

**FEDERAL RESERVE BANK OF MINNEAPOLIS
PROCEDURES FOR APPEALING MATERIAL SUPERVISORY DETERMINATIONS**

Scope

These procedures apply to all appeals of “material supervisory determinations” by staff of the Division of Supervision, Regulation and Credit at the Federal Reserve Bank of Minneapolis.

Matters subject to appeal can arise from any:

- examination of a state bank that is a member of the Federal Reserve System (FRS),
- examination of an agency or branch of a foreign bank,
- examination of an Edge Corporation,
- examination of a third party EDP servicer, and
- inspection of a bank holding company, including a financial holding company, or nonbank subsidiary of a bank holding company.

These procedures are intended to supplement the Guidelines for Appeals of Material Supervisory Determinations adopted by the Board of Governors of the FRS on March 24, 1995 (the “FRS Appeals Procedures”).

Definitions

- (1) Appeal Panel: The panel appointed by the Appropriate Reserve Bank Official or his/her designee to hear the initial appeal of a material supervisory determination.
- (2) Appellant: The institution filing an appeal of a material supervisory determination.
- (3) Appropriate Reserve Bank Official: The Appropriate Reserve Bank Official is the Senior Vice President with responsibility for the Division of Supervision, Regulation and Credit.
- (4) Informationally Complete Appeal: An appeal must clearly indicate the determination being appealed and the basis for the appeal, and must provide all facts and information related to

the determination that the Appellant wishes the Appeal Panel to consider. An appeal will be considered informationally complete on the date the Appellant has submitted sufficient information upon which to base a review of the material supervisory determination. If an Appellant seeks to present oral testimony to the Appeal Panel, an appeal will be considered informationally complete the business day after all oral testimony has been heard or any additional written material submitted by the Appellant after presentation of oral testimony has been received by the Appeal Panel.

- (5) Initial Appeal: The first appeal of a material supervisory determination. The Initial Appeal is reviewed by the Appeal Panel.
- (6) Material Supervisory Determination: Material supervisory determination is defined in the FRS Appeals Procedures to include, but not be limited to, "material determinations relating to examination or inspection composite ratings, the adequacy of loan loss reserve and significant loan classifications." Additional items may be considered material supervisory determinations, if in the opinion of the Appeal Panel or, in the case of a second appeal, the Reserve Bank President, the determination would have a significant effect on the composite rating assigned to the Appellant or the supervisory response to the Appellant. No determination will be ripe for appeal until it has been communicated to the Appellant in writing by the Reserve Bank or the Board of Governors. The term material supervisory determination does not include any supervisory determination for which an independent right of appeal exists as defined in the FRS Appeals Procedures. A determination that an action is not appealable under these guidelines may be appealed to the Reserve Bank President or Board of Governors in the same manner as any other adverse action. As provided in the FRS Appeals Procedures, a material supervisory determination remains

effective while under appeal and until such time as it is modified or overturned through the appeals process.

- (7) Person Making a Material Supervisory Determination: In the case of any appeal, the Appropriate Reserve Bank Official will determine the person(s) who made the material supervisory determination under appeal based on documentation available in the Division of Supervision, Regulation and Credit.
- (8) Subsequent Appeals: Any appeal of the findings of a prior appeal. Subsequent Appeals are reviewed by the Reserve Bank President or the Governor with oversight responsibility for the area making the material supervisory determination being appealed.

Procedures for Filing An Appeal

- (1) An appeal must be filed in writing with the Secretary of the Reserve Bank or the Appropriate Reserve Bank Official within 30 calendar days of the Appellant's receipt of the written material supervisory determination. An appeal will not be deemed received by the Reserve Bank unless it includes a certified copy of the minutes of the meeting at which the Appellant's board of directors approved filing the appeal. If the Appellant wishes to present oral testimony, a request to do so should be contained in the appeal. Appeals sent to the Secretary of the Reserve Bank will be forwarded to the Appropriate Reserve Bank Official on the date of receipt. The Appropriate Reserve Bank Official shall forward a copy of the appeal to the appropriate division director of the staff of the Board of Governors by the business day after receipt of the appeal.
- (2) An Appellant will be deemed to have received a written material supervisory determination on the date of delivery indicated on the certified mail receipt retained in the Reserve Bank's file. In the absence of a certified mail receipt, an Appellant will be deemed to have

received the material supervisory determination on the date it date stamps the document, if the Appellant routinely date-stamps incoming correspondence, or three business days after the date of mailing if the Appellant does not routinely date-stamp correspondence. An Appellant may, if appropriate, present evidence demonstrating receipt of the written determination at a later date.

- (3) The written appeal must contain all the facts and information the Appellant wishes to have considered in deciding the appeal and should not include information not available to the Reserve Bank at the time the material supervisory determination being appealed was made unless the Appellant offered to provide such information at the time of the determination.
- (4) An Appellant may request an extension of time for filing an appeal by sending a letter detailing the reason(s) for the request to the Appropriate Reserve Bank Official within the 30 day period for filing appeals. The request shall indicate why a complete appeal cannot be filed within 30 calendar days from receipt of the material supervisory determination and shall indicate the date by which the Appellant will file the appeal. The Appropriate Reserve Bank Official may occasionally grant requests for extensions as circumstances warrant.

