November 14, 2024

RE: Regulations Implementing the Change in Bank Control Act (RIN 3064–AG04)

Dear Members of the Federal Deposit Insurance Corporation:

The American Council for Capital Formation (ACCF) looks forward to commenting on the FDIC's proposed changes to the Change in Bank Control Act (CBCA) and explain why this proposed rule would be duplicative, unnecessary, distortionary, and potentially costly.

Washington, DC is witnessing a regulatory race between agencies, sometimes covering each other's areas, creating unnecessary and burdensome rules with significant economic impacts. Despite policymakers from both parties complaining about regulatory overload, the introduction of new regulations has continued full speed ahead in the political void created by the current partisan divide.

The most recent example of this is the FDIC's proposed rule implementing changes to the Change in Bank Control Act (CBCA), which would increase oversight of large asset managers, such as BlackRock, Vanguard, and State Street, once they reach a ten percent ownership threshold in U.S. banks.

There are valid reasons to worry about how certain asset managers or other large investors could use or intend to use Environmental Social and Governance (ESG) principals to direct business decisions, ranging from choosing Board Members to charting the future course of the organizations that they are significant shareholders of. This aligns with the recent surge in ESG-related shareholder proposals – which proxy advisory firms have notably supported considerably more than asset managers.

But when it comes to regulations, there are important questions to ask: What is the aim of the intended regulation? Is it needed? And how will it improve or hurt the current system?

It is understandable to be worried about the potential influence of asset managers on the banks' operations. But currently, these asset managers function under the "passivity commitments," based on long-established Federal Reserve Rulemaking: Through self-certification, they stay out of certain influential activities and as a result they are subject to less onerous regulations.

This Federal Reserve framework was finalized in 2020, and uses various factors to determine whether a company has a control over a bank looking at "the company's total voting and non-voting equity investment in the bank; director, officer, and employee overlaps between the

company and the bank; and the scope of business relationships between the company and the bank." While the Fed framework has significant details in terms of what could trigger control issues between a company and a bank, it also provides the flexibility needed for current economic conditions as every business relationship is unique and one-size-fits-all regulations might not be appropriate for every occasion.

According to BlackRock's most recent response letter to the FDIC, the world's largest asset manager – previously accused of supporting ESG policies – provided documentation proving it votes with management 99.85 percent of the time on proxy items among the nearly 40 FDIC-supervised institutions BlackRock owns substantial shares in. This nearly unanimous support of management begs the question of why the FDIC should be attempting to unilaterally change the rules when asset managers have strictly adhered to their passive investor roles under the control of the Federal Reserve.

Since one agency is already effectively regulating these businesses, whether it is through self-certification or other means, any potential regulations by the FDIC would be duplicative, unnecessary, distortionary, and potentially costly, both for the big three (as well as any other growing passive investors) and the banks that they are passive investors in.

For example, any arbitrary threshold that could trigger the FDIC regulations can change the behavior of the asset managers and limit their investments in the banks below that set amount. This could potentially limit access to capital, especially for small regional banks, impacting their lending to their clients, including small businesses who have close relationships with their regional banks. This behavioral impact can be seen in other regulations. For example, the Securities and Exchange Commission's (SEC) mandatory reporting requirements increased the regulatory compliance costs for public companies decreasing the number of companies going public in the U.S.

In addition, the new regulations could slow the process of index rebalancing in accordance with market changes as asset managers would need to file notices for transactions that could pass the 10 percent threshold. These delays could impact fund performance and ultimately shareholder returns. In a nutshell, according to Investment Company Institute, more than 116 million of Americans rely on these regulated funds and any negative impacts will ultimately be borne by these American households.

It is not surprising that the ultimate cost impact of any regulation ends up falling on small businesses or low-income households. According to recent testimony by Professor Casey Mulligan of the University of Chicago before the House Committee on Oversight and Accountability, while households in the bottom twenty percent of income distribution would incur 15.3 percent of their total income in terms of regulatory costs in the form of reduced wages and diminished purchasing power due to higher prices, the top twenty percent would only lose 2.2 percent.

Any duplicative and unnecessary regulations will end up distorting the economy further, introducing more costs, especially for the groups that need more economic help.

While regulatory vigilance is crucial, the approach must be strategic and not merely duplicative. The FDIC's proposed regulations on asset managers highlight the necessity for more coherent regulatory frameworks that avoid redundancy and minimize economic disruption. Effective regulation should enhance the system, not encumber it with unnecessary costs and complexity, especially on a solution in search of problem that will beset vulnerable groups with the hardest economic burden.

Regards,

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