XI. Federal Reserve Corporate Governance Proposal and Its Potential Effects

A. Introduction

On August 3, 2017, The Federal Reserve's Board of Governors released a corporate governance proposal (the Proposal) in the Federal Register in order to change banks' board of directors' supervisory expectations and enhance the boards' overall effectiveness.[1] The Proposal is noteworthy because the Federal Reserve is aiming to lighten boards' duties rather than increase their regulation and scrutiny.[2] The Proposal is part of an increasing effort to shift the focus of directors of the largest financial firms back to their core responsibilities: monitoring risks within their financial institutions and designing business plans to combat those risks.[3] Additionally, the Proposal aims to help smaller institutions by cutting down unnecessary burdens on the boards of directors of those smaller institutions as well.[4] The proposal intends to: (1) differentiate the role of the directors as compared to senior management, (2) lessen the amount of occasions that require the board to take action, and (3) give more responsibility to senior management within the institutions.[5] The Proposal underwent

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[1] Proposed Guidance on Supervisory Expectations for Board of Directors, 82 Fed. Reg. 37,219 (Aug. 9, 2017), https://www.federalregister.gov/documents/2017/08/09/2017-16735/proposed-guidance-on-supervisory-expectation-for-boards-of-directors [https://perma.cc/B3QD-KLEN].

[2] Gretchen Morgenson, *The Fed Wants to Make Life Easier for Big-Bank Directors*, N.Y. TIMES (Aug. 11, 2017), https://www.nytimes.com/2017/08/11/business/the-fed-wants-to-make-life-easier-for-big-bank-directors.html?mcubz=0&_r=0 ("In essence, the Fed says, big-bank board members need to take a load off.").

[3] *Id.* (explaining the rationale and goals behind the proposal, specifically refocusing boards on their key functions and responsibilities).

[4] Stephen M. Quinlivan, *Fed Seeks Comment on Corporate Governance Proposal for Financial Institutions*, LEXOLOGY: DODD-FRANK (Aug. 7, 2017), https://www.lexology.com/library/detail.aspx?g=d0251ebd-a0f1-4ec7-a2e8-c4f5831c404f [https://perma.cc/64DT-AQ2C] (describing the intended effects of the Proposal).

[5] Randy Benjenk, *Federal Reserve Issues Proposal on Supervisory Expectations for Board of Directors*, THE NAT'L L. REV. (Aug. 24, 2017), https://www.natlawreview.com/article/federal-reserve-issues-proposal-supervisory-expectations-boards-directors [https://perma.cc/YV7Z-6SQ4] (describing how the proposal will achieve its desired effects).

a 60-day public comment period up until October 10, 2017, and now may go into effect.[6]

This article discusses the Proposal and what it means to financial institutions, the public, and the financial industry at large. First, Part B explains the Proposal. This includes an overview of the history and rationale behind the Proposal, as well as details on the specific components and whom the Proposal specifically applies to. Next, Part C discusses the potential effects of the Proposal. This includes reasons both in favor and against the Proposal and how those reasons could come to light. Lastly, Part D summarizes the Proposal. The summary includes the Proposal's goals and potential effects, and provides for how it might be implemented if and when the Federal Reserve enacts it in the future.

B. The Proposal

1. Background and Rationale

A driving force behind the Proposal stems from the Federal Reserve's desire to ease the rigorous prudential standards that the Dodd-Frank Act established.[7] The Federal Reserve proscribed these rigorous standards believing the ineffectiveness of bank boards was a significant factor leading to the 2008 financial crisis.[8] The current supervisory program, introduced in 2012, contains high standards in order to reduce the likelihood that a firm will fail or go into material distress and to help balance the US financial system overall.[9] Under

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[6] Morgenson, *supra* note 2.

[7] Joe Mont, *Fed Wants to Reassess Bank Board Responsibilities, Institutional Ratings*, COMPLIANCE WEEK: THE FILING CABINET (Aug. 4, 2017), https://www.complianceweek.com/blogs/the-filing-cabinet/fed-wants-to-reassess-bank-board-responsibilities-institutional-ratings#.WbWtvMaZNE4.

