GUIDANCE & SUPERVISION

LISCC Supervisory Program Enforcement Actions Operating Manual

October 28, 2021 (v.2.0)

Redacted Public Version

Note: All redactions in this redacted public version are indicated in bold, italic font with brackets around it, like this: [Redaction: description of redacted material]. Additionally, the front cover, end page, and some font sizes and colors are slightly different from the original internal document to reflect Board publishing standards and to increase accessibility.

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

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1 Purpose of Manual

This operating manual sets forth LISCC program operational expectations for supervisory activities related to the issuance and termination of enforcement actions, as well as monitoring of firms' enforcement action remediation between issuance and termination.[1] Other information about enforcement actions is also included or cross-referenced as further background information and context.

A glossary of important terms is included in Appendix B. The first time a glossary term is explained in this manual, it appears in italics.

2 Overview and Types of Enforcement Actions

The Federal Reserve issues enforcement actions to firms for violations of laws, rules, or regulations, unsafe or unsound practices, breaches of fiduciary duty, and violations of already issued orders.[2] For the purposes of this manual, an *enforcement action* (EA) refers to *informal enforcement actions* (for example, a non-public memorandum of understanding (MOU) between a Reserve Bank and a firm) and *formal enforcement actions* (for example, a public cease-and-desist order issued by the Federal Reserve and generally public), as described further below.[3] EAs do not include Matters Requiring Immediate Attention (MRIAs) or Matters Requiring Attention (MRAs), Annual Assessments letters, exam feedback letters, or similar supervisory documents.

When determining the appropriate EA for a LISCC firm, supervisors should consider the severity and pervasiveness of the weaknesses at the institution, management's capacity to correct the weaknesses, the nature of the unsafe or unsound practice or violation of law, and other relevant factors. The presumptions concerning EAs in the *LFI Rating System* (discussed further below) are also taken into consideration. These factors form the basis for staff recommendations for the type and necessary provisions of an EA.

2.1 Formal Enforcement Actions

Formal EAs are legally enforceable, public actions that require firms to address unsafe or unsound practices and violations of law. For example, formal EAs may be issued to address significant safety and soundness

[1] LISCC Integration and the Office of the LISCC Operating Committee (Office of the OC) will review this manual (and related training materials) every two years to determine whether updates are needed.

[2] Individuals may also be the subject of enforcement actions if specific criteria are met. See the section on "Order of Removal and Prohibition" below.

[3] All defined terms used in this document are included in the Glossary in Appendix B.

deficiencies that are significant, pervasive, or repeated. They may include provisions addressed to the board of directors as well as provisions addressed to the firm, which fall under the responsibility of senior management to remediate.

Formal EAs include *Cease and Desist (C&D) orders*, written agreements, civil money penalties, prompt corrective action directives, and prohibition and removal orders.[4] Most formal actions in the LISCC portfolio are either C&D orders (issued with firm consent), written agreements, or civil money penalties.

While a formal or informal EA can be issued to a firm regardless of its supervisory rating, there is a strong presumption that an institution rated "Deficient - 2" in any component rating (Capital, Liquidity, or Governance and Controls (G&C)) will be subject to a formal EA because a Deficient-2 rating indicates that the financial or operational deficiencies in the firm's practices or capabilities represent a threat to the firm's safety and soundness, or have already put the firm in an unsafe and unsound condition.[5]

Formal EAs must be disclosed to the public unless the Board determines that publication would be contrary to the public interest.[6] The procedures for issuing formal actions are set forth in Sections III and IV below.[7]

2.1.1 C&D Orders

Section 8 of the FDI Act (12 U.S.C. §1818) authorizes the Board to issue a C&D Order when it finds that a firm or an institution-affiliated party (IAP)[8] is engaging, has engaged, or is about to engage in (1) a violation of law, rule, or regulation; (2) a violation of a condition imposed in writing by the Board in connection with the granting of any application or any written agreement; or (3) an unsafe or unsound practice in conducting the firm's business. Separately, under another provision of Section 8, the Board is required to impose a C&D Order when the firm has failed to establish and maintain procedures to comply with the

[4] See also the *Bank Holding Company Supervision Manual,* section 2110. https://www.federalreserve.gov/publications/files/2000p4.pdf

[5] See SR Letter 19-3, *Large Financial Institution (LFI) Rating System*

[6] The Board may also delay publication of a final order for a reasonable time if the Board makes a determination in writing that the publication would seriously threaten the safety and soundness of an insured depository institution. 12 U.S.C. 1818(u)(4).

[7] Formal enforcement actions against LISCC firms issued with the firm's consent must be approved by the Board of Governors (through delegated authority to the General Counsel), unless the Vice Chair for Supervision determines the Board should vote on the action. In addition to the LISCC review discussed below, appropriate staff of the SR Division, the enforcement section of Board Legal, and as applicable, Division of Consumer and Community Affairs (DCCA) must review and approve the proposed action. The LISCC OC must also review and approve the issuance of a formal enforcement action.

[8] An IAP is defined as, among other things, "any director, officer, or controlling stockholder . . . of, or agent for, an insured depository institution[.]" *See* 12 U.S.C. § 1813(u).

Bank Secrecy Act or has failed to correct certain previously reported deficiencies related to these procedures.[9]

A firm is given the opportunity to consent to a C&D order (referred to as a *Consent Order* when issued with firm consent), which may be issued on a contested basis if a firm does not consent. A contested proceeding begins with a formal Notice of Charges issued by the Board and is followed by an administrative hearing and recommended decision on the charges by an administrative law judge, and a final decision and order by the Board of Governors.[10]

A C&D order typically requires the firm to cease and desist from the misconduct in question and includes provisions that require the firm to take affirmative action to correct the deficiencies that led to the order. For LISCC firms, C&D orders often require the firm to serve as a source of strength to its insured depository institution, enhancements to board and senior management oversight, improved risk management practices, and enhancements to the conduct and oversight of particular business lines.

A temporary C&D order is an EA that imposes immediate interim requirements on a firm necessary to protect it against ongoing or expected serious harm. A temporary C&D order is effective upon service to the firm; however, a temporary C&D order may be challenged by the firm within ten days after service in federal court. The temporary C&D order, unless enjoined by the district court, remains in place until the Board issues a final C&D order or dismisses the action. Temporary C&D orders are rarely issued in the LISCC portfolio.

2.1.2 Written Agreement

Written Agreements are formal, public EAs in the form of an agreement between the relevant Reserve Bank and the firm. The process for recommending and approving these actions at the staff level is similar to that of Consent Orders and requires Board staff approval and Vice Chair for Supervision review. However, the Reserve Bank, rather than the Board, executes Written Agreements. Violations of provisions of a Written Agreement may provide the basis for issuing a C&D or assessing civil money penalties.

2.1.3 Civil Money Penalties

A *civil money penalty* may be assessed by the Board against a supervised institution or an IAP. The amount of the civil money penalty will depend upon, among other things, the severity and pervasiveness of the legal violation or unsafe and unsound practice. For example, section 8(i) the FDI Act authorizes a first tier penalty of up to $5,000 per day for violations of (1) law, violations of any or regulation; (2) a final C&D Order, a temporary C&D Order, a removal and prohibition order on a formal enforcement, or compliance

[9] See 12 U.S.C. 1818(s).

[10] See 12 CFR 263.

with a prompt-corrective-action, violations of any directive; (3) a condition imposed in writing by the Board in connection with the granting of an application or other request, or violations of any; and (4) a written agreement. A second-tier penalty may amount to $25,000 per day for any first-tier violation that involves, an unsafe or unsound practice recklessly engaged in, or a breach of fiduciary duty when the violation, practice, or breach is part of a pattern of misconduct, causes or is likely to cause more than a minimal loss to the bank, or results in pecuniary gain or other benefit for the offender. A third-tier civil money penalty of up to $1.0 million per day or 1 percent of the total assets of the institution can be assessed for any knowing violation, unsafe or unsound practice, or breach of any fiduciary duty when the offender knowingly or recklessly caused a substantial loss to the financial institution or received a substantial pecuniary gain or other benefit. Civil money penalties may also be assessed, under the three-tier penalty framework described above, for any violation of the Change in Bank Control Act and for violations of the anti-tying provisions of federal banking law, among other laws. All daily civil money penalty amounts are adjusted for inflation.[11] Board Legal, with the concurrence of the SR Division or DCCA, as appropriate, determines the amount of the civil money penalty to recommend.

2.1.4 Prompt Corrective Action Directive[12]

A Prompt Corrective Action (PCA) Directive is issued against an insured depository institution when its capital position declines or is deemed to have declined below certain regulatory thresholds. The purpose of the prompt corrective action statute is to take action at an early stage against an insured depository institution to resolve the problems at the least possible cost to the deposit insurance fund. The statute sets forth a framework of mandatory actions that regulators must take, as well as discretionary action they must consider taking when an insured depository institution's capital position declines or it is deemed to have declined below certain threshold levels. [13] The statute provides for increasingly stringent provisions as a bank is placed in progressively lower capital categories. The bank's consent is not required for issuance of the PCA Directive, which are public formal EAs that may be enforced in federal courts and may cause any bank, bank holding company, or bank-affiliated party that violates the PCA Directive to be subject to civil money penalties or other EAs.

2.1.5 Order of Removal and Prohibition – Actions Against Individuals

The Board may issue an Order of Removal and Prohibition against an Institution-Affiliated Party who has directly or indirectly violated any law or regulation, engaged or participated in any unsafe and unsound

[11] Penalty tiers are periodically adjusted for inflation, as required by law. Current penalty amounts under section 8 of the FDI Act, for example, range from $10,366 per day for first tier violations to $2,073,133 per day for third tier violations (12 CFR 263.65).

[12] 12 U.S.C. 1831*o* and 12 CFR 208.41 et seq.; and PCA website ***[Redacted: hyperlink to internal website containing the PCA internal procedures, handbook, templates and FAQs]***

[13] An undercapitalized bank that submits an acceptable restoration plan will not be subject to a PCA Directive.

practice, or committed or engaged in any act, omission, or practice which constitutes a breach of fiduciary duty.[14] Further, the Board must determine that, because of the violation, unsafe or unsound practice, or breach, that: (i) the institution has suffered or will probably suffer financial loss or other damage, or (ii) the interests of depositors have been or could be prejudiced by the violation, practice, or breach, or (iii) the IAP has received financial game or other benefit from the violation, practice, or breach. Finally, the Board must also determine that the violation, practice, or breach involves personal dishonesty or demonstrates a willful or continuing disregard for the safety and soundness of the institution. These actions are taken following an investigation by Board Legal and are not part of the normal supervisory program.

2.1.6 Public Disclosure of Formal Enforcement Actions

The Board is required to publish and make publicly available any final order issued for any administrative enforcement proceeding it initiates, including C&D Orders, removal and prohibition orders, and civil money penalties, as well as any written agreement or other written statement that it may enforce (i.e., formal EAs in general) unless the Federal Reserve Board determines that publication of the order or agreement would be contrary to the public interest. As noted below, Section 4(m) agreements generally are not publicly disclosed because publication would convey the less-than-satisfactory ratings of the FHC or its depository institution subsidiaries.[15] The Board generally tries to publish formal EAs within a week of execution on its public website, and the issuance is noted in the Board's weekly H.2 reports.

2.2 Informal Enforcement Actions

Informal EAs are non-public actions that are typically used when circumstances warrant a less severe form of action than the formal supervisory actions described above. A determination as to which action to use is based on individual facts and circumstances, including the severity, number, and nature of the deficiencies. Supervisory ratings are also taken into consideration (as discussed further below). Informal actions include *memorandum of understanding (MOUs*), board resolutions, and commitments. Typically, informal actions against LISCC firms are in the form of an MOU. Informal actions are not enforceable.

2.2.1 Memorandum of Understanding (MOU)

An MOU is an agreement between the Reserve Bank and a firm that requires the firm to address its deficiencies. It is signed by both the Reserve Bank and an authorized representative of the firm.

[14] Section 8(e) and (i)(3) of the FDI Act (12 U.S.C. 1818(e) and (i)(3)).

[15] Section 8(u) of the FDI Act (12 U.S.C. 1818(u).)

