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Chief Counsel's Office
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James P. Sheesley
Assistant Executive Secretary
Attention: Comments-RIN 3064-ZA26
Legal ESS
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

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

Re: *Proposed Interagency Guidance on Third-Party Relationships: Risk Management*

Ladies and Gentlemen,

Wells Fargo & Company (Wells Fargo)[1] appreciates the opportunity to respond to the proposed interagency (Board, FDIC, and OCC (together, the agencies)) guidance and request for comment ("RFC") regarding banking organizations' management of risks associated with third-party relationships (also herein referred to as third-party risk).

Wells Fargo endorses the interagency coordination and approach to create guidance ensuring consistent expectations for third-party risk management across the agencies. A single congruous governance document, clearly articulating risk-based principles and expectations on third-party risk management provides efficiencies and standardization across banking organizations.

Wells Fargo supports the usage of OCC 2013-29 and its third-party risk management framework for the proposed interagency guidance. The third-party risk management lifecycle stages provide the structure to understand the risks and expectations from onboarding to termination. These standards in conjunction with clarifications in the OCC 2020-10 (FAQs), and elements from FRB SR 13 19, and FDIC FIL 44 2008 provide a contextual background to allow banking organizations to understand and determine the risks a third party presents and develop a third-party risk management program commensurate with the complexity and level of risk.

Wells Fargo believes utilization of third parties provide banking organizations with advantages, efficiencies, and opportunities to provide customers with beneficial products and services. The

[1] Wells Fargo & Company (NYSE: WFC) is a leading financial services company that has approximately $1.9 trillion in assets, proudly serves one in three U.S. households and more than 10% of small businesses in the U.S., and is the leading middle market banking provider in the U.S. In the communities we serve, the company focuses its social impact on building a sustainable, inclusive future for all by supporting housing affordability, small business growth, financial health, and a low-carbon economy.

proposed guidance affords an opportunity for the agencies to deliver dynamic and progressive direction that reflects the continually evolving third-party risk.

The integration of pertinent and practical elements leveraged from each of the agencies afford an opportune time to provide banking organizations with clear, effective, and actionable guidance.

- Wells Fargo supports the need for sound risk management practices with prudent oversight of third-party risks.
- The consolidation of this guidance provides an opportunity to incorporate evolving third-party risks such as artificial intelligence, fintech and Environmental, Social, and Governance (ESG) Risk.
- Wells Fargo encourages the agencies to maintain a consistent approach and flexibility to allow banking organizations to implement a risk-based approach with this proposed guidance. This will empower banks to appropriately operationalize processes to identify and understand risks, with the efficiency and adaptability required in today's environment.

Wells Fargo participates in and generally supports the comments of the American Banking Association, Bank Policy Institute, Consumer Bankers Association, Securities Industry and Financial Markets Association, and The Clearing House. Our comments outlined below are intended to supplement the comments of the trade associations and provide Wells Fargo's perspective on certain aspects addressed by the RFC.

Themes and considerations with respect to the RFC are:

Update Guidance to Reflect Complexity of the Current Environment

The proposed guidance leverages existing guidance, which includes the highly effective third-party risk management lifecycle. The agencies have an opportunity to modernize the guidance to provide a progressive and dynamic view that reflects the rapidly evolving and complex third-party risk environment. Wells Fargo supports the incorporation and exposition of concepts outlined in the FAQs into the new guidance. The FAQs provide references representative of current events, trends, and areas of emerging risk.

- Ransomware attacks that impact supply chain and third parties are prevalent. Cybersecurity would be an area to articulate and define expectations within the guidance to reflect this prominent and rapidly developing risk to third party oversight.
- Based on social unrest and the impacts of global climate change, ESG risk is also top of mind within industry and risk groups. It would be appropriate for ESG risk to be considered for inclusion within this guidance and the expectations of the agencies.
- Artificial Intelligence and Machine Learning are increasingly being offered by third parties. It would be appropriate to consider a risk-based approach within the guidance.

