

An hourglass-shaped graphic with a globe inside. The top bulb is dark blue, and the bottom bulb is light blue. The globe is centered within the hourglass, and the text is arranged around it.

# WikiLeaks Document Release

<http://wikileaks.org/wiki/CRS-RL33235>

February 2, 2009

Congressional Research Service

Report RL33235

*Banking and Securities Regulation and Agency Enforcement  
Authorities*

William D. Jackson, Mark Jickling, and Gary Shorter, Government and Finance Division; M. Maureen Murphy and Michael V. Seitzinger, American Law Division

January 17, 2006

**Abstract.** The federal bank regulatory agencies - the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, and the Office of Thrift Supervision - have extensive authority to enforce various legal and regulatory standards with respect to the banking institutions that they supervise. Similarly, the Securities and Exchange Commission (SEC) has a wide range of tools to enforce the securities laws. This report provides a brief sketch of these authorities and identifies the organizational entities within each agency that Congress assigns enforcement responsibilities. It includes a table comparing the formal enforcement tools that the banking agencies may use with those of the SEC.

WikiLeaks



# Banking and Securities Regulation and Agency Enforcement Authorities

**Mark Jickling**

Specialist in Financial Economics

**Gary Shorter**

Specialist in Financial Economics

**M. Maureen Murphy**

Legislative Attorney

**Michael V. Seitzinger**

Legislative Attorney

January 17, 2006

Congressional Research Service

7-5700

[www.crs.gov](http://www.crs.gov)

RL33235

**CRS Report for Congress**

*Prepared for Members and Committees of Congress*

## Summary

The federal bank regulatory agencies—the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, and the Office of Thrift Supervision—have extensive authority to enforce various legal and regulatory standards with respect to the banking institutions that they supervise. Similarly, the Securities and Exchange Commission (SEC) has a wide range of tools to enforce the securities laws. This report provides a brief sketch of these authorities and identifies the organizational entities within each agency that Congress assigns enforcement responsibilities. It includes a table comparing the formal enforcement tools that the banking agencies may use with those of the SEC. This report will be updated as legislative activity warrants.

## **Contents**

Background .....	1
An Overview of Banking and Securities Regulation.....	2
Banking .....	2
Securities .....	3
Major Enforcement-Related Statutes.....	4
Banking .....	4
Securities .....	5
Organization of Enforcement Programs .....	6
Banking .....	6
Securities .....	7
Comparison of Enforcement and Compliance Tools.....	8
For Further Reading .....	10

Tables

## **Contacts**

Author Contact Information .....	11
----------------------------------	----

<http://wikileaks.org/wiki/CRS-RL33235>

## Background

In the United States, following several decades of divergence, the businesses of commercial banking and securities activities have converged.<sup>1</sup> Yet the regulatory framework for them, crafted largely in the 1930s, remains mainly under different statutory roofs.<sup>2</sup> This report<sup>3</sup> summarizes the enforcement and compliance programs of federal banking regulators and those of the Securities and Exchange Commission (SEC). It begins by discussing the key objectives of banking and securities regulation, which shed light on why enforcement programs differ. There follow brief overviews of the statutory basis for enforcement, the major enforcement tools, and, finally, how regulators organize enforcement programs.

This report focuses on the primary goals of bank and securities regulation respectively. Banks are to be run in a safe manner, seeking to avoid risk and thus losses. Their regulation is largely in the background, “opaque.” Although banking operations are subject to penetrating examinations by federal regulators, agencies do not make most of the details public. The SEC, on the other hand, requires securities firms and securities issuers to disclose various details of their operations, including all material information that may generate losses as well as expected profits. In contrast to bank regulation, therefore, SEC regulation of securities businesses may be labeled “transparent,” that is, although sources of volatility are acceptable in the industry, they must be adequately and accurately revealed or disclosed.

