

Strafford

presents

Bank Enforcement Actions: Trends and Developments for 2010

Negotiating and Complying With Enforcement Orders, Meeting Disclosure Requirements

A Live 90-Minute Teleconference/Webinar with Interactive Q&A

Today's panel features:

Konrad Alt, Managing Director, **Promontory Financial Group**, San Francisco

Sanford M. Brown, Partner, **Bracewell & Giuliani**, Dallas

T. J. Mick Grasmick, Partner, **Manatt Phelps & Phillips**, Los Angeles

Thursday, May 20, 2010

The conference begins at:

1 pm Eastern

12 pm Central

11 am Mountain

10 am Pacific

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Enforcement Trends for 2010

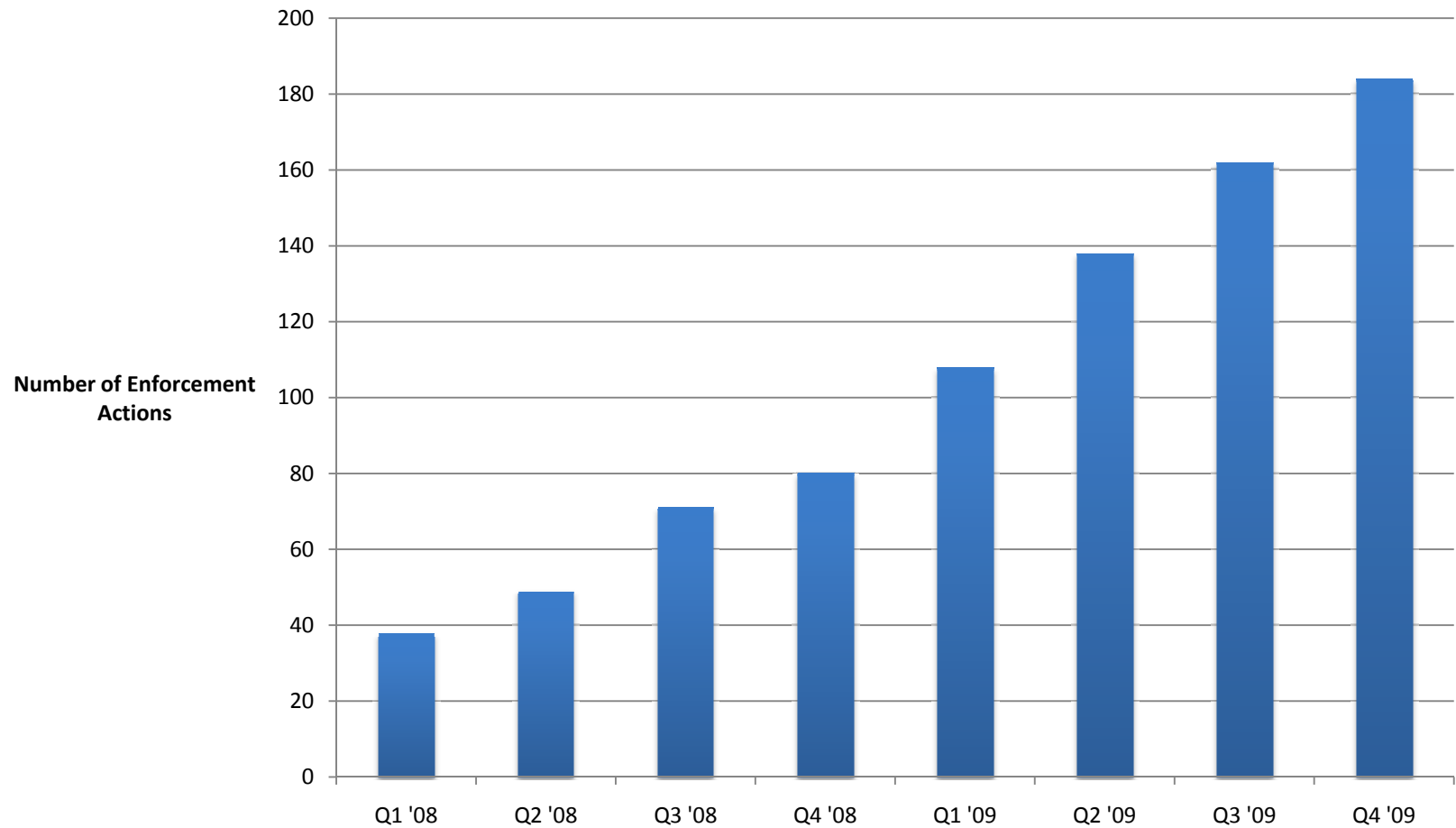
Presented by Konrad Alt

Strafford CLE Webinar/Teleconference
May 20, 2010



Enforcement Action Trends Volume

Total Number of Enforcement Actions





Enforcement Action Trends Safety and Soundness

The percent of enforcement actions that addressed:

