sifma

asset management group

October 28, 2024

VIA ELECTRONIC SUBMISSION

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

comments@fdic.gov

Re: Change in Bank Control Act – RIN 3064-AG04

Dear Mr. Sheesley:

The Asset Management Group of the Securities Industry and Financial Markets Association ("SIFMA AMG")[1] appreciates the opportunity to comment on the Federal Deposit Insurance Corporation's (the "FDIC") proposed changes to its regulations implementing the Change in Bank Control Act of 1978 (the "CBCA") notification requirements (the "Proposed Rule").[2]

We oppose the Proposed Rule and respectfully request that the FDIC withdraw it. As discussed in detail below, the Proposed Rule would disrupt a decades-old regulatory regime that market participants rely upon to provide widely used investment products, including products used by retail investors, and would do so for no clear reason and in a manner that runs afoul of the Administrative Procedure Act.

Before proceeding on this matter in any form, the FDIC should collaborate with the Office of the Comptroller of the Currency (the "OCC") and the Board of Governors of the Federal Reserve System (the "Federal Reserve Board"), in consultation with other regulators of relevant jurisdiction, to determine whether there is a reasonable basis for, and adequate cost-benefit analysis to support, the proposed changes to the existing CBCA regulatory regime.

[1] SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. SIFMA AMG brings the asset management community together to provide views on U.S. and global policy and to create industry best practices. SIFMA AMG's members represent U.S. and global asset management films whose combined assets under management exceed $45 trillion. The clients of SIFMA AMG member firms include, among others, tens of millions of individual investors, registered investment companies, endowments, public and private pension funds, UCITS, and private funds such as hedge funds and private equity funds. For more information, visit http://www.sifma.org/amg.

[2] 89 Fed. Reg. 67002 (Aug. 19, 2024).

I. Introduction and Executive Summary

SIFMA AMG members manage a range of widely-used investment products that would be impacted by the Proposed Rule, including index funds (i.e., funds that seek to track the performance of an index) and actively managed funds (i.e., funds for which the manager selects investments based on the fund's investment strategy). Our members, as investment advisers, owe a fiduciary duty to their clients, including the funds they advise. This fiduciary duty is owed to each fund and requires the adviser to manage the fund's portfolio based on that fund's stated investment objectives and strategies. Our members invest client assets solely for the purpose of investment and not "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" in which they invest.[3] Instead, our members make voting decisions pursuant to broad-based voting guidelines and any engagement with management is designed to drive long-term value for investors in our members' funds. As fiduciaries, our members are required by law to make such voting decisions in the best interests of their clients in accordance with those voting guidelines.

For these reasons, our members' holdings, even at levels of more than 10%, simply do not raise concerns that the CBCA was intended to address. The statutory criteria that the agencies review in connection with a CBCA filing include: antitrust considerations; the financial condition of the acquirer or the future prospects of jeopardizing the financial stability of the bank; the competency, experience, and integrity of the management of the acquirer; and if an acquisition would adversely affect the deposit insurance fund.[4] As a result, the banking agencies have historically not raised concerns with our members' investments in FDIC-supervised depository institutions. Nevertheless, the FDIC has issued the Proposed Rule with the aim of substantially changing how the CBCA is implemented with respect to asset managers.

As set forth below, SIFMA AMG opposes the Proposed Rule for the following reasons:

- The FDIC is attempting to upend a clear, decades-old, and well-functioning compliance regime and replace it with a yet-to-be articulated regulatory framework. This approach fails to recognize the substantial reliance interests of market participants who have developed numerous financial products based on the legal certainty provided by the existing compliance regime.
- A new requirement for duplicative CBCA notices and parallel investment review by both the FDIC and the Federal Reserve Board could produce inconsistent and untimely determinations of control, undermining legal certainty for the banking industry and investors.
- Changes to the current process could adversely impact retail and institutional investors by impeding the offering of certain investment funds or preventing investment funds from meeting their investment objectives.

[3] 12 U.S.C. § 1817(j)(8)(B).

[4] 12 U.S.C. § 1817(j)(7).