In both sectors, other goals are promoted by industry standards or self-policing and by government regulation. Among these are the following: business continuity planning in case of natural and unnatural (terrorist) disasters that could weaken operations;<sup>4</sup> preventing use of financial institutions as conduits for money laundering or terrorist financing;<sup>5</sup> providing consumer protection against fraud and misconduct; safeguarding data security and the privacy of customer information; and supervising technological service providers. Banking and securities regulators and institutions have long cooperated, both nationally and internationally, informally and formally, and share cooperative arrangements of many kinds, often extending beyond U.S. borders.<sup>6</sup>

---

<sup>1</sup> CRS Report RL30516, *Mergers and Consolidation Between Banking and Financial Services Firms: Trends and Prospects*, by Walter W. Eubanks.

<sup>2</sup> CRS Report RL32672, *Financial Institutions and Markets: Major Federal Statutes*, by M. Maureen Murphy.

<sup>3</sup> Sections of this report were written by William Jackson, formerly of the Government and Finance Division of CRS.

<sup>4</sup> CRS Report RL31873, *Homeland Security: Banking and Financial Infrastructure Continuity*, by William Jackson.

<sup>5</sup> CRS Report RL33020, *Terrorist Financing: U.S. Agency Efforts and Inter-Agency Coordination*, coordinated by Martin A. Weiss, especially section “Financial Regulators and Institutions.”

<sup>6</sup> Institute of International Bankers, “Global Survey 2005, Regulatory and Market Developments,” at <http://www.iib.org/GS2005.pdf>.

# An Overview of Banking and Securities Regulation

## Banking

Banking is one of the most heavily regulated businesses in the United States.<sup>7</sup> The reasons for this lie in the economics of banking. A typical bank balance sheet features long-term assets (loans and investments) and short-term liabilities (deposits). This means that banks face liquidity problems if depositors suddenly choose to withdraw their funds. Furthermore, a run on a single bank can become an industry-wide problem, if cautious depositors at otherwise healthy banks—understanding that only some withdrawal claims can be satisfied—decide to get in line early. Banks are monitored closely through regulatory systems that require governmental chartering; periodic reporting on virtually every aspect of their business; systematic examination and supervision; independent auditing; and annual reports to shareholders, depositors and the public.<sup>8</sup> Under the dual banking system, banks may be chartered by a state government or by the federal government.

Although the chartering authority—state or federal—prescribes the requirements that a banking institution must meet with respect to the basic aspects of its business, an array of federal laws and regulations provide for close federal supervision of nearly all depository institutions in the United States. A major component of federal regulation of banking is the deposit insurance system. To discourage runs on banks and reduce the risk of contagion, Congress began federal deposit insurance during the Great Depression, following collapses of state-sponsored deposit guaranty schemes.<sup>9</sup> Because under the deposit insurance program, the federal government assumes part of the financial risk of bank failure, federal law requires that banking regulators have access to confidential business data and gives them broad powers to assure that the managers of insured depository institutions operate them in a safe manner.

Nearly every aspect of the operation and management of an insured institution is subject to close regulatory supervision. In an economic sense, bankers and regulators are business partners: a bank that becomes insolvent is not just a business failure; it also represents a failure of regulation. As vigilant as the regulators may be, bad business decisions are inevitable, as are downturns in the economy that may result in negative effects flowing from risks that are otherwise acceptable. In other words, depositories cannot completely avoid risks. With federal insurance of deposits, however, comes a safety net that lessens the impact of bank failure on depositors and, consequently, on the entire monetary economy.

Congress divides federal regulatory authority over banking institutions among five regulators. The Federal Deposit Insurance Corporation (FDIC), besides administering the federally guaranteed insurance fund that covers any insured deposit losses, regulates state-chartered banks (and savings associations), except those belonging to the Federal Reserve System (FRS). The Board of Governors of the FRS (Fed) regulates such “member banks.” The Office of the Comptroller of the Currency (OCC) regulates federally-chartered “national banks.” The Office of Thrift Supervision (OTS) regulates federally-chartered and state-chartered savings associations.