Period	Capital	Asset Quality	Management	Earnings	Liquidity
2008-09	83%	84%	77%	67%	70%
4Q '09	93%	90%	86%	79%	83%

Common management provisions:

- Improve quality/knowledge of board members
- Boards to exercise more oversight
- Assess management

From 1Q '08 through 4Q '09, the most common capital ratio requirements were:

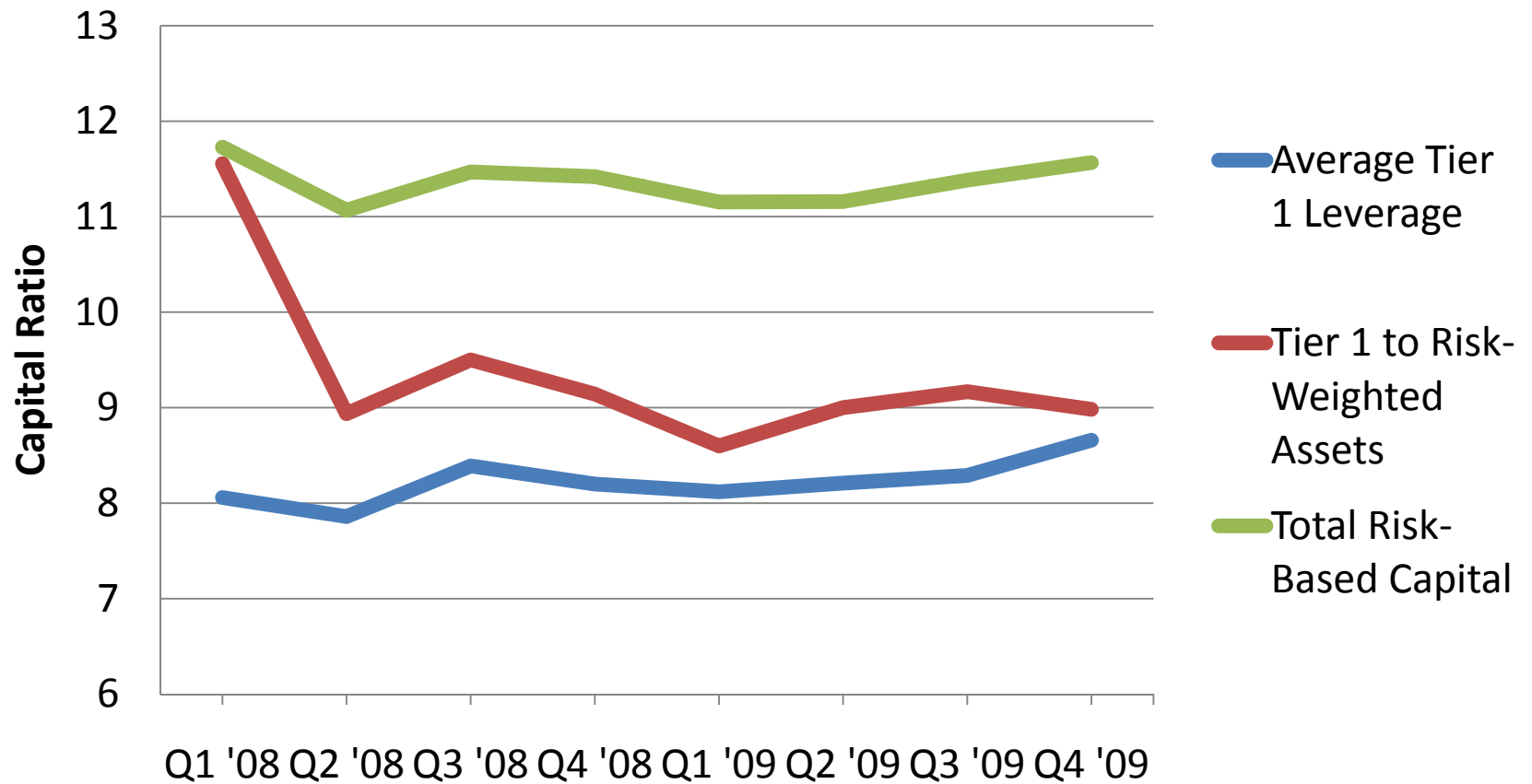
Tier 1 Leverage	Tier 1 to Risk-Weighted Assets	Total Risk-Based Capital
8%	10%	12%





Enforcement Action Trends Safety and Soundness

Average Capital Requirements: 2008-2009





Enforcement Action Trends

Management Provisions

Management provisions commonly address:

- Board decision-making
 - Arrange for an independent review of board and executive officers
 - Improve oversight of audit function
 - Improve board member attendance at committee meetings
- Establishing policies and monitoring risks
 - Maintain effective control over supervision of bank's major operations
- Adding independent board members
- Hiring and retaining new management
 - New management (e.g., President, CEO, CCO)
 - Evaluate staffing needs
 - Assess skills and abilities of senior management