[8] William W. Lang, Opinion, *Fed Proposal Won't Let Boards Off Easy, But Here's Why That's OK*, AM. BANKER (Aug. 10, 2017, 9:30 AM), https://www.americanbanker.com/opinion/fed-proposal-wont-let-boards-off-easy-but-heres-why-thats-ok [https://perma.cc/QNS9-7UTV] ("The Fed has noted that board ineffectiveness at large banks was a central contributor to the financial crisis . . . .").

[9] Press Release, Board of Governors of the Federal Reserve System, Federal Reserve Board Invites Public Comment on Two Proposals: Corporate Governance and Rating System for Large Financial Institutions (Aug. 3, 2017) [hereinafter Fed Reserve Press Release], federalreserve.gov/

this current program, the Federal Reserve's examiners report all regulatory affairs that call for remedial action to the bank's board of directors and senior management.[10] Although the program was introduced in order to overcome contributing factors of the financial crisis, in practice, the regulations are too burdensome and restrictive on the boards of directors, thus the need for the Proposal.[11]

Under the Proposal, there would be a shift to concentrate on liquidity, capital, governance and control, and compliance with laws and regulation.[12] This shift will merge and align with the changes enacted by the Federal Reserve since the 2012 supervisory program was introduced.[13] This is due in part to the Treasury's belief that current bank boards' duties are "too voluminous, lack appropriate tailoring, and undermine the important distinction between the roles of management and that of the boards of directors."[14] While banks boards' duties are generally that of oversight and guidance to promote safety and soundness, management duties involve day-to-day matters.[15] After years of review, the Federal Reserve determined there are not clear lines differentiating the expectations of boards as

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newsevents/pressreleases/bcreg20170803a.htm [https://perma.cc/X3EH-T3GE] (outlining the current supervisory program and how it came to be).

[10] Morgenson, *supra* note 2 (explaining how the program currently functions with an extensive reporting process, before the Proposal enactment).

[11] Lang, *supra* note 8 ("Following the crisis, regulators in practice increased scrutiny of large-bank boards, but the demands became too expansive, diverting board time and attention away from their central function of setting a bank's strategic path.").

[12] Fed Reserve Press Release, *supra* note 9 (explaining how the Proposal would change the system).

[13] *Id.*

[14] Quinlivan, *supra* note 4 (citing a June 2017 Treasury report which states that the current board requirements are too burdensome and lack distinction from management responsibilities within the same institutions).

[15] Paul Harris et al., *The Transforming Role of the Bank Board*, THE CLEARING HOUSE, https://www.theclearinghouse.org/research/banking-perspectives/2017/2017-q3-banking-perspectives/bank-board-responsibilities [https://perma.cc/3J55-URLM] ("A number of commentators and U.S. regulators have begun pointing to the need to reset the regulatory and supervisory approach to bank board governance by more precisely differentiating between the role of the bank board (oversight and guidance) and that of management (day-to-day execution).").

compared to senior managers.[16] However, the Proposal helps to differentiate those expectations by defining boards' key functions.[17]

Banks' boards of directors also have a duty of care to their institutions.[18] Under this duty, bank boards can be sued for failing their oversight and decision-making responsibilities.[19] The Proposal seeks to clarify and improve boards' responsibilities and facilitate their duty of care.[20] The Proposal consists of three parts: (1) proposed board effectiveness guidance, (2) refocusing existing guidance, and (3) clarifying expectations relating to supervisory findings.[21]

2. *Who It Impacts*

The Proposal applies to the boards of directors of "bank holding companies, savings and loan holding companies, state member banks, U.S. branches and agencies of foreign banks, and non-bank systemically important financial institutions supervised by the Federal Reserve."[22] Nonetheless, all institutions whose primary regulator is the Federal Reserve Board should recognize the Proposal's elements as a model for their boards of directors and should use the elements to guide their boards.[23] However, the Proposal does not apply to national

