

July 31, 2008

Mr. Robert E. Feldman  
Executive Secretary  
Attn: Comments/Legal ESS  
Federal Deposit Insurance Corporation  
550 17<sup>th</sup> Street, NW  
Washington, DC 20429

RECEIVED  
SECRETARY  
OF  
FDIC

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A 1:37

Re: Guidelines for Appeals of Material Supervisory Determinations

Dear Mr. Feldman:

I am writing today on behalf of certain clients who are interested in the Federal Deposit Insurance Corporation's ("FDIC") proposed amendments to the process for the review of material supervisory determinations. I appreciate the agency providing the opportunity to comment on this important issue. While I commend the FDIC for undertaking a review of its procedures with an eye towards conforming them with other federal banking agencies, I urge the FDIC to reconsider this proposal for the reasons set forth below.

**Avoid Abrupt Change in Policy**

FDIC-supervised banks have enjoyed the advantages of the existing process since the enactment of the FDIC guidelines in 1995. I am concerned that an abrupt change of FDIC policy will create an unpredictable environment for supervised banks -- a result that the marketplace can hardly afford in these tumultuous economic times.

**Current Appeals Process is Preferable**

The current appeals process does not hamper the agency's ability to enforce its authority. The appeals process permits supervised banks to obtain faster resolutions to potential issues which allows them to adjust their practices and procedures in a more timely manner. The desire for expeditious determinations will not impair the FDIC's enforcement authority, but, instead, mitigates any harm to an improperly rated bank.

Enforcement proceedings by the FDIC can be protracted, often lasting many months and years. If the SARC appeals process is not permitted while an enforcement action proceeds, a supervised bank may be burdened by an erroneous finding or incorrect downgrade that unjustly costs the bank millions of dollars. The impact in the interim on deposit insurance assessment rates alone could cause significant harm.

The expeditious review of these specific material supervisory determinations does not conflict with the FDIC's authority to pursue an enforcement action. The SARC process does not require enforcement actions to be deferred until after the SARC appeals process concludes, which could be a challenge to the authority of the agency. A collateral process that addresses the facts on which both the review of material supervisory determinations and enforcement actions are based does not challenge the authority of the agency. In this regard, it has happened more than once that a class action lawsuit, a suit brought by the FDIC as receiver, an enforcement proceeding, and a criminal proceeding brought by the Department of Justice have been ongoing at the same time, all with respect to the same institution. None of the courts and agencies responsible for those proceedings has claimed that one proceeding challenged the authority of the other just because the same underlying facts are being ascertained in each.

By providing a rapid and effective way to allow a bank to show the FDIC that an error has been made in an exam, the FDIC may discover that an enforcement action it was considering is based on information that is fundamentally flawed. This can only help FDIC manage its resources more effectively. It is not a challenge to the authority of the FDIC to pursue the enforcement action.

While the investigative process underlying enforcement proceedings is described as being more robust than the SARC process, it lacks one fundamental aspect that the Congress thought warranted enacting this statute – an early review by an independent decision-maker. It is significant that Congress believed this independent review was critical even though the practices supporting the enforcement process described in the Notice have long been in place at the FDIC as well as at the other banking agencies.

Investigations leading to enforcement actions are often guided by the very same examiners who criticized the institution in an exam report. As the FDIC's Examiner's Manual notes: "The report of examination generally serves as the FDIC's primary evidentiary exhibit in Section 8 proceedings." Moreover, as the FDIC knows, most institutions are reluctant to actively defend formal enforcement litigation against their primary regulator. So it is unlikely an institution will obtain independent review of an examiner's findings once an enforcement proceeding has begun. The FDIC should not water down the protections provided by Congress.

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During this turbulent economic period, the industry needs more opportunities for informal and formal review, not fewer. The FDIC's proposed changes impact every supervised bank. I strongly support the FDIC's 2004 interpretation and implementation of the guidelines for appeals of material supervisory determinations, and am concerned that if the FDIC proceeds with the proposed alterations, supervised banks and the overall economy will suffer.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ron Glancz", with a long horizontal flourish extending to the right.

Ronald R. Glancz