Enforcement Action Trends Compliance

2008-2009 compliance-related enforcement actions that addressed:

BSA/AML	56%
Fair Lending	15%
Flood Insurance	12%
UDAP	9%
Information Security	9%





Enforcement Action Trends Agencies

- The FDIC leads increase in total enforcement actions
- Ratio of enforcement actions to regulated institutions
 - Overall ratio increased 0.3% in 4Q '09, relative to 3Q '09
 - During 4Q '09, FDIC and OCC expanded ratio of actions to institutions
 - During 4Q '09, FRB and OTS shrank ratio of actions to institutions
 - For 2009, OTS had highest ratio (11%) ; FDIC had lowest ratio (5.5%)
- CAMELS provision patterns
 - FDIC/FRB/OTS typically address all provisions
 - OCC included provisions addressing Asset Quality more often than the other CAMELS components





Enforcement Action Trends Distribution of Formal Enforcement Actions by State: 2008-2009

State	Distribution of Enforcement Actions by State	Distribution of Insured Depositories by State	Difference between Actions and Insured Depositories
California	10%	4%	+6%
Florida	9%	4%	+5%
Georgia	9%	4%	+5%
Illinois	8%	8%	0%
Minnesota	4%	5%	-1%
Texas	4%	8%	-4%
Washington	4%	1%	+3%
Kansas	3%	4%	-1%
Utah	3%	1%	-2%
Michigan	3%	2%	+1%
Colorado	3%	2%	+1%
Wisconsin	3%	3%	0%



Bank Regulatory Enforcement Actions
by
Sanford M. Brown
Bracewell & Giuliani LLP
for
Strafford Publications
May 20, 2010

2010 Enforcement Actions

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OCC

- 40 Formal Agreements
- 7 Cease and Desist Orders
- 3 Civil Money Penalties

FDIC

- 140 Consent Orders
- 49 Civil Money Penalties
- 16 Prompt Corrective Action Directives

2010 Enforcement Actions (cont.)

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Federal Reserve

- 81 Written Agreements
- 1 Cease and Desist Order
- 5 Prompt Corrective Action Directives

OTS

- 9 Supervisory Agreements
- 21 Cease and Desist Orders
- 9 Civil Money Penalties
- 11 Prompt Corrective Action Directives

Common Articles in Enforcement Actions

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- Capital
- Asset Quality
- Management
- Earnings
- Liquidity

Capital

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- Higher than normal ratios
 - 9% to 11% leverage
 - 12% to 16% total risk-based
- Not "well capitalized"
 - No brokered deposits
 - No delegated authority
- Prepare a capital plan

Asset Quality

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- Criticized asset plan
- Loan review
- Credit Administration
- ALLL
- Charge offs

Management

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- Management study
- Removal action
- Board involvement
- State supervisor
- Prior notice for new officers and directors

Earnings

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- Profit plan
- Strategic plan
- Realistic budget

Liquidity

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- Contingency plan
- Reduce reliance on noncore funding
- FHLB
- Correspondent lines

Compliance Committee

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- Independent Directors
- Monthly meetings
- Quarterly reports

Texas
New York
Washington, D.C.
Connecticut
Dubai
Kazakhstan
London

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Complying with Enforcement Actions

Presented by Konrad Alt

Strafford CLE Webinar/Teleconference
May 20, 2010



Enforcement Action Compliance Baseline expectations

- Management and board commonly fail to appreciate the extent to which they have lost credibility with their regulators.
- Key steps to rebuild credibility include:
 - Efforts to show understanding of the situation and commitment to addressing it
 - Careful, independent assessment of management and board
 - Vigorous efforts to strengthen risk management
 - Openness to any reasonable means of raising capital
 - Scrupulous candor and meticulous execution of every commitment made to regulators
 - Retention of highly credible expert advisors





Enforcement Action Compliance Baseline expectations

- Good enforcement action compliance can sometimes extend the time available to raise capital, but is not a substitute for capital.
 - Have a clear strategy for raising capital and communicate regularly and proactively with the primary regulator regarding execution status.
- Expectations for near-term regulatory relief should be low. Removal of enforcement actions in less than two years is unusual, even with very strong compliance efforts and meaningful results.
- Demands on directors will be high. Directors should expect to meet at least monthly for the first year, with numerous special meetings required to guide and approve responses to regulatory requirements.





