January 29, 2024

RE: Request for Comments on Proposed *Guidelines Establishing Standards for Corporate Governance and Risk Management for Covered Institutions with Total Consolidated Assets of $10 Billion or More. Reference: 12 CFR Parts 308 and 364; RIN 3064-AF94*

Dear Federal Deposit Insurance Corporation,

Thank you for the opportunity to comment on the proposed *Guidelines Establishing Standards for Corporate Governance and Risk Management for Covered Institutions with Total Consolidated Assets of $10 Billion or more*. We are writing you on behalf of Pinnacle Bancorp, Inc. which is a family owned $19.4 billion-dollar multi-bank holding company with four bank charters focused on community banking operating in a footprint that encompasses the Midwest and Southwest regions of the United States.

The 2023 bank failures were unfortunate but subjecting banks with $10 billion in assets to more stringent risk and board governance than those applied by the OCC and Federal Reserve for banks over $10 billion seems to us unnecessary and overreactive from a safety and soundness perspective. If adopted the more stringent FDIC governance structure would immediately make a state charter less appealing and threaten the viability of dual chartering framework. A community bank, such as Pinnacle Bancorp, Inc., with a limited geographic footprint often takes on less risk than large and regional banks. Reaching a certain asset threshold does not in of itself render a well-run community bank becoming a complex financial institution with a higher degree of risk that requires far greater regulatory scrutiny and more stringent risk management protocols.

Requiring a majority of directors be outside and independent while limiting permissibility of some common boards exceeds OCC and Federal Reserve guidelines and requirements. These requirements would be detrimental to family-owned and closely held covered banks. Should a family-owned private bank give up control to non-shareholder independent directors? This seems illogical to us for a lot of reasons and gets very close to unlawful taking of property. It also threatens to trickle down to thousands of family-owned community banks throughout the United States. Who would provide new capital to the banking industry if investors can’t control the institution at the board level? We fear this would damage entrepreneurship and new bank formation within the banking sector, which we believe is critical for the health and vitality of the banking industry and United States economy overall. Finally, the banks that failed took on too much risk including crypto but they also had numerous independent directors. Based on the events in March of 2023, the correlation of independent directors to safety and soundness doesn’t seem to exist to us.

Below we have addressed the request for comment questions outlined in the notice below.

1. ***Should the proposed Guidelines apply to FDIC-supervised institutions with $10 billion or more in total consolidated assets, or would a higher or lower threshold be appropriate? Alternatively, should the proposed Guidelines only apply to FDIC supervised institutions that are examined under the FDIC's Continuous Examination Process? Please explain.***

As written, this should not apply to a bank as small as $10 billion. A more appropriate threshold would be $100 billion or $50 billion at the very least. The banks that failed in the spring of 2023 generally had much larger asset levels with higher deposit and loan concentrations or were heavily involved in Crypto currencies taking on substantially more non-traditional banking risk as a result. Below is a list of some banks that failed in the spring of 2023, their asset size at the time of failure and whether they were involved in crypto.

a. Silicon Valley Bank $212 billion.

b. First Republic $232 billion.

c. Signature Bank $88 billion.

    i. Signature was heavily involved in Crypto, and their assets declined rapidly with crypto prices leading up to regulators closing the bank.

d. Silvergate Bank $12 billion.

    i. Like Signature bank, Silvergate was heavily involved in Crypto, and their business model failed with the selloff in crypto assets.

We would argue these banks had unique business models that serviced a niche customer type which fed risk concentrations that impacted their viability in the spring of 2023. Pinnacle Bancorp, Inc. operates under a community bank business model servicing a diverse group of customers throughout our footprint. We want the Pinnacle family of banks to be the community bank of choice and service a wide variety of customers across various industries. If this proposed cookie-cutter approach to risk management is applied to banks as small as $10 billion, the impact on cost to those institutions is substantially higher than larger regional banks. This cost will inadvertently be passed onto and felt by customers given the higher costs to operate the bank in a compliant manner. This higher cost burdened will also result in a direct impact to employee compensation and benefits making it more challenging to hire, develop and retain talent. This would negatively impact the competitiveness of FDIC banks over $10 billion compared to smaller banks and regional to large banks that can more easily absorb these additional costs.

To us this seems like an over-reaction to a situation that is not fixed by these proposed guidelines. This feels like a blanket change to governance rather than today's risk-based approach. We would also note this would go beyond corporate governance standards applied by the OCC and Federal Reserve to banks

with $50 billion and $100 billion in assets which seems unnecessary from a safety and soundness perspective.

2. ***Is there a need to differentiate corporate governance and risk management requirements for covered institutions with $50 billion or more in total consolidated assets (or some other threshold)? Please explain.***

We have no additional comments to this request.

3. ***Should the proposed Guidelines apply to any insured state nonmember bank or insured state savings association with total consolidated assets less than $10 billion if that institution's parent company controls at least one covered institution?***

This should absolutely not apply to banks with less than $10 billion. Whether they are affiliated with larger banks under a parent company or not. Multiple charters when they have distinct boards and management should operate outside of this proposed guidance. This is especially true when there is very little loan and deposit participation between covered institutions hence common concentrated risk declines further.

