

**§ 509.38 Recommended decision and filing of record.**

(a) *Filing of recommended decision and record.* Within 45 days after expiration of the time allowed for filing reply briefs under § 509.37(b) of this subpart, the administrative law judge shall file with and certify to the Director, for decision, the record of the proceeding. The record must include the administrative law judge's recommended decision, recommended findings of fact, recommended conclusions of law, and proposed order; all prehearing and hearing transcripts, exhibits, and rulings; and the motions, briefs, memoranda, and other supporting papers filed in connection with the hearing. The administrative law judge shall serve upon each party the recommended decision, findings, conclusions, and proposed order.

(b) *Filing of index.* At the same time the administrative law judge files with and certifies to the Director for final determination the record of the proceeding, the administrative law judge shall furnish to the Director a certified index of the entire record of the proceeding. The certified index shall include, at a minimum, an entry for each paper, document or motion filed with the administrative law judge in the proceeding, the date of the filing, and the identity of the filer. The certified index shall also include an exhibit index containing, at a minimum, an entry consisting of exhibit number and title or description for: Each exhibit introduced and admitted into evidence at the hearing; each exhibit introduced but not admitted into evidence at the hearing; each exhibit introduced and admitted into evidence after the completion of the hearing; and each exhibit introduced but not admitted into evidence after the completion of the hearing.

[61 FR 20356, May 6, 1996]

**§ 509.39 Exceptions to recommended decision.**

(a) *Filing exceptions.* Within 30 days after service of the recommended decision, findings, conclusions, and proposed order under § 509.38 of this subpart, a party may file with the Director written exceptions to the adminis-

trative law judge's recommended decision, findings, conclusions or proposed order, to the admission or exclusion of evidence, or to the failure of the administrative law judge to make a ruling proposed by a party. A supporting brief may be filed at the time the exceptions are filed, either as part of the same document or in a separate document.

(b) *Effect of failure to file or raise exceptions.* (1) Failure of a party to file exceptions to those matters specified in paragraph (a) of this section within the time prescribed is deemed a waiver of objection thereto.

(2) No exception need be considered by the Director if the party taking exception had an opportunity to raise the same objection, issue, or argument before the administrative law judge and failed to do so.

(c) *Contents.* (1) All exceptions and briefs in support of such exceptions must be confined to the particular matters in, or omissions from, the administrative law judge's recommendations to which that party takes exception.

(2) All exceptions and briefs in support of exceptions must set forth page or paragraph references to the specific parts of the administrative law judge's recommendations to which exception is taken, the page or paragraph references to those portions of the record relied upon to support each exception, and the legal authority relied upon to support each exception.

**§ 509.40 Review by the Director.**

(a) *Notice of submission to the Director.* When the Director determines that the record in the proceeding is complete, the Director shall serve notice upon the parties that the proceeding has been submitted to the Director for final decision.

(b) *Oral argument before the Director.* Upon the initiative of the Director or on the written request of any party filed with the Director within the time for filing exceptions, the Director may order and hear oral argument on the recommended findings, conclusions, decision, and order of the administrative law judge. A written request by a party must show good cause for oral argument and state reasons why arguments

cannot be presented adequately in writing. A denial of a request for oral argument may be set forth in the Director's final decision. Oral argument before the Director must be on the record.

(c) *Director's final decision.* (1) Decisional employees may advise and assist the Director in the consideration and disposition of the case. The final decision of the Director will be based upon review of the entire record of the proceeding, except that the director may limit the issues to be reviewed to those findings and conclusions to which opposing arguments or exceptions have been filed by the parties.

(2) The Director shall render a final decision within 90 days after notification of the parties that the case has been submitted for final decision, or 90 days after oral argument, whichever is later, unless the Director orders that the action or any aspect thereof be remanded to the administrative law judge for further proceedings. Copies of the final decision and order of the Director shall be served upon each party to the proceeding, upon other persons required by statute, and, if directed by the Director or required by statute, upon any appropriate state or Federal supervisory authority.

#### § 509.41 Stays pending judicial review.

The commencement of proceedings for judicial review of a final decision and order of the Office may not, unless specifically ordered by the Director or a reviewing court, operate as a stay of any order issued by the Director. The Director may, in its discretion, and on such terms as it finds just, stay the effectiveness of all or any part of its order pending a final decision on a petition for review of the order.

### Subpart B—Local Rules

#### § 509.100 Scope.

The rules and procedures in this subpart B shall apply to those proceedings covered by subpart A of this part. In addition, subpart A of this part and this subpart shall apply to adjudicatory proceedings for which hearings on the record are provided for by the following statutory provisions:

(a) Proceedings under section 10(a)(2)(D) of the HOLA (12 U.S.C. 1467a(a)(2)(D)) to determine whether any person directly or indirectly exercises a controlling influence over the management or policies of a savings association or any other company;

(b) Proceedings under section 10(g)(5)(A) of the HOLA (12 U.S.C. 1467a(g)(5)(A)) to determine whether to terminate certain activities by savings and loan holding companies or to terminate ownership or control of a non-insured savings and loan holding company subsidiary; and

(c) Proceedings under section 15(c)(4) of the Securities and Exchange Act of 1934 (15 U.S.C. 78o(c)(4)) (Exchange Act) to determine whether any association or person subject to the jurisdiction of the Office pursuant to section 12(i) of the Exchange Act (15 U.S.C. 78l(i)) has failed to comply with the provisions of sections 12, 13, 14(a), 14(c), 14(d) or 14(f) of the Exchange Act.

#### § 509.101 Appointment of Office of Financial Institution Adjudication.

Unless otherwise directed by the Office, all hearings under subpart A of this part and this subpart shall be conducted by administrative law judges under the direction of the Office of Financial Institution Adjudication, 1700 G Street NW., Washington, DC 20552.

#### § 509.102 Discovery.

(a) *In general.* A party may take the deposition of an expert, or of a person, including another party, who has direct knowledge of matters that are non-privileged, relevant and material to the proceeding and where there is a need for the deposition. The deposition of experts shall be limited to those experts who are expected to testify at the hearing.

(b) *Notice.* A party desiring to take a deposition shall give reasonable notice in writing to the deponent and to every other party to the proceeding. The notice must state the time and place for taking the deposition and the name and address of the person to be deposed.

(c) *Time limits.* A party may take depositions at any time after the commencement of the proceeding, but no