Enforcement Action Compliance

Key planning questions

- Enforcement actions commonly require preparation of many plans and reports in 30-90 days. Ability to meet these requirements often depends critically on resources:
 - Financial models sufficient to support capital/earnings/liquidity planning
 - Available personnel to produce the various required submissions
 - Governance or project management framework that can force resolution of key questions
 - External expertise as needed to assist with, for example:
 - Credit review/risk assessment
 - Asset workout/disposition
 - Independent valuation
 - Management or board assessment
 - Process improvement
 - Strategic and capital planning





Enforcement Action Compliance

Elements of Compliance Management

Oversight

- Board committee
- Management level committee

Resources

- Assess what resources are needed
- Engage outside assistance to meet deadlines





Enforcement Action Compliance

Elements of Compliance Management

Project plan and process

- Appoint one party to manage the process and report to committees
- Develop process and controls
- Develop both high-level and detailed project plans
- Establish formats for required reports, plans and programs.





Enforcement Action Compliance

Elements of Compliance Management

Communication and reporting

- Who/When/What

Documentation

- Status reports to management and board
- Evidence of review and sign-off



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Disclosure of Regulatory Enforcement Actions – May 20, 2010 Strafford CLE Webinar Presentation

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- ◆ **There are several disclosure issues which boards of directors of banks and bank or savings and loan holding companies must address when a supervisory enforcement action is imminent, as well as when it is final and effective.**

Who should be told about the coming enforcement order?

- ◆ **The Board and Management must first consider the bank's multiple constituencies:**
 - **Should shareholders be told about significant regulatory problems, and the corrective action the bank is undertaking?**
 - **What about the bank's depositors or the local community press, which might print an article about the bank's regulatory problems that triggers a withdrawal of deposits?**
 - **What about the market makers in the bank's stock and analysts who cover the bank?**
 - **Need the bank (or its financial advisors) update any private equity firms or other potential investors who may be considering providing the bank required new capital?**

The Type of Enforcement Action Affects the Disclosure Decision

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- ◆ **Enforcement actions not publicly announced by the agencies: Supervisory letters and negotiated Board resolutions; informal memoranda of understanding (MOU)**
- ◆ **Notice that the bank has been determined to be in “troubled condition”**
- ◆ **Enforcement actions with less financial or operations impact: Enforcement actions for consumer and other compliance violations (other than Bank Secrecy Act violations); National Flood Insurance Act civil money penalties**
- ◆ **Written Agreements, Consent Orders, Cease and Desist Orders which the agencies are required to publish and make publicly available pursuant to Section 8(u) of the FDI Act**
- ◆ **Prompt Corrective Action Notification Letters and Individual Capital Maintenance Requirements**
- ◆ **Capital Directives**

Can The Bank Legally Disclose An Enforcement Action Arising From The Confidential Report Of Examination?

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Confidentiality Notice

The copy of the Report of Examination and this letter are the property of the FDIC and the California Department of Financial Institutions and are furnished to the institution examined for its confidential use. The Examination Conclusions and Comments page discloses the institution's Uniform Financial Institution Ratings. These ratings are for your confidential use only. Neither the institution, nor any of its directors, officers, or employees may disclose or make public in any manner these ratings or any other portion of this Report under any circumstances. Refer to Part 309 of the FDIC Rules and Regulations for additional information on confidentiality restrictions.

THIS REPORT OF EXAMINATION IS STRICTLY CONFIDENTIAL

This Report of Examination is the property of the OCC, and its contents are strictly confidential. Unauthorized disclosure of the contents of this report, including component and composite ratings, is generally prohibited. However, when necessary or appropriate for bank business purposes, a national bank is allowed to disclose the Report of Examination to a person or organization officially connected with the bank as officer, director, employee, attorney, auditor, or independent auditor. Disclosure may also be made to the bank's holding company and, under certain conditions, to a consultant employed by the bank. These exceptions to the general prohibition on disclosure are described in OCC regulations, 12 CFR 4.37(b)(2). Any other disclosure of the Report of Examination or its contents without the OCC's prior approval is a violation of 12 CFR 4.37(b) and subject to criminal penalties in 18 USC 641 for conversion of the U.S. Government property.

Disclosure of Informal Enforcement Actions

- ◆ **The difference between a formal and an informal enforcement action is important both as to the seriousness of the supervisory action and with respect to disclosure. An MOU is generally used when examiners conclude that the circumstances warrant a milder form of action than a formal supervisory action. Board Resolutions which commit to corrective action are now less frequently acceptable. The FDI Act (12 USC 1818(u)) requires that formal enforcement action be available verbatim on the issuing agency's web site within a few weeks after the action is executed and effective. The existence of an informal MOU will not be disclosed by the agency and the text of the MOU will not be posted on the agency's web site. However, the existence and the requirements of an MOU (but generally not the document) may be disclosed at the discretion of the Board.**

Disclosure of Informal Enforcement Actions (cont'd)

- ◆ **If an MOU contains requirements or restrictions that could be considered material and disclosable under the securities laws, disclosure is generally advisable regardless of the informal nature of the enforcement action, and the decision of the Board should be when and how, not whether to disclose.**
- ◆ **Disclosing an informal enforcement action allows Management to freely discuss ongoing corrective action if presented with questions or rumors about the enforcement action, and allows the bank to announce the successful removal of the enforcement action when that occurs.**
- ◆ **In the current environment of formal enforcement orders, capital directives and bank failures, disclosure of informal supervisory actions has less of a stigma.**
- ◆ **Rumors that a bank is subject to an enforcement action can bring press speculation that the bank is another “troubled bank” to be added to the potential failure list.**

When Should Regulatory Enforcement Developments Be Disclosed?

