AMERIS BANK

February 7, 2024

By email: comments@fdic.gov
James P. Sheesley, Assistant Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, D.C. 20429

Re: Proposed Guidelines Establishing Standards for Corporate Governance and Risk Management for Covered Institutions with Total Consolidated Assets of $10 Billion or More; FDIC RIN 3064-AF29

Ladies and Gentlemen:

Ameris Bank, a Georgia-chartered state bank with approximately $25 billion in total assets and its main office in Atlanta, Georgia, submits this letter in response to the request for comment on the above-referenced Proposed Guidelines. We support the American Bankers Association, Mid-Size Banking Coalition of America and other bank trade association comments, but wanted to highlight our particular concerns.

We believe that if adopted in their current form, the Proposed Guidelines would not only create considerable governance confusion and an inappropriate burden for covered state banks, but also actually weaken their corporate governance and risk management.

We agree with the Federal Deposit Insurance Corporation (FDIC) on the importance of board of directors oversight and management accountability, and rigorous risk management. We agree that tailored and risk-based supervision supports effective assessment of an insured depository institution's governance and risk management processes. However, the Proposed Guidelines diverge from existing Federal Reserve Board (FRB) and Office of the Comptroller of the Currency (OCC) principles-based guidance and established corporate governance principles, including state corporate laws to which state banks are subject. The divergent approach of the Proposed Guidelines comprises enforceable, specifically detailed rigid requirements. This approach would remove an FDIC-supervised bank's flexibility to respond and allocate resources optimally, based on its particular risk profile and activities, to present and future risks. The FDIC's approach would drive a focus on compliance with specific prescriptive requirements rather than on substantive, thoughtfully targeted management of risks themselves.

First, we believe the Proposed Guidelines should be harmonized with existing principles-based FRB and OCC guidance. The risk management concepts and objectives addressed in the Proposed Guidelines are not unique to FDIC-supervised institutions. A novel and inflexible approach to the governance and risk management of FDIC-supervised institutions is not merited and would have adverse and anticompetitive effects. Further, the Proposed Guidelines should allow a bank to tailor its risk management based on its risk profile and activities. A less complex institution engaging in less sophisticated risk-taking activities may need more basic management and control systems than the more detailed and formalized systems and controls that may be needed at a larger, more complex institution undertaking a broader and more complex range of activities.

As enforceable standards for FDIC-supervised institutions of $10 billion or more in assets (potentially also for institutions beneath that threshold), FDIC institutions would be supervised and examined in a different, more stringent manner than FRB and OCC-supervised institutions of $50 billion or more in asset size. FDIC-supervised institutions would have far greater compliance, operational, and administrative costs. The significantly greater costs to FDIC-supervised institutions without risk-based and contextual justification, and their reduced ability to attract and retain qualified directors, senior managers and other risk management staff, eliminates the appeal and any advantages of a state nonmember charter.

Second, we wish to highlight below several specific concerns Ameris Bank has with the Proposed Guidelines' prescriptive requirements.

a. Expansive director roles and duties. Directors of FDIC-supervised institutions should not be required to assume senior management responsibilities nor to ensure and approve the wide range of actions and policies described in the Proposed Guidelines. We believe that directors should instead oversee senior management and hold them accountable for performing day-to-day management duties and establishing and approving policies to govern the institution's activities, with the board responsible for approving policies that are significant to the institution's overall safe and sound operation. We believe that existing state corporate law should continue to define directors' duties. Under the Proposed Guidelines, the board of directors has expansive duties to "ensure" that various actions occur. The Proposed Guidelines seemingly assign day-to-day management responsibilities to the Board. For instance, a board will need to ensure that management corrects all deficiencies identified by auditors and examiners. This may generate considerable confusion regarding responsibility for compliance. See also c. and d., below, requiring the board to "establish processes". The Proposed Guidelines' blurring of the established respective roles and responsibilities of the board, and management, may create significant additional unwarranted liability for directors and detract from the board's critically important focus on the oversight of the overall operation and strategic direction of the institution.

