Chapter 4 – Cease-and-Desist Actions

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Cease-and-Desist Orders

The FDIC can issue cease-and-desist orders against an IDI and the IDI's IAPs to stop violations or unsafe or unsound practices. Orders may also require affirmative action (e.g., restitution, as discussed in chapter 9) to correct any conditions resulting from such violations or practices and to prevent them from occurring in the future. Cease-and-desist orders issued by the FDIC are titled "Consent Order" if the respondent stipulates to the issuance of the order, and titled "Order to Cease and Desist" if issued through litigation following the issuance of a notice of charges, an administrative enforcement hearing, an administrative law judge recommended decision, an FDIC BOD decision and order, and any appeal by the respondent to the appropriate federal appellate court. An order issued against a specific person as an IAP is termed a PC&D and is also described in this chapter.

The statutory definition of an IAP is set forth in Section 3(u) of the FDI Act. In certain cases, unaffiliated third parties (e.g., contractors, attorneys, accountants, or technology service providers) may be deemed to be an IAP of an IDI. This determination can be complex and requires extensive legal analysis.

The FDIC also has the authority to issue temporary orders in the most severe situations. Temporary orders become effective immediately, but the IDI or IAP has ten days to file an action in federal district court seeking to set aside the temporary order. Additionally, a temporary order is issued in conjunction with a companion notice seeking an order under Section 8(b). The following pages provide instructions for issuing, modifying, and terminating orders.

By ordering an IDI or IAP to cease and desist from violations or practices and/or to take affirmative actions, the FDIC may prevent the IDI's problems from reaching such serious proportions as to require more severe corrective measures. Essentially, a cease-and-desist order is remedial with the general purpose of assisting the IDI or IAP in resolving its problems that are the basis for supervisory concern.

Statutory Authority

Section 8(b) of the FDI Act authorizes the FDIC to issue a cease and desist order (or consent order, if stipulated). A temporary order to cease and desist is authorized under section 8(c) of the FDI Act.

Grounds

The FDIC may issue an order when the facts reasonably support the conclusion that an IDI or IAP has engaged, or is about to engage, in:

- An unsafe or unsound practice in conducting the business of the IDI, 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.

Consent Orders

An IDI or IAP may elect to stipulate to the FDIC's issuance of an order. By stipulating to the order, the IDI or IAP waives the right to an administrative enforcement hearing and all rights to

appeal and consents to the issuance of an order. Eliminating the administrative enforcement hearing allows the IDI or IAP to avoid lengthy and costly legal proceedings. IDIs or IAPs consenting to the issuance of an order are not permitted to deny the alleged misconduct. However, the FDIC may, in appropriate cases, allow them to consent to the issuance of the order without admitting or denying engagement in any unsafe or unsound practice or violation of any laws or regulations. If the IDI or IAP declines to stipulate, the FDIC issues a notice of charges, which starts the formal administrative enforcement proceeding.

Notice and Hearing

The formal administrative enforcement process that may result in the issuance of an order commences with the service of a notice on the IDI or IAP. The notice is a public document that contains a statement of facts constituting the alleged actionable misconduct and schedules the date and location for an administrative enforcement hearing to initially adjudicate by an administrative law judge with the Office of Financial Institution Adjudication the charges against the IDI or IAP. The parties to the administrative enforcement proceeding are the FDIC and the IDI or IAP. The IDI's or IAP's failure to respond to the notice and/or to appear at the administrative enforcement hearing generally results in a default by the respondent.

After the administrative enforcement hearing is conducted, the administrative law judge submits a recommended decision to the FDIC BOD. The FDIC BOD then takes the recommended decision into consideration and will issue a final decision. An order issued by the FDIC BOD becomes final and effective 30 calendar days after the order is served on the IDI or IAP, unless the IDI or IAP appeals an adverse order to the appropriate federal appellate court and the federal appellate court stays the FDIC's final order. If the order is issued with the consent of the IDI or IAP, then the provisions of the stipulated order will state when the final order will become effective, typically on the date of issuance.

The order remains in effect until modified or terminated by the FDIC, or stayed or set aside by a reviewing federal appellate court. An order can be issued against an IDI, any director, officer, employee, agent, or other IAP as defined in Section 3(u) of FDI Act.

Failure to Comply with the Order

Failure to comply with an order that has become final can form the basis for the following actions by FDIC:

- Imposing a CMP against an IDI or any IAP under Section 8(i) of the FDI Act,
- Petitioning a U.S. District Court to enforce the order,
- Removing and Prohibiting any IAP officials under Section 8(e) of the FDI Act, and
- Terminating an IDI's federal deposit insurance under Section 8(a) of the FDI Act.