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- ◆ **When directors know with some certainty that significant restrictions and improvement requirements are coming in an enforcement action, or that higher capital ratios will be imposed, the Board can be presented with difficult business judgment decisions as to whether the regulatory action is material and when to disclose it. Each situation tends to be unique and there can be valid reasons for selecting one of perhaps several well-supported disclosure position, including:**
 - **Waiting to address all such developments in the next quarterly report, earnings release or shareholders meeting proxy statement.**
 - **Making an 8-K Item 8.01 Other Event filing for reporting banks and holding companies with or without a press release where management or the Board can add positive statements about the corrective action being taken.**

Standards as to When Regulatory Enforcement Developments Should Be Disclosed

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- ◆ **The securities law standard for disclosing regulatory developments generally is whether an enforcement action contains matters with potential financial impact that an investor would consider material in making an investment decision regarding a bank. Also, when any other material development is disclosed, such as a decision by the Board to reduce or suspend dividends, the securities laws require disclosure of all other material information known at the time.**
- ◆ **The Bank's accountants may require disclosure of regulatory developments which could have a financial impact on the bank if the accountants are providing earnings or financial statements being disclosed in public filings. They may dictate the use of uniform language describing the enforcement action in footnotes to the financial statements.**
- ◆ **Disclosure of anticipated regulatory enforcement actions may be required or advisable, for example, when quarterly earnings are announced and the Board has received a draft enforcement action which it expects to execute.**

When And How Should Regulatory Enforcement Developments Be Disclosed

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- ◆ **Some boards have announced actions to suspend dividends and payments on trust preferred securities in anticipation of enforcement actions which now routinely prohibit such actions (including making dividend payments to Treasury on TARP capital) without prior regulatory approval.**
- ◆ **Consider being proactive in communication of even arguably non-material regulatory developments to demonstrate Board and management leadership during these challenging financial times.**
- ◆ **Banks that have announced they may bid in FDIC receiverships may no longer qualify to bid.**
- ◆ **In 10-K's and Annual Reports to shareholders, regulatory enforcement actions have variously been disclosed in Recent Developments, Management Discussion and Analysis, Risk Factors, Capital discussion and/or in financial statement footnotes.**
- ◆ **Disclose formal enforcement orders before they become public on the agency websites.**
- ◆ **Some banks have timed their execution and disclosure of enforcement actions to coincide with the announcement of capital raises.**

Announcements of new senior executive officers or directors may need to state that these new management additions are subject to prior regulatory review and non-objection (which can take 30 to 60 days and sometimes longer).

- ◆ **The potential impact of non-compliance with regulatory enforcement orders should also be disclosed, such as the failure to submit an acceptable capital plan or to meet and maintain higher required minimum capital ratios by the deadlines set forth in the enforcement order.**
- ◆ **Banks often add that they are still “well capitalized”, “safe and sound” or “strong” when disclosing an enforcement action. Subsequent deteriorations in asset quality and earnings and additional enforcement actions can raise questions about prior press release language.**
- ◆ **Bank holding companies should expect the Federal Reserve to require a Written Agreement following the effectiveness of the bank’s enforcement order and should consider disclosing that expectation.**

- ◆ **Many banks with enforcement actions in place now face their next examinations. For many, these may have “down round” results with even lower CAMELS ratings. Compliance with the enforcement order may be deemed inadequate or incomplete and the failure to submit an acceptable capital or strategic plan may be deemed an unsafe or unsound practice. Additional formal enforcement action is then likely.**

Prepare the Board, Management and Staff for the Disclosure

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- ◆ **Centralize responses to Press, customer or other inquiries to the CEO and/or Chairman or to Investor Relations.**
- ◆ **Directors should not share their personal views of the enforcement experience or embellish on the disclosure in discussions with shareholders, customers or acquaintances.**
- ◆ **Prepare Q&A's for branch staff and Talking Points for press responses.**
- ◆ **Reconsider continued analyst and webcast calls regarding earnings and other material developments.**

Consent Agreement with the FDIC and the DFI

On [Date], Bank, a wholly-owned subsidiary of Company, agreed to enter into a Stipulation and Consent to the Issuance of an Order to Cease and Desist (the “Consent Agreement”) with the Federal Deposit Insurance Corporation (“FDIC”) and the California Department of Financial Institutions (“DFI”).