- The proposed change could limit FDIC-supervised depository institutions and their parent holding companies' access to important sources of capital by discouraging investment funds from acquiring voting securities issued by FDIC-supervised depository institutions or their parent holding companies.
- The proposed change runs afoul of the Administrative Procedure Act ("APA") as the FDIC (i) lacks the statutory authority to adopt the Proposed Rule, (ii) failed to provide a reasonable basis for eliminating the exemption, and (iii) did not conduct a meaningful assessment of the potential adverse consequences of changing existing CBCA notice procedures.

II. Comments on the Proposed Rule

A. The FDIC's Long-Standing Approach Has Created a Workable Process That Asset Managers Have Relied on for Decades.

The CBCA was enacted on November 10, 1978, and became effective on March 10, 1979. In enacting the CBCA, Congress sought to address both the inability of federal banking agencies to review the transfer of ownership of insured depository institutions to individuals or groups of individuals and concerns about foreign investors making investments in U.S. insured depository institutions.[5] Congress did not contemplate the application of the CBCA to investment products. The statute predates the widespread use by investors (particularly retail investors) of investment products that might exceed the 10 percent threshold under the CBCA. For example, index investing was only newly emerging in the late 1970s and did not begin to gain traction with investors until the 1990s. As of 2023, total net assets in index funds and index ETFs are $13.3 trillion.[6]

More than twenty years ago, the FDIC implicitly recognized the need for a CBCA review process that accommodated investment products by codifying its then-existing practice of exempting transactions from its review if the Federal Reserve Board reviews the CBCA notice.[7] Reflecting its satisfaction with the Federal Reserve Board's reviews of CBCA notices, the FDIC considered it an "unnecessary duplication" for an acquirer to file notifications with both the Federal Reserve Board and the FDIC.[8] Furthermore, the FDIC reaffirmed the inclusion of this exemption and the underlying rationale in its most recent revisions to the CBCA regulations in 2015.[9] Asset managers have developed products for their clients that rely upon the regulatory clarity and efficiency of the current CBCA review process.

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[5] *See* H. R. Rep. No. 95-1383, at 19-22 (1978).

[6] *See* ICI, 2024 Investment Company Fact Book, at 28 (64th ed., 2024), https://www.icifactbook.org/pdf/2024-factbook.pdf.

[7] 68 Fed. Reg. 50457 (2003); 12 C.F.R. § 303.84(a)(8).

[8] 68 Fed. Reg. 50457, 50458 (2003).

[9] 80 Fed. Reg. 65889, 65897 (2015) ("The purpose of this exemption is to avoid duplicate regulatory review of the same acquisition of control by both the Board of Governors and the FDIC.").

The current FDIC exemption does not extend to cases where the Federal Reserve Board accepts a passivity commitment in lieu of a notice. In such cases, the FDIC guidance provides that the agency will evaluate the facts and circumstances to determine whether a notice is required to be filed with the FDIC for the indirect acquisition of an FDIC-supervised institution.[10] Nevertheless, in practice, the FDIC has not required notices when the Federal Reserve Board accepts a passivity commitment in lieu of a notice.[11]

The FDIC's approach has worked well for over two decades and reinforces the benefits of close collaboration and respect among federal banking agencies. It allows investors in FDIC-supervised depository institutions, including index funds, actively managed funds, and other investment funds, to efficiently satisfy their notice obligations under the CBCA. This approach also avoids the possibility of inconsistent agency reviews. Further evidence of the effectiveness of the current approach is that the FDIC has identified no problems with the Federal Reserve Board's review of these notices during the past two decades.

B. The Proposed Rule Would Result in Duplicative Filings and Create Inefficiencies and Inconsistencies Among Banking Regulators.

The Proposed Rule would create a duplicative review process on a transaction-by-transaction basis that is very likely to result in an inconsistent application of the CBCA. If the Proposed Rule is finalized, one can reasonably conclude that the FDIC will adopt a different position on individual transactions than the position of the Federal Reserve Board on those same transactions. Otherwise, there will have been no reason for the FDIC to issue the Proposed Rule. The adoption of differing approaches by the FDIC and the Federal Reserve Board, when evaluating the CBCA notice, would create legal confusion and unnecessarily increase the costs of complying with the CBCA. For example, the FDIC and the Federal Reserve Board could impose, on the same asset manager's investment in the same issuer, different thresholds on the ownership percentage of voting securities or different passivity commitments. Further, one federal banking agency could issue a non-objection with respect to a CBCA notice and another federal banking agency could object, or fail to respond, to the same notice.

