

**Decision of the
Supervision Appeals Review Committee**

In the Matter of ***

Case No. 2024-03

I. Summary

*** (Bank) asked the Supervision Appeals Review Committee (Committee) to review the appropriateness of the Consumer Compliance Rating assigned at the Bank's ***, 2022 Consumer Compliance and Community Reinvestment Act Examination, conducted by the FDIC. As described further below, the Committee finds in favor of the Division of Depositor and Consumer Protection (DCP).

II. Background and Procedural History

The FDIC's 2022 Consumer Compliance and Community Reinvestment Act Examination of the Bank resulted in the assignment of a Consumer Compliance Rating of "4," which is a downgrade from the prior "2" rating assigned during the ***, 2019 examination. The Report of Examination for the 2022 examination (2022 Report) also rated the Board and Management Oversight and Compliance Program as weak.¹ In addition, the 2022 Report identified violations of laws and regulations, such as ***.

Generally, the 2022 Report identified weaknesses in the Bank's Compliance Management System (CMS). [The 2022 Report was transmitted to the Bank, which included information about a potential formal enforcement action.]

By letter to the Director of DCP (Director) dated February 20, 2024, the Bank requested a review of the Consumer Compliance Rating in the 2022 Report.² The Bank also requested a new examination and expungement of the existing rating. The Director concluded that the Consumer Compliance Rating was appropriate and consistent with the Uniform Interagency Consumer Compliance Rating System (CC Rating System), the FDIC's Consumer Compliance Examination Manual (CCEM), and regulatory guidance. The Director also denied the request for a new examination, based on the conclusion that the current rating was appropriate.

The Bank submitted an appeal to the Committee to review the appropriateness of the Director's determinations regarding the Consumer Compliance Rating and its request for a new examination. In accordance with the *Guidelines*, the Committee has reviewed the appeal for

¹ In the previous examination, the Board and Management Oversight and Compliance Program were rated as adequate.

² Consistent with the FDIC's [*Guidelines for Appeals of Material Supervisory Determinations*](#) ("*Guidelines*"), the Director did not review the material supervisory determinations related to the enforcement action.

consistency with the policies, practices, and mission of the FDIC, and the reasonableness and support for the positions of the parties. The Committee met with the parties to consider the appeal and hear oral arguments on August 7, 2024.

III. Discussion

The Bank operates *** full-service offices *** within ***. The Bank operates a traditional community banking division and a *** program. The traditional community banking division operations involve commercial, agricultural, residential, and consumer loan products funded by deposits. Through the *** program, the Bank ***. The *** program and corresponding third-party relationships have in recent years become a significant part of the Bank's operations.

The Bank argues that DCP did not consider the Bank's CMS policy and other key policies and procedures in a meaningful way in issuing the Compliance rating, which led to an unfair and biased result. The Bank asks for the Compliance rating to be discarded and requests that the FDIC conduct a new examination to properly and comprehensively assess the Bank's CMS.

The Bank takes issue with the weight given to its CMS policy in the Director's decision (decision), dated ***, 2024, and the rationale supporting that decision. Specifically, the Director's decision stated that DCP's first record of receiving the Bank's CMS policy was in an e-mail dated ***, 2023. The decision also states that the examiners could not find evidence in the minutes of the Bank's Board of Directors meetings demonstrating that the Board had ever adopted the CMS policy. Finally, the Director's decision notes that the CMS policy was dated *** 2022, only *** months before the examination began, and many of its elements had yet to be implemented.

The Bank indicates that it provided its CMS policy to examiners in *** 2022, in response to a request for information, and that it remains unclear why examiners were unwilling to give the Bank's CMS policy "sufficient weight." In addition, the Bank states that even if the CMS policy was dated *** 2022, the policies, procedures, and practices included in the policy were implemented and maintained long before *** 2022, through for example, its *** Policy and *** Program ***, among others. The Bank argues that the implementation of these policies and procedures is reflected by documentation it submitted to the examiners, and this aligns with supervisory expectations in the CCEM.