Among other things, under the terms of the Consent Agreement, the Bank has agreed to:

- Have and retain qualified management, and notify the FDIC and the DFI of any changes in the Bank’s Board of Directors or senior executive officers;**
- Increase participation of the Bank’s Board of Directors in the Bank’s affairs;**

Sample Form 8-K Disclosure of Bank Cease and Desist Order (cont'd)

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- Present a written capital plan to the FDIC and the DFI within 60 days of the Consent Agreement by which the Bank would achieve a Tier 1 capital ratio of not less than 10% and a Tier 1 Risk-Based capital ratio of not less than 12% by [Date];
- Not pay cash dividends without the prior written consent of the FDIC and the DFI;
- Immediately replenish its allowance for loan and lease losses and thereafter maintain an adequate allowance for loan and lease losses at all times;
- Implement a revised policy for determining the adequacy of the allowance for loan and lease losses;

Sample Form 8-K Disclosure of Bank Cease and Desist Order (cont'd)

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- Eliminate all assets classified “Loss” and one-half of the assets classified “Doubtful” at its regulatory examination of [Date] (the “ROE”) and formulate a written plan to reduce the Bank’s exposure in each asset classified “Substandard” or “Doubtful” in the ROE;
- Restrict or not extend any additional credit to borrowers with existing credits classified as “Loss,” “Doubtful” or “Substandard”;
- Revise and implement written lending and collection policies;
- Develop a plan to systematically reduce the number of commercial real estate and acquisition, development and construction loans;
- Develop a written three-year strategic plan;
- Formulate and implement a written profit plan;
- Develop policies and plans for maintaining an adequate level of liquid assets and borrowing capacity and reducing reliance on non-core funding sources;

Sample Form 8-K Disclosure of Bank Cease and Desist Order (cont'd)

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- **File with the FDIC amended Consolidated Reports of Condition and Income;**
- **Submit to the FDIC and the DFI a written plan to eliminate its reliance on brokered deposits and a written certification that the pricing of all the Bank's deposit products is in compliance with interest rate limitations under the FDIC's rules and regulations;**
- **Not engage in any expansionary activities without the prior written consent of the FDIC and the DFI; and**
- **Provide quarterly progress reports to the FDIC and the DFI.**

Sample Disclosure of Capital Raise and Cease & Desist Order

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Item 1.01. Entry into Material Definitive Agreement

The Investments

- ◆ **On [Date], [Company] entered into investment agreements (the “Investment Agreements”) with [Investors], pursuant to which the Investors invested an aggregate of [\$_____] in cash in the Company through direct purchases of newly issued convertible preferred stock and warrants . . .**
- ◆ **[Bank], a wholly owned banking subsidiary of the Company, entered into a Stipulation and Consent agreeing to the issuance of an Order to Cease and Desist (the “Order”) with the FDIC and the [DFI] effective [Date], addressing, among other items, management of asset quality and increased capital for the Bank.**

Sample Disclosure of Capital Raise and Cease & Desist Order (cont'd)

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Among other things, the Order requires the Bank to:

- No later than [Date] and during the life of the Order, maintain a Tier I capital to total assets leverage ratio of not less than 10 percent and a total risk-based capital ratio of not less than 12 percent;
- Within 30 days of the Order, eliminate from its books, by charge-off or collection, all assets classified “Loss”;
- Within 90 days of the Order, reduce assets classified “substandard” in relation to Tier I Capital plus the allowance for loan and lease losses to not more than 90 percent; within 180 days from the effective date of the Order, to not more than 70 percent; within 270 days from the effective date of the Order, to not more than 50 percent and to continue to reduce the volume of such assets after that date;

Sample Disclosure of Capital Raise and Cease & Desist Order (cont'd)

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- **Have and retain qualified management of the Bank, and within 90 days assess management and staffing needs, responsibilities, qualifications and compensation;**
- **Assure the on-going participation of the Bank’s Board of Directors in the affairs of the Bank;**
- **Cease to extend additional credit to any borrower who has a loan or extension of credit with the Bank that is classified as “loss” or, without the approval of a majority of the Bank’s board or senior loan committee, “substandard” or “doubtful,” subject to certain exceptions;**
- **Within 90 days of the Order, correct all “special mention” deficiencies;;**

Sample Disclosure of Capital Raise and Cease & Desist Order (cont'd)

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- **Within 30 days of the Order, strengthen the effectiveness of the internal loan review function to ensure timely and adequate loan reviews and to correct identified loan review deficiencies**
- **Analyze, plan for and continue to reduce credit concentrations with respect to commercial real estate loans and acquisition, development and construction loans;**
- **Within 90 days of the Order, correct credit data and collateral documentation exceptions;**
- **Within 60 days of the order, develop and submit a written profit plan and a three-year strategic plan, including specific goals for the dollar volume of total loans, total investment securities and total deposits;**

Sample Disclosure of Capital Raise and Cease & Desist Order (cont'd)

