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Sent Via Electronic Delivery: comments@FDIC.gov

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: Guidelines Establishing Standards for Corporate Governance and Risk Management for Covered Institutions with Total Consolidated Assets of $10 Billion or More (RIN 3064-AF94)

Dear Mr. Sheesley:

On behalf of the Oregon Bankers Association ("OBA") and its membership of Oregon state and national banks, we appreciate the opportunity to comment on the above-referenced proposed guidelines ("Guidelines") from the Federal Deposit Insurance Corporation ("FDIC"). OBA is the full-service trade association for the banking industry in the state of Oregon. Our organization represents banks of all sizes and is the voice of the Oregon banking community before federal and state entities. We are concerned that the proposed Guidelines could undermine, not strengthen, the safety and soundness of covered institutions and, in turn, the broader banking industry and Deposit Insurance Fund.

Comments

The FDIC notes in the Policy Objectives of the proposed Guidelines that "Strong corporate governance is the foundation for an insured depository institution's safe and sound operations. An effective governance framework is necessary for an insured depository institution to remain profitable, competitive, and resilient through changing economic and market conditions." The Policy Objectives further note that a financial institution's board of directors serves a critical role in maintaining an institution's safety and soundness as well as financial and operational resilience. We highlight these comments because OBA's member banks share these views and the importance of a qualified, well-informed, and engaged board of directors. We are concerned, however, that the proposed Guidelines are highly prescriptive, inconsistent with other agencies' guidance, and unnecessarily burdensome.

The Guidelines seek to impose an enforceable federal overlay on state fiduciary duty standards, which would extend beyond the scope of the Office of the Comptroller of the Currency's ("OCC") governance guidelines and of the Federal Reserve Board's ("The Fed") governance guidance. Adoption of the Guidelines would create inconsistencies and confusion. As the Guidelines only pertain to state nonmember banks, adoption could result in state nonmember banks choosing to become member banks to avoid unnecessarily complex and burdensome requirements.

A banker provided the following example of the kind of challenges the Guidelines present. The Delaware fiduciary standard, by far the most influential, provides that directors have a non-delegable duty of loyalty to act in the best interests of their company and its shareholders. Though Delaware's shareholder primacy rule may be broad enough to permit directors to consider the interests of some non-shareholder stakeholders, directors must believe those interests have a reasonable nexus to enhancing or protecting shareholders' interests. Not only is it unclear how a director could accurately and reliably identify and evaluate the interests of regulators and the general public, but a director subject to such a fiduciary standard could very reasonably conclude that the interests of those and other non-shareholder stakeholders have no reasonable nexus to enhancing or protecting shareholders' interests. Some states' fiduciary standards arguably allow directors greater discretion, but none are so broad as to allow strict compliance with the proposed standard.

Given the differences between existing federal guidance and potential conflicts with state law, we ask that FDIC withdraw the Guidelines and engage in an interagency process to address inconsistencies between its proposed Guidelines and The Fed and OCC guidance, as well as examine and reconcile the Guidelines with state-level regulations and policies.

The Guidelines would blur the distinction between the board and management and their respective duties. The Guidelines contemplate the board taking on additional roles that have traditionally been the domain of the management team. No board can strictly comply with the proposed standard because it, like other proposed standards, is unspecific and conflates the responsibilities and capacities of a board and management. The outcomes the Guidelines would likely drive would not only be immediately harmful to individual covered institutions but would quickly drive qualified directors and qualified bank director candidates out of the banking industry, undermining – rather than strengthening – the banking industry's corporate governance quality.

Additionally, the $10 billion threshold is too low. Considerable compliance costs incurred by covered institutions and those who believe they may expect to be identified as covered institutions will raise the costs of consumer financial products and services. If the Guidelines are finalized, the $10 billion threshold should be substantially increased to no less than $50 billion.

Finally, the Guidelines lack a reasonable compliance transition period. Once an institution is deemed a covered institution, it would be subject to the Guidelines. This would leave no opportunity for an institution to thoughtfully amend its corporate governance structure. Furthermore, under the Guidelines, a covered institution's existing directors could be held personally liable. As a result, FDIC's adoption of the Guidelines or similar additional heightened corporate governance standards, without providing for a reasonable mandatory compliance transition period, could create an exodus of directors at institutions both above and near the covered institution threshold.

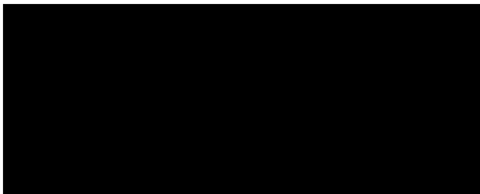
Conclusion

While the above items do not constitute an exhaustive list of potential issues, they highlight some of the concerns our member banks have with the proposed Guidance. The inconsistencies and conflicts created by the proposed Guidelines, at a minimum, require greater study and collaboration with other state and federal

banking agencies. We urge the FDIC to withdraw the Guidelines from further consideration pending additional study.

We appreciate the opportunity to offer comment regarding the proposed Guidelines. If you have any questions, please feel free to contact us.

Very best regards,



Kevin T. Christiansen
SVP & Government Affairs Director
Oregon Bankers Association & Community Banks of Oregon