

Federal Agencies Update

Volume 3 Number 3

Week ending July 11, 2008

Federal Deposit Insurance Corporation

June 30, 2008

The Federal Deposit Insurance Corporation released a list of orders of administrative enforcement actions taken against banks and individuals in May. No administrative hearings are scheduled.

The FDIC processed a total of 21 orders in May. Copies of the orders referred to above can be obtained from or inspected at the FDIC's Public Information Center, 3501 Fairfax Drive, Room E-1002, Arlington, VA (telephone 703-562-2200 or 1-877-275-3342). To view all orders online, visit the FDIC's Web page at

<http://www.fdic.gov/bank/individual/enforcement/index.html>. A list of orders made public follows.

FINAL ORDERS ISSUED PURSUANT TO SECTION 8(b), 12 U.S.C. § 1818(b)

(Cease-and-Desist)

Family Bank and Trust Co., Palos Hills, IL; FDIC-08-009b; [Issued 5/9/08 - PDF](#) ([PDF Help](#))

Oxford Bank, Oxford, MI; FDIC-08-032b; [Issued 5/15/08 - PDF](#) ([PDF Help](#))

Pinnacle Bank, Beaverton, OR; FDIC-08-126b; [Issued 5/27/08 - PDF](#) ([PDF Help](#))

Earthstar Bank, Southampton, PA; FDIC-08-080b; [Issued 5/28/08 - PDF](#) ([PDF Help](#))

FINAL ORDERS ISSUED PURSUANT TO SECTION 8(e), 12 U.S.C. § 1818(e)
(Removal and Prohibition Orders)

Bank of the West, San Francisco, CA; FDIC-07-202e; against Anita R. Luong; [Issued 5/20/08 - PDF](#) ([PDF Help](#))

Hebron Savings Bank, Hebron, MD; FDIC-08-067e; against Sandra L. Walker; [Issued 5/20/08 - PDF](#) ([PDF Help](#))

BancorpSouth Bank, Tupelo, MS; FDIC-07-122e; against Jon D. Storonsky; [Issued 5/20/08 - PDF](#) ([PDF Help](#))

Empire Bank, Springfield, MO; FDIC-07-094e; against Deborah M. Levesque; [Issued 2/8/08 - PDF](#) ([PDF Help](#))

Royal Bank America, Narberth, PA; FDIC-07-271e; against Joseph J. Zakorchemny, Jr.; [Issued 5/20/08 - PDF](#) ([PDF Help](#))

Citizens Bank of Pennsylvania, Philadelphia, PA; FDIC-06-221e; against Monica Pigford Bryant a/k/a Monica Pigford; [Issued 5/20/08 - PDF](#) ([PDF Help](#))

First Trust and Savings Bank, Oneida, TN; FDIC-08-029e; against Carol J. Bridges; [Issued 5/20/08 - PDF](#) ([PDF Help](#))

FINAL ORDERS ISSUED PURSUANT TO SECTION 8(i), 12 U.S.C. § 1818(i)
(Civil Money Penalties)

Darby Bank and Trust Company, Vidalia, GA; FDIC-08-039k; in the amount of \$9,500; [Issued 5/12/08 - PDF](#) ([PDF Help](#))

Centier Bank, Whiting, IN; FDIC-07-181k; in the amount of \$1,400; [Issued 5/12/08 - PDF](#) ([PDF Help](#))

BancorpSouth Bank, Tupelo, MS; FDIC-07-123k; against Jon D. Storonsky in the amount of \$2,500; [Issued 5/20/08 - PDF](#) ([PDF Help](#))

Royal Bank America, Narberth, PA; FDIC-07-270k; against Joseph J. Zakorchemny, Jr. in the amount of \$10,000; [Issued 5/20/08 - PDF](#) ([PDF Help](#))

RidgeStone Bank, Brookfield, WI; FDIC-07-153k; in the amount of \$3,450; [Issued 5/12/08 - PDF](#) ([PDF Help](#))

