February 9, 2024

Assistant Executive Secretary James P. Sheesley
Attention: Comments/Legal OES (RIN 3064–AF94)
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429
comments@FDIC.gov

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

Dear Assistant Executive Secretary Sheesley:

Cadence Bank ("Cadence" or the "Bank") appreciates the opportunity to submit the following comments in response to the Federal Deposit Insurance Corporation's ("FDIC") proposed rule to promulgate new guidelines regarding standards for corporate governance and risk management functions of supervised institutions with assets of over $10 billion (the "Guidelines").[1] The proposed Guidelines implement standards for the board of directors, as well as the creation of a new executive position in the form of an independent Chief Risk Officer ("CRO").[2] The proposed Guidelines would grant the FDIC flexibility to address perceived shortfalls from the Guidelines in a manner tailored to the institution.[3] This comment letter focuses on the potentially significant and unintended consequences for Cadence if the FDIC finalizes the Guidelines as proposed.

I. About Cadence Bank

Cadence is a Mississippi-chartered bank with approximately $50 billion in assets and headquarters in Tupelo, Mississippi and Houston, Texas. Cadence operates more than 350 branches located across the South and Texas. Cadence provides consumers, businesses and corporations with a full range of innovating banking and financial solutions.

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[1] FDIC, Notice of Proposed Rulemaking: Guidelines Establishing Standards for Corporate Governance and Risk Management for Covered Institutions with Total Consolidated Assets of $10 Billion or More, 88 Federal Register 70391, October 11, 2023 (www.fdic.gov/news/board-matters/2023/2023-05-11-notice-dis-a-fr.pdf).
[2] 88 Fed. Reg. at 70393-94.
[3] 88 Fed. Reg. at 70393 ("The issuance of these standards as Guidelines rather than as a regulation provides the FDIC with supervisory flexibility to pursue the course of action that is most appropriate given the specific circumstances of a covered institution's failure to meet one or more of the standards, and the covered institution's self-corrective and remedial responses.")

CADENCE Bank

II. The Guidelines Would Expand the Role of the Board Beyond Oversight into a Management Function

The Guidelines repeatedly require that boards "ensure" or "confirm" certain events or outcomes are achieved or avoided, which is at odds with the well-established role of the board to oversee and hold management accountable. For example, the Guidelines impose a duty on each director to "confirm that the institution operates in a safe and sound manner, in compliance with all laws and regulations."[4] "Confirming" suggests directors must not only oversee, but also independently validate the work of independent risk management and audit functions, blurring the distinction between the roles of directors and management. Not only are boards not positioned to undertake day-to-day management functions, to the extent that boards are required to do so, the potential exists to create an appearance of impaired independence from management. We believe that any guidelines adopted by the FDIC should use language that reflects the appropriate role of the board in providing oversight and holding management accountable.

III. The Guidelines Create Unnecessary Additional Litigation Risk

The Guidelines state that an institution's board "should consider the interests of all its stakeholders, including shareholders, depositors, creditors, customers, regulators, and the public."[5] We believe that any guidelines adopted by the FDIC should include language that clarifies: (a) that the Guidelines are not intended to, nor do they, exceed applicable state law requirements; and (b) the consideration of non-shareholder constituencies be permissive rather than mandatory to complement, rather than expand upon, state law so as to avoid imposing unnecessary increased litigation risk on the banks to which the Guidelines apply.

IV. The Guidelines Actually Mandate Restructuring of Corporate Operations

The Guidelines include provisions on the "General Obligations," "Board Composition," "Duties of the Board," "Committees of the Board," and "Management Responsibility Regarding Risk Management."[6] Compliance with these Guidelines would require restructuring of the Bank's board-level committees, as well as its internal management.