<sup>7</sup> See Jonathan R. Macey and Geoffrey P. Miller, *BANKING LAW AND REGULATION* 73 (2d ed. 1997).

<sup>8</sup> See Patricia A. McCoy, *BANKING LAW MANUAL* § 12.03 [Matthew Bender, 2d ed.].

<sup>9</sup> CRS Report RS20724, *Federal Deposit and Share Insurance: Proposals for Change*, by Walter W. Eubanks.

Besides federal regulation, all state-chartered banking institutions are subject to state banking laws and to supervision by state supervisory agencies.<sup>10</sup> Federal regulators also have authority to monitor safety and soundness in various related organizations, known as bank “affiliates,”<sup>11</sup> which may be bank subsidiaries, bank service companies, or other entities related to the bank through corporate family structures known as “holding companies.” Regulation of holding companies and their subsidiaries depends on what kind of firm is at their core. The Fed regulates bank-based holding companies; OTS regulates savings institution-based complexes; and the SEC, securities-based “investment bank holding companies.”<sup>12</sup>

## Securities

The federal securities laws require companies that sell securities to the public to register with the SEC. In contrast to bank regulation, however, the act of registration with the SEC does not mean that the government has deemed a corporation’s securities to be a safe investment. Registration documents, known as “prospectuses,” state in bold type at their beginning that these securities have not been approved or disapproved by the SEC, and any representation to the contrary is a criminal event. The prospectus for even a high-quality stock or bond issue sets forth a long list of risk factors, some of which are unlikely to occur, while others such as weather, labor cost, and raw material conditions are intuitively obvious. In fact, the standard prospectus for a high-yield (junk) bond offering usually includes statements to the effect that it is highly unlikely that the issuing corporation will be able to pay interest on the bonds, let alone repay the principal. Under federal securities law, such an offer is entirely legal if all material information is fully and accurately disclosed to the public. All parties concerned expect the value (price) of traded securities to fluctuate, unlike bank deposits of fixed value.

In other words, there is no securities law term equivalent to safety and soundness, the central notion of banking regulation. No one sees failure of a publicly-traded corporation or the decline of its share price as a SEC failure if the firm has disclosed all material risks fully and accurately. The SEC seeks to protect investors from fraud, not risk. Banking regulation transfers the risk of bank failure, including any failure resulting from fraud, from the customer to the government.

The SEC also regulates and requires registration of broker/dealers, investment advisers, mutual fund operators, and other members of the securities industry. Although the SEC exercises regulatory authority over the securities industry, its authority is somewhat limited. An illustrative comparison is between the capital requirements imposed upon banks and the SEC’s net capital rule, which requires brokerage firms to maintain a minimum level of capital above mere solvency. Lawmakers intend bank capital requirements to permit institutions to weather unexpected losses or unfavorable market developments. The net capital rule, on the other hand, is a liquidation rule—it seeks to ensure that failing brokerages are shut down while they have money left to meet customer claims. Even in such cases, the brokerage industry’s self-funded protection

---

<sup>10</sup> Conference of State Bank Supervisors, “State Banking Department Links,” at [http://www.csbs.org/links/state\\_links.asp](http://www.csbs.org/links/state_links.asp).

<sup>11</sup> CRS Report RS21680, *Affiliates in Banking, Finance, and Commerce: Development and Regulatory Background*, by William D. Jackson.

