



LEGAL ALERT

June 22, 2010

Federal Reserve, OCC, OTS, and FDIC Issue Final Guidance on Incentive Compensation

The Federal Reserve, the Office of the Comptroller of the Currency (OCC), the Office of Thrift Supervision (OTS), and the Federal Deposit Insurance Corporation (FDIC) issued final guidance yesterday to ensure that incentive compensation arrangements at all financial organizations supervised by the agencies (including state chartered banks) take into account risk and are consistent with safe and sound practices. The guidance embodies three primary principles: (1) incentive compensation arrangements at a banking organization should provide employees incentives that appropriately balance risk and financial results in a manner that does not encourage employees to expose their organizations to imprudent risk; (2) these arrangements should be compatible with effective controls and risk-management; and (3) these arrangements should be supported by strong corporate governance, including active and effective oversight by the organization's board of directors. In issuing the guidance, the regulators are attempting to prevent incentive compensation plans from creating a "heads I win, tails the firm loses" scenario.

The guidance specifically requires the board of directors to work with management and outside advisors to assess whether the overall design and performance of the company's incentive compensation arrangements are consistent with the organization's safety and soundness. The guidance also clarifies that risk-management and compensation expertise and experience at the board level may be present among the members of the board and may come from advice received from outside counsel.

The agencies expect banking organizations to take prompt action in complying with the final guidance and will incorporate a review into the regular examination process. Where appropriate the agencies will take supervisory or enforcement action to ensure that material deficiencies that pose a threat to the safety and soundness of the organization are promptly addressed.

Contact Nicholas Bybel or L. Renée Lieux if you seek guidance regarding how the final guidance specifically impacts your company at:

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