



July 13, 2020

Via Electronic Mail

Chief Counsel's Office
Attention: Comment Processing
Office of the Comptroller of the Currency
400 7th St, SW
Suite 3E-218
Washington, DC 20219

Re: OCC Interim Final Rule (IFR) Regarding Director, Shareholder, and Member Meetings (OCC Docket No. 2020-0020; RIN 1557-AE94)

To Whom It May Concern:

The Bank Policy Institute¹ ("BPI") appreciates the opportunity to comment on the interim final rule ("IFR")² issued by the Office of the Comptroller of the Currency that amends 12 CFR 5 and 7 to clarify that national banks and federal savings associations may permit telephonic and electronic participation at all board of directors, shareholder, and, as applicable, member meetings.

BPI places great importance on effective corporate governance, and has strived to serve as a thought leader in the area, including through its publications and comment letters.³ For this reason, we particularly appreciate the opportunity to comment on the board of directors meeting-related provisions of the IFR intended to codify the permissibility of remote director participation at board of

¹ The Bank Policy Institute is a nonpartisan public policy, research, and advocacy group, representing the nation's leading banks and their customers. Our members include universal banks, regional banks and the major foreign banks doing business in the United States. Collectively, they employ almost 2 million Americans, make nearly half of the nation's small business loans, and are an engine for financial innovation and economic growth.

² OCC Bulletin 2020-55/May 26, 2020: Director, Shareholder, and Member Meetings. <https://www.occ.gov/news-issuances/bulletins/2020/bulletin-2020-55.html>.

³ See "The Role of the Board of Directors in Promoting Effective Governance and Safety and Soundness for Large U.S. Banking Organizations" (May 2016) and "The Guiding Principles for Enhancing U.S. Banking Organization Corporate Governance" (2015) (in the process of being revised). Available at https://bpi.com/wp-content/uploads/2018/07/tch_report_the-role-of-the-board-of-directors-in-promoting-governance.pdf and <https://bpi.com/wp-content/uploads/2018/07/guiding-principles-for-enhancing-u-s-bank-organization-corporate-governance.pdf>.

directors meetings. In doing so, we believe that the IFR advances the cause of good governance at federally chartered banking organizations.

Among the topics that the IFR requested specific industry comment on is, “Should the OCC provide risk management standards to mitigate any security risks arising from telephonic or electronic meetings?” As described in greater detail below, we believe that issuance of new OCC risk management standards to govern telephonic or electronic meetings is unnecessary and could be counterproductive, without meaningful improvements in mitigating security risks.

I. We welcome the OCC’s codification of the existing guidance regarding the permissibility of telephonic or electronic participation in board of directors meetings.

We support the IFR’s codification of the OCC’s interpretation that permits national banks to provide for telephonic or electronic participation at board of directors meetings.⁴

In this regard, we concur with the OCC’s view that remote communications tools provide national banks with more flexibility in planning and holding director meetings; could permit greater director participation at these meetings for those participants not able to attend in person; and may reduce the costs, logistical constraints, and other burdens—as well as, in the current environment, health risks—associated with conducting in-person meetings.

Prior to the current pandemic it had become common practice for one or more directors to participate in meetings remotely from time to time, as necessary, in order to overcome challenges with in-person participation such as logistical constraints. Over the past few months during the COVID-19 pandemic, national banks have utilized remote communication tools, such as telephone or internet-based conferencing, to an even greater degree than in the past, enabling them to comply with internal and regulatory meeting requirements within the parameters of the COVID-19 social distancing guidelines recommended by public health authorities like the Centers for Disease Control and Prevention. In the current environment, boards have been able to continue to carry out their critical oversight role without directors co-locating and notwithstanding federal, state and local restrictions on travel and gatherings by relying upon these tools. Accordingly, BPI members have gained significant experience in conducting board meetings via telephone and/or telepresence since the issuance of OCC Interpretive Letter No. 860 in 1999 and especially in recent months. Based on this experience, we believe that the OCC should codify the permissibility of telephonic and video participation in board of directors meetings.

