Minority Depository Institutions Advisory Committee Minutes
October 3, 2017

The Minority Depository Institutions Advisory Committee (MDIAC) convened for a meeting at 8:30 a.m. on October 3, 2017, at the Office of the Comptroller of the Currency (OCC) headquarters located at 400 7th Street, SW, Washington, DC.

In accordance with the provisions of Public Law 92-463, the meeting was open to the public from 8:30a.m.to 2:00 p.m.

Advisory Committee Members Present
Jamie Bartholomew Aller, Director and General Counsel, The National Bank of Malvern, Malvern, PA; Lucilio (Louie) M. Couto, President and Chief Executive Officer, American Plus Bank, N.A., Arcadia, CA; Guillermo Diaz-Rousselot, President and Chief Executive Officer Continental National Bank, Miami, FL; John Hou, Chairman, President and Chief Executive Officer, Asian Pacific National Bank, San Gabriel, CA; Joe Quiroga, President, Texas National Bank, Mercedes, TX; Carlos Safie, Chairman of the Board, President and Chief Executive Officer, Executive National Bank, Miami, FL.

OCC Participants Attending
Keith A. Noreika, Acting Comptroller of the Currency; Jorge Aguilar, Attorney; Charlotte Bahin, Senior Advisor for Thrift Supervision, Adrianna Bailey, Associate Deputy Comptroller (AsDC) for Bank Secrecy Act/Anti-Money Laundering (BSA/AML); Lazaro Barreiro, Director for Governance and Operational Risk Policy; Arnie Cohen, Congressional Affairs Specialist; Beverly F. Cole, Deputy Comptroller (DC) for Compliance Supervision Management and Designated Federal Officer; Janet Fix, Analyst to DC for Community Affairs; Larry Hattix, Senior Deputy Comptroller (SDC) for Enterprise Governance and Ombudsman; Bryan Hubbard, DC for Public Affairs; Beth Knickerbocker, Chief Innovation Officer; Andrew Moss, Community Relations and Minority Affairs Specialist; Paul Reymann, Director for Consumer Compliance Policy; Margot Schwadron, Director for Capital Policy; Seth Schwartz, Compliance Officer BSA/AML; Enice Thomas, Senior Advisor to the SDC for Midsize Community Bank Supervision; Barry Wides, DC for Community Affairs.

External Speakers
None.

Public Observers
None.

Meeting Opening
Beverly Cole opened the meeting at 8:30 a.m, welcomed all in attendance. The meeting agenda was also reviewed. Attendees were reminded the meeting is open to the public and meeting minutes would be published.

Regulatory Capital Update

Margot Schwardron reviewed a handout that provided a policy update on regulatory capital proposed rulemakings. The committee was informed that two major proposed rulemakings to simplify the Capital Rule were issued. The Transition Notice of Proposed Rulemaking (NPR) issued August 22, 2017 proposes retention of certain existing transition provisions for banking organizations that are not subject to the Advanced Approaches Capital Rule. This will extend existing transitional capital treatment for certain capital deductions and risk weights. The comment period for this NPR last week. In addition the Simplifications NPR issued September 27, 2017 proposes simplifications to the Capital Rule pursuant to the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA). This NPR proposes to simplify certain aspects of the capital rule that were highlighted in the EGRPRA report. We are proposing to freeze the current treatment until the Simplifications NPR becomes final so banks do not have to apply the full deduction amount for items being addressed. The comment period is open for 60 days after it is published in the *Federal Register*.

The current capital rule introduced the 10% and 15% threshold deduction framework, in which mortgage servicing assets (MSAs), temporary difference deferred tax assets (DTAs) that are not realizable through carry back, and significant investments in the regulatory capital of unconsolidated financial institutions (UFIs) are individually limited to 10% of common equity tier 1, and combined the 3 items cannot exceed 15% of CET1. Under the transition arrangements, in 2017, banks only have to deduct 80% of the amount of the three items above the 10% and 15% limitation. In 2018, the full amount of the deduction applies as well as an increase in 100% RW to 250%. Again, the transition NPR is proposing to freeze the 2017 treatment until the simplification NPR becomes final. Also, the transition NPR proposes something similar for the limitation on the amount of minority interest that a bank can include in regulatory capital. The current rule imposes a limit on the amount of minority interest that a bank can include in regulatory capital based on the regulatory capital requirement of the subsidiary. In 2017 under the transition provisions, a bank calculates how much minority interest doesn’t count as capital of the parent bank, and can include 20% of that. In 2018, none of the minority interest that doesn’t count as capital can be included in the bank’s regulatory capital. The transition NPR proposes to keep the 2017 treatment in place until the simplification NPR is finalized.