The Bank also asserts that it was actively engaging outside counsel and compliance consultants to implement CMS functions, primarily third-party due diligence and monitoring, and to improve critical aspects of the CMS well before the 2022 examination. Further, the Bank states that the CMS was well established and that several external compliance consultants audited the CMS and its related functions.

The Bank argues that its Board discussed the CMS policy at length during its ***, 2022 meeting, and the minutes of this meeting reflect the adoption of a variety of other policies that contribute to the Bank's overall CMS.

DCP contends the Consumer Compliance Rating is appropriate, as the Bank's CMS is "seriously deficient" and the Bank's Board and management have not managed the consumer compliance risk proactively, have not taken sufficient actions to address the previously identified Matters Requiring Board Attention (MRBAs), and have not prevented violations of law and consumer harm.³ DCP notes that the Bank's efforts to manage compliance and risks in its third-party relationships have been ineffective. DCP also states that the Bank's CMS does not provide sufficient oversight of third parties, necessary staff and resources for the Bank's complex operations, and corrective actions to address supervisory findings and recommendations.

With respect to the Bank's request for a new examination, DCP notes that the Bank's next consumer compliance examination, which will assess the Bank's CMS since the 2022 examination, is planned for ***, consistent with DCP's examination frequency policy.

Committee Findings

The SARC guidelines state that "formal enforcement-related actions and decisions, including determinations and the underlying facts and circumstances that form the basis of a recommended or pending formal enforcement action" are not "material supervisory determinations" subject to appeal.⁴ When this language was adopted, the FDIC noted in the preamble to the *Guidelines*, "the facts and circumstances that form the basis of a recommended or pending formal enforcement action cannot be challenged through the process set forth in the Guidelines and must instead be addressed through the administrative enforcement process. In such instances, an appeal of the rating may be available through the SARC process based on grounds other than the facts and circumstances that form the basis of the recommended or pending formal enforcement action."⁵

In this case, the Bank has appealed its Consumer Compliance Rating, and is also subject to a formal enforcement-related action. This creates a challenging circumstance for the SARC and the Bank. The Consumer Compliance Rating "reflects the effectiveness of an institution's CMS to ensure compliance with consumer protection laws and regulations and reduce the risk of harm to consumers," and the FDIC lists as one of three "broad categories" under which the CC Rating System is organized as "Violations of Law and Consumer Harm."⁶ Thus, potential violations of law and consumer harm constitute a key piece of the Consumer Compliance Rating. However, in this case, given the limitations the *Guidelines* impose on the SARC's ability to consider the facts and circumstances underlying the formal enforcement-related action, which includes allegations of violations of law and consumer harm, and which appear to have played a material role in the rating, it is difficult for the SARC to evaluate whether the rating should be overturned.

The *Guidelines* provide that, "the burden of proof as to all matters at issue in the appeal, including timeliness of the appeal if timeliness is at issue, rests with the institution."⁷ In this

³ As noted above, violations of the *** were cited in the 2022 Report.

⁴ FDIC *Guidelines*, Paragraph D(2)(d).

⁵ 82 FR 34522, 34524 (July 25, 2017) (available at <https://www.federalregister.gov/documents/2017/07/25/2017-15466/guidelines-for-appeals-of-material-supervisory-determinations>).

⁶ See [FDIC Consumer Compliance Examination Manual](#), at section II-13.1-13.2.

⁷ FDIC *Guidelines*, Paragraph G(3).

case, the Bank was unable to prove that the downgrade of the Consumer Compliance Rating should be overturned.

The Bank has also requested that the SARC find that DCP should conduct a new examination. Given that the Bank's next consumer compliance examination is scheduled ***, the SARC declines this request.

In any event, the SARC believes it is important that the Bank take a proactive and holistic approach to compliance issues, and, to the extent the Bank is taking a comprehensive approach, the upcoming examination will provide an opportunity for the Bank to demonstrate if that is the case.

IV. Conclusion

For the reasons stated above, the SARC finds in favor of DCP.