Evidence Required

Under Section 8(b), the FDIC may issue an order based on the opinion that an institution is engaging, has engaged, or is about to engage in unsafe or unsound practices or violations. However, mere suspicion does not constitute sufficient grounds for instituting the enforcement action.

The FDIC has the burden of proving the allegations contained in the notice of charges by a preponderance of the evidence. Even when a respondent has agreed to stipulate to the issuance of an order, the evidence must still support the findings in the notice of charges and establish a basis for the provisions of the order.

Relevant documentation or similar evidence of the following is required to support the notice of charges and to establish a basis for the provisions of the order:

- FDIC requests made of the IDI's BOD and/or officers,
- Promises regarding actions to be taken by the IDI's BOD and/or officers,
- Conferences and meetings held with the IDI's BOD or officers, or
- Institution records.

Examination Report Not Required

When sufficient evidence is otherwise available, it is unnecessary to wait for completion of an examination or preparation of a ROE or Target Conclusion Letter before recommending and issuing an order. However, all unsafe or unsound practices or violations should be carefully addressed and documented. Any ROE, Target Conclusion Letter, or memorandum to the RD should include as many detailed facts about the alleged practices or violations as possible.

Commission of Practice or Violation Not Required

A final order may be issued before a violation or unsafe or unsound practice occurs in order to prevent a developing situation from reaching serious proportions.

Example: Four banks are owned by the same individuals, and the owners have misused three of the banks (but not the fourth) through self-dealing transactions. In this situation, the FDIC could issue an order against the owners banning all loans and fees to the owners. The prohibition could apply to all four banks even though no self-dealing had occurred at the fourth IDI. The basis for the order against the fourth IDI could be the FDIC's reasonably held belief that, because of abuse at the related banks, similar unsafe or unsound practices are likely to occur at the remaining IDI.

Requiring Affirmative Action

In addition to prohibiting unsafe or unsound practices and violations, the FDIC may require affirmative action to correct any conditions resulting from violations or practices. The authority to require affirmative action includes the authority to require an IDI or IAP to make restitution or provide reimbursement, indemnification, or guarantee against loss if such IDI or IAP was unjustly enriched, or if the violation or practice involved a reckless disregard for the law or applicable regulations.

Corrective Provisions

The following table lists possible unsafe or unsound practices or violations and the potential corrective measures that may be included in an order. ***This list is not all-inclusive.***

Practice or Violation	Corrective Provisions and Additional Considerations
Inadequate capital	State amount of required capital and/or the adoption of a capital plan. Capital ratios should be used in the formulation and recommendation of capital level provisions. For example, restore the leverage ratio to X% or increase total capital by $XXX.
Inadequate allowance for loan and lease losses (ALLL) or allowance for credit losses (ACL)	Review current ALLL/ACL and make such entries as are necessary to provide an appropriate ALLL/ACL, considering the condition of the loan portfolio. Adjustments to the ALLL/ACL should be documented and provided to the regulatory authorities for review. Review and amend the methodology for determining the ALLL/ACL balance. Prospectively maintain an appropriate ALLL/ACL and require the IDI to amend prior Reports of Condition and Income to correct previous inaccuracies in the ALLL/ACL balance.
Hazardous lending and collection policies	Direct the IDI to cease and desist from such practices. The provision usually includes one or more of the following conditions for extending credit: • Obtaining documents necessary to perfect the institution's lien and evaluate the lien's priority; • Obtaining and maintaining current financial information on secured and unsecured credits; • Establishing a repayment program consistent with the loan's purpose, security, and source of repayment; or • Adopting adequate policies, procedures, and information systems.
Excessive concentrations with inadequate risk management practices	Develop appropriate policies and establish risk management practices to identify, measure, monitor, and control concentrations of credit to any individual extension of credit or to any group of extensions of credit based on the type of collateral pledged, industry, and/or product line. The concentrations should be measured based on a specific percentage of the institution's capital. The provision may also direct the IDI to maintain comprehensive economic and market analysis on any identified industry concentration of credit.
Operating without adequate liquidity	Develop appropriate policies and procedures to identify, measure, monitor, and control funding and liquidity risk, including effective corporate governance. The provision may also direct the IDI to develop a written plan that details primary and contingency courses of action for returning liquidity to an adequate level. The plan should define the institution's liquidity measure and establish a prudent limit for that measure. The plan should also address the importance of cash flow projections; diversified funding sources; stress testing; a cushion of liquid assets; and a formal, well-developed contingency funding plan as primary tools for measuring and managing liquidity risk. Where applicable, the plan should establish specific timelines for meeting established liquidity goals.
Inadequate internal controls	Require affirmative action to correct specific weaknesses, hire qualified operations officer(s), and/or contract for an outside audit that will include direct verification. This condition usually includes a requirement that applicable policies be enhanced.
Operating at a deficit/loss	Require formulation and implementation of comprehensive annual budgets for all income and expense categories. The provision may also direct the IDI to appoint a committee that will review and analyze the institution's income and expenses or supervise adherence to budgetary requirements.

