

STATEMENT

OF

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Before the

**SUBCOMMITTEE ON FINANCIAL INSTITUTIONS AND CONSUMER
PROTECTION**

**COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS
UNITED STATES SENATE**

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Thank you for this opportunity to discuss the OCC's use of articles in enforcement documents that require banks to retain independent consultants. It has been our longstanding practice to use such articles in appropriate cases. The purpose of requiring banks to retain independent consultants is to provide expertise and resources to assist banks in correcting unsafe or unsound practices and violations of law identified through our supervisory process. Their work has resulted in the correction of operational and management deficiencies; led to the filing of thousands of Suspicious Activity Reports in Bank Secrecy Act cases; and facilitated the payment of hundreds of millions of dollars in restitution to bank customers in cases involving unfair or deceptive practices.

There are a number of reasons why we may require a bank to retain an independent consultant. First, independent consultants have subject matter expertise that the bank does not. This is particularly true with respect to community banks. The consultants can apply their knowledge and experience to focus on the supervisory issue,

identify its scope, and work with bank personnel to correct violations and unsafe or unsound practices.

Second, independent consultants can provide the resources necessary to correct problems in a timely manner. Once again, this is particularly helpful to community banks, which sometimes do not have sufficient resources to do so.

Finally, independent consultants are, as the name suggests, independent from the operational area that needs to be reviewed or enhanced. Thus, rather than having the bank review itself, the OCC may require the use of a third-party as a fresh pair of eyes to assess the scope of the problem and the remedy. In all cases, however, it is the OCC's job to determine whether the bank's corrective actions are sufficient.

Independent consultants have been particularly effective in ensuring that banks address significant management and operational deficiencies. For example, in a sizeable number of cases, when supervisory concerns have arisen concerning the ability of bank management to perform an accurate review of the quality of a bank's loan portfolio, the OCC has ordered the bank to retain an independent consultant to conduct a review of asset quality until such time as the bank develops and implements an internal asset quality review system that is demonstrated to be effective.

Similarly, in cases in which there are questions about the accuracy of a bank's books and records, the OCC has required the institution to retain an auditor to review those records to assess their completeness, and report on any deficiencies. The OCC has also ordered banks to retain independent consultants to perform annual reviews of methods used by banks to establish an allowance for credit losses. The OCC has required similar engagements by bank management to address deficiencies in a variety of other

circumstances involving, for example, real estate appraisals, compensation, internal controls, and information technology systems.

The majority of these cases is concentrated in community bank enforcement actions and reflects the fact that those institutions often have the greatest need for the expertise and resources that an independent consultant can provide. However, we have used independent consultants in cases involving institutions of all sizes. In all of these cases, the OCC considers the qualifications of the firms or individuals proposed for each engagement, and we do not permit the bank to retain consultants we believe are unqualified or have conflicts that would compromise the objectivity of their work. The OCC also oversees and monitors the work of the consultants through our supervisory process, and we validate the results to ensure that the violations or practices that were the basis of the enforcement action have been corrected.

The circumstances in which we used independent consultants in the Independent Foreclosure Review (IFR) differed substantially from the typical case. The unprecedented breadth, scale, and scope of the reviews, the large number of institutions, consultants, and counsel involved in the process, and the complexity of the file reviews—which involved hundreds if not thousands of individual decision points for each file—distinguished the IFR from the normal type of file review that is conducted by independent consultants. It also required an unprecedented level of regulatory oversight and coordination. This oversight included the issuance of guidance, examiner visitations to the locations of the consultants, and daily communications among consultants, servicers, and the OCC throughout the process.

While the use of independent consultants has generally served the agency well in terms of accomplishing our supervisory objectives, we believe there are lessons to be learned from our experience and we are currently evaluating our use of independent consultants and exploring ways to improve the process.

Thank you, and I would be happy to answer your questions.