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*Synopsis:* TRS enables an individual with a hearing or speech disability to communicate by telephone with a person without such a disability. This is accomplished through TRS facilities that are staffed by specially trained communications assistants (CAs) using special technology. The CA relays conversations between persons using various types of assistive communication devices and persons who do not require such assistive devices. In a traditional text-based TRS call, the caller types the number of the TRS facility and, after reaching the facility, types the number of the party he or she desires to call. The CA, in turn, places an outbound voice call to the called party. The CA serves as the ''link'' in the conversation, converting all TTY messages from the caller into voice messages, and all voice messages from the called party into typed messages for the TTY user. The process is performed in reverse when a voice telephone user initiates a traditional TRS call to a TTY user. TRS also includes Video Relay Services (VRS), Internet Protocol (IP) Relay, and Speech-to-Speech (STS). IP Relay is a form of TRS that uses the Internet, rather than the Public Switched Telephone Network, to place the leg of the call from the person with a hearing or speech disability to the TRS CA. The IP Relay user establishes a local connection to an Internet service provider (ISP) using a computer, web phone, personal digital assistant (PDA) or any other IP-capable device. The IP Relay user then reaches a CA by directing the web browser to one of the IP Relay providers' Web sites. When the IP Relay user is connected to the IP Relay service provider, the user is immediately routed to a CA, who then makes the outbound call to the hearing person and relays the call between the parties. The Commission has received complaints from vendors, consumers, and TRS providers that people are using the IP Relay to make telephone purchases using stolen or fake credit cards. Although such purchases are illegal, and the Department of Justice and the FBI can investigate, due to the transparent nature of the CA's role in a TRS call the CA may not interfere with the conversation. The TRS statutory and regulatory scheme do not contemplate that the CA should have a law enforcement role by monitoring the conversations they are relaying.

The Federal Trade Commission is aware of this problem and has instructed that persons who have been defrauded should contact the FTC directly at *http://www.ftc.gov* or 877–FTC–HELP. The FBI also has a Web site for complaints and information regarding Internet crimes: *http://www.ic3.gov.* Since this type of fraud first became apparent, the TRS Providers have worked to develop methods to determine which IP Relay calls are fraudulent, and therefore have been able to prevent many of these calls from reaching the intended victims. This has been achieved without negatively impacting legitimate users of the service, according to the IP Relay providers. However, this is still a concern and merchants should report any fraudulent activity to the FTC, FBI, or their state authorities. We encourage vendors that accept orders for their goods and services by telephone to take steps to ensure that, when they receive a TRS call, the credit card is valid and the purchaser is authorized to use the particular credit card, just as they would do with any other telephone order. We also remind vendors that Title III of the Americans with Disabilities Act of 1990 (ADA) does not permit merchants to treat persons with a hearing or speech disability differently than they treat others. Therefore, if they accept telephone orders from the general public, they cannot refuse to accept them from persons with hearing or speech disabilities using TRS.

For more information on the applicability of the ADA in this context, see generally the United States Department of Justice's ADA home page, at *http://www.usdoj.gov/crt/ada/adahom1.htm* or contact the DOJ ADA Information Line at 800–514–0301 (voice) or 800–514–0663 (TTY).

Federal Communications Commission.

**Thomas D. Wyatt,**

*Deputy Chief, Consumer & Governmental Affairs Bureau.*

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## FEDERAL DEPOSIT INSURANCE CORPORATION

### Intra-Agency Appeal Process: Guidelines for Appeals of Material Supervisory Determinations and Guidelines for Appeals of Deposit Insurance Assessment Determinations

**AGENCY:** Federal Deposit Insurance Corporation.

**ACTION:** Notice of guidelines.

**SUMMARY:** On June 28, 2004, the Federal Deposit Insurance Corporation (''FDIC'') Board of Directors (''Board'') adopted revised Guidelines for Appeals of Material Supervisory Determinations (''guidelines''). The Guidelines for Appeals of Material Supervisory Determinations govern the Supervision Appeals Review Committee (''SARC'') process and supersede the FDIC's prior Guidelines for Appeals of Material Supervisory Determinations, which were adopted by the FDIC's Board of Directors on March 21, 1995. The guidelines reconstitute the SARC and modify the procedures for appeals to the SARC. On that same date, the Board also adopted Guidelines for Appeals of Deposit Insurance Assessment Determinations. The Guidelines for Appeals of Deposit Insurance Assessment Determinations govern the Assessment Appeals Committee (''AAC'') process. The guidelines reconstitute the AAC and set out procedures for appeals to the AAC. Both sets of guidelines are effective upon adoption.

**DATES:** The SARC Guidelines and the AAC Guidelines became effective on June 28, 2004.

**FOR FURTHER INFORMATION CONCERNING THE SARC GUIDELINES CONTACT:** Lisa K. Roy, Associate Director, Division of Supervision and Consumer Protection, (202) 898–3764; Christopher Bellotto, Counsel, Legal Division, (202) 898–3801, Federal Deposit Insurance Corporation, 550 17th St., NW., Washington, DC 20429.

**FOR FURTHER INFORMATION CONCERNING THE AAC GUIDELINES CONTACT:** William V. Farrell, Chief, Assessment Management Section, Division of Finance, (202) 416–7156; Diane Ellis, Associate Director, Division of Insurance and Research, (202) 898–8978; Lisa K. Roy, Associate Director, Division of Supervision and Consumer Protection, (202) 898–3764; Christopher Bellotto, Counsel, (202) 898–3801, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

**SUPPLEMENTARY INFORMATION:**

The revised Guidelines for Appeals of Material Supervisory Determinations

change the composition of the SARC, reducing it from five to three voting members, and incorporate changes to the procedures governing SARC appeals. Included are new rules under which the FDIC's Division of Supervision and Consumer Protection (''DSC'') issues written decisions if it denies requests for review of material supervisory determinations; if dissatisfied with the division's determination, institutions decide for themselves whether to appeal to the SARC; and SARC decisions will be published, with exempt material redacted. The types of determinations eligible for review by the SARC and the standards by which such appeals are decided remain unchanged.

