

**§ 308.536**

**12 CFR Ch. III (1–1–05 Edition)**

such briefs, not to exceed 60 days from the date the parties receive the transcript of the hearing or, if applicable, the stipulated record. Such briefs may be accompanied by proposed findings of fact and conclusions of law. The ALJ may permit the parties to file reply briefs.

**§ 308.536 Initial decision.**

(a) The ALJ will issue an initial decision based only on the record, which will contain findings of fact, conclusions of law, and the amount of any penalties and assessments imposed.

(b) The findings of fact will include a finding on each of the following issues:

(1) Whether the claims or statements identified in the complaint, or any portions of such claims or statements, violate § 308.502 of this subpart; and

(2) If the person is liable for penalties or assessments, the appropriate amount of any such penalties or assessments considering any mitigating or aggravating factors that he or she finds in the case, such as those described in § 308.530 of this subpart.

(c) The ALJ will promptly serve the initial decision on all parties within 90 days after the time for submission of post-hearing briefs and reply briefs (if permitted) has expired. The ALJ will at the same time serve all parties with a statement describing the right of any defendant determined to be liable for a civil penalty or assessment to file a motion for reconsideration with the ALJ or a notice of appeal with the Board. If the ALJ fails to meet the deadline contained in this paragraph, he or she will notify the parties of the reason for the delay and will set a new deadline.

(d) Unless the initial decision of the ALJ is timely appealed to the Board, or a motion for reconsideration of the initial decision is timely filed, the initial decision will constitute the final decision of the Board and will be final and binding on the parties 30 days after it is issued by the ALJ.

**§ 308.537 Reconsideration of initial decision.**

(a) Except as provided in paragraph (d) of this section, any party may file a motion for reconsideration of the initial decision within 20 days of receipt

of the initial decision. If service is made by mail, receipt will be presumed to be 5 days from the date of mailing in the absence of proof to the contrary.

(b) Every motion for reconsideration must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors. The motion must be accompanied by a supporting brief.

(c) Responses to the motions will be allowed only upon order of the ALJ.

(d) No party may file a motion for reconsideration of an initial decision that has been revised in response to a previous motion for reconsideration.

(e) The ALJ may dispose of a motion for reconsideration by denying it or by issuing a revised initial decision.

(f) If the ALJ denies a motion for reconsideration, the initial decision will constitute the final decision of the FDIC and will be final and binding on all parties 30 days after the ALJ denies the motion, unless the final decision is timely appealed to the Board in accordance with § 308.538 of this subpart.

(g) If the ALJ issues a revised initial decision, that decision will constitute the final decision of the FDIC and will be final and binding on the parties 30 days after it is issued, unless it is timely appealed to the Board in accordance with § 308.538 of this subpart.

**§ 308.538 Appeal to the Board of Directors.**

(a) Any defendant who has filed a timely answer and who is determined in an initial decision to be liable for a civil penalty or assessment may appeal such decision to the Board by filing a notice of appeal with the Board in accordance with this section.

(b)(1) No notice of appeal may be filed until the time period for filing a motion for reconsideration under § 308.537 of this subpart has expired.

(2) If a motion for reconsideration is timely filed, a notice of appeal must be filed within 30 days after the ALJ denies the motion or issues a revised initial decision, whichever applies.

(3) If no motion for reconsideration is timely filed, a notice of appeal must be filed within 30 days after the ALJ issues the initial decision.

(4) The Board may extend the initial 30-day period for an additional 30 days