Practice or Violation	Corrective Provisions and Additional Considerations
BOD dominated by related individuals or officers, or members' effectiveness compromised by dependence on the IDI for credit or income	Require the IDI to change composition of its BOD to reduce individuals' impact on decision-making. Each situation is unique, but generally a majority of the members of the BOD and of influential committees should be outside directors with sufficient knowledge and expertise to fulfill their assigned responsibilities. Require adoption of mitigating controls (see RMS Manual of Examination Policies, Management Chapter, section titled *Directors of Banks with Dominant Management Officials*).
Inadequate Management	Require the IDI to hire and retain management officials with sufficient ability, experience, and other qualifications, particularly in areas where weaknesses are noted.
Violations of consumer and civil rights laws and regulations and/or failure to substantially comply with informal enforcement actions based on consumer compliance issues	Require correction of all violations of consumer and civil rights laws and regulations noted during the examination. Other provisions may include one or more of the following: • Pay restitution (discussed further in chapter 9); • Adopt appropriate procedures to ensure future compliance; • Retain a qualified consumer compliance officer; • Establish regular, ongoing audit and review programs for consumer compliance; • Establish an ongoing consumer compliance training program for staff; • Review type and number of staff positions needed to manage and supervise consumer compliance program; • Establish procedures for consumer compliance officer to report to institution's BOD at least quarterly; and/or • Ensure institution's BOD provides adequate supervision over consumer compliance program.
Discriminatory lending	Eliminate and prevent discriminatory treatment in institution's lending activities. Additional provisions may include the following: • Review lending policies for prohibited discriminatory guidelines, and eliminate any such guidelines; • Provide additional training to staff; • Establish monitoring and review programs; • Reimburse customers for the effects of discrimination; • Offer a new credit opportunity for persons denied credit due to discrimination; • Advise consumers of their rights under the ECOA; or • Contact credit reporting agencies regarding any change in debt status (such as removing a signor from the obligation).
Inadequate information security program	Require IDI to adopt new or revised information security program. Additional provisions may include the following:

Practice or Violation	Corrective Provisions and Additional Considerations
	• Adopt effective management, technology and access controls for IT systems to protect customer information from cybersecurity attacks and other unauthorized access risks; • Oversee and monitor service providers by obtaining and reviewing audit, examination and other operational reports from service providers; • Undertake business continuity and resiliency risk assessment; • Enhance BOD oversight of audit of information technology and information security program, including BOD's prompt review of, and prompt corrective action responses to, all exception items; • Report periodically to the BOD regarding the IDI's implementation of the information security program; and • Appoint a qualified IT officer and conduct a review of staffing to ensure that the IDI has adequate resources with the required skills.

Issuing Cease-and-Desist Orders

The FDIC's delegations of authority delineate the office or position with authorization for approving the issuance of a notice or consent order. Field staff should consult the RO to discuss possible enforcement actions and prepare a memorandum detailing each type of potentially actionable misconduct. RO staff, including RO Legal, should review the memorandum and ROE, if available, to determine if cease-and-desist action is warranted. RO staff should notify the appropriate federal and state agencies, notify the institution's BOD that a cease-and-desist action is contemplated, and coordinate a meeting with the BOD to discuss the action.

Modifying Section 8(b) Actions

When subsequent events such as an examination or visitation result in the need to make minor changes to an outstanding final order, the final order may be modified. Procedures for modifying a cease-and-desist order are similar to those for initiating a new enforcement action. If an order is modified, the case memorandum should support the changes made to the original order.

Terminating Section 8(b) Actions

Section 8(b) cease-and-desist orders may be considered for termination under any of the following conditions:

- The IDI 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 IDI's current circumstances, including situations in which the IDI closed.

