UBT Union Bank & Trust®

February 6, 2024

RE: Request for Comments on Proposed *Guidelines Establishing Standards for Corporate Governance and Risk Management for Covered Institutions with Total Consolidated Assets of $10 Billion or More*

Reference*: RIN 3064-AF94*

Dear Federal Deposit Insurance Corporation,

We appreciate the opportunity to comment on the FDIC's proposed "*Guidelines Establishing Standards for Corporate Governance and Risk Management for Covered Institutions with Total Consolidated Assets of $10 Billion or More*." Union Bank and Trust Company (UBT) is a closely held, state-chartered, non-member community financial institution with headquarters in Lincoln, Nebraska, and locations throughout Nebraska and two in the Kansas City MSA. UBT has grown from just under $10 million in total assets when it was purchased in 1965 to its current level of over $8.3 billion. This growth has been primarily organic, and a result of excellent customer service and a focus on serving the communities where we are located.

Given what transpired in early 2023, it is understandable why the FDIC is reviewing standards for corporate governance and risk management for insured financial institutions. However, it is unreasonable to subject family-owned community banks of $10 billion to the same standards as institutions with assets in excess of $100 or 200 billion. Silicon Vally Bank had over $200 billion in assets. SVB's risk profile included an uninsured deposit ratio of 90%, a large concentration of customers in one sector, and long-term investments that declined in value. In comparison, UBT has an uninsured deposit ratio of 18.7%, we monitor our concentrations very closely to make sure we are well diversified, we have strong liquidity, and the majority of our investment securities are short term in nature. This illustrates that reaching $10 billion in assets doesn't necessarily push a well-run community bank, which is currently supervised by their primary regulator and examined frequently, to now become a complex financial institution that requires additional scrutiny. In many cases, the well-run community banks reached the $10 billion threshold because of their strong reputation and franchise value in the communities they serve. Thus, there are several institutions with assets well above $10 billion that have a low to moderate risk profile only to be burdened with potentially unnecessary scrutiny and costs.

The proposed guidelines also require that a majority of a bank's board of directors be made up of independent directors. In addition, a director is not considered independent if he or she serves on the board of directors of the bank's holding company, unless that holding company conducts limited business outside the bank. This guideline would prohibit the use of majority-overlapping boards at the bank and holding company level. At UBT, we have several external directors on our board, but our organization also benefits from the synergies of having family ownership at both the Bank and Holding Company level. The stockholders on our Bank and Holding Company boards provide the vision and

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direction of the organization. Having more outside directors on the boards would remove that power from the shareholders and place it in the hands of independent outside individuals It would also be difficult, if not impossible, for outside directors to convey a proper "tone at the top" for an institution in regard to culture and working environment, as is required in the proposed guidelines.

Addressing the Requests for Comments in Section VI, UBT offers the following comments:

1. **Should the proposed Guidelines apply to FDIC-supervised institutions with $10 billion or more in total consolidated assets, or would a higher or lower threshold be appropriate? Alternatively, should the proposed Guidelines only apply to FDIC supervised institutions that are examined under the FDIC's Continuous Examination Process? Please explain.**

   Consideration should be given to a higher threshold of $50 billion, given recent consolidation and asset growth within the industry. An institution with consistent and well managed organic growth should not be penalized and overly supervised if they haven't incrementally increased their risk profile. Institutions should have the opportunity to seek exemption from the guidance based on their risk and complexity profiles. In addition, the guidelines should be consistent with OCC standards, whereby the guidelines would not apply to a bank until its average total consolidated assets across the past four quarters exceed the threshold, as opposed to two quarters, as proposed.

   A bank with an elevated risk profile should be identified well before it reaches $10 billion in assets as opposed to being subjected to higher levels of supervision just because of growth. In addition to asset size, consideration should also be given to public versus privately held institutions along with factoring in their risk profile. In essence, a $15 billion well run community bank should not be thrown into a group it doesn't belong or identify with. The Board and management of an institution, along with oversight and consultation with their primary regulator, have a better understanding of what actions the institution needs to take to address its governance and risk management practices.

2. **Is there a need to differentiate corporate governance and risk management requirements for covered institutions with $50 billion or more in total consolidated assets (or some other threshold)? Please explain.**

   Differentiation may lead to further confusion thus the guidance and reasoning thereof of any such differentiation need to be transparent.

3. **Should the proposed Guidelines apply to any insured state nonmember bank or insured state savings association with total consolidated assets less than $10 billion if that institution's parent company controls at least one covered institution?**

   No, the guidance should not be universally applied to banks under the threshold just because of their affiliation with other banks that exceed the threshold.

