RESOLUTION

WHEREAS, companies that sponsor, manage, or advise investment companies, other pooled investment vehicles, and institutional accounts, including some advised by third-party managers (each such company, vehicle, or account, a "fund," and, together with the company that sponsors, manages, or advises one or more funds, a "fund complex") acquire and hold the voting securities of State nonmember insured banks and State savings associations (each such bank or association, an "FDIC-supervised institution") and controlling affiliates of FDIC-supervised institutions; and

WHEREAS, the Federal Deposit Insurance Corporation ("FDIC") has provided or entered into, and may in the future provide or enter into, statements, agreements, and other regulatory comfort that fund complexes rely on to acquire and hold up to a specified percentage of the voting securities of one or more FDIC-supervised institution, or a controlling affiliate of an FDIC-supervised institution, without being considered to control directly or indirectly the FDIC-supervised institution for purposes of certain Federal banking laws enforced by the FDIC (each such existing or future statement, agreement, or other regulatory comfort, "FDIC control comfort"); and

WHEREAS, FDIC control comfort includes (i) the Extension of the Revised Statement Regarding Status of Certain Investment Funds and Their Portfolio Investments for Purposes of Regulation O and Reporting Requirements under Part 363 of FDIC Regulations, dated December 15, 2023 and (ii) the passivity agreements between and among the FDIC and one or more fund complexes; and

WHEREAS, a fund complex's reliance on FDIC control comfort is conditioned on its compliance with the passivity commitments or other conditions included in the FDIC control comfort; and

WHEREAS, due in part to the growing popularity of funds that track the S&P 500 index and other stock indexes, several of these fund complexes have experienced recently large increases in their holdings of voting securities of FDIC-supervised institutions or their controlling affiliates;[1] and

WHEREAS, several of these fund complexes have proposed, without being deemed to control an FDIC-supervised institution for purposes of certain Federal banking laws, to increase their holdings in some controlling affiliates of FDIC-supervised institutions to as much as 24.9 percent of a class of voting securities and to have director representation on the board of directors of controlling affiliates; and

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[1] Lucian A. Bebchuk & Scott Hirst, Big Three Power, and Why It Matters, 102 B.U. L. REV. 1547, 1552 (2022) ("[W]e estimate that, as of the end of 2021, the Big Three [Vanguard, BlackRock, and State Street] collectively held a median stake of 21.9% in S&P 500 companies, which represented a proportion of 24.9% of the votes cast at the annual meetings of those companies."); Lucian A. Bebchuk & Scott Hirst, The Specter of the Giant Three, 99 B.U. L. REV. 721, 736 (2019) ("[T]he average share of the votes cast at S&P 500 companies at the end of 2017 was 8.7% for BlackRock, 11.1% for Vanguard, and 5.6% for [State Street] . . . . As a result, for S&P 500 companies, the proportion of the total votes that were cast by the Big Three was about 25.4% on average . . . .").

WHEREAS, the growing role played by these fund complexes raises important policy issues, including as to whether any fund complex might alone, or acting in concert with another covered fund complex or any other person, control directly or indirectly an FDIC-supervised institution for purposes of certain Federal banking laws enforced by the FDIC; and

WHEREAS, the FDIC's program for monitoring compliance with the passivity commitments and other conditions of FDIC control comfort relies primarily on periodic certifications of compliance by the applicable fund complex; and

WHEREAS, the Change in Bank Control Act of 1978 ("Change in Bank Control Act") amended the Federal Deposit Insurance Act to add section 7(j)(15), 12 U.S.C. § 1817(j)(15), which gives the FDIC authority to take depositions, issue subpoenas, and take other steps to investigate whether a person has violated, or is about to violate, the prohibition on any person acquiring control directly or indirectly of an FDIC-supervised institution (including through any of its controlling affiliates) unless the FDIC has been given at least 60-days prior written notice and, within that time, the FDIC has not disapproved the proposed acquisition; and

WHEREAS, pursuant to the exemption under 12 C.F.R. § 303.84(a)(8), an acquisition of voting securities of a depository institution holding company for which the Board of Governors of the Federal Reserve System (the "Board of Governors") reviews a notice pursuant to the Change in Bank Control Act does not require notice to the FDIC under the FDIC's regulations implementing the Change in Bank Control Act; and

WHEREAS, "the FDIC's longstanding practice [is] to recognize this exemption only when the Board of Governors actually reviews a Notice under the Change in Bank Control Act and not when the Board of Governors does not require and review a Notice," and "[a]ccordingly, if the Board of Governors determines to accept passivity commitments in lieu of a Notice, the FDIC will evaluate the facts and circumstances of the case to determine whether a Notice is required to be filed with the FDIC for the indirect acquisition of control of an FDIC-supervised institution"[2]; and

WHEREAS, the Board of Governors has determined to accept passivity commitments in lieu of notices under the Change in Bank Control Act from at least two large fund complexes;[3] and

WHEREAS, the Board of Directors of the FDIC ("Board") has determined it is appropriate to (i) enhance the FDIC's monitoring of compliance with the passivity commitments and other

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[2] *See* Filing Requirements and Processing Procedures for Changes in Control With Respect to State Nonmember Banks and State Savings Associations, 80 Fed. Reg. 65,889, 65,897 (Oct. 28, 2015) ("The final rule also continues the FDIC's longstanding practice to recognize this exemption [under 12 C.F.R. § 303.84(a)(8)] only when the Board of Governors actually reviews a Notice under the Change in Bank Control Act and not when the Board of Governors does not require and review a Notice. Accordingly, if the Board of Governors determines to accept passivity commitments in lieu of a Notice, the FDIC will evaluate the facts and circumstances of the case to determine whether a Notice is required to be filed with the FDIC for the indirect acquisition of control of an FDIC-supervised institution.").

