

to 12 CFR 346.19. This authority shall also extend to the power to revoke such approval and require the dismissal of the depository.

(2) Authority is delegated to the General Counsel or designee to modify the terms of the model deposit agreement used for such deposit agreements.

(g) *National Historic Preservation Act.*

(1) Authority is delegated to the Director (DOS), and where confirmed in writing by the director, to an associate director, or to the appropriate regional director or deputy regional director, to enter into memoranda of agreement pursuant to regulations of the Advisory Council of Historic Preservation which implement the National Historic Preservation Act (16 U.S.C. 470).

(2) The Director (DOS) may limit the delegation of authority to the associate director, the regional director or deputy regional director to applications wherein the applicant has agreed in writing to conditions relating to the National Preservation Act which may be imposed by the FDIC.

(h) *Applications or notices for membership or resumption of business.* Authority is delegated to the Director (DOS), and where confirmed in writing by the director, to an associate director, or to the appropriate regional director or deputy regional director, to provide comments on applications or notices for membership or commencement or resumption of business to the appropriate Federal banking agency pursuant to section 4 of the Act (12 U.S.C. 1814). Such comments, if provided, shall be provided within a reasonable time, not to exceed 30 days from the time such application or notice is received by the delegate. In the event that circumstances preclude comment within 30 days, the delegate shall so notify the appropriate Federal banking agency within 30 days, giving an estimate of when comments may reasonably be expected.

(i) *Depository Institutions Disaster Relief Act of 1992 (DIDRA).* (1) Authority is delegated to the Director (DOS), and where confirmed in writing by the director, to an associate director, or to the appropriate regional director or deputy regional director, to accept requests and issue orders permitting an insured depository institution to sub-

tract from total assets the qualifying amount attributable to insurance proceeds for purposes of calculating compliance with the leverage limit prescribed under section 38 of the Act.

(2) Authority is delegated to the Director (DOS), and where confirmed in writing by the director, to an associate director, to act on requests for reconsideration of an order of denial issued pursuant to paragraph (i)(1) of this section.

(3) The requisites which must be satisfied before the authority delegated in paragraphs (i)(1) and (i)(2) of this section may be exercised, provide that the insured depository institution:

(i) Had its principal place of business within an area in which the President, pursuant to section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170), has determined that a major disaster exists;

(ii) Derives more than 60 percent of its total deposits from persons who normally reside within, or whose principal place of business is normally within, areas of intense devastation caused by the major disaster;

(iii) Was adequately capitalized, pursuant to section 38 of the Act, prior to the major disaster; and

(iv) Has an acceptable plan for managing the increase in its total assets and total deposits.

(4) The authority delegated under paragraphs (i)(1) and (i)(2) of this section shall be exercised only upon the concurrent certification of the Associate General Counsel for Compliance and Enforcement, or in cases where the regional director or deputy regional director issues the order, by the appropriate regional counsel, that the order is not inconsistent with section 38 of the Act.

[54 FR 53567, Dec. 29, 1989, as amended at 58 FR 8217, Feb. 12, 1993; 59 FR 52663, Oct. 19, 1994]

**§ 303.9 Delegation of authority to act on certain enforcement matters.**

(a) *Actions pursuant to section 8(a) of the Act (12 U.S.C. 1818(a)).* (1) Authority is delegated to the Director (DOS), and where confirmed in writing by the director, to an associate director, or to the appropriate regional director or

deputy regional director, to issue notifications to primary regulator when the respondent bank's book capital is less than 2% of total assets; Provided however, That authority may not be delegated to the regional director or deputy regional director whenever the respondent bank has issued any mandatory convertible debt or any form of Tier 2 capital (such as limited life preferred stock/subordinated notes and debentures).

(2) Authority is delegated to the Director (DOS), and where confirmed in writing by the director, to an associate director, to issue notifications to primary regulator when the respondent bank's adjusted Tier 1 capital is less than 2% of adjusted part 325 total assets.

