Meeting Among Staff of the Federal Deposit Insurance Corporation, Federal Reserve Board, Office of the Comptroller of the Currency, and Representatives of the Bank Policy Institute (BPI), JPMorgan Chase & Co., Truist Financial, UBS, Goldman Sachs, HSBC Bank USA, Ally Bank, PNC Bank, Mitsubishi UFJ Financial Group (MUFG), Wells Fargo Bank, East West Bank, BNP Pariabas, Santander Bank, Depository Trust & Clearing Corporation (DTCC), KeyBank, Huntington Bank, BNY Mellon, American Express, Bank of America, TD Bank, M&T Bank, Barclays, Comerica, and Covington & Burling LLP

December 17, 2021

Participants:

Thomas Lyons, Sumaya Muraywid, Marguerite Sagatelian, Paul Robins, Jennifer Jones (Federal Deposit Insurance Corporation)

Timothy Geishecker (Federal Reserve Board)

Kevin Greenfield, Emily Doran, Lazaro Barreiro (Office of the Comptroller of the Currency)

Julia Moss, Gregg Rozansky, Paige Paridon, Brian Anderson (BPI); Rosemary Longo, Mark Pomeroy (JP Morgan Chase & Co.); Rohan Ranadive, Jorge Rivera (Truist Financial); Gregg Goldman, Marcin Zlotkowski (UBS); Jeannette Rovira, Erwin Eichmann, Scott Farbish (Goldman Sachs); Jeff Hoeger, Susan Marriott (HSBC Bank USA); Heather Hendershott (Ally Bank); Rebecca Boehm, Rodney Abele (PNC Bank); Jeannie Pumphrey, Erin Brown (MUFG); Michele Woodside, William Peterson, Michelle Carusone (Wells Fargo Bank); Amanda Xu, Tommy Ng (East West Bank); Mitchell Huzar (BNP Paribas); Joleen Willis, James Powers (Santander Bank); Jason Harrell, Kelly Feili (DTCC); Cheryl Dimitroff, Dan Lamb (KeyBank); Anthony J. Hahn (Huntington Bank); Rory Keane, Lorraine Bellard (BNY Mellon); Christian Merida (American Express); Marice Snodgrass (Bank of America); Eugene LaCroce (TD Bank); Robert C. Atkinson (M&T Bank); Bryan Alter (Barclays); Russ Jackson, Ella Wardowski (Comerica); and Jeremy Newell, Drew Ruben (Covington & Burling LLP).

Summary: Staff of the Federal Deposit Insurance Corporation, Federal Reserve System, and Office of the Comptroller of the Currency (collectively, the "agencies") met with representatives of the Bank Policy Institute, twenty-two financial institutions, and one law firm (collectively, "BPI and bank representatives") regarding the agencies' Proposed Interagency Guidance on Third-Party Relationships: Risk Management (FDIC ZRIN 3064-ZA26) (the "Proposed Guidance"), which was published in the Federal Register on July 19, 2021 (86 Fed. Reg. 38182) and September 10, 2021 (86 Fed. Reg. 50789). Consistent with its comment letter to the agencies regarding the Proposed Guidance, BPI & bank representatives discussed their views on the Proposed Guidance, including the scope of the Proposed Guidance, policy establishment, contract approval and negotiation, subcontractors, data aggregators, and the Bank Service Company Act. BPI also provided a presentation deck to facilitate in the discussion. This presentation deck is found below.

Proposed Interagency Guidance on Third-Party Relationships: Risk Management

December 17, 2021

Introduction

- BPI strongly supports the Agencies' efforts to harmonize supervisory expectations for banking organizations' management of third-party risk.

- We also strongly support the extent to which the Proposed Guidance would emphasize the appropriateness of banking organizations' adopting risk management practices that are commensurate with the level of risk and complexity of their respective third-party relationships.

- Our presentation focuses on certain suggested improvements that we view as particularly important and does not reflect the full range of our comments.*

* BPI's comment letter on the Proposed Guidance is available here: https://bpi.com/wp-content/uploads/2021/10/BPI-Issues-Comment-Letter-in-Response-to-Proposed-Interagency-Guidance-on-Third-Party-Relationships.pdf. These slides have been prepared for presentation purposes only. Please refer to our comment letter for a more complete and detailed explanation of the points addressed herein as well as other key considerations.

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Introduction (cont'd)

- *Less prescriptive language*. We appreciate the Agencies' use of language in the Proposed Guidance that is, relative to existing Agency guidance on this topic, less prescriptive and that would, if adopted, better position banking organizations to apply the Proposed Guidance in a risk-based manner.

  - *"Typical" practices*. The Proposed Guidance's reference to risk management practices that are "typical" is an important improvement over prior, more prescriptive terminology, and should be construed and applied flexibly in practice.

- *FAQs*. The Agencies should update and incorporate the OCC FAQs,* as appropriate, and rescind the others.

* OCC Bulletin 2020-10, *Third-Party Relationships: Frequently Asked Questions to Supplement OCC Bulletin 2013-29* (March 5, 2020), https://www.occ.gov/news-issuances/bulletins/2020/bulletin-2020-10.html.

Questions

- *Implementation of final guidance*. Will there be an "effective" date, and will this date vary based on the banking organization's primary federal regulator?
  - *Transition period*. It would be helpful to have a period of time prior to the "effectiveness" of the guidance.
- *Related guidance*. How will the final guidance intersect with other third-party risk management guidance and policies, such as the FFIEC's Information Technology Handbook?

