

Claims: Government Investigations, Enforcement and Triggering Insurance Coverage Under D and O Insurance



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FDIC D&O Insurance and “Claim” Issues



Definition of “Claim” in a D&O Policy

- A D&O policy is triggered when there is a “claim” made during the policy period for a “wrongful act”
- A typical definition of “claim” can be found in most bank D&O policies and one issued by Travelers reads as follows:
 - (a) a written demand against any Insured for monetary damages or non-monetary relief;
 - (b) a civil proceeding against any Insured commenced by the service of a complaint or similar proceeding;
 - (c) a criminal proceeding against any Insured commenced by a return of an indictment or information;
 - (d) an arbitration proceeding against any Insured, or a formal administrative or regulatory proceeding against any Insured Person . . . which shall be deemed commenced by such Insured’s receipt of an arbitration petition, a notice of filed charges, a formal investigative order or a similar legal document. . . .

So, what constitutes a “claim”




- The actual definition is crucial for determining if, and when, insurance is available
- In the FDIC context –
 - informal investigations
 - internal referrals
 - interviews or document requests
 - review periods
 - formal investigation/lawsuit
 - enforcement

“Claim” definition Denials and Cases



- 11th Circuit – Office Depot Case (unreported)
 - no coverage for investigation until subpoenas and Wells Notices issued
 - rejected argument that “proceedings” were the same as “investigation”

- 
- MBIA Case – 2d Circuit
 - Held that Special Litigation Committee, investigative expense and independent consultant costs covered
 - held that a sensible businessperson would equate a subpoena as a “formal or informal investigative order”
 - rejected insurer’s argument that because the documents were produced voluntarily by an oral request and not by subpoena or other formal means that it did not constitute a “claim”

Timing of a “claim”

- notice issues come into play – when is a claim a claim
- interrelated wrongful acts?
- merging and comparing of policy timing, limits and language to determine whether and when a “claim” is covered and under which policy
- nature of the claims made and reported policy

Market Response

- AIG Investigation Edge and other carriers matched the broader coverage grants
 - specifically covers informal investigations
 - can contain sublimits

FDIC Letter on D&O Issues

- The FDIC published advisory letter FIL-47-2013 dated October 10, 2013 confirming the importance of reviewing Directors & Officers Liability Insurance Policies (D&O)
- In the letter, the FDIC advised banks to review the terms and conditions of their policies and to pay special attention to exclusions for regulatory actions and to remind banks that insurance to pay for Civil Money Penalties (CMPs) is not allowed

Regulatory Exclusion



- Regulatory Exclusion: A typical regulatory exclusion contained in a bank policy might read as follows:
- [no coverage] “based upon or attributable to any action or proceeding brought by or on behalf of the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, any other depository insurance organization, the Comptroller of the Currency, the Federal Home Loan Bank Board, or any other national or state regulatory agency.”

Insured v Insured

- The insured v insured exclusion can apply when the FDIC acts as the receiver of a failed institution and then sues former directors because the FDIC “steps into the shoes” of the failed bank
- Georgia Federal case involving Community Bank & Trust said no coverage



- Insurance is not permitted to pay for the imposition of Civil Money Penalties on individuals
- This includes a prohibition even when the individual promises to repay the institution



- Risk and regulated enterprises
- Examination by Federal and State banking agencies
- When a regulator through examination determines that a bank warrants higher levels of scrutiny and oversight it can establish that through a formal and informal enforcement action
- Regulator discretion (Delegations of Authority):
 - State
 - FDIC
 - OCC
 - Informal “progressive” discipline
 - Formal



- Formal

- 1) It can serve as the basis for further administrative penalties, such as civil money penalties, removal of officers and directors

- 2) Types

- a) Prompt corrective action directives
- b) Capital directives
- c) Cease and desist orders
- d) Written agreements



- Disclosure to third parties
 1. Confidential non-public supervisory information
 2. Applications to disclose: Part 309 request
 3. Securities law: disclosure
 4. Disclosure of formal order vs. informal orders
 5. Disclosure of examination report of federal and state examiners

Questions & Answers



Thank You!



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FDIC Relevant Delegations of Authority

<http://www.fdic.gov/regulations/laws/matrix/exhibit1.html>

Delegations of Authority: Applications & Filings

Notices and Filings Delegations of Authority

Subpart A Procedures and Rules and Practices

(1) Application	(2) Type of Action	(3) Reserved to Board	(4) DSC Director & Deputy Director	(5) DSC Associate Director	(6) DSC Reg. Director Dpty Reg Dir Area Director	(7) DSC Assistant Regional Director	(8) DSC - Case Manager, Field Supervisor, and Supervisory Examiner	(9) Delegation Requirements / Footnotes
Agreements with foreign regulators (Bd Reso 071098)	Approve or Deny	No	Yes	Yes	No	No	No	A-3
Determine whether filing "substantially complete" (Bd Reso 071098)	Make determination	No	Yes	Yes	Yes	Yes	Yes	A-4
Agreement pursuant to NHPA of 1966 (Bd Reso 071098)	Enter in agreement	No	Yes	Yes	Yes	Yes	No	
Modification of publication requirements 303.7(f)	Approve or deny	No	Yes	Yes	Yes	Yes	Yes	A-4
303.6	Examine or investigate and evaluate facts related to any filing to the extent necessary or appropriate under the circumstances	No	Yes	Yes	Yes	No	No	
Request for reconsideration 303.11(f)	Deny	No	Yes	Yes	No	No	No	A-1
	Grant	No	Yes	Yes	Yes	No	No	A-1
303.11(g)(2)	Notice of Intent and Final Order to Nullify, withdraw, revoke or suspend a filing decision	Yes	Yes	Yes	Yes	No	No	A-2
303.11(g)(2)	Temporary Order	Yes	Yes	Yes	No	No	No	A-2



*FOOTNOTES APPLICABLE TO ALL OF EXHIBIT I

1. The FDIC Board of Directors retains the authority to act on any filing upon which any member of the Board of Directors wishes to act, even if the authority to act on such filing or enforcement matter has been delegated.
2. Any subdelegation below the Regional Director level must be in writing by the Regional Director.
3. Any FDIC official with delegated authority under this part may elect not to exercise that authority.

FOOTNOTES

A-1

Except for appeals of denied change in bank control, change in senior executive officer or director, or Section 19 applications, which are covered by Subparts D, L, and M, respectively, of Part 308, the levels of authority to reconsider filings for which a Request for Reconsideration has been granted are as follows:

1. Board of Directors, if the Board originally acted on the filing;
2. Supervisor Appeals Review Committee (SARC), if filing was denied by Director, Deputy Director, or Associate Director;
3. Director or Deputy Director, if filing was denied by Regional Director, Deputy Regional Director, or Area Director.

All require consultation with the Legal Division.

The decision at any of these levels is the final agency determination.



A-2

It is reserved to the Board to issue notices of intent and temporary and final orders under 303.11(g) as to any decision on a filing originally acted on by the Board.

If not originally acted on by the Board, notice of intent and final orders are delegated, as indicated, after consultation with the Legal Division.

Issuance of a temporary order in lieu of notice of intent is delegated to the Director, Deputy Director, and Associate Director, after consultation with the Legal Division.

Only the official who acted on the original filing, or an official of equivalent authority, may exercise 303.11(g) delegations.

A-3

Delegated authority to the DSC Director, Deputy Director, and Associate Director to enter into written agreements with foreign regulators is limited to written agreements used to facilitate information sharing arrangements between home and host country supervisors.

A-4

Assistant Regional Directors, Case Managers, Field Supervisors and Supervisory Examiners may determine if an application is substantially complete or modify publication requirements only to the extent they are authorized to act on the application.

**Subpart B
Deposit Insurance Applications**

(1) Application	(2) Type of Action	(3) Reserved to Board	(4) DSC Director & Deputy Director	(5) DSC Associate Director	(6) DSC Reg. Director Dpty Reg Dir Area Director	(7) DSC Assistant Regional Director	(8) DSC - Case Manager, Field Supervisor, and Supervisory Examiner	(9) Delegation Requirements / Footnotes
De Novo	Approve	No	Yes	Yes	Yes	Yes B-1 (1-6) only	No	B-1, B-2
	Approve. CRA protest not resolved and no RO signoff.	No	Yes	Yes	No	No	No	B-1 and WO signoff on unresolved CRA protest.
	Approve. Requirements at B-1 are NOT met.	Yes	No	No	No	No	No	
	Deny	Yes	No	No	No	No	No	
Proposed Interim Depository Inst.	Approve	No	Yes	Yes	Yes	Yes B-1 (1-6) only	No	B-1
Proposed Interim depository Inst.	Deny	Yes	No	No	No	No	No	
Operating Uninsured	Approve	No	Yes	Yes	Yes	No	No	B-1, B-2, B-3
	Approve. Delegation requirements are NOT met.	Yes	No	No	No	No	No	
	Deny	Yes	No	No	No	No	No	
Continuation of FDI upon w/d from FRS	Approve. Applicant has agreed in writing to nonstandard conditions other than 303.2(dd) conditions.	No	Yes	Yes	Yes	Yes	No	
	Approve. Applicant has not agreed in writing to nonstandard conditions.	Yes	No	No	No	No	No	
	Deny	Yes	No	No	No	No	No	
De Novo with 25% or more Foreign Ownership or Otherwise Controlled	Approve. Bank will be part of a PBO.	Yes	No	No	No	No	No	B-1, B-2, B-4
	Approve. Bank will not be part of a PBO or an FBO.	No	Yes	Yes	No	No	No	B-1, B-2, B-4, B-5, B-6
	Approve. Bank will be part of a FBO.	No	Yes	Yes	Yes	No	No	B-1, B-2, B-5, B-6
	Deny	Yes	No	No	No	No	No	




FOOTNOTES

B-1

1. Statutory factors in FDI Act Section 6 have been considered and are favorably resolved.
2. No unresolved Management Interlocks (Part 348).
3. Compliance with NHPA, NEPA, and CRA, and any applicable statements of policy or applicable related regulations, including 12 CFR part 345.
4. No CRA protest, or appropriate signoff (see B-2).
5. Conformity with FDIC Statement of Policy on Applications for Deposit Insurance.



