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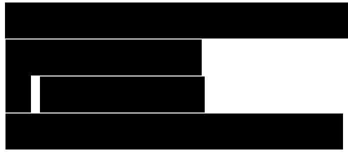

November 15, 2024

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

Submitted via email for RIN 3064-AG04, https://www.fdic.gov/resources/regulations/federal-register-publications

Re: Proposed Rule "Regulations Implementing the Change in Bank Control Act"

Dear Mr. Sheesley:

This comment responds to the Federal Deposit Insurance Corporation ("FDIC")'s proposed rule amending its regulations under the Change in Bank Control Act ("CBCA").[1] The FDIC has proposed changes relating to its passivity agreements, including with asset managers that have large ownership interests in multiple FDIC-supervised institutions. The FDIC has also proposed requiring notice of transactions relating to FDIC-supervised institutions regardless of whether the Federal Reserve Board ("FRB") also receives notice.[2] Given the important mission of the FDIC under the CBCA, Consumers' Research supports both changes.

Multiple large asset managers, including BlackRock, Vanguard, and the Capital Group Companies, have passivity agreements with the FDIC or the Federal Reserve.[3] Despite such passivity agreements, asset managers have exercised great influence on FDIC-supervised institutions by becoming members or signatories to horizontal organizations such as the Net Zero Asset Managers Initiative ("NZAM").[4] NZAM includes a commitment that expressly references financial institutions setting targets on their lending and investment activities in the areas of electric generation and fossil fuels. Pushing these types of policy changes banks qualifies as control under the CBCA, which defines control broadly as "***the power, directly or indirectly, to***

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[1] Regulations Implementing the Change in Bank Control Act, 89 Fed. Reg. 67002 (proposed Aug. 18, 2024) (to be codified at 12 C.F.R. pt. 303).
[2] *Id.* at 67002.
[3] FDIC Proposed Resolution on Monitoring Passivity Agreements at 2 n.3 (discussing passivity commitments from BlackRock and Vanguard), https://www.fdic.gov/sites/default/files/2024-04/resolution-mckernan-proposals-related-change-bca.pdf; Passivity Agreement Between FDIC and Capital Group Companies, https://www.fdic.gov/regulations/applications/resources/change-in-control/passivity-agree-capital-group-2018-04-12.pdf.
[4] Vanguard was a member of NZAM until December 2022, when it withdrew.

direct the management or policies of an insured depository institution."[5] Further, the exercise of control by large asset managers harms competition for lending and increases risks to banks, as was shown by the collapse of Silicon Valley Bank, which focused on green initiatives rather than financial risk. The FDIC should therefore review all transactions involving control of institutions under its jurisdiction, and it should not grant exemptions based on generic passivity commitments alone. The FDIC should instead require a showing that the acquiring person is actually passive by disclosing and renouncing commitments to pursue non-financial policy changes at portfolio company banks, such as net zero by 2050.

Consumers' Research submits this comment based on its commitment to supporting consumers in the banking and financial sector. Founded in 1929, Consumers' Research is an independent 501(c)(3) nonprofit organization with the mission to increase the knowledge and understanding of issues, policies, products, and services of concern to consumers.[6] Its researchers pursue an informed understanding of consumers' experiences in the banking and financial sector through peer-reviewed academic research and longer-term research initiatives, such as the Ceres Report.[7]

I. Large asset managers have joined horizontal organizations and thereby exert control over policies of FDIC-supervised institutions.

A. Large asset managers have joined organizations that require financial institutions to set climate-based targets for lending and investment activities.

Many of the world's largest asset managers have joined organizations, including NZAM and Climate Action 100+ ("CA100+), that require members to pursue climate goals when making investment and proxy voting decisions. For portfolio companies of these asset managers that are banks, these commitments include pushing banks to set lending and investment targets aligned with the groups' climate goals. This coordinated activity meets the CBCA's broad definition of "control."