Under the Federal Reserve's LFI Rating System, there is a strong presumption that a firm rated "Deficient - 1" in any category (Capital, Liquidity, or G&C) rating will be subject to an informal EA.[16] A firm's failure to comply substantially with an MOU may also be considered in determining whether to further downgrade an institution in the relevant rating category, to escalate to a formal EA, or take other action.

2.2.2 Board Resolutions

The Federal Reserve in its Annual Assessments or supervisory letters may request a firm's board of directors to pass certain board resolutions. Board resolutions generally represent commitments made by the firm's board of directors and are incorporated into the corporate minutes. The firm provides a signed copy of the corporate resolutions to the Federal Reserve.

2.2.3 Commitments

Commitments are generally used to correct minor problems or to request periodic reports addressing certain aspects of an institution's operations. Commitments may be used when there are no significant deficiencies, unsafe or unsound practices, or violations of law. Generally, the Federal Reserve sends a letter to the institution outlining its request and asking for a response indicating that the commitments are accepted. Commitments have not generally been used in the LISCC program. In case of their use, the procedure for seeking a commitment would be the same as that for an MOU, as described below.

2.2.4 Agreements under section 4(m) of the Bank Holding Company Act (Section 4(m) Agreements)[17]

Bank holding companies (BHCs) that are well-managed and well-capitalized, whose subsidiary depository institutions are well-managed and well-capitalized and that have at least a satisfactory Community Reinvestment Act (CRA) rating, may elect to become a financial holding company (FHC). An FHC may engage in expanded financial activities enumerated in section 4(k) of the BHC Act (Section 4(k) activities) that are not permissible for BHCs and their subsidiaries, including, but not limited to, underwriting, broker dealer activities, insurance, and merchant banking.[18] The top-tier legal entity of all LISCC firms are FHCs.

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[16] See SR Letter 19-3, *Large Financial System (LFI) Rating System*.

[17] 12 U.S.C. 1843(m); 12 CFR 225 Subpart I; and ***[Redacted: hyperlink to internal website to which FHC compliance requirements and letter templates are posted]***

[18] Permissible activities for FHCs are listed in sections 3905, 3906, and 3907 of the *Bank Holding Company Supervision Manual*. Definitions for well-managed and well-capitalized, as well as additional information on compliance with FHC requirements, can be found at BS&R's FHC compliance website at: ***[Redacted: hyperlink to internal website to which FHC compliance requirements and letter templates are posted]***.

Without this authority, LISCC firms would not be able to engage in many of their core activities (such as underwriting securities) without specific approval from the Board.

Under section 4(m) of the BHC Act, an FHC that no longer meets FHC requirements must either cease engaging in Section 4(k) activities or enter into an agreement acceptable to the Federal Reserve that allows the FHC to continue engaging in its current Section 4(k) activities (*Section 4(m) Agreement*). The agreement restricts the firm from engaging in new Section 4(k) activities and from acquiring companies or businesses engaged in the firm's current Section 4(k) activities without prior Federal Reserve Board approval.[19] Section 4(m) Agreements do not typically restrict a firm from otherwise continuing to grow an existing business organically (e.g., through new originations, customer activity). Section 4(m) Agreements are generally not made public, because doing so would publicly disclose the ratings of the FHC or its depository institution subsidiaries. Section VII of this manual contains additional information on Section 4(m) Agreements.

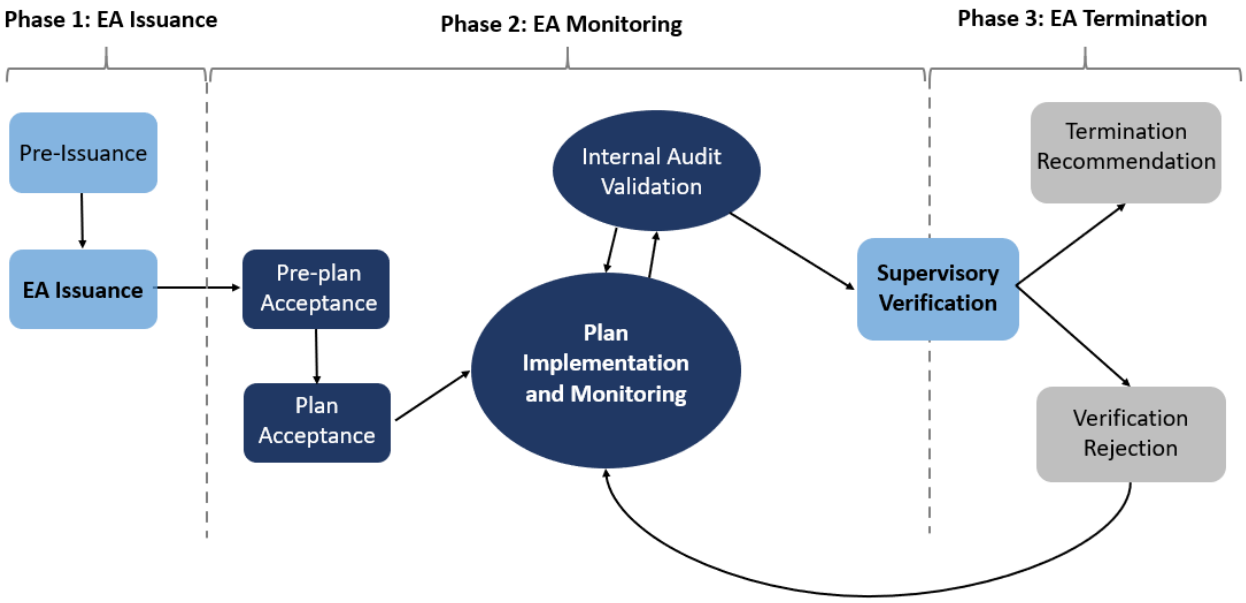
3 Bases for Action

The bases for EAs are generally either unsafe and unsound practices and/or violations of law. In addition to the description in Section I, for information on the bases for bringing EAs, see relevant statutory law and regulations referenced herein, the *Bank Holding Company Supervision Manual*, the *Commercial Bank Examination Manual*, and the *FFIEC BSA/AML Examination Manual.*

EAs may be related to actions brought by other government agencies, including the OCC and the Department of Justice.

[19] The Board may, on a case-by-case basis, provide limited exceptions to these prohibitions to allow firms to make small investments necessary to continue their business as usual.

4 Enforcement Action Lifecycle



Phase 1: Issuance - this phase includes the creation of an EA Issuance Working Group (as discussed below), development of the EA recommendation, vetting of this recommendation by the Responsible Program Steering Committee (as discussed below) and the LISCC Operating Committee (OC), decisions on the recommendation from the OC Chair, Director of S&R and the General Counsel, and final approval of the EA issuance by the Vice Chair for Supervision (or Board as applicable) to issue the EA, as well as tasks related to issuance such as publication on the Board's public website. (Details in section IV.)

Phase 2: EA Monitoring - this phase includes designation of the EA Oversight Committee and Primary Party, creation of the EA Monitoring Working Group, EA plan review and approval, remediation monitoring, approval of any necessary plan modifications or adjustments, sending annual and semiannual feedback to the firm. (Details in section V).

Phase 3: Termination – this phase includes supervisory verification of the EA remediation, including any associated supervisory events, supervisory review of Internal Audit's validation work (as needed), development of the recommendation for termination, vetting of the recommendation with the EA Oversight Committee (and OC if determined appropriate), decisions on the recommendation from the OC Chair, Director of S&R and the General Counsel, and final approval of the termination by the Vice Chair for Supervision (or the Board if applicable); and notification to the firm. (Details in section VI).

5 Issuance

The lifecycle of most LISCC EAs begins with specific supervisory concerns that arise through the examination and monitoring process and culminates in a rating downgrade that triggers the ratings presumption (discussed below). It is also possible that a LISCC EA could result from a specific violation of law or unsafe and practice that is identified during other events, such as an investigation performed by Board Legal. In general, a LISCC EA that relates to a supervisory concern identified during the examination and monitoring process by the Dedicated Supervisory Team (DST) or LISCC Program (and/or other LISCC stakeholders) requires the submission of a formal recommendation to the enforcement staff of Board Legal and a review by the Board's Vice Chair for Supervision. The process for preparing a LISCC EA recommendation is detailed below.

The procedures in this section apply primarily to formal enforcement actions and MOUs. The goal of these procedures is to promote consistency in the EA issuance process across the LISCC portfolio and the proper sequencing of required steps to issue an action. For procedures related to Section 4(m) Agreements, see Section VII below.

5.1 Ratings Presumption

Under the LFI Rating System, there is a strong presumption that firms with a "Deficient-1" rating in any of the LFI component ratings will be subject to either an informal or formal EA, and that firms with a "Deficient-2" rating in any of the LFI component ratings will be subject to a formal EA.[20] "Troubled condition" is not automatically triggered by a "Deficient-2" rating, but will be imposed if the firm is subject to a formal action for financial condition or the Federal Reserve otherwise imposes the status.

[20] SR 19-3 / CA 19-2: Large Financial Institution (LFI) Rating System. If a firm is rated Deficient-2 in any of the LFI component ratings, it may also be deemed to be in a "troubled condition," subjecting it to golden parachute restrictions, supervisory approval of directors and executives (under the Financial Institutions Reform Recovery, and Enforcement Act of 1989) "Troubled condition" is not automatically triggered by a "Deficient-2" rating, but will be imposed if the firm is subject to a formal action for financial condition or the Federal Reserve otherwise imposes the status. See 12 CFR 225.71

As designed, the presumption promotes consistency in the recommendation of enforcement actions, as weaknesses that do not rise to the level of warranting a Deficient-2 rating would not ordinarily support an enforcement action.[21] The strong presumption helps align ratings and EAs, improving the credibility and effectiveness of the Federal Reserve's supervisory assessments and actions. Under most circumstances, the LISCC OC Chair will recommend an EA consistent with the presumption to the Legal Division. In conducting its own analysis of whether to concur with the LISCC EA recommendation, Board Legal will conduct its own analysis as to whether the presumption should be rebutted in an individual case. Ultimately, the Board has the discretion to accept or reject staff's recommendation an enforcement action.

5.2 Recommendation

The LISCC program expects most EA issuance recommendations to be driven by ratings changes and therefore vetted as part of the Annual Assessment ratings (AAR) process, consistent with the presumptions in the LFI Rating System. To align with the AAR process, the DST is central to EAs that are vetted during that process.

In preparation for the AAR vettings, DSTs should work closely with other LISCC stakeholders (as discussed below) to prepare an EA recommendation whenever they are prepared to bring a recommendation for a supervisory rating that would result in an upgrade or downgrade from the current rating. The DST should consider whether there are any outstanding EAs involving the firm that should be terminated and replaced by the proposed EA, as this is often the most appropriate action. This does not mean that in all circumstances an existing EA must be terminated and replaced. The DST should have a prepared recommendation with supporting rationale to present during the vetting process even if the recommendation would be to maintain the current EA.

An EA may also be recommended outside of the AAR process based on adverse supervisory findings, violations of law or regulations, other identification of unsafe and unsound practices, or lack of progress in addressing current EAs. Whenever there are significant examination findings, supervisors should consider whether EAs, revisions to EAs, and ratings changes are appropriate. For midcycle rating change recommendations, the DST is expected to have prepared a recommendation with supporting rationale even if the recommendation would be to maintain the current EA. In addition, Board Legal may determine that an EA is warranted based on a legal investigation and make a recommendation to the Board. LISCC Integration staff will contact and coordinate with the appropriate DST and program stakeholders to provide a supervisory response to Board Legal's recommendation. Board Legal often also consults with the DST and other relevant program staff directly in such cases.

As soon as an appropriate LISCC stakeholder has concluded an EA may be warranted, the LISCC Integration team at the Board should be consulted about the basis for the action and the process. In general, it is

[21] Notwithstanding the rating, the presumption may be rebutted depending on facts and circumstances.

expected that DST leadership will initiate the process, in consultation with program stakeholders and LISCC Integration.

5.3 Preparation for Steering Committee and OC Issuance Vettings

The DST, relevant program teams, and LISCC Integration staff coordinate to develop the materials to vet the issuance of an EA with relevant SCs or the OC, as appropriate. As per internal Reserve Bank requirements, the DST may consult with its local legal staff and obtain any input or reviews as needed.

