October 17, 2024

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

Re: Regulations Implementing the Change in Bank Control Act (RIN 3064-AG04)

Dear Mr. Sheesley:

The Index Industry Association ("IIA") appreciates the opportunity to share our views on the Proposed Rule issued by the Federal Deposit Insurance Corporation ("FDIC") on "Regulations Implementing the Change in Bank Control Act" ("Proposed Rule"), which would expand the FDIC's Change in Bank Control Act ("CBCA") approval authority regarding changes to direct or indirect control of an FDIC-supervised institution. The IIA would like to share its views on several aspects of the Proposed Rule that could impact passive investments, specifically affecting financial indexes.

The IIA was founded in 2012 as a not-for-profit organization composed of independent index providers from around the world. Many of the leading independent index providers are members of the IIA. The IIA's mandate is to educate investors on the attributes and role of indices within the investment process; to advocate for the interests of both index users and providers worldwide; and to work with regulators and other representative bodies to promote competition and push for industry standards of best practice, independence and transparency. As independent index providers, IIA's members do not trade the underlying component securities in their indices or issue investable financial products that track or use indices.[1] This independence model prevents the real and perceived conflicts of interest that may arise in certain index providers that do not separate such business functions.

Financial indexes or benchmarks measure the performance of financial instruments, geographical markets, and sectors based on a methodology. Indexes, by themselves, cannot be invested in. However, indexes are used to create index-based products, thereby enabling passive and thematic investment. These products create diversified investment opportunities for professional and retail investors at a reasonable price.

American capital markets drive our economy and depend on capital flowing freely. Index providers have a critical role, which creates an efficient way for investors to weigh cost-effective options. Index providers rely on accurate and comprehensive financial data in order to develop

[1] We note that some IIA members are affiliated with exchanges which may be trading venues for an index's underlying component securities or for index-linked investment products, or to which indices are licensed for use in the development of derivative investment products.

and maintain indexes. However, the FDIC's Proposed Rule may create unintended consequences for index providers and investors.

In short, the Proposed Rule would require the provision of advance notice to the FDIC for certain acquisitions of voting securities of FDIC-supervised institutions, at a level sufficient to trigger a presumption of control under the regulations, without regard to whether such investor might simply be reallocating investments in accordance with changes in the composition of an underlying benchmark. Moreover, as investment funds under management continue to grow, and the number of publicly traded issuers continues to decline, further concentration of ownership is inevitable. Investors in such products should not be penalized absent some indicia of intent to control a depository institution beyond crossing an arbitrary threshold even temporarily.

The impact of requiring fund complexes to file CBCA notices could materially affect the strategy of the funds within the fund complex, as the potential delay in processing the CBCA filing by the FDIC alongside a notice to the Federal Reserve Board could result in material implications. Such implications could include:

- The Proposed Rule, if adopted, could require fund complexes to file such notices when implementing an index reconstitution or rebalance event that may result in the fund complex owning more than 10% of a bank.
- The processing time for the CBCA notice may significantly impact the ability of one or more funds within the complex to adhere to its investment strategies by delaying the fund's ability to execute transactions implementing the index reconstitution or reallocation.
- A delay in implementation of the rebalance or reallocation may materially impact the price at which a fund within the fund complex may access the relevant securities, potentially causing material shareholder harm.
- Further, over time these delays and pricing issues may cause a fund to experience significant tracking errors with respect to its underlying index, resulting in harm to existing shareholders and the marketability of the fund.

The impacts of the Proposed Rule to index providers are largely unknown. Fund managers may not be able to replicate an index for a passively managed fund, which could lead to tracking errors or potential time challenges, as the time period available to the FDIC is 60-90 days to disapprove of the transaction. Clarity is important for investors and this timeframe may affect their decision-making process.

We respectfully submit these comments and look forward to working with the appropriate regulators on developing rules that protect and strengthen America's resilient and exceptional capital markets. Thank you for your consideration of our response.

Sincerely,

[redacted]

Rick Redding
Chief Executive Officer
Index Industry Association