Ironically, the Proposed Rule recognizes the need for collaboration among the federal banking agencies to ensure consistency in the review of transactions implicating the CBCA, yet the FDIC engaged in a unilateral and disjointed process in issuing the Proposed Rule and failed to achieve consensus even among the Board itself. The Proposed Rule was approved by a vote of 3-2 with the dissenting members of the FDIC Board raising significant substantive and procedural concerns with the rule. As FDIC Director Jonathan McKernan recognized, it is "critically important that we not mandate duplicative regulatory notices or otherwise add undue regulatory burden" and the

[10] 80 Fed. Reg. 65889, 65897 (2015).

[11] 89 Fed. Reg. 67002, 67004 (2024).

"appropriate balance would require coordination across the three federal bank regulators."[12] Further, the Acting Comptroller of the Currency has validated the importance of an effective interagency process, going so far as to say that the lack of coordination or alignment on the implementation of the CBCA could result in resources being shifted from bank supervision – the FDIC's primary statutory mission – to monitoring compliance with the CBCA.[13] We also note that the Federal Reserve Board has not expressed support for the Proposed Rule or issued any public comment whatsoever.

Finally, the FDIC's purported commitment to engage in a collaborative process is belied by the agency's parallel actions outside the notice and comment rulemaking process. The FDIC reportedly is demanding information regarding the indirect ownership interests of at least two asset managers, without waiting for the conclusion of this rulemaking process and without regard for passivity letters issued by the Federal Reserve Board, as obliquely referenced by Director Rohit Chopra.[14]

C. The Proposed Rule Will Harm Funds and Their Investors and FDIC-Supervised Depository Institutions.

The Proposed Rule would replace the existing single agency notice and review process that produces consistent results in a timely manner with a multiagency notice and review process. This will have several adverse consequences for investment funds, retail and other investors, and FDIC-supervised depository institutions and their parent holding companies.

First, time delays alone could make it impractical for funds to offer certain investment products that require daily adjustments to their holdings. Ultimately, these delays will harm investors in the form of lower returns, higher costs, and investment strategies that do not align with investor preferences. For example, for actively managed funds, such delays would result in lost opportunity costs that harm a fund's shareholders. In times of market volatility, such delay could deprive the manager of the ability to increase a fund's positions at the most favorable price. For index funds, the composition of an index changes regularly as index providers rebalance their indices to ensure that the composition of an index adequately reflects its stated methodology. If, as a result of market conditions or a particular corporate action by a depository institution or its parent holding company, an issuer is added or removed from an index, an index fund may needlessly incur tracking errors if it is subject to an extended filing and review period. These unnecessary delays

[12] Statement by Jonathan McKernan, Director, FDIC, Board of Directors, on the Proposed Amendments to the Change in Bank Control Act Framework, https://www.fdic.gov/news/speeches/2024/statement-jonathan-mckernan-director-fdic-board-directors-proposed-amendments.

[13] Acting Comptroller Issues Statement on the FDIC's Proposals Related to Change in Bank Control Act, https://www.occ.gov/news-issuances/news-releases/2024/nr-occ-2024-43.html.

[14] Statement of CFPB Director Rohit Chopra, Member, FDIC Board of Directors, on a Proposed Rule to Strengthen Oversight of Large Asset Managers and Other Investors, https://www.consumerfinance.gov/about-us/newsroom/statement-of-cfpb-director-rohit-chopra-member-fdic-board-of-directors-on-a-proposed-rule-to-strengthen-oversight-of-large-asset-managers-and-other-investors/.

could also raise fiduciary issues for managers and require actions that may not be in the long-term best interest of the investment fund.