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[16] Legal Update from Mayer Brown LLP, David R. Sahr et al., US Federal Reserve Board Proposes Changes to Corporate Governance and Supervision of Large Financial Institutions (Aug. 25 2017), https://www.mayerbrown.com/us-federal-reserve-board-proposes-changes-to-corporate-governance-and-supervision-of-large-financial-institutions-08-25-2017/ [https://perma.cc/6M5G-HGEU] ("The results of [a Federal Reserve review] indicate that (i) it has become challenging for institutions to distinguish between supervisory expectations for boards and for senior management and (ii) boards spend a significant amount of time on supervisory expectations unrelated to their core responsibilities and may be overwhelmed by the quantity and complexity of information . . . .").

[17] *Id.* (explaining how the Proposal may fix identified issues).

[18] *See generally* Julie A. Hill & Douglas K. Moll, *The Duty of Care of Bank Directors and Officers*, 68 ALA. L. REV. 966 (2016) (providing an overview of bank directors' duty of care).

[19] *Id*. at 1003 ("[T]he FDIC brings claims against bank directors and officers for deficiencies in both oversight and decision-making—the same types of claims that are commonly asserted in the corporate setting.").

[20] *See* Benjenk, *supra* note 5.

[21] *Id.*

[22] *Id.*

[23] Richard M. Alexander et al., *Federal Reserve Board Proposes Guidance Addressing Supervisory Expectations on Board of Directors*, HARV. L. SCH. F.

banks, state non-member banks, or federal or state savings banks, whose boards will continue to be governed by the supervisory expectations of the Office of the Comptroller of the Currency or the Federal Deposit Insurance Corporation.[24]

3. *Components*

a) Part One: Proposed Board Effectiveness Guidance

The objective of the first part of the Proposal (Part One) is to differentiate the expectations of boards of directors from that of senior managers.[25] Part One only applies to banks and thrift holding companies with $50 billion worth of assets or more and firms that are not banks but that are designated by the Financial Stability Oversight Council as a systemic risk to U.S. financial stability.[26]

Under Part One, the Federal Reserve identifies five key characteristics of an effective board.[27] First, the Proposal sets clear, consistent, and aligned direction, meaning an effective board guides strategy and defines risk tolerance.[28] Second, the Proposal holds institutions' senior management accountable.[29] It does so in order to

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ON CORP. GOVERNANCE AND FIN. REG. (Aug. 27, 2017), https://corpgov.law.harvard.edu/2017/08/27/federal-reserve-board-proposes-guidance-addressing-supervisory-expectations-on-boards-of-directors/ [https://perma.cc/FBX9-K859] (explaining that the Proposal is not necessarily limited to certain Federal Reserve supervised institutions).

[24] Quinlivan, *supra* note 4 (outlining the entities to which the Proposal does not apply and how those institutions will continue to be regulated).

[25] Chris Bruce, *Fed Proposes Governance Guidance, New Ratings for Institutions*, BLOOMBERG BNA (Aug. 3, 2017), https://www.bna.com/fed-proposes-governance-n73014462730/ [https://perma.cc/UAS8-WEGB] ("The first part provides 'board effectiveness' guidance aimed in part at clearly distinguishing between supervisory expectations for boards as opposed to senior managers.").

[26] *Id.* ("It applies to banks and thrift holding companies with assets of $50 billion or more, as well as nonbank firms tagged as risks to U.S. financial stability.").

[27] Alexander et al., *supra* note 23 (listing the key characteristics under part one of the Proposal).

[28] *Id.* ("An effective board guides the development of and approves the firm's strategy and sets the types of levels of risk it is willing to take.").