4. **The proposed Guidelines include a reservation of authority enabling the FDIC to determine that compliance with the proposed Guidelines should not be, or no longer be, required for a covered**

institution based on risk and complexity. Should there be an application process in accordance with subpart A of part 303 of the FDIC's regulations for a covered institution to request exemption from the requirements of these proposed Guidelines? If so, what criteria would be appropriate for FDIC to establish to consider such a request?

The flexibility of providing a process for institutions to request exemption from the requirements of the proposed guidelines is critical for those institutions with lower risk and complexity. However, a formal process seems too bureaucratic as the regional regulatory examination team overseeing an institution would have a thorough understanding of the institution's operations and risk profile and would be better informed to grant an exemption.

5. **Should the covered institution and its parent holding company with other affiliates be required to have separate risk management officers and staff? Please explain.**

   The covered financial institution along with its parent holding company or other affiliates should not be required to have separate risk management officers and staff. The duplication and associated costs would be unnecessary, and a separation may actually dilute any synergies amongst the entities and result in unintended oversight of risks.

6. **The proposed Guidelines provide that a covered institution may use its parent company's risk governance framework to satisfy the Guidelines based on certain factors. What other factors, if any, should the FDIC consider?**

   Consistent with other regulatory guidance, it would be reasonable for a covered institution to utilize its parent company's risk governance framework to satisfy the guidelines.

7. **Should the proposed Guidelines include more specific suggestions for corporate governance? If so, what additional suggestions should be included?**

   Insured institutions are already subjected to an extensive and complex set of laws and regulations. The proposed guidelines include requirements that are onerous, but at the same time are vague and would lead to inconsistencies between institutions. As an example, the guidance that would require an institution to report known or suspected violations of laws or regulations is open to interpretation including the application of a materiality standard.

8. **Should the proposed Guidelines include more specific requirements for risk management? If so, what additional requirements should be included?**

   No additional comments beyond what has already been expressed.

9. **Do the proposed Guidelines provide sufficient and appropriate requirements regarding the role of the board for corporate governance and risk management? Please explain.**

The proposed guidelines would likely increase the personal liability exposure to both directors and officers. The proposed guidelines extensively utilize the term "ensure" regarding expectations of directors and officers. The guidelines also border on expecting managerial responsibilities from the board, as opposed to oversight. This would create difficulties in attracting qualified directors and officers as compared to other entities not subjected to such stringent guidance. Director and Officer insurance costs for impacted institutions would increase substantially.

10. **Do the proposed Guidelines provide sufficient and appropriate requirements regarding the role of executive management for managing the covered institution and its risks? Please explain.**

    No additional comments beyond what has already been expressed.

11. **Should the CRO or the CAO report to the board or solely to a board committee? Please explain.**

    Reporting solely to a board committee would be intuitive given the purpose and expertise of a board risk committee.

12. **Do the CRO or the CAO and their associated functions have sufficient independence under the proposed Guidelines? Please explain.**

    No additional comments beyond what has already been expressed.

13. **Would the proposed Guidelines have any costs or benefits that the FDIC has not identified? If so, please identify and discuss.**

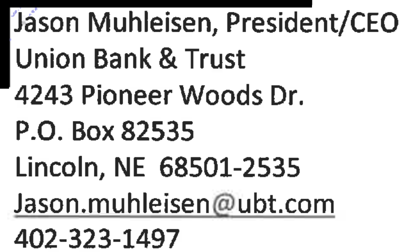
    The proposed guidelines would result in an increase in directors fees correlated to the additional expectations of their role. Additional time and resources would be needed to recruit and retain qualified, independent directors. The inconsistency in standards between the FDIC, OCC, and Federal Reserve would result in additional costs and inefficiencies to comply with multiple sets of standards. The estimated hours to comply within the proposal would result in an approximate decline in earnings of 5% assuming a well-run $10 billion community bank with an ROA of 1.25%. This impact is certainly not insignificant in the current competitive environment and doesn't factor in other impacts including the reduction in debit card interchange revenues under the Durbin Amendment. There will be institutions that would incur these additional costs and not marginally improve their already well managed risk profile.

14. **Are there alternative ways to achieve the objectives of these proposed Guidelines that would impose lower burdens and costs on covered institutions? If so, what alternatives would be appropriate?**

    We would recommend reducing the stringent requirements of the board composition for both the Bank and the Holding Company. Instead, consider adding a risk committee which reports to the Board. Proposed guidance should align with guidance from the OCC and the Federal Reserve. Multiple sets of standards will lead to inefficiencies, additional costs, and confusion.

Your consideration of these comments is appreciated. Please do not hesitate to contact us if you have any questions.

Sincerely,



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