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DAVID E. RAINBOLT
Executive Chairman

November 24, 2023

Mr. James P. Sheesley
Assistant Executive Secretary
Attn: Comments/Legal OES (RIN 3064-AF94)
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

Re: Comments to Proposed Guidelines Establishing Standards for Corporate Governance and Risk Management for Covered Institutions with Total Consolidated Assets of $10 Billion or More

Dear Mr. Sheesley:

On behalf of BancFirst, Oklahoma City, Oklahoma, we appreciate the opportunity to provide our comments to the corporate governance and risk management guidelines (the "Guidelines") proposed by the Federal Deposit Insurance Corporation (the "FDIC") that would apply to all non-member banks with total consolidated assets of $10 billion or more on or after the effective date of the final Guidelines.

Size Alone Does Not Equal Complexity

The FDIC stated that the Guidelines are intended to be generally consistent with the goals of the Office of the Comptroller of the Currency (the "OCC") and the Board of Governors of the Federal Reserve System (the "Federal Reserve") in an effort to harmonize corporate governance and risk management requirements for banks that present a higher risk profile. The Guidelines, however, are applicable to banks with assets of $10 billion or more instead of the $50 billion asset threshold utilized by the OCC in its *Guidelines Establishing Heightened Standards* (12 CFR Part 30 (App. D) and by the Federal Reserve in its policies contained in Regulation YY, 12 CFR 252.22, Subpart C, *Risk Committee Requirements for Bank Holding Company with Total Consolidated Assets of $50 Billion or More*. In 2014 when it finalized heightened standards for certain national banks, the OCC noted that the $50 billion asset criterion is a "well understood threshold" that the OCC and other Federal banking regulatory agencies have used to demarcate larger, more complex banking organizations from smaller, less complex banking organizations.

Each of the Federal Reserve and the OCC reserved the right to apply their heightened standards to an institution under the $50 billion asset threshold under certain limited circumstances. Specifically, the OCC can apply its heightened standards to a bank under the $50 billion asset threshold only if it determines that the bank's operations are highly complex or otherwise present a heightened risk. The

OCC expected to utilize this reserved right only if a bank's operations were highly complex relative to its risk-management capabilities and noted that "[t]his is a high threshold that only will be crossed in extraordinary circumstances." According to the OCC, it never intended to apply its heightened standards to community banks. In his address to the American Bankers Association Risk Management Forum on April 10, 2014, Comptroller of the Currency Thomas Curry, when addressing the OCC's authority to apply the heightened standards to banks below the $50 billion threshold, stated that "[s]ome community bankers may be reading that language as a loophole that we will use to impose onerous new requirements on community banks. I want to assure you that this is not the case and not our intent." The FDIC is now attempting to impose the Guidelines on community banks with assets between $10 billion and $50 billion.

The proposed Guidelines effectively eliminate the "high threshold" recognized by other regulatory agencies and arbitrarily and significantly lower the "well understood threshold" to banks with assets of $10 billion or more without exception or regard for actual complexity or heightened risk. The FDIC did not provide any fact or actuarially-based justification for reducing the threshold. Instead, it cited its belief that the proposed $10 billion asset threshold will reduce the likelihood of bank failures and the magnitude of losses in the event of failures. If the processes mandated in the Guidelines will actually reduce failures, the FDIC should be proposing to apply them to banks of all sizes. Data indicates that banks with assets below $10 billion fail at a much higher rate than banks with assets in excess of $10 billion. As reflected below, banks below $10 billion and over $100 billion accounted for 99.73% of all failures that have occurred since 2009. Only one of the 376 bank failures since 2009 involved a bank with assets between $10 billion and $50 billion. Based in part on this data, the proposed $10 billion asset threshold is not appropriate, consistent with other Federal banking regulatory agencies or any more likely to prevent bank failures than measures already being utilized by the FDIC.