6. Agreement in Writing to the imposition of a condition OTHER THAN:
- Standard Condition at 303.2(dd) (Subpart A)
 - Any of the following 14 Standard Conditions:
 - 1) The applicant will provide a specific amount of initial paid-in capital;
 - 2) The Tier 1 capital to assets leverage ratio (as defined in the appropriate capital regulation and guidance of the institution's primary federal regulator) will be maintained at not less than eight percent throughout the first three years of operation and that an adequate allowance for loan and lease losses will be provided;
 - 3) Any changes in proposed management or proposed ownership to the extent of 10 percent or more of stock, including new acquisitions of or subscriptions to 10 percent or more of stock shall be approved by the FDIC prior to the opening of the depository institution for business;
 - 4) The applicant will adopt an accrual accounting system for maintaining the books of the depository institution;
 - 5) Where applicable, deposit insurance will not become effective until the applicant has been granted a charter as a depository institution, has authority to conduct a depository institution business, and its establishment and operation as a depository institution have been fully approved by the appropriate state and/or federal supervisory authority;
 - 6) Where deposit insurance is granted to an interim institution formed or organized solely to facilitate a related transaction, deposit insurance will only become effective in conjunction with consummation of the related transaction;
 - 7) Where applicable, a registered or proposed bank holding company, or a registered or proposed thrift holding company, has obtained approval of the Board of Governors of the Federal Reserve System or the Office of Thrift Supervision to acquire voting stock control of the proposed depository institution prior to its opening for business;
 - 8) Where applicable, the applicant has submitted any proposed contracts, leases, or agreements relating to construction or rental of permanent quarters to the appropriate regional director for review and comment;

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9. Where applicable, full disclosure has been made to all proposed directors and stockholders of the facts concerning the interest of any insider in any transactions being effected or then contemplated, including the identity of the parties to the transaction and the terms and costs involved. An insider is one who is or is proposed to be a director, officer, or incorporator of an applicant; a shareholder who directly or indirectly controls 10 or more percent of any class of the applicant's outstanding voting stock; or the associates or interests of any such person;
 10. The person(s) selected to serve as the principal operating officer(s) shall be acceptable to the appropriate regional director;
 11. The applicant will have adequate fidelity coverage;
 12. The depository institution will obtain an audit of its financial statements by an independent public accountant annually for at least the first three years after deposit insurance is effective and submit to the appropriate FDIC office (i) a copy of the audited annual financial statements and the independent public auditor's report thereon within 90 days after the end of the depository institution's fiscal year, (ii) a copy of any other reports by the independent auditor (including any management letters) within 15 days after their receipt by the depository institution, and (iii) written notification within 15 days when a change in the depository institution's independent auditor occurs.
 13. The bank shall operate within the parameters of the business plan submitted to the FDIC. During the first three years of operations, the bank shall notify the regional director of the FDIC and its primary Federal regulator, if not the FDIC, of any proposed major deviation or material change from the submitted plan 60 days before consummation of the change.
 14. In cases, primarily involving special purpose de novos, where the applicant's business plan indicates there will only be an intercompany or similar deposit than the following additional standard condition must be imposed: That the insured institution shall acquire prior to the effective date of deposit insurance and continue to maintain the requisite deposits to be "engaged in the business of receiving deposits other than trust funds" as defined in 303.14 of the FDIC Rules and Regulations.



7. FDI filings involving the following are to be acted upon at the Washington office and such filings should not be accepted without prior consultation with the Risk Management and Applications Section.
 - 1) de novo institutions owned by a company that is not a "bank holding company" under the Bank Holding Company Act of 1956 or a "savings and loan holding company" under the Home Owners' Loan Act, and
 - 2) certain special purpose banks and nonbank banks, including non-traditional banks, money desk operations with no teller windows, Internet banks, Bankers' banks, and boutique or niche type banks that focus on particular segments of the market, e.g., sub-prime lending or other limited purpose product lines, select customer bases, etc.
8. The DSC Director, Deputy Director or Associate Director may, on a case-by-case basis, delegate approval authority for filings involving limitations B-1 7 (1) or B-1 7(2) to the DSC Regional Director, Deputy Regional Director or Area Director.
9. FDI filings where the composite rating at an entrance examination is "3" or worse is not subdelegated below the Associate Director (Operating Uninsured only).
10. The DSC Regional Director, Deputy Regional Director or Area Director may delegate, in writing, authority to approve filings subject to the limitation B-1 (1-6) to DSC Assistant Regional Directors.



B-2

When an application is protested based on CRA concerns, delegated authority must be exercised consistent with the current DSC Memorandum to Regional Directors regarding Consultation Policy and Procedures for Compliance Examination and CRA Issues. Consultation with the Legal Division is required when a nonstandard condition is imposed in response to a CRA protest.

B-3

Eligible for deposit insurance considering its charter and class in the State in which it is licensed/chartered.

B-4

Refer to the Joint Agency Statement on Parallel-Owned Banking Organizations, FIL-35-2002, dated April 23, 2002, for the definition of a parallel-owned banking organization (PBO).

B-5

Refer to the Federal Reserve Bank's International Banking Organizations (Regulation K), Section 211.21(o) for the definition of a foreign banking organization (FBO).

B-6

Delegated Authority may be exercised only after receipt of a determination from the DSC International Branch, working in conjunction with the Legal Division, as to whether or not the de novo institution would be part of a PBO or FBO

**SUBPART C
DOMESTIC BRANCHES AND RELOCATIONS**

(1) Application	(2) Type of Action	(3) Reserved to Board	(4) DSC Director & Deputy Director	(5) DSC Associate Director	(6) DSC Reg. Director Dpty Reg Dir Area Director	(7) DSC Assistant Regional Director	(8) DSC - Case Manager, Field Supervisor, and Supervisory Examiner	(9) Delegation Requirements / Footnotes
In-State Branches and relocations; and interstate other than the two scenarios below.	Approve. Applicant agrees in writing to nonstandard conditions.	No	Yes	Yes	Yes	Yes	Yes	C-1, C-2, C-8
Interstate, Establish new branch (first branch in new State)	Approve. Applicant agrees in writing to nonstandard conditions.	No	Yes	Yes	Yes	Yes	Yes	C-1, C-2, C-3, C-5, C-8
Interstate, Relocate Main Office (MO) to another State and retain existing state branches	Approve. Applicant agrees in writing to nonstandard conditions.	No	Yes	Yes	Yes	Yes	Yes	C-1, C-2, C-3, C-4, C-8
Special Criteria Exemptions for: In-State MO & Branch relos Messenger Service Temporary Branch	Approve	No	Yes	Yes	Yes	Yes	Yes	C-1, C-6, C-8
In-State and Interstate Branches and Relocations	Approve. Applicant does not agree to nonstandard conditions in writing.	No	Yes	Yes	No	No	No	C-1, C-2, C-3
In-State and Interstate Branches and Relocations	Approve. Delegation requirements at C-1, C-2, or C-3 are NOT met.	Yes	No	No	No	No	No	
In-State and Interstate: Temporary Branch	Deny	No	Yes	Yes	Yes RD Only	No	No	
All Other Branches and Relocations	Deny	No	Yes	Yes	Yes RD Only	No	No	
Emergency / Disaster Events	Approve after Temporary Relocation	No	Yes	Yes	Yes RD Only	No	No	C-7



FOOTNOTES

C-1

1. Statutory factors at Section 6 of FDI Act have been considered and are favorably resolved.
2. Applicant meets or agrees in writing to meet Part 325 Capital Requirements set forth in 12 CFR part 325 and the FDIC "Statement of Policy on Capital Adequacy" (12 CFR part 325, appendix B) before or at consummation of the transaction which is the subject of the filing.
3. Fair/Reasonable/Comparable insider transactions, if applicable.
4. Compliance with NHPA, NEPA, and CRA, and any applicable related regulations, including 12 CFR part 345.
5. No CRA protest, or appropriate signoff (see C-2).
6. Applicant with existing interstate presence has not failed the credit needs tests per Section 109 of Riegle-Neal.



