



September 16, 2024

RE: Regulations Implementing the Change in Bank Control Act, RIN 3064–AG04

To Whom it May Concern:

The National Community Reinvestment Coalition (NCRC) appreciates the opportunity to comment on the FDIC’s proposed changes to its regulation implementing the Change in Bank Control Act. The FDIC is motivated to make this change because it documents an increase in index fund investments in bank securities, which could increase the risk profile of banks it supervises. Since the FDIC perceives the possibility of increased risk due to recent investment trends, NCRC believes that the public must have increased opportunities to comment on bank applications covered by the Change in Control Act.

NCRC is a network of more than 700 community-based organizations dedicated to creating a nation that not only promises but delivers opportunities for all Americans to build wealth and attain a high quality of life. We work with community leaders and policymakers to advance solutions and build the will to solve America’s persistent racial and socio-economic wealth, income, and opportunity divides, and to make a Just Economy a national priority and a local reality. Integral to our mission is the promotion of a safe and sound banking industry that is accountable to the public.

Currently, the FDIC does not require an application in the case of investors seeking to control between 10 and 25 percent of depository institution holding companies that are overseen by the Federal Reserve Board (FRB).¹ The FDIC has implicitly deemed FRB review of the applications to be sufficient to safeguard the safety and soundness and the ability of the banks to meet convenience and needs in those cases.

However, in recent years, the FDIC has observed an “exponential” increase in investments by index funds in the banks it supervises, including deposit institution holding companies.² The FDIC is concerned that although these funds have been historically passive investors, their approach will change and that they will seek a more active role in bank management and control. Specifically, the FDIC states:

Fund complexes owning such high percentages of voting securities of FDIC-supervised institutions may create situations where the investor can have an outsized influence over

¹ FDIC, *Notice of Proposed Rulemaking: Regulations Implementing the Change in Bank Control Act*, RIN 3064–AG04, Federal Register, Vol. 89, No. 160, Monday, August 10, 2024, 67003.

² *Ibid.*, 67004.

the management or policies of an institution. Such outsized influence may flow naturally from exercise of their votes as large shareholders over matters such as mergers, or through other indicia of control, such as engagements with portfolio companies whereby investors meet with directors or management to influence the direction of the company.³

It is also possible that a few investors such as three index firms that each have 20 percent of the voting securities could collude with a combined voting share of 60 percent and thus have significant leverage to control the management of the bank. The FDIC is prudent to guard against possible attempts by so-called passive investors to seek control of banks, regardless of whether these index funds individually or in concert seek to influence management. Even a firm with a 20 percent stake acting individually can have an outsized influence, particularly when the votes of bank boards are close.

Given the increased possibilities of unpredictability when passive investors are acting in manners that are anything but passive, NCRC supports the FDIC's proposal to also require applications to the FDIC in cases of depository institution holding companies. This application requirement should also include instances when investors seek to claim passivity and rebut presumptions of control.⁴

NCRC believes, however, that applications alone to the FDIC is not sufficient to safeguard the public interest. NCRC maintains that when the FDIC requires applications to the FDIC as well as the FRB, that the FDIC conduct a public comment period. If the FDIC is concerned about possible increases in risk or one of the other statutory factors of review such as anti-trust enforcement or demonstration of public benefit, then these concerns merit public comment as an additional level of accountability.

The public may present information in compelling ways that would prompt the FDIC to review the application with heightened scrutiny. In addition to convenience and needs, public comments often address issues associated with managerial resources and reputational risk because the public understands that institutions can serve communities sustainably only if they are managed well and do not engage in activities that expose them or their communities to risky or unsavory practices. A rigorous review process with public input provides more assurances of safe and sound operations of banks as well as increasing their abilities to serve convenience and needs.

In addition, NCRC believes that Notice of the Change in Bank Control Act applications should be published on the FDIC's website with an opportunity to request a copy of the application, which should be provided before the public comment period closes. Additionally, commenters should be able to request, and obtain, public hearings.

³ Ibid., 67004.

⁴ Ibid., 67004.



In sum, NCRC supports the FDIC's proposed change to its regulation implementing the Change in Control Act. We also urge the FDIC to institute public comment periods when it chooses to review a change in control application.

Thank you for the opportunity to comment on this important matter. If you have any questions, you can contact me on jvantol@ncrc.org or Josh Silver, Senior Fellow, on jsilver97@gmail.com.

Sincerely,



Jesse Van Tol
President and CEO