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November 18, 2024

<u>VIA ELECTRONIC SUBMISSION</u>

Mr. James P. Sheesley, Assistant Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

Re: ***Change in Bank Control Act – RIN 3064–AG04***

Dear Mr. Sheesley:

We appreciate the opportunity to comment on the proposal (the "<u>Proposal</u>") by the Federal Deposit Insurance Corporation (the "<u>FDIC</u>") to amend its filing requirements and processing procedures for notices filed under the Change in Bank Control Act (the "<u>CBCA</u>"). In summary, we are concerned that the Proposal would unnecessarily restrict the flow of capital to impacted FDIC-supervised institutions and harm mutual fund shareholders by imposing duplicative and potentially inconsistent regulatory requirements on investors. We support the comments submitted by the Investment Company Institute and the Securities Industry and Financial Markets Association – Asset Management Group[1] and urge the FDIC not to change its current CBCA filing requirements as contemplated by the Proposal. We believe the robust compliance conditions imposed by passivity agreements and other regulatory requirements are sufficient to mitigate the concerns raised by the Proposal.

I. Capital Group background.

The Capital Group Companies is one of the oldest asset management organizations in the United States with more than 90 years of investment experience. Through our investment adviser subsidiaries, we actively manage equity and fixed income investments across all market sectors in various collective investment vehicles and institutional client separate accounts. Most of these assets consist of the American Funds family of mutual funds as well

[1] *See* Letter to Mr. James P. Sheesley, Assistant Executive Secretary, Federal Deposit Insurance Corporation, from the Investment Company Institute and ICI Southwest, dated October 29, 2024; Letter to Mr. James P. Sheesley, Assistant Executive Secretary, Federal Deposit Insurance Corporation, from Lindsey Weber Keljo, Head – Asset Management Group of the Securities Industry and Financial Markets Association, dated October 28, 2024.

as other U.S. regulated investment companies managed by Capital Research and Management Company.

We are long-only investors, do not invest our own proprietary capital[2] and instead manage only our clients' capital. We file beneficial ownership reports with the U.S. Securities and Exchange Commission (the "SEC") on Schedule 13G, requiring us not to invest for control or management. Our employees do not serve as officers or directors of portfolio companies. We do not mount proxy solicitations. In brief, Capital Group funds do not engage in any activities that seek to exercise control over the operational or management decisions of the FDIC-supervised institutions in our various investment portfolios.

Our mutual funds provide retail investors with the opportunity to build wealth by investing in diversified portfolios at low cost. Shares in the American Funds are held by approximately 60 million investor accounts, representing individuals, retirement plans and other institutions. Our funds are among the most used investment options in retirement plans of small- and medium-sized businesses across the U.S. Our funds and accounts invest in equity securities of over 2,000 global companies.

II. Changes to the FDIC's current CBCA filing requirements may substantially restrict the flow of investment capital into depository institution holding companies, especially in times of market stress.

During the ordinary course of business, the aggregate investments of all funds and accounts Capital Group manages can, at times, exceed 10 percent of a class of voting securities of insured state nonmember banks or insured state savings institutions (or the parent companies thereof). Our investments are passive in nature and each individual fund's or account's investment must remain under 10 percent of voting securities.

The CBCA and the FDIC's implementing regulations require a person seeking to acquire control of an insured state nonmember bank or insured state savings institution to provide the FDIC with prior written notice of the proposed acquisition of control.[3] Under the FDIC's regulations, a rebuttable presumption of control arises if the acquirer proposes to acquire direct or indirect ownership of, or the power to vote, 10 percent or more of a class of voting securities of such entities, if certain other conditions are met.[4] Importantly, FDIC regulations do not require the acquiror to provide the FDIC with such notice if the transaction involves the acquisition of voting securities of a depository institution holding company for which the Board of Governors of the Federal Reserve System (the "FRB") reviews a notice.[5] The Proposal seeks to remove this exemption.

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[2] Capital Group may contribute immaterial amounts of seed capital to assist with the launch of new funds and managed accounts.

[3] 12 U.S.C. § 1817(j); 12 C.F.R. § 303.82.

