One Mission. Community Banks.

February 9, 2024

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

RE: Guidelines for Establishing Standards for Corporate Governance & Risk Management for Covered Institutions with Total Consolidated Assets of $10 Billion or More [RIN 3064-AF94]

To Whom It May Concern:

The Nebraska Independent Community Bankers ("NICB"), a trade association exclusively representing community banks across Nebraska, would like to voice our strong concerns with the Federal Deposit Insurance Corporation's ("FDIC") proposed guidelines for corporate governance and risk management standards for covered institutions with total consolidated assets of $10 billion or more ("the Proposal"). We appreciate the opportunity to provide feedback on the Proposal and urge the FDIC to reconsider a number of the proposed guidelines found in the Proposal.

I. <u>ASSET THRESHOLD OF THE PROPOSAL</u>

The Proposal arbitrarily sets the total consolidated asset threshold for covered institutions at $10 billion while providing little justification for the threshold. The NICB believes aligning the threshold with the corporate governance frameworks established by the Federal Reserve Board ("the Fed") and the Office of the Comptroller of Currency ("OCC") of $50 billion is a more prudent choice to maintain regulatory consistency across the industry.

Going forward with the current asset threshold of the Proposal would immediately disadvantage FDIC supervised community banks and has the possibility of threatening the appeal and viability of state-charters and the dual-regulatory framework. This is especially true when you consider that the Proposal appears to provide the FDIC with the full discretion to precipitously apply the proposed corporate governance standards to community banks of any size, without sufficient notice or allowance for implementation. Time and again regulation has shown how it "trickles down" over time, and we fear this will be no different, resulting in a disparate impact to community banks.

The NICB strongly opposes community banks being subject to the same rigorous standards expected of the nation's largest and most complex institutions, whether national banks or regional banks. This completely ignores the unique risk profile of each individual community bank while at the same time minimalizing the actual risk inherent of those large complex institutions. A community bank reaching a

1001 S 70th Street, Suite 101, Lincoln, NE 68510
(p) 402.474.4662 | www.nicbonline.com

certain asset threshold has little bearing on its status as a complex institution; rather, it should be viewed in the opposite lens: a community bank reaching a certain asset size is indicative of how well-run the community bank is and how effective the current dual-regulatory framework of state and federal supervision is at maintaining safety and soundness.

II. BOARD COMPOSITION AND DIRECTOR RESPONSIBILITIES

The Board composition and Director responsibility standards provided for in the Proposal go beyond and are more prescriptive than those the Fed and OCC apply only to the largest and most-complex banks. To start, it makes no sense, and no reasonable justification was given, that a community bank of a certain asset threshold must now be required to have a majority of independent directors. Having similar independent director requirements as publicly-traded companies is an affront to the family-owned, closely-held banking model that has been the backbone of the community banking in Nebraska for generations.

Advancing this majority independent director standard raises serious questions and poses detrimental risks to community banks. First and foremost is whether the FDIC has the statutory authority to force family-owned and closely-held banks to relinquish control of corporate governance to outside directors. It will also have a chilling effect on private investment in community banks, as those putting in investment ought to have some level of control at the Board level to ensure their investment is being prudently managed. The importance and impact of the knowledge and skills provided by insider directors to their institutions, and the resulting proven record of strength and resiliency of those institutions should not be minimized. A majority independent Board standard begs the question of potential negative impact to understanding risk in the industry by these directors, thereby increasing risk to the Deposit Insurance Fund. We believe this is counterintuitive, as the recent losses to the Fund are part of the basis for the Proposal.

Furthermore, the standards in the Proposal will make it difficult to attract qualified, well-informed directors to serve on community bank boards. The is especially true in Nebraska where the majority of our community banks are located in rural areas where it is already a challenge to find individuals with the necessary competence level to serve as directors. While diversity of directors is a noble cause, any standards need to account for the reality of the populations found in rural areas that are among the pool of qualified potential directors for community banks in those areas. This again speaks to the arbitrariness of setting these standards at a certain asset size threshold, as a well-run large community bank with a set geographical footprint is distinctly different than a large regional bank headquartered and operating only in large metropolitan areas.

Additionally, the Proposal appears to blur the lines between a board's oversight function and the day-to-day functions of management, and it places increased work and burden on board, which with a majority independent structure, are likely to not have the necessary skillset to perform. This includes from the Proposal: (1) new requirements to adopt specific strategic plans and management compensation plans, (2) new committee requirements of at minimum on committees of audit, compensation, and risk, and (3) new risk management programs which would cover a broad range topics from credit, concentration, interest rate, model, and liquidity to operational risks such as conduct, cyber-security and information technology, and third-party management, as well as the inclusion of strategic and legal & compliance risk. These new requirements add additional uncertainty when coupled with the apparent increased liability to directors under the Proposal, furthering the complication of finding competent individuals to serve on boards.

Many of the standards provided for by the Proposal do not consider existing state laws and regulatory frameworks, and as a result will threaten and throw into question the system of state charters the industry has operated on with safety and soundness for decades. The NICB believes corporate governance and the duties of boards should predominately remain within the realm of the chartering authority of the institution.

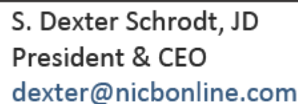
III. CONCLUSION

While we acknowledge the Proposal as written will not directly impact the majority of community banks if implemented, we submit these comments on the assumption that the standards provided by the Proposal will inevitably trickle down to a wider breadth of community bank size and function as regulatory frameworks inevitably do. This is why the NICB resoundingly supports tiered regulation that is *clear and specific* as to its appropriate application to the largest and most complex financial institutions and is equally *clear and specific* as to its exclusion of community banks that operate successfully within a set risk profile. This Proposal does neither of those things.

Our comments should not be misconstrued as lack of support for strong corporate governance and risk management standards, as these have shown to be essential to a prudent, strong, and resilient financial industry. However, we are concerned that the Proposal is a serious intrusion into the corporate governance of community banks, especially when compared to the standards placed on much larger institutions regulated by the Fed and OCC. For these reasons, we strongly encourage the FDIC to substantially modify the Proposal with a more direct focus on those institutions that pose serious risk to the industry.

We again thank the FDIC for the opportunity to comment and for the thoughtful consideration of these comments on the Proposal.

Sincerely,



S. Dexter Schrodt, JD
President & CEO
dexter@nicbonline.com