Inclusion of Clarifying Elements of FAQs and Footnote Details in Guidance

The clarification and detail provided with the FAQs outline relevant examples and regulatory expectations for third-party risk management. The FAQs provide beneficial clarity in navigating the expanding third-party landscape and demonstrate important concepts which should be included in the updated guidance. Important explanatory details are also located in the footnotes throughout the proposed guidance which warrant inclusion in the body of the proposed guidance. Two examples are outlined below.

- **Significant Bank Functions**

To ensure clear understanding and scope of the statements, Wells Fargo recommends the language in the FAQs #8 and proposed guidance footnote #13 be combined into a single definition and included in the body of the proposed guidance:

  - FAQs #8 includes: "*critical activities—significant bank functions (e.g., payments, clearing, settlements, custody) or significant shared services (e.g., information technology)*.

- Footnote #13 states "*Significant bank functions include any business line of a banking organization, including associated operations, services, functions, and support, that upon failure would result in a material loss of revenue, profit, or franchise value".*

- **Business Arrangements**
  - FAQ #2 provides relevant examples of a business arrangement: *"Since the publication of OCC Bulletin 2013-29, business arrangements have expanded and become more varied and, in some cases, more complex. The OCC has received requests for clarification regarding business arrangements and how those arrangements relate to OCC Bulletin 2013-29."* The following are listed as some examples:
    - Referral arrangements
    - Appraisers and appraisal management companies
    - Professional service providers
    - Maintenance, catering, and custodial service companies

The elucidation of these concepts as part of the definition would assist banking organizations in consideration of the broader and more inclusive view of a third-party relationship, and those presenting significant third-party risk. Wells Fargo urges clarification that a risk-based approach should be applied to all third parties and commensurate and appropriate to the level of risk.

Clarification on Board of Director and Senior Management Responsibilities

Wells Fargo believes that the Board of Directors has clear accountability for understanding third party risk. The role of the Board of Directors should be plainly defined and articulated in the proposed guidance. For example, the Planning section states:

> *"For example, when critical activities are involved, such plans may be presented to and approved by a banking organization's board of directors (or a designated board committee)."*

This language appears to be inconsistent with the FAQs clarification noted below, and not aligned with FRB SR 13 19 regarding senior management responsibilities.

The FAQs clarified:

> "*This statement was not meant to imply that the board must read or be involved with the negotiation of each of these contracts."* It subsequently explained, "*The board may use executive summaries of contracts in their review and may delegate actual approval of contracts with third parties that involve critical activities to a board committee or senior management*."

FRB SR13 19 reinforced senior management responsibilities in ensuring the board's awareness. That guidance states:

> *"Senior management is also responsible for providing the institution's board of directors with sufficient information about outsourcing arrangements so that the board can understand the risks posed by these arrangements."*

The FAQs and FRB SR13 19 appropriately reflect the ownership and responsibility of senior leadership. We request the agencies revise the proposed guidance to reflect for board delegation of authority in alignment with current guidance.

Subcontractors

Wells Fargo concurs with the importance of understanding the different types of risk introduced when subcontractors are involved, especially when the subcontractor is in possession of customer data. The application of subcontractor language in the proposed guidance is inconsistent. The current draft states the expectation a banking organization's oversight of a fourth party is via their third-party, then subsequently states the expectation a banking organizations' direct oversight of the fourth party.

Under Due Diligence reliance on subcontractors, it states:

> *"Evaluate the third party's ability to identify, assess, monitor, and mitigate risks from its use of subcontractors and to provide that the same level of quality and controls exists no matter where the subcontractors' operations reside."*
>
> Within the same paragraph it then asserts:
>
> *"Evaluate whether additional risks may arise from the third party's reliance on subcontractors and, as appropriate, conduct similar due diligence on the third party's critical subcontractors, such as when additional risk may arise due to concentration-related risk, when the third party outsources significant activities, or when subcontracting poses other material risks."*

Banking organizations have the capability to review the third party's ability to manage its subcontractors, and to review specific actions taken by the third party regarding its subcontractors. Banking organizations do not have contractual privity with subcontractors and have limited access to them.