C-2

When an application is protested based on CRA concerns, delegated authority must be exercised consistent with the current DSC Memorandum to Regional Directors regarding Consultation Policy and Procedures for Compliance Examination and CRA Issues. Consultation with the Legal Division is required when a nonstandard condition is imposed in response to a CRA protest.

C-3

For de-novo branching to a host state where applicant does not already maintain a branch:

Confirmation by the FDIC that the applicant has complied with the host state's filing requirements and that the applicant has provided a copy of the FDIC filing to the host state.

Confirmation that host State has in effect a law that meets requirements of FDI Act 18(d)(4)(A).

Determination that bank is as of the date of the filing and will continue to be adequately managed and adequately capitalized.

Compliance with CRA (FDI Act 44(b)(3)) as to interstate aspects.



C-4

For applications submitted to relocate a main office from one state to another where the applicant seeks to retain branches in the state where the applicant's main office exists prior to an interstate relocation of the main office, confirmation must be obtained that the filing meets the requirements of FDI Act Section 18(d)(3)(B).

C-5

For exercise of delegated authority, the applicant in an interstate application with one or more existing branches in a State other than its home state, must not have failed the credit needs test of a host state as per Section 109 of Riegel Neal Interstate Banking and Branching Efficiency Act of 1994 (12 CFR Part 369).

C-6

Criteria 2 in footnote C-1 is not required for the following filings:

In-State Messenger Service

In-State Temporary Branch

In-State Relocations of Branches or Main Office



C-7

Regulation permits relocation upon occurrence of disaster or emergency, provided:

Notification of relocation within 3 days of the relocation, and

Filing of a short-form application with the regional director within 10 days of the relocation.

Content of application shall a) identify the nature of the emergency or disaster, b) specify the location of the temporary branch, and 3) provide an estimate of the duration the bank plans to operate the temporary branch.

C-8

Additional delegation requirements that must be met before a Field Supervisor (Risk Management) or Supervisory Examiner can act under its delegation:

The Case under the case manager program has been assigned to the field.

A CRA assessment of "Satisfactory" or "Outstanding".

No CRA protest.

The last compliance composite rating must be a composite "1" or "2".

After consultation with the consumer protection branch, it is determined that there are no substantive compliance or fair lending violations.

**SUBPART D
MERGERS**

(1) Application	(2) Type of Action	(3) Reserved to Board	(4) D&C Director & Deputy Director	(5) D&C Associate Director	(6) D&C Reg. Director Dpty Reg Dir Area Director	(7) D&C Assistant Regional Director	(8) D&C - Case Manager, Field Supervisor, and Supervisory Examiner	(9) Delegation Requirements / Footnotes
Mergers under Bank Merger Act	Approve. Requirements at D-1 and within deposit market share thresholds for delegated authority.	No	Yes Regardless of deposit market share percentage in RGM with a favorable competitive factors report rec'd from Atty Gen'l	Yes Regardless of deposit market share percentage in RGM with a favorable competitive factors report rec'd from Atty Gen'l.	Yes Provided resulting institution will not hold more than 35% of deposits in RGM and favorable competitive factors report rec'd from Atty Gen'l.	Yes Provided resulting institution will not hold more than 35% of deposits in RGM and favorable competitive factors report rec'd from Atty Gen'l	No	D-1, D-2, D-3
	Approve. D-1 requirements NOT met; or The Attorney General has provided an adverse competitive factors report; or Emergency exists requiring expeditious action; or Immediate action necessary to prevent a probable failure.	Yes	No	No	No	No	No	
	Deny	Yes	No	No	No	No	No	
Corporate Reorgs, Interim Mergers and related FDI apps.	Approve	No	Yes	Yes	Yes	Yes	No	D-1, D-2, D-3
	Approve. Requirements at D-1 and D-2 NOT met.	Yes	No	No	No	No	No	
	Deny	Yes	No	No	No	No	No	
Competitive Factor Reports	Furnishing Competitive Factors Reports with favorable resolution to other Federal Banking Agencies if delegate is of the view that proposed merger would not have substantially adverse effect on competition; and Revising Competitive Factors Reports from other Federal agencies in deciding whether to approve a merger filing under delegated authority	No	Yes	Yes	Yes	Yes	No	



FOOTNOTES

D-1

1. Resulting institution will meet all applicable capital requirements upon consummation (or where the resulting entity is an insured branch of a foreign bank, would be in compliance with 12 CFR 347.211 upon consummation of the transaction).
2. Factors in Section 18(c)(5) and (11) (Money Laundering-Patriot Act) of the FDI Act have been considered and are favorably resolved.
3. Merging institutions do not operate in same Relevant Geographic Mkt ("RGM") or Atty. Gen'l has provided favorable competitive report.

NOTE: Board has not delegated authority to approve any merger application where the DOJ has provided an adverse competitive report.

4. Compliance with the CRA and any applicable related regulations, including 12 CFR Part 345, is favorably resolved.
5. No CRA protest filed, or appropriate signoff (see D-2).
6. Applicant agrees in writing to conditions other than standard 303.2(dd) conditions.



D-2

When an application is protested based on CRA concerns, delegated authority must be exercised consistent with the current DSC Memorandum to Regional Directors regarding Consultation Policy and Procedures for Compliance Examination and CRA Issues. Consultation with the Legal Division is required when a nonstandard condition is imposed in response to a CRA protest.

D-3

Any approval under Subpart D that is also an Interstate Merger covered by FDIA Section 44 must also meet the approval requirements of Section 44. For example, if the Regional Director decides not to act on an interstate bank merger application, under Section 44, he or she cannot approve that application under Section 18(c) even if all the criteria for delegated approval under Section 18(c) are met. The application must be forwarded to the Washington Office for action under both Sections 44 and 18(c) of the FDI Act.

**SUBPART E
CHANGE IN BANK CONTROL**

(1) Application	(2) Type of Action	(3) Reserved to Board	(4) DSC Director & Deputy Director	(5) DSC Associate Director	(6) DSC Reg. Director Dpty Reg Dir Area Director	(7) DSC Assistant Regional Director	(8) DSC - Case Manager, Field Supervisor, and Supervisory Examiner	(9) Delegation Requirements / Footnotes
Notice of change in bank control - less than 25% foreign ownership or control	Issue Written Notice of Intent Not to Disapprove	No	Yes	Yes	Yes	Yes	No	E-1, E-5, E-6
	Determine whether FDIA 7(j) Notice should be filed for acquisition of less than 25% voting control	No	Yes	Yes	Yes	Yes	No	E-5
	Determine informational adequacy of Notice	No	Yes	Yes	Yes	Yes	No	E-5
	Extend Notice Periods	No	Yes	Yes	Yes	Yes	No	E-5, E-6
	Act on 303.83(b) Exemptions and subsequent notifications	No	Yes	Yes	Yes	Yes	No	E-5
	Delay/Waive Publication Waive/Shorten Comment Period Act Prior to expiration of Comment Period	No	Yes	Yes	Yes	Yes	No	E-5
	Disapprove	No	Yes	Yes	No	No	No	E-5
Notice of change in bank control -- 25% or more Foreign Ownership or Otherwise Controlled	Issue Written Notice of Intent Not to Disapprove. Bank will be part of a PBO.	Yes	No	No	No	No	No	E-1, E-2, E-3, E-5, E-6
	Issue Written Notice of Intent Not to Disapprove. Bank will not be part of a PBO or a FBO.	No	Yes	Yes	No	No	No	E-1, E-2, E-3, E-4, E-5, E-6
	Issue Written Notice of Intent Not to Disapprove. Bank will be part of a FBO.	No	Yes	Yes	Yes	Yes	No	E-1, E-2, E-4, E-5, E-6



FOOTNOTES

E-1

Delegated authority may be exercised only if it is determined that the proposed acquisition does not present any of the grounds for disapproval listed in section 7(j)(7), 12 U.S.C. § 1817(j)(7).

E-2

Delegated authority may be exercised only after receipt of a determination from the DSC International Branch, working in conjunction with the Legal Division, as to whether or not the institution is part of a PBO or FBO.

E-3

Refer to the Joint Agency Statement on *Parallel-Owned Banking Organizations*, FIL-35-2002, dated April 23, 2002, for the definition of a parallel-owned banking organization (PBO).

E-4

Refer to the Federal Reserve Bank's *International Banking Operations* (Regulation K), Section 211.21(o) for the definition of a foreign banking organization (FBO).



E-5

1. When the proposed transaction is an acquisition of control of a parent company of a state nonmember bank and that parent company is a "bank holding company" under the Bank Holding Company Act of 1956 or a "savings and loan holding company" under the Home Owners' Loan Act, any change in control of such a company would be subject to approval by the Federal Reserve Board or the Office of Thrift Supervision, respectively.
2. When the proposed transaction is an acquisition of control of a parent company of a state nonmember bank that is neither a "bank holding company" under the Bank Holding Company Act of 1956, nor a "savings and loan holding company" under the Home Owners' Loan Act (e.g. the parent company of an industrial loan company), the Washington office will act on the notice and such filings should not be accepted without prior consultation with the Risk Management and Applications Section.
3. The DSC Director or Deputy Director may, on a case-by-case basis, delegate authority to approve filings involving the limitation E-5 (2) to the DSC Regional Director, Deputy Regional Director or Area Director.

