



December 4, 2023

Via Electronic Mail

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

Re: Notice of Proposed Rulemaking and Issuance of Guidelines: Guidelines Establishing Standards for Corporate Governance and Risk Management for Covered Institutions with Total Consolidated Assets of \$10 Billion or More; RIN 3064–AF94

Ladies and Gentlemen:

We are submitting this letter, on behalf of Citizens Business Bank (**CBB**), in response to the request of the Federal Deposit Insurance Corporation (the **FDIC**) for comment on its notice of proposed rulemaking and issuance of guidelines for establishing standards for corporate governance and risk management for covered institutions with total consolidated assets of \$10 billion or more (the **Proposed Guidelines**), published in the Federal Register on October 11, 2023.

CBB is a state-chartered, non-member bank founded in 1974 and headquartered in Ontario, California. CBB currently holds approximately \$16 billion in total assets and maintains more than 60 banking centers and three trust offices, all in the State of California. CBB's primary federal prudential regulator is the FDIC, and its state regulator is the California Department of Financial Protection and Innovation. CBB is wholly owned by CVB Financial Corp., which is a public company listed on Nasdaq and regulated by the Federal Reserve Board and the Securities and Exchange Commission.

CBB is focused on providing a wide array of business banking products and services to small and medium-sized businesses and on serving our local communities throughout the State of California. CBB has achieved exceptional financial results as a banking organization over an extended period of time, having recently reached the milestones of our 186th consecutive quarter of profitability and our 136th consecutive quarter of paying a cash dividend to our shareholders. Moreover, CBB is consistently recognized as one of the top-performing banks in the nation, having been ranked as the number one, "Best Bank in America" according to Forbes' *America's Best Banks*, for four of the past eight years, including for 2023, and having been ranked by S&P Global Market Intelligence as the third best-performing public bank with assets greater than \$10 billion in the United States for 2022.

CBB is also a member of the Mid-Size Bank Coalition of America (the **MBCA**), which is a non-partisan financial and economic policy organization consisting of more than 100 banks, ranging in asset size from approximately \$10 billion to \$100 billion. We understand that the MBCA is submitting a separate and comprehensive comment letter to the FDIC on the Proposed Guidelines, and CBB wishes to express its full support for the positions and points taken by the MBCA in its separate comment letter.

However, because CBB has its own unique set of concerns, as a business-focused financial institution with a deep history of community banking, we wish to make comments on four specific issues raised by the Proposed Guidelines which we believe are of particular importance to CBB:

1. First and foremost, we believe that the FDIC should raise the asset threshold of the Proposed Guidelines, in whatever form adopted, to cover only those FDIC-regulated banks with average total consolidated assets above \$50 billion, consistent with the asset threshold of the comparable Office of the Comptroller of the Currency (OCC) Guidelines Establishing Heightened Standards for Certain Large Insured National Banks, Insured Savings Associations, and Insured Federal Branches (79 Fed. Reg. 54518, Sept. 11, 2014) (**OCC Guidelines**). Utilizing this \$50 billion threshold for asset size as a common benchmark would appropriately reflect the wider variety of community-based business models and operating platforms among smaller banking organizations, and would likewise be consistent with the “tailoring” approach that the FDIC and other prudential regulators have previously and publicly adopted in recognition of the significantly increased compliance burdens that would be imposed by certain banking regulations such as the Proposed Guidelines.
2. We believe that the Proposed Guidelines, as presently formulated, will operate to materially increase the already substantial litigation risk borne by insured institutions and their boards of directors. We believe this enhanced litigation risk is likely to be realized, among other avenues, in the form of shareholder derivative actions that will be encouraged by virtue of the unusually prescriptive language currently employed throughout the Proposed Guidelines.
 - The Proposed Guidelines expand the universe of parties with potential standing to bring litigation against insured institutions, by requiring directors to consider the interests of a wide variety of new and explicitly named stakeholders, including an undefined “public”.
 - In contrast to the OCC Guidelines, the corporate governance provisions currently set forth in the Proposed Guidelines would in many cases exceed applicable state law requirements, which in turn will potentially create confusion with respect to applicable legal standards and undermine existing legal precedents regarding director liability.
 - The frequent use in the Proposed Guidelines of terms requiring the boards of insured institutions to “ensure”, “establish”, “confirm” and “write” will not only conflict with a board’s well-established duty of oversight as opposed to management, but also provide an easy avenue for eponymous plaintiffs to seek to hold directors liable for any gap or shortfall in meeting the many enumerated standards set forth in the Proposed Guidelines.
3. We believe that the requirement in the Proposed Guidelines that banks must promptly self-report all “known or suspected” violations of law or regulations to any relevant law enforcement and federal and state agencies would create a host of problems and conundrums for insured institutions and their boards and managers. First, the Proposed Guidelines are unclear as to the scope and materiality of the violations at issue, which could dramatically expand current reporting obligations for insured institutions. Second, by using terminology like “known or suspected”, the Proposed Guidelines would potentially interfere with the insured institutions own efforts to undertake appropriate internal inquiries and conclusions regarding any identified issues, including interfering in the insured institution’s ability to work with external advisors or counsel in conducting privileged investigations. Third, such reporting requirements, depending on the government agency concerned, might not be subject to strict confidentiality requirements, which would further expose reporting institutions to

heightened litigation risk and possible loss of attorney-client privilege or other safeguards designed to protect sensitive information and to encourage the solicitation of legal advice.

4. We believe that the FDIC should provide for a minimum one-year transition period between the effective date of the Proposed Guidelines and the date when covered banks would be expected to have achieved full compliance. The Proposed Guidelines, if implemented, would impose substantial new burdens on smaller covered banks, and would require significant changes to such banks' internal policies and procedures, reporting protocols, policy review timetables, director training, etc.

We appreciate your consideration of Citizens Business Bank's comments and hope you will take them into account as the FDIC works to improve and refine the Proposed Guidelines.

Sincerely,

A large black rectangular redaction box covering the signature of David A. Brager.

David A. Brager, President and Chief Executive Officer

Cc: Yamynn De Angelis, Executive Vice President and Chief Risk Officer
Richard H. Wohl, Executive Vice President and General Counsel
Brent Tjarks, Executive Director, MBCA