⁴ New paragraph (d) of §7.2003 of the OCC’s rules provides that a national bank may provide for telephonic or electronic participation at a meeting of its board of directors. This provision codifies OCC Interpretive Letter No. 860 and makes the national bank rule consistent with rules for Federal savings associations. See OCC Interpretive Letter No. 860 (April 1999) (“Although the National Bank Act does not specifically address the manner in which a national bank’s board of directors shall conduct its meetings, it does authorize national banks “[t]o prescribe, by its board of directors, bylaws not inconsistent with law, regulating the manner . . . its general business [is to be] conducted.” 12 U.S.C. § 24 (Sixth). This authority to prescribe bylaws to conduct a national bank’s general business is sufficiently broad to permit a national bank to adopt procedures governing the practice of conducting board meetings, including the ability to conduct regular board meetings by telephone or video conferencing.”)

II. The issuance of new risk management standards to govern telephonic or electronic meetings is unnecessary and could be counterproductive, without meaningful improvements in mitigating security risks.

Our member banks are keenly aware of and focused on the security risks relating to the use of telephonic, internet-based and other electronic communication technologies. In our experience, national banks view board communications as highly sensitive data. Indeed, the continued integrity of board communications is critical to support the board's ability to oversee the most sensitive and important strategic decisions made by management. In addition, as noted above, it has been common practice of national banks for years to allow, as necessary, a portion of directors to participate in meetings telephonically, consistent with bank by-laws and applicable law. Accordingly, banks already take a number of thoughtful and varied measures to reduce security risks, such as limiting unnecessary distribution of board materials, using secure electronic portals to share documents and using security precautions to prevent unauthorized access to telephonic and/or video meetings, and have extensive experience with these risk-reduction tools that predates the COVID-19 crisis.

National banks are currently subject to stringent regulatory requirements and adhere to a variety of other robust guidelines and industry best practices for data security. The demanding requirements in the Interagency Guidelines Establishing Standards for Information Security, the Interagency Guidance on Response Programs for Unauthorized Access to Customer Information and Customer Notification, and the FFIEC Information Technology Examination Handbook, as well as safety and soundness requirements and targeted guidance documents issued by the OCC and other financial regulators—data security, use of cloud services, and other issues—have made the financial sector one of the most highly-regulated sectors in the U.S. economy regarding data and information security. Banks apply their information security protocols to board communications just as they do for other types of highly confidential information. While national banks should provide effective risk management to mitigate security risks arising from holding meetings, they should have discretion in determining how to structure their efforts in this regard in a manner consistent with existing law and standards. Additionally, telephone and telepresence board meetings are not unique to national banks. Accordingly, practices should not be prescribed or regulated differently than they would be for other corporations that conduct highly sensitive meetings via telephonic and other means of remote communication.

For these reasons, we believe that additional requirements beyond those already applicable are unnecessary and are at risk of being overly prescriptive, especially as they would apply to those OCC-regulated banks subject to the OCC's Heightened Standards (Appendix D to Part 30), which are already required to maintain enhanced supervisory processes with regard to cybersecurity and security risks.⁵

Any new standards risk being unnecessarily duplicative—particularly if implemented as mandatory and inflexible. Each national bank's board should be able to make its own determinations regarding whether and/or under which circumstances it would be most appropriate to modify effective existing security risk protocols to accommodate risks specific to telepresence or telephonic meetings. This is particularly important since technology continues to evolve and there is no "one size fits all" type of security measures that constitute a best practice to mitigate security risks arising from the conduct of board meetings. Measures should be tailored to an individual bank's risk profile, size, business, and complexity, as well as other considerations such as cost and director preference and geography. Bank

⁵ The OCC has identified cyber risk as one of the types of operational risks that is addressed by the Heightened Standards.

information security protocols continually evolve as new technologies and practices are adopted, and banks should continue to treat board materials in accordance with the security standards that they use over time for all of their most sensitive data.

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Bank Policy Institute appreciates the opportunity to comment on the IFR. If you have any questions, please contact the undersigned by phone at 917-863-5945 or by email at Gregg.Rozansky@bpi.com.

Respectfully submitted,

A handwritten signature in cursive script that reads "Gregg Rozansky".

Gregg Rozansky
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Bank Policy Institute