Procedures for Reviewing Appeals

- (1) Within approximately seven calendar days of receipt of the appeal, in addition to determining the person(s) who made the material supervisory determination under appeal, the Appropriate Reserve Bank Official, or his/her designee, will select a panel to review the appeal, the Appeal Panel. The Appeal Panel will consist of individuals who were not involved in making the material supervisory determination, who do not directly or

indirectly report to the individual(s) making the material supervisory determination, and who are qualified to decide the appeal.

- (a) The Appeal Panel shall consist of individuals who are FRS officers or senior staff. The size of the Appeal Panel shall be determined by the Appropriate Reserve Bank Official in light of the nature of the appeal, availability of independent qualified officers and staff, and other factors deemed relevant by the Appropriate Reserve Bank Official. The panel members shall have experience relevant to the matter being appealed.
 - (b) The Appropriate Reserve Bank Official shall appoint a Chair of the Appeal Panel when designating the panel membership. The Chair shall ensure that a letter acknowledging receipt of the appeal is sent to the Appellant generally within one (1) to two (2) business days of appointment. The letter will acknowledge receipt of the appeal and inform the Appellant when a determination as to completeness will be made. In addition, the Chair will provide the Appellant a copy of these procedures and the FRS Appeals Procedures, if appropriate.
 - (c) The Chair will notify the person(s) who made the material supervisory determination under appeal of receipt of the appeal and provide that person a copy of the appeal. The person who made the determination will be given several days to gather documentation related to the material supervisory determination under appeal and to provide additional written clarification of the matter under appeal.
- (2) Within two (2) business days of appointment, the Appeal Panel will review the appeal to determine if it is informationally complete, is clear as to the matter being appealed and the basis for the appeal, and concerns a material supervisory determination.

- (a) If the Appeal Panel determines that minor deficiencies in information or clarity exist in the appeal, it will contact the Appellant by letter and request that specific additional documentation be forwarded to the Chair within seven (7) business days. Information received by the Chair within the required time frame shall be reviewed for completeness within (5) business days of receipt. If the information is not received within this timeframe, the Appeal Panel will return the appeal to the Appellant together with a letter notifying the Appellant of the deficiencies and stating that the appeal may be refiled within 30 calendar days.
- (b) If the Appeal Panel determines that the appeal is substantially deficient in terms of clarity or information or does not concern a material supervisory determination, the Appeal Panel will return the appeal to the Appellant together with a letter outlining the deficiencies and stating that the appeal may be refiled within 30 calendar days.
- (c) If the Appellant has asked to provide oral testimony to the Appeal Panel, the appeal will not be deemed informationally complete until the business day after all oral testimony has been heard or additional written information is received from the Appellant, if such information is requested by the Appeal Panel, whichever is later.
- (d) When the Appeal Panel determines that the appeal is complete, it will notify the Appellant that a complete appeal was received. An appeal will be deemed received:
 - (i) as of the date of receipt of the appeal if no additional information is requested and oral testimony is not heard; (ii) as of the date of receipt of the additional information if additional information was requested; or (iii) as of the business day after the hearing of testimony or submission of additional written information permitted by the Appeal Panel if oral testimony was heard.

- (3) Upon determining that an appeal is complete, the Appeal Panel will notify the appropriate division director or staff of the Board of Governors of the date of receipt of a complete appeal and the date a final written decision is due. The Appeal Panel will request that staff of the Board of Governors provide their views, if any, on the matter under appeal and provide a date by which such information must be received.
- (4) If the appeal involves a joint examination with another state or federal regulatory agency, the Appeal Panel will provide a copy of the complete appeal to that agency upon determination that the appeal is complete. The Appeal Panel will indicate the date of receipt of a complete appeal and the date a final decision is required. The other agency will generally be provided an opportunity to comment on the appeal in advance of a final decision.
- (5) The Appeal Panel will then determine such administrative items as its standard for review. Generally, the standard of review will focus on whether the Reserve Bank's findings and conclusions are based on sufficient evidence and are consistent with FRS policy. In most cases, a de novo review will not be undertaken.
- (6)
 - (a) Within twenty (20) business days of receiving an appeal, or such other time period as mutually agreed to by the Appellant and the Appeal Panel, the Appeal Panel shall hear oral testimony from the Appellant if the Appellant desires to present such testimony. The Appeal Panel may structure oral testimony as it sees fit, including limiting the Appellant to prepared remarks or allowing the Appeal Panel to ask questions. Additional witnesses may be allowed to present testimony in the sole discretion of the Appeal Panel.
 - (b) The Appeal Panel shall notify the Appellant of the format for providing oral testimony and the date such testimony will be heard no less than five (5) business

days prior to taking testimony. Oral testimony will be heard at the Reserve Bank or such other location as mutually agreed by the Appeal Panel and the Appellant.

(c) The Appeal Panel shall record any oral testimony by the Appellant for review in further appeals. The method of recording testimony shall be determined by the Appeal Panel.