E-6

Failure to disapprove a notice of change of control within the statutory time period is an automatic approval. Opportunities to extend the time period are limited.

**SUBPART F
CHANGE OF DIRECTOR OR SENIOR EXECUTIVE OFFICER**

(1) Application	(2) Type of Action	(3) Reserved to Board	(4) DSC Director & Deputy Director	(5) DSC Associate Director	(6) DSC Reg. Director Dpty Reg Dir Area Director	(7) DSC Assistant Regional Director	(8) DSC - Case Manager, Field Supervisor, and Supervisory Examiner	(9) Delegation Requirements / Footnotes
Change of Director or Senior Executive Officer	Determine informational adequacy of a Notice	No	Yes	Yes	Yes	Yes	No	
	Determine when 30- day period begins to run	No	Yes	Yes	Yes	Yes	No	
	Designate SNM banks as "troubled", as defined in 303.101 (c)	No	Yes	Yes	Yes	Yes	No	
	Grant Waiver of Prior Notice Requirement	No	Yes	Yes	Yes	Yes	No	
	Extend processing period an additional 60 days	No	Yes	Yes	Yes	Yes	No	
	Issue notice of intent not to disapprove	No	Yes	Yes	Yes	Yes	No	
	Issue notice of disapproval	No	Yes	Yes	Yes	Yes	No	

**SUBPART G
ACTIVITIES OF INSURED STATE BANKS**

(1) Application	(2) Type of Action	(3) Reserved to Board	(4) D8C Director Deputy Director	(5) D8C Associate Director	(6) D8C Reg. Director Dpy Reg Dir Area Director	(7) D8C Assistant Regional Director	(8) D8C - Case Manager, Field Supervisor and Supervisory Examiner	(9) Requirements / Footnotes
Determine whether or not an instrument has the character of debt securities and would not represent a significant risk to the deposit funds and therefore may be included with adjustable rate and money market preferred stock regarding the limitations of 362.3(b)(2)(II)(A)	Make determination	No	Yes Director Only	No	No	No	No	
Notices to Engage in Real Estate Investment Activities	Issue a letter of non-objection	No	Yes	Yes	Yes	No	No	G-1, G-3
Notices to Engage in Securities Activities Not Permissible for a National Bank (securities underwriting)(§362.16)	Acknowledge a self-certification notice	No	Yes	Yes	Yes	No	No	G-2
Notices	Remove a proposal from Notice processing and begin processing as an application	No	Yes	Yes	Yes	No	No	G-4
Applications to Engage in Real Estate Investment Activities	Approve	No	Yes	Yes	Yes	No	No	G-1, G-5A, G-5B, or G-5
Applications to Invest in Auction Rate and Money Market Preferred Stock in excess of 15% of Tier 1 capital	Approve	No	Yes	Yes	Yes	No	No	G-1, G-5C
Applications for Investments/Activities where Notice or Delegated Authority Requisites are not met or are not applicable	Approve	No	Yes	Yes	No	No	No	G-1
All applications or notices pursuant to this Subpart	Deny	No	Yes	Yes	No	No	No	Notices warranting objection are to be deemed applications and processed in Washington with a denial recommendation.
Application to Engage in Equity Securities Activities -	Approve	No	Yes	Yes	Yes	No	No	G-1 and G-7 are met
	Approve	Yes	No	No	No	No	No	Reserved to the Board if G-7 #1 and 12 conditions are not met.
Application for exception to Standards 362.16(e)	Approve	Yes	No	No	No	No	No	G-2a
Application for Relief from conditions under 362.16(g)(3)	Approve	No	Yes	Yes	Yes	No	No	G-2
Notice to acquire and retain investments in common and preferred shares under 362.3(a)(2)(II)(A)	Approve	No	Yes	Yes	Yes	No	No	G-1, G-7, G-8
Application to engage in grandfathered insurance activities if subsidiary does not meet eligible subsidiary standards 362.4(b)(2)(I)(B)	Approve	No	Yes	Yes	No	No	No	G-1
Application to become affiliated with a securities underwriting company under 362.8(b)	Approve	Yes	No	No	No	No	No	G-1



FOOTNOTES

G-1

Bank meets all applicable capital standards and the level of capital is sufficient for a business of its size and character. Also, the level of activity is conducted in a manner that does not present a significant risk to the deposit insurance fund.

G-2

All of the following requisites are met.

G-2a

All of the four items listed below and application and notice conform with existing FDIC Policy

1. The applicant and all of its insured depository institution affiliates are well-capitalized
2. The applicant is in compliance with the capital deduction requirement
3. The applicant complies with sections 23A and 23B of the Federal Reserve Act as if the subsidiary were a financial subsidiary of a national bank.
4. The applicant and all its insured depository institution affiliates received a rating of at least "satisfactory record of meeting community credit needs" in its most recent CRA examination.



G-2b

All of the five requisites listed below are met.

1. The applicant is well-managed.
2. The securities business of the financial subsidiary is physically separate and distinct in its operations from the operations of the bank.
3. The financial subsidiary conducts its securities business pursuant to independent policies and procedures designed to inform customers that it is a separate organization from the insured state nonmember bank.
4. The depository institution has adopted policies and procedures, including limits on exposure, to govern participation in financing transactions underwritten or arranged by an underwriting subsidiary.
5. The depository institution discloses the subsidiary's interest in a security underwritten or dealt in by the subsidiary or declines to express an opinion on the value or advisability of the purchase or sale of such securities.



G-3

All Notice Requisites are answered YES, except for 1 or more of the 4 designated eligible subsidiary requirements AND the investment in the equity securities of the subsidiary does not exceed 2% of Tier 1 capital AND the bank has only one subsidiary engaging in real estate investment activities AND the bank's total investment in the subsidiary does not include any extensions of credit from the bank to the subsidiary.

G-4

The Notice presents a significant supervisory concern, raises a significant legal or policy issue, or the appropriate Regional Director, Deputy Regional Director, or Area Director determines that other good cause exists for removal.



G-5

All of the following Delegated Authority Requisites are answered YES.


A. Investment Activities (Depository Institution):

1. Has the depository institution been chartered and operating for 3 years or more? (This condition is waived if the institution is owned by an established, well-capitalized, well-managed holding company or is managed by seasoned management.
2. Is the composite UFIRS rating 1,2 or 3?
3. Is the management rating 1,2 or 3?
4. Is the CRA rating S or better?
5. Is the compliance rating 1,2 or 3?
6. Is the depository institution not subject to formal or informal enforcement action or a corrective program?



B. Investment Activities (Subsidiary):

1. Does it meet applicable capital standards and have sufficient capital for a business of its size and character?
2. Is it physically separate and distinct from the insured depository institution? (This criterion need not be satisfied for a bank with covered transactions with the subsidiary engaged in a real estate investment activity that does not exceed 10% of capital and surplus.)
3. Does it maintain separate accounting and other business records?
4. Does it observe separate business entity formalities?
5. Does it have a chief executive officer who is not an employee of the institution? (This criterion need not be satisfied for a bank with covered transactions with the subsidiary engaged in a real estate investment activity that does not exceed 10% of capital and surplus.)
6. Does it have a majority of its board of directors who are neither directors nor officers of the depository institution? (This criterion need not be satisfied for a bank with covered transactions with the subsidiary engaged in a real estate investment activity that does not exceed 10% of capital and surplus.)
7. Does it conduct business pursuant to independent policies and procedures?
8. Does it have only one business purpose?
9. Does it have qualified management and employees?

- 
10. Has it established adequate internal policies and controls? (This criterion need not be satisfied for a bank with covered transactions with the subsidiary engaged in a real estate investment activity that does not exceed 10% of capital and surplus.)
 11. Is the depository institution's covered transactions with affiliates, including subsidiaries subject to section 18(j)(1) of the FDI Act, limited to 20% of capital and surplus?
 12. Does the depository institution have policies to ensure that transactions with its subsidiary are on terms and conditions that are considered to be arm's length?
 13. Does the depository institution have policies to ensure that low quality assets are not purchased from the subsidiary?
 14. Do the depository institution and the subsidiary have policies to ensure that a customer of one is not required to either buy a product or use a service from the other as a condition of entering into a transaction?
 15. Does the depository institution and the subsidiary have policies to ensure that they do not enter into transactions with the banks' insiders unless the transactions are excluded by the items of 362.4(d)(3)(iii)?
 16. Are extensions of credit from the depository institution to or on behalf of the subsidiary fully collateralized?
 17. Is the depository institution well-capitalized after deducting from its tier one capital a portion of its investment in the equity of the subsidiary as required in Appendix A of Part 325?



