

Introduction

This section discusses post examination activities that are essential to fulfilling the supervisory oversight of the savings association. Included in this section are the activities necessary to complete the examination process, the objective of the meetings with the board of directors or trust committee and the coordination with the Uniform Interagency Trust Rating System (UITRS). While these activities are a continuing part of the examination process, they are referred to here as post examination activities to distinguish them from the on-site portion of the examination.

On-Site and/or Post Examination Closing Procedures

For every trust and asset management examination conducted by the Office of Thrift Supervision the following on-site and/or post examination closing procedures will be performed:

- Summarize the results and conclusions at the end of each examination program
- Review the workpapers and summary conclusion to ensure that the examination objectives have been achieved
- Ensure that there are properly cross-referenced workpapers to document and support substantive findings and conclusions
- Draft comments for the ROE, including the scope and recommendations
- Assign the Uniform Interagency Trust Ratings

Meetings with the Board of Directors

As stated in 12 CFR §550.150, the board of directors is responsible for the proper exercise of a savings association's trust powers. In addition, OTS emphasizes the essential role of each institution's board of directors in establishing the policies that result in safe and sound operations. Consistent with this philosophy is the belief that board members should be actively involved in the regulatory process.

Meetings between regulatory staff and the board of directors, the individuals ultimately responsible for a savings association's affairs, serve a variety of functions. They provide opportunity for interaction and they facilitate long-term communication, which is especially important when the regulatory process reveals significant adverse information. They help to keep the directors and regulators mutually informed by providing them an opportunity to discuss:

- the examination process and findings;
- the institution, its functions and plans;
- the external and competitive environment; and
- industry-related concerns.

The need for effective communication between examiners and the board of directors is of paramount importance when the regulatory process reveals significant adverse information, for example when the trust department receives a 3, 4, or 5 composite rating under the UITRS; as a result, meetings with the board of directors are strongly encouraged in these instances. Meetings with the board of directors are encouraged regardless of a department's condition, at least on a periodic basis.

Types of Meetings

There are two types of meetings, regular and special. Generally, examination-related matters are discussed at regular meetings and special meetings are held for purposes other than the specific presentation of examination findings. However, any meeting may serve more than one purpose; thus, the distinction between regular and special meetings may be an artificial one in some instances. For example, meetings called by regulatory staff to implement a formal enforcement action are often the direct result of examination findings, even though the meeting itself is not technically examination-related.

Regular Meetings - Regular meetings may result from regular, special or targeted examinations. The primary purpose of these meetings is to present and discuss examination findings and, if necessary, reach agreement on a plan of corrective action. A secondary purpose may be to gather information regarding a new product or service or future plans for the savings association. These meetings may also be used to enhance the directors' understanding of the regulatory process and to establish rapport and build lines of communication between regulators and directors. Examiners should meet with the board of directors of adversely rated institutions following the conclusion of the examination. Adversely rated institutions are defined as those with a UITRS composite rating of 4 or 5 and a UITRS composite rating of 3 if the rating represents a downgrade from the previous examination.

Generally, examiners should meet with the board of directors of all 3-rated institutions; however, the examiner-in-charge (EIC), with the concurrence of the regional office, has discretion to determine whether a meeting is necessary or appropriate in those cases in which the 3 rating is not a downgrade from the prior examination. Meetings with the board of directors on nonadversely rated institutions are also encouraged, especially if the EIC notes adverse trends, a risk profile that reflects an increase in risk or other matters that need to be brought to the board's attention. For nonadversely rated trust departments which are considered large and complex, meetings with the board or its trust committee are strongly encouraged, whether or not adverse trends are noted.

Regular meetings should normally be held subsequent to the examination, although they may be held during the last week of the examination if the examination results have already been discussed with senior management. They may also be held in conjunction with the next regularly scheduled board meeting, or to coincide with other meetings scheduled as a result of reasonably concurrent examinations, such as safety and soundness or compliance examinations, or at some other mutually agreed upon date. Whenever possible, it should be no later than 60 days after the completion of the examination. When scheduling the meeting, regulators should make every effort to ensure that the board of directors is familiar with the examination findings or has received a copy of the trust and asset management examination report prior to the meeting.