Choice Bank, Oshkosh, WI; FDIC-07-167k; in the amount of \$1,800; [Issued 5/5/08 - PDF](#) ([PDF Help](#))

MODIFICATION

Ocean Bank, Miami, FL; FDIC-07-017b; Modification of Order to Cease and Desist; [Issued 5/7/08 - PDF](#) ([PDF Help](#))

TERMINATIONS

Orders Terminating an Order to Cease and Desist

Great Eastern Bank of Florida, Miami, FL; FDIC-06-037b; [Issued 5/23/08 - PDF \(PDF Help\)](#)

Beardstown Savings s.b., Beardstown, IL; FDIC-07-063b; [Issued 5/12/08 - PDF \(PDF Help\)](#)

Prime Alliance Bank, Woods Cross, UT; FDIC-06-096b; [Issued 5/29/08 - PDF \(PDF Help\)](#)

July 7, 2008

FDIC Issues List of Banks Examined

The Federal Deposit Insurance Corporation issued its list of state nonmember banks recently evaluated for compliance with the Community Reinvestment Act (CRA). The list covers evaluation ratings that the FDIC assigned to institutions in April 2008. The CRA is a 1977 law intended to encourage insured banks and thrifts to meet local credit needs, including those of low- and moderate-income neighborhoods, consistent with safe and sound operations. As part of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), Congress mandated the public disclosure of an evaluation and rating for each bank or thrift that undergoes a CRA examination on or after July 1, 1990.

A consolidated list of all state nonmember banks whose evaluations have been made publicly available since July 1, 1990, including the rating for each bank, can be obtained from the FDIC's Public Information Center, located at 3501 Fairfax Drive, Room E-1002, Arlington, VA 22226 (877-275-3342 or 703-562-2200), or via the Internet at www.fdic.gov.

For Immediate Release

July 8, 2008

Agencies Issue Statement on Basel II Advanced Approaches Qualification Process

The federal banking and thrift agencies issued an interagency statement outlining the qualification process for banking organizations implementing the new advanced capital adequacy framework known as Basel II. The process consists of three major stages: adoption of an implementation plan; completion of a satisfactory parallel run; and advancement through three transitional periods. The statement updates the interagency statement on

qualification issued in January 2005 to reflect the final advanced approaches rule published December 7, 2007.

Federal Trade Commission

‘Red Flag’ Regulations Require Financial Institutions and Creditors to Have Identity Theft Prevention Programs

Financial institutions and creditors are now required to develop and implement written identity theft prevention programs under the new "Red Flags Rules."

The Red Flags Rules are part of the Fair and Accurate Credit Transactions (FACT) Act of 2003. Under these Rules, financial institutions and creditors with covered accounts must have identity theft prevention programs in place by November 1, 2008, to identify, detect, and respond to patterns, practices, or specific activities that could indicate identity theft.

The Commission staff is launching an outreach effort to explain the Rules in greater detail. It has now published a general alert on what the Rules require, and, in particular, an explanation of which businesses - financial institutions and creditors - are covered by the Rules.

FTC Proposes Rescinding 40-Year Guidance on Statements Concerning Tar and Nicotine Yields

The Federal Trade Commission has proposed rescinding guidance issued in 1966 that generally permits statements concerning tar and nicotine yields if they are based on the Cambridge Filter Method, which is sometimes referred to as "the FTC Method." If the guidance is withdrawn, advertisers should no longer use terms suggesting the FTC's endorsement or approval of any specific test method.

The Cambridge Filter Method is a machine-based test method that "smokes" cigarettes according to a standard protocol. At the time the FTC issued its guidance, most public health officials believed that reducing the amount of "tar" produced by a cigarette could reduce a smoker's risk of lung cancer. The Commission believed that giving consumers uniform, standardized information about tar and nicotine yields of cigarettes would help them make informed decisions about the cigarettes they smoked.

