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Proposed Federal Reserve Bank Account Access Guidelines

Proposal Provides Broad Principles for Federal Reserve Banks in Evaluating Whether to Permit Eligible Institutions to Access Federal Reserve Bank Accounts or Services

Yesterday, the Board of Governors of the Federal Reserve System (the "Federal Reserve") released a notice requesting comments on proposed guidelines that would provide a framework for the Federal Reserve Banks to use in evaluating requests by "eligible" institutions to establish accounts at, and obtain other financial services provided by, the Federal Reserve Banks.[1] These accounts and services are core components of the U.S. payments system and, according to the Federal Reserve staff memorandum accompanying the notice,[2] access to these accounts and services increasingly has been sought by institutions with "non-traditional charter types." According to the staff memorandum, these non-traditional charter types, which have been authorized or are being considered by federal and state authorities, raise interpretive and policy questions regarding whether institutions with such charters should have access to Federal Reserve Bank accounts and services.

To address a recent increase in requests and inquiries relating to these accounts and services, the proposed guidelines would provide a "structured, transparent, and detailed framework for evaluating access requests" by all eligible institutions.[3] The Federal Reserve proposes to "make clear that legal eligibility does not bestow a right to obtain an account and services," and emphasizes that the guidelines are "not intended to provide assurance that any specific institution will be granted" access. The Federal Reserve Banks would use the guidelines to evaluate, based on six broad "principles," each request on a case-by-case basis. The proposal suggests that, by "support[ing] consistency" in decision-making by the Federal Reserve Banks, "while maintaining Reserve Bank discretionary authority to grant or deny requests," the guidelines would "reduce the potential for forum shopping across Reserve Banks and mitigate the risk that individual

decisions by Reserve Banks could create de facto System policy for a particular business model or risk profile." The six principles would also be considered by Federal Reserve Banks in monitoring and re-evaluating an institution's ongoing use of an account or services, particularly when there has been a change in the risks posed by the institution's use of the account, and in determining at any time whether to impose conditions on access, which may include, among other things, limits on the interest paid on an account or a maximum balance.

The proposed guidelines are described as "centered on a foundation of risk management and mitigation." Because the guidelines reflect considerations commonly used in the regulation and supervision of federally insured institutions, the guidelines could apply differently to insured and uninsured institutions. For federally insured institutions, the application of the guidelines "will be fairly straightforward in most cases." Requests from non-federally insured institutions, however, "may require more extensive due diligence."

The following summarizes the six principles outlined in the proposed guidelines:

- ***Eligibility.*** Under the first principle, a Federal Reserve Bank would determine whether the institution requesting access to an account or services is eligible for access under the Federal Reserve Act or another federal statute. Under Section 13 of the Federal Reserve Act, eligibility for an account at a Federal Reserve Bank is generally limited to members of the Federal Reserve System and "other depository institutions,"[4] which include both banks insured by the Federal Deposit Insurance Corporation (the "FDIC") and those eligible to make application to be insured by the FDIC.[5] The Federal Reserve notes that it is also considering whether it may, in the future, clarify its interpretation of legal eligibility to access Federal Reserve Bank accounts and services. This first principle would also include an evaluation of whether the institution has a "well-founded, clear, transparent, and enforceable legal basis for its operations" and whether an institution's activities and services are consistent with other applicable laws, including those governing funds transfers, economic sanctions, anti-money laundering ("AML"), and consumer protection.
- ***Risks to Federal Reserve Banks, the payment system, and financial stability.*** Under the second, third, and fourth principles, a Federal Reserve Bank would assess any risks it could itself incur as a result of the institution's access to an account or services, as well as potential risks to the overall payment system and U.S. financial stability. These principles would include assessments of relevant credit, operational, settlement, cyber, and other risks, and evaluations of, among other things, the institution's risk management and governance, compliance with regulatory and supervisory requirements, financial condition, liquidity, operational capacity and reliability, and settlement processes. A Federal Reserve Bank would also assess the effects of the institution's access on other institutions, including through the potential transmission of liquidity risk or other strains in times of financial or economic stress. With respect to financial stability, Federal Reserve Banks would take into account that, for institutions not subject to capital requirements similar to those that apply to federally insured institutions, there is a "particularly large" potential for "sudden and significant" deposit inflows during times of stress, due to the possibility that investors might deposit funds with institutions that hold mostly central bank balances, rather than using them to provide financing to financial and non-financial firms and state and local governments, which may "greatly amplify[] stress."
- ***Facilitation of illicit activity.*** Under the fifth principle, a Federal Reserve Bank would assess potential risks posed by the institution's access to an account or services on the overall economy as a result of potential facilitation of illicit activity, such as money laundering, fraud, or cybercrime. This principle would require the institution to comply with economic sanctions regulations promulgated by the Office of Foreign Assets Control and to have an AML program that includes the "pillars" generally required of bank AML programs. These pillars include internal controls, independent testing, the designation of

one or more officials responsible for coordinating and monitoring day-to-day compliance, ongoing training, and appropriate risk-based procedures for ongoing customer due diligence.[6]

- ***Monetary policy effects.*** Under the sixth principle, a Federal Reserve Bank would assess the effects of the institution's access to an account or services on the Federal Reserve's ability to implement monetary policy. This principle would include consideration of how access by the institution—or by a group of "like institutions"—could affect, among other things, reserves, key policy interest rates, short-term funding markets, and the overall size of the consolidated balance sheet of the Federal Reserve Banks.

The Federal Reserve requests comments on all aspects of the proposed guidelines and specifically on (1) whether the guidelines would address all the risks relevant to the Federal Reserve's policy goals, (2) whether the level of specificity in each principle provides sufficient clarity and transparency about how Federal Reserve Banks would evaluate requests, (3) whether the guidelines would support responsible financial innovation, and (4) whether the Federal Reserve or the Federal Reserve Banks should consider other steps or actions to facilitate the review of requests for Federal Reserve Bank accounts and services in a consistent and equitable manner.

Comments on the proposed guidelines are due 60 days after the notice is published in the *Federal Register*.

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ENDNOTES

1 Board of Governors of the Federal Reserve System, Proposed Guidelines for Evaluating Account and Services Requests (May 5, 2021), *available at* https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20210505a1.pdf.

2 Memorandum from Staff to the Board of Governors of the Federal Reserve System regarding Proposed Guidelines to Evaluate Requests for Accounts and Services at Federal Reserve Banks (Apr. 28, 2021), *available at* https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20210505a2.pdf.

3 The guidelines would not apply to account requests that are addressed in existing Federal Reserve rules or policies, including accounts provided under fiscal agency authority, accounts for foreign banks authorized under the Federal Reserve's Regulation N, 12 C.F.R. part 214, joint accounts, or accounts for designated financial market utilities.

4 12 U.S.C. § 342.

5 *See* 12 U.S.C. § 461(b)(1)(A). In addition to commercial banks, mutual savings banks, federal savings banks, savings and loan associations, and credit unions may be "depository institutions" for this purpose. *Id.* Edge and Agreement corporations as well as branches and agencies of foreign banks are also eligible for Federal Reserve Bank accounts. *See* Federal Reserve Banks, Operating Circular 1, Account Relationships (effective Feb. 1, 2013), *available at* https://www.frbservices.org/assets/resources/rules-regulations/020113-operating-circular-1.pdf.

6 *See* 31 C.F.R. § 1020.210(a)(2).

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