Client Alert

Americas FS Regulatory Center of Excellence

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Guidance for boards

Federal Reserve proposes corporate governance guidance to clarify supervisory expectations for the roles and responsibilities of bank boards in large institutions

Accountability for risk management and compliance in financial services companies is a core expectation for individuals across the three lines of defense and on boards of directors (boards). To clarify their supervisory expectations for boards in particular and refocus those expectations on a board's "core responsibilities," the Federal Reserve Board (Federal Reserve) recently released a corporate governance proposal. The proposal, which is intended to distinguish supervisory expectations for boards from the expectations for senior management, is divided into three parts:

1. Guidance identifying key attributes of effective boards to be used when assessing the board of a large financial institution, including all domestic bank and savings and loan holding companies (BHCs/SLHCs) with total consolidated assets of $50 billion or more, and systemically important nonbank financial companies designated by the Financial Stability Oversight Council for supervision by the Federal Reserve. The five key attributes are:
   a. Setting clear, aligned, and consistent direction regarding the firm's strategy and risk tolerance;
   b. Actively managing information flow and board discussions;
   c. Holding senior management accountable;
   d. Supporting the independence and stature of independent risk management and internal audit; and
   e. Maintaining a capable Board composition and governance structure.
2. Revisions to or rescission of existing supervisory expectations for BHC/SLHC boards of all sizes as set forth in 27 separate Federal Reserve Supervision and Regulation Letters (SR Letter). Proposed revisions would align the guidance with the agency's supervisory framework, including the current proposal for supervisory expectations of larger firms as well as SR Letter 16-11 for smaller firms. Redundant, outdated, or irrelevant supervisory expectations would be rescinded. SR Letter 08-8 (Compliance Risk Management Programs and Oversight at Large Banking Organizations with Complex Compliance Profiles) is identified among the SR Letters slated for review.
3. Guidance clarifying that for all financial institutions supervised by the Federal Reserve, most supervisory findings will be communicated to an institution's senior management for corrective action while the firm's board is expected to hold senior management accountable for remediating the supervisory findings.

Coincident with the release of the corporate governance proposal, the Federal Reserve separately released a proposed rule that would establish a new rating system for the supervision of large financial institutions, defined to include BHCs with total consolidated assets of $50 billion or more, noninsurance, noncommercial SLHCs with total consolidated assets of $50 billion or more, and U.S. intermediate holding companies of foreign banking organizations. As proposed, institutions evaluated under the new system would be assigned a rating in each of three components: capital planning and positions, liquidity risk management and positions, and governance and controls. The effectiveness of their boards would be evaluated as a subcategory under the "governance and controls" component and would include consideration of the key attributes outlined in the corporate governance proposal. The Federal Reserve expects to assign initial ratings under this new system during 2018. The ratings would not be disclosed publicly.

Comments on both the corporate governance proposal and the new rating system for large financial institutions will be accepted through October 10, 2017.

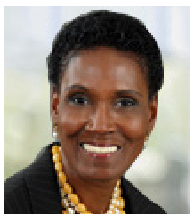
Moving Forward

The Federal Reserve indicates the proposed guidance results from a multiyear review of board practices including how the responsibilities of the board were distinguished from and provided oversight of senior management. The review exposed a need for greater clarity and documentation of the distinct roles and responsibilities of both the board and senior management. The agency adds that greater clarity regarding these expectations could improve corporate governance, increase efficiency, support accountability, and promote compliance—features that dovetail with the board responsibilities currently outlined in SR Letter 08-8 and reinforce a continuing focus on conduct, culture, compliance, and accountability.

Financial services companies should anticipate that this proposal is only one part of the changes that are coming to the larger picture of compliance. Regulatory expectations continue to evolve for financial services companies of all sizes across the areas of operational integration, compliance automation, and risk assessment in addition to accountability for risk and compliance, and these changes will likely be reflected in future updates to supervisory guidance and regulation.

We would welcome discussion on these emerging developments and encourage you to contact us with any questions you might have. For your reference, we have attached KPMG's recently published article on "Board Oversight of Risk and Compliance in a Changing Regulatory Environment."

Regards,



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