C. Auction Rate and Money Preferred Stock

Note: As indicated in FIL-16-99, dated February 19, 1999, the OCC has stated that national banks are permitted to invest in money market preferred stock. Therefore, banks may invest in these without application subject the investment quality and marketability restrictions that are imposed on a national bank investing in similar stock. The OTS, however, has been silent as to these investments. Therefore, savings associations must apply to hold these investments that exceed 15% of tier 1 capital.

1. The Insured Depository Institution (IDI) is at least "adequately-capitalized".
2. The aggregate investment in auction rate and money preferred stock is 100% or less of the IDI's consolidated tier 1 capital.
3. The IDI has adopted a funds management policy that addresses how auction rate and money market preferred stock relate to the IDI's investment objectives.
4. The IDI has an investment policy that addresses limits on concentrations and that contains aggregate limits on this type of investment.



G-6

All Delegated Authority Requisites are answered YES, except for 1 or more of the 4 designated eligible subsidiary requirements AND the investment in the equity securities of the subsidiary does not exceed 10% of Tier 1 capital.

G-7

1. The application conforms with existing FDIC policy.
2. The depository institution has been chartered and operating for 3 years or more.
3. The composite UFIRS rating is 1 or 2.
4. The management rating is 1 or 2.
5. The CRA rating is S or better.
6. The compliance rating is 1 or 2.
7. The depository institution is not subject to formal or informal enforcement actions or a corrective program.



8. The depository institution has a comprehensive risk management policy in place.
9. The depository institution has comprehensive policies to account for its equity investments.
10. The depository institution or its subsidiary does not exercise a controlling influence over the company, partnership or LLC in which it has a non-financial equity investment.
11. The depository institution's covered transactions with affiliates, including subsidiaries subject to section 18(j)(1) of the FDI Act, is limited to 20% of capital and surplus. Notices filed under section 24(f)(6) of the FDI Act do not need to meet this criterion.
12. The depository institution is well-capitalized after deducting from its Tier one capital a portion of its investment in the non-financial subsidiary as required in Appendix A of Part 325.

G-8

The aggregate investment in grandfathered equities is 100% or less of the depository institution's Tier 1 capital.

**SUBPART H
ACTIVITIES OF INSURED SAVINGS ASSOCIATIONS**

(1) Application	(2) Type of Action	(3) Reserved to Board	(4) DSC Director Deputy Director	(5) DSC Associate Director	(6) DSC Reg. Director Dpty Reg Dir Area Director	(7) DSC Assistant Regional Director	(8) DSC - Case Manager, Field Supervisor and Supervisory Examiner	(9) Requirements / Footnotes
Determine whether or not an instrument has the character of debt securities and would not represent a significant risk to the deposit funds and therefore may be included with adjustable rate and money market preferred stock regarding the limitations of 362.3(b)(2)(iii)(A)	Make a determination	No	Yes— Director Only	No	No	No	No	
Notices	Remove a proposal from Notice processing and begin processing as an application	No	Yes	Yes	Yes	No	No	H-3
Applications to Invest in Auction Rate and Money Market Preferred Stock in excess of 15% of Tier 1 capital	Approve	No	Yes	Yes	Yes	No	No	H-1, H-4
Applications for Investments/Activities where Notice or Delegated Authority Requisites are not met or are not applicable	Approve	No	Yes	Yes	No	No	No	H-1
All applications or notices pursuant to this Subpart	Deny	No	Yes	Yes	No	No	No	Notices warranting objection are to be deemed applications and processed in WO with a denial recommendation.
Application to hold an equity investment in an amount greater than permissible for a federal savings association	Approve	No	Yes	Yes	Yes	No	No	H-1
Application to engage in an activity not permissible for a federal savings association	Approve	No	Yes	Yes	No	No	No	H-1
Notice to hold nonresidential realty loans in an amount not permissible for a federal savings association	Approve	No	Yes	Yes	Yes	No	No	H-1
Notice to conduct activities in excess of the amount permissible for a federal savings association	Approve	No	Yes	Yes	Yes	No	No	H-1
Notice to acquire a subsidiary or conduct new activities through a subsidiary by an insured savings association	Acknowledge receipt of notice/issue Letter of non-objection	No	Yes	Yes	Yes	Yes	Yes	H-2



H-1

Bank meets all applicable minimum capital standards and the activity or level of activity is conducted in a manner that does not present a significant risk to the deposit insurance fund.

H-2

Case Managers only.

H-3

The Notice presents a significant supervisory concern, raises a significant legal or policy issue, or the appropriate regional director or deputy regional director determines that other good cause exists for removal.



H-4

The following Delegated Authority Requisites are answered YES. Note: As indicated in FIL-16-99, dated February 19, 1999, the OCC has stated that national banks are permitted to invest in money market preferred stock. Therefore, banks may invest in these without application subject to the investment quality and marketability restrictions that are imposed on a national bank investing in similar stock. The OTS, however, has been silent as to these investments. Therefore, savings associations must apply to hold these investments that exceed 15% of tier 1 capital.

1. The IDI is at least "adequately-capitalized".
2. The aggregate investment in auction rate and money preferred stock is 100% or less of the IDI's consolidated tier 1 capital.
3. The IDI has adopted a funds management policy that addresses how auction rate and money market preferred stock relate to the IDI's investment objectives.
4. The IDI has adopted an investment policy that addresses limits on concentrations and that contains aggregate limits on this type of investment.

**SUBPART I
MUTUAL TO STOCK CONVERSIONS**

(1) Application	(2) Type of Action	(3) Reserved to Board	(4) DSC Director Deputy Director	(5) DSC Associate Director	(6) DSC Reg. Director Dpty Reg Dir Area Director	(7) DSC Assistant Regional Director	(8) DSC - Case Manager, Field Supervisor and Supervisory Examiner	(9) Delegation Requirements / Footnotes
Mutual-to- stock conversion	Accept Notices for filing	No	Yes	Yes	Yes	No	No	
	Extend period of review an additional 60 days	No	Yes	Yes	Yes	No	No	
	Issue letter of non objection.	No	Yes	No	No	No	No	I-1
	Issue Objection	Yes	No	No	No	No	No	
	Approve or Deny waiver of depositor vote	Yes	No	No	No	No	No	I-2



I-1

Conversion transaction is determined NOT to:

1. Pose a risk to institution's safety and soundness;
2. Violate any law or regulation;
3. Present a breach of fiduciary duty;
4. Raise any unique legal or policy issues.

I-2

Authority is delegated to the Director, Deputy Director or Associate Director to act on requests to waive the depositor vote requirements found in 333.4(c)(2) when the requests are based on the need for the bank to comply with applicable State law in effect as of 1-1-99, that provides for voting by incorporators as the only depositor voting mechanism for state-chartered, mutual savings banks, or prohibits depositors of state-chartered, cooperative savings banks in mutual form from voting by proxy.

SUBPART J
FOREIGN BANK ACTIVITIES:

(1) Application	(2) Type of Action	(3) Reserved to Board	(4) D8C Director Deputy Director	(5) D8C Associate Director	(6) D8C Reg. Director Dpy Reg Dir Area Director	(7) D8C Assistant Regional Director	(8) D8C - Case Manager, Field Supervisor and Supervisory Examiner	(9) Delegation Requirements / Footnotes
By BNM Bank: Establish a Foreign Branch, or Move a Foreign Branch within same country	General Consent: Requirements at 347.103 (b) and 347.103(d) met.	No	NA	NA	NA	NA	NA	J-1, J-3
Establish a Foreign Branch	Approve, Expedited Processing: Requirements at 347.103(c) and 347.103 (d) met.	No	Yes	Yes	Yes	No	No	J-2, J-3
Establish a Foreign Branch, or Move a Foreign Branch within same country	Approve, Standard Processing: BNM bank does not qualify under 347.103(b), (c), or (d) (General Consent or Expedited Processing).	No	Yes	Yes	Yes	No	No	J-4, J-6
	Approve, Standard Processing: requirements at J-4 not met.	Yes	No	No	No	No	No	J-4
	Deny	Yes	No	No	No	No	No	
To make Direct and Indirect Investments in Foreign Orgs.	General Consent: Requirements at 347.108 (a) and 347.108(c) met.	No	NA	NA	NA	NA	NA	J-8
	Approve, Expedited Processing: investment outside limits for General Consent at 347.108(a) but otherwise meets requirements of 347.108(b) and 347.108(c).	No	Yes	Yes	Yes	No	No	J-8
	Approve, Standard Processing: BNM bank does not qualify under 347.108(a), (b) or (c) (General Consent or Expedited Processing), requirements at J-10 met.	No	Yes	Yes	Yes	No	No	J-10, J-6
	Approve, Standard Processing: requirements at J-10 not met.	Yes	No	No	No	No	No	
	Deny	Yes	No	No	No	No	No	
By Foreign Banks: Move Insured Branch of a Foreign Bank	Approve: requirements at J-6 met; applicant agrees in writing to nonstd cond; CRA protest resolved or has concurrence	No	Yes	Yes	Yes	No	No	J-6, J-7
	Approve: requirements at J-6 met, but applicant does not agree to nonstandard conditions	No	Yes	Yes	No	No	No	
	Approve: reqs at J-6 not met	Yes	No	No	No	No	No	
	Deny	No	Yes	Yes	No	No	No	
Application to operate a noninsured state branch of a foreign bank (347.206(b))	Approve or Deny	Yes	No	No	No	No	No	See 303.186
Application by Insured State Branch of Foreign Bank to Conduct Activity not permissible for Federal Branches 347.213(a) thru (d)	Approve or Deny	Yes	No	No	No	No	No	See 303.187
Divestiture Plans for nonpermissible activities necessitated by change in law under 347.213(e)	Approval of Divestiture Plans	No	Yes	Yes	Yes	No	No	
	Denial of Divestiture Plans	Yes	No	No	No	No	No	



J-1

§347.103(b) Requirements for General Consent for SNM bank to establish a foreign branch, or move a foreign branch within same country (written notice to FDIC within 30 days):

1. SNM Bank is an Eligible Depository Institution
2. Only §347.103(a) activities to be conducted at foreign branch
3. SNM bank already operates one or more foreign branches or foreign bank subsidiaries
4. Requirements at J-3 satisfied.