[4] 12 C.F.R. § 303.82(b)(2).

[5] 12 C.F.R. § 303.84(a)(8).

The Proposal also threatens to end the FDIC's longstanding practice of not requiring prior notice of an acquisition when the FRB has accepted a passivity agreement in lieu of a notice.[6] Capital Group has been party to a passivity agreement with the FRB since 2002 (the "FRB Passivity Agreement"). This agreement allows us to invest up to 15 percent of any class of voting securities of a bank holding company or bank (collectively, "Banking Organizations") without being deemed to have acquired control of that institution under the Bank Holding Company Act ("BHCA") or the CBCA, so long as we abide by strict limits on the exercise of control. The FRB Passivity Agreement serves the important purpose of providing certainty around the FRB's treatment of our investments in banks and bank holding companies. If we were required to file a CBCA notice with the FDIC for our investments in depository institution holding companies that would otherwise be subject to the FRB Passivity Agreement, the FDIC would eliminate this certainty and subject us to duplicative and potentially inconsistent treatment by banking regulators.

Funds and accounts advised by Capital Group currently hold equity securities of approximately 30 depository institution holding companies with FDIC-supervised subsidiary institutions. The immediate impact of the Proposal would be to require us to (i) file a notice to the FDIC under the CBCA if we expect to acquire more than 10 percent of a class of voting securities of any such entity, or (ii) rebut the presumption of control in writing (i.e., execute a passivity agreement with the FDIC), which would impose substantial costs on our funds and the investors they serve as a result of delays, expenses and changes in market price. However, we believe the cumulative impact of the Proposal will be far broader than our specific investments; the Proposal has the potential to negatively impact FDIC-supervised institutions and the economy as a whole.

First, limiting the ability of mutual funds to invest in the impacted depository institution holding companies will restrict the flow of investment capital into these companies, disadvantaging them relative to holding companies without FDIC-supervised bank subsidiaries. For example, if the process for providing notice or rebutting the presumption of control to multiple regulators (i.e., the FRB and the FDIC) becomes so burdensome and unpredictable that asset managers cannot reliably obtain approval to hold more than 10% of a company's voting securities, or cannot do so expeditiously, the 10% threshold may act as a de facto limit on investments. This could delay necessary increases in bank capital, force impacted holding companies to seek capital from other sources, such as activist investors, and/or require the companies to use greater leverage to meet their needs. Neither of these options is likely to be viewed as preferable to the current arrangement, whereby investment companies provide such capital on a longer-term basis and subject to strict limits on the exercise of control.

In addition, the Proposal will impede day-to-day business transactions and stifle timely investment. In our experience, it can take several months to execute a passivity agreement with the FDIC with respect to a particular investment. Evolving economic and market conditions may require depository institution holding companies to raise capital quickly. If our ability to invest in depository institution holding companies were further limited, we may not be able to provide capital to such entities.

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[6] 89 Fed. Reg. at 67004.

Furthermore, placing restrictions on investment companies' ability to invest in FDIC-supervised institutions directly or indirectly would constrain asset manager participation in the capital markets during times of market stress. U.S. capital markets are among the most active and deep in the world. However, during times of market stress, liquidity may contract as similar programmatic traders adapt to changing conditions. For example, transactions by index funds are solely governed by client flows and are potentially pro-cyclical. In times of downward market stress, an active asset manager's investment professionals may act in a counter-cyclical manner and use available cash to buy securities of companies with reduced valuations that represent a buying opportunity. Historically, Capital Group has been able to play that role. In the Great Financial Crisis of 2008-09, Capital Group clients provided over $12 billion in direct capital to 48 banks and other financial companies, many of which had come under significant stress. These companies directly employed 2.3 million people and provided critical credit support for the U.S. economy. Timely participation by diverse market participants is important to support healthy U.S. capital markets. Such timely participation would be foreclosed by burdensome CBCA notice and approval procedures.