The Simplifications NPR proposes simpler capital treatment for High Volatility Commercial Real Estate (HVCRE), MSA, DTAs, investment in the capital of UFIs, and minority interest. The NPR proposes alternative treatments for the four items for non-advanced approaches banks. The simplification NPR proposes to replace the HVCRE exposure definition in the standardized approach with a purpose-based High Volatility Acquisition Development or Construction (HVADC) exposure definition. Many comments were received on this area.

The federal agencies plan to simplify the calculation of the number of deductions for purposes of regulatory capital. The NPR proposes to simplify the capital treatment for non-advanced approaches banks. It increases the individual deduction thresholds form 10 to 25% of common equity tier 1, eliminates the aggregate 15% common equity tier 1 deduction threshold, replaces the current distinction between significant and non-significant investments with one treatment for all investments in the regulatory capital of UFIs, MSAs and temporary differences DTAs not deducted would receive a 250% risk weight, and regarding investment in UFIs - equity investments could qualify for a preferential 100% risk weight subject to limits. Other investments would receive the relevant risk-weight for the exposure category of the investment.

The NPR proposes to simplify the minority interest limitation calculation for non-advanced approaches banks from the current limitation being based on the calculation of the capital ratios of the subsidiary to the proposed limitation removing the allocation based on the subsidiary's capital ratios and being limited to up to 10% of the bank's relevant tier of capital.

The transitions NPR does not apply to the advanced approaches banks. And, most of the provisions in the simplifications NPR would also not apply to this population of banks. However, under the standardized approach, advanced approaches banks would use the proposed HVADC exposure definition.

The OCC's effort to explain the simplification proposal to the industry include providing a Community Bank Summary for the Simplification NPR and conducting National Call on October 12, 2017.

Remarks from Acting Comptroller of the Currency (ACoC) Keith A. Noreika

ACoC Noreika addressed the group and reminded them that the June 2017 MDIAC meeting he began the conversation about exploring opportunities to foster economic growth and reducing regulatory burden within the federal banking system. At this meeting, ACoC Noreika shared some of those proposals with the MDIAC members. Some key points include:

- The banks that the OCC supervises should be—as they are today—engines of economic growth for the nation. Our job as bank supervisors is to strike the right balance between supervision that effectively ensures safety, soundness, and compliance, while—at the same time—enabling economic growth.
- ACoC already took several important steps to promote a regulatory environment that is balanced and provides the certainty needed to encourage investment. In particular, he reported he met with various trade groups, scholars, community groups, and my colleagues at the federal and state levels to begin a constructive, bipartisan dialogue on how our regulatory system might be recalibrated to foster economic growth.
- He reported on his June testimony before the Senate Banking Committee, where he shared 17 suggestions that Congress could consider to recalibrate regulation in ways that would reduce burden and encourage economic growth with one example involving the Volcker Rule where he sought ways to simplify the regulatory framework implementing the Volcker Rule and noted that the OCC issued a notice for public comment soliciting stakeholders views on how to improve implementation of the Rule.
- ACoC stated that there are many other statutes that do not provide the federal banking agencies with sufficient flexibility to tailor their regulations to the risk profiles of different institutions. This is true despite the fact that the risks inherent in large, complex institutions are markedly different in type and scope from those of smaller institutions, such as yours. As a result, regulations that were intended to address the systemic risks typically associated with larger institutions often must be applied to smaller ones that do not pose such broad, systemic risks. He cited section 165 of the Dodd-Frank Act that requires an annual stress test for all

banks with assets of more than $10 billion, limiting regulators' flexibility to determine when and within what parameters a stress test should be conducted and functions as a barrier to growth and opportunity.
- Another opportunity involves simplifying the capital requirements currently applicable to community banks by exempting banks that do not use models-based capital requirements from section 171 of the Dodd-Frank Act (the "Collins Amendment"). This provision was adopted to prevent banks using models-based capital requirements from holding less than the generally applicable amount of capital. But smaller banks do not use models-based capital requirements, so the Collins Amendment may limit bank regulators from tailoring capital requirements to these smaller institutions even when that is not the true intent of the Collins Amendment. Adopting this change would allow the federal banking agencies to tailor the capital rules to match the size and complexity of the institutions applicable to this provision. Another approach that the regulatory agencies could pursue with this legislative change is the idea to exempt community banks from certain Basel-based capital standards, provided they comply with a robust leverage ratio requirement and also do not engage in a set of risky activities that the regulators should define through notice-and-comment rulemaking.