The Guidelines for Appeals of Deposit Insurance Assessment Determinations change the composition of the AAC, reducing it from seven to five voting members, and set forth procedures to be followed by insured depository institutions that choose to appeal adverse assessment determinations they have received from the appropriate FDIC division. As with the SARC, AAC decisions will be published, with exempt material redacted. The types of determinations eligible for review by the AAC and the standards by which such appeals are decided remain unchanged.

On March 18, 2004, the FDIC published in the **Federal Register**, for a 30-day comment period, a notice of and request for comments the proposed revisions to the Guidelines for Appeals of Material Supervisory Determinations and the proposed Guidelines for Appeals of Deposit Insurance Assessment Determinations. (69 FR 12855). The comment period closed on April 19, 2004. The FDIC considered it desirable in this instance to garner comments regarding these guidelines, although notice and comment rulemaking was not required and need not be employed should the FDIC make future amendments.

The FDIC received three comment letters, two from trade organizations (America's Community Bankers and the American Bankers Association) and one from a depository institution (The Bank of Easton). The comments generally supported the proposed guidelines, although a few objections were raised and several recommendations were made to somewhat revise specific parts of the proposal. The following is a discussion of the revised guidelines for the SARC and for the AAC and the comments received.

## I. Guidelines for Appeals of Material Supervisory Determinations

*Background*

Section 309(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (Public Law 103–325, 108 Stat. 2160) (''Riegle Act'') required the FDIC (as well as the other Federal banking agencies and the National Credit Union Administration Board) to establish an independent intra-agency appellate process to review material supervisory determinations.

The Riegle Act defines the term ''independent appellate process'' to mean a review by an agency official who does not directly or indirectly report to the agency official who made the material supervisory determination under review. In the appeals process, the FDIC is required to ensure that (1) an appeal of a material supervisory determination by an insured depository institution is heard and decided expeditiously; and (2) appropriate safeguards exist for protecting appellants from retaliation by agency examiners.

On March 21, 1995, the FDIC's Board of Directors adopted the original Guidelines for Appeals of Material Supervisory Determinations, which established and set forth procedures governing the SARC, whose purpose was to consider and decide appeals of material supervisory determinations as required by the Riegle Act.

A. Membership

As originally constituted, the SARC consisted of the FDIC Vice Chairperson (as chair of the SARC), the Director of the Division of Supervision (''DOS''), the Director of the Division of Compliance and Consumer Affairs (''DCA''), the Ombudsman, and the General Counsel (or their designees).

The 1995 SARC guidelines were amended in 1999 to add the Director of the Division of Insurance (now the Director of the Division of Insurance and Research (''DIR'')) as a voting SARC member, to provide formally that the Directors of DOS and DCA (now the DSC Director) would not vote on cases brought before the SARC involving their respective (now consolidated) divisions, to provide that designees would be limited to the most senior members of a SARC member's staff, and to include Truth-in-Lending (Regulation Z) restitution. In addition, the SARC was expressly authorized to consider appeals of denied filings as set forth in 12 CFR 303.11(f) for which a Request for Reconsideration has been granted, other than denials of a change in bank control, change in senior executive officer or board of directors, or denial of an application pursuant to section 19 of the Federal Deposit Insurance Act (''FDI Act'') (which are contained in 12 CFR 308, subparts D, L, and M, respectively), if the filing was originally denied by the Director, Deputy Director or Associate Director of DSC.

While the prior guidelines satisfied the Riegle Act's requirement to establish an independent appellate process for the review of material supervisory determinations, the revised guidelines will facilitate the disposition of SARC appeals and further underscore the perception of the SARC as a fair and independent high-level body for review of material supervisory determinations within the FDIC.

In the Notice and Request for Comment published on March 18, 2004, the FDIC proposed to change the composition of the SARC so that the Director of DSC, the Director of DIR, and the Ombudsman would no longer serve on the SARC, and new SARC members would be drawn from the most senior levels of the Corporation.

Under the revised guidelines, SARC membership would consist of three (3) voting members: (1) One of the inside FDIC Board members, either the Chairperson, the Vice Chairperson, or the Director (Appointive), as designated by the FDIC Chairperson (this person would serve as the Chairperson of the SARC); and (2) one deputy or special assistant to each inside FDIC Board member not designated as the SARC Chairperson.

The General Counsel would be the fourth, and non-voting, member of the SARC. The FDIC Chairperson can designate alternate member(s) to the SARC if vacancies occur so long as the alternate member was not directly or indirectly involved in making or affirming the material supervisory determination under review. In addition, a member of the SARC can designate and authorize the most senior member of his or her staff—within the substantive area—to act on his or her behalf in SARC matters.

One commenter noted that the designation ''inside directors'' would make the procedures more ''reader-friendly.'' The FDIC has two ''outside directors''—the Director from the Office of the Comptroller of the Currency and the Director from the Office of Thrift Supervision. The FDIC has three ''inside directors''—the FDIC Chairperson, the FDIC Vice-Chairperson and the appointive FDIC Director. By using the designation suggested by the commenter, the procedures more clearly describe the membership of the SARC

and AAC. The FDIC has adopted this suggestion in the revised guidelines. In addition, the term ''special assistant'' has been added to clarify that directors may have both deputies and special assistants who may serve on the SARC (or AAC).

The three commenters expressed concern over the removal of the FDIC's Ombudsman from the SARC. One commenter indicated a preference that the Ombudsman be the sole decision maker for appeals of material supervisory determinations, but, if not that, at least be retained as a voting member; one commenter acknowledged the potential for perceived conflicts that arise because the Ombudsman serves a dual role as SARC member as well as liaison to insured institutions; the third commenter saw the Ombudsman as playing a valuable role in facilitating discussions between institutions and examiners. The latter two commenters suggested that the Ombudsman be retained as a non-voting SARC member. The former commenter also objected to the FDIC's proposal on the grounds that it did not conform with the statutory requirement for the Ombudsman. No commenter opposed the elimination of division directors and one expressly supported that change.