The FDIC stated that it observed during the 2008 financial crisis and more recent bank failures in 2023 that financial institutions with poor corporate governance and risk management practices were more likely to fail. Although banks can fail for many reasons, we generally agree that poor corporate governance and risk management practices likely cause failures. But, we see no correlation between poor corporate governance and risk management practices and banks that simply have assets of between $10 billion and $50 billion. The FDIC provided no evidence to justify that these banks are more likely to have poor corporate governance and risk management practices or are more likely to fail than banks of other asset sizes. In fact, asset size alone is not a good predictor of failure. Lowering the threshold as significantly as proposed by the FDIC ignores the reality that non-complex, low risk profile community banks operate with assets of $10 billion and above. It is important to note that, on a relative basis, a $10 billion bank today is not as significant as it was five to ten years ago due, in part, to changes in the economy. Lowering the threshold is also entirely unnecessary given the existing examination measures the FDIC can utilize to determine which banks are highly complex or otherwise present a heightened risk.

One need only review recent bank failures to recognize that the FDIC has no actuarially-based justification to vary from the "well understood" $50 billion asset threshold. From January 1, 2010 through November 3, 2023, the FDIC's data reflects the following:

- In 2010, 157 banks failed. Only one bank exceeded $10 billion (Westernbank Puerto Rico, Mayaguez, PR at $11.9 billion);
- In 2011, 92 banks failed. None exceeded $10 billion;

- In 2012, 51 banks failed. None exceeded $10 billion;
- In 2013, 24 banks failed. None exceeded $10 billion;
- In 2014, 18 banks failed. None exceeded $10 billion;
- In 2015, eight banks failed. None exceeded $10 billion;
- In 2016, five banks failed. None exceeded $10 billion. In fact, none exceeded $104 million;
- In 2017, eight banks failed. None exceeded $10 billion;
- In 2018, no banks failed;
- In 2019, four banks failed. None exceeded $10 billion. In fact, none exceeded $121 million;
- In 2020, four banks failed. None exceeded $10 billion. In fact, none exceeded $153 million;
- In 2021, no banks failed;
- In 2022; no banks failed; and
- As of November 3, 2023, five banks have failed in 2023. None had assets between $10 billion and $50 billion. The two most recent failures involved banks with assets of only $139 million and $66 million. Each of the other three failed banks had well over $100 billion of assets ($110.4 billion, $209 billion and $229.1 billion).

Of the 376 bank failures since 2009, only one bank had assets between $10 billion and $50 billion, and it had assets of only $11.9 billion. It was located in the U.S. territory of Puerto Rico. The vast majority of failures involved banks with assets of less than $1 billion. Only 37 or 9.8% of the banks had assets that exceeded $1 billion. Only four or 1% of the failed banks had assets that exceeded $10 billion. And, of those four banks, three exceeded $100 billion. Two of those three exceeded $200 billion. Even if we include the 165 failures that occurred during the Great Recession of 2008 and 2009, only seven or 4.2% of the banks had assets between $10 billion and $50 billion.

We recognize that, as of June 30, 2023, only 113 banks had assets between $10 billion and $50 billion. But, assuming that this number has stayed relatively consistent since 2009, less than 1% of these banks have failed over a 14-year period. In comparison, of the 33 banks in excess of $100 billion, three or 9% have failed in 2023 alone. Based on these statistics, there is no actuarially justifiable reason for the FDIC to reduce the "well understood threshold" below $50 billion.

Complexity Matters

In his statement dissenting to approval of the Guidelines, FDIC Vice Chairman Travis Hill argued that the lesson to be learned from the bank failures mentioned by the FDIC is that bank supervisors should "focus more on core risks to safety and soundness, and relatively less on process-related governance." We agree with his argument, especially as to our own operations and those of similarly situated banks regardless of asset size. Although we recently became a member of the Federal Reserve System, the FDIC is proposing to apply the Guidelines to banks like us based solely on asset size without any risk-based analysis or justification. As of June 30, 2023, we had total consolidated assets of approximately $10.2 billion, making us the second smallest bank of those with assets in excess of $10 billion. We are subject to regulation by the Oklahoma State Banking Department, the Board of Governors of the Federal Reserve System, and the Consumer Financial Protection Bureau. Our parent

company, BancFirst Corporation, is under the jurisdiction of the Securities and Exchange Commission (the "SEC") and is subject to the corporate governance and other restrictions and requirements of the SEC under the Securities Exchange Act of 1934, as amended.

