the person recording the deposition shall not have power to rule upon questions of competency or materiality or relevancy of evidence. 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 that time. The questions propounded and the answers thereto, together with all objections made (but not including argument or debate), shall be recorded by the officer before whom the deposition is to be taken, or under his direction. The deposition shall be subscribed by the witness, unless the parties by stipulation waive the signing or the witness is ill, cannot be found, or refuses to sign, and certified as a true and complete transcript thereof by the person recording the testimony. If the deposition is not subscribed to by the witness, the person recording the testimony shall state on the record this fact and the reason therefor. The officer before whom the deposition is taken shall promptly send the original and two copies of such deposition, together with the

original and two copies of all exhibits, by registered mail to the Secretary unless otherwise directed in the order authorizing the taking of the deposition or in the notice of the issuance thereof. Interested parties shall make their own arrangements with the person recording the testimony for copies of the testimony and the 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 advis-

able. 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 APPLICABLE TO PROCEEDINGS RELATING TO CEASE-AND-DESIST ORDERS

SECTION 263.22—SCOPE

The rules and procedures set forth in this subpart are applicable to proceedings by the Board with a view to ordering a State member bank (other than a District bank) to cease and desist from practices and violations described in section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) and enumerated in § 263.23. The procedures for issuing such orders prescribed in section 8 of said Act will be followed and hearings required thereunder will be conducted in accordance with the rules and procedures set forth in this subpart and Subpart A of this Part. In connection with any proceeding under this subpart, the Board will provide the appropriate State supervisory authority with timely notice of intent

to institute such a proceeding and the grounds therefor. Unless within such time as the Board deems appropriate in the circumstances of the case (which time will be specified in the notice) satisfactory corrective action is effectuated by action of the State supervisory authority, the Board will proceed as provided herein. Copies of any notice or order served upon any State bank in connection with such proceedings will also be sent to the appropriate State supervisory authority.

SECTION 263.23—GROUNDS FOR CEASE-AND-DESIST ORDERS

If, in the opinion of the Board, any State member bank (other than a District bank) is engaging or has engaged, or the Board has reasonable cause to believe that the bank is about to engage, in an unsafe or unsound practice in conducting the business of such bank, or is violating or has violated, or the Board has reasonable cause to believe that the bank is about to violate, a law, rule, or regulation, or any condition imposed in writing by the Board in connection with the granting of an application or other request by the bank, or any written agreement entered into with the Board, the Board may issue and serve upon the bank a notice of charges in respect thereof.

SECTION 263.24—NOTICE OF CHARGES AND HEARING

The notice referred to in § 263.23 will contain a statement of the facts constituting the alleged violation or violations or the unsafe or unsound practice or practices, and fix a time and place at which a hearing will be held to determine whether an order to cease and desist therefrom should issue against the bank. The hearing will be fixed for a date not earlier than 30 days nor later than 60 days after service of such notice unless an earlier or a later date is set by the Board at the request of the bank, and shall be held in the Federal judicial district or in the territory in which the home office of the bank is located, unless the bank consents to another place. Unless the bank appears at the hearing by a duly authorized representative, it will be deemed to have consented to the issuance of the cease-and-desist order.

SECTION 263.25—ISSUANCE OF ORDER

In the event of such consent, or if upon the record made at any such hearing, the Board finds that any violation or unsafe or unsound practice specified in the notice of charges has been established, the Board may issue and serve upon the bank an order to cease and desist from any such violation or practice. Such order may, by provisions which may be mandatory or otherwise, require the bank and its directors, officers, employees, and agents to cease and desist from the same and, further, to take affirmative action to correct the conditions resulting from any such violation or practice.

SECTION 263.26—EFFECTIVE DATE

A cease-and-desist order will become effective at the expiration of 30 days after the service of such order upon the bank concerned (except in the case of a cease-and-desist order issued upon consent, which will become effective at the time specified therein), and will remain effective and enforceable as provided therein, except to such extent as it is stayed, modified, terminated, or set aside by action of the Board or a reviewing court.

