FDIC

Federal Deposit Insurance Corporation
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FDIC Enforcement Policy

RE: Bank Stock Buybacks and Dividends During Unusual and Exigent Circumstances

A healthy and stable banking sector is vital for economic growth. Banks are an especially important source of credit for businesses and households during times of stress. A resilient banking sector can limit the depth of a recession and enhance the subsequent recovery.

During previous periods of economic stress, including the 2008 financial crisis and COVID-19 pandemic, the FDIC observed that banks generally sought to continue paying out dividends to shareholders and some banks sought to continue share buyback programs.[1] These actions can deplete capital and leave banks weakened at the very moment the economy needs them the most. Banks that have less capital generally reduce lending to households and businesses, are more prone to failure, and impose larger losses on the Deposit Insurance Fund.

The FDIC generally views capital distributions to shareholders during periods of economic stress to be an unsafe and unsound practice. One clear indicator of economic stress is a determination by the Board of Governors of the Federal Reserve System, with the approval of the Secretary of the Treasury, that unusual and exigent circumstances necessitate the establishment of a broad-based emergency lending program under Section 13(3) of the Federal Reserve Act.

The FDIC presumes that when at least one emergency lending program has been established, and for the period during which it is originating loans, it would generally constitute an unsafe and unsound practice for a state-chartered nonmember bank or state savings association to distribute capital to shareholders. The FDIC may effectuate this policy through its cease-and-desist authority under 12 U.S.C. 1818(b). These proceedings are fact-specific, and the FDIC retains the discretion to adjust its enforcement approach if circumstances warrant. For example, capital distributed from the insured depository institution to the holding company for purposes of paying creditors or other expenses may be appropriate.

The FDIC may complement this enforcement approach with a rulemaking under 12 U.S.C 1831o, 1831p-1, 3907 *et seq.*, and/or other relevant authorities. A rulemaking may include other indicia of broad financial or economic stress beyond the establishment of an emergency lending facility.

Under current FDIC regulations, there are certain automatic restrictions on capital distributions that are tied to a bank's capital levels.[2] The FDIC views these restrictions as critical for idiosyncratic or localized stress impacting a specific institution or set of institutions. Reliance on these restrictions during periods of broad financial or economic stress is insufficient and warrants the type of systemic approach outlined in this enforcement policy.

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[1] https://pages.stern.nyu.edu/~sternfin/vacharya/public_html/BankCapitalAcharyaGujralKulkarniShin_JACF.pdf; https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/us-banks-2021-dividend-payout-ratios-lower-than-pre-pandemic-levels-69740147.

[2] 12 CFR part 324.