(3) The authority delegated under paragraphs (a)(1) and (2) of this section shall be exercised only upon concurrent certification by the Associate General Counsel for Compliance and Enforcement, or, in cases where a regional director or deputy regional director issues notifications to primary regulator, by the appropriate regional counsel, that the allegations contained in the findings of unsafe or unsound practices or conditions, if proven, constitute a basis for the issuance of a notification to primary regulator pursuant to section 8(a) of the Act (12 U.S.C. 1818(a)).

(b) *Actions pursuant to section 8(b) of the Act (12 U.S.C. 1818(b)).* (1) Authority is delegated to the Director (DOS), to the Director (DCA), and where confirmed in writing by either director, to an associate director, or to the appropriate regional director, deputy regional director or regional manager to issue:

(i) Notices of charges; and

(ii) Cease-and-desist orders (with or without a prior notice of charges) where the respondent bank or individual respondent consents to the issuance of the cease-and-desist order prior to the filing by an administrative law judge of proposed findings of fact, conclusions of law and recommended decision with the Executive Secretary of the FDIC.

(2) The Director (DOS) and the Director (DCA) may issue a joint notice of charges or cease-and-desist order under

paragraph (b)(1) of this section, where such notice or order addresses both safety and soundness and consumer compliance matters. A joint notice or order will require the signatures of both directors or, alternatively, the signatures of the appropriate regional director or deputy regional director and regional manager.

(3) The authority delegated under paragraphs (b)(1) and (2) of this section shall be exercised only upon concurrent certification by the Associate General Counsel for Compliance and Enforcement or, in cases where a regional director, deputy regional director or regional manager issues the notice of charges or the stipulated cease-and-desist order, by the appropriate regional counsel, that the allegations contained in the notice of charges, if proven, constitute a basis for the issuance of a section 8(b) order, or that the stipulated cease-and-desist order is authorized under section 8(b) of the Act, and, upon its effective date, shall be a cease-and-desist order which has become final for purposes of enforcement pursuant to the Act.

(c) *Actions pursuant to section 8(c) of the Act (12 U.S.C. 1818(c)).* (1) Authority is delegated to the Director (DOS), to the Director (DCA), and where confirmed in writing by either director, to an associate director, to issue temporary cease-and-desist orders.

(2) The Director (DOS) and the Director (DCA) may issue a joint temporary cease-and-desist order where such order addresses both safety and soundness and consumer compliance matters. A joint notice or order will require the signatures of both directors or, alternatively, the signatures of the appropriate regional director or deputy regional director and regional manager.

(3) The authority delegated under paragraphs (c)(1) and (2) of this section shall be exercised only upon concurrent certification by the Associate General Counsel for Compliance and Enforcement that the action is not inconsistent with section 8(c) of the Act (12 U.S.C. 1818(c)) and the temporary cease-and-desist order is enforceable in a United States District Court.

(d) *Actions pursuant to section 8(e) of the Act (12 U.S.C. 1818(e)).* (1) Authority is delegated to the Director (DOS) or

the Director (DCA), and where confirmed in writing by the director, to an associate director, to issue:

(i) Notices of intention to remove an institution-affiliated party from office or to prohibit an institution-affiliated party from further participation in the conduct of the affairs of an insured depository institution pursuant to sections 8(e)(1) and (2) of the Act (12 U.S.C. 1818(e)(1) and (2)), and temporary orders of suspension pursuant to section 8(e)(3) of the Act (12 U.S.C. 1818(e)(3)); and

(ii) Orders of removal, suspension or prohibition from participation in the conduct of the affairs of an insured depository institution where the institution-affiliated party consents to the issuance of such orders prior to the filing by an administrative law judge of proposed findings of fact, conclusions of law and a recommended decision with the Executive Secretary of the FDIC.

(2) The Director (DOS) and the Director (DCA) may issue joint notices and orders pursuant to paragraph (d)(1) of this section where such notice or order addresses both safety and soundness and consumer compliance matters. A joint notice or order will require the signatures of both directors or their associate directors.

