
2013 OSFI Corporate Governance Updates

Implications for Compensation and Governance Committees

Introduction

On January 28, 2013, the Office of the Superintendent of Financial Institutions Canada (OSFI) released its final Corporate Governance Guidelines (Guidelines).¹ These Guidelines are substantially similar to the draft that was released for comment in August 2012, and provide an update to the original Guidelines published by OSFI in 2003. The Guidelines, which complement OSFI's Supervisory Framework and Assessment Criteria², set out its latest governance expectations for federally-regulated financial institutions (FRFIs), with particular focus **on the role of the Board, risk governance, and the role of the audit committee.**

This Briefing provides an overview of the Guideline topics that will be of particular interest and importance to the **compensation** and **governance** committees of FRFIs, along with next steps to ensure compliance.³

Role of the Board

OSFI's Guidelines clearly distinguish between the responsibilities of the Board and the responsibilities of senior management. Among other items, the Board must be responsible for the approval of:

- The appointment, performance review and compensation of the CEO and, as appropriate, senior management (including the heads of oversight functions); and
- Succession plans for the Board, CEO and, as appropriate, senior management.

While OSFI states that it is senior management's responsibility to ensure compensation policies for all human resources are consistent with the Financial Stability Board (FSB) Principles for

¹ Final guidelines can be found [here](#).

² The Guidelines also complement relevant portions of the Bank Act, the Insurance Companies Act, the Trust and Loan Companies Act, the Cooperative Credit Associations Act and associated regulations

³ OSFI's guidelines outline the role of the "Board", referring to either the entire Board or a Board committee that has been delegated a particular area of oversight.

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Sound Compensation Practices and related Implementation Standards⁴, it stresses the critical role of the Board in providing high-level guidance through review and discussion. These principles and implementation standards are extensive and, in our view, will require significant attention from both senior management and the Board. Key provisions of the FSB principles and implementation standards include stress-testing/back-testing of compensation plans, risk-adjustments, clawbacks, deferrals of variable compensation, and the use of share retention policies.

Board Effectiveness

OSFI's Guidelines outline a number of attributes of an effective Board and identify the following activities as important in ensuring continued effectiveness:

- Regular self-assessments of Board and committee practices with occasional assistance from independent external advisors;
- Annual review of the process for evaluating director skills and competencies in connection with Board succession planning; and
- Internal and/or external director education opportunities.

Also critical to Board effectiveness is relevant financial industry and risk management expertise. The Board's skills and competency evaluation process should ensure reasonable representation of this expertise at Board and committee levels.

Board Independence

The Guidelines stress the importance of the Board's independence from senior management and, among other things, identify the separation of the Board Chair and CEO roles as critical in maintaining the Board's independence and ability to execute its mandate effectively. FRFI Boards should document and approve formal director independence policies, taking into account the specific shareholder/ownership structure of the institution.

⁴ The FSB's Principles for Sound Compensation Practices can be found [here](#) and the Implementation Standards can be found [here](#).

Next Steps for FRFI Boards

To ensure compliance with OSFI's Guidelines, FRFI Boards will want to carefully review:

- Compensation and governance committees' mandates against OSFI's Guidelines; and
- Institution-wide compensation programs against the FSB Principles for Sound Compensation Practices and Implementation Standards.

Boards should then identify and document any deficiencies. Self-assessments should be retained and provided to OSFI upon request. OSFI expects issuers to establish plans to address any deficiencies no later than May 1, 2013 with full compliance expected no later than January 31, 2014.

We expect, for many leading FRFIs, ensuring compliance with the Guidelines will involve adding another layer of procedure and documentation rather than substantive changes in corporate governance policies or practices. For others that have been slower to respond to FSB pronouncements, more substantive changes may be warranted. For an assessment of what your company will need to do in order to comply with compensation and governance committee aspects of OSFI's Corporate Governance Guidelines, please contact any of the persons below.

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