October 24, 2019

TO: The Board of Directors

FROM: Chad R. Davis
Deputy to the Chairman for External Affairs

SUBJECT: Establishment of the FDIC Advisory Committee of State Regulators

EXECUTIVE SUMMARY

Examining and supervising financial institutions for safety and soundness and consumer protection is at the core of the FDIC's mission. In carrying out its mission, the FDIC has formed partnerships with state financial institution regulators. In each phase of the life cycle of a bank, the FDIC works in concert with the state regulator. Whether it is the evaluation of a proposed *de novo* institution, the ongoing supervision of the entity, the review of a proposed merger, or even the unwanted circumstance of a bank's failure, the FDIC and state financial institution regulators must have strong and collaborative working relationships to ensure the effective and efficient regulation of the banks that we supervise.

In order to provide the FDIC with a useful mechanism to promote dialogue and obtain advice or recommendations on a broad range of policy issues regarding the regulation of state-chartered financial institutions throughout the United States, including its territories, the Chairman of the Board of Directors of the FDIC ("the FDIC Chairman") is seeking Board approval to establish a new advisory committee called the FDIC Advisory Committee of State Regulators ("ACSR" or "Committee"). The Board has previously approved the FDIC Advisory Committees on Systemic Resolution ("SRAC"), Community Banking ("CBAC"), and Economic Inclusion ("ComE-IN"). These committees have provided valuable opportunities for the discussion of key policy issues.

In a similar manner, the ACSR would provide a forum where state regulators and the FDIC can discuss a variety of current and emerging issues that have potential implications regarding the regulation and supervision of state-chartered financial institutions. The Committee is intended to facilitate regular discussion of: safety and soundness and consumer protection issues; the creation of new banks; the protection of our nation's financial system from risks such as cyber-attacks or money laundering; and other timely issues. These discussions will provide insights that will contribute to the FDIC developing more effective strategies and policies regarding state-chartered financial institutions. The ACSR will serve solely in an advisory capacity and will have no final decision-making authority, nor will it have access to or discuss any non-public, confidential or institution-specific information.

Comparable to the administration of SRAC, CBAC, and ComE-IN, it is proposed that the Board delegate to the FDIC Chairman all authorities necessary to establish and operate the ACSR (and any appropriate subcommittees), including the selection of Committee members, the establishment of administrative and operational procedures, and budgetary authority. The ACSR will consist of no more than 15 members who would be regulators of state-chartered financial institutions from across the United States, including its territories, or other individuals with

expertise in the regulation of state-chartered financial institutions. The ACSR would operate on a continuing basis, subject to a two-year term and renewal under the Federal Advisory Committee Act, until the FDIC Chairman determines that the Committee is no longer in the public interest.

DISCUSSION

I. The Federal Advisory Committee Act ("FACA")

The FACA applies to any advisory committee that is established or utilized by a Federal agency and provides "advice or recommendations" to an agency. To establish an advisory committee, the FDIC must comply with the FACA as well as the regulations promulgated by the General Services Administration ("GSA"), the agency charged by Congress with overseeing the administration of the FACA.[1]

The FACA sets forth the following requirements that the FDIC must follow to establish an advisory committee:

- identify as a matter of public record that the committee is in the public interest and is consistent with the FDIC's mission;

- consult with the GSA on the establishment of the advisory committee by explaining the need for the committee, stating the reasons why the committee is necessary to the FDIC's performance of its duties imposed by law and how the FDIC plans to attain a fairly balanced membership for the committee;[2]

- utilize the committee for advisory purposes only;

- file a committee charter with the relevant Congressional committees (in this case the Senate Committee on Banking, Housing, and Urban Affairs, and the House of Representatives Committee on Financial Services), the GSA, and the Library of Congress;

- establish uniform administrative guidelines and controls for the committee;

- comply with applicable recordkeeping, reporting and disclosure requirements

[1] President Trump recently issued Executive Order 13875, entitled, *Evaluating and Improving the Utility of Federal Advisory Committees* (June 14, 2019). This Executive Order instructs covered agencies to evaluate the need for each of their current advisory committees, and terminate at least one-third of their current committees, subject to waivers issued by the Office of Management and Budget ("OMB"). Although this Executive Order was issued under the authority of the FACA, the order exempts independent regulatory agencies, like the FDIC, from its application. Subsequently, OMB issued memorandum M-19-22, entitled *Instructions Regarding the Implementation of Executive Order 13875*, which the Legal Division opined also does not apply to the FDIC.

[2] The GSA's concurrence or approval regarding the establishment is not required under the FACA. In the absence of the GSA's concurrence or approval, an agency may nevertheless establish an advisory committee upon a determination by the agency head that the advisory committee is in the public interest and necessary to the performance of agency duties imposed by law.

(including maintaining all committee documents for public inspection);

- select a Designated Federal Officer to supervise the committee;
- select committee members who broadly represent affected entities;
- open the committee's meetings to the public, unless properly closed pursuant to the Government in the Sunshine Act; and
- terminate the committee after two years, unless its charter is renewed.

In establishing the ACSR, the FDIC will adhere to the foregoing requirements under the FACA.

