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FDIC Amends Enforcement Action Manual and Clarifies Terminations of Orders



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On July 25, the Federal Deposit Insurance Corporation (“FDIC”) **announced** amendments to its Enforcement Actions Manual. The amendments to chapters 1 and 4 update and clarify the FDIC’s approach to terminating cease-and-desist orders and consent orders issued under section 8(b) of the Federal Deposit Insurance Act (“FDI Act”).

The FDIC reiterated that “Section 8(b) of the FDI Act authorizes the FDIC to issue a cease-and-desist order, which is titled a ‘consent order’ if the action is not contested, when the facts reasonably support the conclusion that an insured depository institution has engaged, or is about to engage, in

- An unsafe or unsound practice in conducting the business of the institution, or
- A violation of a law and/or regulation, written agreement with the FDIC, or written condition imposed by the FDIC in connection with the granting of any application or other request.”

The FDIC went on to clarify that “[s]ection 8(b) orders may be terminated under any of the following conditions:

- The institution is in full compliance with all the provisions of the order and has fully corrected the violations of laws and regulations, unsafe and unsound practices, or conditions that led to the issuance of the order.
- Any provisions deemed ‘not in compliance’ have become outdated or irrelevant to the institution’s current circumstances, including situations in which the institution is closed.

- Deterioration or any provisions deemed 'not in compliance' leads to issuance of a new or revised formal action."

The amendments don't appear to make substantive changes, but it does seem to clarify that, in most cases, the FDIC will not be terminating a section 8(b) enforcement order unless the institution has met all of its obligations under the order and rectified the problem that underlies the order.