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

There may be limited exceptions in which replacing an enforcement action with a less severe or less comprehensive action may be appropriate. Requests for use of this limited exception must be presented to the appropriate Division Director and the General Counsel and require consultation with the Chairman. Use of the limited exception is expected to be rare.

Procedures for termination are similar to those for initiating a cease-and-desist order (and, likewise, an ROE is not required). The RO should document its justification for terminating the order. If a new formal action is being pursued, the existing order should remain in effect until the new action is issued and effective.

Temporary Cease-and-Desist Orders

A temporary order may be issued to halt particularly severe, egregious, and harmful practices or conditions pending a formal hearing on a permanent order.

Statutory Authority

Section 8(c) of the FDI Act authorizes the FDIC to issue temporary orders to cease and desist.

Grounds

A temporary order may be issued if any of the following conditions are met:

- An IDI or IAP has violated or threatens to violate a law, regulation, or written agreement, or threatens to engage in or has engaged in an unsafe or unsound practice (or its continuation); and the violation or threatened violation or practice is likely to result in the insolvency of the IDI, the substantial dissipation of its assets or earnings, a weakening of its condition, or prejudice to the interests of depositors prior to completion of the cease-and-desist proceedings.

- An IDI's accounts and records are so incomplete or inadequate that the FDIC is unable to determine its financial condition or the details or purpose of any transaction or transactions that might have a material effect on an IDI.

- Any person or entity engaged or is engaging in conduct described in 12 U.S.C. § 1828(a)(4), namely false advertising, misuse of FDIC names or logos, or misrepresentation to indicate FDIC-insured status. Pursuant to the statute, a person or entity that violates a temporary cease-and-desist order issued on this basis shall be subject to civil money penalties. The FDIC's authority under 12 U.S.C. § 1828(a)(4)(E) also includes the right to conduct a formal investigation under Section 10(c) of the FDI Act, which authorizes the issuance of subpoenas and the power to take sworn testimony.

Provisions of Temporary Orders

The provisions included in temporary orders vary, depending on the grounds for the action. The order should focus on matters that require immediate action. The following table lists provisions that may appear in temporary orders. ***This list is not all-inclusive.***

Grounds	Provisions of Order
Violations or unsafe/ unsound practices	Cease and desist from violations or practices, and take affirmative action to prevent insolvency, dissipation of assets, weakening of condition, or prejudice to depositors pending completion of Section 8(b) proceedings. The temporary order may also require restitution or reimbursement, indemnification, or guarantee against loss if unjust enrichment is involved, or if the violation or practice involved a reckless disregard for the law or applicable regulations. The IDI may also be required to restrict growth, dispose of the loans or assets involved, rescind agreements or contracts, employ qualified officers or employees, or take other action deemed appropriate by the FDIC.
Incomplete or inaccurate books and records	Cease activity or practice that gave rise to incomplete/inaccurate state of books and records. Restore books and records to a complete and accurate state.

Companion Section 8(b) Action Required

An enforcement action under Section 8(c) of the FDI Act must be accompanied by an enforcement action under Section 8(b) of the FDI Act to establish a permanent order, which can address broader issues in its provisions.

Meeting before Issuance

A meeting with the IDI's BOD may be held before issuing the notice of charges and the temporary order. If the BOD or the respondent consents to issuance of a permanent order under Section 8(b) of the FDI Act, there is no need to proceed with an action under Section 8(c) of the FDI Act. Instead, the RD can issue the permanent order under Section 8(b) of the FDI Act immediately if the RC certifies that the action is legally appropriate.

When Orders Become Effective

Temporary orders are effective upon service and remain effective and enforceable pending completion of Section 8(b) proceedings. As noted above, a respondent served with a temporary order may file an action within 10 days in federal district court seeking to set aside the temporary order.

Issuing Temporary Cease-and-Desist Orders

The FDIC's delegations of authority delineate the office or position with authorization for approving the issuance of a temporary order.

Modifying/Terminating Section 8(c) Actions

Procedures for modifying an order issued under Section 8(c) of the FDI Act are similar to those for initiating a new action. If a Section 8(c) action is modified, the RO should document its justification for the changes made to the original temporary order.

In most cases, it will not be necessary to formally terminate a Section 8(c) action because the temporary order expires by operation of law when the Section 8(b) order becomes final and effective. If an IDI is closed by federal or state authorities or merges into another IDI before a Section 8(b) order is issued, then it will be necessary to terminate the Section 8(c) order. The instructions would be similar to the steps for terminating a Section 8(b) action. The RO should document its justification for terminating the order.