We are "well capitalized," "well managed," and highly rated in all respects by our regulators and have robust controls in place to adequately and appropriately manage risk. According to the Federal Reserve, BancFirst Corporation is not considered to be a "large, complex banking organization." And, we operate as a community bank, albeit a self-described "super community bank," by providing a full range of commercial banking services to retail customers and small to medium-sized businesses in both the non-metropolitan trade centers and cities in the metropolitan statistical areas of Oklahoma through full service community banking offices with decentralized management. Underwriting, funding, customer service and pricing decisions are made by presidents in each market within our strategic parameters. We generally have a larger lending capacity, broader product line and greater operational scale than our principal competitors do in the non-metropolitan market areas (which typically are independently owned community banks). In the metropolitan markets we serve, our strategy is to focus on the needs of local businesses that seek more responsive services than are available at larger institutions. We maintain a strong community orientation and have developed broad banking relationships with our customers and community branch network. Because of this, our lending and investing activities are funded entirely by core deposits. We do not use any brokered or reciprocal deposits. We maintain centralized control functions such as operations support, bookkeeping, accounting, loan review, compliance and internal auditing to ensure effective risk management. Although slightly over $10 billion in assets, we are still a community bank, and it would be inappropriate to describe us as being complex or to assume that we have poor corporate governance or risk management practices. There is simply no risk in our profile that would justify the extra time and expense that we or any similarly situated bank would have to incur to comply with the Guidelines.

The FDIC notes that its supervisory experience has shown that banks with assets greater than $10 billion are larger, more complex and present a higher risk profile. However, on May 12, 2015, FDIC Chairman Martin Gruenberg remarked to the American Association of Bank Directors that the FDIC recognizes that "a bank's size, risk profile, and complexity of its activities will determine the most appropriate framework, and therefore we do not expect community bank governance to have the same level of complexity as that found in larger banks." Instead of focusing on the nature, scope and risk of a bank's activities, the FDIC now seems content to rely merely on asset size to indicate increased risk. FDIC examiners assess a bank's corporate governance framework at each onsite examination. And, the FDIC already utilizes a continuous examination process for the largest banks that it supervises. FDIC-supervised banks with assets of $10 billion or more are supervised through this process which includes onsite targeted reviews of areas the examiner determines are necessary to complete a full-scope investigation; ongoing monitoring and assessment of institution risks, policies, procedures and financial condition; and frequent communication with bank management. A designated examiner-in-charge oversees the continuous examination process. These banks are also subject to increased off-site review activities and more granular risk-based deposit insurance pricing. As described by the FDIC, the Large Insured Depository Institution Program (the "LIDI Program") remains the primary instrument for off-site monitoring for banks with assets exceeding $10 billion. The LIDI Program provides a comprehensive process to standardize data capture and reporting for large and complex institutions nationwide, allowing for quantitative and qualitative risk analysis. The LIDI Program focuses on banks' potential vulnerabilities to asset, funding, and operational stresses, and supports effective large bank supervision by using individual bank information to focus resources on higher-risk areas, determine the need for supervisory action, and support insurance assessments and resolution planning. Based on the processes and programs in place, the FDIC already has the tools

necessary to determine the complexity of products and services, risk profile, or scope of operations of individual banks.

Compliance Costs

The FDIC readily admits that it does not have access to information that would enable a quantitative estimate of the benefits of the Guidelines. However, it is proposing to vary from a well understood regulatory threshold of $50 billion to apply the Guidelines to a group of banks (i.e., those with assets between $10 billion and $50 billion) that as a whole, based on verifiable information, has actually experienced only one failure in the past 14 years.