<sup>12</sup> The most recent structural legislation governing financial holding companies is the Gramm-Leach-Bliley Act, 113 Stat. 1138, P.L. 106-102.

arrangement—the Securities Investor Protection Corporation—may have to cover many account shortfalls.<sup>13</sup>

As in banking, state securities supervisors retain certain oversight power over securities businesses.<sup>14</sup> Unlike the banking agencies, which supervise without intermediary organizations, the SEC has delegated significant authority to private-sector bodies. For corporation accounting, it has granted the Financial Accounting Standards Board and Public Company Accounting Oversight Board major decision-making capabilities. For securities firms, it has allowed many oversight responsibilities to be carried on by the National Association of Securities Dealers (NASD), a “self regulatory organization” (SRO). The stock exchanges are also SROs and thus exercise certain regulatory authority over their membership and over the corporations whose shares they list. The SEC, however, may veto rulings of these nongovernmental bodies, may require them to modify their rules (or adopt new ones), and exercise further oversight over them.

## Major Enforcement-Related Statutes

### Banking

Although Congress has scattered provisions delegating various enforcement authorities to federal banking agencies under specified circumstances throughout U.S. laws, a full range of the civil enforcement powers of the federal banking agencies is set out in section eight of the Federal Deposit Insurance Act.<sup>15</sup> Banking violations are also punishable under federal criminal laws, and banking regulators often refer suspected violations to the Department of Justice for possible prosecution. Many prosecutions involving banks or banking officials are based on charges under general criminal statutes, such as the federal laws against mail fraud, wire fraud, racketeering, false statements, and money laundering. In addition, many federal criminal laws apply more narrowly to banking. These include:

---

18 U.S.C. § 215	bank bribery
18 U.S.C. § 656	theft or embezzlement of bank funds
18 U.S.C. § 709	false advertising or misuse of federal terms such as “federal deposit insurance”
18 U.S.C. § 1005	false entries by bank employees or false statements to regulators
18 U.S.C. § 1014	false statements on a loan or credit application
18 U.S.C. § 1029	access device fraud
18 U.S.C. § 1344	bank fraud
18 U.S.C. § 2113	bank robbery.

---

Because both banking and securities companies operate as intermediaries in financial transactions, law requires them to make anti-money laundering and anti-terrorist financing procedures to monitor and report on certain types of currency and foreign transactions under various federal laws and under regulations issued by the Department of the Treasury’s Financial

<sup>13</sup> CRS Report RS21741, *Securities Investor Protection Corporation*, by Gary Shorter.

<sup>14</sup> North American Securities Administrators Association, “About Nasaa,” at <http://www.nasaa.org/About%5FNASAA/>.

<sup>15</sup> 12 U.S.C. § 1818.

Crimes Enforcement Network.<sup>16</sup> They also must report suspicious transactions.<sup>17</sup> Violation of these requirements is subject to potential criminal and civil penalties.<sup>18</sup> In addition, Congress requires them to institute procedures to comply with the various economic sanction programs administered by Treasury's Office of Foreign Assets Control (OFAC) and subjects them to potential civil and criminal penalties for failure to comply with the requirements that include blocking assets of designated entities and persons and notifying OFAC of that.<sup>19</sup> Of course, banks and banking officials may be prosecuted under criminal laws of general applicability, such as those covering bribery of public or foreign officials and tax fraud and evasion.

## Securities

The securities laws give the SEC a range of administrative sanctions that it can apply to violators. Like the banking regulators, the SEC cannot bring criminal charges itself but makes recommendations for prosecutions to the Justice Department. The principal securities statutes are four, as follows.

The Securities Act of 1933,<sup>20</sup> called a "truth-in-securities" law, requires that securities be registered with the SEC before a sponsor/issuer sells them to the public. Registration requires disclosure of detailed information about the issuing corporation's business, management, and financial condition. Failure to make complete and accurate disclosures creates liability for civil and criminal penalties.

The Securities Exchange Act of 1934<sup>21</sup> created the SEC and gave it broad authority to adopt rules and regulations to maintain fair and orderly securities markets. This act requires ongoing disclosure and gives the SEC control over the form and content of corporate financial statements (quarterly and annual reports, etc.). The act also applies to exchanges where securities are bought and sold—stock, bond, and stock option markets must submit their rules for SEC approval. Brokers, the firms that employ them, and other industry professionals must register; revocation of registration may prevent them from working in the securities industry. The Exchange Act also governs communications between firms and their shareholders as well as certain merger transactions.

