



United States House of Representatives
One Hundred Eighteenth Congress
Committee on Financial Services
2129 Rayburn House Office Building
Washington, DC 20515

May 14, 2024

The Honorable Martin J. Gruenberg
Chairman
Federal Deposit Insurance Corporation
550 17th Street, NW,
Washington, DC 20429

Dear Chairman Gruenberg:

We write regarding the Federal Deposit Insurance Corporation's (FDIC) October 11, 2023, notice of proposed rulemaking and issuance of guidelines entitled *Guidelines Establishing Standards for Corporate Governance and Risk Management for Covered Institutions with Total Consolidated Assets of \$10 Billion or More*.¹ The proposal would establish obligations of boards of directors of covered banks, establish obligations of individual directors, and establish the role of boards of directors in the risk management of the covered banks. While providing clarity regarding supervisory expectations is important, the proposal is a significant step backwards and should be withdrawn.

Effective corporate governance and risk management are core tenets of safety and soundness. It is critical that boards of directors effectively oversee bank management so that management operates the bank in a safe and sound manner. Each Federal banking agency has repeatedly emphasized the critical role of the board of directors in overseeing bank management.² Through its proposed rulemaking, the FDIC proposes to blur the longstanding distinction between the roles of the board of directors and bank management, inappropriately shifting management responsibilities to the board. In addition, the proposal dictates the composition of the board and inappropriately charges directors with considering the interests of non-shareholder "stakeholders" such as creditors, regulators, and the public.

For example, the proposal blurs the proper role of the board in overseeing bank management, and management's role in running the day-to-day operations of the bank. Instead of charging bank management with ensuring or confirming that the bank is operated in a safe and sound manner and in compliance with all laws and regulations on a day-to-day basis, the proposal inappropriately charges directors with this responsibility. Likewise, the proposal suggests that the board must establish and approve *all* bank policies, rather than the core subset of policies that

¹ See 88 Fed. Reg. 70391.

² See, e.g., SR 21-3 / CA 21-1: Supervisory Guidance on Board of Directors' Effectiveness (Feb. 26, 2021) (emphasizing the role of the board of directors in "oversee[ing] and hold[ing] senior management accountable").

existing law or regulation require the board to approve, such as setting the primary risk appetite for the bank.

The proposal also needlessly prescribes the composition of the board, introducing new requirements that a majority of directors be independent of both bank management and the board of the bank's holding company. Many banking organizations have an overlap between the boards of the bank and the holding company, which benefits the overall banking organization by ensuring holistic board oversight. New restrictions on board compositions will result in needless turnover and may reduce the number of qualified directors available to banking organizations.

Finally, the proposal would require boards of directors to "consider the interests of all its stakeholders, including shareholders, depositors, creditors, customers, regulators, and the public."³ This would conflict with the fiduciary duties that directors owe to the bank and its shareholders.⁴ Moreover, this newfound duty is vague, as it is unclear what these stakeholders' "interests" may be.

In our view, the FDIC's proposal is fatally flawed. We respectfully request that the FDIC withdraw the proposal. We appreciate your attention to this matter.

Sincerely,



Andy Barr
Chairman of the Subcommittee
on Financial Institutions
and Monetary Policy



Bill Posey
Member of Congress



Roger Williams
Member of Congress



Barry Loudermilk
Vice Chairman of the Subcommittee
on Financial Institutions
and Monetary Policy



Blaine Luetkemeyer
Member of Congress



John Rose
Member of Congress

³ 88 Fed. Reg. 70391, at 70404.

⁴ See generally *Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc.*, 506 A.2d 173 (Del. 1986).



William Timmons
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