



February 9, 2024

Via Electronic Submission

James P. Sheesley, Assistant Executive Secretary  
Attention: Comments/Legal OES (RIN 3064-AF94)  
Federal Deposit Insurance Corporation  
550 17<sup>th</sup> Street NW  
Washington, DC 20429

Re: Guidelines Establishing Standards for Corporate Governance and Risk Management for Covered Institutions with Total Consolidated Assets of \$10 Billion or More [RIN 3064-AF94]

Dear Mr. Sheesley,

Thank you for the opportunity to comment on FDIC's proposed guidelines for corporate governance and risk management. With our administration's emphasis on economic growth and business development, we believe the best results come from innovation, not regulation. We have made significant progress with our legislature to reduce unnecessary red tape and regulations that do not make sense or are antiquated for today's business environment.

The proposed standards would establish new corporate governance standards and redefine fiduciary duties affecting North Dakota financial institutions. Corporate governance is a state issue, not a federal issue. It is federal overreach to propose standards that are the purview of states. Appropriate corporate governance helps businesses be successful and is so important that states individually make determinations for standards tailored to their state's specific needs.

The proposed expansion of fiduciary duties for board of directors to include unconventional stakeholders such as the general public is contrary to North Dakota law, and beyond any fiduciary duty requirement for any business operating in the United States. It is an impractical and impossible standard to meet and would be to the detriment of the business when members of the general public who are not connected to a North Dakota financial institution have an equal standing as the institution's customers and shareholders. North Dakota law recognizes that the broader public's interest may be considered as long as it serves the financial institution's interest:

"In discharging the duties of the position of director, a director may, in considering the best interests of the financial institution, consider the interests of the financial institution's employees, customers, suppliers, and creditors; the economy of the state and nation; community and societal considerations; and the long-term and short-term interests of the financial institution and its shareholders, including the possibility these interests may be best served by the continued independence of the financial institution."  
*North Dakota Century Code 6-03-04.1(6).*

It is troubling that this proposed rule mandates directors to make decisions which are overridingly in the public's interest rather than focusing on their duty to the company and shareholders. Not only are the interests of the public different and potentially conflicting with those of the company and shareholder, but this mandate also strays away from the capitalist ideals which have made this country great. A government decree which creates an artificial focus on a perceived greater public good at the expense of the interests of the individual corporation and shareholders better aligns with failed policies of Marxist regimes than it does with traditional American values. Rules such as this proposal have no place in American regulatory policy.

Corporate governance and fiduciary duty expectations are set in state law, and for a federal agency to impose these types of rules on businesses is clearly an infringement on state sovereignty. The proposed rules are misguided and would have a negative outcome for North Dakota, which relies on local financial institutions to support the economy. We therefore urge you to reconsider and withdraw this proposal.

Regards,



Doug Burgum  
Governor