Second, if the FDIC and the Federal Reserve Board adopt inconsistent determinations of control under the CBCA, investment funds would be required to adopt the most restrictive standard when acquiring voting securities of FDIC-supervised institutions or their parent holding companies. It may be impossible for fund managers to track indices or other investment guidelines and, as a result, they may not be able to offer some products. For example, there could be a reduction in the number of index funds replicating bank-related indices or changes to the weighting of FDIC-supervised depository institutions or their parent holding companies within the indices. Limitations to such product offerings could also threaten the viability of index funds as a low cost and efficient means of diversification for retail investors.

Third, the Proposed Rule would result in additional costs for investment companies who would be required to file multiple notices or rebuttals under the CBCA and respond to questions from multiple agencies reviewing these notices or rebuttals. Ultimately, those costs will be borne by the investing public.

Fourth, to the extent that the Proposed Rule causes funds to reduce their investments in FDIC-supervised depository institutions and their holding companies, FDIC-supervised depository institutions would be deprived of additional amounts of equity capital. As FDIC Vice Chair Travis Hill noted, a reduction in equity capital could adversely impact U.S. financial stability.[15] Moreover, a reduction in equity capital could cause these banks to reduce their lending or otherwise curtail the services they provide, adversely impacting economic activity in their communities.

D. The Proposed Rule Runs Afoul of the APA.

If finalized, the Proposed Rule would be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," in violation of the APA, 5 U.S.C. § 706(2)(A). A brief summary of the shortcomings under the APA are set forth below.

i. The FDIC lacks statutory authority to adopt the Proposed Rule.

The FDIC lacks the statutory authority to exercise a second level of CBCA review authority over investments in bank holding companies. The CBCA contemplates that "*the* appropriate federal banking agency" (emphasis added) would review the notices filed under the CBCA. It does not specifically contemplate review by multiple federal banking *agencies*. The statute clearly expects the CBCA to be applied in a consistent manner across agencies, making a single agency's review all that is needed. With the Proposed Rule, the FDIC impermissibly attempts to shoehorn an alternate reading of the CBCA to assert more authority for itself despite such action being contrary to the clear design of the statute. As Chief Justice Roberts stated, "In the business of statutory

[15] Statement by Vice Chairman Travis Hill on Proposals Related to Change in Bank Control Act, https://www.fdic.gov/news/speeches/2024/statement-vice-chairman-travis-hill-proposals-related-change-bank-control-act.

interpretation, if it is not the best, it is not permissible."[16] In this case, the best reading of the statute is that one appropriate federal banking agency would receive notices and make a determination under the CBCA for any transaction falling under the statute and, with respect to any FDIC-supervised depository institution with a holding company, the appropriate federal banking agency would be the Federal Reserve Board. By failing to abide by this common sense reading of the CBCA, the FDIC has exceeded its statutory authority in issuing the Proposed Rule and violated the APA.[17]

ii. The Proposed Rule fails to provide a reasoned basis for changes to established notice procedures.

The FDIC fails to provide "good reasons for [its] new policy" as required by the APA.[18] Citing a single source for support, the Proposed Rule asserts that index funds may create situations of "outsized influence" and the "potential for control" over FDIC-supervised institutions that "could increase the risk profile at such institutions."[19] However, the Proposed Rule fails to identify a single transaction or investment that raises concerns of outsized influence or of an increased risk profile in the two decades since the exemption was codified. Furthermore, the FDIC does not indicate, or even hint, that the Federal Reserve Board has failed to properly review CBCA notices involving the parent holding companies of any FDIC-supervised institutions. While the Proposed Rule states that the FDIC has observed a "general pattern of more frequent requests for relief to rebut the presumptions of control," it provides no information about instances in which relief was denied or the reasons for such denial.[20] Because the FDIC does accept passivity commitments with asset managers investing in FDIC-supervised institutions, the "general pattern" observed by the agency appears to be merely evidence of thoughtful engagement by asset managers and not a problem that requires duplicative CBCA notices and reviews.