A. The Guidelines Would Require Restructuring of Board-Level Committees

The Guidelines state they are intended to provide flexibility; however, as it relates to the board of the institution, the FDIC also states that the Guidelines "set expectations" for corporate governance regarding the "obligations, composition, duties, and committee structure" of the corporation.[7] Some provisions of the Guidelines, such as the requirement for a majority of

[4] 88 Fed. Reg. 70404. (emphasis added)
[5] 88 Fed. Reg. 70404.
[6] 88 Fed. Reg. 70394-97.
[7] 88 Fed. Reg. 70394.

independent board members, would have no impact on the Bank because its board is already comprised of a majority of independent members. However, others, such as the specified board-level committees, would require Cadence to restructure its internal governance and create a new board-level committee[8] in order to meet the "minimum expectations" in the Guidelines.[9] These "expectations" do not account for the specific business operations at the Bank, or the potential benefit as compared to the burden of that restructuring. We believe that these prescriptions for specific board-level committees are unnecessary to achieve the Guidelines' stated goals.

B. The Guidelines Would Require Restructuring of Internal Management

The Guidelines propose that the function Chief Risk Officer should be independent, much like that of a Chief Audit Officer.[10] The Guidelines specify that the entire "risk management unit" should be independent, with the board overseeing the "compensation and performance management of the CRO."[11] The Guidelines define the "independent risk management unit" as an organizational unit at the Bank that "maintains independence from front line units" and further specifies a reporting structure for the risk management unit.[12] Meeting these requirements would require the Bank to restructure its risk management function and remove the risk management staff from front line units. It would further change the role of the CRO as the Guidelines specify that the CRO should report directly to either the board or its risk committee, and to the CEO purely for administrative matters.[13] The Guidelines further specify that the independent internal audit unit should maintain independence from the independent risk management unit, and that the internal audit unit would review and report on risks it identifies.[14] The Guidelines do not appear to contemplate the significant restructuring these provisions require, or the burden of so doing, nor do the Guidelines assess how such requirements would satisfy regulatory goals in a manner that could not be addressed under the current regulatory framework.

V. Additional Regulatory Guidance Promulgated Separately Introduces Additional Opportunities for Inconsistent Regulatory Expectations

Although the Guidelines state they are "generally consistent with the goals communicated" from other banking regulators, namely the OCC and Federal Reserve Board, the plain language of the Guidelines acknowledges that even if the overall alignment in the goals of those regulators, it does not mean the manner in which the agencies expect organizations to meet those goals are the same.[15] Adding opportunities for inconsistency in the manner in which the

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[8] 88 Fed. Reg. 70396.
[9] 88 Fed. Reg. 70397.
[10] 88 Fed. Reg. 70396-97, 70404, 70407-08.
[11] 88 Fed. Reg. 70396-97, 70404.
[12] 88 Fed. Reg. 70404.
[13] 88 Fed. Reg. 70404.
[14] 88 Fed. Reg. 70404.
[15] 88 Fed. Reg. at 70393.

different regulators assess compliance with goals increases uncertainty for already highly regulated banks.

Further, the Guidelines propose their flexibility as a positive feature, which "provides the FDIC with supervisory flexibility to pursue the course of action that is most appropriate given the specific circumstances of a covered institution's failure to meet one or more of the standards, and the covered institution's self-corrective and remedial responses."[16] Yet, this too adds uncertainty for regulated parties, since it is dependent on the specific examination team overseeing a regulated institution, and opportunities for inconsistency in either required or acceptable remediation measures. As the proposed Guidelines would apply to more than 50 institutions, the opportunities for substantial differences between supervised institutions could be significant.[17]

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Cadence Bank appreciates the opportunity to comment on the Guidelines, as well as the FDIC's consideration of the changes to the Guidelines described above.

Sincerely,

Shanna Kuzdzal

Senior Executive Vice President and Chief Legal Officer

[16] 88 Fed Reg. at 70393.
[17] 88 Fed. Reg. at 70394, ("As of March 31, 2023, there are 57 covered institutions.").