The first step in preparing an EA involves the gathering of supporting documentation and completion of the EA issuance matrix. The matrix is the primary document of record for vetting the content of the proposed action and providing the supervisory recommendation for the action.[22]

Staff proposing the action, in consultation with LISCC Integration and Board Legal, should also gather all relevant exam papers, communications to the firm, and other supervisory materials that support the proposed content of the action. These should, in general, be final examiner and EIC conclusion memos directly related to the proposal, letters communicating MRIAs and MRAs, AAR letters, and similar documents. These materials should be linked into the matrix per the template. LISCC Integration will ensure that the draft matrix (with supporting materials appropriately linked) are transmitted to the enforcement staff of Board Legal in as timely a manner as possible.

Staff proposing the action will also typically prepare a discussion presentation deck for vetting to accompany the matrix. Generally, the EA presentation deck (whether included in a ratings presentation deck or provided separately) should include the following information:

- Current firm ratings and primary drivers of any deficient ratings;
- Support for any downgrade to lower rating;
- A brief summary of the safety and soundness or regulatory rationale for placing the firm under an EA;
- Summary of exam and other supervisory findings upon which the proposed action is based;
- Expectations for the corrective actions the firm must take to address the action and anticipated timeframe;
- Any key aspects of the provisions and associated supervisory work as set out in the matrix;
- DST and program leadership group (PLG) recommendations;
- For BSA/AML and OFAC related EAs, the concurrence of the S&R Division BSA/AML Section;
- Summary of any similar actions other regulatory agencies have planned or issued.

[22] The issuance matrix template is in Appendix A to this manual and available at the Enforcement Action section of the LISCC Integration workspace on the LISCC SP site: ***[Redacted: hyperlink to internal website to which the issuance matrix template is posted]***.

When an action is being proposed in connection with a downgrade or continuation of a deficient rating, the EA proposal should be incorporated into, or appended to, the ratings presentation. Typically, the Annual Assessment presentation template for the cycle will include a space for EA proposals and/or updates.

5.3.1 Issuance Working Group

For each new EA (including replacement actions), once it is determined that a matrix should be drafted, a working group will be formed consisting of staff from the DST, relevant program area(s), LISCC Integration, and the enforcement section of Board Legal (*Issuance Working Group*). LISCC Integration will typically coordinate the overall process between LISCC, S&R, and Legal stakeholders. Prior to beginning, LISCC Integration will provide guidance on the vetting process and any special considerations, level of detail, or other direction needed for the issuance matrix.

Generally, DST staff will prepare the issuance matrix, in consultation with members of the Issuance Working Group and other relevant LISCC stakeholders. LISCC Integration will assist and support as needed through the drafting process. LISCC Integration will assist in coordinating discussions and views of the Issuance Working Group. If it is anticipated that a program group rather than the DST will be the *Primary Party*[23] responsible for the action through its lifetime, then that group should also have primary responsibility for preparing the issuance matrix, in consultation with the DST.

The Primary Party and LISCC Integration will be responsible for ensuring that the bases for the action are clearly indicated, supporting supervisory work is adequately documented, and supervisory expectations for expected corrective actions are sufficiently articulated and appropriate. The Issuance Working Group will also provide input on questions that may be relevant for review by senior management, Board Legal, or the Vice Chair for Supervision.

Once it is complete and the Issuance Working Group has commented, the Primary Party will submit the issuance matrix to the relevant DST Lead and Deputy for review (if the DST Lead or Deputy has not already reviewed) and relevant PLG leads, as appropriate. After incorporating feedback following this review, the

[23] The *Primary Party* is the LISCC stakeholder with primary responsibility for the Enforcement Action through its life cycle. In most cases this with be the Dedicated Supervisory Team (DST) for the specific firm. There are EAs for which it may be appropriate for another stakeholder to serve as Primary Party, such as a program PLG group (e.g., G&C Compliance). A non-DST Primary Party may be approved by both the DST Co-Chairs and Relevant Program SC Co-chairs. Generally, an appropriate case for a program PLG to be the Primary Party is for relatively narrow EAs that generally require exam work only within a single program area of expertise (e.g., compliance), particularly when the EAs have been issued to multiple firms. However, there may be other appropriate circumstances identified by the relevant co-Chairs.

Primary Party will submit the issuance proposal materials to the relevant Steering Committee Co-Chairs (or OC Chair, if the only vetting is at the OC) for their review.[24]

After review and incorporation of any comments from the SC Co-Chairs or OC Chair, the Primary Party will finalize the matrix, presentation deck, and any other supporting materials for the issuance proposal vetting, in consultation with the Issuance Working Group as necessary.

5.3.2 Program Steering Committee Vetting and Recommendation

The EA proposal will be vetted either through the Annual Assessment ratings process, with the appropriate Steering Committee and/or the OC, or through a separate vetting if the issuance is not attendant to a ratings determination. Relevant stakeholders from the Primary Party, programs, LISCC Integration and enforcement staff from Board Legal should be in attendance for non-executive sessions.

At least one week prior to the scheduled vetting or otherwise in accordance with program requirements, the Primary Party should submit to the vetting Steering Committee (or OC) the final matrix, presentation deck, and any additional relevant background materials (such as AAR letters or significant exam letters). LISCC Integration will forward these materials to the enforcement staff of Board Legal at the same time.

Following the non-executive vetting, the Steering Committee members will provide views to the Co-Chairs, who will determine whether to agree with the issuance recommendation. If the Co-Chairs agree, the decision will be documented in the vetting minutes, including a brief supporting rationale. If the Co-Chairs do not agree with the recommendation, they will provide explicit guidance regarding additional work or analysis needed to approve the recommendation or indicate that it would prefer to wait for some additional time to see if the problem persists before approving a recommendation. Once the team developing the action believes that these issues have been addressed, another request may be submitted to the Steering Committee (or escalated to the OC) for further consideration of the recommendation. If the initial vetting is at the OC rather than a Steering Committee, the same process will be followed with recommendations made to the OC Chair.

All EAs require OC Chair approval and typically, input from OC members. If the EA is proposed through an Annual Assessment vetting cycle, the Steering Committee Co-Chairs will present the EA recommendation to the OC during the ratings vetting. Otherwise, the OC Chair will determine whether a full OC vetting is appropriate or whether OC members should be consulted on the EA issuance proposal via email. For most formal EAs, it is expected that a full vetting will be requested.

[24] The OC Chair may determine that the issuance proposal should be vetted by the OC initially rather than an SC. This determination will be based on circumstances, including, but not limited to, cross-program enforcement actions. In that case, the OC Chair will be consulted on appropriate senior-level review (e.g., whether the S&R Deputy or Division Director should be briefed) prior to the OC vetting.

With input from the OC, the OC Chair will determine whether to proceed with the recommendation. If the OC Chair determines not to proceed, the steps discussed above regarding guidance back to the Primary Party will be followed. If the OC Chair approves the matrix, this will be the EA recommendation on behalf of S&R to Board Legal. The OC Chair's decision must be documented in the official LISCC OC record.

5.3.3 Recommendation to Board Legal

Upon deciding that a LISCC EA recommendation should proceed, the OC Chair will transmit (or request that LISCC Integration transmit) the matrix and all supporting materials to the Assistant General Counsel for Enforcement, which will serve as LISCC's EA recommendation to Board Legal.

Board Legal will review the LISCC recommendation and draft the EA. LISCC Integration will assist Board Legal in coordinating a review of the draft EA by the Primary Party, the Issuance Working Group and any other relevant LISCC stakeholders. The relevant SC and DST Co-Chairs and the OC Chair, and thereafter the S&R Deputy Director for Supervision,[25] will also be given opportunity to review and comment. Board Legal will also prepare a memorandum to the Vice Chair for Supervision (and potentially other Board members) regarding the EA recommendation. LISCC integration will assist Board Legal in drafting the memorandum.

The Board's General Counsel or their designee will review and approve the proposal (including the draft EA and Board staff memo) prior to submission to the Vice Chair for Supervision.

5.3.4 Final Approval

The Assistant General Counsel for Enforcement is responsible for transmitting the EA memo to the Vice Chair for Supervision and other Board members as appropriate. The Assistant General Counsel for Enforcement will coordinate with the OC Chair and LISCC Integration to the extent necessary to address any requests from the Vice Chair for Supervision and other Board members for briefings or further information. At any time, the Vice Chair for Supervision may determine that additional Board member consultation, including the Committee on Supervision and Regulation, is appropriate. The Vice Chair for Supervision will determine whether the proposed action should be presented for a full Board vote or proceed through staff delegated procedures.

Upon obtaining approval from the Vice Chair for Supervision, Board Legal in consultation with the DST will present the EA to the firm for review and execution. Any comments from the firm must be reviewed by the Board's Assistant General Counsel for Enforcement who will consult with the OC Chair and S&R senior management as appropriate.

[25] The Director of S&R may also review the draft action if determined appropriate by the OC Chair and Deputy Director for Supervision.

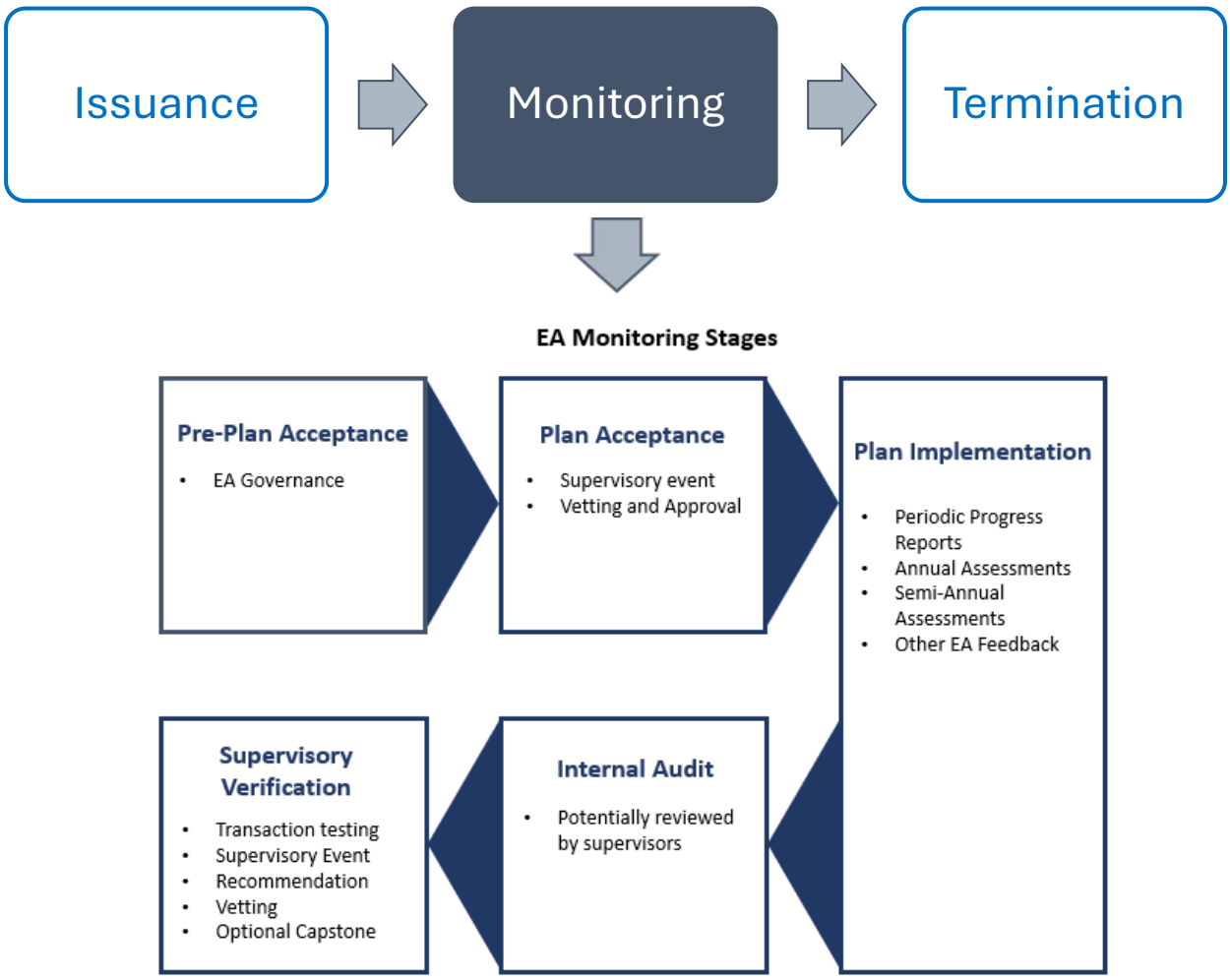
If the firm consents to the proposed action, Board Legal will arrange for final Board approval of the EA in coordination with the Office of the Secretary and will provide notice to the Vice Chair for Supervision. Board Legal will coordinate with LISCC Integration and Board Public Affairs regarding any EA where publication is required.