(3) The authority delegated under paragraphs (d)(1) and (2) of this section shall be exercised only upon concurrent certification by the Associate General Counsel for Compliance and Enforcement that the allegations contained in the notice of intent, if proven, constitute a basis for the issuance of a notice of intent pursuant to section 8(e) of the Act, or that the stipulated section 8(e) order is not inconsistent with section 8(e) of the Act, and, upon issuance, shall be an order which has become final for purposes of enforcement pursuant to the Act.

(e) *Actions pursuant to section 8(g) of the Act (12 U.S.C. 1818(g)).* (1) Authority is delegated to the Director (DOS), to the Director (DCA), and where confirmed in writing by either director, to an associate director, to issue orders of suspension or prohibition to an institution-affiliated party who is charged in any information, indictment, or complaint as set forth in section 8(g) of the

Act when such institution-affiliated party consents to the suspension or prohibition.

(2) The Director (DOS) and the Director (DCA) may issue joint orders pursuant to paragraph (e)(1) of this section where such order addresses both safety and soundness and consumer compliance matters. A joint order will require the signatures of both directors or their associate directors.

(3) The authority delegated under paragraphs (e)(1) and (2) of this section shall be exercised only upon concurrent certification by the Associate General Counsel for Compliance and Enforcement that the action taken is not inconsistent with section 8(g) of the Act (12 U.S.C. 1818(g)) and the order is enforceable in a United States District Court pursuant to sections 8(i) and 8(j) of the Act (12 U.S.C. 1818 (i) and (j)).

(f) *Actions pursuant to section 8(p) of the Act (12 U.S.C. 1818(p)).* (1) Authority is delegated to the Executive Secretary to issue consent orders terminating the insured status of insured depository institutions that have ceased to engage in the business of receiving deposits other than trust funds pursuant to section 8(p) of the Act (12 U.S.C. 1818(p)).

(2) The authority delegated under paragraph (f)(1) of this section shall be exercised only upon the recommendation and concurrence of the Director (DOS) or associate director and the Associate General Counsel for Compliance and Enforcement that the action taken is not inconsistent with section 8(p) of the Act.

(g) *Civil money penalties.* (1)(i) Except as provided for in paragraph (g)(3) of this section, authority is delegated to the Director (DOS), to the Director (DCA), and where confirmed in writing by either director, to an associate director, to issue notices of assessment of civil money penalties.

(ii) The authority delegated under paragraph (g)(1)(i) of this section shall be exercised only upon concurrent certification by the Associate General Counsel for Compliance and Enforcement that the allegations contained in the notice of assessment, if proven, constitute a basis for assessment of civil money penalties.

(2) The Director (DOS) and the Director (DCA) may issue joint notices pursuant to paragraph (g)(1) of this section where such notice addresses both safety and soundness and consumer compliance matters. A joint notice will require the signatures of both directors or their associate directors.

(3) Authority is delegated to the General Counsel or designee for the levying and enforcement of civil money penalties under section 7(a)(1) of the Act (12 U.S.C. 1817(a)(1)) for the late, inaccurate, false or misleading filing of Reports of Condition and Report of Income, and such other reports as the Board of Directors may require under the authority of that section. In the exercise of the delegated authority, the General Counsel or designee shall consult with the appropriate Director or associate director before imposing any penalty.

(h) *Directives and capital plans under section 38 of the Act (prompt corrective action) and part 325 of this chapter.* (1) Authority is delegated to the Director (DOS), and where confirmed in writing by the director, to an associate director, or to the appropriate regional director or deputy regional director, to accept, to reject, to require new or revised capital restoration plans or to make any other determinations with respect to the implementation of capital restoration plans and, in accordance with subpart Q of part 308 of this chapter, to issue:

(i) Notices of intent to issue capital directives;

(ii) Directives to insured state non-member banks that fail to maintain capital in accordance with the requirements contained in part 325 of this chapter;

(iii) Notices of intent to issue prompt corrective action directives, except directives issued pursuant to section 38(f)(2)(F)(ii) of the Act (12 U.S.C. 1831o(f)(2)(F)(ii));