(d) The Appeal Panel may, in its discretion, allow the Appellant to submit additional written materials after hearing testimony. The format and timing of such materials shall be established by the Appeal Panel. If such material is allowed, the appeal will be considered informationally complete on the date the Appeal Panel receives the written material from the Appellant.

(7) Notwithstanding any of the above, the Appeal Panel may, in its sole discretion, solicit the views of the Appellant, any Reserve Bank staff involved in the determination under appeal, Board staff, and where appropriate, the staff of other supervisory agencies or other parties, as it deems necessary to decide the matter under appeal.

(8) Nothing in these procedures shall be construed to create a right of discovery in favor of Appellant with respect to Reserve Bank or FRS documents regarding the material supervisory determination under appeal.

Findings

(1) The Appeal Panel will issue written findings within 30 calendar days of receiving the complete appeal unless the Appellant and the Appeal Panel jointly agree to extend the time for decision.

(2) In reaching a decision, the Appeal Panel will utilize the standard for review determined at the outset of this appeal matter and will consider only that information that was available to

the individual making the material supervisory determination under appeal at the time the determination was made or information which the Appellant offered to provide at the time of the determination but which the individual making the determination declined to review. Subsequent information, such as information regarding payments on a classified loan after the date of the examination or a legal opinion sought and obtained after receipt of the material supervisory determination, will not be considered in deciding the appeal unless the person making the determination should have been aware of the information at the time the determination was made.

- (3) The written decision will include a memorandum outlining the basis for the Appeal Panel's conclusions, including appropriate citations to legal authority or FRS policies and to documentation provided by the Appellant or the Reserve Bank.
- (4) The written decision will be sent to the Appellant by certified mail and a copy will be provided to the person making the material supervisory determination. A complete record of the appeal will be prepared by the Appeal Panel Chair and will be retained in a file separate from the general files maintained on the Appellant.
- (5) If the Appeal Panel reverses the material supervisory determination under appeal, the Division of Supervision, Regulation and Credit shall update all files, both hard copy and electronic, containing the original determination to reflect the results of the appeal. Complete records of the original material supervisory determination and the appeal shall be maintained.

Subsequent Appeal to Reserve Bank President

- (1) An Appellant may appeal an adverse determination by the Appeal Panel to the President of the Reserve Bank within 30 calendar days of the Appellant's receipt of the adverse decision and shall include a certified copy of the minutes of the board of directors' meeting at which the subsequent appeal was authorized. The appeal may be filed with the Secretary of the Reserve Bank or the Appropriate Reserve Bank Official and must include all facts and information the Appellant wishes the President to consider. Appeals sent to the Secretary of the Reserve Bank will be forwarded to the Appropriate Reserve Bank Official on the date of receipt. The Appropriate Reserve Bank Official shall forward a copy of the appeal to the President of the Reserve Bank and to the appropriate division director of the staff of the Board of Governors by the business day after receipt of the appeal.
- (2) An Appellant will be deemed to have received a written decision of the Appeal Panel on the date of delivery indicated on a certified mail receipt received by the Reserve Bank for the written determination.
- (3) The President, or his designee, shall review the appeal to determine whether it is informationally complete and clear as to the matter being appealed and shall notify the Appellant of any deficiencies consistent with the procedures followed for initial appeals.
- (4) The President, or his designee, shall obtain the record of the initial appeal from the Appeal Panel Chair.
- (5) The President, or his designee, shall provide the person who made the initial determination a copy of the subsequent appeal. If the appeal raises issues not addressed in the initial appeal, the person who made the material supervisory determination under appeal shall notify the President who shall provide a reasonable period of time for the person who made the material supervisory determination to provide a written response to the new material.

- (6) The President may rely upon all resources within the Reserve Bank in the review of the appeal and underlying material supervisory determination. Specific standards for review are not set, but rather the President may base his decision on whatever facts and information the President deems relevant under the circumstances.
- (7) The President shall issue a written determination of the appeal which shall be provided to the Appellant and the person who made the original material supervisory determination within 30 calendar days from receipt of the complete appeal. The determination will be provided to the Appellant by certified mail and the complete record of the President's review shall be retained in the appeal file.

Subsequent Appeal to the Board of Governors

An Appellant receiving an unfavorable decision from the Reserve Bank President may file a written appeal with the Secretary of the Board of Governors within 30 days of receipt of the written determination. Procedures for reviewing such appeals shall be established by the Board of Governors.

Protection of Appellant from Retaliation

Appellants will be protected from retaliation in a manner to be determined by the Appropriate Reserve Bank Official and considering the specific circumstances in each instance. Retaliation is not permitted and allegations of retaliation will be investigated. Any Reserve Bank employee found to retaliate against an institution for filing an appeal shall be subject to the Reserve Bank's disciplinary policies. Institutions who believe they have suffered retaliation as the result of an appeal may contact the Appropriate Reserve Bank Official or the Board of Governors Ombudsman. Board of Governors policy states that its Ombudsman will periodically contact institutions after their appeals have been decided in order to make certain that no retaliation has occurred.