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Federal Reserve Proposes to Clarify and Reduce Supervisory Expectations on Boards of Directors

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On August 9, 2017, the Board of Governors of the Federal Reserve (the "Federal Reserve") published proposed guidance on certain supervisory expectations for Boards of Directors of banks and holding companies. The proposal consists of three parts, and arose out of a multi-year review of practices of boards of directors of banking organizations conducted by the Federal Reserve. The review assessed, among other things, the factors that make boards effective, the challenges boards face, and how boards influence the safety and soundness of their firms and promote compliance with laws and regulations. The Federal Reserve also reviewed expectations contained in its supervisory guidance.

The first part of the proposal includes proposed supervisory guidance addressing effective boards of directors ("proposed BE guidance"), which would only apply to bank and savings and loan holding companies with total consolidated assets of $50 billion or more, and to nonbank financial companies designated as systemically important. The proposed BE guidance attempts to better distinguish the supervisory expectations for boards from those of senior management, and sets forth what the Federal Reserve believes effective boards do: (1) set clear, aligned, and consistent direction regarding the institution's strategy and risk tolerance, (2) actively manage information flow and board discussions, (3) hold senior management accountable, (4) support the independence and stature of independent risk management and internal audit, and (5) maintain a capable board composition and governance structure.

The second part of the proposal attempts to refocus supervisory guidance found in existing Supervision and Regulation (SR) letters for boards of directors of bank and savings and loan holding companies of all sizes. The Federal Reserve is conducting a comprehensive review of all existing supervisory expectations and regulatory requirements to identify those which do not relate to the board's core responsibilities or are no longer aligned with the Federal Reserve's supervisory framework. The Federal Reserve listed 27 SR letters in which guidance on the roles and responsibilities for boards of directors would be rescinded or revised.

Under the proposal, for banking organizations with total consolidated assets of less than $50 billion supervisory expectations would be revised to align with the supervisory expectations set forth in SR letter 16‑11, "*Supervisory Guidance for Assessing Risk Management at Supervised Institutions with Total Consolidated Assets Less than $50 Billion*" (SR 16–11), which already applies to all Federal Reserve-supervised institutions with total consolidated assets of less than $50 billion. For banking organizations with total consolidated assets of $50 billion or more, supervisory expectations would be revised to align with the attributes of an effective board outlined in the proposed BE guidance.

Finally, the third part of the proposal includes proposed supervisory guidance that would replace Federal Reserve SR letter 13–13/CA letter 13–10, which currently establishes an expectation that all supervisory findings, referred to as Matters Requiring Immediate Attention ("MRIAs") and Matters Requiring Attention ("MRAs"), would be presented to the board so that the board may ensure that senior management devotes appropriate attention to addressing these matters. The proposed guidance would attempt to clarify the process that Federal Reserve examiners and supervisory staff should follow in communicating supervisory findings to an institution's board and senior management. In particular, Federal Reserve examiners and supervisory staff would direct most MRIAs and MRAs to senior management for corrective action. MRIAs or MRAs would only be directed to the board for corrective action when the board needs to address its corporate governance responsibilities or when senior management fails to take appropriate remedial action. However, boards would remain responsible for holding senior management accountable for remediating supervisory findings.

Comments on the Federal Reserve's proposal must be received no later than October 10, 2017.

The full proposal of the Federal Reserve's proposal published on August 9, 2017, is available: ***here***.