The Investment Company Act<sup>22</sup> provides for regulation of defined investment companies such as mutual funds. As securities, mutual funds must be registered before public sale, a process that requires public disclosures regarding the fund and its managers. The law also places certain limits on the type of investments that funds are permitted to make and on various other business practices.

---

<sup>16</sup> 31 C.F.R., Part 103.

<sup>17</sup> 31 C.F.R. § 103.19 (brokers and dealers); 31 C.F.R. § 103.18 (banks).

<sup>18</sup> See, e.g., 31 U.S.C. §§ 5321, 5322.

<sup>19</sup> See U.S. Department of the Treasury, Office of Foreign Assets Control, "Foreign Assets Control Program for the Financial Community," at <http://www.treas.gov/offices/enforcement/ofac/regulations/t11facbk.pdf>.

<sup>20</sup> 15 U.S.C. §§ 77a *et seq.*

<sup>21</sup> 15 U.S.C. §§ 78a *et seq.*

<sup>22</sup> 15 U.S.C. §§ 80a *et seq.*

The Investment Advisers Act of 1940<sup>23</sup> applies to persons engaging in the business of advising others, either directly or through publications, as to the advisability of the purchase or sale of securities. Advisers whose assets under management exceed specified thresholds must register with the SEC. In 2004, the SEC required hedge funds to register as advisers.<sup>24</sup>

## Organization of Enforcement Programs

### Banking

Congress has vested enforcement of federal banking laws generally in an institution's primary federal regulator. Each of the federal banking agencies issues regulations applicable to the entities under its authority. Typically, these are coordinated through the Federal Financial Institutions Examination Council (FFIEC).<sup>25</sup> It is an interagency body composed of the heads of the federal banking agencies, which is charged with making "uniform principles and standards and report forms for examination of financial institutions,"<sup>26</sup> encouraging "application of uniform examination principles and standards by State and Federal supervisory agencies,"<sup>27</sup> and reviewing all federal banking regulations at least once every 10 years "to identify outdated or otherwise unnecessary regulatory requirements."<sup>28</sup>

Federal banking regulators have both considerable enforcement options and wide discretion in choosing among them. Besides the formal enforcement tools specifically authorized by statute, each of the federal banking agencies employs informal methods of insuring that regulated institutions meet safety and soundness standards as well as regulatory and statutory standards. These range from moral suasion to written requirements that corrective action be taken. Much of the information upon which informal enforcement actions are based derives from periodic bank examinations. Each banking agency has its own examination force that detects violations during recurring safety and special-purpose examinations of bank books and operations. Upon completion of a bank examination, the regulator will present a Report of Examination to the institution's board of directors, which is to order remedial action or present information refuting the findings. Other forms of informal enforcement tools to correct perceived weaknesses in an institution include supervisory directives, board-of-director resolutions drafted by the regulator, and written instructions or agreements from the regulator.<sup>29</sup>

Institutions usually make correction and remediation voluntarily following the examination process and consider such self-correction a normal part of their business because of the multiplicity and complexity of banking laws and regulations. If this informal process of enforcement is unavailing, the banking agencies resort to the formal mechanisms available to them. They, thus, typically issue progressively stricter enforcement decrees against more serious weaknesses: memoranda of understanding, civil money penalties, cease-and-desist orders, and

<sup>23</sup> 15 U.S.C. §§ 80b *et seq.*

<sup>24</sup> CRS Report 94-511, *Hedge Funds: Should They Be Regulated?*, by Mark Jickling.

<sup>25</sup> U.S. Federal Financial Institutions Examination Council, "About the FFIEC," at <http://www.ffiec.gov/about.htm>.

<sup>26</sup> 12 U.S.C. § 3305.

