



CIBC Bank USA
120 South LaSalle Street
Chicago, Illinois 60603

Via Electronic Mail

February 9, 2024

Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429
Attention: James P. Sheesley, Assistant Executive Secretary
RIN 3064-AF94

Re: Notice of Proposed Rulemaking and Issuance of Guidelines: Guidelines Establishing Standards for Corporate Governance and Risk Management for Covered Institutions With Total Consolidated Assets of \$10 Billion or More (the "Proposal"). RIN 3064-AF94.

Ladies and Gentlemen:

CIBC Bank USA appreciates the opportunity to comment on the Federal Deposit Insurance Corporation's ("FDIC") October 11, 2023 notice of proposed rulemaking and issuance of guidelines entitled *Guidelines Establishing Standards for Corporate Governance and Risk Management for Covered Institutions With Total Consolidated Assets of \$10 Billion or More*.¹ CIBC Bank USA is an FDIC-insured, Illinois-chartered, nonmember bank, with greater than \$10 billion in assets, and would be one of the largest and most complex² covered institutions for purposes of the Proposal.

While CIBC Bank USA management maintains practices and operating models designed to meet the FDIC's stated goal of having corporate and risk governance structures that effectively promote safety and soundness, we believe the Proposal as drafted is problematic in a number of areas and is likely to have a negative impact on safety and soundness of covered institutions. In particular, we are very concerned that the Proposal unduly burdens covered

¹ FDIC, *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 (proposed October 11, 2023). The FDIC states that the proposed guidelines would be issued as part of its safety and soundness regulations and would be explicitly enforceable under Section 39 of the Federal Deposit Insurance Act and applicable to all insured state nonmember banks, state-licensed insured branches of foreign banks and insured state savings associations that are subject to Section 39 of the FDI Act with total consolidated assets of \$10 billion or more ("*covered institutions*").

² CIBC Bank USA is one entity within the larger Canadian Imperial Bank of Commerce ("*CIBC*") enterprise (the "*Enterprise*"), consisting of, among other entities, CIBC, a top-tier parent bank that is one of the Canadian "Big 5" banks. In the US, affiliates of CIBC Bank USA include an OCC-regulated national trust company, a registered investment advisor and a broker-dealer, which, along with CIBC Bank USA and other US entities, are organized under CIBC's Federal Reserve-supervised intermediate holding company. CIBC also operates a branch in New York as well as ten representative offices throughout the US.

institutions with novel, unclear, and expansive expectations that are overly prescriptive for legally-enforceable regulation.³ We believe, the Proposal would hinder CIBC Bank USA’s ability to govern itself effectively, especially compared to similar peers that are not covered institutions (such as national banks or Fed member banks). Additionally, the Proposal would compromise existing CIBC Bank USA and Enterprise practices and operating models in place that support sustainable, safe and sound operation by leveraging CIBC Bank USA’s strong, supportive relationship with our top-tier parent bank and our board that overlaps in membership with that of CIBC’s US intermediate holding company (“IHC”). We are also concerned that certain principles in the Proposal are incompatible with the structure of institutions like CIBC Bank USA that are 100% owned by a foreign banking organization.

I. The Proposal Does Not Account for the Structure of Complex Organizations with Strong Holding Company Operations such as CIBC’s

In our view, the Proposal will have negative effects on our board of directors and its ability to effectively exercise its duties. CIBC Bank USA leverages the expertise and experience of board members that also serve on CIBC’s US IHC’s⁴ board of directors and, in some cases, currently serve or previously served on the board of directors of CIBC, the top-tier Canadian parent bank. We have found the overlapping and interconnectivity of board members to be extremely valuable for a number of reasons. This is a common, well-accepted approach throughout the industry and is employed by many organizations. Such a structure helps us align priorities and promotes consistency across the CIBC Enterprise. It also facilitates the exchange of information among the respective boards of directors, leading to more effective board operation. This structure also helps our top-tier parent bank board of directors understand the risks and needs of CIBC Bank USA and the remainder of CIBC’s combined US operations, provides CIBC Bank USA’s board greater insight into the broader operation of our Enterprise, and enhances our ability to leverage the expertise of Enterprise resources.

Two provisions of the Proposal would compromise the effectiveness of this arrangement and remove the benefits that it provides: first, the requirement of a majority of independent/independent directors on the covered institution’s board; and second, the expectation that boards of directors ensure they are not “excessively influenced” by a “dominant policy maker” in their operations and deliberations.

To meet the first requirement, CIBC Bank USA would have to substantially alter its board membership, creating board turnover and vacancies in an environment where it is already difficult to attract and retain qualified board members. These challenges result from a number of factors including (a) CIBC’s desire to recruit board members who are familiar with the financial services industry and have financial and risk management expertise; (b) concerns about “over boarding” resulting in potential board members reserving their capacity to serve on

³ For a more detailed discussion on specific ways in which the Proposal departs from widely-followed corporate governance practices, *see* comment letter from the Society for Corporate Governance (December 14, 2023) and the comment letter from the Bank Policy Institute jointly with the American Association of Bank Directors (February 9, 2024).

⁴ CIBC’s US IHC is CIBC Bancorp USA Inc., and is the direct parent of CIBC Bank USA.

public company boards that are higher profile and considered more prestigious; and (c) the higher expectations, greater volume of work, and increased legal liability associated with serving on a covered institution's board, as compared to boards of non-bank financial services companies and companies in other industries. The Proposal would make these existing challenges even greater.