Despite no quantitative estimate of benefits, the FDIC acknowledges that the Guidelines will result in additional compliance costs for its 57 supervised banks with assets of $10 billion or more. It estimated that the Guidelines would compel these 57 banks to expend 91,375 labor hours in the first year, and 90,365 labor hours in each year thereafter, to comply. The FDIC believes that the annual compliance cost is less than .03% of annual noninterest expense for all supervised banks. However, when determining these estimates, the FDIC specified that it did not include such other regulatory costs to achieve compliance, such as hiring additional staff and changes to internal systems and processes.

We question the accuracy of FDIC's estimates based on our compliance experience and the other regulatory costs not included. And, even if the FDIC's average of .03% of annual noninterest expense is accurate for all of the FDIC's supervised banks taken as a whole, it is merely an average and does not recognize the reality that the time and cost of compliance will disproportionately affect the supervised banks at the lowest range of the $10 billion threshold. Those banks operating with the least complexity or risk will likely pay a much greater percentage of their annual noninterest expense than the banks that are highly complex and present a much higher risk profile.

As of June 30, 2023, the smallest (Washington Trust Bank, Spokane, Washington) and largest (Truist Bank, Charlotte, North Carolina) banks in the group of 57 banks proposed to be impacted by the Guidelines had assets of approximately $10.6 billion and $546.8 billion, respectively. In addition to the immense size differential, the complexity and risk profiles of these banks are likely to vary significantly. If operated in a manner similar to BancFirst, Washington Trust Bank is likely more similar to a bank with assets of $1 billion than to Truist Bank. And yet, the FDIC is proposing to apply the Guidelines in a one-size-fits-all approach without exception, grouping Washington Trust Bank and Truist Bank together under the Guidelines. As noted, the FDIC already monitors the complexity of products and services, risk profile, and scope of operations of individual banks. Accordingly, there is no justification for applying the Guidelines equally to Washington Trust Bank and Truist Bank, especially when banks like Washington Trust Bank at the lower range of the FDIC's threshold will pay a higher percentage of their annual noninterest expense than the larger, more complex banks like Truist Bank.

The FDIC's approach will serve only to increase compliance expenses for community banks like ours without increasing the likelihood of preventing bank failures. At best, the Guidelines, if applied to banks with assets between $10 billion and $50 billion during the past 14 years, would have prevented only one failure. This does not justify imposing additional bureaucracy on these banks. Lowering the threshold to $10 billion will almost certainly cause consolidation of community banks over time as greater numbers of institutions exceed that fixed threshold due to inflation. Any such consolidation would not benefit consumers or the communities served by the banks with less than $50 billion in assets.

Conclusion

In conclusion, we strongly object to the FDIC disregarding the well understood asset threshold of $50 billion and proposing that the Guidelines apply to banks with assets of $10 billion or more. Size alone, especially at the lower range of the FDIC's proposed threshold, is not an indicator of complexity or risk profile. In fact, since 2009, only one of the 376 banks that failed had assets between $10 billion and $50 billion. Lowering the threshold will force banks operating with the least complexity and risk to pay a much greater percentage of their annual noninterest expense than the banks that are highly complex and present a much higher risk profile. The FDIC, through its continuous examination process and the LIDI Program, already has the means necessary to determine which banks with assets of $10 billion or more operate with poor corporate governance and risk management practices. Applying the Guidelines as proposed is not appropriate or consistent with other Federal banking regulatory agencies and is not any more likely to prevent bank failures than the FDIC's existing processes and programs.

We appreciate the opportunity to comment. Please let me know if you have questions.

Sincerely,

David E. Rainbolt
Executive Chairman

cc: Senator James Lankford

Representative Tom Cole

Representative Frank Lucas

Representative Kevin Hern

Representative Stephanie Bice