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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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## FEDERAL DEPOSIT INSURANCE CORPORATION

### 12 CFR Part 337

RIN 3064-AC48

#### Rescission of Deposit Broker Notification, Recordkeeping and Reporting Requirements

**AGENCY:** Federal Deposit Insurance Corporation ("FDIC").

**ACTION:** Final rule.

**SUMMARY:** As part of the Financial Regulatory Relief and Economic Efficiency Act of 2000, Congress repealed section 29A of the Federal Deposit Insurance Act ("FDI Act"). Section 29A imposed certain requirements on deposit brokers and authorized the FDIC to issue implementing regulations. The FDIC is rescinding the regulations issued to implement the now-repealed section 29A of the FDI Act. As a result of Congress' repeal of section 29A and the FDIC's rescission of the implementing regulations, deposit brokers no longer are required to notify the FDIC that they are acting as deposit brokers or have ceased acting as such. Also, deposit brokers no longer are required to maintain records as to the amounts and maturities of deposits placed by the broker at each insured depository institution.

**EFFECTIVE DATE:** April 3, 2001.

**FOR FURTHER INFORMATION CONTACT:** Carol A. Mesheske, Chief, Special Activities Section, Division of Supervision, (202) 898-6750, Joseph A. DiNuzzo, Counsel, (202) 898-7349 or Christopher L. Hencke, Counsel, (202) 898-8839, Legal Division, FDIC, Washington, D.C. 20429.

**SUPPLEMENTARY INFORMATION:** Congress repealed section 29A of the FDI Act (12 U.S.C. 1831f-1) in the Financial Regulatory Relief and Economic

Efficiency Act of 2000, Pub. L. 106-569, Title XII, § 1203. The effective date of that legislation was December 27, 2000. Section 29A prohibited a "deposit broker," as defined in section 29(g) of the FDI Act (12 U.S.C. 1831f(g)), from soliciting or placing deposits with FDIC-insured depository institutions unless the broker notified the FDIC that it was acting as a deposit broker. Deposit brokers also were required to notify the FDIC when they stopped acting as deposit brokers. In addition, section 29A authorized the FDIC to impose, by regulation, recordkeeping and reporting requirements upon deposit brokers. As an amendment to § 337.6 of its regulations, in 1992 the FDIC issued notice, recordkeeping and reporting requirements affecting deposit brokers. 12 CFR 337.6(e). As the result of Congress' repeal of section 29A of the FDI Act, the FDIC is now rescinding the regulations issued pursuant to section 29A.

In the past, some deposit brokers have advertised themselves as "FDIC-registered." Such advertisements suggested that the broker had been approved or examined by the FDIC. Such suggestions were incorrect. By repealing section 29A, Congress intended to eliminate such inaccurate advertisements. Brokers should no longer advertise that they are "FDIC-registered" or otherwise indicate that they are somehow approved by the FDIC.

Neither the repeal of section 29A nor the rescission of § 337.6(e) changes the definition of deposit broker. Under the FDI Act a deposit broker is broadly defined as "any person engaged in the business of placing deposits or facilitating the placement of deposits of third parties with insured depository institutions \* \* \*." 12 U.S.C. 1831f(g)(1)(A). The repeal of section 29A and the rescission of § 337.6(e) mean only that deposit brokers are no longer bound by the former statutory and regulatory notification, recordkeeping and reporting requirements. The prohibition on the acceptance of brokered deposits by certain FDIC-insured depository institutions, based on their capitalization, continues to apply. (12 U.S.C. 1831f; 12 CFR 337.6.) Similarly, the requirements for obtaining "pass-through" insurance coverage on

brokered deposits are unchanged. (12 CFR 330.5(b).)

#### Exemption From Public Notice and Comment

The rescission of § 337.6(e) does not constitute a "rule" for which the FDIC is required to publish a general notice of proposed rulemaking under section 553(b) of the United States Code. This is because the final rule merely rescinds a regulation issued pursuant to a statute that Congress has repealed. Thus, the FDIC has determined for good cause that public notice and comment are unnecessary and the rule should be published in final form.

#### Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 USC 601-612) requires an agency to publish an initial regulatory flexibility analysis, except to the extent provided in 5 USC 605(b), whenever the agency is required to publish a general notice of proposed rulemaking for a proposed rule. For the reasons discussed above, the FDIC is publishing this rule as a final rule, for which no publication of a general notice of proposed rulemaking is necessary. Thus, no regulatory flexibility analysis is required.

#### Congressional Review Act

The Office of Management and Budget has determined that this final rule is not a "major rule" within the meaning of the Congressional Review Act (5 USC 801, *et seq.*). The FDIC will file the appropriate reports with Congress and the General Accounting Office so that this final rule can be reviewed.

#### List of Subjects in 12 CFR Part 337

Banks, banking, Deposit brokers, Deposit insurance, Reporting and recordkeeping requirements, Savings associations, Securities.

In consideration of the foregoing, the FDIC hereby amends part 337 of chapter III of title 12 of the Code of Federal Regulations as follows:

#### PART 337—UNSAFE AND UNSOUND BANKING PRACTICES

1. The authority citation for part 337 continues to read as follows:

**Authority:** 12 U.S.C. 375a(4), 375b, 1816, 1818(a), 1818(b), 1819, 1820(d)(10), 1821f, 1828(j)(2), 1831, 1831f-1.

**§ 337.6 [Amended]**

2. Section 337.6(e) is removed and reserved.

By order of the Board of Directors.