The Proposal acknowledges that the benefit of the FDIC's current CBCA filing requirements—and the original purpose of granting an exemption for acquisitions of depository institution holding companies for which the FRB reviews a notice—is to avoid "duplicative regulatory review of the same transactions by both the FRB and the FDIC."[7] The FDIC argues that this benefit has now been outweighed by "risks created by possible outsized control over and concentration of ownership of FDIC-supervised institutions" due to growth in passive investment strategies.[8] Although it speculates on theoretical concerns, the Proposal does not set forth any evidence demonstrating that the FDIC's current CBCA filing requirements have resulted in unauthorized control of FDIC-supervised institutions, much less have caused actual harm to FDIC-supervised institutions. Before considering amendments to the CBCA filing requirements, we urge the FDIC to review whether the responses to this Proposal provide any evidence of actual harm, and, if any such harm exists, whether the costs associated with such harm are outweighed by the benefits received from the changes under the Proposal, as adjusting the process could have a significant effect on FDIC-supervised institutions and the economy as a whole.

III. The FDIC's current CBCA filing requirements ensure that acquisitions of voting securities by investment companies are subject to strict limitations on the exercise of control.

Although we do not believe that the policy rationale for revising the FDIC's CBCA filing requirements demonstrates the necessity of the changes contemplated by the Proposal, the robust compliance conditions imposed by passivity agreements and other regulatory requirements are sufficient to ensure that regulated investment companies adequately rebut the presumption of control under the CBCA. This eliminates the need to make the changes contemplated by the Proposal.

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[7] 89 Fed. Reg. at 67005.

[8] *Id.*

As indicated in Part II above, Capital Group has entered into the FRB Passivity Agreement, which governs our investments in Banking Organizations, including bank holding companies with FDIC-supervised bank subsidiaries. Through this agreement, the FRB has imposed a robust set of conditions aimed at ensuring that Capital Group will not exercise control over such entities. Among other things, the FRB Passivity Agreement requires that (a) our investments in any Banking Organization stay within certain quantitative limits, at both the aggregate and the individual fund/account level; (b) we will not have any director, officer or employee interlocks with the Banking Organization; (c) we will not seek or accept representation on the board of directors of the Banking Organization; (d) we will not have or seek to have any Capital Group representative serve as an officer, agent or employee of the Bank; (e) we will not propose a director or slate of directors in opposition to any nominee(s) proposed by the management or board of directors of the Banking Organization; (f) we will not threaten to dispose of voting shares of the Banking Organization as a condition of specific action or inaction by such entity; (g) we will cap our votes in any class of securities of the Banking Organization at 10 percent (or engage in mirror voting for the shares we hold in excess of 10 percent); and (h) we will not otherwise take any action to control the Banking Organization within the meaning of the BHCA. These conditions are similar to those imposed by the FDIC when an investor seeks to rebut the presumption of control by entering into a passivity agreement.

Irrespective of our obligations under the FRB Passivity Agreement, we are also subject to certain regulatory or internal requirements that prevent us from investing in a manner resulting in control under the CBCA. As described above, we file beneficial ownership reports with the SEC on Schedule 13G, which require us to certify that the securities we hold "were acquired and are held in the ordinary course of business and . . . [not] for the purpose of or with the effect of changing or influencing the control of the issuer."[9] In contrast, investors who cannot make such a certification must file beneficial ownership reports on Schedule 13D. Our employees do not serve as directors or officers of our portfolio companies, nor do we propose directors or solicit proxies with respect to portfolio companies.

These conditions eliminate the need to change the FDIC's CBCA filing requirements as indicated in the Proposal. To the extent an asset manager such as Capital Group, a 13G filer, acquires more than 10 percent of a class of voting securities of a bank holding company, such investment would be subject to strict regulatory and internal restrictions on our ability to invest to obtain control. Instead of adopting the changes contemplated by the Proposal, the FDIC could consider codifying its current practice of not requiring a CBCA notice in cases where the FRB has accepted a passivity agreement with an asset manager.

IV. We encourage the FDIC to expand its use of blanket passivity agreements to encourage investment in FDIC-supervised institutions and ensure fairness among investors.