J-2

§347.103(c) Requirements for 45-day Expedited Processing for SNM bank to establish a foreign branch:

1. SNM bank is an Eligible Depository Institution, and
2. Only §347.103(a) activities to be conducted at foreign branch, and
3. SNM bank already has a related presence in the foreign country through:
 - a) An affiliated bank (including Edge or Agreement Corps) operating one or more foreign branches or foreign bank subsidiaries in the country; or
 - b) The SNM bank's holding company operates a foreign bank subsidiary in the country
4. If SNM bank proposes to establish a branch in an additional foreign country, it must already have any of the following in two or more additional foreign countries (i.e., in addition to the country of the proposed foreign branch):
 - a) Foreign branch or foreign bank subsidiary of the SNM; or
 - b) Foreign branch or foreign bank subsidiary of an affiliated bank (including Edge or Agreement Act Corps); or
 - c) Foreign bank subsidiary of the SNM bank's holding company.
5. Requirements at J-3 satisfied.



J-3

Delegated Authority requisites for approval of the establishment or moving of a foreign branch by SNM bank:

1. Branch will not be located on a site on the World Heritage List or the country's equivalent of the National Register of Historic Places as provided by §403 of NHPA Amendments Act;
2. Foreign branch will not be located in a country whose laws or practices would limit FDIC's access to information for supervisory purposes
3. The FDIC has not notified the SNM bank its general consent or expedited processing rights are modified or suspended

NOTE: A SNM bank which closes a foreign branch need only provide subsequent notification within 30 days of such closing to FDIC (refer to §347.103(f) and §303.182(d)).



J-4

1. The requirements of section 402 the NHPA Amendments Act have been favorably resolved;
2. The applicant will only conduct activities authorized by § 347.103(a) and
3. If the foreign branch will be located in a foreign country in which applicable law or practice would limit the FDIC's access to information for supervisory purposes, the delegate is satisfied that adequate arrangements have been made (through conditions imposed in connection with the approval and agreed to in writing by the applicant) to ensure that the FDIC will have necessary access to information for supervisory purposes.

J-5

On a case-by-case basis, the DSC Director, Deputy Director or Associate Director may delegate approval authority for applications subject to Standard Processing to the DSC Regional Director, Deputy Regional Director or Area Director. This Delegated Authority may be exercised only after receipt of a determination from the DSC International Branch, working in conjunction with the Legal Division, that adequate arrangements (through conditions imposed in connection with the approval and agreed to in writing by the applicant) have been made to address issues related to the foreign operations.



J-6

Delegated Authority requisites:

1. The seven factors set forth in FDIA Section 6 have been considered and favorably resolved.
2. The applicant is at least adequately capitalized as defined in Part 325, Subpart B
3. Any financial arrangements which have been made in connection with the proposed relocation and which involve the applicant's directors, officers, major shareholders, or their interests are fair and reasonable in comparison to similar arrangements that could have been made with independent third parties.
4. Compliance with NHPA, NEPA, CRA and any applicable related regulations, including 12 CFR part 345, has been considered and favorably resolved.

J-7

When an application is protested based on CRA concerns, delegated authority must be exercised consistent with the current DSC Memorandum to Regional Directors regarding Consultation Policy and Procedures for Compliance Examination and CRA Issues. Consultation with the Legal Division is required when a nonstandard condition is imposed in response to a CRA protest.

J-8

§347.108(a) Requirements for General Consent for SNM bank to make direct and indirect investments in foreign organizations (written notice to FDIC within 30 days):

1. SNM bank is an Eligible Depository Institution
2. Investment is in conformance with requirements at §347.104 thru §347.107 (authorized financial activities of the foreign organization)
3. SNM bank already operates one or more:
 - a) Foreign branch
 - b) Foreign bank subsidiary
 - c) Affiliate bank (incl. Edge or Agmt Act Corp) operates one or more foreign branch (es) or foreign bank subsidiaries
 - d) SNM bank's holding company operates foreign bank subsidiary (ies).
4. Investment is within one of the limits of §347.108(a)(3):
 - a) Acquired at net asset value from affiliate; or
 - b) Reinvestment of cash dividends rec'd from same foreign organization during preceding 12 months; or
 - c) Total direct and indirect investments in a single foreign organization during any 12 month period does not exceed 2% of SNM bank's Tier I capital, AND, as to all investments in all foreign organizations, the aggregate does not exceed:
 - i. 5% of SNM's Tier I capital in any 12 month period;
 - ii. Up to an additional 5% of SNM's Tier I capital in any 12 month period acquired for trading purposes.



6. If in the aggregate SNM bank and its affiliates will hold 20% or more of the foreign organization's voting equity securities, at least one SNM bank (applicant or any other SNM bank, whether or not affiliated) has a foreign bank subsidiary in the relevant foreign country (contact International Division or see Website).
7. FDIC has not notified SNM bank that its general consent or expedited processing rights are modified or suspended.
8. If foreign investment will be 20% or more of voting equity interest of the foreign organization, the foreign organization may not be located in a country whose laws or practices would limit FDIC's access to information for supervisory purposes.

J-9

§347.108(b) Requirements for 45-day Expedited Processing for SNM bank to make direct and indirect investments in foreign organizations.

1. SNM is an Eligible Depository Institution
2. Investment is in conformance with requirements at §347.104 thru §347.107 (authorized financial activities of the foreign organization)
3. If foreign investment will be 20% or more of voting equity interest of the foreign organization, the foreign organization may not be located in a country whose laws or practices would limit FDIC's access to information for supervisory purposes.
4. FDIC has not notified SNM bank that its general consent or expedited processing rights are modified or suspended



J-10

Delegated Authority requisites for approval under Standard Processing:

1. The investment complies with the amount limits in §347.104 through §347.107 and it is in a foreign organization which only conducts such activities as authorized.
2. For foreign investments resulting in the applicant holding 20 percent or more of the voting equity interests of the foreign organization or controlling such organization, if the organization is located in a foreign country in which applicable law or practice would limit the FDIC's access to information for supervisory purposes, the delegate is satisfied that adequate arrangements have been made (through conditions imposed in connection with the approval and agreed to in writing by the applicant) to ensure that the FDIC will have necessary access to information for supervisory purposes.

**SUBPART K
PROMPT CORRECTIVE ACTION**

(1) Application	(2) Type of Action	(3) Reserved to Board	(4) DSC Director Deputy Director	(5) DSC Associate Director	(6) DSC Reg. Director Dpty Reg Dir Area Director	(7) DSC Assistant Regional Director	(8) DSC - Case Manager, Field Supervisor and Supervisory Examiner	(9) Delegation Requirements / Footnotes
Capital Distributions 303.203	Approve or Deny	No	Yes	Yes	Yes	No	No	K-1
Acquisitions, branching and new lines of business 303.204	Approve or Deny	No	Yes	Yes	Yes	No	No	K-1
Bonuses and increased compensation for senior executive officers 303.205	Approve or Deny	No	Yes	Yes	Yes	No	No	K-1
Payment of Principal or Interest on Subordinated Debt 303.206	Approve or Deny	No	Yes	Yes	Yes	No	No	K-1
Restricted Activities for Critically Undercapitalized Institutions 303.207	Approve or Deny	No	Yes	Yes	Yes	No	No	K-1



K-1

Exercise of delegated authority only at the DSC Regional Director, Deputy Regional Director, and Area Director level is only authorized after full consultation with the Washington Office on all relevant issues.