Recognizing that the Proposed Rule fails to identify problems with the current rule, the FDIC seeks to defend its actions in the following ways: (1) by requesting information about the CBCA notice process through a series of questions in the Proposed Rule while also proposing a change in the regulations governing the provision of such notices and (2) through a "companion" process described by Director Chopra under which the FDIC would contact certain asset managers with respect to passivity agreements for future acquisitions.[21] The FDIC should have proceeded with a Request for Information or Advanced Notice of Proposed Rulemaking, as Director Hill suggested at the July 30, 2024 open meeting, and evaluated any responses from the "companion" process prior to issuing the Proposed Rule. The simultaneous launching of this companion review process

[16] *Loper Bright Enterprises, et al. v. Raimondo*, 603 U.S._____ (2024).

[17] 5 U.S.C. § 706(2)(c).

[18] *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221 (2016).

[19] 89 Fed. Reg. 67002, 67004-005 (2024).

[20] 89 Fed. Reg. 67002, 67005 (2024).

[21] *See supra* note 14.

is inconsistent with the purported commitment to an interagency process, fair dealing, and fundamental principles of the notice and comment rulemaking process.

Even if the FDIC identified support for its assertions that fund complexes create the "potential" for control of FDIC-supervised depository institutions, the FDIC fails to explain how duplicative review would solve these concerns. As noted above, the Proposed Rule does not assert that the Federal Reserve Board's review of notices under the CBCA is inadequate or otherwise deficient. The FDIC's historic respect for Federal Reserve Board decision making is reflected in the practice of not requiring notifications to the FDIC if the Federal Reserve Board has determined that the presumption of control has been rebutted, including when the Federal Reserve Board accepts a passivity commitment. Nevertheless, for reasons unknown and unstated, the FDIC appears determined to reverse course and abandon comity with the Federal Reserve Board.

iii. The Proposed Rule fails to consider the reliance interest in, and the adverse consequences of, changes to the current notification scheme.

Because the FDIC is proposing a significant "change[in] course," it must "take[] into account" the fact that its existing "longstanding polic[y]" for the notice exemption has "engendered serious reliance interests" from the regulated community.[22] The Proposed Rule wholly fails to consider the investment products that rely on the FDIC's long-standing approach. Investment funds have invested substantial resources to develop, offer, and manage investment products that require an efficient means for complying with the CBCA due to the existing notification regime. Changes to this regime could impair these investments and impact the offering of investment products as discussed above.

The FDIC also grossly underestimates the costs and scope of the additional filing obligations resulting from the elimination of the exemption. For example, the FDIC indicates that it expects to receive 52 notices annually because of the Proposed Rule and one request to rebut the presumption of control annually.[23] While this may reflect the recent filings with the FDIC, even the FDIC acknowledges that the number of notices filed has been increasing over the past few years. Additionally, the FDIC estimates that each notice would require 30.5 labor hours at an hourly cost of $142.40 and that each request to rebut the presumption of control would require 15 labor hours at an hourly cost of $111.40, which is far lower than actual anticipated costs.[24] This estimate does not appear to take into account the significant likelihood of different determinations by the FDIC and the Federal Reserve Board, which would significantly increase legal costs.

Furthermore, the impact of waiting periods that would result from the Proposed Rule are significant. Restricting acquisitions of securities for an extended review period would impact the ability of portfolio managers to follow specific investment mandates for clients and negatively impact end investors in the form of increased portfolio risk and decreased investment returns.

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[22] *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 30 (2020) (internal quotations omitted).

[23] 89 Fed. Reg. 67002, 67006 (2024).

[24] *Id.*

Bank-focused strategies and funds would be significantly curtailed. Large asset managers might determine to place artificial limitations on client investments to avoid CBCA notices subject to an uncertain process.

Finally, the Proposed Rule could harm FDIC-supervised depository institutions and their parent holding companies by impeding the ability of such funds to invest in these depository institutions and their parent holding companies and distorting market liquidity through, for example, the absence of stable shareholders, yet the Proposed Rule contains no discussion or analysis on this point. For example, it would limit the ability to offer private investment in public equity deals (PIPE deals) for FDIC-supervised institutions and their parent holding companies, because these deals are often executed in short time frames.

III. Request for Comments on Certain Questions

A. Question 1 – Should the FDIC require prior written notice at the bank level when the change of control occurs at the holding company level?

