

The background features a dark blue gradient with a faint grid and several data visualization elements. A line graph with blue and purple points is visible in the upper half, with data labels such as 25.05, 49.55, 55.93, and 39.03. A bar chart is partially visible in the lower half, with labels like 32.00, 43.22, and SALES 0.003 90%.

Core Concept #8: Enforcement Actions

Types of Action: Informal vs. Formal Enforcement Actions

Formal Written Agreement

Cease & Desist (C&D)

Personal Cease and Desist Order (PC&D)

Prompt Corrective Action (PCA)

Safety and Soundness Directive

Termination of FDIC Insurance

Removal or Suspension of Institution Affiliated Party (IAP)

Civil Money Penalties (CMPs)

Informal Actions: Commitment Letter, Board Resolutions, MOU

Parties Subject to Enforcement Actions and Grounds on Which Actions May be Brought

- Parties subject to enforcement
 - Supervised Institutions
 - Institution-Affiliated Parties
 - Directors, officers, employees, agents of the institution
 - Person who controls an IDI
 - Independent contractors (e.g., attorneys) who act knowingly/recklessly
- Grounds on which enforcement actions may be brought
 - Violation of a law, rule, regulation or a final Order
 - Breach of fiduciary duty
 - Unsafe or unsound banking practice

Types of Remedies: Cease & Desist

- Generally requires board to manage the remediation plan
- Issued to halt violations of law as well as to require affirmative action to correct any condition resulting from such violations.
- May be issued upon consent by Board (“Consent Order”), or involuntarily, after service of a Notice of Charges and an administrative hearing resulting in a final agency Order.
 - In practice, always by consent, with company neither admitting nor denying liability
 - Generally, agree to multi-year remediation plan, in many cases conducted and overseen by a consulting firm
- Personal Cease & Desist Orders (PC&Ds) may be issued against an “institution-affiliated party”
- In practice, 100% of cases against large banks are settled, given reputational and retaliation risks of litigating with one’s regulator, and generally on agency terms. The result is a consent order
- Such orders often mandate hiring of an outside consultant and include a series of actions the bank must take
- The consent orders are generally amended by the agency over time to add more requirements with the threat of a new order if the bank does not agree to the amendment