



615 MERRICK AVENUE, WESTBURY, NY 11590
Tel: (516) 683-4570 • Fax: (516) 683-8344 • E-mail: Patrick.Quinn@myNYCB.com

August 2, 2019

Attn: Ms. Ann E. Misback, Secretary
Board of Governors of the
Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Re: Rules Regarding Availability of Information [R-1665]; Rules
Governing the Disclosure of Confidential Supervisory Information
and Other Nonpublic Information of the Board

Ladies and Gentlemen:

On behalf of New York Community Bancorp, Inc. and its principal bank subsidiary, New York Community Bank (together, "NYCB"),¹ thank you for the opportunity to provide comments concerning the Federal Reserve Board's June 14, 2019 proposed change to its rules governing how supervised financial institutions request and disclose confidential supervisory information ("CSI").² NYCB supports the Board's effort to update and clarify the rules regarding how CSI can and should be handled.

We recommend that the Fed's rulemaking initiative be supported by all applicable federal and state authorities and that banking regulators view the Board's initiative as an opportunity to implement a more uniform structure regarding the requesting, sharing, and receiving of CSI. This Notice of Proposed Rulemaking serves as an important opportunity for the Federal Reserve Board to promote uniformity in how supervisory authorities handle its CSI after disclosure.

As a supervised financial institution NYCB, is regulated by several authorities, including the Federal Reserve Board, the Federal Deposit Insurance Corporation, the Consumer Financial Protection Bureau, and the New York State Department of Financial Services ("DFS") and regularly receives important supervisory information from each.

¹ NYCB, headquartered in Westbury, NY, is a leading producer of multi-family loans on non-luxury, rent-regulated apartment buildings in New York City, and as of March 31, 2019 NYCB reported assets of \$52.1 billion, loans of \$40.5 billion, deposits of \$31.6 billion, and stockholders' equity of \$6.6 billion.

² Federal Reserve Board, Public Comment Request for Technical Updates to its Freedom of Information Act Procedures and on Changes to its Rules Governing the Disclosure of Confidential Supervisory Information (June 14, 2019), <https://www.federalreserve.gov/newsevents/pressreleases/bcreg20190614a.html>.

Each federal and state bank supervisory authority has separate regulations and guidance concerning CSI disclosure for the financial institutions they supervise. NYCB, as an FDIC-insured and New York State-chartered non-member bank, is subject to no less than four separate sets of regulations and guidance regarding CSI, and among them there is no uniform approach for requesting, sharing and receiving CSI from supervisory authorities. The CFPB, FDIC and FRB each require a different process for requesting CSI and adhere to different timeframes for processing such requests.³

Furthermore, each supervisory authority takes a different approach in defining the scope and treatment of CSI. For example, the CFPB allows affiliates of a supervised financial institution to review and receive CSI concerning the regulated institution; however, neither the FRB nor FDIC allows this.⁴ Furthermore, the CFPB, FDIC, and FRB each allow directors, officers and employees of a supervised financial institution to review the institution's CSI; however, the CFPB and FDIC require that directors, officers and employees reviewing CSI only do so when CSI is relevant to their assigned duties, whereas the FRB does not.⁵ The CFPB allows for trustees, members and general partners of the supervised financial institution to review CSI,⁶ while the FDIC and FRB does not address these persons. Further, the CFPB and FRB both allow supervised financial institutions to share CSI with their parent company (if one exists), while the FDIC does not.⁷

With respect to disclosing CSI to outside parties, both the FRB and FDIC provide statutory guidance addressing when external auditors are authorized to access CSI.⁸ The CFPB, FDIC and FRB each have separate guidance for when a supervised financial institution wishes to share CSI with its certified public accountants or outside legal counsel. In most circumstances, prior authorization is not needed from the CFPB to share CSI with a certified public accountant or outside legal counsel.⁹ However, the FDIC always requires prior authorization when a supervised financial institution seeks to share CSI with such parties.¹⁰ The FRB only allows a supervised financial institution to share CSI with certified public accountants (when not acting as an external auditor) or outside counsel under a narrow set of conditions.¹¹ Lastly, the CFPB allows CSI to be shared with consultants and vendors without prior authorization, while the FDIC and FRB does not.¹²

³ 12 C.F.R. § 261.21(c); 12 C.F.R. § 1070.43(b); 12 C.F.R. § 309.5(b).