As a prime example, NZAM investment managers "commit to support investing aligned with net zero emissions by 2050 or sooner."[8] They further agree to "[i]mplement a stewardship and engagement strategy, with a clear escalation and voting policy, that is consistent with [their] ambition for all assets under management to achieve net zero emissions by 2050 or sooner."[9] NZAM's commitment under "Target setting approaches" specifically links to the Science Based

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[5] 12 U.S.C. § 1817(j)(8)(B).
[6] Consumers' Research, *America's Oldest Consumer Protection Agency*, https://consumersresearch.org/history/.
[7] Consumers' Research, *The Ceres Report*, https://consumersresearch.org/documents/consumers-research-ceres-report/.
[8] NZAM, *Commitment*, https://www.netzeroassetmanagers.org/commitment/.
[9] *Id.*

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Targets (SBTi) initiative for Financial Institutions.[10] The SBTi states that financial institutions must set climate-based targets for lending and investment activities.[11] In other words, the NZAM commitment expressly references targets for financial institutions on their lending and investment activities. This is exactly a type of policy change that constitutes "control" and that the FDIC must be investigating and prohibiting when approving passivity agreements and other regulatory comfort under the CBCA.

It is also important to note that NZAM does not operate in isolation, but rather it is one of multiple associations under the larger umbrella of the Glasgow Financial Alliance for Net Zero ("GFANZ") that explicitly states its purpose is to transition the entire economy to align with the policy of net zero.[12] GFANZ's website states that it "is a global coalition of leading financial institutions committed to accelerating the decarbonization of the economy."[13] It further states that "[a]chieving the objective of the Paris Agreement to limit global temperature increases to 1.5°C from pre-industrial levels requires a ***whole economy transition***. Companies, ***banks***, insurers, ***and investors will need to adjust their business models,*** develop credible plans for the transition to a low-carbon, climate-resilient future, and then implement those plans. GFANZ has worked to develop the tools and methodologies needed to turn financial institutions' net-zero commitments into action."[14] GFANZ was "launched … ***to coordinate efforts across all sectors of the financial system to accelerate the transition to a net-zero global economy***."[15] GFANZ in turn contains eight sector-specific alliances, including not only NZAM but also a Net-Zero Banking Alliance ("NZBA").[16] Participation in the GFANZ alliances, which are specifically designed to coordinate actions across the financial system, show that asset managers voting on shareholder proposals is part of the issue but behind-the-scenes coordination and pressure is an equally, if not more important, issue for purposes of ascertaining whether an asset manager can exercise control on banks by directing bank policy--the touchstone of the CBCA.

Similarly, CA100+ is a group of over 700 investment firms managing $68 trillion in assets that are committed "to ensur[ing] the world's largest corporate greenhouse gas emitters take necessary action on climate change."[17] Internal documents from CA100+ demonstrate that the goal of CA100+ is for companies it targets to "commit[] to net zero or go[] out of business"

[10] *Id.*
[11] SBTI, *Financial Institutions*, https://sciencebasedtargets.org/sectors/financial-institutions.
[12] Glasgow Financial Alliance for Net Zero, https://www.gfanzero.com/.
[13] *Id.*
[14] *Id.*
[15] GFANZ, *About*, https://www.gfanzero.com/about/.
[16] *Id.*
[17] Climate Action 100+, *How We Work*, https://www.climateaction100.org/approach/how-we-work/.

by 2030.[18] Investment managers who own shares in banks are therefore in a position to force the banks to change their lending policies to conform to this change.

B. Large asset managers, who are NZAM and/or CA100+ members, have records of exercising control over the policies of their portfolio companies.

There is a clear record of large asset managers exercising control over the policies of their portfolio companies. After BlackRock joined CA100+ in 2020, it began to push companies to commit to net zero emissions. BlackRock also received a letter from the Federal Reserve stating that it could acquire up to 15% of any class of voting securities of a state member bank without having to file a notice under the Change in Bank Control Act.[19] BlackRock's commitment and actions from 2020 onward stand in stark conflict, as explained in this section.