Final issuance-related materials, including the final matrix, staff memo, and EA should be posted to the appropriate LISCC repository per the *Reserve Bank Supervision and Regulation Recordkeeping Manual*[26] and relevant LISCC internal operating manuals.[27] In general, this will be BOND for the Board staff memos recommending the action or termination, the action itself, and related correspondence to and from the firm, as well as the scope memo and related correspondence for any EA-related exam. The other, final internal documents should generally be posted to ExamSpace. LISCC Integration will also post the final matrix and memo to its EA page on the LISCC SharePoint.

[26] The manual is accessed at: ***[Redacted: hyperlink to internal website to which the Reserve Bank Supervision and Regulation Recordkeeping Manual is posted]***. See p. 169 and after.

[27] See the LISCC Program Bond Requirements manual ***[Redacted: hyperlink to internal website to which the BOND Requirements document is posted]*** and the LISCC Issues Management Framework ***[Redacted: hyperlink to internal website to which the framework is posted]***.

6 Monitoring[28]



6.1 Scope and Purpose

Enforcement Action monitoring (EA monitoring) includes all supervisory activity related to an EA between its issuance and the supervisory recommendation to terminate an EA. Such activity includes baseline monitoring, supervisory exams for the purposes of verifying EA remediation, Remediation Verification Events (RVEs) and related supervisory activities. This is typically the longest stage of the EA lifecycle.

[28] Note: the expectations for LISCC supervisors for EA monitoring as articulated in this manual reflect a normal course of operations. There are times when exceptions or different actions should be taken, dependent on the circumstances. Alternative actions should be discussed with LISCC Integration, who will advise on how to obtain any necessary approvals (depending on the specific request).

EA monitoring activities serve various supervisory purposes, including:

- Observing and evaluating a firm's progress in addressing the provisions of the EA;
- Observing and evaluating any reduction of risk associated with addressing the EA provisions;
- Incorporating progress on EA remediation into other supervisory assessments (e.g. supervisory ratings);
- Developing a robust record for termination, escalation, or replacement of an EA.

Key elements of the EA monitoring record are discussed below and typically include:

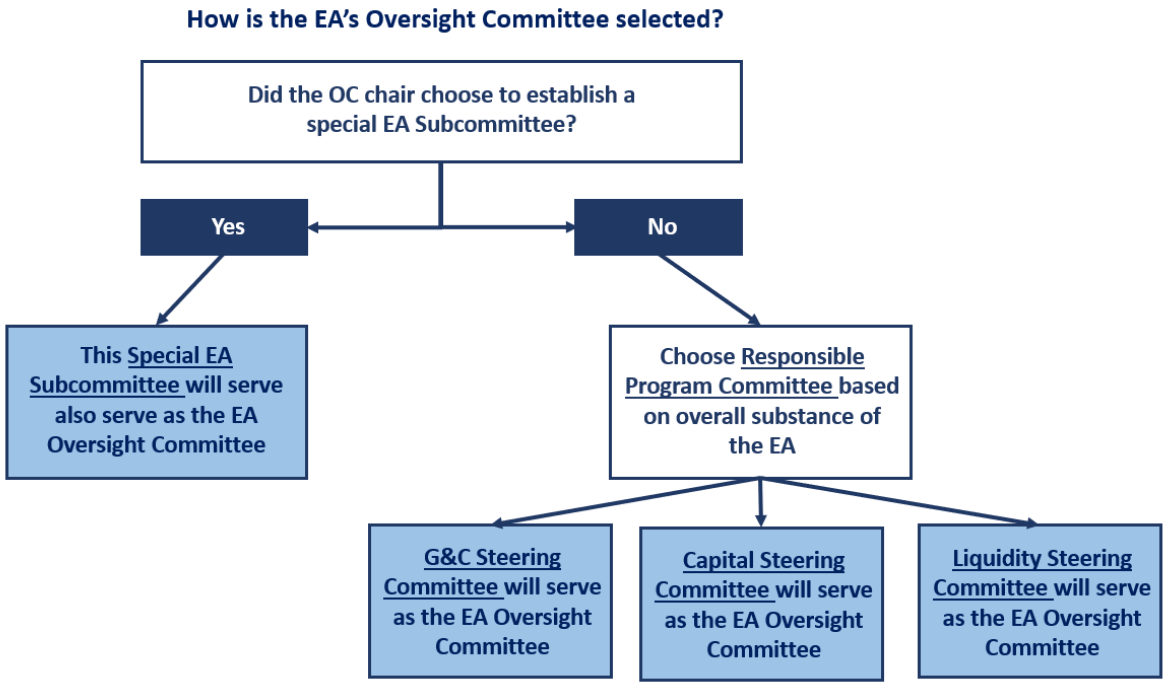
- EA plan review and acceptance;
- Progress reports submitted by firms subject to EAs;
- A section of the Annual Assessments letter assessing EA progress;
- Semiannual interim feedback to the supervised institution;
- Exam findings and feedback from EA-related exams;
- Corresponding C-SCAPE updates.

6.2 Post-Issuance/Pre-Plan Acceptance Periods

6.2.1 Governance Oversight Committees

Governance of EA monitoring activities will typically be determined during the pre-plan-acceptance period. EA monitoring activities are generally overseen by the *Responsible Program Steering Committee* (as discussed below). In some cases, a *Special EA Subcommittee* of the OC will be established (as discussed below). The Responsible Program Steering Committee or the Special EA Subcommittee is the *EA Oversight Committee* for purposes of this manual. The scope of, resources for, and vetting of EA monitoring period activities such as exams will be approved by the Chair or Co-Chairs of the EA Oversight Committee following vetting and consultation with the committee. The EA Oversight Committee will also typically vet the scope and results of EA-related exams and formal feedback to firms on EA progress. The OC also reviews annual feedback on the EA through the Annual Assessment process (as described below) and may be consulted at the discretion of the Chair or Co-Chairs of the EA Oversight Committee or OC Chair on any EA-related matter. In general, formal supervisory communications related to a significant LISCC EA should be reviewed by the enforcement staff of Board Legal prior to submission to the firm.

In general, the goal of EA monitoring governance is to avoid multiple LISCC committees formally overseeing EA monitoring activities in parallel. This should promote efficiency and consistency in approach to the monitoring activities associated with an EA. (See below for EA Oversight Committee selection process.)



6.2.2 Responsible Program Steering Committee

If there is no Special EA Subcommittee, the EA Oversight Committee will typically be the Responsible Program Steering Committee. The OC may also be the EA Oversight Committee in special circumstances.[29] The Responsible Program Steering Committee is the LISCC program Steering Committee that oversees the preponderance of the provisions of the EA. Because of the nature of the majority of EAs, in most cases this will be the G&C Steering Committee. When the Responsible Program Steering Committee acts as the EA Oversight Committee, it will oversee EA activities in accordance with its usual procedures, including vetting of exams and making recommendations to the OC, as appropriate.[30] LISCC Integration and the EA Monitoring Working Group (as described below) will be consulted as relevant by the Co-Chairs/PLGs of the Steering Committee on EA-related matters.

When acting as the EA Oversight Committee, the Responsible Program Steering Committee Co-Chairs will consult with any other relevant SC Co-Chairs on oversight of provisions under their purview. The Co-Chairs

[29] Such circumstances to date have been limited to instances where parallel enforcement actions have been issued against a group of similarly situated institutions. Examples of this include the parallel FX Consent Orders issued against multiple firms engaged in similar behavior or the mortgage foreclosure orders issued in the wake of the 2008 financial crisis.

[30] Program Manuals: Capital Operating Manual, G&C Operating Manual, Liquidity Operating Manual, MAP Operating Manual, RRP Operating Manual, Office of the OC Operating Manual. Located at: ***[Redacted: hyperlink to internal website to which the manuals are posted]***

involved in the consultation will agree on other LISCC program and Board staff participation in vettings and letter review depending on the nature of the provisions.

6.2.3 Special EA Subcommittees

Special EA Subcommittees are temporary subcommittees of the LISCC OC that are established for the purpose of overseeing monitoring activities for a specific EA, including plan acceptance, vetting of EA-related exam findings, and preparation for termination, replacement, or escalation. The LISCC OC Chair, in consultation with LISCC program Co-Chairs, determines if a Special OC Subcommittee is warranted for an EA during the issuance period. These committees include members of the OC and may include other members, as determined by the OC Chair in consultation with program Co-Chairs.

Considerations for whether a Special EA Subcommittee should be established include:

- Whether the EA is a formal, general safety and soundness EA (i.e., generally not a specific compliance EA such as for BSA/AML);
- The overall complexity of the EA and the remediation activities that will be necessary to address it;
- Whether multiple LISCC programs and Steering Committees would have purview over the action and to what extent.

If a Special EA Subcommittee is established, the OC Chair will appoint a Chair or Co-Chairs from the OC to head the subcommittee. The OC Chair and Special EA Subcommittee Co-Chairs will choose subcommittee members from LISCC program and Board leadership in consultation with the OC Chair. Special EA Subcommittee Co-Chairs should include at least one DST Co-Chair or SC Co-Chair in the subcommittee membership, as relevant. The responsibilities of a Special EA Subcommittee include:

- General oversight of EA monitoring activities;
- Vetting major EA decisions and recommending OC concurrence therewith, as appropriate (e.g., plan acceptance or rejection; EA termination recommendations);
- Vetting and approving other significant EA-related decisions, such as transformation and closure of MRAs/MRIAs that are covered by EA provisions, approvals of significant changes to remediation timelines, other material EA plan changes, EA exam results, and classifying provisions to “full compliance” in C-SCAPE (communicated to the firm as to whether any further work is needed);
- Support of DST and program staff in carrying out EA-related supervisory activities, including:
    - Working with program leadership to ensure adequate resourcing;
    - Ensuring appropriate stakeholder input into decisions;
    - Ensuring adequacy of updates to the OC, LISCC etc. in between Annual Assessments;
    - Providing advice, etc.

The membership and scope of responsibilities of the Special EA Subcommittee will be memorialized in a charter document (which can take the form of a memo) establishing the committee. In addition, the

charter should specify the procedure to be used for the committee's oversight of EA supervision events (exams, etc.) and related supervisory activities. The procedure may follow that of a program Steering Committee or take another (potentially simplified) form, as determined by the Co-Chairs of the Special EA Subcommittee, and approved by the OC Chair.

Special EA Subcommittee charter documents will be posted to the LISCC Integration SharePoint site in an appropriately designated folder and will also be posted to the appropriate SharePoint where charters of the OC and subdivisions thereof are posted.

6.3 Staff Responsibilities

6.3.1 Primary Party

During the EA monitoring period, the Primary Party leads, in cooperation with other stakeholders (including the Monitoring Working Group (described below) and relevant subject matter experts), the organization and planning of post-issuance monitoring activities. This work includes developing the parts of the annual supervisory plan that will cover supervisory review of EA implementation (both monitoring and exam verification activities).

6.3.2 Working Group and Other Stakeholders

A Monitoring Working Group should be established shortly after issuance of the EA. The *Monitoring Working Group* should consist of the same type of stakeholders as the Issuance Working Group (see section IV above), although working group composition may be changed during the monitoring period to reflect differences in responsibilities, staff departures or reassignments, etc. For example, a DST Lead may be part of the Issuance Working Group but may prefer to assign someone else from the DST to be part of the Monitoring Working Group instead. In general, the working group should remain relatively small in membership, but bring in other stakeholders for discussions and review of documents as appropriate.