[29] *Id.* (providing the second key characteristic of an effective board).

ensure that the strategy and risk tolerance are being enforced and that the firm's risk management and controls are being appropriately managed.[30] Third, the Proposal requires managing information flow and board discussions so that the board can make well-informed decisions while taking into account the specific risks and opportunities of their institution.[31] Fourth, the Proposal requires boards to maintain a board of competent composition and governance structure, to ensure that the institution is being properly governed in relation to its assets, intricacy, riskiness, scope of operations, and other relevant changes that may the institution may face.[32] The fifth and final rule is that boards should use internal risk and audit committees of the institution to support the independence of the institution's risk management and internal audit functions.[33]

The Federal Reserve examiners will use these five key characteristics in their evaluations of the largest institutions.[34] At the time of evaluations, boards of directors can give the examiners an internal evaluation of these characteristics in order to better facilitate the review process and to enable the boards to stay on track leading up to the reviews.[35] The attributes are intentionally vague in order to allow for variability when accessing firms with different levels of

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[30] *Id.* ("An effective board of directors holds senior management accountable for implementing the firm's strategy and risk tolerance and maintaining the firm's risk management and control framework. An effective board of directors also evaluates the performance and compensation of senior management.").

[31] *Id.* ("An effective board of directors actively manages its information flow and its deliberators, so that the board can make sound, well-informed decisions in a manner that meaningfully takes into account risks and opportunities.").

[32] *Id.* ("An effective board has a composition, governance structure, and established practices that support governing the firm in light of its asset size, complexity, scope of operations, risk profile, and other changes that occur over time.").

[33] *Id.* ("An effective board of directors through its risk and audit committees, supports the stature and independence of the firm's independent risk management and internal audit functions.").

[34] Fed Reserve Press Release, *supra* note 9 (explaining how part one of the Proposal would affect evaluations).

[35] Legal Update from Mayer Brown LLP, *supra* note 16 ("The proposed guidance also indicates that a board may provide supervisors with a self-assessment of its effectiveness based on these five attributes during the review process, although the proposal does not define the procedures or format for such an assessment.").

direct board responsibilities.[36] At the very least, Part One will provide a standard set of expectations for boards to use as a model in determining their responsibilities and corporate governance plans.[37] However, this does not mean the Federal Reserve is lightening their standards of boards overall.[38] Instead, these rules define clear expectations for boards to follow and implement in their institutions.[39]

b) Part Two: Refocusing Existing Guidance

The second part of the Proposal (Part Two) would update the current supervisory guidance to make the guidance more applicable to modern-day institutions.[40] Supervisory guidance specifically relates to the roles and obligations of boards and senior management within a firm.[41] Part Two aims to wipe out obsolete and unnecessary supervisory expectations and to provide expectations more closely correlated with the Federal Reserve's broad supervisory plan.[42]

For example, where existing supervisory guidance assigns the same roles and responsibilities to both the board and senior management, then the Proposal allows the Federal Reserve to revise that expectation to assign those roles and responsibilities to only senior management.[43] The Federal Reserve will conform these supervisory

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[36] Alexander et al., *supra* note 23 (stating the desired purpose of part one of the Proposal and how it is flexible enough to be adapted when need be).
[37] *Id.* ("[B]oards would be provided with a standard set of expectation they could rely on to frame their responsibilities and approaches to governance.").
[38] Lang, *supra* note 8.
[39] *Id*. ("Banks shouldn't mistake a clear statement of expectation as an easing of standards . . . . [B]y establishing more focused expectations . . . supervisors will have better tools to hold boards accountable.").
[40] Bruce, *supra* note 25 ("The second portion of the BE guidance would update existing supervisory guidance, while the third part said the Fed will be directing high-attention items to senior management for corrective action.").
[41] Morgenson, supra note 2 (explaining the meaning of supervisory guidance means in relation to Part Two of the Proposal).
[42] Luigi L. De Ghenghi et al., *Federal Reserve Proposes New Guidance on Corporate Governance*, DAVIS POLK: FINREGREFORM (Aug. 7, 2017), http://www.finregreform.com/single-post/2017/08/07/Federal-Reserve-Proposes-New-Guidance-on-Corporate-Governance [https://perma.cc/33F9-TTDC] (stating existing guidance would be rescinded or revised "to eliminate redundant or outdated supervisory expectations . . . and to ensure they are better aligned with the Federal Reserve's supervisory framework.").
[43] *See* Quinlivan, *supra* note 4 (giving an example of how Part Two would work in practice when there is redundancy).