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- **Within 30 days of the Order, eliminate and correct all violations of law, taking all necessary steps to ensure future compliance with all applicable laws and regulations, and strengthening its appraisal review processes;**
- **Within 120 days of the Order, provide training in suspicious activity detection and reporting to all employees, officers, and directors, and shall do so thereafter every year;**
- **Within 60 days of the Order, develop or revise, adopt and implement a written liquidity and funds management policy;**
- **Conduct a risk analysis with respect to ceasing business activities with certain counterparties identified as having been involved in or suspected of fraudulent activities;**

Sample Disclosure of Capital Raise and Cease & Desist Order (cont'd)

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- **Not pay cash dividends without the prior written consent of the FDIC and [DFI];**
- **Not solicit, accept, renew or roll over brokered deposits unless it has applied for and been granted a waiver of this prohibition by the FDIC; and**
- **Within 30 days of the Order, and within 30 days of the end of each quarter thereafter, furnish written progress reports detailing the form and manner of any actions taken to secure compliance with the Order and the results thereof.**

Written Agreement with the FRB

On [Date], the Company entered into an agreement (the “FRB Agreement”) with the Federal Reserve Bank of San Francisco (“FRB”). Among other things, under the terms of the FRB Agreement, the Company has agreed to:

- Submit a written capital plan to the FRB within 60 days;
- Not declare or pay any dividends without the prior written approval of the FRB and the Director of the Division of Banking Supervision and Regulation of the Board of Governors (the “Division Director”);
- Not make any distributions of interest, principal, or other sums on subordinated debentures or trust preferred securities (including such distributions by the Company’s nonbank subsidiaries) without the prior written approval of the FRB and the Division Director;

- Not incur, increase, or guarantee any debt (including such action by the Company's nonbank subsidiaries) without the prior written approval of the FRB;
- Provide a written statement regarding cash flow projection for the remainder of 2009 and 2010 within 60 days and submit a cash flow projection for each calendar year thereafter;
- Comply with notice and approval requirements under applicable law and regulations relating to the appointment of directors, senior executive officers as well as any change in the responsibilities of any senior executive officers; and
- Comply with the restrictions on indemnification and severance payments under applicable law and regulations.

Informal Regulatory Agreements

Effective [Date], [Bank] entered into a memorandum of understanding (“MOU”) with the FDIC and the Department of Financial Institutions (the “DFI”). The MOU is an informal administrative agreement pursuant to which the Bank has agreed to take various actions and comply with certain requirements to facilitate improvement in its financial condition. In accordance with the MOU, the Bank agreed among other things to (a) develop and implement strategic plans to restore profitability; (b) develop a capital plan containing specified elements including achieving by [Date] and thereafter maintaining a Leverage Capital Ratio of not less than 9% and a Total Risk-Based Capital Ratio of not less than 13%; (c) refrain from paying cash dividends without prior regulatory approval; (d) reduce the amounts of its assets adversely classified or criticized in its most recent FDIC examination or internally graded Special Mention within certain specified time parameters; (e) increase the allowance for loan and lease losses (“ALLL”) by [\$ _____] and thereafter maintain an appropriate ALLL balance; (f) develop and implement certain specified policies and procedures relating to the ALLL, troubled debt restructurings, and non-accrual and impaired loans; (g) develop and implement a plan for reducing concentrations of commercial real estate loans; (h) make certain revisions to the Bank’s liquidity policy concerning “high-rate” deposits and reduce the Net Non-Core Funding Dependency Ratio to less than 40% by [Date]; (i) conduct a complete review of management and staffing and submit written findings to the FDIC and the DFI concerning the same; (j) notify the FDIC and the DFI prior to appointing any new director or senior executive officer; (k) refrain from establishing any new offices without prior regulatory approval; and (l) submit written quarterly progress reports to the FDIC and the DFI detailing the form and manner of any actions taken to secure compliance with the MOU and the results thereof.

On [Date], the Company entered into an MOU with the Federal Reserve Bank of San Francisco (the “FRB”) pursuant to which the Company agreed, among other things, to (i) take steps to ensure that the Bank complies with the Bank’s MOU; (ii) implement a capital plan addressing specified items and submit the plan to the FRB for approval; (iii) submit annual cash flow projections to the FRB; (iv) refrain from paying cash dividends, receiving cash dividends from the Bank, increasing or guaranteeing debt, redeeming or repurchasing its stock, or issuing any additional trust preferred securities, without prior FRB approval; and (v) submit written quarterly progress reports to the FRB detailing compliance with the MOU.

The MOUs will remain in effect until modified or terminated by the FRB, the FDIC and the DFI. We do not expect the actions called for by the MOUs to change our business strategy in any material respect, although they may have the effect of limiting or delaying the Bank's or the Company's ability or plans to expand. The board of directors and management of the Bank and the Company have taken various actions to comply with the MOUs, and will continue to take all actions necessary for continued compliance. Management believes that the Bank and the Company are currently in substantial compliance with the terms of the MOUs.