The Monitoring Working Group supports EA monitoring and the Primary Party as follows:

- Assisting with development of EA-related supervisory plans, as relevant to the stakeholder's program duties;
- Assisting in coordinating on exam and monitoring work as relevant to the stakeholder's duties, including identifying and helping secure resource needs;
- Socializing, developing, and confirming views within respective stakeholders' management chains as EA issues arise during the monitoring period (e.g., Legal member will consult with Legal management, LISCC Integration with Board LISCC management);
- Contributing to EA monitoring documentation as relevant to one's responsibilities, including input to memos, letters, or other supervisory communications;

    - All working group members should read, receive, and review the draft semiannual update to the firm and the EA portion of the Annual Assessment letter and ask any relevant questions or provide any comments in a timely manner;
- Providing advice and viewpoints to the Primary Party when developing recommendations to the Relevant Program Steering Committee, Special EA Subcommittee and/or Relevant Program Steering Committee Co-Chairs, materials for the LISCC and/or members of the Board Governors, etc.;
- Discussing issues, disagreements, etc. and providing input for escalation of those issues to the Responsible Program Steering Committee, Special EA subcommittee or Co-Chairs thereof, as appropriate;
- Other work to facilitate or carry out EA monitoring as needed

Other stakeholders may include LISCC program, Legal, or other Federal Reserve staff with a responsibility relevant to the EA, often working within the management chain of a Monitoring Working Group member. These stakeholders will be involved with or consulted on EA monitoring activities as relevant.

6.4 EA Plan Review and Acceptance

6.4.1 Purpose

The general goal of an EA plan review is to determine whether the firm has:

- Addressed any specific requirements for the remediation plan (or plans) articulated in and required by the EA;
- Provided a reasonable plan for addressing the requirements of the EA (e.g., a reasonably clear understanding and articulation of the goals of remediation, steps needed to accomplish the remediation, responsible parties, an appropriate timeline for completion, and firm Internal Audit validation of remediation efforts);
- Appropriately considered underlying root causes of the deficiencies leading to the EA, how these should be addressed through the plan, and how remediation will be sustained over time and changing circumstances;
- Appropriately considered governance and escalation of issues that may arise as the plan is being implemented.

The firm should also clearly explain in its EA remediation plan how any MRIA/MRA remediation plans relevant to remediating EA provisions are incorporated into the EA remediation plan and any modifications thereto.

In addition to the above considerations, depending on the nature and reason for the EA, there may be other considerations that are also relevant to the acceptability of the plan that should be specifically considered in the plan review.

In general, while modification of the plan over the life of an EA is a common occurrence as circumstances change (as discussed below), the initial accepted plan should be sufficient to provide a reasonable road map to remediation that is sufficient for termination. The plan is the "meeting of the minds" between the firm and supervisors on how the firm will get to EA termination and the primary reference point (including through modifications) for both the firm and supervisors after the EA is issued.

6.4.2 Plan Review (Supervisory Event)

Plan reviews generally require a supervisory event. In most cases, an exam event is the best-suited event for a plan review. *Remediation Verification Events (RVEs)*[31] may be used for narrow EAs or where remediation has been substantially completed by the time of the issuance of the EA. This is a rare occurrence, but may happen, for example, when an EA is issued after the underlying reasons for the EA were discovered by the firm or supervisors prior to a legal investigation. In most cases, the necessary remediation will not have started or be materially complete when an EA is issued.[32] The Primary Party may propose an RVE for a plan review under appropriate circumstances to the relevant EA Oversight Committee Co-Chairs. A number of factors will be considered in this decision, including:

- The type of EA;
- Scope and complexity of the EA provisions;
- Any already-submitted acceptable remediation plans covering EA provisions;
- The sources and length of time required to appropriately review the EA plan.

Following completion of the plan review, the Primary Party will develop a recommendation on whether to accept the initial plan with supervisors assigned to the review. The Primary Party should also seek input from members of the Monitoring Working Group who did not participate in the review. The recommendation (with any divergent views) will be presented to the Co-Chairs of the EA Oversight Committee. The EA Oversight Committee Co-Chairs will provide initial feedback and determine whether a full vetting is warranted depending on the EA and the degree to which the material items in the plan have been previously reviewed and found acceptable. (e.g., through MRA remediation plans.) Depending on the type and complexity of the EA, the EA Oversight Committee Co-Chairs will also consult with the OC Chair on whether OC concurrence or other input is necessary with respect to outcome of the vetting.

In general, an acceptable plan is what the firm must sustainably implement to address the EA provisions in order for the Federal Reserve to consider termination of the EA. While the plan does not have to specify every task necessary to address the provisions, it should provide a clear, comprehensive road map to

[31] Per the Issues Management Framework.

[32] Firms may claim to have completed remediation of the relevant issues prior to the issuance of an EA. In most cases, the state of the remediation is partial or insufficiently rigorous to address the EA provisions.

termination, demonstrating how the firm will address the EA's requirements, any significant underlying issues that led to the EA, and promote sustainability of the EA remediation after completion.

6.4.3 Plan Submission Extensions

The discretion to grant a deadline extension request rests with the S&R Director, who may, in appropriate circumstances, delegate that decision to be made by the Primary Party (acting on behalf of the relevant Reserve Bank and the LISCC program) with the concurrence of the EA Oversight Committee Co-Chairs. If the extension is material, the Monitoring Working Group should be informed and provide views. Considerations for granting an extension may include:

- Length of time since issuance;
- Complexity of the EA;
- State of the firm's remediation prior to issuance;
- Number of previous extensions;
- Management or directors' (as relevant) apparent effort to meet submission deadlines; and
- Any unintended consequences of an extension should all be considered before any extension approval.

If the extension is approved, the C-SCAPE issue owners must note the approved extension in C-SCAPE and adjust all monitoring timelines accordingly. The DST (if not the Primary Party) should check that this occurs in a timely manner and remind primary owners if necessary.

6.5 Plan Implementation Period

6.5.1 Plan Modifications

A firm may seek to modify its plan from time to time after the initial plan is accepted due to changes in management, circumstances, or better understanding of the remediation necessary to address the EA. In addition, the Federal Reserve may require the firm to modify the EA plan in order to address subsequent exam findings directly related to and covered by the EA provisions. Plan change requirements cannot exceed the scope of the EA.

Typically, the EAs require the approval of the S&R Director prior to amending or rescinding of approved plans or programs. The Primary Party is authorized by S&R Director approve technical and other plan modification requests from the firm that do not represent material, substantive changes in the nature and

scope of the already accepted EA plan. For non-material changes, the Primary Party should respond to the firm with an email acknowledgement which is stored in the appropriate EA ExamSpace folder.[33]

For material, substantive requests from the firm for plan modifications, the Primary Party will consult with the Monitoring Working Group (and other stakeholders, if relevant) on whether to recommend acceptance of the changes or some portion thereof. The Primary Party will develop a recommendation of acceptance or rejection of some or all the changes for the EA Oversight Committee Co-Chairs who are authorized by the S&R Director to approve plan modifications. The Co-Chairs will determine whether the entire oversight committee should be consulted and a vetting required. The recommendation must be approved, modified, or rejected through documented request and response (via email or through documents posted to ExamSpace).

Plan modifications that are required by the Federal Reserve will typically be vetted and approved by the EA Oversight Committee Co-Chairs (or via full committee vetting, if appropriate) through usual vetting processes. If required modifications are approved, the Primary Party will inform the firm via formal notification through a supervisory letter or similar communication which is stored in BOND and ExamSpace in accordance with supervisory record retention policies. Any formal supervisory communication regarding a plan modification should be reviewed by the enforcement staff of Board Legal, which may be coordinated through the Legal representative to the Monitoring Working Group.

6.5.2 Periodic Progress Reports

Most EAs require periodic progress reports from the firm. Periodic progress reports help the Federal Reserve monitor the firm's remediation efforts and identify areas where additional supervisory attention may be necessary.

Post EA issuance but prior to plan acceptance, the Primary Party should inform the firm generally of what type of content is expected for progress reports. This may be conveyed informally but should be documented in the formal Federal Reserve monitoring record (ExamSpace). After plan acceptance, the required information should align with plan milestones and content and contain other important information about firm progress (including interim controls, etc.). Where appropriate, internal firm MIS that examiners have determined provides sufficient information on remediation progress may constitute elements of the progress report. Prior to plan acceptance, the report may discuss development of the plan as well as any relevant remediation underway.

The following elements should be considered for progress report content requests during the plan implementation phase:

[33] See the ExamSpace training materials for further information ***[Redacted: hyperlink to internal website to which the ExamSpace training materials are posted]***.

- Remediation project plan summaries, including description of milestones and accountable management;
- Progress on major plan milestones (Red-Amber-Green (RAG) status or other measurement tool) with explanation of how management measures the progress;
- Discussion of risk reduction, business changes, etc. as related to implementation of the plan and the firm's efforts to address the EA overall;
- Discussion of ongoing efficacy of milestones implemented including any new compliance issues involving areas that are generally covered by the EA provisions;
- Discussion of preparation for implementing remaining milestones;
- Discussion of any delays, setbacks, other challenges to implementation of the plan and how the firm intends to address them, including any modifications to the plan;
- If relevant, root causes of remediation delays or failures should be discussed, as well as the firm's intent to address them;
- Internal Audit validation and/or findings with respect to any milestone or other major aspect of plan implementation, as relevant;
- Updates on any MRIAs/MRAs that are not transformed (see below) but the remediation of which pertains to some portion of remediation of an EA provision in the submitted progress reports until those issues are fully remediated and closed.

Supervisors should be wary of "compliance exercise" progress reports that do not provide a holistic, substantive view of the firm's progress in addressing the EA. When this occurs, the Primary Party should consider a message to the firm requesting modification of the next report with feedback on past report shortcomings. Additionally, the Primary Party should follow up with firm management on past-due progress reports. Late submissions of firm progress reports may be approved on a case-by-case basis by the Primary Party, who is authorized by the Director of S&R to grant extensions of time for submissions. If a firm fails to submit progress reports in a timely manner in more than one quarter within an annual cycle, the Primary Party should consult with the EA Oversight Committee Co-Chairs on appropriate messaging to the firm. Approval of extensions to progress report submission deadlines may be sent via email and posted to the appropriate EA ExamSpace grouping as well as noted in C-SCAPE.

Typically, EA progress reports will be required quarterly in the EA, but semiannual reports may be more appropriate where the EA remediation projects have long periods between milestones or the firm is nearing the end of (apparent) successful remediation, or as other circumstances warrant. The Primary Party may consider recommending a suspension or termination the progress report where the firm has completed remediation, firm Internal Audit has validated the remediation, and the remediation is awaiting supervisory verification. The Primary Party should discuss recommendations for significant modifications in the content of progress report requirements and any periodicity changes with the Monitoring Working Group. For reductions in periodicity or termination of the report requirement (typically, in cases where final supervisory verification has occurred), the Primary Party must obtain the concurrence of the EA Oversight Committee Co-Chairs and the enforcement staff of Board Legal. The suspension or termination

must be approved by the Director of S&R and/or the General Counsel (as the EA may require) or their delegees. The Primary Party may recommend resumption of progress reporting to begin again if verification examiners determine that remediation is not satisfactory, or if circumstances otherwise support such a recommendation. The process outlined for termination and suspension above should be used for resumption of progress report requirements.

The Primary Party should also consider whether more frequent reports are warranted where remediation progress is not satisfactory.

A formal written Federal Reserve response to each progress report is not required. However, the information presented in the progress reports should be acknowledged and assessed in the annual EA assessment and discussed as appropriate in any semiannual interim feedback (see below). Summary versions of these assessments should also be included in C-SCAPE updates, along with links to supporting documentation.

As appropriate, depending on where the firm is in remediation, progress reports should be supplemented with update meetings between the Primary Party and relevant supervisory stakeholders with firm management and/or the board of directors. Appropriate meeting frequency would depend on firm progress, severity of the underlying issues, complexity of the remediation, and other factors, but generally should be no less than quarterly.

6.5.3 Repositories

Documents from program monitoring activities that provide information about EA progress (e.g., baseline monitoring reports) should be included in the EA grouping in ExamSpace or otherwise clearly linked through a monitoring document in the grouping Exams used during the EA verification process should have their own ExamSpace event where documents will be posted and will link to the provisions in C-SCAPE.

ExamSpace (for both monitoring and individual groupings for RVEs and exams), and BOND for official correspondence, final recommendation memos and certain exam materials,[34] are the primary depositories for EA-related documents. An EA grouping on ExamSpace (the *ExamSpace Monitoring Team Site*) should be established for each of the firm's EAs for everything other than EA-related exam events.[35] These are the only official "golden sources" for EA decisions. Documents may exist elsewhere, but these two depositories are the repositories of record for termination decisions.