As previously indicated, written notice at the bank level should not be required when the change of control occurs at the parent holding company level. Putting aside the considerable question of statutory authority, this would create a duplicative notice obligation and create a potentially inconsistent review process where the Federal Reserve Board and the FDIC review the same information and reach different conclusions or impose inconsistent requirements. There is no added benefit to the banking system by having the FDIC receive the same notices and undertake a parallel review process pursuant to the same statutory factors. Furthermore, the FDIC and the Federal Reserve Board could ask for different information in the course of their review of the notice for the same acquisition of voting securities, unnecessarily adding further complexity and costs to the filing process and exacerbating the likelihood of the agencies engaging in different analyses and reaching inconsistent conclusions.

Therefore, the FDIC should continue its longstanding practice of not requiring a notice in circumstances where the Federal Reserve Board has determined that an investor has rebutted the presumption of control, including by entering a passivity agreement.

B. Question 4 – Does the existing and proposed regulatory and supervisory framework properly consider all aspects of the role played by investors with FDIC-supervised institutions in the context of the CBCA?

The FDIC has not provided any examples or evidence that the existing framework system no longer works. In addition, the Proposed Rule creates a supervisory framework where investors are subject to duplicative filings and a dual review process. This fails to recognize the need for prompt and certain action regarding the acquisition of shares to ensure that investors and banks can continue to rely on capital markets for their investment and funding needs.

C. Question 11 – Should the FDIC enter into blanket passivity agreements with investors that apply to the entire portfolio of the FDIC-supervised institutions in the fund complex or require separate agreements for each FDIC-supervised institution? What should the FDIC consider when making this determination?

Passivity agreements should apply to all investments by a fund complex. We are unaware of any supervisory benefits associated with separate agreements for each FDIC-supervised institution, but there are clearly costs imposed by this approach. Absent some clearly articulated and empirically supported reason for having separate agreements for each FDIC-supervised institution, passivity agreements should apply across the entire portfolio of investments. The FDIC's process for obtaining passivity agreements should be handled in a timely manner, the conditions should be uniform among similarly situated parties, and the process should be well defined and transparent.

The FDIC should understand that fund managers are already accustomed to making a determination of whether they are investing for the purpose of changing or influencing control, or whether they are seeking to make only a passive investment, by virtue of their familiarity with the Securities and Exchange Commission's ("SEC") beneficial ownership reporting requirements.

Pursuant to Section 13(d) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 13d-1 thereunder, beneficial owners of five percent or more of any class of voting equity securities registered pursuant to Section 12 of the Exchange Act are generally required to make a public filing in respect of that ownership on Schedule 13D. However, Rule 13d-1 permits certain types of institutional investors, such as SEC-registered investment advisers and SEC-registered investment companies, to instead make a short-form filing on Schedule 13G provided that such person "has acquired such securities in the ordinary course of the person's business and not with the purpose nor with the effect of changing or influencing the control of the issuer, nor in connection with or as a participant in any transaction having such purpose or effect." To the extent a fund or manager has previously acquired securities of an issuer with a passive intent and then decides to "go active," Rule 13d-1 requires such fund or manager to file a Schedule 13D filing within five business days.

We believe incorporating this existing framework with which funds, managers, and issuers are already familiar provides substantial benefits of clarity and efficiency for both funds and the FDIC.

D. Question 12 – Are institutional investors, fund complexes asset managers or other large, passive shareholders directing the management or policies of FDIC-supervised institutions as a result of their voting securities holdings?

As fiduciaries, our members invest client assets for the benefit of their clients and for the purpose of investment, and not "to direct the management or policies of an insured depository institution."[25] For example, our members make voting decisions pursuant to broad-based voting guidelines that are designed to drive long-term value for investors in our members' funds. As fiduciaries, our members are required by law to make those voting decisions in the best interests of their clients in accordance with those voting guidelines. The Proposed Rule generally mentions that "there have

[25] 12 U.S.C. 1817(j)(8)(B).

been changes to proxy access and discretionary broker voting that have given fund complexes more potential for control," but the FDIC has not found that institutional managers, investing on behalf of their clients, are seeking to direct the management or policies of FDIC-supervised institutions.

