



## FEDERAL RESERVE BANK OF MINNEAPOLIS

### PROCEDURES FOR APPEALING MATERIAL SUPERVISORY DETERMINATIONS

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#### Scope

These procedures apply to all appeals of Material Supervisory Determinations made by staff of the Division of Supervision, Regulation, and Credit (SRC) at the Federal Reserve Bank of Minneapolis (Reserve Bank). 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 electronic data processing servicer, and
- Inspection of a bank holding company, including a financial holding company, a savings and loan holding company, or a nonbank subsidiary of a bank holding company.

These procedures are issued pursuant to the Guidelines for Appeals of Material Supervisory Determinations adopted by the Board of Governors of the FRS on March 24, 1995.

#### Definitions

1. Appeal Panel: The person(s) appointed to hear the Initial Appeal.
2. Appellant: The institution filing an appeal.
3. Appropriate Reserve Bank Official: The Officer in Charge of Supervision for the Federal Reserve Bank of Minneapolis.
4. Informationally Complete Appeal: An appeal must clearly indicate the determination being appealed and the basis for the appeal, and it 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, as further described in these procedures. 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: A Material Supervisory Determination includes, but is not limited to, material determinations relating to: examination or inspection composite ratings, the

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adequacy of the loan loss reserve, or 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, or a determination to appoint a conservator or receiver.

7. **Person Making a Material Supervisory Determination:** The person(s) who made the Material Supervisory Determination under appeal, as determined by the Officer in Charge of Supervision based on documentation available in the Division of Supervision, Regulation, and Credit.
8. **Second Appeal:** An appeal of the findings of the Appeal Panel. The Second Appeal is conducted by the Reserve Bank President.
9. **Third Appeal:** An appeal of the decision of the Reserve Bank President. The Third Appeal is conducted by the Governor with oversight responsibility for the area making the Material Supervisory Determination being appealed.

### **Procedures for Filing an Appeal**

1. An Initial Appeal must be filed in writing with the Secretary of the Reserve Bank or the Officer in Charge of Supervision within 30 calendar days of the Appellant's receipt of the written Material Supervisory Determination. 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 Officer in Charge of Supervision on the date of receipt. The Officer in Charge of Supervision will 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 is deemed to have received a written Material Supervisory Determination on the date of delivery as indicated by the Reserve Bank's files. An Appellant may, if appropriate, present evidence demonstrating receipt of the written determination at a later date.
3. The 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. The appeal must include a certified copy of the minutes of the meeting at which the Appellant's board of directors approved filing the appeal.
5. An Appellant may request an extension of time for filing an appeal by sending a written request to the Officer in Charge of Supervision within the 30-day period for filing appeals. The request must indicate why a complete appeal cannot be filed within the 30 days and must indicate the date by which the Appellant will file the appeal. The Officer in Charge of Supervision may grant an extension in his/her sole discretion as circumstances warrant.

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**Procedures for Reviewing Appeals**