The following issues, while not all-inclusive, would warrant the board of director's attention and therefore should be considered for inclusion in the meeting agenda:

- a comparison of the savings association's policies, practices and reporting systems with those one would expect to find in a well-managed institution of comparable size and offering similar services;
- senior management's efforts to correct deficiencies in policies, practices and reporting systems;

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- the department's system of internal controls, including the risk management, compliance and audit programs;
 - the extent to which senior management and directors are receiving information needed to manage or oversee the affairs of the department effectively;
 - depth in management personnel;
 - any significant concerns or observations regarding the quality of earnings;
 - management's long term plans; and
 - the board's involvement in the department's affairs.

OTS examiners should be prepared to discuss possible methods for achieving correction of any deficiencies noted. However, it is important for the examiners to refrain from managing the department by directing the specific course of action that is to be taken. If no major deficiencies are noted, examiners can inform the board of directors of the general condition of the trust department and obtain the board's view on its operation in the future. The directors should be encouraged to discuss any matters of interest.

The meetings are expected to foster a working relationship with those individuals who are directly responsible for the management of the trust department. Meetings must be constructive and conducted in a clear, concise and orderly manner, accompanied by a written agenda presented to the attendees. Success depends entirely on the substance of matters discussed and the effort expended to prepare for the meeting.

Special Meetings - Meetings with the board may be required to facilitate other goals apart from presenting the findings of a report of examination. For example, a special meeting would be appropriate to institute a supervisory action, to gather information in order to act on a specific proposal, application or request by the institution, or to discuss an institution's progress in achieving interim goals in accordance with a corrective action plan. In addition, get-acquainted meetings may also be held as a special meeting, perhaps caused by a change in the composition of the board of directors or a change of examiners assigned to the savings association. Finally, special meetings may be held as a result of a request to meet with OTS staff.

Composite Trust Rating System and Post Examination Follow-up

The frequency schedule for the conduct of regular trust and asset management examinations is in large measure dependent upon the composite rating assigned to a department under the UITRS. The need for follow-up contact with a savings association may be satisfied by the post examination meeting between OTS regulatory staff and the board of directors, as well as periodic monitoring and communication with management.

For a department that receives a composite 3, 4, or 5 rating, the level of follow-up activity will vary according to the severity of the problems noted, the corresponding enforcement action taken and the institution's history of responsiveness to supervisory actions, both generally and in terms of its trust department. The following guidelines are designed to provide a framework under the UITRS for the application of reasonably uniform follow-up procedures on a national basis. However, because follow-up activity must be tailored to the circumstances of each individual institution and its trust department, these guidelines are not intended to preclude flexibility and judgment to design and apply other remedial and supervisory measures.

Trust Departments Rated 1 or 2 - Corrective action for a department rated composite 1 or 2 would normally be taken or initiated during the on-site examination. Any weaknesses not resolved during the

examination should be addressed by management in its response to the examination report in sufficient detail so as to allow the regional office to conclude that the matters have been or will be appropriately resolved. However, if a significant change in its operations or other significant developments has occurred between examinations, then a targeted examination or other type of visitation to review the changes should be considered.

Trust Departments Rated 3 - If a department receives a composite 3 rating, its trust and asset management activities exhibit some supervisory concern. A combination of weaknesses exist that may range from moderate to severe. Therefore, the savings association's trust and asset management activities will require more than normal supervision and may include informal or formal enforcement actions. For example, if compliance problems or other important weaknesses remain largely uncorrected from one examination to the next or if overall performance has significantly deteriorated between examinations, then a more forceful supervisory response is necessary in order to effect correction or to forestall any further deterioration. In these situations, normal follow-up procedures should be supplemented by a meeting with the full board of directors and the use of an informal or formal action should be considered. Also, a targeted examination should be scheduled if regional office management believes that on-site verification of corrective action is deemed prudent. Formal supervisory action, such as a cease and desist order, should be taken where there are repeated substantive violations of laws and regulations.

Trust Departments Rated 4 - If a department receives a composite 4 rating; serious questions are raised about its ability to discharge its trust and asset management responsibilities. Performance at this level poses a threat to trust and asset management accounts and, if left unchecked, could evolve into conditions that could ultimately undermine public confidence in the savings association. Therefore, a department receiving a composite 4 rating requires close supervisory attention. A meeting with the full board of directors is required and targeted examinations should be conducted to properly monitor the department's condition. In most instances, the use of a formal enforcement action is necessary to address the problems.

Trust Departments Rated 5 - If a department receives a composite 5 rating; its performance poses a serious threat to the safety and soundness of the savings association. Such a department requires immediate and close supervision. Targeted examinations should be conducted. Formal supervisory action and, depending on the circumstances, the use of regulatory sanctions and/or termination of the savings association's trust powers would normally be required.