Overview of Comments on and Revisions to Proposed Guidance on Supervisory Expectations for Boards of Directors

On August 9, 2017, the Board invited public comment on proposed supervisory guidance describing the key attributes of effective boards of directors of large depository institution holding companies. The Board also invited comment on conforming changes to related existing supervisory guidance.[1] The final guidance retains the five key attributes of effective boards from the proposal, and includes the following changes in response to comments and statutory revisions since the proposal:

- Increases the applicability of the guidance from $50 billion to $100 billion. The final guidance applies to large firms with $100 billion or more in total assets. This change aligns with an identical increase to the asset thresholds in section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act[2] and the large financial institution rating system.[3]
- Further distinguishes the roles and responsibilities of boards from those of senior management, provides illustrative examples of effective board practices, and uses certain terms with greater precision and consistency. Commenters noted several places in the proposed guidance that could benefit from clarification and consistency.
- Removes the suggestion that boards conduct regular self-assessments and provide the results to Federal Reserve examiners. Commenters asserted that sharing the results of self-assessments would have a chilling effect on director honesty and candor, which would undermine the value of conducting self-assessments. Because examiners draw on a variety of information when assessing the effectiveness of board oversight, the Board agreed with commenters that providing the results of self-assessments was not needed.

Comments generally. The Board received 45 comment letters on the proposed guidance. Staff met with several commenters and firms that would have been covered by the proposal. Commenters generally supported the proposal, but as noted above, some expressed concerns regarding specific aspects of the proposal and provided suggestions on potential changes.

Attribute 1: Set clear, aligned, and consistent direction. Several commenters requested the guidance clarify which policies and procedures a board should review and approve. The guidance clarifies that in addition to those required by regulation, clarifies significant policies, procedures, and plans, effective boards reviews and includes examples of potential significant policies and procedures.

Attribute 2: Boards' information needs. Some commenters argued that management should control the flow of information to the board and asked for guidance on specific practices or policies a board should adopt relating to the flow of information. Boards are in the best position to determine their information needs, and the guidance does not include specific

[1] 82 FR 37219 (August 9, 2017). Staff continues to consider ways to improve the clarity and consistency of supervisory communications, including public feedback, related to SR letter 13-13/CA letter 13-10, "Supervisory Considerations for the Communication of Supervisory Findings."

[2] Public Law 115–174, section 401, 132 Stat. 1296 (2018).

[3] 83 FR 58724 (November 21, 2018) and 84 FR 4309 (February 15, 2019). See also SR Letter 19-3/CA Letter 19-2, "Large Financial Institution (LFI) Rating System" (February 26, 2019).

practices that boards should adopt. However, the guidance clarifies that board effectiveness improves with active involvement by directors in setting board and committee meeting agendas.

Attribute 3: Hold senior management accountable. Some commenters asked whether boards should maintain detailed records of individual questions and answers provided by directors, and other commenters requested that the guidance clarify the role of effective boards in setting performance objectives for management. The guidance states that boards maintain records that provide a general description of the matters discussed with senior management. The guidance also clarifies that effective boards approve clear financial and nonfinancial performance objectives for the Chief Executive Officer (CEO) and business line executives, and nonfinancial performance objectives for the chief risk officer and chief audit executive.

Attribute 4: Independence of risk management and internal audit. Several commenters asserted that board risk committees should not direct who serves on particular management committees, and other commenters requested the guidance clarify that boards have flexibility to determine whether particular elements of risk oversight are determined by the full board or committee. The guidance eliminates reference to a risk committee's involvement in management-level committee membership and clarifies the risk committee's role in advising management on changes to the firm's practices in order to align with the firm's strategy and risk appetite. The guidance also provides that effective boards have flexibility to determine whether the risk committee should escalate review of certain matters to the full board.

Attribute 5: Maintain capable board composition and governance structure. Some commenters asked whether director diversity includes consideration of race, ethnicity, and gender, in addition to diversity of skills, knowledge, and experience. The guidance notes that effective boards consider a diverse pool of director candidates, including women and minorities, consistent with the 2015 interagency policy statement related to diversity policies and practices. Other commenters said that directors should take training to improve their firm oversight. The guidance states that training is a way for directors to learn about topics relevant to their duties, and training needs depend on directors' experience and the firm's activities and risk profile.

Application to insurance SLHCs. Some commenters asserted the guidance should not apply to insurance savings and loan holding companies (SLHCs) because it would potentially conflict with state insurance laws and they criticized the proposal for failing to acknowledge that regulation of insurance is left to the states. Although the McCarran-Ferguson Act places certain limitations on the federal regulation of the business of insurance, the Federal Reserve has express authority under the Home Owners' Loan Act to issue prudential standards for SLHCs, including insurance SLHCs. The guidance does not relate to or conflict with the regulation of the business of insurance.

Supervisory approach. Several commenters requested more clarity on the use of the guidance in the supervisory process. SR letter 21-3 / CA letter 21-1, "Supervisory Guidance on Board of Directors' Effectiveness" includes information regarding how the guidance will be used to inform the governance and controls component of the large financial institution rating system.

Supervisory letter review. Commenters generally supported the supervisory letter review, and some asserted other supervisory documents should be included in the review. SR letter 21-4 / CA letter 21-2, "Inactive or Revised SR Letters Related to the Federal Reserve's Supervisory Expectations for a Firm's Boards of Directors" provides additional details on the treatment of each supervisory letter included in the review.[4] Staff will continue to periodically review and update supervisory guidance.

[4] See SR 21-4 / CA 21-2, "Inactive or Revised SR Letters Related to the Federal Reserve's Supervisory Expectations for a Firm's Boards of Directors" at https://www.federalreserve.gov/supervisionreg/srletters/SR2104.htm.