[34] See the LISCC Program BOND Requirements manual.

[35] The name of the grouping should follow the naming convention delineated in the ExamSpace Grouping Guidance; include link to the guidance. In the EA monitoring folder, there should be a document that sets links to relevant EA-related exams that have their own event in ExamSpace. See the ExamSpace Grouping Guidance.

All EA-related records, whether submitted by the firm or the Federal Reserve, are confidential supervisory information unless released to the public (such as a Consent Order) and must be labeled Restricted FR. All members of a Monitoring Working Group will have edit level access to the ExamSpace and C-SCAPE events relevant to the EA (generally BOND access should already exist).

6.6 C-SCAPE – Post Issuance Provision Management

6.6.1 Assignment of Ownership

C-SCAPE assignment of ownership for purposes of updates, etc. should continue per the Issues Management Framework.[36] Under the framework, the Primary Issue Owner is a LISCC Program member with subject matter expertise responsible for actively monitoring the provision after it is entered into C-SCAPE and for maintaining the accuracy and completeness of the C-SCAPE record throughout its life cycle, including compliance with system and LISCC standards.[37] There may also be a Secondary Issue Owner per the Issues Management Framework who is in the same reporting line as the Primary Issue Owner and has specific responsibilities for EA provisions in CSCAPE.[38] The Primary and Secondary Issue Owners (if not the Primary Party) is accountable to the EA Primary Party and the relevant LISCC Program for ensuring timely and accurate updates on EA provisions. The Primary Party should check that updates occur on a timely basis and meet program requirements if the Primary Party is not the Primary Issue Owner. Annual assessment and semiannual feedback (discussed below) may be the primary sources for C-SCAPE updates, as appropriate.

6.6.2 Provision Entry

Substantive provisions of the EA (i.e., not paragraphs containing contacts, progress report requirements, etc.) should be entered into C-SCAPE at the provision level and not at the sub-provision level. Exam and other supervisory work during the monitoring period may cover subsets of provisions. However, it is the intention of this manual that the ongoing requirement to update on C-SCAPE be set at the provision (i.e., paragraph) level. Questions about appropriate provision entry should be directed to LISCC Integration.

6.6.3 MRIA/MRA Transformation and Closure

As a principle, the number of outstanding supervisory issues that materially overlap should be minimized. This provides for a clearer and more coherent record over time. It also promotes administrative efficiency

[36] See Issues Management Framework

[37] Id., p. 14

[38] Id. p. 15

by reducing tracking and update burdens as well as multiple, possibly conflicting timelines and expectations.

Therefore, in general, MRAs and MRIAs that are covered in material part by an EA provision should be "transformed" (per C-SCAPE) and closed. Within a reasonable time following the issuance of an EA or while a fully drafted EA is pending final approvals, the Primary Party, with the assistance of the Issuance Working Group and other stakeholders, will create a recommendation for which MRIAs/MRAs related to the EA provisions should and should not be transformed and closed. In general, any MRIA/MRA that is fully covered by an EA provision or sub-provision should be recommended for transformation and closure. Partially covered MRIAs and MRAs should be considered for a combination of transformation and reissuance, with the reissued MRIA or MRA covering only the part of the original issue that is not covered by the EA provision.

Exceptions to transformation and closure (or closure with reissuance) may be considered based on circumstances, such as:

- The firm has completed its remediation (including Internal Audit validation) and supervisory verification has been planned for the near future;
- The MRIA/MRA is already undergoing verification or has been verified and all that remains is supervisory vetting;
- Special circumstances around the MRIA/MRA and the firm's ongoing remediation warrant retaining it as a separate issue from the EA provision;
- The MRIA/MRA is a discrete issue that only addresses a portion of the EA provision (and no full sub-provision) and the firm already has submitted and begun implementing acceptable remediation plans (this basis for exception should be used sparingly).

Recommendations for transformation and closure must be approved by the Co-Chairs of the EA Oversight Committee.[39] Once transformation and closure of MRIAs and MRAs is approved, the Primary Party should work with C-SCAPE issue owners to ensure that the relevant actions are taken in C-SCAPE and that historical documents related to transformed MRIAs/MRAS are clearly linked in C-SCAPE history. The Primary Party should draft a letter to the firm informing it of the closed MRIAs/MRAs (which have been transformed into EAs) and a summary assessment of remediation progress on those issues that is relevant to the EA provisions should be provided (if any progress has occurred). The letter should be posted to the appropriate EA grouping in ExamSpace Monitoring and BOND.

[39] The EA Oversight Committee Co-Chairs will determine whether committee vetting of the transformation and closure recommendations is appropriate.

6.6.4 Regular C-SCAPE Updates [40]

LISCC supervisors should continue to follow C-SCAPE requirements per the Issues Management Framework, except where such requirements directly conflict with this manual.[41] Issue Owners should continue to provide regular updates every 90 days unless C-SCAPE requirements are modified. Where the C-SCAPE Primary Issue owner is not the same as the Primary Party, the Primary Issue Owner should consult with the Primary Party to confirm it has all relevant information needed to make the update.

In general, the primary source material for regular C-SCAPE updates are:

- The last EA section in the Annual Assessment letter and/or the semiannual EA assessment letter;
- Exam memos and feedback letters, other supervisory products as relevant;
- Firm progress reports and other firm MIS as relevant.

Sources posted to ExamSpace and used for each update should be linked into the update. Updates should be provided at the provision level per initial entry until the verification is completed and the provision is placed in "Full Compliance" per the Issuance Management Framework. Firm progress reports and firm responses to semiannual EA feedback letter must be posted to the appropriate EA grouping in the ExamSpace Monitoring Team Site as per AD Letter 18-9. The semiannual interim feedback letter must be posted to the appropriate EA grouping in the ExamSpace Monitoring Team Site and to BOND as per AD Letter 18-9.

6.6.5 Other Updates

If a firm's request to extend a plan-related deadline is approved, the Primary Issue Owner must note this in the C-SCAPE record and adjust related timelines accordingly. The EA Primary Party is responsible for notifying the Primary Issue Owner of such extensions if the Primary Issue Owner is another stakeholder.

If supervisors conclude in accordance with LISCC practice per this manual and other relevant LISCC operating manuals that the firm has fully addressed any specific provision, the exam feedback letter should inform the firm that "no further work is expected" on the specific provision at that time. In that case, supervisors may mark the firm in "full compliance" with the provision in C-SCAPE for internal purposes only. A status of "full compliance" for individual provisions should not be communicated to the firm until the entire EA has been determined to be in full compliance. Until the provision can be placed in "Full Compliance", the status should be maintained in C-SCAPE as "In progress". The other C-SCAPE provision status categories should no longer be utilized (i.e., partial compliance, noncompliance).

[40] All posting and C-SCAPE requirements will be updated upon the completion and implementation of "The New Tech Platform" and one depository solution will be sought.

[41] If there are any questions or concerns about such conflict, contact LISCC Integration for resolution.

6.7 Federal Reserve Feedback on EA Remediation Progress

6.7.1 Annual Assessment of EA Progress

An assessment of EA progress for all outstanding EAs must be included in each year's Annual Assessment to the firm. This *EA progress assessment* should be prepared by the Primary Party in consultation with the Monitoring Working Group and other relevant supervisory stakeholders. Where there are multiple EAs, an assessment should be provided for each. The EA progress assessment should include, among other relevant elements:

- A summary and supervisory assessment of firm progress on the EA, based on firm progress reports, meetings, exam findings, monitoring activities, other exams that have relevance, or other firm developments;
- A summary of EA-related exam findings for the year and messages delivered, if any;
- Supervisory expectations for firm progress on the EA for the following year and reiteration of any needed messages where progress is not satisfactory or at risk of not being satisfactory.

A summary version of this assessment should be presented during the Annual Assessment ratings vetting meetings to the EA Oversight Committee and any other relevant LISCC program committee (e.g., as part of the relevant slide deck), in coordination with appropriate review by program and local management (including DST Co-Chairs). The state of EAs as a whole in the portfolio will also be presented to LISCC, typically by LISCC Integration.

Once approved and/or modified by the EA Oversight Committee and the DST Co-Chairs, the EA progress assessment should be converted into feedback to the firm in a section or appendix of the Annual Assessment letter (to be determined by the DST Co-Chairs for each cycle). The feedback should include the elements discussed above as well as any other elements that informed the assessment. Thereafter the EA progress assessment section of the Annual Assessment letter will proceed through an Enforcement Action letter oversight group in coordination with the usual Annual Assessment letter oversight process.

The EA progress assessment will be modified each half year through the semiannual interim feedback process discussed below.

6.7.2 Semiannual Feedback on EA Progress

Approximately at the mid-point between Annual Assessments, the Primary Party (in consultation with the Monitoring Working Group and any other relevant stakeholders) will update the last EA progress assessment as relevant with any developments that occurred during that half-year period and develop a semiannual feedback message to the firm. The semiannual EA progress assessment and proposed feedback to the firm will be vetted through the EA Oversight Committee per its usual procedures with appropriate

review by program and local management (including DST Co-Chairs). Thereafter the EA progress assessment letter will proceed through an Enforcement Action letter oversight group and additional program leadership reviews as appropriate.. If new developments are limited, the feedback letter may primarily summarize the prior feedback and acknowledge progress reports received. This situation may occur, for example, if the firm is in the middle of implementing long-term remediation projects and no examinations have been executed. However, if there are any concerns about firm progress, including from Internal Audit reviews, the Primary Party should recommend additional supervisory messages as appropriate to be delivered in a timely manner.

In most cases, the Primary Party (with appropriate stakeholders) should schedule a meeting with the firm to discuss the semiannual letter and firm progress on its EA(s) or incorporate the discussion into another regularly scheduled meeting within a reasonable time after the semiannual letter is sent.

A semiannual feedback letter is not required if the firm has completed all EA remediation and it is pending Internal Audit validation and/or supervisory verification, or the EA is in the termination recommendation phase.

6.7.3 Other EA Feedback to the Firm

Where remediation progress is significantly delayed due to apparent management failures, there are significant negative EA-related examination findings, or any other information emerges that calls into question the state of firm progress on remediating the EA, the Primary Party should draft an interim letter expressing supervisory concern. Interim feedback letters should follow the same vetting and approval process as semiannual feedback letters through the EA Oversight Committee.

Other feedback to the firm throughout the year may, as relevant, be provided through exam and RVE supervisory feedback letters, regular monitoring meetings, or ad hoc written communications. All written feedback on EA progress (including emails) should be posted to the relevant ExamSpace folder depending if it is an exam, RVE, or monitoring, as well as BOND, per LISCC program guidance. All significant oral feedback should be memorialized in email (if shared with other stakeholders) or memo form and posted to the relevant ExamSpace folder. The Primary Party will typically be responsible for posting the required documents to the appropriate repositories.

EA related exam results must be vetted through the EA Oversight Committee unless (if the EA Oversight Committee is not a program Steering Committee) the Co-Chairs of the EA Oversight Committee direct that results should be vetted through the Relevant Program Steering Committee. Examiners should follow program Steering Committee requirements in preparing materials for vetting. If the EA Oversight Committee is not a program Steering Committee, examiners should generally follow G&C requirements for preparing vetting materials unless otherwise directed by the Co-Chairs of the EA Oversight Committee.

6.8 Verification Period

6.8.1 Internal Audit Validation

Supervisory verification activities should generally take place after the firm's Internal Audit (Internal Audit) validates EA remediation. Supervisors can leverage and consider Internal Audit's work papers and findings during verification, where warranted. In most cases, independent supervisory work will be needed to fully verify remediation.

In consultation with the Monitoring Working Group, the Primary Party may recommend to the EA Oversight Committee Co-Chairs that supervisory verification of a remediation item should not wait to follow Internal Audit validation. Circumstances that could warrant verification not following Internal Audit validation include:

- The EA provision pertains to Internal Audit itself;
- The Internal Audit function is ineffective to the degree that its review of the EA remediation would not be useful to supervisors;
- Waiting for Internal Audit validation is impractical or would unduly delay a termination recommendation;
- Verification of the EA requirement may be accomplished through monitoring activities (see below), where the EA remediation in question is simple and does not need examiner testing for verification.

The recommendation for not following Internal Audit validation must have a solid, documented rationale, with a copy to the appropriate ExamSpace EA grouping. The EA Oversight Committee Co-Chairs may approve the recommendation with or without a full committee vetting.

