

Remarks by

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**“Principles of Supervision and
Your Value to our Nation’s Banking System”**

at the

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Good evening. Thank you for inviting me to speak here today.

As this event is sponsored by our great friends at the University of North Carolina, I would be remiss if I did not acknowledge that this is a rather important time for the University and North Carolina.

While I know that this great event takes precedence for you all, I recognize there may be a TV or two on throughout the hotel, monitoring that small basketball tournament.

I also would be remiss if I did not thank the NCAA. I am humbled that they would go out of their way to schedule the North Carolina game for tomorrow and not interfere with our time here tonight.

Now, on to the topic of the evening....

I am pleased to see so many of you here. The Banking Institute is designed to provide the highest quality continuing education on cutting-edge issues related to banking law. Events like this not only help each of you stay on top of developments in banking law, but it gives me an opportunity to hear from you, and I look forward to your questions at the end.

What I plan to do this evening is to lay out a few thoughts about the importance of certainty, consistency, diligence, and communication in our supervisory approach, as well as our ongoing efforts to be cognizant of regulatory burden.

About the FDIC

As the primary supervisor of the majority of the nation's small and medium-size banks, the FDIC oversees a segment of the banking system that plays a vital role in communities across the country.

Through our back-up examination authority, the FDIC also has the ability to examine the nation's largest banks. And through our statutory mandate to protect the Deposit Insurance Fund, we have a duty to ensure that all FDIC-insured banks are operating in a safe and sound manner.

Having worked both as a regulator and at a regulated entity, I spent a lot of time thinking about supervision before I came to this job.

If we were to set up a supervisory approach from scratch, we would want it to:

1. Ensure that institutions are safe and sound;
2. Provide clear rules of the road;
3. Be consistent in its application;
4. Be fair, effective, and holistic in the consideration of regulatory issues;
5. Be timely and contemporary in providing feedback;
6. Respect the business judgment of an institution's management team; and
7. Promote an open, two-way dialogue between the regulated and the regulators.

Certainty and the Role of Guidance

As a supervisor, our rules and expectations should be clear to those we supervise. A key aspect of effective supervision is providing a level of certainty surrounding compliance with applicable laws and regulations.

Related to this concept, much has been said about the role of guidance in our regulatory and supervisory framework.

Under the Administrative Procedures Act, a rule is defined, in part, as “... an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy...” That is a rule.

Separately, there is supervisory guidance. Supervisory guidance can be a helpful tool to provide clarity to our regulated institutions and to FDIC supervisory staff on how to operate in a safe and sound manner, be fair to consumers, and comply with applicable laws and regulations.

But supervisory guidance documents are not the same as rules, and should not be treated as such.

This past fall, the FDIC joined several other agencies to issue a statement clarifying to examiners and financial institutions that institutions cannot be criticized for violations of *guidance*, only for violations of law, regulation, or other enforceable conditions.

We have taken a number of steps to ensure our examiners understand this, including written instructions, all-hands examiner calls, and in-person training.

We also are reviewing our outstanding guidance documents, the role such guidance documents play in the examination process, and our approach to issuing supervisory guidance going forward.

Transparency

A critical component of certainty is transparency.

In October, the FDIC launched the “Trust through Transparency” initiative to make publicly available previously unpublished FDIC information, including how case managers and examiners implement the risk-focused supervision program, turnaround times for examinations, and guidelines and decisions related to appeals of material supervisory determinations.

I am pleased that the initiative has averaged about 10,000 views per week and more than 50,000 unique visitors. Now, the FDIC has about 6,000 employees so I know that it is not just my people clicking ...

By making this information available to the public, we are holding ourselves publicly accountable to high standards. My hope is that the “Trust through Transparency” initiative will strengthen the bond of trust among consumers, banks, and the FDIC.

We are in the process of evaluating and continually releasing more information, so I encourage you to visit our website and pay close attention to our press releases and financial institution letters (FILs).

Communication and Eliminating Redundancy

The FDIC, in fact, communicates with its regulated entities in multiple ways, including interactions between examiners and bank employees, and through issuance of FDIC documents and materials such as regulations, supervisory guidance, FAQs, FILs, articles and research, webinars, and technical assistance videos.

As part of our efforts to improve and streamline our communication, the FDIC recently retired 493 FILs that were outdated or duplicative, more than half of the 837 FILs that were outstanding.

These communications are intended to *help* bankers understand our expectations. We do not want bankers devoting their time just trying to understand what is relevant and what is not.

I'm hopeful that the elimination of these redundant and outdated FILs will make our communications more helpful, both those that exist now, and those that we issue in the future.

In addition to these official communications, and to ensure that our examination process is fair, unbiased, and free of outside influence, we require our examiners to establish a dialogue with bankers and to keep the lines of communication open throughout the examination process and beyond.

This helps supervised institutions understand what is expected so they can decide how best to comply given their unique circumstances.

Communication is especially important in the case of community banks with limited resources.

If the chief compliance officer is also the chief loan officer and a bank teller in her spare time, she needs to be able to allocate her limited time efficiently. Clearly understanding the institution's regulatory and compliance obligations makes this possible.

Open communication also fosters an environment where, if a bank does experience unexpected challenges, they know they can come to us early when those challenges arise.

We must foster an environment between us and regulated entities such that we are one of the first calls a bank makes, not a call the bank makes only after exhausting any and all means of addressing it on its own.

We now live in a world of ever-increasing cybersecurity risks, which can produce consequences that spread by the minute or the second, rather than by the hour or the day.

Addressing risks such as cybersecurity is something that can be done best when communication is open between the bank and regulators.

It is also one of many challenges that require coordination amongst the regulators themselves.