SECTION 263.27—TEMPORARY CEASE- AND-DESIST ORDERS

Whenever the Board determines that the violation or threatened violation or the unsafe or unsound practice or practices, specified in the notice of charges referred to in § 263.23 or the continuation thereof, is likely to cause insolvency or substantial dissipation of assets or of earnings of the bank, or is likely to otherwise seriously prejudice the interests of its depositors, the Board may issue a temporary order requiring the bank to cease and desist from any such violation or practice.

SECTION 263.28—EFFECTIVE DATE OF TEMPORARY ORDER

Such order will become effective upon service upon the bank, and, unless set aside, limited, or suspended by a court in proceedings authorized under section 8(h)(2) of the Federal Deposit In-

insurance Act, will remain effective and enforceable pending the completion of the administrative proceedings held pursuant to such notice and until such time as the Board dismisses the charges specified in such notice, or if a cease-and-desist order is issued against the bank pursuant to § 263.25, until the effective date of any such order.

**SUBPART C—RULES AND PROCEDURES
APPLICABLE TO PROCEEDINGS
RELATING TO REMOVAL AND
SUSPENSION ORDERS**

SECTION 263.29—SCOPE

The rules and procedures set forth in this subpart are applicable to proceedings by the Board to remove or suspend a director, officer, or any other person participating in the conduct of the affairs of a State member bank (other than a District bank) or of a national banking association or a District bank where the facts are certified to the Board pursuant to 12 U.S.C. 1818(e)(2), 12 U.S.C. 1818(e)(4), or 12 U.S.C. 1818(e)(6), and/or prohibit such director, officer, or other person from further participation in the conduct of the affairs of such a bank, upon the grounds set forth in section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) and enumerated in this subpart. The procedures for issuing such orders prescribed in section 8 of said Act will be followed and hearings required thereunder will be conducted in accordance with the rules and procedures set forth in this subpart and Subpart A of this Part. In connection with any proceeding under this subpart relating to a director, officer, or other person participating in the affairs of a State member bank (other than a District bank), the Board will provide the appropriate State supervisory authority with timely notice of intent to institute such a proceeding and the grounds therefor. Unless within such time as the Board deems appropriate in the circumstances of the case (which time will be specified in the notice) satisfactory corrective action is effectuated by action of the State supervisory authority, the Board will proceed as provided herein. Copies of any notice or order served upon any State bank in connection with such proceed-

ings will also be sent to the appropriate State supervisory authority. In connection with any proceeding under this subpart relating to a director, officer, or other person participating in the affairs of a national banking association or a District bank where the facts are certified to the Board pursuant to 12 U.S.C. 1818(e)(2), 12 U.S.C. 1818(e)(4), or 12 U.S.C. 1818(e)(6), the Comptroller of the Currency shall be entitled to sit as a member of the Board and to participate in its deliberations on any such case and to vote thereon in all respects as a member of the Board.

**SECTION 263.30—GROUNDS FOR
REMOVAL ORDER**

(a) Whenever, in the opinion of the Board, any director or officer of a State member bank (other than a District bank) or of a national banking association or a District bank where the facts are certified to the Board pursuant to 12 U.S.C. 1818(e)(2) has committed any violation of law, rule or regulation, or of a cease-and-desist order which has become final, or has engaged or participated in any unsafe or unsound practice in connection with the bank, or has committed or engaged in any act, omission, or practice which constitutes a breach of his fiduciary duty as such director or officer, and the Board determines that the bank has suffered or will probably suffer substantial financial loss or other damage or that the interests of its depositors could be seriously prejudiced by reason of such violation or practice or breach of fiduciary duty, and that such violation or practice or breach of fiduciary duty is one involving personal dishonesty on the part of such director or officer, the Board may serve upon such director or officer a written notice of its intention to remove him from office.

(b) Whenever, in the opinion of the Board, any director or officer of a State member bank (other than a District bank) or of a national banking association or a District bank where the facts are certified to the Board pursuant to 12 U.S.C. 1818(c)(4), by conduct or practice with respect to another insured bank or other business institution which resulted in substantial financial loss or other damage, has evidenced his personal dishonesty and unfitness to continue as a director or officer, and whenever, in the opinion of the

Board, any other person participating in the conduct of the affairs of such bank, by conduct or practice with respect to such bank or other insured bank or other business institution which resulted in substantial financial loss or other damage, has evidenced his personal dishonesty and unfitness to participate in the conduct of the affairs of such bank, the Board may serve upon such director, officer, or other person a written notice of its intention to remove him from office and/or to prohibit his further participation in any manner in the conduct of the affairs of the bank.

