From: Danielle Zanzalari
To: Comments
Subject: [EXTERNAL MESSAGE] August 19, 2024 Regulations Implementing the Change in Bank Control Act; Comment Request (RIN 3064-AG04)
Date: Wednesday, September 25, 2024 6:23:12 AM

[redacted]

Dear members of the Corporation:

I believe this proposed rule will disrupt our markets, which we cannot afford. Aside from the questionable timeline of this proposal, there are four significant drawbacks to consider.

First, the FDIC's proposal would create redundancy in bank ownership supervision, possibly leading to confusion and inconsistency in regulatory enforcement. The Bank Holding Company Act designates the Fed as the primary regulator for bank holding companies and details its role in reviewing any control and influence companies have over bank operations and management. Regulations Y and LL established a benchmark, stipulating that owning over 10% of voting shares represents controlling interest in a bank, but in 2020, the Fed revised its rules to allow flexibility in determining controlling interests based on various factors.

Specifically, the Fed states that "experience has shown that [it is] difficult to prescribe a set of rigid rules that determine whether one company exercises a controlling influence over another company in all situations." Some of the factors it considers are "voting and non-voting equity investment," "employee overlaps," and "the scope of business relationships between the company and the bank." While "several factors" may seem ambiguous, the Fed details what will "trigger" an issue with bank organization in a tiered presumption chart.

This flexibility enables the Fed to examine holistically the relationship between companies and banks, rather than adhering to a strict rule. Adding further regulation by the FDIC may cause confusion over the hierarchy of supervisory rules.

Second, there is an existing precedent set by the Fed regarding the conditions asset managers must meet to operate above the 10% ownership threshold. These requirements were explained to Vanguard by the Federal Reserve Board's general counsel in 2013 and 2019 and to BlackRock in 2020, as reported by BankRegBlog. For example, asset managers cannot threaten, dispose, or control management and influence any policies or decisions, such as employee compensation, capital raises, mergers, and acquisitions, etc. Since this arrangement has functioned effectively with strong oversight of the Fed Board, the FDIC's intervention may be perceived as an ambitious political move.

Third, if the concern is that asset managers are not remaining passive in their investments, alternative solutions such as modifying voting structures, having asset managers relinquish voting rights, or allowing individual investors to retain voting rights could be explored rather than added regulation. In fact, over the past two years, BlackRock, Vanguard, and State Street have instituted innovative solutions that return proxy voting power to retail and institutional clients. If McKernan aims to regulate entities influencing bank ownership and decision-making, attention should be on proxy advisers, not asset managers. Glass Lewis and ISS, a proxy advisory duopoly with 97% market share, exhibit actual conflicts of interest.

Fourth, implementing duplicative regulations could hinder investment opportunities in smaller and regional banks through index and mutual funds. This could pose challenges for smaller banks to access capital markets fully, especially as they have struggled in recent years. Furthermore, it could negatively affect individual investors who rely on index funds for long-term wealth generation.

In conclusion, the FDIC's plan diverges from the established supervisory approach of the Fed, risking regulatory redundancy and market disruption. This move appears politically motivated rather than driven by genuine regulatory necessity, risking adverse effects on smaller and regional banks.

Sincerely,

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