Comment on Proposed Rule

A recent market analysis found that BlackRock and Vanguard hold ownership interests in over 300 of the 338 banks surveyed.[1] The proposed rule seeks to address growing concerns about the increasing concentration of ownership by asset management firms across the banking sector.[2] Both BlackRock and Vanguard are estimated to hold more than 10% of shares in several banks, giving them controlling influence over these institutions.[3] This trend toward concentrated ownership among top investment firms poses systemic risks, and the proposed rule would empower the FDIC to disapprove transactions that exacerbate such risks.[4]

Asset management firms like Vanguard and BlackRock, as custodians of increasingly large index funds and ETFs, are gaining significant influence over the corporations whose stocks are included in these products. While classified as passive investors, their substantial holdings grant them considerable voting power, giving them sway over corporate governance decisions.[5] This concentration of control among a few players raises concerns about monopolization across industries and the prioritization of short-term investor returns over long-term financial stability.[6] The FDIC's proposed rule addresses the complexities of such ownership structures, aiming to mitigate systemic risks and conflicts of interest by enhancing oversight of these investments.[7] By

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[1] *Vanguard, BlackRock are the top investors in US banks*. (n.d.). S&P Global Market Intelligence. https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/vanguard-blackrock-are-the-top-investors-in-us-banks-74959785

[2] Dennis, N. (2024, April 2). *Could 3 powerful fund managers take control of US banks?* Business Insider, https://markets.businessinsider.com/news/etf/could-3-powerful-fund-managers-take-control-of-us-banks-1033215904

[3] *Id.*

[4] *Id.*

[5] Davis Polk & Wardwell LLP, *FDIC Proposes to Expand its Reach Over Some Investments in Bank Holding Companies* (Sept. 5, 2024), https://www.davispolk.com/insights/client-update/fdic-proposes-expand-its-reach-over-some-investments-bank-holding-companies.

[6] Columbia Law Review, "*Index Funds and the Future of Corporate Governance: Theory, Evidence, and Policy,*" 2020.

[7] Harper's Magazine, "*What Goes Up: The Power of Passive Investment Vehicles,*" June 2024.

requiring more scrutiny for such investments, the FDIC seeks to prevent concentrated control and mitigate the risk of excessive risk-taking by these investors.[8]

We support the FDIC's proposed rule as it addresses legitimate concerns about the growing influence of institutional investors over FDIC-supervised institutions. The removal of the exemption will ensure that the FDIC can properly scrutinize transactions that might otherwise lead to excessive risk-taking or undue concentration of control. However, we also believe that this rule could be more effective and less burdensome if it were tailored to apply only to systemically relevant institutions—those whose material financial distress or failure would threaten the financial stability of the United States.[9] The FDIC's current oversight includes strict notification requirements that impose significant compliance costs, particularly affecting smaller institutions.[10] A survey of FDIC-supervised banks revealed the annual costs per institution varied between $250 to $10,000, with a median of $40,000, representing 3.35% of an institution's net income.[11] Notably, smaller institutions bear a disproportionate burden, with compliance costs equating to 16% percent of their net income, compared to just over 1% for larger organizations.[12]

By focusing compliance on larger institutions that have a significant impact on the broader financial system, the FDIC could alleviate unnecessary regulatory burdens on smaller institutions that pose less systemic risk.[13] Additionally, some investors have expressed concerns that the proposal may increase regulatory duplication and create delays, as it would require separate FDIC approval even when the Federal Reserve has already reviewed and cleared the

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[8] Morrison & Foerster LLP, *FDIC Proposes Broader Role Under the Change in Bank Control Act* (Aug. 28, 2024), https://www.mofo.com/resources/insights/240827-fdic-proposes-broader-role-under-the-change.
[9] Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, section 113, 124 Stat. 1376, 1398-1402 (2010).
[10] (Mar. 2, 2023), https://archive.fdic.gov/view/fdic/12102/fdic_12102_DS2.pdf.
[11] *Id*. at 1.
[12] *Id*. at 3.
[13] *Id*. at 1423.

acquisition. This could discourage passive investments and increase costs for investors seeking to acquire stakes in bank holding companies.[14] To avoid such duplicative reviews, this rule could be implemented in conjunction with the Federal Reserve Board. Both agencies could work together synergistically, allowing relevant parties to submit a single notice for joint review, streamlining the process while still achieving the intended goals of oversight and stability.

Conclusion

The FDIC's proposed rule is necessary to ensure greater oversight of acquisitions by institutional investors. By focusing on systemically relevant institutions and collaborating with the Federal Reserve Board, the FDIC can mitigate regulatory burdens while addressing potential risks of undue influence and market concentration. This balanced approach promotes financial stability without imposing excessive compliance costs on smaller institutions.

Thank you for the opportunity to comment on this important matter. Should you have any questions, please feel free to contact us through the following:

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[14] Davis Polk & Wardwell LLP, *FDIC Proposes to Expand its Reach Over Some Investments in Bank Holding Companies* (Sept. 5, 2024), https://www.davispolk.com/insights/client-update/fdic-proposes-expand-its-reach-over-some-investments-bank-holding-companies.