Consistency and Coordination

Coordination can be made challenging by the fact that our regulatory system is set up in a way that ensures banking supervision is a responsibility shared among several federal agencies – the Federal Reserve Board, Office of the Comptroller of the Currency (OCC), Consumer Financial Protection Bureau, and FDIC – as well as state regulators.

The U.S. system of supervision is different from many countries in the world. It is an admittedly more fragmented system, which can present challenges.

Ensuring consistency, therefore, requires tremendous coordination. To accomplish this, the banking agencies and entities work together through the Federal Financial Institutions Examination Council (FFIEC) to prescribe uniform principles, standards, and report forms.

Beyond the FFIEC process, I also have regular, informal conversations with the other agency heads, which gives us an opportunity to share information and discuss issues as they arise.

In one example of this coordination, the FDIC has partnered with the FFIEC agencies on an examination modernization project that, among other things, is exploring ways to use technology in the exam process. For example, the project team is considering how technology can reduce regulatory burden by shifting examination work from on-site to off-site.

Regulatory Burden

There have also been substantial coordinated efforts on another vital issue – regulatory burden.

Last year, Congress passed legislation to address this burden and more appropriately tailor our regulatory approaches, and the banking regulators are working to implement these changes.

Notices of proposed changes have been released to the public on a wide range of topics, including tailored capital and liquidity rules,

reciprocal deposits, appraisal requirements, stress testing requirements, resolution plan requirements, and much more.

We have to ensure that our regulations are appropriate for the size and complexity of the banks we supervise. As I have said in the past, we have made our regulatory system way too complicated for banks that are not that complicated.

To that end, a key priority of mine is to substantially simplify the capital requirements for community banks.

In November, we joined with the Federal Reserve and the OCC on a proposal to give qualifying community banks the option to calculate a simple leverage ratio, rather than multiple measures of capital adequacy.

As part of this proposal, we proposed a definition of tangible equity that is simple to calculate and includes high-quality, loss-absorbing capital.

The agencies estimate that more than 80 percent of community banks will be eligible for the Community Bank Leverage Ratio (CBLR), based on the proposed calibration and qualifying criteria. This was a

key priority in designing the proposal – to ensure that the simple ratio would be available broadly.

We are also working with our fellow banking regulators on ways to tailor the risk-based capital rules for community banks that do not qualify for the CBLR, recognizing that the risk-based regime should be simpler. We are focusing on the capital ratios and buffers community banks are subject to, and will revisit some of the more complicated calculations and risk-weightings currently required.

Tone of Examinations

One final area I want to address this evening is the overall tone and approach of our examinations.

Sometimes we, as regulators, can become so focused on finding shortcomings that we lose sight of the big picture.

This is not to say that our examiners are doing a poor job. To the contrary, they are doing exactly what they are trained to do and, in the vast majority of cases, doing it exceptionally well.

But I compare our examination process to cleaning my house. I live with my daughter, two elderly parents, and two dogs. I am quite skilled at getting rid of dirt and, with two dogs, I have to clean frequently. I promise you that I have a clean house. However, no matter how much cleaning I do, I can always find dog hair. And as I spot little balls of white hair out of the corner of my eye, I have to remind myself the house is clean ... because I just cleaned it.

Our examination approach should not be such that we focus more on seeking out dirt than on whether the home is clean.

But if we walk in and find that the home is dirty, we will take action.

And you can rest assured that if you try to just sweep the dirt under the rug, we will find it.

The Role of Banking Counsel

Since I have a captive audience of great legal minds, I want to take this opportunity to briefly touch upon the role of banking counsel. I would like to start with an informal survey (and no, you cannot opt out): how many of you started your legal career as banking lawyers?

When I was in law school, I did not even entertain the idea of being a banking lawyer.

I wanted to be a corporate lawyer and work on the exciting stuff that you would see in the news: big M&A transactions, IPOs (this was in the late 1990s and early 2000s), securities offerings for companies with cool names, etc.

Sarbanes-Oxley had recently been signed into law, securities lawyers were all the rage, and banking law did not even cross my mind.

In fact, when I told the managing partner at my law firm in Silicon Valley that I wanted to move to D.C. in 2005, he offered to transfer me to the firm's Washington office. My reply to him: "But that office does banking law and who wants to do that?!" A decade and a half later of banking regulation, the joke is on me.

The most recent financial crisis highlighted many things about our economy, banking system, and regulatory framework, but what is often overlooked is the role of bank regulatory counsel. Put simply, you are the backbone of a financial institution ... the final check and the much needed balance to decision-making ... a skillful mediator between the business needs of the organization and regulatory demands.

I know firsthand that doing your job at a financial institution does not come without professional peril.

Lawyers are often viewed as a dreaded cost center and certainly not as producers. The financial crisis helped illustrate the need for lawyers to be at the table when business decisions are made. Navigating that landscape within a financial institution can be tricky; being able to do so with tact, poise, and a dose of humor may be a winning recipe.

When I served as general counsel of a bank, I was often in the position of being the “bad guy” and telling people what they did not want to hear. I will leave you with a few things I told C-level executives.

1. “Go ahead and try that... what kind of bread would you like me to bring you in prison?”
2. “If you run to the CEO’s office with that idea, I will trip you.”
3. “Listen to me – you are not paying me enough to lie to you and I care too much about my law license to lie for fun. I am telling it like it is.”
4. “My lawyers are not the brakes, they are your seatbelt: we will get you where you want to go without banging your head on the windshield.”

5. “I am not a cost center: if you did not make mistakes, I would not have to pay for them.”

I do not profess to have a recipe for what constitutes a great banking lawyer, but I do know that regulators count on you to do the best job you can navigating dire straits on your clients’ path to success.

And with that – Godspeed!