b. Board duties to many stakeholders. The Proposed Guidelines state that a director should consider "the interests of all its stakeholders, including shareholders, depositors, creditors, customers, regulators, and the public." This directive could create significant new and potentially unfulfillable fiduciary duties for Ameris Bank and other banks whose corporate law is based on the Model Business Corporation Act. Moreover, it may be unclear what, for example, the interests of regulators may be in a given instance, and how an institution is to resolve conflicting interests among its regulators and other various stakeholders.

c. Blurring of roles of front-line units, management, and the board. The Proposed Guidelines would require that the board establish processes requiring front line units and the independent risk management unit to "identify known or suspected violations of the Risk Appetite Statement, concentration risk limits, and front line unit risk limits" and to "distinguish breaches based on the severity of their impact on the covered institution." The front line and independent risk management units would be required to inform *front line unit management, the CRO, the Risk Committee, the Audit Committee, the CEO, and the FDIC in writing* of "a breach of a risk limit or noncompliance with the risk appetite statement or risk management program describing the severity of the breach, its impact on the covered institution, and how the breach will be, or has been, resolved." We read this requirement as blurring the distinct roles and functions of front-line units, management, and the board. The front line and independent risk management units would be tasked with reporting such incidents or suspected incidents directly to the board, CEO and the FDIC, bypassing necessary careful preceding reviews, assessments, determinations, and protocols designed to assure the integrity and accuracy of reporting to senior management and the board, who in turn should determine the effect of the incidents and the reporting that should be made to the FDIC. The Proposed Guidelines effectively require front-line and independent risk management units to act of their own accord, in an ad-hoc manner, without the insight, expertise, and diligence of senior management and the board. This could create a serious conflict of authority and destabilize management and oversight of the institution. This could lead to inconsistent or flawed interpretations and incident handling. This could also potentially create adversarial, not collaborative, efforts to respond to and address risks, reducing the flexibility, responsiveness, and effectiveness of a risk management program.

d. Unprecedented extensive reporting requirements. The Proposed Guidelines would require a board to establish processes for the front line and independent risk management units to ensure that certain known or suspected violations of law, or "willful disregard for requirements" are promptly reported to relevant law enforcement and federal and state agencies. All violations of law or regulation would be required to be reported to the agency with jurisdiction over that law or regulation. This reporting is all without regard for the nature or materiality of the violations, their possible impact or even the level of certainty that violations occurred. Moreover, this reporting requirement assumes that that these law enforcement and federal and state agencies are equipped to receive and respond to such reporting.

e. Quarterly risk appetite approval. The Proposed Guidelines would require the board to review and approve the institution's risk appetite statement quarterly, without regard to an actual need to do so, a major exercise for a board of directors already responsible for reviewing and approving many broad-ranging, enterprise matters. This contrasts with at least annual review and approval under the OCC Guidelines Establishing Heightened Standards at 12 C.F.R. Part 30, which recognizes that more frequent reviews may be necessary "based on the size and volatility of risks" and existence of any material changes affecting the institution as a whole. The FDIC requirement also contrasts with the FRB's Supervisory Guidance on Board of Directors' Effectiveness, SR 21-3/CA 21-1 (applicable to banks of $100 billion or more in assets). The FRB guidance provides that the board should "periodically" review and approve the covered institution's risk appetite. Requiring the board to review and approve the institution's risk appetite quarterly could lead to misalignments with its strategic plan to the extent it is reviewed and approved less frequently, e.g., annually, as typically is the case with Ameris Bank, including forecasts on a three- to five-year time horizon. Quarterly reviews and approvals could influence an institution to modify acceptable risk levels to avoid the necessity of seeking the board's review and approval for even minor changes in risks.

We appreciate the opportunity to provide our comments. We hope that the FDIC will strongly consider them and accordingly revise the Proposed Guidelines.

Sincerely,

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Chief Legal Officer	Chief Risk Officer

cc: Mike Helmus, Managing Director – Risk Management
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