

**Joint Statement of
FDIC Board Members Michael J. Hsu and Jonathan McKernan
before the
Committee on Financial Services
U.S. House of Representatives
June 12, 2024**

Chairman McHenry, Ranking Member Waters, and Members of the Committee, we are pleased to appear today to discuss the activities of the Special Review Committee of the Federal Deposit Insurance Corporation's (FDIC) Board of Directors (FDIC Board). We are appearing before the Committee in our capacity as members of the FDIC Board and as co-chairs of the Special Review Committee.

In response to alarming public reports of workplace misconduct and sexual harassment, the FDIC Board established the Special Review Committee on November 20, 2023, to retain, oversee, and provide direction to an independent review of the reports and the FDIC's workplace culture. The FDIC Board appointed us as co-chairs of the Special Review Committee. Our north star for the duration of our time as co-chairs was protecting and ensuring the safety of FDIC staff. This remains our paramount concern and objective.

The Special Review Committee's duties and authorities included soliciting a contract for an independent third-party reviewer, providing direction to the contractor and overseeing the review conducted, receiving the report of the third-party reviewer and assessing its sufficiency, and reporting to the full FDIC Board periodically and upon completion of the contractor's work.

To select the third-party reviewer, the FDIC, under the Special Review Committee's direction, solicited 33 law firms, and twenty firms responded. Based on criteria including experience reviewing workplace misconduct matters, conducting internal investigations, and

advising a range of organizations, boards, and board committees, the Special Review Committee and staff conducted discussions with nine firms. The discussions explored potential conflicts of each firm in conducting the needed review and proposed fees. Following these discussions, the Special Review Committee selected Cleary Gottlieb Steen & Hamilton (Cleary Gottlieb) to undertake the review. The firm's investigations practice, including the partners who would lead the investigation, specialized in conducting internal investigations for board and board committees of public and private companies and government agencies. The investigation partners had nearly 100 years of combined experience. Cleary Gottlieb could enter into a legal services agreement with the FDIC and was able to commence the review immediately.

To gain better insight into the nature and scope of workplace culture issues at the FDIC, we met with the FDIC's Employee Resource Groups, the National Treasury Employees Union, the FDIC's Internal Ombudsman, and the Executive Committee of the Chairman's Diversity Advisory Council. Partners from Cleary Gottlieb listened to these meetings, and Cleary Gottlieb subsequently met separately with many of these same groups. Our meetings with these groups were powerful and moving. They amplified the nature of the allegations that had been reported and reinforced our focus on the people of the FDIC and ensuring that they could work in a safe workplace, one in which individuals engaged in misconduct are held accountable to the fullest extent.

One of the first actions Cleary Gottlieb took was to establish a hotline (including an email address and telephone number) that current and former FDIC employees could use to report allegations of harassment and interpersonal misconduct at the FDIC. Concerned about their privacy, some FDIC employees requested additional means to report allegations to Cleary Gottlieb, which then established a web-based means for employees to tell their stories. To

facilitate reporting, the FDIC waived any confidentiality restrictions that would have otherwise precluded an employee, current or former, from disclosing allegations of harassment or interpersonal misconduct to Cleary Gottlieb. Ultimately, over 500 courageous FDIC employees told their stories through one of the reporting channels.

As co-chairs, we met with the Cleary Gottlieb partners on a weekly basis to receive updates on the progress of the review. The scope of the independent review, well-defined in the FDIC Board resolution establishing the Special Review Committee, was to review allegations of sexual harassment and interpersonal misconduct at the FDIC, including allegations of hostile, abusive, unprofessional, or inappropriate conduct and any FDIC management response thereto, and the FDIC's workplace culture, including any practices that might discourage or otherwise deter the reporting of, or appropriate response to, such misconduct. We did not impose any specific limits on Cleary's review but provided broad support for Cleary to follow the facts and investigate any and all employee reports and allegations.

Drawing on their experience conducting such reviews, the Cleary Gottlieb team developed a draft review management plan. In addition to receiving, managing, and responding to the significant volume of hotline reports, the Cleary Gottlieb team conducted scoping interviews of relevant FDIC divisions; gathered, reviewed, and analyzed relevant FDIC documents and information; and conducted interviews with current and former FDIC employees to discuss allegations of harassment or other misconduct and the FDIC's response, as well as the FDIC's workplace culture. The Special Review Committee co-chairs provided some limited suggestions on the review plan for Cleary Gottlieb's consideration. However to maintain the independence and integrity of the review, the Special Review Committee was clear that the

review should be driven, within its defined scope, by the factual findings and Cleary Gottlieb's judgment and experience.

The FDIC Board's resolution establishing the Special Review Committee authorized the co-chairs to appoint up to three additional nonvoting members to promote a diversity of views. We added three distinguished nonvoting members who brought a wealth of executive management and board-level experience across the government and private sector. Cleary Gottlieb provided the nonvoting members with a summary of the review plan and work completed and subsequently provided the full Special Review Committee with status updates.

The Special Review Committee received the first draft of the factual findings, root causes, and recommendations from Cleary Gottlieb in early April. Committee members reviewed the findings, asked questions, and offered feedback. Drawing on their experiences, the nonvoting members provided the co-chairs insightful structural comments and input to strengthen recommendations, which the co-chairs relayed to Cleary Gottlieb.

Cleary Gottlieb delivered the final draft report to the Special Review Committee on April 30. The report summarized Cleary Gottlieb's review, provided a statement of facts, findings, and recommendations to promote a workplace that is free of employee harassment and interpersonal misconduct. In a formal meeting, the Special Review Committee accepted the final report and determined that the report was sufficient as contemplated by its governing document. The Special Review Committee delivered the report to the full FDIC Board later that day. Before the final report (Report) was released publicly, in order to comply with privacy laws and due-process considerations, FDIC staff provided input to Cleary Gottlieb, and Cleary Gottlieb made redactions to the Report. The FDIC Board terminated the Special Review Committee on May 30.

As noted earlier, our singular focus throughout the review was protecting the staff of the FDIC. That continues to be our priority going forward. The harassment and misconduct detailed in the Report are totally unacceptable. The number and scope of allegations, the patterns of misconduct, and the longstanding culture revealed by the review are highly disturbing and urgently need to be fixed. The root causes and recommendations cited in the Report provide a clear roadmap for what needs to be done and why. This is where our attention must be focused to ensure the FDIC is a safe workplace for all of its employees. We are especially supportive of the Report's recommendation to engage an external expert and establish an independent monitor to ensure that the agency's corrective actions are validated and that accountability is enforced. As members of the FDIC Board, we are committed to the transformation called for in the Report to ensure that FDIC employees are safe, and that any employee engaging in misconduct is held accountable.