Statement by Vice Chairman Travis Hill on Proposals Related to Change in Bank Control Act

April 25, 2024

I appreciate the concerns that have brought us here this morning. There does seem to be a contradiction when large asset managers on the one hand commit to banking regulators that they will be "passive" with respect to their investments in banks,[1] while on the other hand take certain actions to use their voting power as investors to achieve broader policy goals.

I support Director McKernan's proposal. I agree with the principle that we should take steps to confirm that large asset managers with passivity agreements are living up to those commitments.

I do not support the staff proposal, which oddly is being introduced by Director Chopra. This proposal would expand well beyond ensuring passivity at the largest asset managers, and would require a range of other types of bank investors to file duplicative notices with both the FDIC and the Federal Reserve.

I am generally supportive of the principle that the FDIC should seek public comment before enacting policy changes that impact external parties, and I think this is an area where public input could be useful. For example, these proposals raise a deeper question of what the banking agencies mean by "passivity." As an example, our passivity agreements include a commitment by signatories not to "direct or attempt to direct management or policies," and I suspect that there may be differing views of what crosses that line. I think more clarity on this type of question in the future, informed by public input, could be helpful.

In addition, the willingness of outside capital to invest in banks is critical to our capital framework and financial stability. We should always be mindful of the consequences of actions that could discourage capital from coming into the banking industry,[2] and I generally believe that

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[1] Why is passivity relevant to the FDIC? The Change in Bank Control Act ("CBCA") generally prohibits any "person" from acquiring "control" of a bank unless the person has provided notice to the appropriate Federal banking agency and that agency has not disapproved. "Control" is defined by the CBCA to mean "the power, directly or indirectly, to direct the management or policies of an insured depository institution or to vote 25 per centum or more of any class of voting securities of an insured depository institution." 12 U.S.C. § 1817(j)(8)(B). The FDIC's regulation implementing the CBCA establishes a rebuttable presumption that, if certain conditions are met, a 10% ownership stake "constitutes the acquisition of the power to direct the management or policies of that institution" and thus "control" under the CBCA. 12 C.F.R § 303.82. Passivity (sometimes in the form passivity agreements that include various passivity commitments) has been one mechanism to rebut the presumption of control for purposes of the CBCA when an investor crosses the 10% ownership threshold.

[2] *See, e.g.,* Joshua Franklin, Stephen Gandel, and Colby Smith, "Jamie Dimon warns investors over bank stocks if US capital rules enacted," *Financial Times* (Sept. 11, 2023) ("JPMorgan Chase's chief executive Jamie Dimon criticised US regulators over recent proposals for new capital rules, warning they risked making bank stocks uninvestable….").

ensuring the appropriate level of passivity, rather than restricting investment, should be the goal of any endeavors in this area.

Finally, I would like to thank the staff for their work and engagement on this issue, along with my fellow Board members.