However, the scientific consensus is that machine-based measurements of tar and nicotine yields based on the Cambridge Filter Method do not provide meaningful information on the amounts of tar and nicotine smokers receive from cigarettes or on the relative amounts of tar and nicotine they are likely to receive from smoking different brands of cigarettes. The

primary reason for this is smoker compensation – that is, smokers alter their smoking behavior in order to obtain the necessary nicotine dosage. Compensation, and changes over the years in cigarette design to facilitate compensation, can have significant effects on the amount of tar and nicotine smokers get from cigarettes.

July 10, 2008

FTC Challenges Flow International's Proposed Acquisition of Rival OMAX Corp.

Flow Required to Provide Competitors with Royalty-Free License to OMAX Patents

The Federal Trade Commission issued a complaint charging that Flow International Corporation's (Flow) proposed \$109 million acquisition of rival waterjet manufacturer OMAX Corporation (OMAX) would be anticompetitive and in violation of federal antitrust laws. Under the terms of a consent order resolving the Commission's complaint and allowing the transaction to proceed, Flow will be required to grant to any firm a royalty-free license to two OMAX patents relating to the controllers used in waterjet cutting systems.

"Flow and OMAX are each other's closest competitor in the highly concentrated U.S. market for waterjet cutting systems," said Jeffrey Schmidt, Director of the FTC's Bureau of Competition. "The consent agreement announced will remedy the Commission's competitive concerns, and will benefit consumers by ensuring that Flow will continue to face direct competition in this market going forward."

The Relevant Product Market

The relevant product market at issue in this transaction is the development, manufacture, marketing, and sale of waterjet cutting systems. These systems use high-pressure water mixed with abrasive garnet particles to cut a wide variety of materials, including steel and stone. Both Flow and Omax have developed PC-based controllers that automatically compensate for the unique cutting characteristics of waterjet systems. The controllers, for example, manage the taper of the waterjet – the waterjet expands as it leaves the nozzle, forming a cone shape – and the lag – the faster the cutting head moves, the more the waterjet trails behind the cut.

Flow and OMAX are the leading manufacturers of waterjet cutting systems in the United States. Flow, a publicly traded company, is headquartered in Kent, Washington. Its PC-based controller, along with the accompanying sales and marketing efforts, has made Flow the leading supplier of waterjet cutting systems in the United States. OMAX, Flow's closest competitor, also uses PC-based controllers to run its waterjet cutting systems, and holds two broad patents covering

controllers. OMAX's controllers are a significant factor behind its position as the second leading supplier of waterjet cutting systems in the United States.

On December 5, 2007, Flow signed an exclusive option agreement to negotiate the acquisition of OMAX. Under the agreement, Flow and OMAX will work to negotiate a definitive agreement for Flow to acquire OMAX. Upon closing, Flow will pay approximately \$109 million in cash and stock with the potential for a contingent earn-out in two years of up to \$26 million. The closing also will settle a long-running and expensive lawsuit between Flow and OMAX relating to controllers and patents.

The Commission's Complaint

The Commission's complaint alleges that the proposed acquisition would be anticompetitive and would substantially lessen competition in the U.S. market for the development, manufacture, marketing, and sale of waterjet cutting systems, in violation of Section 5 of the FTC Act and Section 7 of the Clayton Act, as amended. Specifically, the complaint alleges that the acquisition would eliminate direct competition between Flow and OMAX and enable Flow to exercise unilateral market power in the relevant market.

According to the complaint, both Flow and OMAX produce waterjet cutting systems that feature relatively inexpensive yet sophisticated PC-based controllers. These controllers make FLOW and OMAX each other's closest competitors in the relevant market. The complaint further alleges that OMAX holds two broad patents that prevent new entry sufficient to deter or counteract the likely anticompetitive harm that would be caused by the proposed acquisition.

Terms of the Consent Order

The Commission's consent order is designed to remedy the alleged anticompetitive effects of the proposed acquisition. The order requires Flow to grant each competitor seeking one a royalty-free license to OMAX's two broad patents. Since other aspects of Flow and OMAX's businesses can easily be duplicated by competitors, requiring Flow to grant these licenses will ensure that other firms are able to replace the competition that would otherwise have been eliminated by the proposed acquisition.