E. Question 13 – Are investors coordinating voting or otherwise acting in concert in ways that the FDIC should be monitoring more closely?

As noted in the response to Question #12, when our members exercise voting rights in, and engage with, depository institutions, they do so as fiduciaries on behalf of their clients for the purpose of investment. The Proposed Rule cites no evidence that asset managers are coordinating their voting with other investors or otherwise acting in concert with respect to their investments in FDIC-supervised institutions and their holding companies. We are unaware of any SIFMA AMG members coordinating their voting or otherwise acting in concert.

F. Question 15 – Has concentrated ownership of FDIC-supervised institutions and their affiliates affected banking sector competition?

There is no evidence that ownership of FDIC-supervised institutions has affected banking sector competition. This "common ownership theory" is unsettled among economists and academics, with research on the subject to date proving contradictory and unpersuasive. We urge the FDIC to refrain from prematurely enacting policy on the basis of a speculative theory, which could prove detrimental to the millions of Americans who rely on investments for retirement, education, and other types of savings.

G. Question 18 – Should the FDIC limit the voting power of persons who acquire 10 percent or more of a class of voting securities of an FDIC-supervised institution or its parent company?

The FDIC should not unilaterally limit the voting power of persons who acquire 10 percent or more of a class of voting shares of an FDIC-supervised institution or its parent company, effectively changing the definition of control under the CBCA. Imposing this restriction on asset managers would have several negative consequences. First, as previously noted, unilateral changes to the CBCA regulations by the FDIC will cause inconsistent results in the notice and review process if an institution is FDIC-supervised. Any action that would change the definition of control under the CBCA should be the result of an interagency notice-and-comment process to ensure that these types of inconsistencies do not occur. Second, imposing this arbitrary limit on voting power will discourage investors from acquiring voting securities of an FDIC-supervised depository institutions or its parent holding company and thus will adversely impact the ability of the banking industry to raise capital. Finally, this limited voting approach would be inconsistent with the interpretation of control under the Bank Holding Company Act of 1956 ("BHC Act") and the Federal Reserve Board's Regulation Y, which generally permit investors to vote shares above 10 percent (but less than 25 percent) depending upon other indicia of control. This could have potentially broader implications for investors in insured depository institutions and their parent holding companies and control determinations under the BHC Act.

IV. Alternative Approach to Proposed Rule.

For the reasons noted above, SIFMA AMG believes that the Proposed Rule should be withdrawn, and no further action is warranted with respect to the notice requirements under the CBCA.

If, as a result of a good faith interagency review process, the FDIC, Federal Reserve Board and the OCC determined to move forward with proposed changes to CBCA notifications, the agencies should issue a joint proposal that takes into account the views of other relevant regulators, including the SEC and the Treasury Department.

To the extent a reasoned interagency process identifies specific concerns, any proposed changes to the current CBCA notice requirements and agency review process should be calibrated to ensure that the federal banking agencies are consistently applying the same review standards. In addition, the notice and the review process established by the agencies' regulations should ensure that interpretations of the CBCA and its control provisions remain consistent with the definition of control under the BHC Act and Regulation Y. Creating uncertainty for investors under the CBCA or the BHC Act would have significant adverse capital and liquidity consequences for insured depository institutions and their parent companies. The appropriate way to avoid these adverse consequences is through an interagency joint notice-and-comment process.

Finally, in order to assess the impact of proposed regulatory changes on the banking industry, asset managers, and end investors in funds, the interagency process should include dialogue with the asset management and banking industries before any regulatory action is taken to understand (i) the role of asset managers and the nature of their investments generally, (ii) how asset managers engage with companies in which they invest on behalf of clients, and (iii) the critical differences between asset managers and other types of investors in banks.

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On behalf of SIFMA AMG, we appreciate the opportunity to respond to the Proposed Rule and your consideration of our recommendations. If you have any questions or require additional information, please do not hesitate to reach out to Lindsey Keljo at 202-962-7312 or LKeljo@sifma.org.

Respectfully submitted,

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