The CA100+ Steering Committee's now-public meeting minutes reflected that "BlackRock underst[ood] that by joining CA100+, it [was] expected to shift its voting to support climate resolutions."[20] BlackRock did just that. In the 2019-20 proxy season prior to joining CA100+, BlackRock voted for only about 6% of environmental proposals and against only 55 directors on climate-related issues.[21] But in the 2020-21 proxy season—after joining CA100+ and, later, NZAM—BlackRock voted for 64% of environmental proposals and against 255 directors on climate-related issues.[22] And since 2021, BlackRock's shareholder engagements and key voting actions have centered on climate-change considerations, with "climate and natural capital" constituting BlackRock's number one shareholder engagement factor in 2020-2021.[23] BlackRock has withdrawn involvement in CA100+ except for its international arm, but it remains a member of NZAM.

These dramatic changes occurred despite BlackRock's public statement in 2020 upon joining CA100+ that it would "independently" determine how to "prioritize engagements" and

[18] Climate Action 100+, *Global Steering Committee—Strategy Session 1* 8 (Oct. 27, 2020), CERES51908, at 439, https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/Appendix_Full.pdf.

[19] Letter from Mark Van Der Weide to William Sweet (Dec. 3, 2020), https://www.federalreserve.gov/supervisionreg/legalinterpretations/blackrock-letter-20201203.pdf.

[20] CA100+ *Steering Committee Meeting Minutes* (March 26, 2020), CERES0001262 (p. 460) (emphasis added), https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/Appendix_Full.pdf.

[21] BlackRock, *Investment Stewardship Annual Report* (2020), at 13, 17, https://web.archive.org/web/20201102062130/https://www.blackrock.com/corporate/literature/publication/blk-annual-stewardship-report-2020.pdf.

[22] BlackRock, *BlackRock Investment Stewardship* (2021), at 14- 15, https://web.archive.org/web/20210720072532/https://www.blackrock.com/corporate/literature/publication/2021-voting-spotlight-full-report.pdf.

[23] BlackRock, *Pursuing Long-Term Value for Our Clients* 8 (2021), https://perma.cc/K6UE-D8DR.

"vote proxies."[24] Clearly, such statements cannot be taken at face value and an additional regulatory investigation is required to evaluate an asset managers actual activity to direct the management or policies of an insured depository institution."[25]

Similarly, the Capital Group Companies voted to push climate agendas onto its portfolio companies since joining NZAM. In 2007 and 2018, Capital Group Companies signed a passivity agreement with the FDIC.[26] Nevertheless, Capital Group joined NZAM in June 2022 and made its Target Disclosure in August 2023, disclosing that $20.6 billion of its assets were covered by the NZAM Commitment Statement.[27] That Commitment Statement included commitments to "[i]mplement a stewardship and engagement strategy . . consistent with [NZAM's] ambition for all assets under management to achieve net zero emissions by 2050 or sooner."[28] Accordingly, in 2023, Capital Group recorded 1,115 unique ESG engagements with companies and issuers.[29]

In March 2023, twenty-one attorneys general wrote a lengthy letter to asset managers detailing and raising questions regarding the influence on portfolio companies that comes from their votes.[30] The letter noted the involvement of CA100+ "engagement service providers," showing how directly involved CA100+ is in these efforts.[31] It also noted that climate-related proposals have been filed at ten North American banks, and that at least one bank made a commitment to a CA100+ member in return for the withdrawal of a shareholder proposal.[32]

C. Asset managers have influenced FDIC-insured banks to adopt policies aligned with the asset managers' climate goals.

NZAM and CA100+ members, as well as other large asset managers, have voted for FDIC-insured banks, such as Bank of America, Wells Fargo, and JPMorgan Chase Bank, to adopt climate-related proposals. In 2023, 26 asset managers voted for the Bank of America Report on Climate Plan.[33] Earlier this year, 24 asset managers voted for the Wells Fargo Report on Climate Lobbying and 24 asset managers voted for the Wells Fargo Report on Climate Plan.

