February 11, 2014

Johnny Vilela
OCC Clearance Officer
Legislative and Regulatory Activities Division
Office of the Comptroller of the Currency
400 7th Street, SW., Suite 3E-218
Washington, DC 20219

Via electronic mail: regs.comments@occ.treas.gov; oira_submission@omb.eop.gov

Re: OCC Proposed National Banking Guidelines

Dear Mr. Vilela:

I am writing on behalf of the Council of Institutional Investors (Council), a nonprofit association of corporate, union, and public pension funds, foundations, and endowments, with combined assets that exceed $3 trillion.[1] Member funds are major shareowners in public securities and generally have a duty to protect the retirement assets of millions of American workers. As such, our members have an interest in the regulatory landscape of our nation's banking sector. We ask that the OCC take into account the following comments to the proposed guidelines, as informed by our member approved corporate governance policies.

Issue 1: Director Independence

The Council's first comment pertains to the proposed guidelines' discussion of the inclusion of independent directors. Section III.D states:

> To promote effective, independent oversight of bank management, at least two members of the board of directors should not be members of the bank's management or the parent company's management.[2]

The Council's membership approved policies state that at least two-thirds of the directors should be independent; their seat on the board should be their only non-trivial professional, familial or financial connection to the corporation, its chairman, CEO or any other executive officer. Furthermore, the company should disclose information necessary for shareowners to determine whether directors qualify as independent.[3]

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[1]For more information about the Council of Institutional Investors (Council) and its members, please visit the Council's website at http://www.cii.org.
[2]Department of the Treasury, Office of the Comptroller of Currency, OCC Guidelines Establishing Heightened Standards for Certain Large Insured National Banks, Insured Federal Savings Associations, and Insured Federal Branches; Integration of 12 CFR Parts 30 and 170, *available at* http://www.occ.gov/news-issuances/news-releases/2014/nr-occ-2014-4a.pdf.
[3]Council Corporate Governance Policy 2.3, *Independent Board*. For greater detail on this, or any other member approved policy, visit the Council's website.

We believe that maintaining a board comprised of two-thirds independent directors, coupled with a narrowly drawn definition of independence, is critical to a properly functioning board. While arguably no guideline can unerringly describe and distinguish independent directors under all fact patterns, we believe the guidelines should impose on a board an obligation to consider all relevant relationships and circumstances to determine independence. Moreover, while a two-thirds standard might reduce the pool of qualified board candidates in some circumstances, this burden is comparatively small when weighed against the substantial benefits to the interests of shareholders and the board.

Finally, we respectfully request that the OCC review and consider in its entirety the Council's detailed definition and related guidelines for independent directors in evaluating potential improvements to Section III.D.[4]

Issue 2: Compensation and Risk Management

The Council's second comment pertains to the proposed guidelines' discussion of executive compensation and risk management. Section II.K(6) of the guidelines state:

> The bank's front line units and independent risk management should incorporate the risk appetite statement, concentration risk limits, and front line unit risk limits into compensation and performance management programs.[5]

Section II.M, entitled *Compensation and Performance Management Programs,* further expounds on the matter, stating:

> The bank should establish and adhere to compensation and performance management programs that meet the requirements of any applicable statute or regulation and are appropriate to:
>
> 1. Ensure [that] the Chief Executive Officer… implement[s] and adhere[s] to an effective risk governance framework;
>
> 2. Ensure front line unit compensation plans and decisions appropriately consider the level and severity of issues and concerns identified by independent risk management;
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> 3. Attract and retain the talent needed to design, implement, and maintain an effective risk governance framework, and;
>
> 4. Prohibit [excessive] incentive-based payment arrangements…that encourage inappropriate risks.[6]

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[4]Council Corporate Governance Policies Attachment, Independent Director Definition, *available at* http://www.cii.org/files/issues_and_advocacy/correspondence/2012/11_01_12_cii_corporate_governance_excerpt.pdf.
[5]*Id.* at n.2.
[6]*Id.*

The Council supports the OCC's efforts to link executive compensation and risk management at banks generally. Our membership approved policies acknowledge that executive compensation decisions are one of the most direct ways for shareowners to assess the performance of the board, and that risk oversight plays an intrinsic role in making effective compensation determinations.[7]

Our policies also state that it is the job of the board of directors and the compensation committee to ensure that executive compensation programs are appropriately structured and effective in rewarding sustainable, superior performance. It is also the job of the board of directors and the compensation committee to ensure that compensation plans enhance the company's short- and long-term strategic goals, with respect to critical factors such as company performance, industry considerations, risk considerations and compensation paid to other employees.[8]

Finally, also relevant to Section II.K(6), our policies state that executive compensation should be driven predominantly by multiple performance measures established ahead of time and publicly disclosed. Those measures should be sufficiently diverse that they do not simply reward the executive multiple times for the same performance, they should be aligned with the company's strategic goals, and they should incorporate company-wide performance metrics, rather than singular business unit performance criteria.[9]

Issue 3: Effective Risk Oversight Communication

The Council's third comment pertains to the proposed guidelines' discussion of risk data aggregation and reporting. Section II.J states:

> The risk governance framework should include a set of policies, supported by appropriate procedures and processes…which provide for…The distribution of risk reports to all relevant parties at a frequency that meets their needs for decision-making purposes.[10]

The Council agrees that distributing risk reports may result in the widespread dispersal of information essential to proper risk management. We, however, note that Council membership approved policies also importantly include a description of the board's role and responsibilities in distributing information about risk oversight.

Council policies state that the board of directors has ultimate responsibility for communicating risk oversight. More specifically, effective risk oversight requires meaningful communication about the company's material risks and risk management processes between the board and management, among board members and committees, and between the board and any outside advisers it consults. Our policies, therefore, reflect the view that the board should disclose to shareowners, at least annually, sufficient information to enable them to assess whether the board is carrying out its oversight responsibilities effectively.[11]

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[7] Council Corporate Governance Policy 5.1, *Executive Compensation: Introduction.*
[8] *Id.*
[9] Council Corporate Governance Policy 5.5d, *Executive Compensation: Pay for Performance.*
[10] *Id.* at n.2.
[11] Council Corporate Governance Policy 2.7, *Board's Role in Risk Oversight*.

Thank you for considering our comments. The OCC's proposed guidelines discuss sound corporate governance concepts, and as the leading voice in the corporate governance arena, we hope the Council's suggestions are pertinent to improving the proposed guidelines. If you have any questions regarding our letter or this request, please contact me at 202-261-7088 or jordan@cii.org, or our general counsel Jeff Mahoney at 202-261-7081 or jeff@cii.org.

Sincerely,

Jordan Lofaro

Jordan Lofaro