To meet the second requirement of avoiding influence by a "dominant policy maker," unless the Proposal is clarified to exclude parent stakeholders from the scope of a "dominant policy maker," CIBC Bank USA will have to create a barrier between its board and the IHC and CIBC boards of directors, which would eliminate the interconnectivity CIBC Bank USA benefits from for strategic, financial, and operational expertise, resources, and support. We believe such connectivity actually promotes CIBC Bank USA operating in a safe and sound manner, does not increase the risk of failure, and is consistent with the expectations other federal bank regulators have for our broader organization.⁵

We request that the aforementioned two requirements be removed, or at the very least, substantially modified to reflect the reality of international banking structures and banks with strong, supportive holding companies, so that the Proposal does not penalize covered institutions like CIBC Bank USA who benefit from the strength and expertise of parent banking organizations.

II. The Proposal Would Effectively Impose Management Responsibilities on our Board

We also echo concerns raised throughout the industry that the Proposal as drafted is likely counterproductive to ensuring safety and soundness due to the potential for increased legal liability for directors and the burden of new operational responsibilities for board members, rather than the oversight responsibilities that are the appropriate and well-accepted province of a board.

By holding board members responsible for "ensuring" specific operational outcomes,⁶ and by including substantial prescriptive governance requirements, the Proposal creates role confusion and by implication requires unnecessary and duplicative managerial and compliance work by board members who are generally expected to focus instead on their oversight obligations under the well-understood, and in many cases, long-standing, corporate governance requirements and guidance referenced by other commenters and industry and legal experts.⁷ The operational burden alone of creating management-like routines, management information systems, and governance for the board to operate as a quasi-management function

⁵ See also discussion in section III below, as well as the comment letters noted in fn. 3.

⁶ For example, the Proposal expects the board to "ensure the [covered institution's] strategic plan is consistent with policies"; "ensure the covered institution's compliance with safe and sound banking practices and all applicable laws and regulations"; "ensure that management corrects deficiencies that auditors or examiners identify in a timely manner"; "establish [...] processes that require front line units and the independent risk management unit [to identify and report and document all] known or suspected violations of law or regulation."

⁷ See the comment letters cited in fn. 3 above for additional, detailed discussion on these topics.

would be significant and disruptive, and would divert key board and management resources from more effective oversight and operational work.

We also believe the additional burden and potential liability associated with these management-like requirements will discourage qualified directors from serving on CIBC Bank USA's board, especially when boards of national associations or Fed-member banks do not have such requirements. In addition, if CIBC were forced to replace, simultaneously, a substantial number of board members due to the independent/independent requirement, the Proposal could result in a period of prolonged board uncertainty and result in long vacancies for critical board positions, potentially *causing* the type of oversight shortcomings that the Proposal seeks to prevent.

III. The Proposal Does Not Align with Generally Accepted Corporate Governance Practices and Longstanding Regulatory Expectations

As mentioned briefly above, we share other industry concerns that, in many respects, the Proposal is not consistent with the guidance and requirements of other regulators who concurrently supervise parts of the CIBC Enterprise, such as the Federal Reserve's expectations on corporate governance, the OCC's Heightened Standards, and state law governing fiduciary duties.

The extremely prescriptive nature of the governance requirements of the Proposal – such as those regarding board composition, board committee responsibilities, and board duties – conflict with generally accepted banking principles of risk-based management, as well as the operating realities of a modern banking organization, which require flexibility, nimbleness, and a measure of discretion to meet the needs of current clients and stakeholders, as well as anticipate the banking industry of the future. This inconsistency and potential conflict will lead to a confusing matrix of regulatory expectations and legal requirements, and will put management and boards in a very difficult position of devoting limited resources and expertise to navigate that regulatory maze.

We are also concerned that it will result in our board and management engaging in activities that have significant cost, but add little value in ensuring effective governance, compliance, and safety and soundness. While effective corporate governance is at the core of risk management and safely achieving strategic objectives, a banking institution's overall success and stability benefits from clear governance with well understood roles, responsibilities and decision-making authority. Effective governance is not just based on complexity of governance structures and layers of decision-making; instead, those structures and decision-making channels must account for an organization's risk profile and balance burden and efficiency in service of effective governance. Federal bank regulators have long acknowledged that there is no "one-size-fits-all" approach to governance and risk management; instead, prudent practices should be risk-based, commensurate with an individual institution's complexity and risk profile. As the FDIC seeks to future-proof its regulatory expectations, we urge it to acknowledge that governance approaches must be flexible and efficient, with the ability to make timely decisions in the face of uncertainty. The additional burden, and resulting potential for regulatory arbitrage, caused by the Proposal would materially compromise the flexibility, efficiency, and

competitiveness of covered institutions like CIBC Bank USA and create an uneven playing field for covered institutions compared to national associations and Fed-member banks.

To prevent regulatory uncertainty and ensure consistency across the bank regulatory landscape, we request that the FDIC align with other banking regulators who have provided for additional flexibility in their corporate governance expectations, including with respect to board composition and duties.

IV. Conclusion

To be clear, we agree with the FDIC's goal of supporting strong corporate governance across all covered institutions. To achieve that goal, we request that the FDIC take two key steps before finalizing this Proposal. First, we request that the FDIC engage in a robust study of this issue, including dialogue with key industry stakeholders, an exploration of existing corporate governance best practices, and a more robust analysis of the additional burden that the Proposal's requirements would impose on covered institutions against the benefits those requirements would provide in terms of ensuring safe and sound operation and preventing bank failures. Next, we request that the FDIC then reissue a new proposal, informed by the learnings from that study.

Sincerely,

CIBC Bank USA

A solid black rectangular box used to redact the signature of Shawn Beber.

By: Shawn Beber
Title: CEO and President