
THE EXAMINER FROM HELL (A TRUE STORY)

Being proactive after an Order actually hurts a bank

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If I had a separate title for this week's blog, it would be "The Examiner from Hell." This is the examiner you have heard about. This is not a compilation of the examiners you have heard about. This examiner is all his own package, contained in one obnoxious human being.

A true story from the field

I recently attended the exit meeting for a moderately troubled bank. The bank had previously agreed to a Consent Order with its primary regulator, and the examiner was coming in to do the follow-up examination.

Talk about a guy who relished his job!

He wanted to nitpick every single thing the bank had done (or allegedly not done). As part of these follow-up exams on the Consent Order, one activity the examiners are supposed to perform is to go through the Consent Order line by line and determine whether the bank has complied. I understand that. That is their job. That is what needs to occur.

Taking extreme interpretations of what it means to comply, however, I do not understand.

What hit my tipping point was the discussion by the examiner on the bank's requirement to modify appropriately and approve its loan, liquidity, and other policies, as required by the Order.

Most Consent Orders have a paragraph or two that deal with major policies regarding lending, collection, funds management, and the like. This Consent Order was no exception. The Consent Order also required that within 90 days of the date of the Order, the Board would approve the policies as amended, addressing the criticisms contained in the Examination Report.

This particular overzealous examiner decided the bank was in noncompliance with that paragraph. Why?

Because the Board had modified appropriately and approved the policies before the Consent Order went into effect.

That's right. You read that right.

Time to do a double-take

Even under my questioning, the examiner said he had no problem with the content of the policies, and thought they were

fine, but the bank had not approved the policies "within 90 days of the date of the Order."

The Board had approved the policies prior to the date of the Order, and was, therefore, in violation of the Order.

I thought: "Here is a modest-sized community bank, \$100 million or so, trying to do what is right, and getting criticized for being proactive. How dumb is that?"

The bank also had a dispute over some investment securities that involved pools of residential real estate loans. This is happening frequently with our clients around the country where the examiner simply follows the rating agency's "noninvestment grade" rating and classifies the entire investment security Substandard. The bank's argument was, that after drilling down into the pools, less than 10% of the loans contained in the pool were past due.

They likened it to the examiner classifying the bank's entire loan portfolio Substandard when less than 10% of the bank's loans were past due. In this pool, less than 10% of the loans were past due, so the bank encouraged the examiner, as the examiner is permitted under the agency's own Manual of Examination Policies, to use his discretion to "pass" the loan.

The examiner basically refused on this one. He not only refused to change the classification, but really refused to listen to the bank's argument.

What's a bank to do?

This is the perfect case for appeal, which the bank plans to do, with our assistance. Don't retreat when you are faced with some of these issues. Just recognize what rights you do have and exercise them judicially, as appropriate.

If you found this column interesting, you may also want to read Jeff's earlier column, "An Order Always Has To Be In Place."

Editor's Note: Tell us about your own recent examination experiences in the comments section below.

If necessary, you may put yourself down as "Anonymous," but we require a valid e-mail address, which will not be published, to verify that your comments are legitimate.

About the Author

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