⁴ 12 C.F.R. § 1070.42(b)(1); Consumer Financial Protection Bureau, Compliance Bulletin 2015-01 Regarding the Treatment of Confidential Supervisory Information (Jan. 27, 2015), https://files.consumerfinance.gov/f/201501_cfpb_compliance-bulletin_treatment-of-confidential-supervisory-information.pdf.

⁵ 12 C.F.R. § 1070.42; 12 C.F.R. § 309.6; 12 C.F.R. § 261.20.

⁶ 12 C.F.R. § 1070.42; Consumer Financial Protection Bureau, Compliance Bulletin 2015-01 Regarding the Treatment of Confidential Supervisory Information (Jan. 27, 2015), https://files.consumerfinance.gov/f/201501_cfpb_compliance-bulletin_treatment-of-confidential-supervisory-information.pdf.

⁷ *Supra* note 5.

⁸ 12 C.F.R. § 261.2(c); 12 U.S.C § 1817(c).

⁹ 12 C.F.R. § 1070.42(b)(2).

¹⁰ 12 C.F.R. § 309.6.

¹¹ Federal Reserve Board, Public Comment Request for Technical Updates to its Freedom of Information Act Procedures and on Changes to its Rules Governing the Disclosure of Confidential Supervisory Information (June 14, 2019), <https://www.federalreserve.gov/newsevents/pressreleases/bcreg20190614a.html>; 12 C.F.R. § 261.21(b)(2).

¹² 12 C.F.R. § 1070.42(b)(2); *supra* note 5.

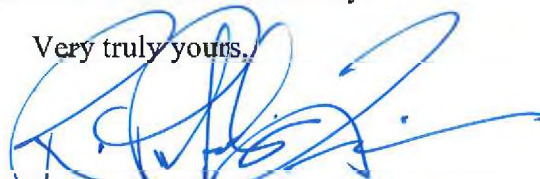
With the foregoing CSI regulatory practices in mind, the industry would benefit if supervisory authorities followed a more uniform CSI regulatory regime. NYCB urges the FRB to promote uniformity amongst the regulators, including state supervisory authorities, regarding treatment of its CSI. Although this Notice of Proposed Rulemaking would bring the FRB in line with how the CFPB requires CSI to be shared with a certified public accountant or outside legal counsel, there still exists many differences in the guidance regulators use to govern requesting, sharing and receiving of CSI. These differences increase business costs and delays for banks, which ultimately slows down the business of banking and causes consumers to suffer.

Lastly, NYCB recommends that the FRB and other banking regulators consider utilizing modern electronic platforms for making their examination reports and other CSI available to authorized parties. By way of example, Intralinks, Inc. and Merrill Corporation provide such platforms, commonly referred to as virtual data rooms (“VDRs”).¹³ A VDR typically has multiple levels of security and tracking mechanisms to protect the security of posted documents. The more common solutions apply multi-level controls and permissions to access information, with vendors providing ISO 27001 information security management system certifications and SSAE16 SOC 2 Type II attestations. Additionally, it is customary for such vendors to secure data while in-transit (e.g., via TLS 1.2 protocol) and while at-rest (e.g., through AES 256-bit encryption and two factor authentication).

VDRs provide time stamped audit trails, which would allow supervisory authorities to easily track who has viewed their CSI and to upload documents, implement document permission settings, and add custom water marks to further ensure document confidentiality. System download features would allow supervisory authorities to automatically track activities such as file access and distribution and to manage individual permissions to view, edit, save or print, as well as revoking access to any documents. Modern day VDR solutions provide efficient, user friendly, and highly secure solutions for distributing, storing, and securely managing access to confidential information and would effectively support a broader effort to ensure consistency among banking authorities in their protocols for handling CIS.

Thank you again for the opportunity to provide comment as you formalize the Proposal. If you have any questions or concerns, please feel free to contact me directly.

Very truly yours,



R. Patrick Quinn
*Executive Vice President
Chief Corporate Governance Officer &
Corporate Secretary*

¹³ INTRALINKS INC., https://www.intralinks.com/?_ga=2.51906345.1608702007.1562770517-436048524.1562770517 (last visited June 14, 2019); MERRILL CORPORATION, <https://www.merrillcorp.com/us/en.html> (last visited June 14, 2019).