



Expeditious Lifting of Regulatory Orders

By Kevin Watson, AuditOne LLC

Many of us, including this writer, have experienced the distraction and disappointment of a regulatory enforcement order. When faced with this unenviable situation, the best course of action is to get the order lifted as quickly as possible. That will release the load from your shoulders so you can get back to your daily productive activities. This article will explain how to get that order removed in the quickest time. The solution involves multiple components including people, action, documentation, communication and feedback.

Regardless of the stated reason for the order, whether a Cease and Desist or a milder Memorandum, the root cause is typically a loss of regulatory trust. To get the order removed, you'll need to restore that trust. Regulators tend to have long memories, so this won't be easy.

The first thing to do is to assign appropriate management to the task. The key is to assign the right employee. He or she should be well organized and possess good documentation skills. An obsession with following instructions or completing tasks certainly wouldn't hurt. In other words, don't assign your star business development executive to the task. Of course, you'll need to ensure the project has your full support, too, or it is destined to flounder.

You'll next need to demonstrate that all critical deficiencies have been corrected. The regulators will be checking point by point from the order and also from the last examination report, so you need to be certain your corrective action is appropriate and complete. To get your arms around this, a corrective action plan and status report is a necessity. In fact, prudent banking practice dictates that you maintain a dynamic corrective action status report as a standard report, in good times and in bad. This important report is not only the key to getting an order lifted, but the key to preventing future enforcement orders.

It could be that some of the deficiencies cannot be resolved in short order. For example, forces outside of your control, such as the economy, may hold back your efforts to return to profitability, raise capital, or unload bad loans. These are the times when you wish you really could make a silk purse out of a sow's ear. All the documentation in the world can't change the bottom line. In that case, you might want to enlist the help of a highly competent "Cleaner" to help raise capital or to make major adjustments to the balance sheet.

The cleanup process is easiest for regulatory orders that are of a compliance or operational control nature. For example, the majority of banks have experienced some nasty regulatory episodes with their BSA compliance programs. For this type of problem, the examiners will have thoughtfully given you an easy-to-read road map to recovery. You simply need to follow it quickly and accurately. Of course, this is easier said than done, but it would be very disappointing to have overcome fundamental financial issues but be held back by a lingering compliance or operational issue.

Now that you've identified the work to be done, you can write your initial response to the regulatory order. Of course, the response must be submitted in accordance with the terms of the order, typically within 30 days. The response needs to present reasonable corrective action plans or very convincing reasons why no change is necessary. This doesn't give you much time to assign staff and design a corrective action plan, but to fail in this initial response will set you back months or years in the effort to regain the regulator's trust.

Your first chance to get the order lifted is at the next regulatory examination. However, you may have the chance to prove yourself before the next full examination if your regulator decides to schedule an interim visitation. These visitations are troublesome, though, since there is very little chance they will result in the order being lifted as the visiting team is typically not equipped for that purpose. On the other hand, failure to demonstrate at the visitation that you are keeping pace with the corrective action plan target dates could set you back months or years because of lost trust.

To ensure you are adequately implementing the plan, I suggest an independent review of the corrective plan status prior to any regulatory visitation or examination. You could enlist internal audit or some other audit-minded person to validate that the corrective action report addresses all examination and regulatory order issues and that the corrective action has, in fact, been implemented as planned.

In summary, if you assign the right person, complete corrective actions timely and appropriately, document what you have done, communicate this to the regulators as required, and then obtain timely feedback that all is in order, you will greatly improve your chances of getting out from under the order in the shortest amount of time. Your mind will be free to focus on much more productive matters and your employees can return to the business of profit generation.

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