Derek B. Dorn
Managing Director, Public Policy |
Associate General Counsel

730 Third Avenue | 12th Floor
New York, NY 10017

212 913-1038
Derek.Dorn@tiaa.org

November 29, 2017

Robert deV. Frierson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, D.C. 20551
E-mail: regs.comments@federalreserve.gov

Re: Proposed Guidance on Supervisory Expectation for Boards of Directors, Docket No. OP–1570

Dear Mr. Frierson:

Teachers Insurance and Annuity Association of America ("TIAA") appreciates the opportunity to submit comments in response to the Federal Reserve's Proposed Guidance on Supervisory Expectation for Boards of Directors (the "Proposed Guidance").[1] We hope our perspective will assist the Federal Reserve in formulating guidance that clarifies and appropriately streamlines the supervisory expectations for boards and senior management.

About TIAA.

Founded in 1918, TIAA is the leading provider of retirement services for those in academic, research, medical, and cultural fields. Over our nearly century-long history, TIAA's mission has always been to aid and strengthen the institutions and participants we serve and to provide financial products that meet their needs. To carry out this mission, we have evolved to include a range of financial services, including asset management and retail services. Today, TIAA manages over $954 billion in assets, and our investment model and long-term approach aim to benefit the 5 million retirement plan participants we serve across more than 15,000 institutions.[2] With our strong nonprofit heritage, the mission we embarked on in 1918 still rings true as we remain dedicated to serving the financial needs of those who serve the greater good.

---

[1] Proposed Guidance on Supervisory Expectation for Boards of Directors, 82 Fed. Reg. 37219 (Aug. 9, 2017).

[2] Asset and participant data are as of June 20, 2017.

TIAA was incorporated as a stock life insurance company in the State of New York, and is a licensed insurer in all states, the District of Columbia, and Puerto Rico. TIAA is a privately held, wholly owned subsidiary of the TIAA Board of Overseers, a special purpose New York not-for-profit corporation. Based on their indirect ownership of a thrift (TIAA, FSB), both TIAA and the TIAA Board of Overseers are registered as savings-and-loan holding companies ("SLHCs") under the Home Owners' Loan Act. Accordingly, TIAA is supervised by the Federal Reserve.

TIAA's interest in corporate governance.

TIAA's interest in the Federal Reserve's corporate-governance framework is twofold. As an SLHC subject to the Federal Reserve's supervision, TIAA has a direct interest in any Federal Reserve guidance that sets out corporate-governance requirements for supervised institutions. In addition, as stewards of our participants' investments, we believe it is critical that the companies in which we invest are subject to a robust corporate-governance framework that includes clear, well-defined responsibilities for boards. In our experience, portfolio companies that operate under such a strong and streamlined corporate-governance framework achieve better results.[3]

TIAA supports the Federal Reserve's efforts to clarify and streamline supervisory expectations for boards.

We commend the Federal Reserve for its efforts to clarify supervisory expectations for boards and senior management and to establish principles for effective boards that focus on core responsibilities, including the process for setting risk tolerance and the development of company strategy. Based on our engagement with companies as an investor, we understand that directors can often become overwhelmed both by the quantity and complexity of the information they must review and with the amount of time they devote to tasks not directly related to their core oversight responsibilities. By more clearly delineating board responsibilities and more appropriately tailoring supervisory expectations, the Federal Reserve's Proposed Guidance is a welcome step toward addressing these issues. We believe such guidance will alleviate some of the burdens directors currently face and allow boards to refocus their efforts on core responsibilities. This is ultimately to the benefit of investors.

---

[3] Our Stewardship & Corporate Governance team, for example, votes on executive compensation-related items at annual meetings of thousands of companies around the globe in which we hold an ownership interest. When reviewing compensation programs and policies, we expect these companies – and independent compensation committees – to demonstrate an alignment between pay and long-term performance. We also hold companies and boards of directors accountable for the executive compensation decisions they make, including with respect to risk considerations.

<u>TIAA urges the Federal Reserve to clarify guidance for MRAs and MRIAs</u>.

As we understand, the Federal Reserve's position is that all Matters Requiring Attention ("MRAs") and Matters Requiring Immediate Attention ("MRIAs") should always be reported to both senior management and the board, but that senior management is often better situated than the board to remediate certain MRAs and MRIAs. TIAA agrees with and supports that position. As we also understand, the Federal Reserve intends to provide direction through the Proposed Guidance as to when MRAs and MRIAs should be sent to senior management for remediation – and does not intend to suggest that certain MRAs or MRIAs should be reported only to senior management and not the board. Nonetheless, language in the Proposed Guidance on that point can be read ambiguously, and we would urge the Federal Reserve to provide greater clarity.