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[24] Letter from BlackRock to Climate Action 100+ Steering Committee (Jan. 6, 2020), https://www.blackrock.com/corporate/literature/publication/our-participation-in-climate-action-100.pdf.
[25] 12 U.S.C.A. § 1817(j)(8)(B).
[26] *2007 Passivity Agreement*, https://www.fdic.gov/system/files/2024-07/passivity-agree-capital-group-2007-12-21.pdf; *2018 Passivity Agreement*, https://www.fdic.gov/system/files/2024-07/passivity-agree-capital-group-2018-04-12.pdf.
[27] Net Zero Asset Managers, *Capital Group*, https://www.netzeroassetmanagers.org/signatories/capital-group/.
[28] NZAM, *Commitment*, https://www.netzeroassetmanagers.org/commitment/.
[29] Capital Group, *Stewardship report* (May 2024), at 6, https://www.capitalgroup.com/content/dam/cgc/tenants/eacg/documents/esg/en/esg-stewardship-2024.pdf.
[30] https://attorneygeneral.utah.gov/wp-content/uploads/2023/03/2023-03-30-Asset-Manager-letter-Press-FINAL.pdf
[31] *Id.* at 7.
[32] *Id.* at 7-8.
[33] These votes were compiled from data in the Diligent Market Intelligence Platform, https://www.insightia.com/.

In 2023, 24 asset managers voted for the JPMorgan Report on Climate Transition Plan. In 2020, 8 asset managers voted for the JPMorgan Report on GHG emissions and finance. Each of these FDIC-insured banks has made commitments to achieve net zero greenhouse gas emissions before 2050.[34] These examples involving large banks are high profile, but there is no reason to doubt that similar influence is being applied to non-member banks that are under the FDIC's jurisdiction for purposes of the CBCA. Given this evidence, it would be irresponsible for the FDIC not to inquire.

After asset managers joined CA100+ and NZAM and pushed climate policies onto their portfolio companies, banks even followed suit by joining Net Zero Banking Alliance ("NZBA") in 2021. NZBA is a group of 142 global banks "committed to aligning their lending, investment, and capital markets activities with net-zero greenhouse gas emissions by 2050."[35] NZBA members commit to "transition[ing] the operational and attributable greenhouse gas (GHG) emissions from their lending and investment portfolios to align with pathways to net-zero by 2050 or sooner" and "set[ting] targets for 2030 or sooner and a 2050 target."[36] NZBA includes several FDIC-insured institutions, such as Bank of America, Wells Fargo, and Citi.[37]

D. There are documented examples of risk from focusing on climate objectives rather than actual financial risk.

The argument that there is no evidence of bank risk from climate activism (the policies being pushed on banks by asset managers) is contradicted by the example of Silicon Valley Bank, which "appears to have been focused more on environmental issues than safe and sound operations."[38] Silicon Valley Bank prioritized ESG by favoring green tech companies with speculative earnings over cash-generating fossil-fuel companies.[39] Its collapse shows that these kind of misguided initiatives clearly create a risk that is directly within the FDIC's purview to prevent.

