

Federal Reserve Board Finalizes Guidelines for Payment System Access

AUGUST 22, 2022

Introduction

- **On August 15, 2022, the Federal Reserve Board (“FRB”) finalized its “Guidelines Covering Access to Accounts and Services at Federal Reserve Banks” (the “Guidelines”)**
- **The Guidelines**
 - Describe six principles that the 12 Federal Reserve Banks should use in evaluating individual requests for master accounts and access to Reserve Bank financial services (referred to herein as requests for “payment system access”); and
 - Provide a tiered review framework for Reserve Banks to analyze payment system access requests in which the level of scrutiny of the request increases as federal supervision of the requesting institution decreases
- **For an institution that is granted payment system access, the Guidelines confirm that Reserve Banks may impose additional risk management controls, including conditions or restrictions on payment system access, to mitigate particular risks posed by the institution**
- **The Guidelines’ “implementation date” was August 19, 2022 (the date of publication in the *Federal Register*), but Reserve Banks are still working to develop an “implementation plan” for the Guidelines**
- **The following**
 - Presents our Key Takeaways and Observations
 - Lists the six Principles To Evaluate Account Access Requests
 - Summarizes the Tiered Review Framework

Key Takeaways and Observations

- **Although technically applicable to all institutions requesting payment system access, the Guidelines will impact most directly requestors that have novel charters and are not insured by the Federal Deposit Insurance Corporation (“FDIC”)**
 - Such institutions include limited-purpose state-chartered institutions, such as Wyoming Special Purpose Depository Institutions
 - Emphasizing their impact on novel charter types, Governor Bowman’s statement regarding the Guidelines referred to them as the “*Non-Traditional Account Access guidelines*” (emphasis added)

- **The final Guidelines have not changed much since they were proposed**
 - The FRB originally proposed the Guidelines over a year ago (May 5, 2021) and issued a revised proposal on March 1 of this year
 - The revised proposal added the tiered review framework mentioned in the earlier slide
 - The substance of the six principles to evaluate payment system access requests and tiered review framework is largely the same

- **Material changes in the final Guidelines include:**
 - Providing a clearer expectation that the Reserve Bank reviewing an institution’s access should consult with the FRB and other Reserve Banks if the request implicates financial stability or monetary policy concerns
 - Revising the tiered framework to require uninsured institutions chartered under federal law (e.g., national trust banks)—but not those chartered under state law—to have a holding company subject to the FRB’s supervision in order to avoid the institution being subject to the highest tier of scrutiny
 - In the revised proposal, all uninsured institutions supervised by a federal banking agency would, in certain cases, have been able to avoid the highest level of scrutiny even if the institution did not have a holding company supervised by the FRB
 - This revision in the final Guidelines effectively ensures that, in order for an uninsured institution to avoid the highest tier of scrutiny under the Guidelines, the Federal Reserve must have direct supervision over the institution (as a state member bank) and / or over its holding company (by statute or commitment)

Key Takeaways and Observations (cont'd)

- **Despite many requests to do so, the FRB is unlikely to publicly provide additional clarity regarding the scope of institutions that are legally eligible to request payment system access**
 - In the preamble to the Guidelines, the FRB stated that it believes the Guidelines “provide[] sufficient clarity on what entities may legally request access to account and services ...”
 - A footnote in the preamble also suggests that the FRB—rather than the Reserve Banks—will decide interpretive questions regarding legal eligibility
 - The preamble does not state that any such interpretive decision would be made public and makes clear that the Reserve Banks are not expected to make public their decisions to grant or deny payment system access
 - Thus, any further clarity is likely to continue to be due to inferences from the scope of institutions that have disclosed whether they have payment system access

- **Implementation and timing also remain unclear**
 - The FRB did not provide a timeframe for responding to account access requests despite requests for it to do so
 - Although the Guidelines are essentially immediately effective, the preamble explains that the Reserve Banks are working together, in consultation with the FRB, “to expeditiously develop an implementation plan for the final Guidelines”
 - Governor Bowman’s statement regarding the Guidelines encourages the Federal Reserve to provide additional clarity: “these guidelines are only the first step in providing a transparent process. More work remains to be completed before a process is established to fully implement the guidelines. There is a risk that this publication could set the expectation that reviews will now be completed on an accelerated timeline”

- **Going forward**
 - We will be monitoring whether additional uninsured institutions are granted payment system access and, if an uninsured institution is granted access, the type and scope of commitments the Federal Reserve requires of the bank’s holding company and any conditions that may be imposed on the access (if this information is publicly available)
 - The proposal notes it does not apply to systemically important financial market utilities (“SIFMUs”) that request payment system access on the basis that a separate framework applies to those entities. Thus, whether stablecoin issuers fall under the Guidelines may depend on whether any future legislation provides for a specific framework for stablecoin issuers to seek payment system access (in which case, like for SIFMUs, that framework may apply instead of the Guidelines)

Principles To Evaluate Account Access Requests

1. **Legal risk**: The institution must be eligible under applicable law to maintain an account at the Federal Reserve and should have a well-founded legal basis for its operations
2. **Reserve Bank risk**: Providing payment system access to the institution should not present undue credit, operational, settlement, cyber or other risks to the Reserve Bank
3. **Payment system risk**: Providing payment system access to the institution should not present undue credit, liquidity, operational, settlement, cyber or other risks to the overall payment system
4. **U.S. financial stability risk**: Providing payment system access to the institution (or a group of like institutions) should not create undue risk to the stability of the U.S. financial system
5. **Financial crimes risk**: Providing payment system access to an institution should not create undue risk to the overall economy by facilitating activities such as money laundering, terrorism financing, cybercrimes, economic or trade sanctions violations or other illicit activity
6. **Monetary policy risk**: Providing payment system access to the institution (or a group of like institutions) should not adversely affect the Federal Reserve's ability to implement monetary policy

Tiered Review Framework

▪ Tier 1

- Institution type: FDIC-insured institutions
- Holding company supervision: holding companies not required to be supervised by the Federal Reserve for their subsidiary institutions to qualify for Tier 1 review (although most of such holding companies already are subject to Federal Reserve supervision)
- Review process: less intensive and more streamlined review

▪ Tier 2

- Institution type: uninsured institutions that federal law subjects to supervision by a federal banking agency
- Holding company supervision:
 - any holding company of the institution must be subject (by statute or commitments) to Federal Reserve oversight
 - uninsured institutions chartered under federal law are required to have a holding company; uninsured institutions chartered under state law are not
- Review process: intermediate level of review

▪ Tier 3

- Institution type: all other uninsured institutions
- Holding company supervision: no requirements for holding companies to be supervised by the Federal Reserve (and such companies likely would not be)
- Review process: strictest level of review

OFFICES

Worldwide Plaza

825 Eighth Avenue
New York, NY 10019-7475
212-474-1000 Phone
212-474-3700 Fax

CityPoint

One Ropemaker Street
London EC2Y 9HR England
+44-20-7453-1000 Phone
+44-20-7860-1150 Fax