[3] *See* Letter from Mark E. Van Der Weide, General Counsel, Federal Reserve Board, to William J. Sweet, Jr., Retired Partner, Skadden, Arps, Slate, Meagher, and Flom LLP (Dec. 3, 2020) (BlackRock); Letter from Mark E. Van Der Weide, General Counsel, Federal Reserve Board, to Anne E. Robinson, Managing Director, General Counsel, and Secretary, The Vanguard Group, Inc. (Nov. 26, 2019) (Vanguard).

conditions of the FDIC control comfort provided to, or otherwise applicable to, any fund complex that (A) sponsors or manages one or more funds that track a broad-based equity index and (B) owns or otherwise controls more than 5 percent of a class of voting securities of a large number of FDIC-supervised institutions or their controlling affiliates (including each fund complex that has entered into a blanket passivity agreement with the FDIC) (each such fund complex, a "covered fund complex") and (ii) annually determine whether any covered fund complex controls, or has controlled, directly or indirectly an FDIC-supervised institution for purposes of any of (A) the Change in Bank Control Act, 12 U.S.C. § 1817(j), or (B) 12 C.F.R. § 337.3, which applies generally Regulation O, 12 C.F.R. pt. 215, to FDIC-supervised institutions (each, a "covered banking law").

NOW, THEREFORE, BE IT RESOLVED, that the Board directs the Director of the Division of Risk Management Supervision ("Director, RMS") to submit within 90 days for the review and approval of the Board a plan to (i) monitor compliance with any passivity commitment or other condition of any FDIC control comfort provided to, or otherwise applicable to, a covered fund complex and (ii) annually determine whether any covered fund complex controls, or has controlled, directly or indirectly an FDIC-supervised institution (including through control of a controlling affiliate of an FDIC-supervised institution or through action in concert with another covered fund complex or any other person) for purposes of any covered banking law (such plan, the "Monitoring Plan"), which Monitoring Plan must include the steps set forth in Attachment A, in addition to any steps the Director, RMS determines appropriate.

Attachment A

Monitoring Steps

General Requirements. The Monitoring Plan must include steps to both identify and assess any act, practice, policy, or program of a covered fund complex that could, whether on its own or together with another act, practice, policy, or program of the covered fund complex or in concert with another covered fund complex or other person, indicate or otherwise pose a risk that the covered fund complex directly or indirectly controls, or has controlled during the review period, an FDIC-supervised institution (including through a controlling affiliate of an FDIC-supervised institution) for purposes of any covered banking law.

Required Reports. The Monitoring Plan must include the submission of a report to the Board by March 31 of each year, except that the initial report must be submitted to the Board within 90 days after the approval by the Board of the Monitoring Plan.

Review Period. The review period for each report to the Board must be the preceding calendar year, except that the review period for the initial report to the Board must be January 1, 2019 through December 31, 2023.

Required Identification Steps. To identify such acts, practices, policies, or programs, the Monitoring Plan must include steps to develop an understanding of the facts and circumstances relating to:

- The engagements by management or the investment stewardship team of each covered fund complex with FDIC-supervised institutions or their controlling affiliates, including whether those engagements entailed discussion of proxy voting by the covered fund complex (including any potential for the withholding of proxies);

- The voting guidelines of each covered fund complex and its other policies and practices relating to voting in elections for directors, "say on pay" or other votes on executive compensation, votes on shareholder proposals, or other shareholder votes, whether in elections involving shareholders of FDIC-supervised institutions or their controlling affiliates, including whether the covered fund complex communicates that it may withhold proxies with an aim to influence corporate policy;

- Any coordination of voting or other investment stewardship activities (including engagements with FDIC-supervised institutions or their controlling affiliates) with another covered fund complex or other asset managers through industry trade associations, alliances, or international economic or other forums;

- Any effort by a covered fund complex (including by withholding proxies) to influence the composition of the board of directors of an FDIC-supervised institution or any of its controlling affiliates;

- Any effort by a covered fund complex to influence the credit, lending, investment, divestment, trading, share buyback, dividend, or similar policies of an FDIC-supervised institution or its controlling affiliates; and

- Any effort by a covered fund complex to influence the political spending or lobbying activity of an FDIC-supervised institution or its controlling affiliates.

Required Assessment Steps. To assess such acts, practices, policies, or programs, the Monitoring Plan must include:

- An assessment of whether each covered fund complex complied during the review period with each passivity commitment or other condition of any FDIC control comfort provided to, or otherwise applicable to, the covered fund complex; and

- An assessment of whether each covered fund complex directly or indirectly controls, or has controlled during the review period, an FDIC-supervised institution (including through a controlling affiliate of an FDIC-supervised institution or through action in concert with another covered fund complex or any other person) for purposes of any covered banking law.