expectations based on the amount of assets of the different institutions.[44] Accordingly, this will be particularly important to smaller institutions, as it will provide them with necessary immediate guidance for expectations and communicating with their examiners.[45]

c) Part Three: Clarifying Expectations Relating to Supervisory Findings

The third part of the Proposal (Part Three) aims to promote efficient information exchange. Part Three provides for directing pertinent information to senior management in order for them to take appropriate remedial actions, rather than to the boards.[46] Under the Proposal, such information would only be sent to the boards when necessary, such as when the boards have to address corporate governance obligations or when the senior management does not take appropriate remedial actions.[47] This will allow boards to focus on core oversight and guidance responsibilities by delegating regular business affairs to senior management and giving the boards more time overall.[48] Nonetheless, boards will remain responsible for ensuring that Federal Reserve issues are addressed by the senior managers, so as to ensure issues are not overlooked.[49] For that reason, financial institutions should consider developing their own internal policies that

[44] Alexander et al., *supra* note 23.
[45] *Id.* ("Importantly for smaller firms, the preamble indicated that the FRB will tailor expectations based on asset size of the institution. [S]upervisory expectations for smaller firms would be revised to align with the supervisory expectations set forth in . . . 'Supervisory Guidance for Assessing Risk Management at Supervised Institutions with Total Consolidated Assets Less than $50 Billion.'").
[46] Bruce, *supra* note 25 ("[T]he third part said the Fed will be directing high-attention items to senior management for corrective action).
[47] *Id*.
[48] Alexander, et al. *supra* note 23 ("The Proposal would also push down oversight responsibility for certain day-to-day business issues to senior management, allowing boards to focus on their core oversight responsibilities.").
[49] Bruce, *supra* note 25 (claiming that the boards will still be involved in ensuring that all of the Federal Reserve's items are looked into).

best conform to their specific institution in order to ensure that they are still being compliant with all the requirements.[50]

C. Potential Effects

1. *Reasons for the Proposal*

There are many proponents of the Proposal and several arguments in favor of its components, as it seeks to address many of the problems within the banking and financial sector.[51] Upon releasing the Proposal, the Federal Reserve stated that the Proposal would "clarify a board's roles and responsibilities in the supervisory process and more efficiently allocate its time and resources."[52] The Federal Reserve believes that the current regulatory duties are excessive and divert directors from their more pertinent roles, such as guiding strategy and implementing effective governance, and that the Proposal would work to effectively combat these problems.[53] Under the Proposal, the information communicated to the boards should be strictly targeted to allow them to focus on their core responsibilities, while leaving many other regular functions up to the senior management.[54] By limiting the responsibilities of boards, the Federal Reserve is suggesting that boards do not have the sole responsibility of ensuring an institution's well-being.[55]

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50 Alexander et al., *supra* note 23 ("Accordingly, financial institutions should consider developing tailored internal policies governing the flow of supervisory information that best fit their institution.").
51 Lang, *supra* note 8 ("The new Fed proposal . . . would redirect supervisory expectation more squarely toward senior management.").
52 Morgenson, *supra* note 2.
53 *Id.* (describing one of the Federal Reserve's needs for the proposal being to allow boards to focus more strictly on their key functions and obligations).
54 Lang, *supra* note 8 ("Communications to the board should be sharply focused on key strategic and trend information that allows directors to prioritize their strategic role. The far too common practice of bank management producing voluminous data-laden board materials needs to be overhauled to better enable directors to home in on key information.").
55 Robert B. Lamm, *Federal Reserve Governance Guidance: The Pendulum Swings Back (?)*, THE SEC. EDGE (Aug. 23, 2017), https://www.thesecuritiesedge.com/2017/08/federal-reserve-governance-guidance-the-pendulum-swings-back/ [https://perma.cc/7MST-VHX4] ("This aspect of the proposals demonstrates the Fed's apparent recognition the board cannot be the guarantor of a company's success or compliance.").