The Commission vote to accept the complaint and consent order was 4-0. The FTC will publish an announcement regarding the agreement in the Federal Register shortly. The complaint, consent order, and an analysis to aid public comment can be found on the Commission's Web site at <http://www.ftc.gov/os/caselist/0810079/index.shtm>. The agreement will be subject to public comment for 30 days, beginning and continuing through August 8, 2008, after which the Commission will decide whether to make it final. Comments should be addressed to the FTC, Office of the Secretary, Room H-135, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. The FTC is requesting that any comment filed in paper form near the end of the

public comment period be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

NOTE: A consent agreement is for settlement purposes only and does not constitute an admission of a law violation. When the Commission issues a consent order on a final basis, it carries the force of law with respect to future actions. Each violation of such an order may result in a civil penalty of \$11,000.

Commodity Futures Trading Commission

Release: 5514-08

For Release: July 7, 2008

CFTC Amends No-Action Letter Issued to the Dubai Mercantile Exchange

Amended Foreign Access Relief Reflects New Standard

Washington, DC – The Commodity Futures Trading Commission announced that Commission staff has amended the May 27, 2007, “no-action relief letter” under which the Dubai Mercantile Exchange (DME) is permitted to make its electronic trading and order matching system available to DME members in the United States.

The new conditions are designed to help the Commission carry out its market surveillance responsibilities and maintain the integrity of prices established on CFTC-regulated exchanges in light of the fact that the DME intends to list for trading a cash-settled contract that settles on the price of a contract traded on a CFTC-regulated exchange. The additional terms and conditions will apply to any U.S. linked contracts that DME elects to trade in the future.

Specifically, the amended letter adds additional terms and conditions that must be satisfied by DME within 120 days in order to maintain the relief granted by the no-action letter. The additional terms and conditions require DME to do the following:

- Adopt equivalent U.S. position limits and accountability levels (including related hedge exemption provisions) for all DME linked contracts;
- Provide the Commission with quarterly reports identifying any trader that had positions in a linked contract above the applicable position limit, whether a hedge exemption had been granted, and if not, whether a disciplinary action had been taken;

- Publish daily trading information that is comparable to the daily trading information published by U.S. exchanges for all linked contracts; and
- Provide the Commission a daily report of large trader positions in each linked contract for all contract months in a form and manner that can be fully integrated into (1) the CFTC's market surveillance systems – including identification of the beneficial owner of each position, and (2) the Commission's Commitments of Traders Report – including appropriate categorization of traders and their positions.

Last month, Commission staff amended ICE Futures Europe's "no-action relief letter" under which it is permitted direct access to U.S. customers. At the time, Commission staff indicated it intends to apply these new foreign access conditions to any future requests for direct foreign access to U.S. customers for contracts that cash settle against those listed on any U.S. exchange. ICE Futures Europe's and the DME's existing no-action relief letters have been amended to meet the new foreign access conditions.

CFTC Seeks Public Comment on Request to Permit Clearing of Certain OTC Agricultural Swaps

Exemptive and Other Relief Sought for OTC Corn Basis Swaps and OTC Calendar Swaps for Corn, Wheat, and Soybeans

Washington, DC – The Commodity Futures Trading Commission is requesting public comment on a petition submitted jointly by the Chicago Mercantile Exchange Inc. (CME) and the Board of Trade of the City of Chicago, Inc. (CBOT) in connection with certain over-the-counter contracts to be listed for clearing-only on the CBOT and cleared through CME. CME is the derivatives clearing organization for the CBOT.

CME and CBOT are requesting that the Commission issue an order under Section 4(c) of the Commodity Exchange Act (CEA) that would permit qualified participants who enter into OTC corn basis swaps and OTC calendar swaps for corn, wheat, and soybeans to submit those contracts to CME for clearing. CME and CBOT also are requesting that the Commission issue an order under Section 4d of the CEA that would permit CME and clearing member futures commission merchants to commingle customer funds used to margin, secure, or guarantee these contracts with other funds held in segregated accounts.