6.8.2 EA Verification Activities

Generally, assessment of EA remediation requires some form of transaction testing and therefore must be a discrete supervisory event. The choice of whether to carry out the assessment of the remediation as an exam or RVE depends on the scope and complexity of the remediation being assessed. The resource and timing considerations laid out in the Issues Management Framework should also be taken into consideration. Exams will be appropriate for verification of most provisions, including sub-provisions thereof. However, whether an item is a provision or sub-provision is not the determining factor because EAs may be drafted differently.

Considerations for whether RVE may be appropriate as a verification activity include:

- The nature of the EA provision and whether significant transaction testing is needed;
- The severity of the issue related to the remediation to be verified;

- The complexity of the provision or sub-provision and related remediation to be reviewed;
- Interdependencies between the remediation work to be verified and other remediation work for the EA (or related supervisory issues);
- The firm's track record on remediation.

No matter the type of event, an entry letter or pre-event informational request and supervisory feedback letter to the firm will generally be necessary to make it clear that an aspect of an EA is being assessed. The exception would be an assessment of a narrow, simple EA requirement that may be carried out through monitoring and does not require transaction testing or significant contact with the firm (beyond submission of relevant documents). Examples include: establishment or changing of firm committees and modest changes to written policies (excluding assessment of implementation of changed policies).

For any EA verification supervisory event, the Primary Party, in consultation with relevant supervisory stakeholders, should design the recommended scope, which will be vetted per the normal practices of the EA Oversight Committee.

Following the verification event, the Primary Party, in consultation with the Monitoring Working Group and other stakeholders (where relevant), should develop a recommendation for the EA Oversight Committee as to whether the remediation is sufficient to meet the relevant EA requirement. The recommendation will be vetted through the normal practices of the EA Oversight Committee.

A determination by the EA Oversight Committee Co-Chairs that remediation is verified should be reflected in C-SCAPE either through a notation of "full compliance" if verification has been achieved for a full provision or as part of the provision. In the feedback letter to the firm, supervisors should state that no further work with respect to the verified requirement is expected. The letter should not state that the firm has achieved compliance until the entire EA is terminated.

Additional issues observed through EA verification supervisory activities that would normally warrant an MRA/MRIA, but which are already covered by an EA provision, should generally be addressed through plan modification (see above). New MRIAs/MRAs should be issued if the EA provisions do not cover the issue.

The feedback letter to the firm must be posted to the appropriate EA grouping in the ExamSpace Monitoring and BOND. Assessment of interim controls required by the EA should also generally adhere to these expectations for assessment activity.

6.9 Capstone Exams

A *capstone exam* is a final verification exam that typically includes a review of remediation work previously examined. When used, it is typically the last stage of examination prior to a termination recommendation (or decision not to make such a recommendation because overall remediation is insufficient). Capstone exams are not required to terminate an EA but are a tool that may be useful in ensuring a complete and

defensible record, particularly for more complex and longer-dated EAs. Considerations for whether to do a capstone exam include:

- Complexity of the EA's provisions and dependencies of different remediation workstreams on each other, as well as differences in timing in completion of those workstreams;
- Amount of the EA previously verified;
- Length of time passed since verification of previous EA remediation;
- Passage of more than three years since previous significant remediation was verified, particularly for more complex EAs, should prompt consideration of a capstone;
- Completeness and quality of the EA record;
- Exam work already completed by other regulators when the EA is jointly issued.

When exam verification of the last unaddressed provision(s) of an EA is contemplated, if the above or similar considerations raise a question as to whether a capstone exam is warranted, the Primary Party should consult with the Monitoring Working Group and other stakeholders. Thereafter, the Primary Party should make a recommendation (either for or against) conducting a capstone exam to the EA Oversight Committee Co-Chairs. The Co-Chairs will determine whether to accept the recommendation and provide that decision and other relevant feedback on the capstone to the Primary Party (including whether broader discussion with the EA Oversight Committee is warranted).

7 Terminations

7.1 Overview

An EA may be terminated at any time during the supervisory cycle based on remediation satisfactory to the LISCC program, which generally should be demonstrated through Internal Audit validation (unless, per discussion in the Monitoring section above, there is justification for not waiting for or relying on Internal Audit validation) and supervisory verification.[42] In most cases, the Primary Party should develop the recommendation to terminate an EA based on the totality of the supervisory record, including the firm's rating. Often a termination recommendation is appropriate when the firm has substantially addressed all provisions of the action and there is a reasonable degree of confidence that similar problems will not reoccur on a significant scale. In those cases, discreet aspects of the EA that are not fully addressed may be reissued as MRAs.

In circumstances where the firm has addressed some provisions, but significant deficiencies remain outstanding or have been newly identified, or circumstances have significantly changed, staff may recommend that the EA be terminated and replaced with a superseding action (see below).

The vetting process for terminating a LISCC EA is similar to the process for imposing an action as described above, except that if the EA Oversight Committee is a Special EA Subcommittee, primary vetting will be done through the EA Oversight Committee. The S&R Director and the Board's General Counsel (or their delegees) will provide final approval for termination of an action after consultation with the Vice Chair for Supervision. The Board of Governors may also vote in some cases to terminate an EA.

7.2 Termination Recommendation

[42] Once all EA remediation has been verified, the Primary Party may seek approval to suspend or terminate any requirements under the EA to submit progress reports to the Federal Reserve. The Primary Party's recommendation should be made to the EA Oversight Committee Co-Chairs, who are authorized by the S&R Director to approve such recommendations. If the request is approved, the Primary Party should seek the concurrence of the enforcement staff of Board Legal to inform the institution in writing.

Termination documentation includes a termination matrix and presentation deck. The Primary Party, in consultation with the Monitoring Working Group and other relevant stakeholders, will prepare the termination matrix. All primary supporting documentation for termination must be linked accurately in the matrix from ExamSpace. The Primary Party must confirm that the relevant ExamSpace folders are accessible to Board Legal enforcement staff assigned to the termination. A template of the termination matrix to be completed is attached in Appendix A.

The completed termination matrix should clearly articulate the supervisory expectations for addressing each provision (which should align generally with the accepted remediation plan, as modified over time), the actions the firm took to address the provision, relevant Internal Audit conclusions, and supervisory verification work. The matrix must also clearly state why the firm's remediation and supervisory verification results support a conclusion that the provision has been addressed. LISCC Integration will ensure that the draft matrix (with supporting materials appropriately linked) are transmitted to the enforcement staff of Board Legal in as timely a manner as possible.

Staff will also typically prepare a presentation deck for the termination vetting with the EA Oversight Committee to accompany the matrix. This deck should provide a summary to the EA Oversight Committee of the reasons why the action was originally taken, the work the firm has done to address the action, supervisory verification work and conclusions, and other relevant information. Generally, the presentation should include the following:

- Brief summary of the safety and soundness or regulatory rationale for the original EA;
- Brief summary of the contents of the EA;
- Current firm ratings;
- Summary of firm remediation and why it has addressed the action;
- Brief summary of Internal Audit validation;
- Summary of supervisory work supporting a conclusion that each substantive EA provision has been addressed;
- For BSA/AML and OFAC related EAs, the concurrence of the S&R Division BSA/AML Section;
- DST and program PLG recommendations;
- Any Legal concerns identified through the termination preparation process;
- Information about similar actions taken by other regulatory agencies, whether terminated or outstanding, against the firm for similar reasons (if relevant).

Full vetting of the termination will generally occur at the EA Oversight Committee. The Primary Party should deliver the presentation and matrix as well as any other relevant supporting materials (e.g., capstone supervisory letters, other supervisory letters from relevant exams), at least one week prior to the vetting meeting. LISCC Integration will forward these materials to the enforcement staff of Board Legal at the same time.

If the Co-Chairs of the EA Oversight Committee (with input from committee members) agree to recommend termination, they will send the recommendation to the OC Chair and consult on whether a full LISCC OC vetting is necessary. If the OC Chair decides to hold an OC vetting, the Primary Party will submit the matrix, the presentation deck (modified as appropriate following the EA Oversight Committee vetting) and other relevant materials to the OC at least one week prior to the vetting meeting. LISCC Integration will forward these materials to the enforcement staff of Board Legal at the same time.

If an OC vetting meeting does not occur, the OC Chair will ask for OC views on the termination recommendation via email (with the supporting documentation). The OC Chair will make the final determination on whether to recommend termination to Board Legal.

If a termination recommendation is not approved by LISCC, LISCC program management will discuss next steps with the Primary Party and the Monitoring Working Group, as well as other LISCC stakeholders as appropriate. For example, the EA Oversight Committee Co-Chairs or the OC Chair may determine that additional examination work is necessary before the EA is re-considered for termination.

If a termination recommendation is approved, the OC Chair will transmit a package to the Assistant General Counsel for Enforcement that includes the termination matrix and confirmation of the OC Chair's recommendation to terminate the action. Board Legal will review the termination package and prepare a memorandum for the Vice Chair for Supervision (and/or other Board members, as appropriate) regarding the proposed termination.

LISCC Integration will assist the enforcement section of Board Legal in the preparation of these materials as appropriate and coordinate any necessary approvals within S&R. This includes obtaining comments from the Monitoring Working Group, comments and approvals from the OC Chair and Deputy Director for Supervision, and, if appropriate, the Director of S&R. The Board's General Counsel and Deputy General Counsel will review the termination proposal prior to submission to the Vice Chair for Supervision.

The Assistant General Counsel for Enforcement is responsible for transmitting the LISCC termination memorandum to the Vice Chair for Supervision and/or other Board members as appropriate. The Assistant General Counsel will coordinate with the OC Chair and LISCC Integration to the extent necessary to accommodate any subsequent requests from the Vice Chair and other Board members such as a briefing. The Vice Chair may determine that additional Board member consultation, including the Committee on Supervision and Regulation, is appropriate. The Vice Chair will also determine whether the termination may be finalized under staff delegation procedures or by Board vote.

When termination of a C&D Order is approved, the Board Secretary will issue the letter to the firm informing it of the termination. For Written Agreements and MOUs, the Assistant General Counsel for Enforcement will send a letter to the relevant Reserve Bank authorizing the Reserve Bank to execute and transmit the termination letter. The termination of all formal EAs (other than 4(m) agreements as discussed below), are disclosed to the public unless the Federal Reserve Board determines that publication

would be contrary to the public interest.[43] The termination announcement will be made public via a press release and posted to the Federal Reserve Board's public website and its enforcement database and will be included in the Board's weekly H.2 report.

Final termination-related materials, including the final matrix and staff memorandum should be posted to the appropriate LISCC repository per the Reserve Bank Supervision and Regulation Recordkeeping Manual.[44] In general, this will be BOND for the final termination recommendation memo from Board staff and for related correspondence to and from the firm. The other final internal documents should generally be posted to ExamSpace. LISCC Integration will also post the final matrix and staff memo to its EA page on the LISCC SP.

7.3 Terminating and Replacing Enforcement Actions

As discussed above, Federal Reserve staff may recommend that an EA be terminated and replaced by another EA where circumstances warrant. Issuance and termination procedures will be used simultaneously in a termination and replacement, but separate termination and issuance matrices must be created. The new EA should include a clause that states that the new action supersedes the previous action. The termination of the original action and the superseding action will occur at the same time.

[43] The Board may also delay publication of a final order for a reasonable time if the Board makes a determination in writing that the publication would seriously threaten the safety and soundness of an insured depository institution. 12 U.S.C. 1818(u)(4).

[44] The manual is accessed at: ***[Redacted: hyperlink to internal website to which the Reserve Bank Supervision and Regulation Recordkeeping Manual is posted]***. See p. 169 and after.

8 Section 4(m) Agreements

Section 4 of the Bank Holding Company Act (12 U.S.C. 1843) permits bank holding companies (BHCs) to elect to be financial holding companies (FHCs) and thereafter engage in a variety of nonbanking activities. To maintain status as an FHC, the FHC and each of its depository institution subsidiaries must be well-managed and well-capitalized. In addition, each insured depository institution subsidiary must have at least a satisfactory Community Reinvestment Act (CRA) rating. FHCs that comply with the well-managed and well-capitalized requirements may (1) engage in a broader range of financial and other activities than those already authorized for BHCs; and (2) acquire companies engaged in financial activities without prior Board approval. Permissible activities for FHCs are listed in sections 3905, 3906, and 3907 of the Bank Holding Company Inspection manual.