ACoC Noreika stated that these recommendations are only a few of the ways we can rebalance regulation and maintain appropriate oversight of the nation's banks. And, ACoC Noreika noted that while the OCC is considering these recommendations to reduce regulatory burden and promote economic opportunity, we also continue to identify and monitor risks. In particular, we have identified issues related to strategic, credit, operational, and compliance risks as top concerns for community banks. To stay on top of these issues that may affect your bank, I encourage each of you to review our most recent *Semiannual Risk Perspective.*[1]
He also encouraged the members to provide comments on other ways to reduce regulatory burden that will foster economic growth.

Compliance Risk Policy (CRP) Update
Paul Reymann addressed the MDIAC members on the Military Lending Act (MLA), TILA-RESPA and an overview CRP topics included in the OCC's Semi-annual Risk Perspective.
A recap of his comments in these areas follow.

Military Lending Act (MLA)

- The MDIAC was reminded that the FFIEC agencies issued interagency exam procedures were issued by the OCC in OCC Bulletin 2016-33 on October 7, 2016. And that the revised interagency examination procedures reflect:
  - the expansion of MLA protections to a broader range of consumer credit products,
  - rules for determining the fees and charges included within the calculation of the Military Annual Percentage Rate (MAPR) and for calculating the MAPR,
  - the optional safe harbor available to creditors for identifying covered service members and dependents (covered borrowers),
  - disclosures creditors are required to provide to covered borrowers,

[1] Semiannual Risk Perspective. Office of the Comptroller of the Currency. Spring 2017 (https://www.occ.gov/publications/publications-by-type/other-publications-reports/semiannual-risk-perspective/semiannual-risk-perspective-spring-2017.pdf).

- and, limitations on consumer credit extended to covered borrowers.

These amended regulatory requirements went into effect on October 3, 2016 for consumer credit products other than credit cards. And, October 3, 2017 is the effective date for the requirements relating to computation of the MAPR for a credit card account. The MLA Booklet of the Comptrollers Handbook will be published soon.

Truth in Lending Act – Real Estate Settlement Procedures Act (TILA-RESPA)

The FFIEC agencies are in the process of issuing updated interagency exam procedures for TILA and RESPA.   The CFPB has issued a series of final rules amending Mortgage Servicing Rules Under the RESPA (Regulation X) and TILA (Regulation Z). The updated FFIEC TILA and RESPA exam procedures will incorporate the 2016 and 2017 CFPB updates to Regulation X and Regulation Z.

On August 4, 2016, the CFPB issued a final rule to further clarify, revise, and amend provisions of Regulation X as well as Regulation Z.

- The amendments in the final rule are frequently referenced as the "2016 Servicing Rule."
- The 2016 Servicing Rule establishes a definition of successor in interest and provides that confirmed successors in interest are considered "borrowers" for the purposes of Regulation X's mortgage servicing provisions.
- Confirmed successor in interest means a successor in interest once a servicer has confirmed the successor in interest's identity and ownership interest in a property that secures a mortgage loan subject to Subpart C of Regulation X.
- The 2016 Servicing Rule also addresses compliance with certain servicing requirements when a person is a debtor in bankruptcy or sends a cease communication request under the Fair Debt Collection Practices Act ("FDCPA").
- Additionally, the 2016 Servicing Rules clarifies, revises, or amends provisions regarding:
    - Delinquency Definition
    - Request for Information
    - Force-Place Insurance
    - Early Intervention
    - Loss Mitigation
    - Prompt Payment Crediting
    - Periodic Statements
    - Small Servicer (except those provisions relating to successors in interest, which are effective April 19, 2018)
- The 2016 Servicing Rule is effective October 19, 2017, except for the provisions related to successors in interest and periodic statements for borrowers in bankruptcy, which take effect on April 19, 2018.

Collaboration with Consumer Financial Protection Bureau (CFPB)

On Aug. 30, 2017; the Consumer Financial Protection Bureau (CFPB) issued a detailed summary of changes and clarifications of the 2017 TILA-RESPA rule, which are already effective.

- This final rule memorializes the CFPB's informal guidance on various issues and makes additional clarifications and technical amendments.
- This rule also:
    - creates tolerances for the total of payments,
    - adjusts a partial exemption mainly affecting housing finance agencies and nonprofits,
    - extends coverage of the TILA-RESPA integrated disclosure requirements to all cooperative units, and
    - provides guidance on sharing the integrated disclosures with various parties involved in the mortgage origination process.

