

# Protecting Bank Capital: Enforcement Action Avoidance or Compliance

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Karen L. Grandstrand  
Karla L. Reyerson  
Fredrikson & Byron, P.A.

# Overview

- Enforcement actions generally
  - Who issues them
  - What they look like
  - Consequences of being under an action
- How to avoid enforcement actions
- How to comply with an action
- Consequences of failure to comply

# Who Issues Enforcement Actions?

- Financial institution's primary federal regulator (FDIC, Fed, OCC, OTS)
- State regulator for state-chartered institutions

# Types of Enforcement Actions

- Board Resolutions
- Commitment Letters
- Memoranda of Understanding
- Supervisory Agreements (thrifts)
- Individual Minimum Capital Ratios (IMCRs)
- Written Agreements/Formal Agreements

# Types of Enforcement Actions (cont.)

- Capital Directives
- PCA Directives
- Cease-and-Desist Orders/Consent Orders
- Removal and Prohibition Orders
- Civil Money Penalties
- Termination of Insured Status

# Common Provisions Included in Enforcement Actions

- Board Oversight
- Management Assessment/Staffing Plan
- Minimum Capital Requirements
- Restrictions on Dividends, Distributions, Management Fees and Consultant Fees
- Maintenance of ALLL/Risk Rating System
- Treatment of Adversely Classified Assets

# Common Provisions in Enforcement Actions (cont.)

- Satisfaction of Credit and Collateral Exceptions
- Concentrations of Credit
- Liquidity/Funds Management
- Other Real Estate Owned
- Internal Audit

# Common Provisions in Enforcement Actions (cont.)

- Development of Plans and Programs
  - Loan Review Program
  - Business/Strategic Plan
  - Profit and Budget Plan
  - Capital Plan
- Debt and Stock Redemption (holding companies)

# Consequences of Entering Into an Enforcement Action

- D&O Insurance/Bond rates may increase or policies may be cancelled
- Loan officers may be prevented from making decisions on classified loans
- Liquidity may be impacted
- May need to disclose as part of capital-raising efforts

# Consequences of Entering Into an Enforcement Action (cont.)

- Cannot bid on failed banks
- If a capital provision is included, will not be considered well-capitalized
- Need permission to change CEOs or directors
- Subject to golden parachute and indemnification restrictions

# Ways to Avoid Enforcement Actions

- Promptly address matters raised in exams
- Avoid repeat findings
- Be proactive in identifying problems and proposing solutions

# How to Comply with Enforcement Actions

- Involve counsel prior to signing any action
- Engage accountants and/or consultants to assist with loan review, strategic planning, capital planning, management assessments, etc.
- Submit timely and thorough reports
- Maintain open communication with regulators
- Make individuals accountable
- Prepare for next examination

# Consequences of Failure to Comply

- Civil Money Penalties
- Issuance of new, more severe enforcement action
- Treated as if under lower capital rating
- Supervision transferred to Washington, D.C.
- Forced to sell
- Failure

# Questions?

# Contact Information

Karen L. Grandstrand

Phone: (612) 492-7153

Email: [kgrandstrand@fredlaw.com](mailto:kgrandstrand@fredlaw.com)

Karla L. Reyerson

Phone: (612) 492-7418

Email: [kreyerson@fredlaw.com](mailto:kreyerson@fredlaw.com)