MANAGEMENT AND INTERNAL CONTROL EVALUATION

Expanded Analysis Decision Factors

This section evaluates the significance of deficiencies or other specific concerns identified in the Core and Expanded Analyses. Click on the hyperlinks found within each of the Expanded Analysis Decision Factors to reference the applicable Expanded Analysis Procedures. If needed, proceed to the accompanying Impact Analysis.

E.1.	**Are management deficiencies or concerns immaterial? *Refer to Expanded Analysis Procedures #1-5.***
E.2.	**Does management have the ability and commitment to implement corrective measures to effectively address deficiencies or concerns? *Refer to Expanded Analysis Procedures #1-5.***

MANAGEMENT AND INTERNAL CONTROL EVALUATION

Expanded Analysis Procedures

Generally, procedures used in the Expanded Analysis should target concerns identified in the Core Analysis and Decision Factors. The flexible procedures specified for the Core Analysis also apply to the Expanded Analysis.

Expanded Analysis Procedures
1. Based on the volume and severity of weaknesses, consider citing apparent violations or nonconformance with the *Interagency Guidelines Establishing Standards for Safety and Soundness*, as appropriate.[1]
2. Determine the significance of insider abuses identified in other modules.
3. Determine the root cause of examination concerns with management or board oversight. Consider issues such as: • **Compliance with internal policies and applicable laws and regulations;** • **Inconsistencies with general safety and soundness tenets;** • **Adequacy of risk management practices, monitoring, management information systems, reporting processes, and audit programs;** • **Responsiveness to recommendations from auditors and supervisory authorities;** • **Rapid growth, and stressed or changing business conditions;** • **Effectiveness of mitigants to manage current business risks;** • **Management depth and succession;** • **Training and development of internal audit staff; and** • **Compensation practices.**
4. Assess management and the board's willingness and ability to correct deficiencies.
5. Determine whether the viability of the organization is threatened by management's inability to correct problems and implement appropriate risk management practices.
End of Expanded Analysis. If needed, Continue to Impact Analysis.

[1] **FDIC: 12 CFR Part 364, Appendix A; or FRB: 12 CFR Part 208, Appendix D-1.**

Expanded Analysis

MANAGEMENT AND INTERNAL CONTROL EVALUATION

Impact Analysis Procedures

Impact Analysis reviews the impact that deficiencies identified in the Core and Expanded Analysis and Decision Factors have on the bank's overall condition, and directs the examiner to consider possible supervisory options.

Impact Analysis Procedures

1. Determine whether management deficiencies or suspicious activities have resulted in or could result in increased asset quality problems, earnings deterioration, reduced capital protection, or undue risk to the bank.

2. Consider whether an informal or formal enforcement action is warranted. Advise the appropriate supervisory officials.[2]

Civil Money Penalties (FDIC)

3. Prepare recommendations for Civil Money Penalties (CMPs), if appropriate.[3] Complete the CMP matrix for fineable violations, unsafe and unsound practices, or breach of fiduciary duties. The matrix should be prepared whenever an examiner believes that a penalty may be warranted. Consider the thirteen factors outlined in the *Interagency Policy Regarding the Assessment of Civil Money Penalties.*

4. Only consider a CMP recommendation if it meets the gravity test after considering the13 points and when any one of the following criteria is present:

- **The bank suffers a substantial financial loss as a result of the violation;**
- **The violation is willful, flagrant, or otherwise evidences bad faith on the part of the bank or individual involved in the violation;**
- **An insider (or associate) directly or indirectly involved in the violation materially benefited from the transaction; or**
- **Previous supervisory actions have not been effective in eliminating or deterring violations.**

5. For recommended CMPs, follow these procedures:

- **Consult with the regional office to determine the documentation necessary to support the violation and the CMP recommendation.**
- **Prepare a memorandum to the appropriate regional director addressing the 13 points and specifying the recommendation.**

[2] Field office supervisor or regional office.
[3] The Manual of Examination Policies details specific instances in which CMPs may be assessed.

• **Include the home mailing addresses for all directors and any other individuals involved in a fineable violation in the confidential pages.** • **Discuss the violations with management, but do not refer to potential CMPs or to the possible amount of CMPs except in the most serious circumstances and <u>after obtaining regional office approval.</u>[4]** • **If the violation involves financial gain to an insider or financial loss to the bank, quantify the amount of loss, if possible. The violation write-up should include the monetary amount and method of calculation, or explain why the amount cannot be determined.** • **Maintain evidence supporting the violations and retain in field office files separate from the regular exam workpapers.**
Suspicious Activity Reports
6. Notify the appropriate bank regulatory officials of suspected activities and actions taken.
7. Discuss the possibility of administrative and enforcement actions with executive management and the board of directors. If suspicious activity is discovered, and the Reserve Bank or regional office concurs, examiners should report the discovery of the suspicious activity and any related apparent violations to the bank's board of directors. • **Examiners should present the facts giving rise to the apparent violation, but avoid conclusions of guilt or innocence of any particular individuals.** • **Remind the board of the regulatory requirements[5] to report apparent violations promptly to law enforcement agencies and the appropriate supervisory officials.**
8. Determine whether management has or will file Suspicious Activity Reports (SARs).[6]
9. Prepare a SAR if the report submitted by the bank is deemed inadequate or the suspected criminal conduct has not been reported by the bank and the examiner believes it is in the best interest of the agency.[7]

[4] If CMPs are approved for discussion, limit discussions to the criteria used to determine whether to assess a penalty. Examiners should not discuss penalties regarding Section 8 matters. If questioned, limit discussions to stating that CMPs can be assessed for noncompliance with an order. (FDIC: Only a regional director can determine compliance with a Section 8 Order.)

[5] FRB: 12 CFR 208.62, 211.5(k), 211.24(f), and 225.4(f); FDIC: 12 CFR Part 353.

[6] Examiners should generally bring apparent criminal activities to management's attention for reporting. In certain situations, it may not be appropriate to notify bank officials.

[7] A SAR prepared and entered into the SAR system by the bank does not prevent examiners from making a more detailed report. SARs should be completed when the examiner obtains evidence to support a belief that a crime has been committed. Do not wait until the examination concludes.

10. If the examiner is preparing the SAR: • **Use the appropriate software;** • **Attach copies of documents that prove or support the suspected criminal violations; and** • **Segregate and store additional supporting documents.**
End of Impact Analysis.