Suggested Improvements to the Proposed Guidance

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Key Suggestions and Themes

Scope*	– Modifying the definition of "business arrangement" – Modifying the explanation of "critical activities"
Policy Establishment	– Clarifying the authority of management to establish policies governing third-party relationships
Contract Approval and Negotiation	– Clarifying that banking organizations have flexibility in the negotiations and approval of vendor contracts
Subcontractors	– Assessing the third party's third-party risk management program rather than subcontractors directly – Clarifying the definition of "critical subcontractors"
Data Aggregators	– Clarifying that relationships with screen scrapers & API relationships are not third party relationships under the Proposed Guidance – Clarifying appropriateness of taking steps to mitigate the risks presented by certain data aggregators
Bank Service Company Act ("BSCA")	– Expanding agency exercise of oversight of certain third-party vendors – Elaborating on agency views of services covered by the BSCA and expectations for BSCA filings

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Scope: Business Arrangement

- *Business arrangement*. The proposed definition of "business arrangement" is overly broad and inconsistent with the stated goals of the Proposed Guidance.

  - To address these concerns, the definition of "business arrangement" should be "any mutual understanding or agreement between a banking organization and a third-party entity *by which the entity is required or commits to provide ongoing goods or services to or for the banking organization pursuant to a written contract*."

  - Business arrangements should be limited to arrangements:
    - Where the third party is providing goods or services;
    - Under a written contract; and
    - Where the services are provided on an ongoing or continuous basis.

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Please refer to pages 4-6 of our comment letter for additional discussion of this topic.

Scope: Business Arrangement (cont'd)

- *"Banking as a service"*. It would be appropriate for the Agencies to clarify that, in "banking as a service" business arrangements between a banking organization and a third party, the third party should be viewed as a service provider to the banking organization, notwithstanding the fact that the third party may view itself as a customer of the banking organization.

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Please refer to page 4 (footnote 8) of our comment letter for additional discussion of this topic.

Scope: Critical Activities

- *Critical activities*. The proposed definition of "critical activities" should be revised to allow banking organizations the flexibility to determine which activities are, in fact, critical and align with existing definitions.
  - *Significant investment prong*. The third prong of this definition, which would capture activities that "require significant investment in resources to implement the third-party relationship and manage the risk," should be eliminated.
  - *FAQ 8*. This FAQ recognizes that (i) not every relationship involving critical activities is necessarily a critical third-party relationship, and (ii) mere involvement in a critical activity does not necessarily make a third party a "critical third party."

Please refer to pages 7-9 of our comment letter for additional discussion of this topic.

Policy Establishment

- *Authority of management*. The Proposed Guidance should specifically clarify the authority of management to establish policies governing third-party relationships.
  - This recommended approach is consistent with Agency guidance on the appropriate role of the board of directors and senior management generally (e.g., SR 13-19).

Please refer to page 13 of our comment letter for additional discussion of this topic.

Contract Approval and Negotiation

- The Proposed Guidance should clarify that banking organizations have flexibility in the negotiations and approval of vendor contracts.

  - *Contract approval by management.* The Proposed Guidance should explicitly incorporate FAQ 26 (*"How does a bank's board of directors approve contracts with third parties that involve critical activities?"*).

  - *"Typical" considerations*. The Proposed Guidance should more explicitly recognize that, for reasons of relative negotiating power or otherwise, contracts with third parties may not always address the items listed as "typical" considerations in contract negotiation.

Please refer to pages 13-15 of our comment letter for additional discussion of this topic.

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Subcontractors

- *Expected diligence*. The Proposed Guidance should clarify that banking organizations are not expected to perform due diligence and oversight of subcontractors. Instead, consistent with FAQ 11 ("*What are a bank management's responsibilities regarding a third party's subcontractors?*"), banking organizations should be permitted to assess the third party's third-party risk management program.

- *Clarifying "critical subcontractors."* If the Agencies do not adopt the above recommendation, the Agencies should clarify the definition of "critical subcontractor." The definition of "critical subcontractor" should align with FAQ 8 (*"What third-party relationships involve critical activities?"*), which recognizes that not all third parties involved in a critical activity are themselves critical to the success of that activity.

Please refer to pages 16-17 of our comment letter for additional discussion of this topic.

Data Aggregators

- *Out-of-scope relationships*. We urge the Agencies to remove “relationships” with data aggregators — whether (i) screen scrapers or (ii) those aggregators with which a banking organization may have a contract or other relationship solely to facilitate the sharing of data as required under section 1033 — from the scope of “business arrangements.”

- *Mitigating risk*. We urge the Agencies to affirm that banking organizations may take a range of steps to manage and mitigate the risks of data aggregators. These steps should include imposing reasonable time, place, and manner conditions on data access by third parties, such as blocking or cutting off access if needed for safety and soundness reasons.

Please refer to pages 10-12 of our comment letter for additional discussion of this topic.

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Bank Service Company Act

- *Oversight over service providers*. The Agencies should use their existing regulatory tools and authorities, including the BSCA, to a greater extent to directly obtain information from, and exercise oversight of, third-party vendors that serve a large number of banking organizations or over which banking organizations have little negotiating power.

- *Covered services and filings*. Final guidance should outline the Agencies' views on services covered by the BSCA and better define the Agencies' expectations for BSCA notice requirements.

Please refer to pages 15-16 and 17-18 of our comment letter for additional discussion of this topic.

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