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# The financial institution's guide to choosing a consent order administrator

People. Partnership. Performance.

As a financial institution, you face a rising degree of scrutiny from an array of regulators. In this environment, regulatory investigations are increasingly common. Sometimes, settlement and a resulting consent order is necessary to expeditiously resolve the investigation. Reaching an agreement on terms is an important milestone, but it's not the end of the story. When the consent order includes customer remediation, your regulator will typically require that you select and retain a neutral third-party administrator. This administrator can become an important actor in satisfying the terms of your agreement and ending the heightened scrutiny a consent order entails.

In addition to delivering an accurate and cost effective process, an administrator who has experience with the regulatory players and understands their preferences and processes can give you added value. Further, a well-managed settlement can help your institution avoid future complications while rebuilding trust and communication on both sides of your long-term relationship with regulators.

## An important step in the investigation life cycle

Understandably, the first and foremost priority for a financial institution facing an investigation is to address the concerns raised and, if necessary, reach an agreement with the regulator to resolve the matter. Once terms are agreed, however, organizations are often faced with short deadlines and an urgent requirement to find an administrator that meets your needs and obtains regulatory non-objection.

While there are certain instances in which a regulator will contact an administrator directly, selecting an administrator is often the financial institution's responsibility. This is an important step that deserves your close attention, as a poorly executed remediation program can prolong a consent order and further strain your institution's overall relationship with its regulator.

Fortunately, there are a few basic guidelines that can help you conduct due diligence and avoid the pitfalls of a hasty decision.

## Onboarding: When speed and security count

An offshoot of the financial crisis is the increased scrutiny that a financial institution is required to exercise with respect to third-party vendors. Your consent order administrator may be immediately subject to a flood of questionnaires from your institution's procurement, third party risk management, information security and/or internal audit groups. Such questionnaires can be 500+ questions long and require hundreds of pages of supporting documentation. The next step

### Key qualities to look for in a consent order administrator:

1. The **ability** to meet the full scope of security and risk assessments required to work with a financial institution

2. **Experience** working with your regulator, and an understanding of their preferred ways of working

3. A **track record** of high participation rates

4. The **capability** to execute all phases of the remediation project from notification through adjudication, payment administrator and tax reporting

5. **Metrics and transparency tools** that provide settlement parties with confidence

is generally multiday site visits by the institution's risk analysts to vendor's operational locations, data centers and the like. Three to six weeks later, the audit assessment report may include findings with recommended and/or required remediation. Normally, such reviews must be repeated annually through the completion of the remediation project.

A mature provider with a depth of compliance experience is likely to avoid one or more "red flag" audit findings. Such "red flag" findings could prevent sharing necessary data with the vendor and thereby delay launching a remediation project by weeks or months.

In selecting a provider, you should consider how well positioned a vendor is to meet these requirements. An administrator with a dedicated compliance, information security and governance department, will make onboarding and periodic reviews as smooth as possible for all parties involved.

## Working for you, understanding the regulator

Depending on the specifics of the situation and the regulators themselves, the regulator's supervision of a remediation program can vary dramatically. In certain cases, regulators require review and non-objection with respect to all remediation documents, claim reviews, payments, call scripts, and more. In other cases, the regulator provides only limited high-level direction. The latter scenario can be a mix of benefits and risks—while the institution has considerable autonomy because of regulator silence on the details of administration, there can be uncertainty about whether the protocols adopted by the financial institution will ultimately be viewed as satisfactory and sufficient in the eyes of the regulator.

Established administrators have developed an understanding of regulatory rhythms based on prior matters. Look for an administrator that has the experience to assess how a regulator may respond to various remediation approaches and can assist you in presenting a persuasive case. An administrator with substantial experience handling these matters can save a financial institution both time and money by understanding and meeting the needs of the regulator from the onset.

## Maximizing participation, managing cash flow

Another after-effect of the financial crisis is the increased focus on consumer protection within the industry. Many regulators view themselves as consumer advocates and want to involve as many consumers as possible – from individuals to investment funds – in the settlement process. They expect high participation rates and want to see settlement money reaching consumers' wallets. In regulatory remediation programs, a participation rate in the 70 percent to 90 percent range is often required. This can be a high bar without the proper teams and processes in place.

In addition to participation rates, regulators are also concerned with the level of participant satisfaction. Managing participant relationships includes responding to requests from legal representatives, estates, divorced payees and dissolved entities, for starters. Other best practices in this area include the ability to communicate with settlement participants via their channel of choice, provide ADA services, correspond in multiple languages, and resolve complaints.

## Speed, accuracy and an attention to details (like taxes)

While your regulator may direct a high participation rate, it's also important that payments are issued quickly, accurately and securely. A settlement process is already costly, and your every dollar counts. You need assurance that an administrator has the tools needed to deliver the right amount to the right people.

Further, depending on the nature of the remediation project, there may be significant tax information return reporting requirements

including 1099-MISC, 1099-INT, 1098 and 1042-S information returns along with IRS TIN validation, W-9/W-8BEN solicitation and federal and state withholding.

## Size and experience do matter

During the settlement process, bench strength can matter. A seasoned administrator has the available capacity to respond quickly to requests, the flexibility to adjust to changes, and the agility to take on latebreaking requirements. For example, regulators routinely direct additional reporting which entails custom software development and database reconfiguration.

## The Epiq advantage

**Onboarding**: Epiq has a department dedicated to support the vendor onboarding process and has built a compliance group that works with financial institutions to make the process as smooth as possible.

**Understanding the regulators**: Epiq is a leading administrator that has been vetted and approved by such regulatory agencies as the CFPB, OCC, DOJ, FRB, HUD, SEC, FTC and USDA.

**Maximizing participation**: Epiq has developed a series of support tools, processes, and personnel that helpfinancial institutions find people, educate them on the settlement matter, and satisfy regulatory outreach standards.

**Boosting satisfaction**: Epiq acts as an in-house contact center to manage participant relationships during the process, and will resolve participant issues and challenges. The Epiq team deploys multiple communication channels, provides customized ADA services, and supports over 200 different languages.

**Speed, accuracy and tax support**: Epiq offers proprietary disbursement software, paired with a team of in-house accounting and tax professionals that work to meet the exact requirements of a financial institution's settlement plan. Epiq's payment controls meet the banking industry's own security and audit standards, as well as federal standards. Further, Epiq will also manage the settlement fund on behalf of the financial institution, assuming responsibility for entire process.

**Size and experience**: Epiq is a publicly traded company with onshore operations and proven experience handling substantive settlement processes for the world's largest banks, mid-sized financials and mortgage servicers. The firm takes pride in offering the best solutions and continually innovating to ensure its longevity and its ability to serve the interests of its clients.

A well-managed settlement can help your financial institution avoid future complications and, importantly, rebuild trust with regulators and consumers alike. Using these guidelines, you have the power to evaluate your options and choose the firm that will deliver the greatest value.

**For further assistance in selecting a consent order administrator you can contact Randy Burkholder.**

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