SECTION 263.31—GROUNDS FOR SUSPENSION ORDER

In respect to any director or officer of a State member bank (other than a District bank) or any other person referred to in § 263.30 (a) or (b) and in respect to any such director or officer of, or other person participating in the conduct of the affairs of, a national banking association or a District bank where the facts are certified to the Board pursuant to 12 U.S.C. 1818(e)(6), the Board may, if it deems it necessary for the protection of the bank or the interests of its depositors, by written notice to such effect served upon such director, officer, or other person, suspend him from office and/or prohibit him from further participation in any manner in the conduct of the affairs of the bank.

SECTION 263.32—EFFECTIVE DATE OF SUSPENSION ORDER

Any suspension and/or prohibition which is subject to the notice prescribed in § 263.31 shall become effective upon service of such notice and, unless stayed by a court in proceedings authorized by section 8(f) of the Federal Deposit Insurance Act, shall remain in effect pending the completion of the administrative proceedings held pursuant to the notice served under § 263.30 (a) or (b) and until such time as the Board shall dismiss the charges specified in such notice, or, if an order of removal and/or prohibition is issued against the director or officer or other person, until the effective date of any such order. Copies of any such notice will also be served upon the bank of which he is a director or officer or in the conduct of whose affairs he has participated.

SECTION 263.33—NOTICE OF INTENTION TO REMOVE AND HEARING

A notice of intention to remove a director, officer, or other person from office and/or to prohibit his participation in the conduct of the affairs of an insured bank will contain a statement of the facts constituting grounds therefor and will fix a time and place at which a hearing will be held thereon. Such hearing will be fixed for a date not earlier than 30 days nor later than 60 days after the date of service of such notice, unless an earlier or a later date is set by the Board at the request of (a) such director or officer or other person, and for good cause shown, or (b) the Attorney General of the United States. Such hearing shall be held in the Federal judicial district or in the territory in which the home office of the bank involved is located, unless the person afforded the hearing consents to another place. Unless such director, officer, or other person appears at the hearing in person or by a duly authorized representative, he shall be deemed to have consented to the issuance of an order of such removal and/or prohibition.

SECTION 263.34—ISSUANCE OF REMOVAL ORDER AND EFFECTIVE DATE

In the event of such consent, or if upon the record made at any such hearing the Board finds that any of the grounds specified in such notice has been established, the Board may issue such orders of suspension or removal from office, and/or prohibition from participation in the conduct of the affairs of the bank, as it may deem appropriate. Any such order shall become effective at the expiration of 30 days after service upon such bank and the director, officer, or other person concerned (except in the case of an order issued upon consent, which shall become effective at the time specified therein). Such order shall remain effective and enforceable except to such extent as it is stayed, modified, terminated, or set aside by action of the Board or a reviewing court.

SECTION 263.35—SUSPENSION AND REMOVAL WHERE FELONY CHARGED

(a) Whenever any director or officer of an insured State member bank (other than a District

bank), or other person participating in the conduct of the affairs of such bank, is charged in any information, indictment, or complaint authorized by a United States attorney, with a commission of or participation in a felony involving dishonesty or breach of trust, the Board may, by written notice served upon such director, officer, or other person, suspend him from office and/or prohibit him from further participation in any manner in the conduct of the affairs of the bank. A copy of such notice will also be served upon the bank. Such suspension and/or prohibition shall remain in effect until such information, indictment, or complaint is finally disposed of or until such suspension and/or prohibition is terminated by the Board..

(b) In the event that a judgment of conviction with respect to such offense is entered against

such director, officer, or other person, at such time as such judgment is not subject to further appellate review, the Board may issue and serve upon such director, officer, or other person an order removing him from office and/or prohibiting him from further participation in any manner in the conduct of the affairs of the bank except with the consent of the Board. A copy of such order will also be served upon such bank, whereupon such director or officer shall cease to be a director or officer of such bank. A finding of not guilty or other disposition of the charge will not preclude the Board from thereafter instituting proceedings to remove such director, officer, or other person from office and/or to prohibit further participation in bank affairs, pursuant to other provisions of this subpart.