Another example of focusing on non-financial risk is illustrated by the stress test recently

[34] Bank of America, *Approach to Zero*, https://about.bankofamerica.com/en/making-an-impact/our-net-zero-strategy-and-targets-to-reduce-emissions; Wells Fargo, *CO2eMission*, https://sites.wf.com/co2emission/; JPMorganChase, *Sustainability Initiatives*, https://www.jpmorganchase.com/impact/environmental-sustainability/es-initiatives.
[35] UN Environment Programme, *Net-Zero Banking Alliance*, https://www.unepfi.org/net-zero-banking/.
[36] UN Environment Programme, *Commitment Statement*, https://www.unepfi.org/net-zero-banking/commitment/.
[37] UN Environment Programme, *Our Members*, https://www.unepfi.org/net-zero-banking/members/.
[38] Letter from State Attorneys General to Janet Yellen, Chair Powell, Director Gruenberg, and Acting Comptroller Hsu (March 21, 2023), https://attorneygeneral.utah.gov/wp-content/uploads/2023/03/2023-03-21-Letter-to-Treasury-Fed-Reserve-OCC-FDIC-re-SVB.pdf
[39] *See* U.S. Senate Committee on Commerce, Science, and Transportation, *Letter from Senator Ted Cruz to Silicon Valley Bank* (Mar. 16, 2023), https://www.commerce.senate.gov/services/files/D0D06D5E-DFA7-4ADA-B182-5A88EDED2276.

conducted by the Biden administration showing that climate risk is *not* material financial risk. Consumers' Research filed an amicus brief on this topic at the Supreme Court.[40] That test demonstrated that even under extreme scenarios, the probability of default on loans increased by only half a percentage point or less. In contrast, federal bank stress tests involving true financial stresses, such as a severe recession, have resulted in probabilities of default jumping by 20 to 40 times that amount or more, leading to hundreds of billions in losses.[41]
If individual banks (such as Silicon Valley Bank) make decisions to focus on non-financial risk, that can be problematic for the specific bank. However, if asset managers are able to force many banks to adhere to the non-financial objectives of horizontal organizations like NZAM, then that can create a much bigger risk. This shows why it is critical that the FDIC carry out its duties under the CBCA, as indicated in its proposed rule.

E. Coordinated refusals to lend to certain industries, or to accept certain customers for banking services, also create significant competition concerns, which are another of the bases for review in the CBCA.

Examining the actual emissions targets that are required by commitments to organizations such as NZAM and CA100+ shows that membership in these organizations is highly relevant to the issue of control under the CBCA because it tends to lessen competition.[42] As noted above, large asset managers who have entered into passivity agreements have also joined NZAM, and NZAM references the SBTi for financial institutions.[43] The SBTi *Financial Institutions' Near-Term Criteria* is a publication that provides instructions to financial institutions on how to set targets.[44] Under Scope 3 portfolio setting requirements, it includes "electricity generation project finance" and it also includes "fossil fuel project finance."[45] It also includes corporate loans for these same activities. It requires 100% of base-year activity or financed emissions to be covered in the financial institution's Scope 3 targets. Limits on the emissions of fossil fuel project finance and corporate loans, by definition, means limiting the amount of lending to these activities. Fossil fuels necessarily emit greenhouse gases when they are burned. Similarly, in the electricity industry, net zero targets require changing fossil fuel usage from 61% in 2020 to 25% by 2030, with an ultimate limit of only 2% fossil fuel usage by 2050.[46] Conforming lending to these targets will similarly require a change in bank operations. Asset managers who are entering into horizontal organizations are thus committing to influence

[40] http://www.supremecourt.gov/DocketPDF/22/22O158/319518/20240722121335429_Alabama%20v%20California%20-%20Consumers%20Research%20Amicus%20FINAL.pdf
[41] *Id.* at 4.
[42] *See* 12 U.S.C. 1817(j)(7)(B).
[43] NZAM, *Commitment*, https://www.netzeroassetmanagers.org/commitment/.
[44] https://sciencebasedtargets.org/resources/files/Financial-Institutions-Near-Term-Criteria.pdf
[45] *Id.* at 16.
[46] International Energy Agency, *Net Zero by 2050: A Roadmap for the Global Energy Sector* at 198, https://iea.blob.core.windows.net/assets/deebef5d-0c34-4539-9d0c-10b13d840027/NetZeroby2050-ARoadmapfortheGlobalEnergySector_CORR.pdf.