Paul reported that OCC consulted with CFPB on the rule and anticipate they may issue a final Pay Day Rule soon**.** He further reported that the CFPB and other FFIEC agencies are working on the Home Mortgage Disclosure Act (HMDA). Some highlights include:

- There have been changes in institutional coverage to make coverage criteria consistent between banks and non-banks. These were effective January 1, 2017.
- CFPB published proposed guidance identifying the fields that would be made available to the public.
- There are changes in loan coverage – that go from purpose driven requirements to a dwelling secured requirement.
    - Home improvement loans not covered unless the dwelling is secured
    - Home Equity Lines of Credit are covered.
    - The FFIEC agencies published resubmission and transaction testing guidelines in August 2017. These will be incorporated into revised interagency exam procedures, with the goal of publishing by the first quarter of 2018 with the FFIEC "Getting it Right" guide.
- In addition the Federal Banking Agencies (OCC, FDIC, and FRB) published a Notice of Proposed Rulemaking on technical conforming changes to the CRA rules. Comments are due by October 20, 2017. Everyone is encouraged to comment.

Semiannual Risk Perspective

Next Paul highlighted a few key topics in OCC's *Semiannual Risk Perspective*. Those included: change management, compliance management systems, risk to your banks or the consumers, and third-party risk management. He reported that implementing new and revised consumer protection rules under TILA, RESPA, MLA, and HMDA are continuing to pose challenges to change management processes and are increasing operational, compliance, and other risks. New and amended regulatory requirements pose challenges to bank systems, policies and procedures, disclosures, and staff training. These will also test the effectiveness of your compliance management systems to keep pace and adapt. It was also noted that changes to the data collection and processing requirements for HMDA that will be implemented over the next several years also pose significant change management, compliance, and operational challenges. So OCC will monitor the potential risk to your bank or the consumer. The agency also highlighted that fair lending risks may increase when banks engage third parties to conduct some or all of the loan application or underwriting processes, or to help banks make decisions regarding terms or pricing. Variations in loan approval and denial and pricing decisions may create increased exposure for fair lending issues and require increased monitoring.

Office of Innovation Update

Beth Knickerbocker provided the MDIAC an update on the activities. She reported her group – the Office of Innovation established "Office Hours" around the country and conducted meetings in New York and San Francisco with interested parties. The New York meetings were more regulatory technology focused whereas the San Francisco meetings were more focused on FinTech. Beth reported some common areas of discussion are FinTechs: understanding of the regulatory environment and expectations, interface with bankers, and understanding the expectation around third party risk management. Beth also discussed OCC's Special Purpose Charter for National Banks. She clearly stated OCC's expectation that any entity engaged in traditional bank activities would be held to the same standard as a national bank or federal savings association. However, that charter proposal is on hold and OCC is not accepting applications but we are meeting with the groups to understand their business models.

MDIAC Roundtable – MDIAC Committee Members

Finally, the committee members participated in a roundtable discussion on a variety to topics.

One committee member asked whether the role of the BSA Officer in relation to a bank's Suspicious Activity Report Committee. Adrianna Bailey responded that typically it is appropriate for the BSA Officer to have the full picture regarding a transaction and that the BSA Officer can override anyone. Another committee member informed the committee that if a customer is not paying interest on a loan under Mexican law a SAR is not required whereas under U.S. A. law you would be required to file a SAR. OCC was asked if U.S.A. shares interest income related data with Mexico, Venezuela, China, etc. Those in the meeting indicated to their knowledge the U.S.A. does not share income related data with other countries.

There were lots of comments regarding HMDA from the committee members. Some stated there should be an innovative way to submit HMDA data including acceptance of CSV fields, should suggested a toolkit free of charge for data submission should be made available, some asked if there is leeway in how banks consistently report the data (i.e. is there an option to consistency use closing date versus funding date?), and some reported there is a fear amongst small and rural bank that the data will be used against the banks. Several bankers stated the bigger fear is security of the data and how the data will be used by the regulators. OCC representatives informed the group that certain HMDA fields were required as a result of Dodd-Frank and OCC contributed comments to CFPB on the proposed rule – and working for consistency on an interagency basis – but CFPB ultimately has the decision on the final rule.

Public Observer Comments

None. There were no public observers in attendance and no written comments were submitted.

Adjournment
The meeting was adjourned at 2:00 p.m.

The minutes are an accurate representation of the meeting.

/s/ Beverly F. Cole
Designated Federal Officer