The Proposal invites public comment on a wide variety of questions about the existing regulatory framework applicable to asset managers and their investments in FDIC-supervised institutions. Our letter addresses many of these questions in Parts II and III above. However,

[9] Schedule 13G, Item 10.

we would like to respond to Question 11 in particular, which asks whether the FDIC should enter into blanket passivity agreements with investors that apply to "the entire portfolio of the FDIC-supervised institutions in the fund complex" instead of requiring separate agreements for each acquisition.[10] We would strongly encourage the FDIC to enter into blanket passivity agreements with asset managers that do not invest to obtain control, rather than executing agreements on a company-by-company basis. This would be consistent with the approach adopted by other federal regulators (including the FRB) and would encourage investment in FDIC-supervised institutions by providing certainty to investors who agree to comply with strict limits on the exercise of control.

Since 2007, Capital Group has executed separate passivity agreements with the FDIC with respect to its investments in several state nonmember banks or state savings associations. Two such agreements are still in effect.[11] When we have applied to the FDIC to enter into these agreements, we have observed that it can take several months of discussions with the FDIC before executing the final agreement, even though the facts of our investment do not materially change from application to application, nor do the terms of the passivity agreements we ultimately sign. This significantly restricts our ability to make timely investments in FDIC-supervised institutions. For the reasons described in Part II above, any restrictions on our ability to invest in FDIC-supervised institutions on a timely basis will restrict capital flows into such institutions. In addition, bilateral discussions associated with these individual passivity agreements impose additional costs on the FDIC and asset managers like Capital Group without any discernable benefit, as the conditions in the passivity agreements are substantially similar in each case.

V. Any future enhancements of the FDIC's process for monitoring compliance with passivity agreements should be narrowly tailored.

In discussions regarding the Proposal at the July 30, 2024 meeting of the FDIC Board of Directors (the "Board"), several Board members indicated a desire to enhance the FDIC's monitoring of asset manager compliance with passivity commitments.[12] Although we understand the motivation behind these statements, we urge the FDIC to ensure that any such modifications do not advantage the business models of certain asset managers over others. In particular, the FDIC should not adopt any process that requires asset managers to draft and maintain meeting minutes of each engagement with FDIC-supervised institutions.

We believe that exercising our proxy voting rights for the entities in which we invest is fundamental to fulfilling our obligations to investors, and we are committed to providing better financial outcomes for our clients. We consult with management teams to understand the quality of the management team, their underlying market assumptions and their plans for the business, among other things, to form an impression on the future prospects of the company. We generally invest in companies where we believe in the management team's

[10] 89 Fed. Reg. at 67007.

[11] *See* https://www.fdic.gov/regulations/applications/resources/change-in-control.html.

[12] *See, e.g.,* Memorandum from Jonathan McKernan to the FDIC Board of Directors, dated July 29, 2024; Statement by Martin J. Gruenberg, Chairman, FDIC on Notice of Proposed Rulemaking Amending Regulations Implementing the Change in Bank Control Act, dated July 30, 2024.

ability to execute on stated business plans and to contribute to the investment objective of our clients. However, as noted above, we do not seek to exercise control over any FDIC-supervised institution in the ordinary course of engagement with our portfolio companies.

Each year, our investment professionals hold thousands of meetings with companies, including one-on-ones with executives and on-site facility visits, to better understand these companies. As noted, the goal of these meetings is not to exert control over management. We believe it is important to get to know the people behind each business and to analyze, for example, whether management's modeling assumptions of a company's future valuation is appropriate given the investment objective(s) of our clients. Asking our investment professionals to produce documentation on each such meeting may chill the very conversations that are essential to our fundamental research.

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We appreciate the opportunity to comment on the Proposal. We urge the FDIC not to change its current CBCA filing requirements, as any modifications thereto may have significant negative consequences for FDIC-supervised institutions and the economy as a whole. If you have any questions regarding our comments, please contact Donald H. Rolfe at (213) 615-0457 or Katherine Z. Solomon at (213) 615-0956.

Sincerely,

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Capital Research and Management Company

Katherine Z. Solomon
Vice President and Associate Counsel
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