December 29, 2025

Chief Counsel's Office
Attention: Comment Processing
Office of the Comptroller of the Currency
400 7th Street SW, Suite 3E-218
Washington DC 20219

Jennifer M. Jones, Deputy Executive Secretary
Attention: Comments — RIN 3064–AG16; RIN 3064–AG12
Federal Deposit Insurance Corporation
550 17th Street NW
Washington DC 20429

VIA EMAIL AND ELECTRONIC PORTAL

Re.: *Docket ID OCC–2025–0174; RIN 3064–AG16: Unsafe or Unsound Practices, Matters Requiring Attention; Docket ID OCC-2025-0142; RIN 3064–AG12: Prohibition on Use of Reputation Risk by Regulators*

Dear Sir or Madam:

The Committee on Capital Markets Regulation (the "Committee") offers these comments to the Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation (the "Agencies") on their proposed rules entitled "Unsafe or Unsound Practices, Matters Requiring Attention" (the "Proposal") and "Prohibition on Use of Reputation Risk by Regulators" (the "Reputation Risk Proposal").[1]

Founded in 2006, the Committee is dedicated to enhancing the competitiveness of U.S. capital markets and ensuring the stability of the U.S. financial system. Our membership includes forty-four leaders drawn from the finance, investment, business, law, accounting, and academic communities. The Committee is chaired jointly by R. Glenn Hubbard (Emeritus Dean, Columbia Business School) and John L. Thornton (Former Chairman, The Brookings Institution) and is led by Hal S. Scott (Emeritus Nomura Professor of International Financial Systems at Harvard Law School and President of the Program on International Financial Systems). The Committee is an independent and nonpartisan 501(c)(3) research organization, financed by contributions from individuals, foundations, and corporations.

Our letter proceeds in two parts.

[1] DEPARTMENT OF THE TREASURY, OFFICE OF THE COMPTROLLER OF THE CURRENCY ["OCC"] and FEDERAL DEPOSIT INSURANCE CORPORATION ["FDIC"], *Unsafe or Unsound Practices, Matters Requiring Attention* 90 FED. REG. 48,835 (2025), https://www.fdic.gov/board/npr-unsafe-or-unsound-practices-matters-requiring-attention.pdf [the "Proposal"]; OCC and FDIC, *Prohibition on Use of Reputation Risk by Regulators* 90 FED. REG. 48,825 (2025), https://www.fdic.gov/board/npr-prohibition-use-reputation-risk-regulators.pdf [the "Reputation Risk Proposal"]. In this letter we refer to the Proposal and Reputation Risk Proposal together as the "Proposals."

Part I describes how the Proposals would create a regulatory definition of "unsafe or unsound practices" for purposes of determining when the Agencies may bring an enforcement action against a depository institution, create a uniform standard for the issuance of "matters requiring attention" to an institution's managers, and codify the elimination of "reputation risk" as a basis for Agency supervision and enforcement actions. Part II assesses these changes and finds that they would benefit the stability and efficiency of the U.S. banking system by focusing supervisors' and managers' attention on material financial risks and promoting greater transparency and consistency in supervision and enforcement, thereby supporting credit availability and economic growth.

We therefore recommend that the Agencies finalize the Proposals.

I. Summary of the Proposals

Part I summarizes the Proposals' three principal revisions to the supervision and enforcement framework for insured depository institutions.

1. Defining "unsafe or unsound practices"

The Federal Deposit Insurance Act ("FDI Act") authorizes the FDIC and OCC (the "Agencies") to undertake enforcement actions against insured depository institutions that engage in "unsafe or unsound practices."[2] These measures include terminating the institution's deposit insurance coverage, issuing an order compelling the institution to stop the offending practice, removing or suspending a director, officer, or employee of the institution, and assessing civil monetary penalties.[3] These enforcement powers are intended to maintain the stability of the banking system by stopping banking institutions from engaging in practices that pose a material risk to the stability of the institution or the Deposit Insurance Fund.[4] Although Agency policy documents provide non-binding indications of how the Agencies apply the "unsafe or unsound" standard, neither the FDI Act nor the Agencies' regulations provide a binding definition of this term. As the Proposal explains, the lack of a definition has "resulted in enforcement actions and supervisory criticisms for concerns not related to material financial risks."[5]

The Proposal would therefore define "unsafe or unsound practice" as:

> "a practice, act, or failure to act, alone or together with one or more other practices, acts, or failures to act, that: (1) Is contrary to generally accepted standards of prudent operation; and (2)(i) If continued, is likely to — (A) Materially harm the financial condition of the institution; or (B) Present a material risk of loss to the DIF; or (ii) Materially harmed the financial condition of the institution."[6]

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[2] 12 U.S.C. § 1818

[3] Proposal at 48,837.

[4] *See, e.g.*, FDIC, *Formal Administrative Actions*, Section 15.1, https://www.fdic.gov/resources/supervision-and-examinations/examination-policies-manual/section15-1.pdf; *Seidman v. OTS*, 37 F.3d 911 (3d Cir. 1994) (A practice is "unsafe or unsound" if it poses an "abnormal risk to the financial stability of the banking institution.").

[5] Proposal at 48,838.