Dated at Washington, D.C., this 26th day of March, 2001.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. 01-8100 Filed 4-2-01; 8:45 am]

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**FEDERAL TRADE COMMISSION****16 CFR Parts 2, 3 and 4****Rules of Practice**

**AGENCY:** Federal Trade Commission (FTC).

**ACTION:** Interim rules with request for comments.

**SUMMARY:** The Commission is updating and making other technical corrections and changes to its regulations on Organization, Procedures and Rules of Practice.

**DATES:** These rule amendments will be effective May 18, 2001. Comments must be received on or before May 4, 2001. These amendments will govern all Commission adjudicatory proceedings commenced on or after May 18, 2001. They will also govern all pending Commission adjudicatory proceedings commenced before May 18, 2001 unless, in the opinion of the Administrative Law Judge (ALJ) or the Commission, the application of one or more amended rules in a particular proceeding would not be feasible or would work injustice.

**ADDRESSES:** Written comments must be submitted with 20 copies to the Office of the Secretary, Room 159, Federal Trade Commission, 600 Pennsylvania Ave., NW., Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** John Graubert, Office of General Counsel, FTC, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326-2186, jgraubert@ftc.gov.

**SUPPLEMENTARY INFORMATION:** The Commission has periodically examined and revised its rules of practice in the interest of clarifying the rules and making the Commission's procedures more efficient and less burdensome for all parties.<sup>1</sup> The Commission is further amending parts 2, 3 and 4 of its rules, 16 CFR parts 2, 3 and 4, to update and make other technical clarifications,

corrections, and changes to the rules, as follows.

**Reports of Compliance**

To facilitate the processing and review of compliance reports, Rule 2.41(a) is being amended to provide (1) that an original and one copy of each such compliance report should be filed with the Secretary of the Commission, and (2) that, at the same time, one additional copy should be filed with the Associate Director for Enforcement in the Bureau of Consumer Protection (for consumer protection orders) or with the Assistant Director for Compliance in the Bureau of Competition (for competition orders).

**Pretrial and Discovery**

**Responsive Motions:** Rule 3.12(a): In federal court practice, Federal Rule of Civil Procedure 12(a)(4) provides that the filing of a "motion permitted under this rule" tolls the period for answering a complaint. Commission Rule 3.12(a) generally follows the federal rule but mentions only a motion for a more definite statement. Although other motions, such as motions to dismiss, are undoubtedly rare at the outset of FTC administrative proceedings, there is no reason to exclude such dispositive motions from the rule. Making Rule 3.12(a) consistent with Fed. R. Civ. P. 12(a)(4) will spare the parties and ALJ the additional inconvenience of arranging extensions of time to answer in individual cases where such motions are filed.

**Initial Pretrial Conferences:** Rule 3.21(b): Under the Commission's 1996 Rule amendments, the ALJs must hold a scheduling conference not later than seven (7) days after the last answer is filed. Although the 1996 amendments were designed to expedite administrative litigation, this is one instance in which some additional time might actually make the proceedings more efficient. As a practical matter, particularly in cases when service on one or more respondents is complicated for any reason (e.g., overseas service), it has proved difficult to predict when the last answer will be filed and difficult to schedule and plan for a scheduling conference in this narrow seven-day window. Moreover, two days after the initial scheduling conference, no matter how hastily convened, the ALJ is required to issue a prehearing scheduling order based in part on the results of the conference. See Rule 3.21(c). Because the Commission wants the parties to exchange disclosures and have meaningful discussions about the proceeding before the scheduling conference in order to identify and

attempt to narrow the issues in the case, which will also assist the ALJ in crafting a meaningful pretrial order, the Commission will make a modest enlargement of the period in Rule 3.21(b) from seven to fourteen (14) days.

**Adjudicative Motions:** Rule 3.22: When the Commission amended the Part 3 Rules in 1996, it approved a change to Rule 3.22(b) to require "that all motions in adjudicative proceedings include the name, address, and telephone number of counsel, and attach a draft order containing the proposed relief." See 61 FR 50640, 50644. This language was inadvertently omitted from the revised Rule itself, as published in the **Federal Register** and later incorporated into the Code of Federal Regulation (although part of this requirement is contained in Rule 4.2(e)(1)). In addition to making this change in Rule 3.22, the amended rule will also require counsel to provide a fax number and e-mail address, if any, along with name, address and phone number.

**Summary Decision:** Rule 3.24(a)(2): The rule currently provides that a decision shall be rendered "within thirty (30) days." For clarity, the Rule is being amended to specify that the decision is due within thirty (30) days after the opposition or any final brief ordered by the ALJ is filed.

**Expert Discovery:** Rule 3.31(c)(4)(i): Under the Commission's current rule, discovery of experts is handled principally by interrogatory. Further discovery, including depositions, requires an order from the ALJ. The amended Rule, reflecting the development of practice in recent years under the Federal Rules of Civil Procedure, generally provides for disclosure of expert opinions and depositions of experts. Rule 3.31(c)(4)(B)(iii), regarding payment of expert fees for certain discovery, is deleted. The ALJ can address any issues regarding fees or costs under Paragraph (d) of this rule.

**Depositions:** Rule 3.33(a): The amended Rule incorporates a provision modeled on Federal Rule of Civil Procedure 30(b)(7), which permits the parties to stipulate or the court to order that a deposition may be taken by telephone or other remote electronic means.

**Foreign Discovery:** Rule 3.36: Since the 1996 amendments to the Rules, parties may issue subpoenas for depositions or production of documents without prior approval or supervision from the ALJs, except when the discovery request seeks information or testimony from another governmental agency. For discovery involving other

<sup>1</sup> See, e.g., 61 FR 50640 (Sept. 26, 1996); 50 FR 41485 (Oct. 11, 1985).