Specifically, the Proposed Guidance contemplates that "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."[4] We respectfully recommend that the Federal Reserve clarify this language to stress that while all MRAs and MRIAs should be <u>reported</u> to both senior management and the board, Federal Reserve examiners and supervisory staff should direct certain MRAs and MRIAs to senior management alone for <u>remediation</u>. Such a clarification would decrease the likelihood that a supervised institution could misinterpret the Proposed Guidance and fail to provide important information about MRAs and MRIAs to its board.

<u>Senior management's enhanced control over the flow of information to directors should not change board access to information or how board agendas are set</u>.

We are supportive of the Federal Reserve's proposal to give senior management more responsibility for controlling the flow of information that goes to the board, thus allowing directors to better focus on more essential matters such as approving overall business strategy and determining the supervised institution's risk tolerance. We agree with the Federal Reserve that "an effective board of directors actively manages its information flow and its deliberations, so that the board can make

---

[4] Proposed Guidance on Supervisory Expectation for Boards of Directors, 82 Fed. Reg. 37223 (Aug. 9, 2017).

sound, well-informed decisions in a manner that meaningfully takes into account risks and opportunities."[5]

Regardless of the increased role senior management may take in determining what information the board receives, however, we stress that the board should maintain certain rights to and control over key information that is essential to the board's performance of its duties. For instance, we believe the board should retain the unfettered right to request and obtain information from senior management. Management's ability to act as a filter for the board, keeping extraneous information from directors so that they may concentrate on high-level matters, is both important and necessary. However, there is a fine line between filtering out unnecessary information and blocking directors from receiving the information they need to perform their core responsibilities.

Regardless of whether Federal Reserve guidance ultimately directs certain information to senior management for review, rather than to the board, directors should always have the right to request and obtain from senior management any and all information necessary to perform their duties. This ability is an absolutely essential component of a board's risk oversight efforts and ability to function properly. We echo the Federal Reserve's point that "directors of an effective board may seek information about the firm and its activities, risk profile, talent, and incentives outside routine board and committee meetings" – and we emphasize that such directors *should* do so in order to obtain whatever information they need to fulfill their duties.[6]

Additionally, board meeting agendas should still be set by an independent director (*i.e.*, the independent chair, the lead independent director, or, for committee meetings, the chair of the relevant committee). The Federal Reserve notes the importance of director involvement in setting board meeting agendas, stating that "directors of an effective board take an active role in setting board meeting agendas such that the content, organization, and time allocated to each topic allows the board to discuss strategic tradeoffs and to make sound, well-informed decisions."[7] We agree that the board as a whole should be involved in setting meeting agendas – and we believe that senior management should have an opportunity to suggest agenda topics – but we assert that ultimate authority over setting the agenda should belong to an independent director. Giving an independent director this authority is fundamental to any board's ability to perform and carry out its fiduciary duties.

---

[5] Proposed Guidance on Supervisory Expectation for Boards of Directors, 82 Fed. Reg. 37225 (Aug. 9, 2017).
[6] *Id.*
[7] *Id.*

While board responsibilities should be streamlined, directors should expect to spend significant time and effort fulfilling their duties as board members.

We commend the Federal Reserve for its willingness to mitigate unnecessary burdens on directors by clarifying the roles and responsibilities of boards and senior management. Nonetheless, we recommend that the Federal Reserve emphasize in its guidance that, particularly after the financial crisis of 2008, serving as a director of a Federal Reserve-supervised institution is a demanding and time-consuming role.

As financial-services companies face increasingly complex challenges, the role of the board in overseeing risk and building a sustainable enterprise is more important than ever. The Federal Reserve can help ensure that board leadership is empowered to focus on core responsibilities – including, most notably, approving business strategies and risk limits – by streamlining the amount of information boards are tasked with reviewing. But directors should still expect to devote significant time and effort to fulfilling their duties. Accordingly, the Federal Reserve should emphasize that the Proposed Guidance is not intended to significantly diminish directors' responsibilities – rather, it seeks to free directors to spend more time on core oversight tasks and less time on issues that are better addressed by senior management.

Conclusion

TIAA commends the Federal Reserve for its focus on this issue, and we appreciate the opportunity to comment on the Proposed Guidance. We would welcome the opportunity to engage further on any aspects of the foregoing.

Sincerely yours,

Derek B. Dorn