(showing Republican Commissioners Mark T. Uyeda and Hester M. Peirce voted in favor of the final rule, with Democratic Commissioner Caroline A. Crenshaw opposing). If President Trump's nominee for SEC Chair, Paul Atkins, is approved, this will increase the Republican majority to three to one (https://www.sec.gov/about/commission-votes/2025/commission-votes-2025-03.xml).

[8]Securities Exchange Commission, Delegation of Authority to Director of the Division of Enforcement, at 1, 3 (Mar. 10, 2025) (https://www.sec.gov/files/rules/final/2025/33-11366.pdf).

[9] https://www.sec.gov/about/crypto-task-force.

[10] https://www.sec.gov/newsroom/press-releases/2025-42.

[11]The SEC brought an average of 609.8 actions in the 10 fiscal years before the 2009 Delegation as compared to an average of 769.3 actions in the 10 fiscal years following it. However, this could be due to myriad factors including the 2009 Delegation, budget increases, and increased in Enforcement staff headcount.

FEDERAL AGENCIES ISSUE THIRD-PARTY RISK MANAGEMENT GUIDE FOR COMMUNITY BANKS

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In June, 2023, a trio of federal agencies (the Federal Reserve, the FDIC, and the Office of the Comptroller of the Currency) issued guidance to banks and other financial institutions (the "TPRM Guidance") to help those organizations manage downstream, third-party risks. The federal guidance did not mandate or codify procedures, but rather was intended it to inform financial institutions about recommended best practices for due diligence in navigating the complexities of risk mitigation.

Perhaps recognizing that TPRM guidance focused on larger institutions, in May 2024 the same agencies released similar guidance directed specifically toward community banks (the "2024 Guidance.")[1] While community banks may not employ as robust a risk management organization as larger financial institutions, they face the same pressures to manage risk. Accordingly, many themes of the two sets of guidance dovetail. However, several key aspects of the 2024 Guidance specific to community banks warrant mention.

As a threshold matter, the agencies make clear that the 2024 Guidance "is not a substitute for the TPRM Guidance." Instead, the agencies intend it "to be a resource for community banks to consider when managing the risk of third-party relationships." The agencies further stress that the 2024 Guidance neither has the force and effect of law, nor does it impose new requirements on the community banks for which it is intended. Like the prior TPRM Guidance, the 2024 Guidance should serve as a guidepost for community banks, not a hard and fast set of rules.

Substantively, the agencies frame the 2024 Guidance using a generally accepted life cycle of third-party relationships. To illustrate these essential steps, the 2024 Guidance provides community banks with numerous considerations for each step, meant to guide the bank through the process of vetting, engaging, and monitoring its third-party vendors. While, again, these steps are not mandatory, they serve as a roadmap for community banks to follow for successful risk mitigation in their third-party vendor relationships.

First, community banks must plan the needs with which a third-party relationship can assist. A key aspect of planning should involve a cost/benefit analysis—weighing the risks of the relationship against the expected benefits. Additionally, community banks should consider the type and extent of access that a third-party would require to perform its role. Of course, community banks also should assess potential security implications that accompany this access. These steps, as well as others set forth in the 2024 Guidance, lay the foundation

for the ensuing stages of the third-party relationship lifecycle.

Next, community banks should perform due diligence in selecting a third-party vendor. Again the 2024 Guidance suggests factors that community banks should consider as part of their due diligence assessment. Among them, the banks should analyze the third party's breadth of experience, the third party's own internal controls and risk mitigation processes, and whether the third-party vendor will rely on additional vendors to perform its work under the contract with the bank. The theme of preemptively mitigating risk underscores the agencies' due diligence recommendations. As the parties progress toward cementing the relationship, proactive due diligence can help a bank avoid incurring unnecessary risk.

With due diligence complete, the parties then negotiate the contract that will govern the services rendered to the community bank by the third party. Here, planning and due diligence meet to ensure that the bank has fully accounted for the previously identified risks associated with the third-party relationship, and has contractually limited those risks, to the extent possible. Considerations that the agencies recommend in drafting such a contract include explicitly specifying the parties' responsibilities, instituting safeguards for sharing information, and delineating limitations on the vendor's use of data received from the bank. Fastidious planning and due diligence can reveal specific terms and conditions that the bank feels necessary to include in its third-party contracts.

Fourth, as the relationship progresses, the community bank should proactively monitor the third party's performance. The parameters of the work should be spelled out in the contract. Continued diligence throughout the relationship will allow the bank to make sure that the third-party vendor is meeting its obligations under that contract. The 2024 Guidance suggests that the bank look to such benchmarks as whether the vendor is complying with applicable laws and regulations, whether it has properly maintained and safeguarded information shared with it, and whether the vendor is appropriately managing and mitigating risk. Actively tracking the relationship can prevent both a breach of the contract, and also proactively mitigate loss of sensitive data.

Finally, when the work is finished (or, as it becomes necessary), the parties terminate the relationship. In deciding when and how to terminate the third-party relationship, the agencies suggest several guideposts including analyzing the financial impact that termination will have on the bank, additional risk exposure arising from ending the relationship, and assessing alternative third parties through which the community bank can migrate its needs. Following these protocols may help facilitate a smooth transition from one vendor to the next.

The 2024 Guidance extends and customizes the previous guidance issued by the Federal Reserve, the FDIC, and the OCC to include community banks. While risks cannot be eliminated, adhering to the recommendations of the agencies can help these banks manage and mitigate risks, and foster productive and risk-minimizing relationships with third-party vendors. Community banks would be wise to heed this federal guidance.

ENDNOTES:

[1] *See* https://www.fdic.gov/news/financial-institution-letters/2024/third-party-risk-management-guide-community-banks.