<sup>27</sup> 12 U.S.C. § 3306.

<sup>28</sup> 12 U.S.C. § 3310.

<sup>29</sup> See Patricia A. McCoy, *BANKING LAW MANUAL* § 13.02 (2d ed.).

orders requiring the removal of officials. Should errant practices continue, an institution may be closed either by charter revocation or termination of its deposit insurance.

Enforcement units within each agency are as follows.

(1) OCC, the primary regulator of nationally chartered banks, which is organizationally placed within the U.S. Department of the Treasury, assigns bank supervision and enforcement operations to the Office of the Chief National Bank Examiner, within which there are “Large Bank Supervision” and “Mid-size/Community Bank Supervision” units and four district offices.

(2) Fed, the primary regulator of state-chartered member banks and bank holding companies including financial holding companies, conducts supervisory and enforcement activities through its Division of Banking Supervision and Regulation and delegates to 12 regional Federal Reserve Banks certain supervisory and enforcement powers.

(3) FDIC, the primary federal regulator of state-chartered banks not belonging to the Fed, allocates enforcement to its Division of Supervision and Consumer Protection, which has Risk Management, Policy and Examination Oversight, and Compliance and Consumer Protection units within eight regional offices.

(4) OTS, the primary federal regulator of savings or thrift institutions, and their savings and loan holding companies, organizationally within the U.S. Department of the Treasury, allocates its supervisory and enforcement activity to its Office of Examinations, Supervision, and Consumer Protection, with certain line supervisory responsibilities delegated to four regional offices.

(5) State-chartered banks are subject to regulation by state banking agencies. Each state has a banking agency and usually designates an administrative position, Chief Examiner, Deputy Commissioner, or Supervisory Examiner, to enforce banking laws applicable to state banks.<sup>30</sup> They usually make examinations on alternating cycles under general cooperative agreements with federal banking agencies, often negotiating them through the FFIEC.<sup>31</sup>

## Securities

Two units within the SEC have enforcement responsibilities: the Division of Enforcement and the Office of Compliance, Inspections, and Examinations. They may operate via 11 regional SEC offices.

The Division of Enforcement conducts investigations into possible violations of federal securities laws and oversees civil suits and administrative proceedings.<sup>32</sup> The division conducts two levels of investigations:

- Informal investigations, which rely primarily on the voluntary cooperation of witnesses and/or the target of the investigation,<sup>33</sup> and

---

<sup>30</sup> 12 U.S.C. § 484 prohibits states from examining national banks except for compliance with state laws on unclaimed property and escheat.

<sup>31</sup> Under 12 U.S.C. § 1820(d)(6)(A)(iii), federal banking agencies are to coordinate examinations with state bank supervisors.

<sup>32</sup> See <http://www.sec.gov/divisions/enforce.shtml>.

- Formal investigations, in which it uses subpoenas to compel testimony or the production of documents. To obtain subpoena authority, the division submits a memorandum to the commissioners (via the General Counsel). The memorandum is a justification for the proposed investigation and the need for subpoenas. A majority of commissioners, or the single commissioner then serving as the duty officer, may then authorize a formal order authorizing administrative action or filing in federal court.<sup>34</sup>

Normally, the agency conducts investigations on a nonpublic basis; the SEC generally refuses to comment on whether an investigation is in progress. It announces enforcement actions to the public, but not all investigations result in enforcement actions. Before bringing an action, division staff may send out a “Wells Call,” suggesting intent to bring an action, giving the target the opportunity to respond in writing before bringing formal charges.<sup>35</sup> Disclosure requirements of the securities laws ensure that the recipient will likely have to publicize a Wells Call, since news that an action is forthcoming is normally considered material to investors.

