



## Comptroller of the Currency Issues in Rapid Succession Two Enforcement Related Bulletins

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Within the last two weeks, the Office of the Comptroller of the Currency issued two bulletins directly related to enforcement matters. OCC Bulletin 2016-5 (a copy of which can be found [here](#)), detailing the OCC's revisions to its Policies and Procedures Manual (PPM 5000-7 (REV)) policy for assessing civil money penalties (CMP), was issued on February 26th. OCC Bulletin 2016-6 (a copy of which can be found [here](#)), describing the OCC's process for administrative enforcement actions based on noncompliance with BSA compliance program requirements or repeat or uncorrected BSA compliance problems, was issued on February 29th. The double barreled issuance of these bulletins should be a further reminder to institution-affiliated parties, national banks, federal savings associations, federal branches and agencies, bank service companies, and services providers, that the OCC remains laser focused with respect to policing and penalizing institutions and persons for actual or perceived wrongful actions or inactions.

The continuing anti-bank environment has spawned both legislative and regulatory proposals and actions. These bulletins are part of the regulatory reaction. In the last few months we have alerted our clients to newly proposed AML regulations in New York (copies of two of our recent QuickStudies can be found [here](#) and [here](#)) which, among other things, seek to greatly expand the personal liability of senior compliance officers, even to criminalize errors in reporting. In December 2015 legislation was introduced in the U.S. Congress entitled "Holding Individuals Accountable and Detering Money Laundering Act". In September 2015 the U.S. Department of Justice circulated an internal memorandum outlining how the department will step up its pursuit of individual accountability for corporate wrongdoing. In short, the tide is moving in the direction of increased emphasis on holding individual directors and officers responsible for their and the institution's actions; even to the level of criminalizing unintentional mistakes.

While OCC Bulletin 2016-5 is primarily to issue a revised version of PPM 5000-7 (REV) (issued in June 1993) and the replacement through consolidation of several previously issued OCC and OTS documents regarding civil money penalties, it nonetheless emphasizes the agency's broad statutory authority to wield harsh enforcement powers relating to directors and officers. Most noteworthy is that revised PPM 5000-7 (REV) replaces the prior CMP matrix. The CMP matrix is a tool used by OCC staff to determine the relative degree of severity of violations of law, unsafe or unsound practices, and breaches of fiduciary duty, and sets forth suggested money penalties based on matrix score and total assets of the bank. In place of the prior single CMP matrix, the revision includes two CMP matrices; a CMP matrix for institutions and a CMP matrix for institution-affiliated parties. These matrices modify the prior single matrix by altering the relative weighting factors used to determine the severity of violations, breaches, and unsafe or unsound practices and also increases the amounts of money penalties to be assessed. While some of this could be attributed to the passing of 23 years, it appears to be a refocus of enforcement policy as to those infractions which will be treated most harshly. Unfortunately, the matrix is not designed to be a predictor of penalty amounts but a very flexible guide for the agency to make an administrative record that will withstand judicial scrutiny. We also believe that the revision and creation of two matrices signal an intention to assess higher civil money penalties against banks committing serious violations of OCC regulations. Additionally, PPM 5000-7 (REV) emphasizes that civil money penalties are not just penalties for improper conduct, but are also intended as a deterrent to assure that those affected directly, and the industry as a whole, conduct themselves properly in the future.



OCC Bulletin 2016-6 lays out the administrative processes the OCC will utilize related to BSA/AML enforcement matters. The bulletin stresses that the OCC has a statutory mandate to issue cease-and-desist orders when citing BSA compliance program violations or violations for repeat or uncorrected BSA compliance problems. As part of the process described in the bulletin, the OCC must provide banks with notice and an opportunity to respond (15 days) before the decision to issue a cease-and-desist order is finalized. Directors and officers should be acutely aware that a violation of a cease-and-desist order may very well result in the pursuit of civil money penalties.

On the surface it appears that these two bulletins are administrative housekeeping matters. However, we cannot help but to take notice of the context in which the timing of the two releases occurs. The more aggressive stance being taken by political candidates, legislators and agencies regarding personal liability of bank directors and officers cannot be overlooked. Directors and officers of institutions need to be wary of the tightening interpretations of BSA and AML requirements and consumer laws. Enforcement policies and penalty matrices are becoming more than an academic issue for community banks. Directors in particular should be advised of the legal significance of executing consent orders and the exposure those orders create.

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