November 8, 2023

Via Electronic Mail

Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429
Attention: James P. Sheesley, Assistant Executive Secretary

Re: Request for Extension of Comment Period for Proposed FDIC Guidelines on Corporate Governance for FDIC-Supervised Institutions

Ladies and Gentlemen:

The undersigned trade associations request that the FDIC provide an additional 60 days (for a total of 120 days) for interested stakeholders to submit comments in response to the Proposed Guidelines Establishing Standards for Corporate Governance and Risk Management for Covered Institutions With Total Consolidated Assets of $10 Billion or More ("Proposed Guidelines" or "Proposal").[1]

The Proposed Guidelines would establish extensive and enforceable standards, which have the effect of requirements, for covered bank boards, senior management, business and other front line units, independent risk management, and internal audit of covered banks. Based on our initial review of these standards, they would effect fundamental changes in board composition, board and management responsibilities and liabilities, and overall corporate governance. Such changes would have a profound impact on how banks operate and their ability to retain and attract the most capable directors, officers,

[1] Guidelines Establishing Standards for Corporate Governance and Risk Management for Covered Institutions With Total Consolidated Assets of $10 Billion or More, 88 Fed. Reg. 70391 (Oct. 11, 2023).

and employees. Accordingly, a number of directly affected and other stakeholders will need time to analyze and contribute their perspectives on this issue.

The Proposal indicates that it was not intended to represent a significant departure from current bank practices established under the guidance previously provided by the Comptroller of the Currency, the Federal Reserve Board, or the FDIC's own examination program. The wide gulf however, between the FDIC's intentions and the results and consequences that our members perceive is in itself a compelling reason for the FDIC to provide the requested additional time for stakeholders to analyze the Proposal and provide informed comments. If, as the FDIC believes, the Proposal does not effectuate significant change, an extension of 60 days will have no practical impact. If, as our members believe, the Proposal would implement extensive change, then the requested 60-day extension is necessary.

Among the specific concerns we have already identified that require thorough analysis are the following:

- The Proposal would appear to be inconsistent with the governing corporate law of the states in which covered banks are chartered. For example, the Proposal would establish a mandatory constituency requirement (and add to the list of constituents), which has been rejected in every state.

- The Proposal would radically alter the eligibility requirements for covered bank directors and create not only inconsistency but conflict.

- The Proposal would increase the potential liability of covered bank directors and officers beyond that for the directors of all other corporations. Commenters will need to devote considerable attention to the risk that these elevated requirements will have on the pool of directors and officers.

- Ambiguities and lack of detail in some aspects of the Proposed Guidelines create the potential for unintended consequences.

- Insured banks are subject to a vast and complex array of laws and regulations, both those that are specific to banking and those of general applicability. The Proposed Guidelines would include an unprecedented requirement for a covered bank timely to report known or suspected violations of law or regulation to various government agencies without any materiality standard, level of certainty that a violation has occurred or clarity on the timing of such reporting. Stakeholders will require sufficient time to evaluate the legal ramifications, complexities and consequences of this novel requirement, particularly because the question of illegality can often be highly fact-specific and dependent on government and judicial positions that change over time. Furthermore, a requirement to externally self-report on legal issues could be expected to pose significant consequences for attorney-client and other privileges.

- The Proposed Guidelines would require covered banks to create new systems, processes and protocols to meet expectations set out in the Proposed Guidelines. The need for stakeholders to have time to thoroughly review these requirements is particularly important as the Proposed

Guidelines do not provide for a transition period to achieve compliance. If adopted as proposed, compliance would apparently be expected for covered banks on the effective date of the final guidelines.

- Because the Proposed Guidelines include prescriptive requirements for the composition and duties of the bank board, stakeholders will need time to evaluate and consult with others regarding the impact on FDIC-supervised banks in recruiting and retaining qualified personnel including directors.

These and other concerns are especially pronounced because the Proposed Guidelines are expressly intended to facilitate the agency's ability to take enforcement actions when the Guidelines are breached.

We are also requesting this extension given the extent to which comments on other outstanding proposals may relate to or affect comments on the Proposed Guidelines. Given the recent extension of the Basel III End Game comment period, we believe an extension is also warranted here to understand its impact on the Proposed Guidelines along with the impact of four resolution-related proposals,[2] which would alter the corporate governance framework at a fundamental level. Stakeholders need additional time to achieve a more-informed and holistic understanding of the interplay between all these proposals and their collective impact on FDIC-supervised banks, their customers, and the financial system. We also note that the current comment period includes the Thanksgiving holiday and the beginning of the period during which banks will undertake their year-end reporting obligations, both of which take away from banks' abilities to respond fully to the Proposal.

The additional requested time would enable banking organizations to provide more thorough comments and would support a more complete analysis of the cumulative costs and benefits of the pending proposals.

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[2] Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, Long-Term Debt Requirements for Large Bank Holding Companies, Certain Intermediate Holding Companies of Foreign Banking Organizations, and Large Insured Depository Institutions, 88 Fed. Reg. 64524 (Sept. 19, 2023); Federal Deposit Insurance Corporation, Resolution Plans Required for Insured Depository Institutions With $100 Billion or More in Total Assets; Informational Filings Required for Insured Depository Institutions With at Least $50 Billion But Less Than $100 Billion in Total Assets, 88 Fed. Reg. 64579 (Sept. 19, 2023); Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Guidance for Resolution Plan Submissions of Domestic Triennial Full Filers, 88 Fed. Reg. 64626 (Sept. 19, 2023); and Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Guidance for Resolution Plan Submissions of Foreign Triennial Full Filers, 88 Fed. Reg. 64641 (Sept. 19, 2023).

The undersigned appreciate your prompt consideration of this request and look forward to the opportunity to comment on the Proposal with the thoroughness that the issues raised by it require. If you have any questions, please contact the undersigned by email at gregg.rozansky@bpi.com, dbaker@aba.com, brent.tjarks@midsizebanks.com, or DBaris@aabd.org.

Respectfully submitted,

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