After considering the comments on the composition of the SARC, the FDIC continues to believe that the revised composition and structure of the SARC satisfies the requirements of the Riegle Act to establish an independent intra-agency appellate process and represents an improvement on SARC membership. A tension and a potential for conflict exist between the Ombudsman's statutory role and its role as a member of the SARC. The statute provides that the Ombudsman is a liaison between the agency and any affected person with respect to any problem resulting from the agency's regulatory activities. On the SARC, the Ombudsman is an agency deciding official. These two roles are fundamentally different and to a degree inconsistent. As liaison, the Ombudsman is required to be neutral, independent, and confidential. In fulfilling its statutory role, the Ombudsman collects information from the institution and the FDIC and attempts to promote communication between the institution and the FDIC. As a member of the SARC, the Ombudsman loses its liaison role and may be presented with actual, potential or perceived conflicts to its neutrality, independence and confidentiality. For example, the Ombudsman may receive confidential information from an institution before the matter is appealed to the SARC. If the Ombudsman is also a SARC member, he or she is placed in the difficult position of either (1) using that confidential information in the FDIC's decision-making process, even though the information was obtained under a promise of confidentiality, or (2) attempting to ignore information acquired in his or her Ombudsman role no matter how important he or she may think the information is.

Making the Ombudsman a non-voting SARC member, as two commenters suggested, does not solve this dilemma. The FDIC believes that underlying tension between the two roles of the Ombudsman—as SARC member and as liaison between the agency and any affected person—places the Ombudsman in a potentially conflicted position best resolved if the Ombudsman does not serve as a SARC member.[1]

The commenter's objection that the FDIC's proposal ''does not conform with the statutory requirement'' for the Ombudsman is not supported by the Riegle Act. The statute sets forth two duties for the Ombudsman: To act as liaison between the agency and any affected person and to assure that safeguards exist to encourage complainants to come forward and preserve confidentiality. 12 U.S.C. 4806(d). ''Independent appellate process'' is defined as review by an agency official who does not report to the official who made the determination under review. 12 U.S.C. 4806(f)(2). No role for the Ombudsman as agency decision maker regarding material supervisory determinations is articulated. The FDIC believes that the proposed structure of the SARC fully complies with the Riegle Act. Consistent with this view, neither the Federal Reserve Board Ombudsman nor the Office of Thrift Supervision Ombudsman participates in deciding material supervisory determinations within those agencies.[2] Under the prior guidelines, the Ombudsman could consider the merits of matters under review by the DSC Director or on appeal to the SARC only in its role as a SARC member. Under the revised guidelines the subject matter of a material supervisory determination that has been appealed to the SARC or that has been resolved in a final SARC decision is ineligible for consideration by the Ombudsman. Thus, unlike the prior guidelines, under the revised guidelines the Ombudsman may consider the merits of a material supervisory determination for which review has been requested from the DSC Director before the institution has made an appeal to the SARC. In addition, the Ombudsman may consider any other problem that an institution may have in dealing with the FDIC.

B. Procedures

Institutions that wish to obtain SARC review of material supervisory determinations must file an appeal to the SARC within 30 calendar days from the date of the division director's written determination. Unlike the prior process, institutions receive a written determination issued by DSC within 30 days, setting forth the reasons for the division's denial. Based on DSC's determination, institutions decide for themselves whether to appeal to the SARC. If the issue presented is not one that merits expending the time or effort of seeking a SARC determination, the institution may decide not to appeal. Under the new guidelines, that decision rests with the institution.

The depository institution, which had recently completed a SARC appeal, complained that it was never informed of DSC's denial of its request for review or that the request had been passed to the SARC. The revised guidelines remedy this anomaly by providing that institutions receive a DSC determination and then have the opportunity to decide for themselves whether to file a SARC appeal. Another commenter expressly supported this provision, saying that a written decision from the DSC Director would ''add certainty'' to the status of a request.

[1] An express basis for one of the comments favoring keeping the Ombudsman on the SARC is an expectation that the sort of conflict discussed above will occur, *i.e.,* the commenter stated that the Ombudsman should remain on the SARC because the Ombudsman facilitated discussions between the institution and examiners. Such communications, however, were impermissible under the prior SARC guidelines if they addressed the merits of an appeal; ''The merits of any material supervisory determination for which an appeal has been initiated or a final decision made will not be eligible for consideration by the Ombudsman (except in his or her capacity as a member of the Supervision Appeals Review Committee).'' The substance of that limitation on the Ombudsman's role, once the matter has been appealed to the SARC, is retained in the revised guidelines.

[2] The Office of the Comptroller of the Currency's (OCC) Ombudsman, in contrast, acts as both fact gatherer and sole deciding official in material supervisory appeals, and did so prior to passage of the Riegle Act. The Act's legislative history indicates that pre-existing programs could continue: ''Some of the Federal banking agencies have in place procedures to settle disputes between the agency and a financial institution that may satisfy the requirements of this [regulatory appeals process] provision. In addition, some agencies, for example, the Comptroller of the Currency, may already have appointed an Ombudsman to hear appeals. Nothing in this section is intended to interfere with such existing programs.'' H.R. Conf. Rep. No. 103–652 (Aug. 2, 1994), 1994 U.S.C.C.A.N. 1977, 2001, 1994 WL 405912.

An appeal to the SARC is considered filed if received by the FDIC within 30 calendar days from the date of the determination being appealed or if placed in the United States mail within 30 calendar days from the date of that determination. Institutions must include their name and address, the name and address of any representative, a copy of the determination being appealed, and all of the reasons, factual or legal, why the institution disagrees with the DSC Director's determination. FDIC staff analyzes the filing for the SARC, but that analysis is part of the intra-agency deliberative process and is not disclosable to insured institutions. The SARC's written decision, setting forth the SARC's rationale, is provided to the institution within 60 days from the date the appeal is filed.

One commenter suggested that the SARC, in its written decision, and the DSC Director, in its written determination of a request for review, be required to respond separately to each argument advanced by an institution in support of its request or appeal. A letter ''generally denying'' a request, the commenter stated, does not demonstrate an open commitment to communication, does not help an institution to understand the basis for a denial, does not help an institution determine whether to file an appeal with the SARC, leaves the impression that the request was not given sufficient consideration, and is not useful as precedent. While the FDIC understands these concerns in the comment and will work to see that decisions issued in the SARC and AAC processes inform institutions of the reasons(s) for the decision rendered, the requirement that every issue raised be separately addressed in every case would impose burdens that do not benefit the industry or the FDIC. For example, in some cases issues may be raised that are insubstantial or frivolous or that miss the point of the matter. In addition, issues may be raised that have been presented and addressed in SARC or AAC precedent that may be cited without reiteration. Accordingly, while the FDIC will consider every issue raised in every case, every issue raised need not be specifically addressed in a written opinion. *See United States* v. *Garza,* 165 F.3d 312, 314 (5th Cir. 1999) (litigant's right to have all issues fully considered and ruled on by the appellate court does not equate to a right to a full written opinion on every issue raised). For these reasons, the FDIC has decided not to adopt the commenter's suggestion.