Personal Cease-and-Desist Orders against IAPs

Pursuant to Section 8(b) of the FDI Act, RMS and DCP may pursue PC&Ds against IAPs if the IAP was found to have engaged in an unsafe or unsound practice or violated a law or regulation. A PC&D is a cease-and-desist order against an IAP. Similar to cease-and-desist orders issued against IDIs, PC&Ds are titled “Consent Order” if the IAP stipulates to the issuance of the order, and titled “Order to Cease and Desist” if issued through litigation. Sections 8(b)(6) and 8(b)(7) of the FDI Act allow the FDIC to require affirmative action remedies and to limit the activities of IAPs.

The statute provides the authority to place limitations on activities or functions of an IAP, provided there is a demonstrable connection to the alleged misconduct and the limitations are designed to remedy it. A PC&D should be used when warranted and justified to address behavior that poses undue risk to an IDI and to correct and hold IAPs accountable for actionable misconduct. Also, a PC&D should be considered when there is a risk that the IAP will engage in the misconduct again. A PC&D can require an IAP to cease and desist from certain acts in their current positions, divest themselves of controlling shareholdings in the IDI, or limit their involvement in the conduct of certain aspects of an IDI’s affairs.

The legal requirements for supporting a PC&D may be met if an IAP violates a law or regulation or engages in an unsafe or unsound practice. A PC&D may be pursued against an IAP when a violation or unsafe or unsound practice does not meet the requirements for a permanent prohibition from the banking industry. Thus, RMS or DCP may seek a PC&D against an IAP where remedial action is warranted, but judgment and discretion should be applied in the use of this remedy, and the Legal Division should be consulted.

Key factors to consider when contemplating PC&Ds against IAPs, include, but are not limited to the following:

- The conduct involved dishonesty but does not meet other requirements for a prohibition and removal action.
- The conduct was by a director or officer, rather than a junior employee.
- The IAP had a substantial role in directing the misconduct.
- The IAP engaged in repeated or large-scale misconduct.
- The FDIC sent a supervisory letter to the IAP, but misconduct continued.
- An ROE or enforcement action detailed the misconduct by a specific IAP, putting the IAP on notice of the misconduct, but the misconduct continued.

- Directors or officers abdicated their fiduciary duties or otherwise acted in an unsafe or unsound manner.

- A former director or officer, who engaged in dishonesty or misconduct, is currently working at another IDI or appears reasonably likely to return to banking.

The FDIC has flexibility in determining the types of provisions to include in PC&D orders. For example, if the FDIC determines that a PC&D is warranted to address misconduct by an officer who has originated loans outside permitted authority or on an unsafe or unsound basis, appropriate provisions may include removal or limiting the IAP's authority and prescribe hours of training related to safe and sound practices.

Issuing PC&Ds

The FDIC's delegations of authority delineate the office or position with authorization for approving the issuance of a PC&D. The RO should document the basis for the proposed PC&D action and the recommended provisions. Issuance of a PC&D requires involvement of the WO and the Legal Division.

Terminating PC&Ds

A PC&D is typically issued with a time limit of five years. If the actions of the IAP were particularly egregious, compliance with a specific provision deemed critical, or another important supervisory reason can be articulated, the time limit can be greater than five years or eliminated completely. Justification for a time limit longer than five years should be documented.

PC&D orders with an explicit duration are self-terminating and, therefore, do not require an order to terminate the action. Termination prior to the end of five years, or termination of PC&Ds without a time limit, should be based on full compliance with the provisions of the order. When considering the issuance and provisions of a PC&D, the remedies set forth in a PC&D should lend themselves to measureable and verifiable compliance to permit a reasoned basis for termination. An IAP can request that a PC&D be terminated by submitting a letter with supporting documentary evidence to the appropriate RD once its requirements have been satisfied. Upon receipt, RMS or DCP staff will evaluate the IAP's submission for completeness and ensure the PC&D requirements have been met. The submission should contain documented and verifiable evidence of the IAP's compliance efforts, including any certification or training requirements.

Procedures for termination are similar to those for initiating a PC&D action. The RO should document its justification for terminating the order.