[6] Proposal at 48,849 [Proposed Regulation § 305.1(a)].

The Proposal would also provide that the Agencies will tailor their issuance of supervisory and enforcement actions based on "the capital structure, riskiness, complexity, activities, asset size, and any financial risk-related factor that the Agencies deem appropriate."[7]

The Proposal explains that these changes are intended to ensure that Agency supervisors focus their supervision and enforcement powers on addressing "material risks to the financial condition of an institution," to allow the institution's directors and management the flexibility to act "based on their business judgment and risk tolerance," and to create "a consistent nationwide standard to provide greater clarity for institutions and institution-affiliated parties."[8]

2. Creating a uniform standard for "matters requiring attention"

The FDI Act also authorizes the Agencies to issue warnings to the directors and managers of insured depository institutions about "deficient" practices that could rise to the level of an unsafe or unsound practice that triggers an Agency enforcement action if left unaddressed. The OCC refers to these warnings as "matters requiring attention" and the FDIC refers to them as "matters requiring board attention." In this letter, we refer to both as "MRAs." The purpose of an MRA is to bring a deficient practice to the attention of the institution's board of directors and management before it threatens the stability of the institution or the Deposit Insurance Fund and before the institution incurs an enforcement action that could hamper its operations.[9]

As the Proposal explains, the Agencies currently apply inconsistent procedures and standards to the issuance of MRAs and also issue MRAs for a broader range of weaknesses in operations, governance, or risk management, including those not tied to financial risks.[10] The Proposal explains that this inconsistency and the issuance of MRAs for matters unrelated to material risks to the financial condition of an institution diverts management resources from risk management and mitigation. The Proposal would therefore create a uniform standard for the issuance of MRAs that permits the issuance of MRAs for:

> "a practice, act, or failure to act, alone or together with one or more other practices, acts, or failures to act, that: (1)(i) Is contrary to generally accepted standards of prudent operation; and (ii)(A) If continued, could reasonably be expected to, under current or reasonably foreseeable conditions, (1) Materially harm the financial condition of the institution; or (2) Present a material risk of loss to the Deposit Insurance Fund; or (B) Materially harmed the financial condition of the institution; or (2) Is an actual violation of a banking or banking-related law or regulation."[11]

The Proposal would also provide that the Agencies will tailor their application of this standard to reflect a risk-based approach that considers the risk profile of each institution.

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[7] *Id.* [Proposed Regulation § 305.1(d)].
[8] Proposal at 48,837-38.
[9] *Id*. at 48,840.
[10] *Id*.
[11] *Id.* at 48,849 [Proposed Regulation § 305.1(b)].

3. Eliminating "reputation risk" as a basis for supervisory and enforcement actions

Since 1995 Agency guidance has allowed examiners to issue MRAs and enforcement actions based on a supervisor's perception of reputational risks, even absent direct financial impact.[12] However, as the Proposal explains, the use of reputation risk by examiners has led to inconsistent and non-transparent standards.

The Reputation Risk Proposal would codify the elimination of reputation risk from the Agencies' supervisory and enforcement frameworks by prohibiting the Agencies from using reputation risk as a standalone basis for any formal or informal criticism, adverse supervisory action, or enforcement against insured depository institutions and from requiring or encouraging banks to terminate accounts, initiate business, or deny services solely due to customers' political, social, cultural, or religious views. The Proposal would clarify that this prohibition does not alter obligations under fair lending, bank secrecy, anti-money laundering, or consumer protection laws.

II. Analysis of the Proposals

The Proposals' changes would produce significant benefits for the stability and efficiency of the U.S. banking system by focusing supervisors' and managers' risk management efforts on traditional risk channels (e.g., credit risk, market risk, and operational risk), rather than their subjective review of reputation risk.

The 2023 failures of SVB, Signature Bank, and First Republic illustrate the importance of refocusing supervisors' risk management efforts on traditional risks. These failures stemmed from core financial issues including unmanaged interest rate risks, concentrated uninsured deposit exposures, and inadequate liquidity planning. However, the supervision and enforcement framework did not effectively compel the banks to address these risks, due in part to supervisors' focus on non-traditional risk channels. For example, only one of the 31 outstanding issues that SVB's supervisors flagged in the period preceding SVB's failure pertained to the interest rate risk that ultimately triggered SVB's failure.[13] Instead, the majority of issues that supervisors flagged centered on non-financial matters such as IT infrastructure and board oversight processes unrelated to traditional risks.

We therefore recommend that the Agencies finalize the Proposals.

[12] Reputation Risk Proposal at 48,826.

[13] BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, *Review of the Federal Reserve's Supervision and Regulation of Silicon Valley Bank* (April 28, 2023), https://www.federalreserve.gov/publications/review-of-the-federal-reserves-supervision-and-regulation-of-silicon-valley-bank.htm.

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Thank you very much for your consideration of the Committee's position. Should you have any questions or concerns, please do not hesitate to contact the Committee's President, Professor Hal S. Scott [redacted] or its Executive Director, John Gulliver [redacted] at your convenience.

Respectfully submitted,

[redacted]

John L. Thornton	Hal S. Scott	R. Glenn Hubbard
CO-CHAIR	PRESIDENT	CO-CHAIR