4. ***The proposed Guidelines include a reservation of authority enabling the FDIC to determine that compliance with the proposed Guidelines should not be, or no longer be, required for a covered institution based on risk and complexity. Should there be an application process in accordance with subpart A of part 303 of the FDIC's regulations for a covered institution to request exemption from the requirements of these proposed Guidelines? If so, what criteria would be appropriate for FDIC to establish to consider such a request?***

We have no additional comments to this request.

5. ***Should the covered institution and its parent holding company with other affiliates be required to have separate risk management officers and staff? Please explain.***

The Parent company and covered institution should not be required to have separate risk management officers and staff. This would result in unnecessary overlap, cost burden, and duplicity with many risk functions. In addition, true independent directors (not working for the covered institution, parent company or affiliate) should be able to serve on multiple boards for covered institutions under one parent.

Otherwise, the volume of directors to manage and work with would be too numerous for parent company executives for a multi-chartered banking organization. The cost associated with this requirement would be increased director fees, cost for more meetings and increased D&O insurance premiums that would need to be passed on to customers to support this structure.

6. ***The proposed Guidelines provide that a covered institution may use its parent company's risk governance framework to satisfy the Guidelines based on certain factors. What other factors, if any, should the FDIC consider?***

The proposed guidelines provide a covered institution may use its parent's risk governance framework to satisfy guidelines based on certain factors. We would be in favor of this. Our parent company's ERM/Risk governance framework could flow to covered institutions. Our risk management program already assesses and monitors risk across various lines of business and major departments for our covered institutions. This program is inspected regularly by the Federal Reserve and operates under their continuous monitoring program. This new proposed FDIC risk management program goes beyond what is required by the Federal Reserve and would duplicate risk management throughout our covered institutions with diminishing returns.

7. ***Should the proposed Guidelines include more specific suggestions for corporate governance? If so, what additional suggestions should be included?***

We have no additional comments to this request.

8. ***Should the proposed Guidelines include more specific requirements for risk management? If so, what additional requirements should be included?***

We have no additional comments to this request.

9. ***Do the proposed Guidelines provide sufficient and appropriate requirements regarding the role of the board for corporate governance and risk management? Please explain.***

We have no additional comments to this request.

10. Do the proposed Guidelines provide sufficient and appropriate requirements regarding the role of executive management for managing the covered institution and its risks? Please explain.

We have no additional comments to this request.

11. Should the CRO or the CAO report to the board or solely to a board committee? Please explain.

We would be ok with the CRO reporting to the risk committee in-leu of the overall board. That should lessen the burden for other board members not on the board risk committee. Similar to our audit committee on our parent company where the CAO meets with the audit committee a minimum of four times a year.

12. Do the CRO or the CAO and their associated functions have sufficient independence under the proposed Guidelines? Please explain.

We have no additional comments to this request.

13. Would the proposed Guidelines have any costs or benefits that the FDIC has not identified? If so, please identify and discuss.

The additional costs of these proposed guidelines would be substantial especially to smaller banks who do not have the capacity to absorb those cost as easily as larger sized organizations. To name a few, increased director fees for the increase of independent directors and retention of qualified directors. Committee fees for directors due to increase work and meeting expense. Banks will be required to pay market rates to gain membership on their boards from a pool of experts as the proposed guidance suggests. On a relative basis, this will be a much higher burden for banks under $100 Billion and especially banks near the $10 Billion proposed threshold because most of these banks do not have the volume of outside representation on their boards compared to larger institutions. As mentioned above, further cost associated with this requirement would be increased director fees, cost for more meetings and increased D&O insurance premiums to name a few.

14. Are there alternative ways to achieve the objectives of these proposed Guidelines that would impose lower burdens and costs on covered institutions? If so, what alternatives would be appropriate?

A few come to mind, first impose a risk committee structure on the existing board without majority of directors being independent. Secondly, allow an independent director of the holding company to count as an independent director of the bank such as the OCC allows. Third, as mentioned above for covered institutions with parent companies above $10 billion in assets, allow the parent company risk management framework to blanket the covered institution. Fourth, compensation of the CRO should be subject of the Risk Committee similar to an Audit Committee controlling compensation of the CAO; therefore, eliminating the need of a board compensation committee.

We would also recommend the FDIC align risk management and board effectiveness guidance with other prudential federal banking agencies to avoid a third set standards that will be confusing and at odds with recent trends to coordinate interagency regulation. These proposed guidelines go further and beyond what the OCC and Federal Reserve require today. For instance, these proposed guidelines require the board to approve the risk appetite statement quarterly which is a higher frequency than both the OCC or Federal Reserve. Risk Appetite statements cover a longer period and generally reflect the culture and business model of the organization. Reviewing this document four times a year seems redundant and could lead to skewness from strategic plans or operating goals which have longer time horizons.

Pinnacle Bancorp appreciates the FDIC's consideration of these comments. Please contact us if we can answer any questions.

Sincerely,

Mark Hesser
President/CEO

Brian Morrow
Vice President/CRO

Pinnacle Bancorp, Inc.
18081 Burt Street
Omaha, NE 68022