The SARC has the discretion, whether or not a request is made, to determine to allow an oral presentation. If an institution wishes to make an oral presentation, it should include in its appeal a statement to that effect. Oral presentations, however, are granted only if the SARC determines in its discretion that the oral presentation is likely to prove helpful or is otherwise in the public interest. At the oral presentation, the institution will present its position and respond to any questions the SARC might have. The SARC, in its discretion, may also require that FDIC staff participate in the oral presentation to the extent the SARC deems appropriate.

One commenter proposed that the section governing ''Contents of Appeal'' be amended to advise institutions to include a request for oral presentation, if they so desire. The FDIC agrees with this suggestion and the guidelines for both the SARC and the AAC have been amended accordingly. The depository institution commented that denial of oral presentation, where requested, should be separately noticed. This comment too has been adopted and a provision has been added mandating separate notice to the requesting institution of the SARC (or AAC) determination regarding any request for oral presentation. Separate notice will also be provided if a case is transferred by a division director directly to the SARC (or AAC).

Only matters previously reviewed at the division level, resulting either in a written determination or direct referral to the SARC, are appealable to the SARC. Evidence not presented for review to the DSC Director may be submitted to the SARC only if authorized by the SARC Chairperson. No discovery or other such rights are created in the SARC process.

The types of determinations eligible for review by the SARC and the standards by which SARC appeals are decided remain unchanged from the previous guidelines.

The provision for publication of SARC and AAC decisions, with appropriate redactions to protect confidential information, was expressly endorsed by one commenter.

The FDIC proposed to eliminate the provision in the original guidelines that allowed for reconsideration of SARC decisions if new information were submitted and good cause shown why that information was material to the dispute. No institution ever invoked this provision, and, in any event, the discretion to revise decisions is implicit. One commenter, however, felt that retaining a reconsideration provision would be helpful to institutions that may not understand that such an avenue is available. The FDIC agrees with the commenter and the revised SARC and AAC procedures provide for reconsideration of SARC and AAC decisions if the institution can show an intervening change in the controlling law or the availability of material evidence that was not reasonably available when the decision was issued.

## II. Guidelines for Appeals of Deposit Insurance Assessment Determinations

The FDIC Board of Directors created the AAC in 1999 to provide a high-level process for considering all deposit insurance assessment appeals brought from determinations made by the appropriate FDIC Divisions. Responsibility for deposit insurance assessments is shared by the Division of Finance (''DOF''), DIR and, in some respects, DSC. DOF is responsible for calculating the assessments owed by individual insured institutions based on assessment risk classifications assigned by DIR, which in turn uses supervisory information provided by DSC. To calculate an institution's assessment, DOF applies the assessment rate that corresponds to the institution's assessment risk classification to that institution's assessment base. DOF determines the assessment base from deposit and other data submitted in the institution's Report of Condition or Thrift Financial Report. An insured institution may request revision of its quarterly assessment payment by following the procedures set forth at 12 CFR 327.3(h); similarly, an insured institution may request review of its assessment risk classification by following the procedures set forth at 12 CFR 327.4(d). Having complied with those procedures and received a determination from the appropriate division, an institution dissatisfied with that division's determination may file an appeal with the AAC. After reviewing the determination made at the division level, the AAC will issue a final decision.

### *A. Membership*

Since its creation in 1999, the AAC membership has included individuals who are knowledgeable and experienced in matters related to the FDIC's assessment activities, bringing to the AAC the necessary experience and judgment to make well-informed decisions concerning determinations on appeal. As originally constituted, the AAC membership consisted of the Vice Chairperson of the Board (as Chairperson of the AAC), the Deputy to the Office of the Comptroller of the Currency's (''OCC'') member of the FDIC's Board of Directors, the Deputy to the Office of Thrift Supervision's

(''OTS'') member on the FDIC's Board of Directors; the General Counsel, the Director of the Division of Supervision and Consumer Protection; the Deputy to the Chairperson and Chief Financial Officer or the DOF Director; and the DIR Director.

Under the guidelines, AAC membership now consists of five (5) voting members: (1) One inside FDIC Board member, either the Vice Chairperson or the Director (Appointive), as designated by the FDIC Chairperson (this person would serve as Chairperson of the AAC); (2) a deputy or special assistant to the FDIC Chairperson, to be designated by the FDIC Chairperson; (3) a deputy or special assistant to the OCC member on the FDIC's Board of Directors; (4) a deputy or special assistant to the OTS member on the FDIC's Board of Directors; and (5) a deputy or special assistant to either the Vice Chairperson or the inside FDIC Director (Appointive), whoever is not the AAC Chairperson. The General Counsel is the sixth, and non-voting, member of the AAC. The FDIC Chairperson may designate alternate member(s) to the AAC if vacancies occur so long as the alternate member is not directly or indirectly involved in making or affirming the determination under review. A member of the AAC may designate and authorize the most senior member of his or her staff within the substantive area to act on his or her behalf in AAC matters.

Like the SARC guidelines, the AAC guidelines use the designation ''inside'' FDIC directors to distinguish them from the OTS and OCC Directors, as suggested by a commenter. In addition, the term ''special assistant'' has been added to clarify that directors may have both deputies and special assistants who may serve on the AAC.

*B. Procedures*

Under the FDIC's assessment regulations, institutions that dispute the computation of their quarterly assessment payments must comply with the filing requirements set forth at 12 CFR 327.3(h) and institutions that dispute their risk classification must comply with the filing requirements set forth at 12 CFR 327.4(d).