(iv) Directives to insured depository institutions pursuant to section 38 of the Act (12 U.S.C. 1831o), with or without the consent of the respondent bank to the issuance of the directive, except directives issued pursuant to section 38(f)(2)(F)(ii) of the Act (12 U.S.C. 1831o(f)(2)(F)(ii));

(v) Directives to insured depository institutions requiring immediate action or imposing proscriptions pursuant to section 38 of the Act (12 U.S.C. 1831o) and part 325 of this chapter, and in accordance with the requirements contained in §308.201(a)(2) of this chapter;

(vi) Notices of intent to reclassify insured banks pursuant to §§325.103(d) and 308.202 of this chapter;

(vii) Directives to reclassify insured banks pursuant to §§325.103(d) and 308.202 of this chapter with the consent of the respondent bank to the issuance of the directive; and

(viii) Orders on request for informal hearings to reconsider reclassifications and designate the presiding officer at the hearing pursuant to §308.202 of this chapter.

(2) Authority is delegated to the Director (DOS), and where confirmed in writing by the director, to an Associate Director, to:

(i) Issue notices of intent to issue a prompt corrective action directive ordering the dismissal from office of a director or senior executive officer pursuant to section 38(f)(2)(F)(ii) of the Act, (12 U.S.C. 1831o(f)(2)(F)(ii)), and in accordance with the requirements contained in §308.203 of this chapter;

(ii) Issue directives ordering the dismissal from office of a director or senior executive officer pursuant to section 38(f)(2)(F)(ii) of the Act, (12 U.S.C. 1831o(f)(2)(F)(ii));

(iii) Issue orders of dismissal from office of a director or senior executive officer pursuant to section 38(f)(2)(F)(ii) of the Act, 12 U.S.C. 1831o(f)(2)(F)(ii) where the individual consents to the issuance of such order prior to the filing of a recommendation by the presiding officer with the FDIC;

(iv) Act on recommended decisions of presiding officers pursuant to a request for reconsideration of a reclassification in accordance with the requirements contained in §308.202 of this chapter;

(v) Act on requests for rescission of a reclassification; and

(vi) Act on appeals from immediately effective directives issued pursuant to section 38 of the Act, (12 U.S.C. 1831o) and §308.201 of this chapter.

(3) Authority is delegated to the Executive Secretary of the FDIC to issue

orders for informal hearings and designate presiding officers on directives issued pursuant to section 38(f)(2)(F)(ii) of the Act, 12 U.S.C. 1831o(f)(2)(F)(ii).

(4) The authority delegated under paragraphs (h)(1)(i) and (ii) of this section shall be exercised only upon the concurrent certification by the Associate General Counsel for Compliance and Enforcement, or in cases where a regional director or deputy regional director issues the notice of intent to issue a capital directive or capital directives, by the appropriate regional counsel, that the action taken is not inconsistent with the Act and part 325 of this chapter.

(5) The authority delegated under paragraphs (h)(1)(iii), (iv), (v), (vi) and (vii) of this section shall be exercised only upon the concurrent certification by the Associate General Counsel for Compliance and Enforcement, or in cases where a regional director or deputy regional director issues the notice of intent to issue a prompt corrective action directive or prompt corrective action directives, or the notice of intent to reclassify or reclassification directive, by the appropriate regional counsel, that the allegations contained in the notice of intent, if proven, constitute a basis for the issuance of a final directive pursuant to section 38 of the Act, or that the issuance of a final directive is not inconsistent with section 38 of the Act.

(6) The authority delegated under paragraph (h)(2) of this section shall be exercised only upon the concurrent certification by the Associate General Counsel for Compliance and Enforcement that the allegations contained in the notice of intent, if proven, constitute a basis for the issuance of a final directive pursuant to section 38 of the Act or that the issuance of a final directive is not inconsistent with section 38 of the Act or that the stipulated section 38 order is not inconsistent with section 38 and is an order which has become final for purposes of enforcement pursuant to the Act.

