

BANKING ALERT

10/28/13

FDIC Issues Warning to Bank Directors and Officers on Exclusionary Terms in Liability Policies

Earlier this month, the Federal Deposit Insurance Corporation (FDIC) issued Financial Institution Letter 47-2013. In the advisory, the FDIC sought to warn the officers and directors of its supervised banks of a recent increase in exclusionary terms or provisions appearing in director and officer (D&O) liability policies purchased by financial institutions.

It is widely acknowledged that the purchase of D&O coverage is both a valuable tool in the attraction and retention of qualified personnel and a legitimate business activity that protects directors and officers in the course of their duties. Any increase in exclusionary terms can leave directors and officers personally liable for claims not covered under the terms of a D&O policy. For this reason, it is important that banking institutions diligently review policies that are being renewed or amended and carefully consider the ramifications to directors and officers that may result from additional exclusionary terms.

Banking institutions must also adhere to FDIC regulations **prohibiting** other types of coverage in D&O policies. Banks may not purchase any insurance policy that would be used to pay or reimburse any institution-affiliated party (IAP) for the cost of any civil money penalty imposed as a result of an administrative proceeding or civil action commenced by any federal banking agency. The purchase of this type of coverage is barred even if the IAP reimburses the bank for the cost.

D&O liability policies are an important risk mitigation tool for banking institutions. For further information on the protections and limitations of such policies, please contact **Mark D. Belongia** at 312.582.1605 or mbelongia@ralaw.com.