

Administrator, Deputy Comptroller for Multinational Banking, or the Deputy Comptroller or Director for Special Supervision, as appropriate, must appoint one or more OCC employees as the presiding officer to conduct the hearing. The presiding officer(s) may not have been involved in the proceeding, a factually related proceeding, or the underlying enforcement action in a prosecutorial or investigative role.

(c) *Waiver of oral hearing.*—(1) *Petitioner.* When the petitioner requests a hearing, the petitioner may elect to have the matter determined by the presiding officer solely on the basis of written submissions by serving on the District Deputy Comptroller or Administrator, Deputy Comptroller for Multinational Banking, or the Deputy Comptroller or Director for Special Supervision, whichever is appropriate, and all parties, a signed document waiving the statutory right to appear and make oral argument. The petitioner must present the written submissions to the presiding officer, and serve the other parties, not later than ten days prior to the date fixed for the hearing, or within such shorter time period as the presiding officer may permit.

(2) *OCC.* The OCC may respond to the petitioner's submissions by presenting the hearing officer with a written response, and by serving the other parties, not later than the date fixed for the hearing, or within such other time period as the presiding officer may require.

(d) \* \* \*

(3) *Presentation.* (i) The OCC may appear and the petitioner may appear personally or through counsel at the hearing to present relevant written materials and oral argument. Except as permitted in paragraph (c) of this section, each party, including the OCC, must file a copy of any affidavit, memorandum, or other written material to be presented at the hearing with the presiding officer and must serve the other parties not later than ten days prior to the hearing or within such shorter time period as permitted by the presiding officer.

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5. In § 19.113, paragraphs (a) and (b) are revised, paragraphs (c), (d), and (e) are redesignated as paragraphs (d), (e), and (f), respectively, and new paragraph (c) is added, to read as follows:

**§ 19.113 Recommended and final decisions.**

(a) The presiding officer must issue a recommended decision to the Comptroller within 20 days from the hearing or, when the petitioner waived

an oral hearing, within 20 days from the date fixed for the hearing. The presiding officer must serve promptly a copy of the recommended decision on the parties to the proceeding. The decision must include a summary of the facts and arguments of the parties.

(b) Each party may, within ten days of being served with the presiding officer's recommended decision, submit to the Comptroller comments on the recommended decision.

(c) Within 60 days following the hearing or, when the petitioner waived an oral hearing within 60 days from the date fixed for the hearing, the Comptroller must notify the petitioner by registered mail as to whether the suspension or removal from office, and prohibition from participation in any manner in the affairs of the bank, will be affirmed, terminated, or modified. The Comptroller's decision must include a statement of reasons supporting the decision. The Comptroller's decision is a final and unappealable order.

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**Subpart H—[Amended]**

**§ 19.160 [Amended]**

6. In § 19.160, paragraph (a) is amended in the second sentence by revising the phrase "notify the acquiring party in writing" to read "mail a written notification to the proposed acquiring person".

7. Section 19.161 is revised to read as follows:

**§ 19.161 Notice of disapproval and hearing initiation.**

(a) *Notice of disapproval.* The OCC's written disapproval of a proposed acquisition of control of a national bank must:

(1) Contain a statement of the basis for the disapproval; and

(2) Indicate that the filer may request a hearing.

(b) *Hearing request.* Following receipt of a notice of disapproval, a filer may request a hearing on the proposed acquisition. A hearing request must:

(1) Be in writing; and

(2) Be filed with the hearing clerk of the OCC within ten days after service on the filer of the notice of disapproval. If a filer fails to request a hearing with a timely written request, the notice of disapproval constitutes a final and unappealable order.

(c) *Hearing order.* Following receipt of a hearing request, the Comptroller issues, within 20 days, an order that sets forth:

(1) The legal authority for the proceeding and for the OCC's jurisdiction over the proceeding;

(2) The matters of fact or law upon which the disapproval is based; and

(3) The requirement for filing an answer to the hearing notice with OFIA within 20 days after service of the hearing order.

(d) *Answer.* An answer to a hearing order must specifically deny those portions of the order that are disputed. Those portions of the order that the filer does not specifically deny are deemed admitted by the filer. Any hearing under this subpart is limited to those portions of the order that are specifically denied.

(e) *Effect of failure to answer.* Failure of a filer to file an answer within 20 days after service of the hearing order constitutes a waiver of the filer's right to appear and contest the allegations in the hearing order. If a filer does not file a timely answer, enforcement counsel may file a motion for entry of an order of default. Upon a finding that no good cause has been shown for the failure to file a timely answer, the administrative law judge shall file with the Comptroller a recommended decision containing the findings and the relief sought in the hearing order. Any final order issued by the Comptroller based upon a filer's failure to answer is deemed to be an order issued upon consent and is a final and unappealable order.

**§ 19.162 [Removed]**

8. Section 19.162 is removed.

**Subpart I—[Amended]**

9. In § 19.170, paragraph (d) is revised, paragraphs (e) and (f) are redesignated as paragraphs (f) and (g), respectively, and a new paragraph (e) is added to read as follows:

**§ 19.170 Discovery depositions.**

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(d) *Conduct of the deposition.* The witness must be duly sworn, and each party will have the right to examine the witness with respect to all non-privileged, relevant, and material matters of which the witness has factual, direct, and personal knowledge. Objections to questions or exhibits must be in short form and must state the grounds for the objection. Failure to object to questions or exhibits is not a waiver except where the grounds for the objection might have been avoided if the objection had been timely presented.

(e) *Recording the testimony.*—(1)

*Generally.* The party taking the deposition must have a certified court reporter record the witness's testimony:

(i) By stenotype machine or electronic sound recording device;

(ii) Upon agreement of the parties, by any other method; or