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the policies of the financial institutions whose shares they own so that they comply with net zero by 2050.

While the focus of this comment is the role of large asset managers in pushing climate targets onto banks, and how this clearly fits within the definitions in the CBCA, the issue is broader than just that fact pattern. Recently, *The Free Press* published a lengthy article on the issue of debanking, that contended that "Muslims, January 6 rioters, and Melania Trump" all have in common the issue of debanking—showing that this issue cuts across political and demographic groups.[47] Competition is the best policy for consumers because it gives them the freedom to vote with their feet if their bank provides sub-par service or refuses to deal with them. But competition becomes illusory if nominally independent banks are controlled by the same few actors. This precise concern underlies the CBCA, and the FDIC should act to restore competition by ceasing the practice of granting regulatory comfort to large asset managers with minimal investigation or oversight of their passivity commitments. Consumers will greatly benefit from this change.

II. The FDIC should require actual passivity before exempting any notice requirement and reject transactions where the acquiring person has made commitments related to an activist organizations, including CA100+ and NZAM.

Given the significant influence asset managers exert over FDIC-insured banks, the FDIC should require an acquiring asset manager person to show actual passivity before approving a transaction covered by the CBCA or granting other regulatory comfort.
The FDIC can disapprove of a proposed acquisition if any acquiring person neglects, fails, or refuses to furnish the appropriate federal banking agency with all required information.[48] Thus, the FDIC should disapprove of a transaction if the acquiring person fails to disclose its affiliations with activist organizations, such as CA100+ and NZAM, that require members to commit to voting and engagement agendas with their portfolio companies. The FDIC should also disapprove of transactions where the acquiring person refuses to fully renounce such commitments, as pressuring banks to comply with climate agendas harms consumers.[49]
The idea (suggested in other comments) that such passivity commitments would result in asset managers reducing their investments in banks is unsupported and contrary to common sense. Prior to the wave of activism that began around 2020, asset managers were perfectly willing to invest in banks without seeking to influence their specific lending policies. Nothing that has changed except for external activist pressure. And if anything, requiring passivity commitments will give asset managers a way to push back on activists that see large asset managers as an easy target to achieve policy objectives that they cannot achieve through the democratic process. If

[47] Rupa Subramanya, *The Debanking of America*, https://www.thefp.com/p/debanking-america-melania-barron-trump-january-6-muslims.
[48] 12 U.S.C. § 1817(j)(7)(E).
[49] 12 U.S.C. § 1817(j)(7)(B).

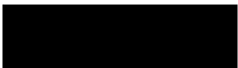
large asset managers return to their role as traditional, passive investors—voting for good corporate governance measures and selecting directors based on their ability to effectively and profitably manage banks—banks will continue to freely compete for customers' business. This will benefit consumers, while allowing asset managers to earn returns for their funds. Coordination among competitors has never been a good economic policy. To the extent commenters disagree, they should take up their arguments with Congress.

Moreover, nothing in the proposed rule will unduly delay bank transactions if the large asset managers are willing to make meaningful passivity requirements in advance and stick to those requirements. The FDIC's rule could also allow applications based on expected increases in ownership. If a fund was close to a threshold, it should be able to file a notice 60-90 days in advance of that so that it can timely seek an increase in its ownership limits. Given these commonsense solutions, commenters' concerns about hindering investment in FDIC-insured institutions are simply misplaced.

III. Conclusion

Large Asset managers exert significant control over FDIC-insured institutions. The FDIC should not accept a generic commitment to passivity but rather should include disclosure and renunciation of participation in horizontal organizations that have a purpose or requirement to change bank operations, such as by setting lending and investment targets for certain sectors. The FDIC should also require notice of transactions resulting in control of FDIC-supervised institutions regardless of whether the FRB also receives a notice.

Sincerely,



Will Hild
Executive Director

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