Due diligence occurs prior to contract execution with the third party, which further reduces the likelihood of obtaining detailed information regarding a subcontractor. Wells Fargo respectfully requests that the language requesting direct due diligence of the subcontractor be removed from the guidance.

Clarification is also requested regarding the applicability of guidance to *all* subcontractors, or whether more appropriately a focus on subcontractors that are material to a critical activity or business arrangement. Wells Fargo recommends the guidance related to subcontractor risk management be focused on the materiality of the subcontractor and the information obtained regarding the third party's ability to manage its subcontractors.

Consistent Use in Terminology

Wells Fargo appreciates the clarification on the definition of third party and third-party relationship and acknowledges the broad and inclusive scope. We would advocate for a consistent use and application of terminology in the new guidance. Two examples are outlined below.

- **Third-Party Relationship**

The FAQs stated the term business arrangement is synonymous with third-party relationship. The broad scope and intent of a third party is outlined in the FAQs and states *the term "business arrangement" is meant to be interpreted broadly and is synonymous with the term third-party relationship*.

> *A footnote in OCC 2013-29 provides examples of business arrangements (third-party relationships), such as activities that involve outsourced products and services, use of independent consultants, networking arrangements, merchant payment processing, services provided by affiliates and subsidiaries, joint ventures, and other business arrangements in which the bank has an ongoing relationship or may have responsibility for the associated records.*
>
> *Traditionally, banks use the terms "vendor" or "outsource" to describe business arrangements and often use these terms instead of third-party relationships. A "vendor" is typically an individual or company offering something for sale, and banks may "outsource" a bank function or task to another company. A bank's relationships with vendors or entities to which banks outsource bank functions or activities do not represent the only types of business arrangements."*

- **Third Party**

The proposed guidance uses various terms to denote a third party. For example, the term service provider could be interpreted to only apply to a third party providing a service, versus other types of business arrangements. Wells Fargo recommends a cogent definition of third party be used consistently throughout the proposed guidance to limit misinterpretation, while considering the obligations of the individual banking organization.

Wells Fargo's recommendation is to use the terms "third party" when referring to the entity, and "third-party relationship" when speaking to the arrangement between the banking organization and the entity throughout the proposed guidance.

Oversight and Accountability

Wells Fargo concurs oversight and accountability are important components for inclusion to reinforce responsibility and expectations. The present placement of oversight and accountability within the third-party risk management lifecycle stages is out of sequence. The current positioning in the proposed guidance implies this is being added as an additional lifecycle stage. We request this be placed after the termination lifecycle stage to reinforce the significance but clarify this is not a third-party risk management lifecycle stage.

Oversight and Accountability in the proposed guidance is a summation of the hierarchical roles in OCC 2013-29 for the Board, Senior Management, and front-line individuals who manage third parties. Stating each has:

> *"distinct but interrelated responsibilities to ensure that the relationships and activities are managed effectively and commensurate with their level of risk and complexity, particularly for relationships that involve critical activities."*

Clear separate and individual responsibilities are no longer articulated in the proposed guidance. We request consideration to clearly distinguish and clarify expectations of the Board, Senior Management, and front-line roles in the proposed guidance. Consideration for board delegation also aligns and supports the shift in responsibilities noted in FRB SR 13 19 and the FAQs from the Board to Senior Management.

Wells Fargo appreciates the opportunity to provide its views on the RFC and looks forward to working with the agencies as the approach to overseeing banking organizations' use of third parties evolves. We would welcome the prospect to discuss these comments further.

Sincerely,

[redacted]

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