II. Establishment of the FDIC Advisory Committee of State Regulators

A. The Purpose of the ACSR

The establishment of the ACSR is consistent with the mission of the FDIC. The FDIC's mission, mandated by statute, is to maintain public confidence in the nation's banking system by insuring deposits; examining and supervising financial institutions for safety and soundness and consumer protection; making large and complex financial institutions resolvable; and managing receiverships.

The ACSR will provide advice and recommendations to the FDIC on a broad range of policy issues regarding the regulation of state-chartered financial institutions throughout the United States, including its territories. The ACSR would provide a forum where state regulators and the FDIC can discuss a variety of current and emerging issues that have potential implications regarding the regulation and supervision of state-chartered financial institutions. The Committee is intended to facilitate discussion of: safety and soundness and consumer protection issues; the creation of new banks; the protection of our nation's financial system from risks such as cyber-attacks or money laundering; and other timely issues. These discussions will provide insights that will contribute to the FDIC developing more effective strategies and policies regarding state-chartered financial institutions.

The ACSR will have no decision-making role in FDIC policies, procedures or strategies, will have no access to confidential supervisory or other confidential information, and will not have access to or discuss any non-public information regarding specific financial companies.

The ACSR's purpose would be solely to provide advice and recommendations to the FDIC. Determination of actions to be taken or policies to be adopted with respect to any matters upon which the ACSR provided advice would be made only by the FDIC.

B. Delegation of Authority to Operate the ACSR

The FACA requires the "agency head" to make a determination, as a matter of formal record, to establish an advisory committee. To be consistent with the FACA and the administrative procedures established for the FDIC's other advisory committees, it is proposed that the FDIC

Chairman be delegated authority by the Board of Directors to establish the ACSR. It is recommended that the FDIC Chairman, or her designee, be delegated authority to take such other actions as may be necessary to properly form and organize the ACSR, including the establishment of subcommittees. Such other actions include, among other things, consulting with the GSA, filing the Committee Charter with the appropriate Congressional committees and other required entities, selecting a Designated Federal Officer (DFO), and if desired, an alternate DFO (ADFO), selecting Committee members, establishing administrative guidelines and management controls, authorizing the budget to establish and operate the Committee, and addressing other requirements mandated by the FACA or rules promulgated under the FACA. The ACSR would report directly to the FDIC Chairman, or her designee. As noted above, this delegation of authority to establish and operate the ACSR would be consistent with the administration of the SRAC, CBAC and ComE-IN.

The ACSR would operate with no more than 15 members on a continuing basis, subject to a two-year term and renewal under the FACA, until the Chairman determines that the Committee is no longer in the public interest.

C. Administration of the ACSR

It is proposed that the Committee meet at least twice per year. To ensure relevant expertise on the ACSR and to obtain a broad range of perspectives, members of the Committee would include regulators of state-chartered financial institutions from across the United States, including its territories. To achieve balance on the Committee, the FDIC may also include as Committee members other individuals with expertise in the regulation of state-chartered financial institutions. Because of their diverse interests and knowledge, the members of the ACSR would provide the FDIC with valuable information and perspectives necessary to the FDIC's performance of its duties imposed by law. The ACSR would provide a forum for public discussion and debate.

It is recommended that Committee members be reimbursed for reasonable expenses relating to travel, meals, and accommodations in connection with Committee business. There would be no other compensation.

FDIC Executive Secretary Robert Feldman is the agency's Committee Management Officer who is charged with compliance with the FACA for all FDIC advisory committees; therefore, he would be assigned such duties with regard to the ACSR. The FACA also requires the appointment of a Designated Federal Officer for each advisory committee to oversee and coordinate the committee's operations. With respect to the ACSR, the FDIC Chairman is proposing to appoint Chad Davis, Deputy to the Chairman for External Affairs, as the DFO. The FDIC Chairman may, if desired, appoint an ADFO to act in the absence of the DFO.

It is proposed that the ACSR use FDIC personnel from various divisions and offices to assist in its administration. Staff support would be necessary from those FDIC divisions that are more closely aligned with the proposed mission of the Committee, i.e., the Division of Risk Management Supervision, the Division of Depositor and Consumer Protection, and the Division of Insurance and Research. The Legal Division would provide legal support for the ACSR's operations, such as preparing *Federal Register* notices regarding meetings, consulting regarding any applicable conflict of interest provisions or standards applied to advisory committee members, and other ministerial duties. The Division of Administration will likely be involved in logistical planning for the ACSR meetings. Staff from other divisions also may be tasked to perform certain functions on an as-needed basis. FDIC employees would provide support for the ACSR on a collateral-duty basis.

The anticipated cost to establish and operate the ACSR, including FDIC staffing and resources, overhead, and reimbursement to Committee members, should not exceed $300,000 per year.

RECOMMENDATION

It is recommended that the Board approve the establishment of the ACSR as detailed in the attached resolution. The proposed advisory committee will further the FDIC's mission related to examining and supervising financial institutions for safety and soundness and consumer protection by providing advice and recommendations to the FDIC on a broad range of policy issues that have a particular impact on state-chartered financial institutions throughout the United States, including U.S. territories.

Concur:

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General Counsel