Section 327.3(h) provides that an institution may request revision of the computation of its quarterly assessment payment and sets out the procedures for doing so. Any such request must be made within 60 days of the quarterly assessment invoice for which a revision is requested, or within 60 days of detection of an error in the institution's quarterly Call Report and must include any supporting documentation. Assessment audit and assessment refund determinations are also subject to review under section 327.3(h), although not expressly mentioned in the rule. Additional information requested by the FDIC must be provided within 21 days. Section 327.3(h) mandates that the FDIC respond within 60 days and provides that the response should include the FDIC's determination wherever feasible; otherwise, the FDIC's determination—rendered by the Chief Financial Officer or designee (usually DOF)—is to be made as promptly as possible.

Under section 327.4(d), an institution may request review of its assessment risk classification within 90 days from the date it receives notice of that classification by the FDIC. Supporting documentation must be included with the request. Any additional information requested by the FDIC must be provided within 21 days. The FDIC—through the appropriate division—either DIR or DSC—must promptly notify the institution of its determination.

An insured depository institution dissatisfied with the determination made by the appropriate division pursuant to 12 CFR 327.3(h) or 327.4(d) may appeal that determination to the AAC. The AAC reviews the determination being appealed and, unless the AAC determines to refer the matter to the FDIC Board of Directors for consideration, renders a final determination which constitutes final agency action. FDIC staff analyzes the filing for the AAC, but that analysis is part of the intra-agency deliberative process and is not disclosable to insured institutions. The AAC's written decision, setting forth its rationale, is provided to the institution.

As with the SARC, the AAC has the discretion, whether or not a request is made, to allow an oral presentation. The institution's appeal may contain a statement regarding whether it wishes to make an oral presentation. Oral presentations are granted only if the AAC determines in its discretion that oral presentation would be helpful or would otherwise be in the public interest. At the oral presentation, the institution presents its position and responds to any questions the AAC might have. The AAC, in its discretion, may also require that FDIC staff participate in the oral presentation to the extent the AAC deems appropriate.

As stated in the SARC discussion, the suggestion of one commenter that the section governing ''Contents of Appeal'' be amended to advise institutions to include a request for oral presentation, if they so desire, has been adopted. In addition, a provision mandating separate notice to the requesting institution of the AAC's determination regarding any request for oral presentation has been added as well. Separate notice will also be provided if a case is transferred by a division director directly to the AAC.

Only matters previously reviewed at the division level are subject to AAC review. Evidence not presented for review to at the division level may be submitted to the AAC only if authorized by the AAC Chairperson. No discovery or other such rights are created in the AAC process.

A reconsideration provision has been added to the AAC guidelines as suggested by a commenter. Reconsideration of AAC decisions may be granted if the institution can show an intervening change in the controlling law or the availability of material evidence that was not reasonably available when the decision was issued.

For the reasons stated in the SARC discussion, the FDIC has decided not to add a provision requiring that AAC decisions address every issue raised.

The Guidelines for Appeals of Material Supervisory Determinations are set forth below. The Guidelines for Appeals of Deposit Insurance Assessment Determinations immediately follow.

* * * * *

For the reasons stated in the Preamble, the Board has adopted the Guidelines for Appeals of Material Supervisory Determinations as set forth below.

**Guidelines for Appeals of Material Supervisory Determinations**

*A. Introduction*

Section 309(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (Public Law 103–325, 108 Stat. 2160) (''Riegle Act'') required the Federal Deposit Insurance Corporation (''FDIC'') to establish an independent intra-agency appellate process to review material supervisory determinations made at insured depository institutions that it supervises. The Guidelines for Appeals of Material Supervisory Determinations (''guidelines'') describe the types of determinations that are eligible for review and the process by which appeals will be considered and decided. The procedures set forth in these guidelines establish an appeals process for the review of material supervisory determinations by the Supervision Appeals Review Committee (''SARC'').

*B. SARC Membership*

The following individuals comprise the three (3) voting members of the SARC: (1) One inside FDIC Board member, either the Chairperson, the Vice Chairperson, or the FDIC Director (Appointive), as designated by the FDIC Chairperson (this person would serve as the Chairperson of the SARC); and (2) one deputy or special assistant to each of the inside FDIC Board members who are not designated as the SARC Chairperson. The General Counsel is a non-voting member of the SARC. The FDIC Chairperson may designate alternate member(s) to the SARC if there are vacancies so long as the alternate member was not involved in making or affirming the material supervisory determination under review. A member of the SARC may designate and authorize the most senior member of his or her staff within the substantive area of responsibility related to cases before the SARC to act on his or her behalf.

*C. Institutions Eligible To Appeal*

The guidelines apply to the insured depository institutions that the FDIC supervises (*i.e.*, insured State nonmember banks (except District banks) and insured branches of foreign banks) and also to other insured depository institutions with respect to which the FDIC makes material supervisory determinations.

*D. Determinations Subject To Appeal*

An institution may appeal any material supervisory determination pursuant to the procedures set forth in these guidelines. Material supervisory determinations include:

(a) CAMELS ratings under the Uniform Financial Institutions Rating System;

(b) EDP ratings under the Uniform Interagency Rating System for Data Processing Operations;

(c) Trust ratings under the Uniform Interagency Trust Rating System;

(d) CRA ratings under the Revised Uniform Interagency Community Reinvestment Act Assessment Rating System;

(e) Consumer compliance ratings under the Uniform Interagency Consumer Compliance Rating System;

(f) Registered transfer agent examination ratings;

(g) Government securities dealer examination ratings;

(h) Municipal securities dealer examination ratings;

(i) Determinations relating to the adequacy of loan loss reserve provisions;

(j) Classifications of loans and other assets in dispute the amount of which, individually or in the aggregate, exceed 10 percent of an institution's total capital;

(k) Determinations relating to violations of a statute or regulation that may impact the capital, earnings, or operating flexibility of an institution, or otherwise affect the nature and level of supervisory oversight accorded an institution;

(l) Truth in Lending (Regulation Z) restitution;

(m) Filings made pursuant to 12 CFR 303.11(f), for which a Request for Reconsideration has been granted, other than denials of a change in bank control, change in senior executive officer or board of directors, or denial of an application pursuant to section 19 of the FDI Act (which are contained in 12 CFR 308, subparts D, L, and M, respectively), if the filing was originally denied by the DSC Director, Deputy Director or Associate Director; and

(n) Any other supervisory determination (unless otherwise not eligible for appeal) that may impact the capital, earnings, operating flexibility, or capital category for prompt corrective action purposes of an institution, or otherwise affect the nature and level of supervisory oversight accorded an institution.