Several commentators have released statements in favor of the Proposal which align with the Federal Reserve's overall goals. Jerome Powell, a Federal Reserve governor and confirmed chair of the Federal Reserve, stated "[w]e need to ensure that directors are not distracted from conducting their key functions by an overly detailed checklists [sic] of supervisory process requirements."[56] The Treasury Department supports the need for reform "to restore balance in the relationship between regulators, boards and bank management."[57] Overall, the goals of and reasons for the Proposal are to better differentiate the board of directors' expectations from that of senior management, to allow the boards to instead focus on their core tasks, and provide consistent information flow to the boards of directors.[58]

2. *Reasons Against the Proposal*

Although there are several reasons in favor of the Proposal, there are some concerns as well.[59] According to the New York Times, current and former bank regulators say that the Proposal is "very likely to reduce crucial interactions between bank examiners and bank boards."[60] Accordingly, the Proposal could lead to not as much important information going to boards of directors, such as issues that government overseers uncover at some firms and institutions.[61] For example, bank directors' lack of knowledge about major problems within their institutions was one factor contributing to the 2008 financial crisis.[62]

There are potential concerns with parts of the Proposal.[63] Particularly, in relation to Part One, it is possible that many key

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[56] Benjenk, *supra* note 5 (arguing in support of the proposal).
[57] Morgenson, *supra* note 2 (stating the Treasury Department's position in favor of the Proposal).
[58] Alexander et al., *supra* note 23 (providing the overall goals of the Proposal).
[59] Lamm, *supra* note 55 ("However, taken as a whole, the proposals strike me as being something of a mixed bag. And some of the positive aspects of the proposal are already being subjected to attacks.").
[60] Morgenson, *supra* note 2 (outlining an opinion against the Proposal).
[61] *Id*. (further explaining reasons against the Proposal).
[62] *Id*. ("During the mortgage debacle that began about a decade ago, we learned just how little some bank directors knew about the looming problems at their institutions.").
[63] *See* Lamm, *supra* note 55 (providing some potential concerns of specific parts of the Proposal).

characteristics are missing from the list.[64] For example, the Federal Reserve did not provide for CEO selection or firm culture in the key characteristics component of the Proposal, and these are potentially important things to consider.[65] There is also a concern about applying different requirements to different sized institutions.[66] Some argue that these key characteristics should apply to all institutions, regardless of their size.[67]

There are also concerns with the Proposal as a whole. For one, sometimes enhanced efficiency does not help the problem at hand and more communication is in fact needed.[68] For example, the Wells Fargo scandal was being investigated for employees opening fake accounts without customer consent.[69] This investigation has forced the company to make additional disclosures.[70] In cases such as this, efficiency is not the main goal and there must be communication throughout the process.[71] Another potential implication to consider is that with more information and responsibility being given to senior management rather than to the board, the management may not act more quickly than the boards and thus it may not result in the desired better efficiency.[72] Moreover, the rule is problematic because "examiners feel their findings have more weight with management when the board

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[64] *Id.* ("[A]side from the fact that these items strike me as responsibilities or tasks rather than 'attributes,' it seems to me that some critical items are missing.").
[65] *Id.* ("CEO selection or management succession isn't on the list . . . [a]nd what about culture or something along the lines of tone at the top?").
[66] *Id.* ("I'm also troubled by the fact that a different set of 'attributes seems to apply to smaller institutions.").
[67] *Id.* ("But shouldn't key high-level attributes or tasks be pretty much the same for every company, regardless of size or industry?").
[68] *See* Morgenson, *supra* note 2 (leading to the Wells Fargo example of needing more disclosures and information).
[69] Paul Blake, *Timeline of the Wells Fargo Accounts Scandal*, ABC NEWS (Nov. 3, 2016), http://abcnews.go.com/Business/timeline-wells-fargo-accounts-scandal/story?id=42231128 [https://perma.cc/MJK7-P4Y7] ("Wells Fargo is embroiled in a scandal over assertions that bank employees opened accounts without customers' authorization.").
[70] *See* Morgenson, *supra* note 2 (explaining how the Wells Fargo scandal could conflict with the Proposal).
[71] *See id*. ("As disclosures about fresh improprieties at Wells Fargo stream in, now seems an odd time to reduce communications between regulators and bank boards.").
[72] *Id.* (stating another reason against the Proposal).