(i) *Investigations pursuant to section 10(c) of the Act (12 U.S.C. 1820(c)).* (1) Authority is delegated to the Director (DOS), to the Director (DCA), to the Director of the Division of Depositor and Asset Services, and where con-

firmed in writing by the director, to an associate director, or to the appropriate regional director, deputy regional director or regional manager, to issue an order of investigation pursuant to section 10(c) of the Act (12 U.S.C. 1820(c)) and subpart K of Part 308 (12 CFR 308.144 through 308.150).

(2) Authority is delegated to the General Counsel, and where confirmed in writing by the General Counsel, to his designee, to issue an order of investigation pursuant to section 10(c) of the Act (12 U.S.C. 1820(c)) and subpart K of Part 308 (12 CFR 308.144 through 308.150).

(3) In issuing an order of investigation that pertains to an open insured depository institution or an institution making application to become an insured depository institution, the authority delegated under paragraphs (i)(1) and (2) of this section shall be exercised only upon the concurrent execution of the order of investigation by the Director (DOS) or the Director (DCA), or their associate directors, or the appropriate regional director, deputy regional director or regional manager, and the General Counsel or designee. In the case of a joint order of investigation, such authority shall be exercised only upon the concurrent execution of the order of investigation by both directors, or their associate directors, or the appropriate regional director, deputy regional director and regional manager, and the General Counsel or designee.

(j) *Truth in Lending Act.* (1) Authority is delegated to the Director (DCA), and where confirmed in writing by the director, to the associate director, or to the appropriate regional manager, to deny requests for relief from the requirements for reimbursement under section 608(a)(2) of the Truth in Lending Simplification and Reform Act (15 U.S.C. 1607(e)(2)); Provided however, that a regional manager is not authorized to deny any request where the estimated amount of reimbursement is greater than \$25,000.

(2) Authority is delegated to the Director (DCA), and where confirmed in writing by the director, to an associate director:

(i) To grant request for relief from the requirements for reimbursement

under section 608(a)(2) of the Truth in Lending Simplification and Reform Act (15 U.S.C. 1670(a)(2)); and

(ii) To act on applications for reconsideration of any action taken under paragraphs (j) (1) and (2) of this section.

(3) The authority delegated under paragraphs (j) (1) and (2) of this section shall be exercised only upon concurrent certification by the Associate General Counsel for Compliance and Enforcement, or, in cases where a regional manager denies requests for relief, by the appropriate regional counsel, that the action taken is not inconsistent with the Truth in Lending Simplification and Reform Act.

(k) *Unilateral settlement offers.* (1) Authority is delegated to the Director (DOS), to the Director (DCA), and where confirmed in writing by either director, to an associate director, to accept, deny or enter into negotiations for unilateral settlement offers with insured depository institutions, or with an institution-affiliated party, pertaining to a proceeding under 12 CFR part 308. In cases where a proceeding under 12 CFR part 308 was issued jointly by DOS and DCA, both directors, or their associate directors, must agree to accept, deny or enter into negotiations for unilateral settlement offers with insured depository institutions or with an institution-affiliated party.

(2) The authority delegated under paragraph (k)(1) of this section shall be exercised only upon concurrent certification by the Associate General Counsel for Compliance and Enforcement that the action taken is not inconsistent with the Act.

(l) *Acceptance of written agreements.* (1) Authority is delegated to the Director (DOS), and where confirmed in writing by the director, to an associate director, to accept or enter into any written agreements with insured depository institutions, or any institution-affiliated party pertaining to any matter which may be addressed by the FDIC pursuant to section 8(a) of the Act (12 U.S.C. 1818(a)).

(2) Authority is delegated to the Director (DOS), to the Director (DCA), and where confirmed in writing by either director, to an associate director, to accept or enter into any written

agreements with insured depository institutions, or any institution-affiliated party pertaining to any safety and soundness or consumer compliance matter which may be addressed by the FDIC pursuant to section 8(b) of the Act (12 U.S.C. 1818(b)) or any other provision of the Act which addresses safety and soundness or consumer compliance matters. In cases which would address both safety and soundness and consumer compliance matters, the Directors, or their designees, may accept or enter into joint written agreements with insured depository institutions or institution-affiliated parties.