Material supervisory determinations do not include:

(a) Decisions to appoint a conservator or receiver for an insured depository institution;

(b) Decisions to take prompt corrective action pursuant to section 38 of the Federal Deposit Insurance Act, 12 U.S.C. 1831o;

(c) Determinations for which other appeals procedures exist (such as determinations of deposit insurance assessment risk classifications and payment calculations);

(d) Decisions to initiate formal enforcement actions under section 8 of the Federal Deposit Insurance Act, 12 U.S.C. 1818 (including assessment of civil money penalties) or under any other provisions of law or regulation; and

(e) Decisions to initiate informal enforcement actions (such as memoranda of understanding).

The FDIC recognizes that, although determinations to take prompt corrective action or initiate formal or informal enforcement actions are not appealable, the determinations upon which such actions may be based (*e.g.*, loan classifications) are appealable provided they otherwise qualify.

*E. Good Faith Resolution*

An institution should make a good faith effort to resolve any dispute concerning a material supervisory determination with the on-site examiner and/or the appropriate Regional Office. The on-site examiner and the Regional Office will promptly respond to any concerns raised by an institution regarding a material supervisory determination. Informal resolution of disputes with the on-site examiner and/or the appropriate Regional Office is encouraged, but seeking such a resolution is not a condition to filing a request for review with the Division of Supervision and Consumer Protection or an appeal to the SARC under these guidelines.

*F. Filing a Request for Review With the FDIC Division of Supervision and Consumer Protection*

An institution may file a request for review of a material supervisory determination with the Director, Division of Supervision and Consumer Protection, 550 17th Street, NW., Room F–4076, Washington, DC 20429, within 60 calendar days following the institution's receipt of a report of examination containing a material supervisory determination or other written communication of a material supervisory determination. A request for review must be in writing and must include:

(a) A detailed description of the issues in dispute, the surrounding circumstances, the institution's position regarding the dispute and any arguments to support that position (including citation of any relevant statute, regulation, policy statement or other authority), how resolution of the dispute would materially affect the institution, and whether a good faith effort was made to resolve the dispute with the on-site examiner and the Regional Office; and

(b) A statement that the institution's board of directors has considered the merits of the request and authorized that it be filed.

The Director, Division of Supervision and Consumer Protection, will issue a written determination of the request for review, setting forth the grounds for that determination, within 30 days of receipt of the request. No appeal to the SARC will be allowed unless an institution has first filed a timely request for review with the Division of Supervision and Consumer Protection.

*G. Appeal to the SARC*

An institution that does not agree with the written determination rendered by the Director of the Division of Supervision and Consumer Protection must appeal that determination to the SARC within 30 calendar days from the

date of that determination. The Director's determination will inform the institution of the 30-day time period for filing with the SARC and will provide the mailing address for any appeal the institution may wish to file. Failure to file within the 30-day time limit may result in denial of the appeal by the SARC. If the Director of the Division of Supervision and Consumer Protection determines that an institution is entitled to relief that the Director lacks delegated authority to grant, the Director may, with the approval of the Chairperson of the SARC, transfer the matter directly to the SARC without issuing a determination. Notice of such a transfer will be provided to the institution.

*H. Filing With the SARC*

An appeal to the SARC will be considered filed if the written appeal is received by the FDIC within 30 calendar days from the date of the division director's written determination or if the written appeal is placed in the U.S. mail within that 30-day period. If the 30th day after the date of the division director's written determination is a Saturday, Sunday or Federal holiday, filing may be made on the next business day. The appeal should be sent to the address indicated on the determination being appealed.

*I. Contents of Appeal*

The appeal should be labeled to indicate that it is an appeal to the SARC and should contain the name, address, and telephone number of the institution and any representative, as well as a copy of the determination being appealed. If oral presentation is sought, that request should be included in the appeal. Only matters previously reviewed at the division level, resulting in a written determination or direct referral to the SARC, may be appealed to the SARC. Evidence not presented for review to the DSC Director may be submitted to the SARC only if authorized by the SARC Chairperson. The institution should set forth all of the reasons, legal and factual, why it disagrees with the determination. Nothing in the SARC administrative process shall create any discovery or other such rights.

*J. Burden of Proof*

The burden of proof as to all matters at issue in the appeal, including timeliness of the appeal if timeliness is at issue, rests with the institution.

*K. Oral Presentation*

The SARC may, in its discretion, whether or not a request is made, determine to allow an oral presentation. The SARC generally grants a request for oral presentation only if it determines that oral presentation is likely to be helpful or would otherwise be in the public interest. Notice of the SARC's determination to grant or deny a request for oral presentation will be provided to the institution. If oral presentation is held, the institution will be allowed to present its positions on the issues raised in the appeal and to respond to any questions from the SARC. The SARC may also require that FDIC staff participate as the SARC deems appropriate.

*L. Dismissal and Withdrawal*

An appeal may be dismissed by the SARC if it is not timely filed, if the basis for the appeal is not discernable from the appeal, or if the institution moves to withdraw the appeal.

*M. Scope of Review and Decision*

The SARC will review the appeal for consistency with the policies, practices and mission of the FDIC and the overall reasonableness of and the support offered for the positions advanced, and notify the institution, in writing, of its decision concerning the disputed material supervisory determination(s) within 60 days from the date the appeal is filed, or within 60 days from oral presentation, if held. SARC review will be limited to the facts and circumstances as they existed prior to or at the time the material supervisory determination was made, even if later discovered, and no consideration will be given to any facts or circumstances that occur or corrective action taken after the determination was made. The SARC may reconsider its decision only on a showing of an intervening change in the controlling law or the availability of material evidence not reasonably available when the decision was issued.

*N. Publication of Decisions*

SARC decisions will be published. Published SARC decisions will be redacted to avoid disclosure of exempt information. Published SARC decisions may be cited as precedent in appeals to the SARC.

*O. SARC Guidelines Generally*

Appeals to the SARC will be governed by these guidelines. The SARC will retain the discretion to waive any provision of the guidelines for good cause; the SARC may adopt supplemental rules governing SARC operations; the SARC may order that material be kept confidential; and the SARC may consolidate similar appeals.

