

# Rules and Regulations

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## FEDERAL RESERVE SYSTEM

### 12 CFR Part 272

[Docket No. R-1142]

#### Federal Open Market Committee; Amendment to Rules of Procedure

**AGENCY:** Federal Open Market Committee.

**ACTION:** Final rule.

**SUMMARY:** The Federal Open Market Committee has amended its definition of a quorum of the Committee. The amendment is designed to enhance the Committee's ability to perform its functions in the event of a national emergency.

**DATES:** The rule is effective February 6, 2003.

**FOR FURTHER INFORMATION CONTACT:** Kieran J. Fallon, Senior Counsel (202-452-5270), Legal Division; Board of Governors of the Federal Reserve System; or Normand R.V. Bernard, Deputy Secretary (202-452-3606), Federal Open Market Committee, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Users of Telecommunication Device for Deaf (TTD) only, call (202) 263-4869.

**SUPPLEMENTARY INFORMATION:** The Federal Open Market Committee (Committee) is composed of (1) all of the members of Board of Governors of the Federal Reserve System (Board), and (2) five representatives of the Federal Reserve Banks elected in the manner provided in the Federal Reserve Act (Act).<sup>1</sup> Because the Board has an authorized membership of seven

Governors, the Committee has a maximum authorized strength of 12 members (7 Board members and 5 Federal Reserve Bank representatives).

The Act does not define a quorum of the Committee. Since the current structure of the Committee was established in 1936, the Committee itself has defined a quorum of the Committee to be seven members, including alternates serving in place of a primary Federal Reserve Bank representative.<sup>2</sup>

The Committee's current quorum rule would prevent the Committee from taking action, including adjusting the Committee's target for the federal funds rate, if an act of war, terrorist attack or other catastrophic event reduced the membership of the Committee to below seven members (including alternates). In light of this possibility, the Committee has amended its definition of a quorum of the Committee. Under the Committee's amended rule, a quorum of the Committee will continue to be seven members unless there are fewer than seven members of the Committee in office, in which case a quorum of the Committee will consist of the number of members in office. As under the current rule, alternates serving in place of an absent primary Federal Reserve Bank representative are considered members for purposes of determining whether a quorum of the Committee is available.

The Committee believes that the revised quorum rule will enhance the Committee's ability to fulfill its critical monetary policy responsibilities in a national emergency. At the same time, the revised rule should not alter the functioning of the Committee in normal operating environments. As noted above, under the revised rule, a quorum of the Committee would continue to be seven members whenever seven or more members of the Committee are in office. The Committee notes that the Securities and Exchange Commission (SEC) has revised its quorum rule in a similar fashion to ensure that the SEC could continue to function if the 5-member

SEC ever had fewer than 3 commissioners in office.<sup>3</sup>

The amended rule relates solely to the internal procedure of the Committee. Accordingly, the public notice, public comment and delayed effective date provisions of the Administrative Procedure Act do not apply. *See* 5 U.S.C. 553(b) and (d). Because public notice and comment is not required, the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) also does not apply to the amended rule.

#### List of Subjects

Administrative practice and procedure, Federal Open Market Committee, Organization and functions (Government agencies).

For the reasons set out in the preamble, the Federal Open Market Committee amends 12 CFR part 272 as follows:

#### PART 272—FEDERAL OPEN MARKET COMMITTEE—RULES OF PROCEDURE

1. The authority citation for part 272 continues to read as follows:

**Authority:** 5 U.S.C. 552.

2. Section 272.3(c) is revised to read as follows:

#### § 272.3 Meetings

\* \* \* \* \*

(c) *Quorum.* Seven members constitute a quorum of the Committee for purposes of transacting business except that, if there are fewer than seven members in office, then the number of members in office constitute a quorum. For purposes of this paragraph (c), members of the Committee include alternates acting in the absence of members. Less than a quorum may adjourn a meeting of the Committee from time to time until a quorum is in attendance.

\* \* \* \* \*

<sup>1</sup> See 12 U.S.C. 263(a). Pursuant to the Act, the Federal Reserve Banks also elect an alternate for each primary Federal Reserve Bank representative on the Committee. Each alternate is authorized to serve on the Committee in the absence of the relevant primary representative. Each primary and alternate Federal Reserve Bank representative on the Committee must be a President or First Vice President of a Federal Reserve Bank. *Id.*

<sup>2</sup> See 12 CFR 272.3(c). From 1936 to 1973, the Committee's quorum rule was reflected in the Committee's By-Laws. *See* Minutes of the Committee's Meeting of March 18, 1936. In 1973, the Committee's By-Laws were rescinded and the Committee's quorum rule was incorporated into the Committee's Rules of Procedure. *See* 38 FR 2754, Jan. 30, 1973.

<sup>3</sup> See 17 CFR 200.41; 60 FR 17201, Apr. 5, 1995. The enabling statutes of the SEC, like those of the Committee, do not define a quorum of the SEC. The SEC's revised quorum rule has been upheld by two separate Federal courts. *See Falcon Trading Group, Ltd. v. SEC*, 102 F.3d 579 (D.C. Cir. 1996); *SEC v. Feminella*, 947 F. Supp. 722 (S.D.N.Y. 1996).