(3) The authority delegated under paragraphs (l) (1) and (2) of this section shall be exercised only upon concurrent certification by the Associate General Counsel for Compliance and Enforcement that the action taken is not inconsistent with sections 8 (a) and (b) of the Act.

(m) *Modifications and terminations of enforcement actions—*(1) *Sections 8(a), 8(b) and 8(c) (12 U.S.C. 1818 (a), (b) and (c)) actions upon failure or merger of a depository institution.* (i) Authority is delegated to the Director (DOS), and where confirmed in writing by the director, to an associate director, or to the appropriate regional director or deputy regional director, to terminate outstanding section 8(a) orders and agreements and to terminate actions and agreements which are pending pursuant to section 8(a) of the Act when the depository institution is closed by a Federal or state authority or merges into another institution.

(ii) Authority is delegated to the Director (DOS), to the Director (DCA), and where confirmed in writing by either director, to an associate director, or to the appropriate regional director, deputy regional director or regional manager, to terminate outstanding section 8(b) and section 8(c) orders and agreements and to terminate actions and agreements which are pending pursuant to sections 8(b) and 8(c) of the Act when the depository institution is closed by a Federal or state authority or merges into another institution. In cases where a joint order was issued by DOS and DCA, both directors, or their associate directors, or the appropriate

regional director or deputy regional director and regional manager, must agree prior to the termination of outstanding 8(b) and 8(c) orders.

(2) *Section 8(a) (12 U.S.C. 1818(a)) actions issued by the Board of Directors.* (i) Authority is delegated to the Director (DOS), and where confirmed in writing by the director, to an associate director, or to the appropriate regional director or deputy regional director, to modify or terminate notifications to primary regulator issued by the Board of Directors pursuant to section 8(a) of the Act where the respondent depository institution is in material compliance with such notification or for good cause shown.

(ii) In cases where the Board of Directors has issued a notice of intent to terminate insured status pursuant to section 8(a) of the Act, authority is delegated to the Director (DOS), and where confirmed in writing by the director, to an associate director, or to the appropriate regional director or deputy regional director, to terminate the actions pending pursuant to such notice of intent to terminate insured status where the respondent depository institution is in material compliance with the applicable notification to primary regulator or for good cause shown.

(3) *Section 8(b) (12 U.S.C. 1818(b)) orders issued by the Board of Directors.* Authority is delegated to the Director (DOS) or the Director (DCA), and where confirmed in writing by the director, to an associate director, or to the appropriate regional director, deputy regional director or regional manager, to terminate outstanding section 8(b) orders issued by the Board of Directors where either material compliance with the section 8(b) order has been achieved by the respondent depository institution or individual respondent or for good cause shown. In cases where an order issued by the Board addresses both safety and soundness and consumer compliance matters, both directors, or their designees, must agree prior to the termination of outstanding 8(b) orders.

(4) *Section 8(g) orders issued by the Board of Directors.* Authority is delegated to the Director (DOS) or the Director (DCA), and where confirmed in

writing by the director, to an associate director, to approve requests for modifications or terminations of section 8(g) orders issued by the Board of Directors.

(5) *Other matters not specifically addressed.* For all other outstanding orders or pending actions not specifically addressed in paragraphs (m)(1), (m)(2), (m)(3) and (m)(4) of this section, the delegations of authority contained in paragraphs (a)(1), (a)(2), (b)(1), (c)(1), (d)(1), (e)(1), (g)(1), (g)(2), (h)(1), (h)(2), (l)(1), (l)(2), and (n) of this section shall be construed to include the authority to modify or terminate any outstanding notice, order, directive or agreement, as may be appropriate, issued pursuant to delegated authority and to terminate any pending action initiated pursuant to delegated authority.

(6) *Certification.* Any modifications or terminations pursuant to paragraphs (m)(1), (m)(2), (m)(3), (m)(4), and (m)(5) of this section shall be exercised only upon concurrent certification by the Associate General Counsel for Compliance and Enforcement, or in cases where a regional director, deputy regional director or regional manager acts under delegated authority, by the appropriate regional counsel, that the action taken is not consistent with the Act.