The Office of Compliance, Inspections, and Examinations (OCIE) is responsible for examinations and inspections of registered entities—broker-dealers, investment companies, investment advisers, transfer agents, clearing agencies, and self-regulatory organizations. This office conducts inspections to attempt to assure compliance with the securities laws, to detect violations, and to apprise the SEC of developments in the regulated community. When OCIE detects deficiencies, it issues a “deficiency letter” which identifies problems that should be corrected, and the office will monitor the situation until it believes that compliance has occurred. If the office believes that violations are too serious for its process of correction, it will refer the violations to the Division of Enforcement.<sup>36</sup>

As in banking, each state continues to have its own set of securities laws, called blue sky laws; state agencies are responsible for enforcing these laws. SROs also have enforcement roles. For example, the National Association of Securities Dealers (NASD) oversees the registration of broker/dealers and their personnel and may bring a variety of sanctions against those who violate its rules and standards. The stock exchanges, as SROs, are required to conduct market surveillance and maintain and enforce rules to protect their public customers. SROs must submit proposed new rules to the SEC for approval.<sup>37</sup>

## Comparison of Enforcement and Compliance Tools

Beyond the informal enforcement methods mentioned above, banking regulators have a wide array of statutorily authorized formal enforcement tools that range from civil administrative fines and orders to civil suits for damages and referrals to the Department of Justice for criminal prosecution. Among the laws delegating civil enforcement authorities is Section 8 of the Federal Deposit Insurance Act, which delegates to the federal banking regulators authority to issue cease

---

(...continued)

<sup>33</sup> A.A. Sommer, Jr. (ed.) 6 SECURITIES LAW TECHNIQUES § 87.03 (2005).

<sup>34</sup> Id. at § 87.04.

<sup>35</sup> Sommer, at § 88.10.

<sup>36</sup> See <http://www.sec.gov/about/offices/ocie.htm>.

<sup>37</sup> See, e.g., 15 U.S.C. § 78s.

and desist orders, prohibition and removal orders, civil money penalties, and orders canceling an institution’s insured status.<sup>38</sup>

Likewise, the SEC has a wide range of enforcement tools. For example, it may use its discretion in investigating possible violations of the securities laws and in obtaining injunctions against practices that may constitute violations.<sup>39</sup> It has the authority to impose civil penalties for insider trading violations<sup>40</sup> and to impose civil penalties in administrative proceedings for violations of the laws.<sup>41</sup> The SEC may also, after notice and opportunity for hearing, begin cease-and-desist proceedings.<sup>42</sup>

A brief sketch of the formal enforcement tools available to federal banking regulators and to the SEC is set out in the following table.<sup>43</sup>

**Enforcement Tools of Federal Bank Regulators and the SEC**

Tools	Bank Regulators	SEC
Cease and desist order (C&D)	May be imposed on insured depository institution (IDI) or institution-affiliated parties (IAP) for (1) unsafe or unsound practice, or (2) violation of any law, rule, regulation, or any written agreement. C&D order may include affirmative order to correct conditions resulting from practices or violations, or limitations on the activities of an IDI or IAP.	May be imposed on any person who violates federal securities laws. Respondent may be ordered to disgorge ill-gotten funds.
Removal and prohibition	May be taken against any IAP who violates law, regulation, final C&D order, or written agreement; engages in unsafe or unsound practices or breach of fiduciary duty, where actual or probable financial loss occurs, or where dishonesty or mental culpability is involved; or if necessary to protect an institution or depositors. Additional grounds for removal or prohibition apply to officers and directors in violation of specific banking statutes, and to an IAP involved in criminal proceedings.	For registered entities (such as brokers, dealers, and investment advisers, the SEC may institute administrative proceedings to suspend or revoke registration, or to impose bars or suspension from employment in the securities industry.  Section 305 of the Sarbanes-Oxley Act gives the SEC the authority to bar a person from serving as an officer or director of a publicly-traded company if that person committed a securities law violation and has demonstrated unfitness to serve.
Civil money penalties	Three tiers of money penalties exist: (1) for violation of law, regulation, final enforcement order, written condition or agreement, temporary C&D order, removal or suspension order, or violation of transaction reporting requirements;	The SEC often seeks civil money penalties and disgorgement of illegal profits in civil suits. In certain cases, fines imposed on single firms and individuals have run into the

<sup>38</sup> 12 U.S.C. § 1818.