is also in the loop."[73] Additionally, much of the language in the Proposal is vague and there are several gaps that need to be filled in when it is implemented, which could change the intended effects and shift the goals.[74] Financial institutions should consider these concerns when assessing how the Proposal will impact them.[75]

D. Conclusion

The Federal Reserve's Board of Governors claim that the Proposal "will promote the safety and soundness of the firms."[76] The Proposal is part of an overall plan to better define boards of directors' regulatory expectations and requirements.[77] The Proposal also aligns with the government's more recent "broad deregulatory agenda."[78] The Federal Reserve invited the public to comment on the Proposal and all of its elements.[79] In particular, the Federal Reserve asked specific questions to financial institutions.[80] These questions were asked in order to determine whether or not the Proposal adequately addressed the issues boards face and if it did enough to clarify boards' responsibilities.[81]

The Proposal was open for public comments until October 10, 2017.[82] Since the close of the comment period, it is unclear whether the Proposal will achieve the desired effects of promoting efficiency

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[73] *Id*.

[74] Lamm, *supra* note 55 ("[T]hey are only proposals, and we have certainly seen situations where changes made on the road to adoption are not improvements. Of equal or greater importance (and possibly concern) is whether and to what extent the Fed fills in the gaps in the high-level principles it had proposed.").

[75] *See id.* (providing potential negative implications of the Proposal and those implications may impact different institutions)

[76] Mont, *supra* note 7.

[77] Benjenk, *supra* note 5 ("Notably, the Proposal is only the beginning of a multi-phased effort to clarify regulatory expectations for boards . . . .").

[78] Morgenson, *supra* note 2 ("The Fed's recommendations are the result of work that predated the Trump administration, but they certainly dovetail with its broad deregulatory agenda.").

[79] Alexander et al., *supra* note 23 (stating that the Federal Reserve put the Proposal out for comments).

[80] *Id.* (explaining that specific questions were asked of financial institutions).

[81] *Id.* (describing the specific questions asked of financial institutions).

[82] Proposed Guidance on Supervisory Expectations for Board of Directors, 82 Fed. Reg. 37,219.

and limiting boards' regulatory burdens.[83] The Proposal is the first of two proposals that the Federal Reserve is planning to release on the matter.[84] Another proposal will likely be issued in order to "address the many check-list type requirements that have proliferated in regulations and interagency guidance since the financial crisis, which are also burdensome."[85] Nonetheless, this is the first step to better clarify the role of bank boards since the current program was introduced.[86] The Proposal's ultimate scope and success will depend on how closely the Federal Reserve implements it.[87] If closely implemented, the Proposal will give the public greater assurance in the financial sector[88] and clarify duties of bank directors.[89]

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[83] Benjenk, *supra* note 5 (stating that the effects of the Proposal are uncertain until if and when it goes into effect).
[84] De Ghenghi, *supra* note 42 ("The proposal is the first of two envisioned by the Federal Reserve").
[85] *Id.* (providing a potential future Federal Reserve proposal to go along with the current one and how that would align with this Proposal).
[86] Fed Reserve Press Release, *supra* note 9 (stating the need for the Proposal to clarify what boards should be focusing on).
[87] Alexander et al., *supra* note 23.
[88] Lang, *supra* note 8 ("Strong implementation of these supervisory policies will give the public more confidence about the financial industry's safety and stability.").
[89] *Id.* ("Yet the proposal is a much-needed clarification of supervisory expectations of boards that will benefit both banks and the public.").
[90] Student, Boston University School of Law (J.D. 2019).