Restitution under Section 8(b)(6)

Appropriateness of Restitution under Section 8(b)(6)

Actions pursuant to Section 8(b)(6) may be appropriate in circumstances where the respondent has been unjustly enriched or where the respondent exhibits reckless disregard for the law. Such actions are usually considered during the CMP process, but restitution actions may be pursued independent of a CMP action or concurrently with any other action. For instructions regarding restitution actions under this section, refer to Chapter 9 – Restitution and Civil Money Penalties.

Cease-and-Desist Orders Based on Noncompliance with Anti-Money Laundering/Countering the Financing of Terrorism Program Requirements

Section 8(s) of the FDI Act directed each of the FBAs to prescribe regulations requiring each FBA-supervised institution to establish and maintain procedures reasonably designed to assure and monitor the institution's compliance with the requirements of the BSA. Section 8(s) also requires that each FBA's examination of an institution include a review of the institution's AML/CFT program and that reports of examination describe any problem with the AML/CFT program. As a result, the FDIC implemented Section 8(s) by promulgating 12 C.F.R. § 326.8 in a joint rulemaking process with the other FBAs. 12 C.F.R. § 326.8 requires each FDIC-supervised institution to establish and maintain an AML/CFT program reasonably designed to assure and monitor the institution's compliance with the requirements of the BSA and its implementing regulations. At a minimum, an AML/CFT program shall have the following components or pillars:

- a system of internal controls to assure ongoing compliance with the BSA,
- independent testing for AML/CFT compliance,
- a designated individual or individuals responsible for coordinating and monitoring AML/CFT compliance, and
- training for appropriate personnel.

In addition, an AML/CFT program must include a customer identification program with risk-based procedures that enable the institution to form a reasonable belief that it knows the true identity of its customers. An AML/CFT program must also include appropriate risk-based procedures for conducting ongoing customer due diligence as set forth in regulations issued by the U.S. Treasury Department (31 C.F.R. Part 1010.210(b)(5)). For the purposes of Sections 8(s), the FDIC evaluates customer due diligence and other AML/CFT monitoring, reporting, and recordkeeping requirements as a part of the internal controls component of the institution's AML/CFT program.

Statutory Requirements

Section 8(s) requires the FDIC to issue a cease-and-desist order against a FDIC-supervised institution if the FDIC determines that the institution has:

- failed to establish and maintain an AML/CFT program, or
- failed to correct any component or pillar problem with the AML/CFT program previously reported to the institution by the FDIC.

Section 8(s) compels the FDIC to pursue an enforcement action in these circumstances. However, the cease-and-desist orders compelled by Section 8(s) are brought pursuant to Section 8(b). In addition, where correction of an AML/CFT problem is mandated or obtained by a cease-and-desist order issued under Section 8(b), a separate action pursuant to Section 8(s) would not be necessary.

Policy Considerations

The first part of Section 8(s) applies when an FDIC-supervised institution fails to establish and maintain a reasonably designed AML/CFT program. An institution would be subject to a cease-and-desist order if the institution failed to implement or maintain an AML/CFT program that adequately covers the required program components or pillars. The first part also applies to individual component or pillar violations if the deficiencies are so severe that they render the program ineffective when viewed as a whole. However, isolated issues with the pillars or components are generally not considered the kinds of problems that would result in a mandatory cease-and-desist order.

The second part of Section 8(s) applies when the institution fails to correct any component or pillar problem with the AML/CFT program previously reported to the institution by the FDIC. The FDIC will only issue a cease-and-desist order if the subsequent problems are substantially the same as those previously reported to the institution. Statements in an ROE or other written document suggesting areas for improvement, identifying less serious issues, or identifying isolated or technical violations or deficiencies generally would not be considered actionable for purposes of Section 8(s). The FDIC also recognizes that certain types of deficiencies may not be fully correctable before the next examination or within the planned timeframes for corrective actions. In addition, certain remedial actions involving multiple lines of business or the adoption or conversion of automated systems may take more time to implement than initially anticipated. In these types of situations, a cease-and-desist order may not be required provided the FDIC determines that the institution has made acceptable substantial progress toward correcting the problem.

Independent of Section 8(s), the FDIC has the authority to take formal or informal enforcement actions for problems with an institution’s AML/CFT program, components or pillars, or other AML/CFT requirements. These other AML/CFT requirements include, for example, customer due diligence, beneficial ownership, foreign correspondent banking, and suspicious activity and currency transaction reporting. The form of the enforcement action in each individual case will depend on the severity of the noncompliance or deficiencies; the capability and cooperation of the institution's management; and the FDIC’s confidence that the institution will take appropriate and timely corrective action.