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NBA Nebraska Bankers Association

February 7, 2024

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

Re: Guidelines Establishing Standards for Corporate Governance and Risk Management for Covered Institutions with Total Consolidated Assets of $10 Billion or More (RIN3064-AF94).

Dear Mr. Sheesley:

The Nebraska Bankers Association (NBA) appreciates the opportunity to comment on the FDIC's Guidelines Establishing Standards for Corporate Governance and Risk Management for Covered Institutions with Total Consolidated Assets of $10 Billion or more (Proposed Guidelines). The NBA is a trade association representing 158 of the 168 commercial banks and savings institutions in the state of Nebraska.

I. GENERAL COMMENTS

As a general matter, the NBA believes that any enhanced Corporate Governance and Risk Management Standards adopted by the FDIC should be principles-based and focused only on institutions that truly present an increased level of safety and soundness risks.

II. COVERED INSTITUTIONS ASSET THRESHOLD

The Proposed Guidelines refer to the Corporate Governance and Risk Management Standards adopted by other federal banking regulators. The Office of the Comptroller of the Currency (OCC) applies these standards to institutions with average consolidated assets of $50 billion or more. The Federal Reserve Board applies its standards to bank-holding companies with total consolidated assets of $50 billion or more.

The FDIC provides little to no justification for imposing the Proposed Guidelines on institutions with total consolidated assets of $10 billion or more. The NBA suggests the FDIC establish a covered institution threshold level similar to those employed by the other federal banking regulators. Establishing a consolidated asset threshold of $10 billion is arbitrary at best. Defining "large" institutions in this matter is short-sighted and ignores risk management and risk processes currently employed by financial institutions based on their risk profile and operations.

Frequently, a $10 billion community bank with a defined geographic presence has a significantly different risk profile than a $10 billion publicly traded institution with a regional presence. Simply attaining $10 billion in total consolidated assets should not force a well-run community bank, currently supervised by their primary state or federal regulator and examined frequently to assess its safety and soundness, to be transformed into a complex financial institution requiring additional scrutiny and regulatory attention.

Most disconcerting is the FDIC's explicit reservation of authority and discretion to apply any heightened Corporate Governance and Risk Management Standards it adopts to any insured nonmember institution with total consolidated assets of less than $10 billion if the FDIC determines that the institution is highly complex or presents increased safety and soundness risks. Worse than an arbitrary threshold of $10 billion is no threshold at all. If the FDIC is to move forward with the Corporate Governance Guidelines, we would recommend that the total consolidated asset threshold be at least $50 billion.

III. NEW DIRECTOR RESPONSIBILITIES

The proposed guidelines impose unnecessarily prescriptive requirements upon board members. The proposed guidelines provide that a "board should hold management accountable for adhering to the strategic plan and approved policies and procedures to *ensure* the covered institution's compliance with safe and sound banking practices and all applicable laws and regulations." In addition, the guidelines provide that a "board also must ensure that management corrects deficiencies that auditors or examiners identify in a timely manner." These requirements conflate the board's oversight functions and management's day-to-day operational functions and should both be stricken from the Proposed Guidelines.

The potential for increased director liabilities will adversely impact the willingness of existing directors to continue to serve and will restrict the interest of and will dampen the interest of individuals qualified and willing to serve as directors in the future. The Proposed Guidelines further conflict with a number of the state's fiduciary and stakeholder standards and should be stricken. In addition, increased exposure to director liabilities will inevitably lead to an increase in D&O insurance premiums.

IV. NEW BOARD COMPOSITION STANDARDS

Requiring that a majority of the directors of a covered institution be outside and independent directors and limiting the possibility of some common boards goes far beyond OCC and FRB guidelines and requirements and are detrimental to family-owned and closely held covered institutions and other covered institutions with limited geographic footprints. In addition, proposed board diversity requirements may be unachievable for many covered institutions and may conflict with existing law in many states.

The limited benefits that a few covered institutions may derive from the addition of new independent directors will be vastly outweighed by the risks to most covered institutions and the Deposit Insurance Fund by the unwarranted exclusion of long-serving insider directors whose services materially contributed to the strength and resiliency of their institutions and the Deposit Insurance Fund.

V. CONCLUSION

To be clear, the NBA supports strong corporate governance and risk management standards. In addition, we firmly believe that a qualified, well-informed, and engaged Board of Directors contributes to an institution’s strength and resiliency, as well as to its safety and soundness. However, existing regulatory authority of the FDIC is adequate to achieve its stated policy objectives and to guard against potential bank failures without the need to adopt the Proposed Guidelines.

Thank you for your consideration of the NBA's comments and recommendations. If you have any questions or require additional information, please do not hesitate to contact me at richard.baier@nebankers.org.

Sincerely,

Richard J. Baier
President & CEO
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