1. Within approximately ten calendar days of receipt of the appeal, the Officer in Charge of Supervision will determine the person(s) who made the Material Supervisory Determination under appeal and will select the Appeal Panel.
  - a. The Appeal Panel will consist of individuals who are FRS officers or senior staff and who: were not involved in making the Material Supervisory Determination, do not directly or indirectly report to the individual(s) who made the Material Supervisory Determination, and are qualified to review the Material Supervisory Determination.
  - b. The size of the Appeal Panel will be determined by the Officer in Charge of Supervision in light of the nature of the appeal, availability of independent qualified officers and staff, and other factors deemed relevant by the Officer in Charge of Supervision.
  - c. The Officer in Charge of Supervision will appoint a Chair of the Appeal Panel when designating the panel membership. The Chair will promptly notify the Appellant of the Reserve Bank's receipt of the appeal, appointment of the Appeal Panel, and the date by which a determination as to completeness will be made. In addition, the Chair will provide the Appellant a copy of these procedures.
  - d. The Chair will notify the person(s) who made the Material Supervisory Determination of the appeal and provide the person(s) a copy of the appeal. The Chair will provide an appropriate amount of time for the person(s) who made the determination to gather documentation related to the Material Supervisory Determination under appeal and to provide additional written clarification of the matter under appeal.
2. Within three business days of appointment, the Appeal Panel will review the appeal to determine if the required information was fully provided, if the appeal is clear as to both the matter being appealed and the basis for appeal, and if it concerns a Material Supervisory Determination.
  - a. If the Appeal Panel determines that all required information was provided and that the appeal is clear and concerns a Material Supervisory Determination, it will be considered an Informationally Complete Appeal as of the date the Reserve Bank received it (unless the Appellant has requested to appear before the Appeal Panel). The Chair will promptly notify the Appellant of acceptance of the appeal and, if applicable, that it is informationally complete.
  - b. If the Appeal Panel determines that minor deficiencies in information or clarity exist in the appeal, it will so notify the Appellant and request that specific additional documentation be provided to the Chair within seven business days. Information received by the Chair within the required time frame will be reviewed for completeness within five business days of receipt. If the additional information is sufficient, the Appeal Panel will consider the appeal informationally complete as of the date the additional information was provided (unless the Appellant has requested to appear before the Appeal Panel). If the information is insufficient or is not received within this time frame, the Appeal Panel will return the appeal to the Appellant with written notification of the deficiencies and notice that the appeal may be refiled within 30 calendar days.
  - c. If the Appeal Panel determines that the appeal is substantially deficient in clarity or information or that it does not concern a Material Supervisory Determination, the Appeal Panel will return the

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- appeal to the Appellant with written notification of the deficiencies and notice that the appeal may be refiled within 30 calendar days.
- d. A determination that an action is not appealable may be appealed to the Reserve Bank President or Board of Governors in the same manner as any other adverse action. As provided in these 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.
  - e. 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.
3. Upon determining that an appeal is informationally complete, the Appeal Panel will notify the appropriate division director or staff of the Board of Governors of the date of receipt of an informationally 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 will 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 appeal documents to that agency upon determination that the appeal is informationally complete. The Appeal Panel will indicate the date of receipt of an Informationally 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 standard for review will be whether the Reserve Bank's findings and conclusions were based on sufficient evidence and were consistent with FRS policy. A completely new (*de novo*) review will not be undertaken.
  6. Appearance before the Appeal Panel
    - a. If the Appellant requested to appear before the Appeal Panel, the Appeal Panel will hear oral testimony within 20 business days of receiving all appeal documents, or such other time period as mutually agreed to by the Appellant and the Appeal Panel. The Appeal Panel may structure the Appellant's appearance as it sees fit, including limiting the Appellant to prepared remarks or allowing the Appellant to present and question witnesses. If the Appeal Panel allows witnesses, it or its designee may also question the witnesses.
    - b. The Appeal Panel will notify the Appellant of the date, location, and structure for the Appellant's appearance no less than five business days prior to the appearance. The Appellant will generally be heard at the Reserve Bank, but another location may be used as mutually agreed to by the Appeal Panel and the Appellant.
    - c. The Appeal Panel will record the Appellant's appearance, which recording may be used in any subsequent appeals. The method of recording will be determined by the Appeal Panel in its discretion. The appeal is considered informationally complete on the next business day following the appearance.
    - d. The Appeal Panel will hear and consider evidence only with respect to information that was available to the person(s) making the Material Supervisory Determination under appeal at the time the determination was made or that the Appellant offered to provide at the time of the

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determination but the individual(s) making the determination declined to review. Subsequent information (e.g., information regarding payments made on a classified loan after the date of the examination or a legal opinion sought after receipt of the Material Supervisory Determination) will not be considered in deciding the appeal unless the person(s) making the determination should have been aware of the information at the time the determination was made.