<sup>39</sup> See, e.g., 15 U.S.C. § 78u.

<sup>40</sup> See, e.g., 15 U.S.C. § 78u-1.

<sup>41</sup> See, e.g., 15 U.S.C. § 78u-2.

<sup>42</sup> See, e.g., 15 U.S.C. § 78u-3.

<sup>43</sup> The tabular description of the formal enforcement tools available to bank regulators in the first column of the table closely follows information found in a table compiled by the Government Accountability Office (GAO) letter to Chairman Baker of the Subcommittee on Capital Markets of the House Financial Services Committee. “Comparison of Financial Institution Regulators’ Enforcement and Prompt Corrective Action Authorities,” GAO-01-322R, Jan. 3, 2001, pp. 13-21.

http://wikileaks.org/wiki/CRS-RL33235

Tools	Bank Regulators	SEC
	(2) violation of law, etc., unsafe or unsound practice, or breach of fiduciary duty that is part of a pattern of misconduct, causes more than a minimal loss, or results in pecuniary gain to the violator; (3) knowing violation of law, etc., engaging in unsafe or unsound practice, breach of fiduciary duty <i>and</i> knowingly or recklessly causing substantial loss or substantial pecuniary gain. Fines range from \$5,000 per day (tier 1) to \$1,000,000 per day (tier 3).	hundreds of millions of dollars.
Injunctions and consent agreements	Bank regulators have authority to seek court injunctions, but in the vast majority of cases, pursue administrative remedies.	The SEC often files civil suits seeking injunctions to prohibit future violations. Many cases are settled out of court, with consent agreements, whereby the target of the investigation does not admit to wrongdoing but agrees not to commit violations in the future. Consent agreements are used in many major cases, and may involve the payment of fines and/or prohibition and suspension orders.
Termination of insurance	FDIC may terminate deposit insurance based on (1) unsafe or unsound practices by an IDI, its directors, or trustees, (2) unsafe or unsound conditions to continue operations, or (3) violation by IDI, directors, or trustees of any applicable law, regulation, etc., or written agreement between the IDI and the FDIC.	No insurance, thus no comparable authority.
Prompt corrective action and liquidation authority	As a bank becomes undercapitalized, significantly undercapitalized, or critically undercapitalized, regulators can take progressively more intrusive steps to monitor banks, restrict certain transactions, require significant changes in business operations, or replace management. Ultimately, regulators may appoint a receiver or conservator and close the institution.	No directly comparable authority. Registered broker/dealers must comply with a net capital rule, and cease operations if their capital falls below the specified level.

**Source:** Compiled by CRS.

## For Further Reading

Insurance Information Institute and The Financial Services Roundtable. *The Financial Services Fact Book 2005*.

<http://www.financialservicesfacts.org/financial/>

Spong, Kenneth. *Banking Regulation: Its Purposes, Implementation, and Effects*.

<http://www.kc.frb.org/BS&S/publicat/PDF/RegsBook2000.pdf>.

U.S. Securities and Exchange Commission. "The Investor's Advocate: How the SEC Protects Investors and Maintains Market Integrity."

<http://www.sec.gov/about/whatwedo.shtml>.

## **Author Contact Information**

Mark Jickling  
Specialist in Financial Economics  
mjickling@crs.loc.gov, 7-7784

Gary Shorter  
Specialist in Financial Economics  
gshorter@crs.loc.gov, 7-7772

M. Maureen Murphy  
Legislative Attorney  
mmurphy@crs.loc.gov, 7-6971

Michael V. Seitzinger  
Legislative Attorney  
mseitzinger@crs.loc.gov, 7-7895