**SUBPART L
SECTION 19 APPLICATIONS**

(1) Application	(2) Type of Action	(3) Reserved to Board	(4) DSC Director Deputy Director	(5) DSC Associate Director	(6) DSC Reg. Director Dpty Reg Dir Area Director	(7) DSC Assistant Regional Director	(8) DSC - Case Manager, Field Supervisor and Supervisory Examiner	(9) Delegation Requirements / Footnotes
Participation by Convicted Individual	Approve or Deny after a Part 308 hearing is held.	Yes	No	No	No	No	No	
Participation by Convicted Individual prior to Hearing, if any	Approve, after consultation with Legal Division, and primary supervisory authority interposes no objection. See also L-1.	No	Yes	Yes	Yes	Yes	No	L-1
	Approve, after consultation with Legal, but primary supervisory authority interposes objection (See also L-1).	No	Yes	Yes	No	No	No	L-1
	Deny, with General Counsel certification that Denial is consistent with purposes of Section 19.	No	Yes	Yes	Yes RD Only	No	No	L-2
Act on waiver pursuant to §308.158(c)	Grant or deny waiver for institution filing requirement with General Counsel concurrent certification	No	Yes	Yes	No	No	No	L-2



L-1

Regional Directors, Deputy Regional Directors, or Area Directors, when exercising their delegated authority for approval, may impose the following conditions:

1. A participant or Institution-affiliated party shall be bonded to the same extent as others in similar positions; and/or
2. Prior consent of Regional Director shall be required for any proposed significant changes in duties and/or responsibilities of the person who is subject of the filing.

L-2

Legal certification required. Refer to Page 4, Legal Division delegations.

**SUBPART M
OTHER FILINGS**

(1) Application	(2) Type of Action	(3) Reserved to Board	(4) DSC Director Deputy Director	(5) DSC Associate Director	(6) DSC Reg. Director Dpty Reg Dir Area Director	(7) DSC Assistant Regional Director	(8) DSC - Case Manager, Field Supervisor and Supervisory Examiner	(9) Delegation Requirements / Footnotes
Reduce or Retire Capital (303.241)	Approve or Deny application under FDIA 18 (i)(1) to reduce the amount or retire any part of common or preferred capital stock, or to retire any part of capital notes or debentures.	No	Yes	Yes	Yes	Yes	No	
Trust Powers 303.242	Approve. Applicant agrees to nonstandard conditions in writing.	No	Yes	Yes	Yes	Yes	No	M-1
	Approve. Applicant does not agree to nonstandard conditions in writing.	No	Yes	Yes	No	No	No	M-1
	Approve. M-1 requirements NOT met.	Yes	No	No	No	No	No	
	Deny	No	Yes	Yes	Yes-RD Only	No	No	
Brokered Deposit Waivers (303.243)	Approve or Deny Fixed Term Waiver	No	Yes	Yes	Yes	Yes Approval only	No	M-2
	Approve temporary waiver pending review of Fixed Term Waiver	No	Yes	Yes	Yes	Yes Approval only	No	
Enter into or make Golden parachute payments permitted by 12 CFR 359.4 and/or excess nondiscriminatory severance plan payments as provided by 12 CFR 359.1(f)(2)(v) (303.244)	Approve or Deny	No	Yes	Yes	Yes	Yes Approval only	No	M-7



(1) Application	(2) Type of Action	(3) Reserved to Board	(4) DSC Director Deputy Director	(5) DSC Associate Director	(6) DSC Reg. Director Dpty Reg Dir Area Director	(7) DSC Assistant Regional Director	(8) DSC - Case Manager, Field Supervisor and Supervisory Examiner	(9) Delegation Requirements / Footnotes
Waiver of Liability for Commonly Controlled Banks pursuant to FDIA 5(e) (303.245)	Approve or Deny	Yes	No	No	No	No	No	
Insurance Fund Conversions between SAIF and BIF (non-Oakar)(303.246)	Approve or Deny	No	Yes	Yes	Yes Approve Only	No	No	Oakar conversions are covered by Bank Merger Act, see 303.246(a).
Conversion with diminution of capital pursuant to FDIA 18(i)(2)(303.247)	Approve	No	Yes	Yes	Yes	No	No	M-9
	Deny	No	Yes	Yes	No	No	No	
Continue/Resume status as an insured institution following termination under section 8 of the FDIA (303.248)	Approve or Deny	Yes	No	No	No	No	No	
Truth in Lending Act / Regulation Z Relief from Reimbursement (303.249)	Deny, up to and including \$25,000, initial requests for relief of reimbursement amount under section 608 (a)(2) of the Truth in Lending Simplification and Reform Act	No	Yes	Yes	Yes	No	No	M-3
	Deny, over \$25,000 reimbursement amount	No	Yes	Yes	No	No	No	M-3
	Grant request	No	Yes	Yes	No	No	No	M-3
	Act on requests for reconsideration							M-4
Management Official Interlocks (303.250)	Approve or deny Interlocks under 348.5 or 348.6	No	Yes	Yes	Yes	Yes Approval only	No	

(1) Application	(2) Type of Action	(3) Reserved to Board	(4) DSC Director Deputy Director	(5) DSC Associate Director	(6) DSC Reg. Director Dpty Reg Dir Area Director	(7) DSC Assistant Regional Director	(8) DSC - Case Manager, Field Supervisor and Supervisory Examiner	(9) Delegation Requirements / Footnotes
	Approve or deny Interlocks under Section 205(8) of Depository Institutions Management Interlocks Act (relates to savings and loan holding companies and their affiliates)	No	Yes	Yes	Yes Approval Only	No	No	
Modification of Conditions (303.251)	Approve or Deny a request to modify the requirement of a prior approval of a filing issued by the FDIC.	No	Yes	Yes	Yes	Yes	Yes	M-5, M-8
Extension of Time (303.252)	Approve or Deny a filing for additional time to fulfill a condition required in an approval of a filing issued by the FDIC or to consummate a transaction which was subject of an approval by the FDIC	No	Yes	Yes	Yes	Yes	Yes	M-6, M-8



M-1

Approval criteria to exercise trust powers are:

1. Statutory factors of FDI Act Section 6 have been considered and favorably resolved;
2. The proposed management of the trust business is considered capable of satisfactorily handling the anticipated business;
3. The applicant's board of directors has formally adopted the FDIC Statement of Principles of Trust Department Management, available from any FDIC regional director.

M-2

1. Authority to approve or deny brokered deposit waivers is not subdelegated below the Associate Director level in cases involving nonstandard conditions that have not been agreed to in writing.
2. Brokered Deposit Waivers must be for a fixed term, generally no longer than 2 years, but may be extended upon refiling.
3. The FDIC may revoke a broker deposit waiver at any time with written notice.
4. Delegated authority to revoke a broker deposit waiver shall be at the same or higher delegation level as provided to act on the original filing.



M-3

Refer to Part 303.249(g) regarding General Counsel certification that action is consistent with the Truth in Lending Simplification and Reform Act.

M-4

Requests for reconsideration of TILA filings are handled in the same manner as in 303.11(f). See page I-1 for specific delegations.

M-5

The following two conditions must be met prior to acting on the delegation of authority for a modification of conditions:

1. Legal Division is consulted to the same extent as was required for approval of the original filing; and
2. The approving delegate must have had the authority to approve the original filing.

M-6

The following two limitations exist when exercising the delegation of authority in an extension of time filing:

1. Extension of time may not exceed one year; however, more than one extension of time filing is allowed regarding a particular filing.
2. To deny an extension of time filing, the delegate must have had the authority to deny the original filing.



M-7

Authority is NOT delegated to the Regional Director, Deputy Regional Director, Area Director or Assistant Regional Director if a disagreement with the primary Federal regulator or State Authority exists.

M-8

Authority to modify conditions pursuant to section 303.251 or approve/deny an extension of time pursuant to section 303.252 is granted only to the extent that the delegate is authorized to act on the original application.

M-9

Statutory factors in 18(i)(4) (FDI Act) have been considered and favorably resolved.



OCC Relevant Delegations of Authority

<http://www.occ.gov/static/publications/ppm-5310-3.pdf>

PROCEDURES FOR ALL ENFORCEMENT ACTIONS

A. *Responsibilities and Decision Authority*

The Senior Deputy Comptrollers for Midsize and Community Bank Supervision and for Large Bank Supervision ("Senior Deputy Comptrollers") have the primary responsibility to use the OCC's enforcement authority under 12 USC 1818, PCA authority under 12 USC 1831e, and safety and soundness authority under 12 USC 1831p-1 as necessary to accomplish the OCC's supervisory objectives. In many cases the authority to initiate, negotiate, execute, modify, and terminate enforcement actions covered by this PPM has been delegated. Current delegations of authority are maintained by the Special Supervision Division (SSDU) and are posted on the SSDU page in the OCCnet (<http://occnet.occ/2SpecialSupervisionOfficeView.asp>). Any authority delegated by the appropriate Senior Deputy Comptroller may not be sub-delegated without that official's express written approval.

Generally, the EIC is responsible for initially recommending the use of an enforcement action to address problems and concerns identified in assigned banks. While ADCs may approve the use of certain informal enforcement actions on 1- and 2-rated banks, District, Midsize and Large Bank deputy comptrollers are responsible for deciding most enforcement action recommendations against banks under their supervision.