- e. The Appeal Panel may, in its discretion, allow the Appellant to submit additional written materials after the appearance, in such format and within such time as established by the Appeal Panel. If such material is allowed, the appeal is considered informationally complete on the date the Appeal Panel receives the written material from the Appellant or the date it was due, whichever is first.
7. Notwithstanding anything in these procedures, the Appeal Panel may, in its sole discretion, solicit the views of the Appellant, any Reserve Bank staff involved in making the Material Supervisory Determination under appeal, Board of Governors staff, and where appropriate, the staff of other supervisory agencies or other parties, as it deems necessary or desirable to decide the matter under appeal.
8. Nothing in these procedures creates a right of discovery in favor of the Appellant with respect to Reserve Bank or FRS documents regarding the Material Supervisory Determination under appeal.

**Findings**

1. The Appeal Panel will issue its decision within 30 calendar days of the date the appeal was informationally complete unless the Appellant and the Appeal Panel jointly agree to extend the time for decision.
2. In reaching its decision, the Appeal Panel will utilize the standard for review described above, 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.
3. The Appeal Panel's decision will be issued to the Appellant in writing. It will include the Appeal Panel's findings and the basis for the Appeal Panel's conclusions, with appropriate support provided.
4. The decision will be sent to the Appellant by Certified Mail or other reasonable means of ensuring receipt, and a copy will be provided to the person who made 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 Reserve Bank's SRC Division will promptly update all files, both hard copy and electronic, regarding the original determination, to reflect the results of the appeal. Complete records of the original Material Supervisory Determination and the appeal shall be maintained.

**Second Appeal**

1. An Appellant may appeal an adverse determination by the Appeal Panel to the President of the Reserve Bank. The Appellant must do so within 30 calendar days of receipt of the adverse decision and must include a certified copy of the minutes of the Appellant's board of directors meeting at which the Second Appeal was authorized. The appeal may be filed with the Secretary of the Reserve

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Bank or the Officer in Charge of Supervision 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 Officer in Charge of Supervision on the date of receipt. The Officer in Charge of Supervision will forward 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. The President, or his/her designee, will review the Second Appeal to determine if the required information was fully provided and if the appeal is clear as to both the matter being appealed and the basis for appeal. The President will promptly notify the Appellant either of acceptance of the Second Appeal or of any deficiencies in the Second Appeal, consistent with the procedures followed for Initial Appeals.
3. The President will obtain the record of the Initial Appeal from the Appeal Panel Chair.
4. The President will provide the person(s) who made the Material Supervisory Determination a copy of the Second Appeal. If the Second Appeal raises issues not addressed in the Initial Appeal, the person(s) who made the Material Supervisory Determination will notify the President, who will provide a reasonable period of time for the person(s) who made the Material Supervisory Determination to respond to the new material.
5. The President may rely upon all resources within the Reserve Bank in the review of the appeal. There is no specific standard of review; rather, the President may base his/her decision on whatever facts and information the President deems relevant under the circumstances.
6. The President will issue a decision within 30 calendar days of acceptance of the Second Appeal. The decision will be issued to the Appellant in writing. The President will also provide a copy to the person(s) who made the original Material Supervisory Determination. The complete record of the President's review will be retained in the appeal file.

### **Third Appeal**

An Appellant may appeal an adverse determination from the President to the appropriate Governor at the Board of Governors. The Appellant must do so by filing its appeal with the Secretary of the Board of Governors within 30 days of receipt of the President's decision. Procedures for reviewing such appeals are established by the Board of Governors.

### **Protection from Retaliation**

Appellants are protected from retaliation. Retaliation is not permitted, and allegations of retaliation will be investigated. Any Reserve Bank employee found to have retaliated against an institution for filing an appeal will be subject to the Reserve Bank's disciplinary policies. Institutions that believe they have suffered retaliation as the result of an appeal may contact the Officer in Charge of Supervision or the Board of Governors' Ombudsman. Pursuant to Board of Governors' policy, its Ombudsman will periodically contact institutions after their appeals have been decided in order to make certain that no retaliation has occurred.