Appeal Composite and CAMELSI Component Ratings

Background

A bank operating under a formal agreement appealed the composite rating and each of the CAMELSI component ratings (capital, asset quality, management, earnings, liquidity, sensitivity to market risk, and information technology), 3/3343233, respectively. Additionally, the bank expressed a desire to appeal many of the conclusions in the report of examination (report) that supported the ratings.

The directors and management also expressed concern with the lack of objectivity in the report and an alleged bias by the supervisory office in their assessment of the bank's condition. Additionally, there was a concern over the difficult communications between the supervisory office and bank management. Management and the board were explicit in stressing that they endeavored to work through their disagreements with the supervisory office over a number of years. Their decision to file an appeal after the most recent examination was made after concluding that third party intervention by the ombudsman was the only way to restore balance to the supervisory process. Finally, the appeal requested the ombudsman facilitate a change in supervisory office.

Discussion

The OCC Bulletin 2002-9, "National Bank Appeals Process: Guidance for Bankers," February 25, 2002, (bulletin), makes clear that banks cannot seek ombudsman review of agency decisions for which banks are provided with an appeal mechanism by statute or OCC regulation, or where the decision is subject to judicial review. These include agency decisions to pursue formal enforcement action or recommended decisions following formal or informal adjudications pursuant to the Administrative Procedures Act, 5 USC 701 et seq., agency actions that are subject to judicial review, and decisions made to disapprove directors and senior executive officers pursuant to Section 914 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, 12 USC 1831i.

While the bulletin does not allow appeals of the underlying facts of an enforcement action, it does permit material supervisory determinations to be appealed even when an enforcement action has been taken. In such circumstances, the OCC's ombudsman, without engaging in additional fact-finding, applies relevant OCC policies and standards to the existing facts to determine whether the agency's conclusions are consistent with those policies and standards.

The bank's correspondence explained that their appeal was not requesting the ombudsman's involvement with supervisory decisions pertaining to compliance with the existing formal enforcement action or any subsequent decisions to pursue additional enforcement actions.

The ombudsman conducted a comprehensive review of the information submitted by the bank and documentation from the supervisory office. The review included meetings with members of the bank's board of directors, senior management team, and legal counsel. The ombudsman also met with members of the supervisory office. The ombudsman review focused on whether there was adequate support for the assigned ratings and whether the ratings reflected the condition of the bank at the time of the examination.

Conclusion

The ombudsman determined that the assigned composite and CAMELSI component ratings were appropriate at the time of the examination. The report of examination also appropriately addressed the need to strengthen the bank's risk management systems. However, the ombudsman identified several instances where the report lacked proper balance. The wording and tone of the report was too harsh and did not give recognition for the bank's positive actions. Further, the report did not consider the unique aspects of the bank's operating environment. Given the length of time since the onsite examination, the ombudsman decided a new examination was needed as opposed to rewriting the report.

The ombudsman held discussions with the district deputy comptroller to encourage measures that would ensure appropriate balance during the next examination, recognizing the unique aspects of the bank's operating environment. Bank management was encouraged to aggressively direct their attention and efforts toward institutionalizing a culture that is reflective of strong risk management systems and internal control processes throughout the bank. Such an effort would yield huge dividends internally as well as eliminating the basis of most of the prior OCC criticisms and recommendations.