*P. Limitation on Agency Ombudsman*

The subject matter of a material supervisory determination for which either an appeal to the SARC has been filed or a final SARC decision issued is not eligible for consideration by the Ombudsman.

*Q. Coordination With State Regulatory Authorities*

In the event that a material supervisory determination subject to a request for review is the joint product of the FDIC and a State regulatory authority, the Director, Division of Supervision and Consumer Protection, will promptly notify the appropriate State regulatory authority of the request, provide the regulatory authority with a copy of the institution's request for review and any other related materials, and solicit the regulatory authority's views regarding the merits of the request before making a determination. In the event that an appeal is subsequently filed with the SARC, the SARC will notify the institution and the State regulatory authority of its decision. Once the SARC has issued its determination, any other issues that may remain between the institution and the State authority will be left to those parties to resolve.

*R. Effect on Supervisory or Enforcement Actions*

The use of the procedures set forth in these guidelines by any institution will not affect, delay, or impede any formal or informal supervisory or enforcement action in progress or affect the FDIC's authority to take any supervisory or enforcement action against that institution.

*S. Effect on Applications or Requests for Approval*

Any application or request for approval made to the FDIC by an institution that has appealed a material supervisory determination which relates to or could affect the approval of the application or request will not be considered until a final decision concerning the appeal is made unless otherwise requested by the institution.

*T. Prohibition on Examiner Retaliation*

The FDIC has an experienced examination workforce and is proud of its professionalism and dedication. FDIC policy prohibits any retaliation, abuse, or retribution by an agency examiner or any FDIC personnel against an institution. Such behavior against an institution that appeals a material supervisory determination constitutes unprofessional conduct and will subject the examiner or other personnel to

appropriate disciplinary or remedial action. Institutions that believe they have been retaliated against are encouraged to contact the Regional Director for the appropriate FDIC region. Any institution that believes or has any evidence that it has been subject to retaliation may file a complaint with the Director, Office of the Ombudsman, Federal Deposit Insurance Corporation, 550 17th Street, Washington, DC 20429, explaining the circumstances and the basis for such belief or evidence and requesting that the complaint be investigated and appropriate disciplinary or remedial action taken. The Office of the Ombudsman will work with the Division of Supervision and Consumer Protection to resolve the allegation of retaliation. For the reasons stated in the Preamble, the Board has adopted the Guidelines for Appeals of Deposit Insurance Assessment Determinations as set forth below.

**Guidelines for Appeals of Deposit Insurance Assessment Determinations**

*A. Introduction*

The Assessment Appeals Committee (''AAC'') was formed in 1999 and, pursuant to the direction of the FDIC Board of Directors, has been functioning as the appellate entity responsible for making final determinations pursuant to Part 327 of the FDIC's regulations regarding the assessment risk classification and the assessment payment calculation of insured depository institutions. Institutions that dispute the computation of their quarterly assessment payments must comply with the time limits and other filing requirements set forth at 12 CFR 327.3(h). Generally, any such request may be made within 60 days of the quarterly assessment invoice for which a revision is requested, or within 60 days of the filing of an amendment to the institution's quarterly report of condition. Institutions that dispute their risk classification must comply with the time limits and other filing requirements set forth at 12 CFR 327.4(d). Generally, an institution may request review of its assessment risk classification within 90 days from the date it receives notice of that classification by the FDIC. The AAC provides a process for considering all deposit insurance assessment appeals brought from determinations made by the appropriate FDIC divisions pursuant to those regulations. The procedures set forth in these guidelines apply to all appeals to the AAC.

*B. AAC Membership*

The following individuals comprise the five (5) voting members of the AAC, representing each member of the FDIC Board of Directors: (1) One inside FDIC Board member, either the Vice Chairperson or the Director (Appointive), as designated by the FDIC Chairperson (this person would serve as Chairperson of the AAC); (2) one of the deputies or special assistants to the FDIC Chairperson, to be designated by the FDIC Chairperson; (3) a deputy or special assistant to the Office of the Comptroller of the Currency's member on the FDIC's Board of Directors; (4) a deputy or special assistant to the Office of Thrift Supervision's member on the FDIC's Board of Directors; and (5) a deputy or special assistant to either the Vice Chairperson or the inside Director (Appointive), whoever is not the AAC Chairperson. The General Counsel is a non-voting member of the AAC. The FDIC Chairperson may designate alternative member(s) for the AAC if vacancies occur. A member of the AAC may designate and authorize the most senior member of his or her staff within the substantive area of responsibility related to cases before the AAC to act on his or her behalf.

*C. Institutions Eligible to Appeal*

These guidelines apply to all depository institutions insured by the FDIC.

*D. Determinations Subject to Appeal*

The AAC, upon appeal by an insured depository institution, reviews determinations of the Director of the Division of Insurance and Research or the Director of the Division of Supervision and Consumer Protection made pursuant to the procedures set forth at 12 CFR 327.4(d) regarding the assessment risk classification assigned by the FDIC to the institution and renders a final determination. The AAC also, upon appeal by an insured depository institution, reviews determinations made pursuant to 12 CFR 327.3(h) by the Chief Financial Officer (or the Director of the Division of Finance, as designee) regarding the computation of the institution's assessment payment and renders a final determination.

*E. Appeal to the AAC*

An institution that does not agree with the written determination rendered by the appropriate division director pursuant to 12 CFR 327.4(d) and 12 CFR 327.3(h) must appeal that determination to the AAC within 30 calendar days from the date of the determination. The division director's determination will inform the institution of the 30-day time limit for filing with the AAC and will provide the mailing address for any appeal the institution may wish to file. Failure to file within the 30-day time period may result in denial of the appeal by the AAC.

If a division director determines that an institution is entitled to relief that the director lacks delegated authority to grant, the director may, with the approval of the Chairperson of the AAC, transfer the matter directly to the AAC without issuing a determination. Notice of such a transfer will be provided to the institution.

*F. Filing With the AAC*

An appeal to the AAC will be considered filed if the written appeal is received by the FDIC within 30 calendar days from the date of the division director's written determination or if the written appeal is placed in the U.S. mail within that 30-day period. If the 30th day after the date of the division director's written determination is a Saturday, Sunday or Federal holiday, filing may be made on the next business day. The appeal should be sent to the address indicated on the determination being appealed.