(n) *Enforcement of outstanding orders.* After consultation with the Director (DOS) or the Director (DCA), or an associate director, or the appropriate regional director, deputy regional director or regional manager, as may be appropriate, the General Counsel or designee is authorized to initiate and prosecute any action to enforce any effective and outstanding order or temporary order issued under 12 U.S.C. 1817, 1818, 1820, 1828, 1829, 1831I, 1831o, 1972, or 3909, or any provision thereof, in the appropriate United States District Court.

(o) *Compliance plans under section 39 of the Act (standards for safety and soundness) and part 308 of this chapter.*

(1) Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, or to the appropriate regional director or deputy regional director, to accept, to reject, to require new or revised compliance plans or to make any other

determinations with respect to the implementation of compliance plans pursuant to subpart R of part 308 of this chapter.

(2) Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, to:

(i) Issue notices of intent to issue an order requiring the bank to correct a safety and soundness deficiency or to take or refrain from taking other actions pursuant to section 39 of the Act (12 U.S.C. 1831p-1) and in accordance with the requirements contained in § 308.304(a)(1) of this chapter;

(ii) Issue an order requiring the bank immediately to correct a safety and soundness deficiency or to take or refrain from taking other actions pursuant to section 39 of the Act (12 U.S.C. 1831p-1) and in accordance with the requirements contained in § 308.304(a)(2) of this chapter; and

(iii) Act on requests for modification or rescission of an order.

(3) The authority delegated under paragraph (o)(1) of this section shall be exercised only upon the concurrent certification by the Associate General Counsel for Compliance and Enforcement, or in cases where a regional director or deputy regional director accepts, rejects or requires new or revised compliance plans or makes any other determinations with respect to compliance plans, by the appropriate regional counsel, that the action taken is not inconsistent with the Act.

(4) The authority delegated under paragraph (o)(2) of this section shall be exercised only upon the concurrent certification by the Associate General Counsel for Compliance and Enforcement that the allegations contained in the notice of intent, if proven, constitute a basis for the issuance of a final order pursuant to section 39 of the Act or that the issuance of a final order is not inconsistent with section 39 of the Act or that the stipulated section 39 order is not inconsistent with section 39 and is an order which has become final for purposes of enforcement pursuant to the Act.

[59 FR 52663, Oct. 19, 1994, as amended at 60 FR 35683, July 10, 1995]

**§ 303.10 Applications and enforcement matters where authority is not delegated.**

(a) *Authority not specifically delegated is retained by the Board of Directors.* (1) Except as otherwise provided in this part, or with respect to matters which generally involve conditions or circumstances requiring prompt action in the field for the better protection of the interests of the FDIC and to achieve flexibility and expedition in its operations and in the exercise of its functions in connection with the FDIC's litigation and liquidation matters and with the payment of claims for insured deposits, the Board of Directors does not delegate its authority and no delegations of final authority are made by the Board of Directors. Any person having a proper and direct concern therein may ascertain the scope of authority of any officer, agent or employee of the FDIC by communicating with the Executive Secretary of the FDIC.

(2) In all cases where authority to act on applications, requests or enforcement matters listed in this part is not delegated to a Director, or to an associate director, or to a regional director, deputy regional director or regional manager"; the authority to act on such applications, requests, or enforcement matters remains vested in the Board of Directors of the FDIC. In addition, the Board of Directors retains the authority to act on any application, request or enforcement matter upon which any member of the Board of Directors wishes to act even if the authority to act on such application, request or enforcement matter has been delegated.

(b) *Applications and requests.* Without limiting the Board of Directors' authority, the Board of Directors has retained the authority to act upon the following applications and requests:

(1) Except as provided in § 303.7(b)(9) of this part to deny applications for merger transactions, and to approve applications for merger transactions where:

(i) The applicant does not agree in writing to comply with any conditions imposed by the FDIC (other than the standard condition listed in § 303.0(b)(26) which may be imposed