Sample De Novo Bank Earnings Release also included with Director nomination information in the Annual Meeting Proxy Statement

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Regulatory Developments

- ◆ **The Bank announced that the California Department of Financial Institutions and the Federal Deposit Insurance Corporation had recently completed a joint examination of the Bank as of [Date]. The Bank expects to enter into a Memorandum of Understanding (MOU) with its federal and state regulators to address certain financial, management and operations matters. This will include requirements that the Bank: (i) review and evaluate the responsibilities and performance of executive management, staff and the Board and the Board's oversight of management and operations; (ii) implement policies and procedures and contingency plans to address unanticipated management vacancies; (iii) review and revise the Bank's strategic plan and target markets; (iv) strengthen the Bank's credit administration and due diligence and monitoring of loans and borrowers; (v) maintain adequate liquidity; (vi) ensure the comprehensiveness of the Bank's methodology and the adequacy of the allowance for loan losses; and (vii) correct certain compliance deficiencies. The Board is unanimously committed to full and prompt compliance with the MOU. The Bank has already made significant progress in the foregoing areas and will make further changes and improvements necessary to comply with the MOU.**

Sample Risk Factor Disclosure of Enforcement Action

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Regulatory Risk

During the second quarter of 2009 [Company] entered into the Memorandum of understanding with the FRB (“FRB Memorandum”) and [Bank] entered into the Memorandum of understanding with the OCC (“OCC Memorandum”). See “Regulation and Supervision—Current Regulatory Matters” for the discussion of terms of the FRB Memorandum and OCC Memorandum. If Company fails to comply with the FRB Memorandum or Bank fails to comply with the OCC Memorandum, it may be subject to further supervisory enforcement action, which could have a material adverse effect on its results of operations, financial condition and business. Bank’s capital ratios were not sufficient to meet the higher levels that Bank is obligated to maintain under its agreement with the OCC. As a result, Bank may be subject to further supervisory action, which could have a material adverse effect on its results of operations, financial condition and business.

Sample Risk Factor Disclosure of Enforcement Action (cont'd)

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Due to the ongoing economic downturn and the resultant deterioration in the California commercial real estate and commercial business markets and adverse impact on Bank's loan portfolio and financial results, the Company and Bank may be the subject of additional regulatory actions in the future and face further limitations on its business. Bank regulatory authorities have the authority to bring enforcement actions against banks and bank holding companies for unsafe or unsound practices in the conduct of their businesses or for violations of any law, rule or regulation, any condition imposed in writing by the appropriate bank regulatory agency or any written agreement with the authority. Possible enforcement actions against the Company and Bank could include the issuance of a cease-and-desist order that could be judicially enforced, the imposition of civil monetary penalties, the issuance of directives to increase capital or enter into a strategic transaction, whether by merger or otherwise, with a third party, the appointment of a conservator or receiver for Bank, the termination of insurance deposits, the issuance of removal and prohibition orders against institution-affiliated parties, and the enforcement of such actions through injunctions or restraining orders. The imposition of any such enforcement actions would likely have an adverse effect on the Company's results of operations, financial condition and business.

Sample Disclosures of Extreme Enforcement Action

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CORRECTIVE ACTION DIRECTIVE

[Company] announced that the [Bank] has received from the Federal Deposit Insurance Corporation (FDIC), a Supervisory Prompt Corrective Action Directive (Directive) dated [Date], due to the Bank's critically undercapitalized status. The Directive requires that within 30 days of the effective date of the Directive, or by [Date], the Bank must either recapitalize by the sale of shares or obligations so that that the Bank will be adequately recapitalized, or accept an offer to be acquired by another institution.

The Directive also reiterates a number of restrictions already imposed on the Bank by the regulators, prohibiting the Bank from accepting or renewing brokered deposits, increasing assets, paying dividends, increasing compensation or paying bonuses to directors or officers, opening relocating or selling new offices, and requiring the Bank to comply with certain restrictions on interest rates and transactions with affiliates. The Bank was already subject to these restrictions prior to the issues of the Directive, and key elements of the Bank's strategic plan have included the reduction in its asset base and brokered deposits.

Sample Disclosures of Extreme Enforcement Action (cont'd)

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Company has been aggressively reducing its concentration in real estate acquisition, development and construction loans and nonperforming loans. Company continues its efforts to raise additional capital which began in the fourth quarter of [Date], when an investment banking firm was retained to assist in raising capital and deleveraging its balance sheet.

As announced on [Date], Company and [Potential Acquirer] mutually agreed to terminate their agreement and plan of merger, dated as of [Date], because necessary regulatory approvals could not be obtained in time to complete the transaction. Since the termination of the transaction, Company has continued to seek out equity investors and has made and continues to make numerous contacts with potential investors.