Definitions for well-managed and well- capitalized are in section 2 of Regulation Y (12 CFR 225.2), as well as additional information on compliance with FHC requirements, can be found at the SR Division's FHC compliance website.[45] Generally, "well managed" means that a BHC does not have a "Deficient-1" or "Deficient-2" rating in any of its three ratings. Each of the BHC's insured depository institution must have a CAMELS composite rating of "2" or better and a Management component rating of "2" or better. To be well-capitalized, a BHC must meet the capital ratios specified in Regulation Y in the definition of "well-capitalized". Each of the BHC's insured depository institutions must meet the ratios specified by its primary Federal regulator in the relevant regulation.

A non-compliant FHC may not engage in new section 4(k) activities or acquire control or shares of any company under section 4(k) of the BHC Act without the prior written approval of the Board. In practice, an FHC that is not well-managed or well-capitalized is required to enter into an agreement acceptable to the Board (*Section 4(m) Agreement*). An FHC may be allowed to continue engaging in certain activities pursuant to a 4(m) agreement such as merchant banking as well as the establishment of de novo companies. In addition, a 4(m) agreement may allow the FHC to make new acquisitions under section (k) of the BHC Act up to certain limits.[46] Routine 4(m) agreements are prepared by the Board Legal in consultation with LISCC Integration, which will coordinate with other LISCC stakeholders and obtain necessary approvals from Board S&R officers, including the OC Chair and the Deputy Director for Supervision. Routine 4(m) agreements are issued under delegated authority by Board Legal and Board S&R.

The process for issuing a Section 4(m) Agreement is as follows:

- **4(m) Notice Letter -** the Assistant General Counsel for Enforcement notifies the FHC of its non-compliance by a letter that describes the conditions that gave rise to the determination that the

[45] ***[Redacted: hyperlink to internal website to which FHC compliance requirements and letter templates are posted]***

[46] Standard limits that would apply to "Deficient-1" firms are also described in the proposed rulemaking at [FR notice once published].

institutions is not in compliance with Section 4(m) (Section 4(m) Notice Letter). The letter requests the FHC to list all of its current section 4(k) activities. Upon receipt of the notice, the FHC may not engage in any new section 4(k) activities or acquire control or shares of any company engaged in any activity under section 4(k) of the BHC Act without the prior written approval of the Board.

- **Criteria and Related Restrictions for 4(m) Agreements –** Most 4(m) agreements will include the standard provisions referenced in the proposed rulemaking to revise Regulation Y.[47] Typically agreements will not be more generous than these standard provisions. Firms that are rated lower than "Deficient-1" in any category may have more limited agreements. In addition, special circumstances may warrant limiting these standard provisions. In addition to allowing de novo subsidiaries, merchant banking activities, and certain other business-as-usual activities that have been considered non-expansionary, the standard provisions would allow an FHC to invest in companies engaged in nonbanking financial activities up to 0.5% of its tier 1 capital.

- **Execution of Agreement -** The FHC must execute a Section 4(m) Agreement with the Board. Board Legal is primarily responsible for drafting the 4(m) agreement and determining the limitations on any new Section 4(k) activities or acquisition of control or shares of any company engaged in any activity under Section 4(k) of the BHC Act without the prior written approval of the Board.

- **Approvals** – A routine 4(m) agreement involving a LISCC institution is ordinarily approved by Board staff under delegated authority. The Assistant General Counsel for Enforcement is primarily responsible for obtaining delegated staff approvals for 4(m) agreements and will coordinate with the OC Chair and LISCC Integration to the extent necessary to accommodate any requests from the Vice Chair for Supervision and other Board members for a briefing.

If the FHC fails to become compliant with FHC requirements within the compliance period established by the Board with respect to the 4(m) Agreement, the Board may:

- Impose restrictions on the FHC's nonbank activities;
- Require the FHC to divest control of any subsidiary depository institutions; or
- At the FHC's election the FHC may cease to engage in any activity that is not permissible under Section 4(c)(8). Section 4(c)(8) covers activities that are closely related to banking. A list of current Section 4(c)(8) permissible activities can be found at sections 3000.0.2 and 3000.0.3 of the Bank Holding Company Inspection manual.

8.1 Monitoring a Section 4(m) Agreement

[47] [NPR to be referenced once published]

The status of the Section 4(m) Agreement itself must be updated quarterly in C-SCAPE. Generally, this can refer to the firm's rating and any notes about its general remediation trend. The firm's progress on remediation of the issues driving its deficient ratings will be the source of record on how the firm is progressing on its 4(m) Agreement, as the agreement is tied directly to the ratings.

As with all EAs, Section 4(m) Agreements and formal correspondence related thereto must be appropriately tagged and filed in BOND and ExamSpace.

8.2 Terminating a Section 4(m) Agreement

When the conditions outlined in Section 4(m) that caused the FHC to become subject to a Section 4(m) Agreement no longer apply (i.e., the relevant rating or ratings have been upgraded to satisfactory ratings), the FHC is compliant by operation of law. After the ratings upgrades at the FHC or depository institution subsidiary have been delivered in writing by the institution's appropriate federal or state regulator, the DST should request that the Assistant General Counsel for Enforcement make a determination that the 4(m) agreement is no longer in effect. The request should include a copy of the proposed letter the DST intends to send to the firm and any supplemental materials establishing the FHC's compliance. The proposed letter should make clear that the 4(m) agreement is terminated by operation of law. A sample letter can be found at the SR Division's FHC website.[48]

[48] ***[Redacted: hyperlink to internal website to which FHC compliance requirements and letter templates are posted]***

9 Appendices

9.1 Appendix A: LISCC Enforcement Action Matrices

9.1.1 Issuance Matrix

Summary:

- [Insert at high level (1-3 sentences typically) why enforcement action being issued].
- [Focus of new action and thematic bulleted list of provisions, for example:
    - Source of strength
    - Governance weaknesses
    - Compliance risk management
    - Operational risk management]

	Provision	Examination/Findings Driving Recommendation	Supervisory Expectations for Provision	Planned Supervisory Work
1	[The Board of Directors shall take all appropriate steps to fully utilize [firm's] financial and managerial resources, pursuant to section 38A of the Federal Deposit Insurance Act (the "FDI Act") (12 U.S.C. § 1831o-1) and to section 225.4(a) of Regulation Y of the Board of Governors of the Federal Reserve System ("Board of Governors") (12 C.F.R. §225.4(a)), to serve as a source of strength to its subsidiary banks, including, but not limited to, ensuring that the subsidiary banks operate in a safe and sound manner and comply with any supervisory actions taken by their appropriate federal or state regulators.]			
2	[Text of overall provision]	[Summary list of MRAs, weaknesses found etc. that support the provision or sub-provision and links to supporting documents (exam letters, Annual Assessment letters, etc.]	[What specific actions the firm must take to satisfy the provision or sub-provision. If the firm has already submitted acceptable plans to address the issue, the content of the plans may serve as the expectation.]	[Description of supervisory work planned to assess compliance with the provision.]
A	*[Text of any sub-provisions]*			
B				
C				
D				
E				

9.1.2 Termination Matrix

Summary:

- [Insert at high level (1-3 sentences typically) why enforcement action being lifted/lifted and replaced].
- [For lift and replace, note which provisions being transferred to new action and why]
- [Other notes]

	Provision	Support for Recommendation -- Examination/Other Findings	Planned Supervisory Work/Future Monitoring (if relevant)
1	[The Board of Directors shall take all appropriate steps to fully utilize [firm's] financial and managerial resources, pursuant to section 38A of the Federal Deposit Insurance Act (the "FDI Act") (12 U.S.C. § 1831o-1) and to section 225.4(a) of Regulation Y of the Board of Governors of the Federal Reserve System ("Board of Governors") (12 C.F.R. §225.4(a)), to serve as a source of strength to its subsidiary banks, including, but not limited to, ensuring that the subsidiary banks operate in a safe and sound manner and comply with any supervisory actions taken by their appropriate federal or state regulators.]	• Supervisory expectation for addressing provision • How firm addressed provision • Supervisory work done/supervisory conclusion on why firm has adequately addressed provision	
2	[Text of provision]		
A	*[Text of any sub-provisions]*		
B			
C			
D			
E			

9.2 Appendix B: Glossary

Capstone exam: An exam that may be conducted (if circumstances warrant) at the end of EA remediation to finish up verification of EA remediation and determine whether a termination recommendation is warranted.

Cease and Desist Order (C&D Orders): A formal EA issued by the Board that orders a firm to cease unsafe and unsound practices (and/or violations of law) and/or requires the firm to take affirmative actions to correct the unsafe/unsound practices and/or violations of law.

Civil money penalty: A civil money penalty assessed by the Board against a supervised institution or an individual for unsafe and unsound banking practices or a violation of law.

Consent Order: A C&D issued with a firm's consent. A firm is given the opportunity to consent to a C&D prior to filing a notice of charges. When a firm consents to a C&D order, the order is issued as an Order to Cease and Desist Issued Upon Consent and commonly referred to as a Consent Order.

Enforcement Action (EA): An informal or formal action issued by the Federal Reserve to a firm which directs the firm to address specific safety and soundness deficiencies and/or violations of law.

EA monitoring: Supervisory activity related to an EA between issuance of the EA and an OC-approved supervisory recommendation to terminate an EA.

EA Oversight Committee: The Responsible Program Steering Committee or Special EA Subcommittee that has primary governance responsibility for an EA.

EA progress assessment: A supervisory assessment of a firm's progress in addressing an EA, issued at a minimum twice a year through the Annual Assessment and in a semiannual follow up communication.

Formal Enforcement Action: a legally enforceable, public action issued by the Federal Reserve Board that requires a firm to address unsafe or unsound practices and/or violations of law, typically in the form of a Cease & Desist Order (including Consent Orders) or a Written Agreement. Section 4(m) Agreements are also formal EAs but are not public.

Informal Enforcement Action: An EA typically in the form of an MOU between the firm and the Federal Reserve that requires the firm to address safety and soundness deficiencies. Informal EAs are not directly enforceable and are not public. Under the LFI Rating System, there is a strong presumption that an informal EA will be issued against a firm with one or more "Deficient-1" ratings.

Issuance Working Group: A stakeholder working group formed to facilitate the issuance recommendation for each new EA. The group should consist of representatives from the firm DST, relevant LISCC program staff, LISCC integration, and the enforcement staff of Board Legal.

LFI Rating System: The ratings system applied to LISCC and LFBO firms. See SR Letter 19-3 ***[Redacted: hyperlink to internal website to which the SR letter is posted]***.

Memorandum of Understanding (MOU): An informal EA that is an agreement between the Reserve Bank and a firm that requires the firm to address its safety and soundness deficiencies.

Monitoring Working Group: A stakeholder working group formed to consult with the Primary Party on EA Monitoring activities and developments and facilitate recommendation for termination of EAs, including sufficiency of record. The group should consist of representatives from the firm DST, relevant LISCC program staff, LISCC integration, and Board Legal.

Primary Party: The LISCC stakeholder with primary responsibility for monitoring of the Enforcement Action. In most cases this with be the Dedicated Supervisory Team (DST) for the specific firm.

Remediation Verification Event (RVE): A streamlined supervisory exam used to conduct independent verification of open supervisory issues remediated by the firm that are narrow in scope. A RVE requires less documentation and should be completed in less time and with less resources than an exam. When appropriate for EA-related work as per this manual, RVEs should be conducted using the rules set forth in the Issues Management Framework.[49]

Responsible Program Steering Committee: The LISCC program Steering Committee that oversees the preponderance of the provisions of the EA due to its subject matter coverage.

Section 4(m) Agreement: An agreement acceptable to the Federal Reserve that allows an FHC that is not well-managed to continue engaging in nonbanking activities under section 4 of the Bank Holding Company Act. The agreement typically restricts the firm from engaging in new Section 4(k) activities and from acquiring companies or businesses engaged in the firm's current Section 4(k) activities without prior Board approval.

Special EA Subcommittee: A temporary subcommittee of the LISCC OC that is specifically established for the purpose of overseeing supervisory activities related to a specific EA.

Written Agreements: A formal EA in the form of an agreement between the relevant Reserve Bank and the firm.

[49] Issues Management Framework

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