



## A MESSAGE FROM COMMISSIONER ENTRINGER



First let me apologize for failing to get the newsletter out quarterly as we had intended; Although I get reminded by my staff, I often get sidetracked. So maybe that needs to be a New Year resolution! Speaking of the New Year, it is fast approaching and with it comes the implementation of the new capital regulations. Included in the newsletter are some brief highlights for you to think about as you do your strategic planning for the upcoming year.

As many of you are aware, we are finalizing our preparations for the 2015 Legislative Session. While we do not have a great deal of legislation to propose, we are seeking some expanded authority related to bank holding companies and third party technology service providers. With respect to bank holding companies, we are asking for authority to investigate when the commissioner is in receipt of information which is material to the safety and soundness of the bank holding company. Included within this investigation authority would be the ability to impose civil money penalties, remove officers or directors and to issue orders relating to a bank holding company. Each of these powers now exist for banks directly, and of course the holding company will be afforded similar due process under the law. We are also seeking the ability to examine third party technology service providers based on a recommendation from the CSBS Accreditation review team.

A proposed amendment to our Change of Control statute would harmonize our law with the Federal law. Specifically, we would remove the requirement for an application in situations where a party falls below the control threshold and incorporate a notice requirement (in place of a formal application) for inheritance and gifting of stock, as well as acquisition of stock as a result of the satisfaction of debts previously contracted. Additionally, the Department is proposing an amendment impacting newly established independent trust companies; we are proposing to repeal a section of the law which allows a newly chartered trust company two years to inject the required capital. It seems to me that since the capital for bank must be paid in before receiving a charter the same rules should apply to a trust company. While these are not all of the changes we are proposing, other changes are essentially "housekeeping". We will provide the associations with a complete list of Bill numbers once they are assigned.

I do want to wish all of you Happy Holidays and of course a prosperous New Year.

## RESOURCES FOR THE REVISED REGULATORY CAPITAL RULES

On page two you can find a few highlights of the new capital regulations. Here is a list of more comprehensive resources:

- ◆ [Interagency Community Bank Guide to the New Capital Rule](#)
- ◆ [Expanded Community Bank Guide to the New Capital Rule for FDIC-Supervised Banks](#)
- ◆ Part 324: September 3, 2014 Final Rule: Regulatory Capital Rules: [Regulatory Capital, Revisions to the Supplementary Leverage Ratio](#)
- ◆ FDIC: [Regulatory Capital page](#)
- ◆ FDIC: [Capital Estimation Tool](#)

The Regulatory Capital Final Rule was adopted into Title 12 of the CFR.  
FDIC: Part 324  
FRB: Part 217, Regulation Q

## COMMON VIOLATIONS CITED DURING EXAMINATIONS

From 2012 to now, 93% of violations cited in Federal and State Reports of Examination are limited to six areas:

- 1) Bank Secrecy Act (32%). Over half of these are late or missed filings of Currency Transaction Reports (CTRs).
- 2) Appraisals or evaluations (20%). Remember that if a certified appraisal is not required, you still need an evaluation.
- 3) Regulation O (13%). Loans to insiders need prior approval if aggregate amount (including related interests) exceeds \$500,000 and the interested party must abstain from voting. Also, keep in mind the Regulation O lending limit for insider loans and the overdraft limitations for executive officers and directors.
- 4) Pledging-related (13%). Often, inadequate funds are pledged to cover public deposits and some securities are ineligible for pledging.
- 5) Legal Lending Limit (9%). It can be challenging figuring out when entities are combined for legal lending limit purposes. Do not hesitate contacting our office if you would like assistance.
- 6) Dividends (6%). A worksheet is found on our website ([www.nd.gov/dfi](http://www.nd.gov/dfi)) to assist you in calculating the “net profits” available for dividend. If the combined “net profits” is negative, a dividend may not be declared without prior State Banking Board or Commissioner approval.

## NEW CAPITAL REGULATIONS HIGHLIGHTS:

### ◆ Accumulated Other Comprehensive Income (AOCI)

On the **March 31, 2015, Call Report**, banks have a *one-time, irrevocable* option to decide whether to include AOCI (such as unrealized gains or losses on securities) in Tier 1 Capital or maintain existing AOCI treatment (known as opting out). It makes sense for community banks to **opt out!**

### ◆ Capital Conservation Buffer

Requires all banks to hold additional capital or face restrictions on certain capital distributions, including dividends, discretionary payments on Tier 1 instruments, share purchases, and discretionary executive officer bonuses.

Capital Conservation Buffer (as a % of RWA)	Maximum Payout Ratio
> 2.50%	No payout limitation
1.875% - 2.50%	60%
1.25% - 1.875%	40%
0.625% - 1.25%	20%
< 0.625%	0%

### ◆ Risk-Weighting Asset Changes (effective January 1, 2015)

- ◇ Cash on Deposit at the bank or 3<sup>rd</sup> party custodian
  - 0%
- ◇ 1-4 Family Residential RE
  - 50% (if first lien and not PD > 90 days, NA, or TDR)
  - 100% for everything else
- ◇ All Other Loans
  - Unchanged (20%, 50%, 100%) depending on type
  - 150% of unguaranteed portion if NA, PD > 90 days
- ◇ High Volatility CRE (HVCRE)
  - 150%
  - HVCRE does not include:
    - \* 1-4 Family Residential Projects
- \* Loans for Agricultural Purposes
- \* Community Development Loans
- \* Certain Acquisition, Development, and Construction loans
- ◇ Structured Securities (TruPs, private label MBS, etc)
  - 20% – 1,250% depending on Simplified Supervisory Formula Approach (SSFA)
- ◇ Unused Commitments – credit conversion factors
  - 0% for those that are unconditionally cancellable
  - 20% for those maturing in one year or less
  - 50% for those maturing in more than one year
- ◇ Non-Significant and Significant Investments in Capital Instruments of Financial Institutions