*G. Contents of Appeal*

The appeal should be labeled to indicate that it is an appeal to the AAC and should contain the name, address, and telephone number of the institution and any representative, as well as a copy of the determination being appealed. If oral presentation is sought, that request should be included in the appeal. Only matters previously reviewed at the division level, resulting in either a written determination or a direct referral to the AAC, may be appealed to the AAC. Evidence not presented for review at the division level may be submitted to the AAC only if authorized by the AAC Chairperson. The institution should set forth all of the reasons, legal and factual, why it disagrees with the determination. Nothing in the AAC administrative process shall create any discovery or other such rights.

*H. Burden of Proof*

The burden of proof as to all matters at issue in the appeal, including timeliness of the appeal if timeliness is at issue, rests with the institution.

*I. Oral Presentation*

The AAC may, in its discretion, whether or not a request is made, determine to allow an oral presentation. The AAC generally grants a request for oral presentation only if it determines

that oral presentation is likely to be helpful or would otherwise be in the public interest. Notice of the AAC's determination to grant or deny a request for oral presentation will be provided to the institution. If oral presentation is held, the institution will be allowed to present its position on the issues raised in the appeal and to respond to any questions from the AAC. The AAC may also require that FDIC staff participate as the AAC deems appropriate.

*J. Dismissal and Withdrawal*

An appeal may be dismissed by the AAC if it is not timely filed, if the legal or factual basis for the appeal is not discernable from the appeal, or if the institution moves to withdraw the appeal.

*K. Scope of Review and Decision*

The AAC will review all submissions concerning an appeal, review the final determination being appealed, consider any other matters it deems in its discretion to be appropriate, and issue a written decision within 60 days from the date the appeal is filed, or within 60 days from oral presentation, if held. The AAC may reconsider its decision only on a showing of an intervening change in the controlling law or the availability of material evidence not reasonably available when the decision was issued.

*L. Publication of Decisions*

AAC decisions will be published. Published AAC decisions will be redacted to avoid disclosure of exempt information. Published decisions of the AAC may be cited as precedent in appeals to the AAC.

*M. AAC Guidelines Generally*

Appeals to the AAC will be governed by these guidelines. The AAC will retain the discretion to waive any provision of the guidelines for good cause; the AAC may adopt supplemental rules governing AAC operations; the AAC may order that material be kept confidential; and the AAC may consolidate similar appeals.

*N. Effect on Deposit Insurance Assessment Payments*

The use of the procedures set forth in these guidelines by an insured institution will not affect, delay, or impede the obligation of that institution to make timely payment of any deposit insurance assessment.

By order of the Board of Directors.

Dated at Washington, DC this 28th day of June, 2004.

Federal Deposit Insurance Corporation.

**Valerie J. Best,**

*Assistant Executive Secretary.*

[FR Doc. 04–15635 Filed 7–8–04; 8:45 am]

BILLING CODE 6714–01–P

## FEDERAL MARITIME COMMISSION

### Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

*Agreement No.:* 011626–010.

*Title:* Alianca/HSDG/P&O Nedlloyd Agreement.

*Parties:* Alianca Navegacao e Logistica Ltda.; Hamburg Süd; P&O Nedlloyd Limited; P&O Nedlloyd B.V.; and Mercosul Line Navegacao e Logistica Ltda.

*Filing Party:* Neal M. Mayer, Esq.; Hoppel, Mayer & Coleman; 1000 Connecticut Avenue, NW., Washington, DC 20036.

*Synopsis:* The proposed modification reduces the number of vessels utilized and makes resulting changes to the parties' space allocation. It also provides for specific transshipment services. The parties request expedited review.

*Agreement No.:* 011638–002.

*Title:* Sea Girt Chassis Cooperative, L.L.C. Limited Liability Company Agreement.

*Parties:* Atlantic Container Lines, China Ocean Shipping Container Lines Co., Ltd., and Mediterranean Shipping Company.

*Filing Party:* Jeffrey F. Lawrence, Esq.; Sher & Blackwell; 1850 M Street, NW., Suite 900, Washington, DC 20036.

*Synopsis:* The amendment deletes Atlantic Container Lines and adds CMA CGM, S.A. and Compania Sudamericana de Vapores, S.A. It also deletes obsolete references to Agreement counsel.

*Agreement No.:* 011733–011.

*Title:* Common Ocean Carrier Platform Agreement.

*Parties:* A.P. Moller-Maersk A/S, P&O Nedlloyd Limited, Hamburg-Süd, Mediterranean Shipping Company S.A., CMA CGM S.A., Hapag Lloyd Container Linie GmbH, and United Arab Shipping Company (SAG), as shareholder parties, and Alianca Navegacao e Logistica Ltda., Safmarine Container Lines N.V., Nippon Yusen Kaisha, CP Ship Limited, Tasman Orient Line C.V., Mitsui O.S.K. lines, Ltd., Lykes Lines Limited, LLC, and Kawasaki Kisen Kaisha, Ltd. as non-shareholder parties.

*Filing Party:* Wayne R. Rohde, Esq.; Sher & Blackwell; 1850 M Street, NW., Suite 900, Washington, DC 20036.

*Synopsis:* The amendment adds Kawasaki Kisen Kaisha, Ltd. as a non-shareholder party to the agreement.

By Order of the Federal Maritime Commission.

Dated: July 2, 2004.

**Bryant L. VanBrakle,**

*Secretary.*

[FR Doc. 04–15578 Filed 7–8–04; 8:45 am]

BILLING CODE 6730–01–P

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 23, 2004.

**A. Federal Reserve Bank of Atlanta** (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

*1. Clarita Kassin*, North Beach Miami, Florida; Kassin Family Partnership, Ltd., North Miami, Florida; and its general partner, Foreign Financial Investments, North Miami, Florida; Delta Holding Corporation, North Miami, Florida; Samuel Papu, Miami, Florida; Dorita Ojalvo, North Miami, Florida; Moris Ruben, Bogota, Colombia; and Salomon Kassin, Aventura, Florida, to collectively retain voting shares of Pointe Financial Corporation, and thereby indirectly retain voting shares of Pointe Bank, both of Boca Raton, Florida.