To assist with these decisions, the Senior Deputy Comptrollers will, on an annual basis, appoint a Washington Supervision Review Committee (WSRC) chaired by the deputy comptroller for Special Supervision and approve its written charter and operating procedures. In addition, each district and Midsize deputy comptroller will, on an annual basis, appoint a District/Midsize Supervision Review Committee (DSRC) and establish its written charter and operating procedures, subject to the review and approval of the Senior Deputy Comptroller for Midsize and Community Bank Supervision. The Washington or district/midsize supervision review committee's (SRC) role is to help ensure that OCC bank supervision and enforcement policies are applied effectively and consistently, and is to advise the Senior Deputy Comptrollers or the deputy comptrollers on bank supervision and enforcement cases by providing recommendations on supervisory strategies and enforcement actions. With a few exceptions as outlined in the delegations of authority matrix, SRC reviews and advises the decision maker on the initiation of all enforcement actions. WSRC reviews all nondelegated enforcement actions, all enforcement actions against bank service companies (12 USC 1861 et seq.) and all proposed referrals to FinCen, FEC, DOJ, HUD, CFPB, and SEC. WSRC may also be asked to advise on cases that are unique or highly visible.



B. *Support for Decisions*

A person presenting a case to SRC will prepare a presentation package, which includes a memorandum summarizing the supervisory history, history of previous enforcement actions, the facts in the current case, an objective analysis of the facts, the recommended enforcement action, legal support for the recommended action, the supervisory strategy, and any other relevant issues. Minutes of the committee's deliberations, recommendations, and the final decision should be documented in the OCC's electronic supervisory databases.

C. *Timeliness of Enforcement Actions*


The OCC will take enforcement actions as soon as practical once the need for such action has been identified, including during an examination when circumstances warrant. Enforcement actions should be taken within the following maximum time periods whenever possible.

The appropriate SRC should recommend and the decision maker should decide whether to initiate an enforcement action, or to change or modify an existing enforcement action, including the form and content of the action, within 15 calendar days following:

- A final Report of Examination or other written supervisory analysis that determines whether the bank is experiencing one or more of the significant or substantial problems or weaknesses listed in the Determining Severity of Enforcement Actions section above;
- A final decision to assign or retain a composite CAMELS rating of 3, 4, or 5;
- A final Report of Examination or other written supervisory analysis that determines whether a bank is undercapitalized, significantly undercapitalized, or critically undercapitalized;
- A final Report of Examination or other written supervisory analysis that determines whether an undercapitalized bank has failed to submit an acceptable capital restoration plan or has failed in some material respect to implement it; or
- A final Report of Examination or other written supervisory analysis that determines whether a bank has violated a safety and soundness standard (See 12 CFR 30 and 12 CFR 170).

For nondelegated enforcement actions (see delegations matrix) involving delegated banks, the appropriate Washington legal division should present the case to WSRC no later than the third weekly WSRC meeting following the receipt of the recommendation from the DSRC.

Within 15 calendar days following the final decision to take an enforcement action that requires the signature of the bank's board of directors (commitment letter, memorandum of understanding, formal agreement, cease and desist order), a copy of the proposed action should be provided to the board, or its duly authorized representative, and a date established within the next three weeks for a meeting with the board of directors to present the document and obtain its execution. If the enforcement action is not executed by the board and a Notice of Charges for Issuance of a Cease and Desist Order is not served, the decision maker or authorized



representatives shall have 30 days to negotiate the execution of the document or serve a Notice of Charges. Recommendations to use a less severe action require the same approval process as the initial action.

For enforcement actions that involve the service of a notice of intent (PCA Directive) or notice of deficiency (Safety and Soundness Order), such notice should be served within 15 calendar days following the final decision to take such action.

Any time frame exceptions should be documented in the OCC's electronic supervisory databases.

D. *Content of Enforcement Action Documents*


Enforcement action documents should address all substantive supervisory problems. Each action should clearly list any prohibited or restricted activities, prioritize remedial measures to be taken, and assign the time frames in which the board of directors or management must act. Enforcement action documents should also explicitly state what action is expected of those parties subject to the document.

Enforcement actions should be drafted using as guidance any standard language provided from time to time by the Director for Enforcement and Compliance, as well as articles used in previous enforcement actions that are tailored to the specific concerns to be addressed. Articles may be modified and new articles created, as necessary, to sufficiently address specific concerns in each individual bank. These articles should be drafted in consultation with, and input from, the District Counsel in the case of delegated banks and the Enforcement and Compliance Division in the case of nondelegated banks.

E. *OCC Responsibilities Following Completion of All Enforcement Actions*

Early assessment and written feedback on a bank's efforts to comply with a new enforcement action are critical to helping management and the board understand the requirements of the document, and achieve timely compliance. Therefore, the EIC and ADC are encouraged to perform an on-site assessment of the bank's compliance with the enforcement action shortly after the document has been entered into. In all cases they must perform an on-site assessment within 60 days of the latest due date in the action. Most articles in an enforcement action require corrective action within a specified time period after the effective date of the document. For example, if the latest due date is 90 days, then the on-site assessment of compliance with the document would commence within 60 days after the expiration of the 90-day period. Articles requiring cessation of specific activities usually require immediate action and should be assessed on-site shortly after the enforcement action becomes effective. If all articles in a document require immediate action, on-site assessment of compliance would commence shortly after the enforcement action becomes effective and no later than 60 days from the completed date of the enforcement action.

The success or failure of the bank in complying with the enforcement action, and the impact on the bank of the continuation of the problems should be thoroughly documented. Noncompliance with the enforcement action will be part of the support for a more severe enforcement action and, in appropriate cases, early resolution actions. The findings of this assessment and any recommendation to take further action, modify the document, or amend the



supervisory strategy must be presented to WSRC or DSRC, which will advise the decision maker (see delegations matrix). Minutes of the deliberations, recommendations, and the decision maker's final decision should be documented in the OCC's electronic supervisory databases.


At least every six months thereafter, while the enforcement action remains outstanding, the EIC and ADC will assess the bank's compliance with the document and present the findings and any recommendation to take further action, modify the document, or amend the supervisory strategy, to WSRC or DSRC which will advise the decision maker (see delegations matrix). At least one assessment must be on-site as part of a full scope examination, the other assessment may involve on-site activities as deemed necessary by the EIC and ADC, consistent with the supervisory strategy for the bank. Minutes of the WSRC or DSRC deliberations, recommendations, and the decision maker's final decision should be documented in the OCC's electronic supervisory databases.

F. *Assessing Compliance with Enforcement Actions*

A rating of *compliance* can be achieved on a particular article in an enforcement action only after the bank has adopted, implemented, and adhered to all of the corrective actions set forth in the article, the corrective actions are effective in addressing the bank's problems, and OCC examiners have verified through the examination process that this has been accomplished. A bank should not be considered in compliance with an article in an enforcement document simply because it has made progress or a good faith effort toward complying with the article.

Articles for which the bank has not achieved compliance fall into two categories:

- Those articles where the bank has adopted and begun the implementation of all of the corrective actions required by the article but sufficient time has not passed to verify that the actions have been fully implemented, are being adhered to, and are effective in addressing the bank's problems. In these situations management and the board must continue to monitor and test the bank's progress to ensure that corrective actions are fully implemented, adhered to, and are effective.
- Those articles where additional action on the part of the bank, its board, and management is required. This includes, but is not limited to: where the bank has failed to adopt policies, procedures, and systems within required time frames; where adopted policies, procedures, and systems fail to address all required items in the article; where the bank has failed to comply with immediately effective requirements; where the bank has failed to cease activities prohibited by the article; where the bank has failed to fully implement or adhere to corrective actions. *In these situations there is a strong presumption to take more severe action (i.e., formal action if the current action is informal; civil money penalties against the board or management if the current action is formal; or if the action is a formal agreement, the use of a stronger formal action).* The decision maker (see delegations matrix) may grant in writing reasonable extensions of time to comply with articles that require the development and implementation of policies, procedures, systems, and controls. Support for such extensions should be fully documented in writing.



For those articles with which the bank has not achieved compliance (both categories), the Report of Examination or other written communication to the bank must identify why the article is not in compliance, and what must be done to achieve compliance.

G. *Termination of Enforcement Actions*

The decision to terminate an enforcement action is the responsibility of the decision maker (see delegations matrix) and generally follows the same review process through SRC as is applicable to new enforcement actions. Usually the EIC or ADC recommends, through SRC, termination based on the assessment of compliance contained in a Report of Examination. An enforcement action should not be terminated until the bank has complied with all of the articles in the document. However, there may be some limited exceptions where termination of an enforcement action before the bank achieves compliance with all articles in the document may be appropriate. This may occur in cases where a bank has complied with all of the material requirements, and the articles in noncompliance have become outdated or irrelevant to the bank's current situation, or in cases where the current document is being replaced by a different enforcement action (e.g., a Consent Order is replacing a Formal Agreement). Minutes of the committee's deliberations, recommendations, and the final decision should be documented in the OCC's electronic supervisory databases.

H. *Enforcement Action Tracking System and Decision Documentation*

The appropriate supervisory office is responsible for ensuring that the enforcement actions application in the OCC's electronic supervisory databases is current and accurately documents the enforcement action process from the date an enforcement action is recommended, presented to SRC, initiated, completed, and finally terminated.