

MEMO# 35907

October 29, 2024

ICI and ICI Southwest File Joint Comment Letter on FDIC Proposal Relating to Regulated Fund Investments in Banking Organizations

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TO: ICI Members
Investment Company Directors
Bank-Affiliated Member Advisory Committee
SEC Rules Committee SUBJECTS: Bank Regulation
Compliance
Investment Advisers RE: ICI and ICI Southwest File Joint Comment Letter on FDIC Proposal Relating to Regulated Fund Investments in Banking Organizations

ICI and ICI Southwest have submitted a [comment letter](#) to the Federal Deposit Insurance Corporation (FDIC) on its proposal to amend the agency's existing regulations under the Change in Bank Control Act (CBCA).^[1] This memorandum briefly explains the Proposal and summarizes the letter.

FDIC Proposal^[2]

When investment in a banking organization reaches a certain threshold, the federal banking agencies are required to consider whether the investor could exercise a controlling interest over the banking organization. Many fund complexes have obtained relief from the Federal Reserve Board (FRB) to acquire up to a specified percentage of the voting stock of a banking organization without the funds or their adviser being deemed to control the banking organization. The relief is conditioned on "passivity commitments" designed to mitigate the ability of the funds and their adviser to control, or exercise a controlling influence over, a banking organization. Fund complexes with this relief are not required to file CBCA notices with the FRB.

The FDIC's current regulations state that an investor is exempt from providing a CBCA notice to the FDIC for transactions in which the FRB reviews a CBCA notice. The Proposal would remove that exemption. In the preamble to the Proposal, the FDIC states that the exemption's original purpose of avoiding "duplicative regulatory review of the same

transaction by both the FRB and the FDIC" is "no longer warranted in light of the widespread impacts resulting from growth in, and changes to the nature of, passive investment strategies." The preamble further states that the FDIC "is committed to engaging in dialogue and coordination with the FRB and the Office of the Comptroller of the Currency to develop an interagency approach to the issues discussed in this proposal."

Letter from ICI and ICI Southwest

The joint letter expresses concern that the FDIC seeks unilaterally to upset the decades-long interagency administration of the CBCA by the federal banking agencies. It states that the FDIC would do so without any demonstration of need to alter long-established practices and in a manner that would impose costs and burdens for regulated funds, their investors and the US economy, and potentially restrict flows of capital to US banking organizations, all without discernable benefits. The letter makes the following points:

- The Proposal is inconsistent with the statutory structure of the CBCA and the FDIC's decades-long policies and practices with respect to the CBCA. Congress's intent in drafting the CBCA, the resulting statutory structure, and the FDIC's longstanding policies and practices in carrying out the CBCA clearly demonstrate that the FDIC should not require a duplicative CBCA notice when an investor files a notice with the FRB.
- The Proposal does not accord with the FDIC's historical interagency approach to implementing the CBCA. The FDIC has, since the CBCA's enactment, generally taken an interagency approach to CBCA issues. Based on this history, and because each of the federal banking agencies has responsibility for questions of bank control, the FDIC's decision to release the Proposal on its own and its other unilateral actions with respect to passivity agreements are inappropriate. Rather than altering the current regulatory exemption for transactions in which the FRB reviews a CBCA notice, the FDIC should retain the exemption. Similarly, the FDIC should codify its longstanding practice not to require CBCA notices for transactions for which the FRB has determined a CBCA notice is not required, such as pursuant to passivity commitments entered into by an investor
- The Proposal does not serve any regulatory purpose; rather, it is a solution in search of a problem. The Proposal's motivations related to passive investing are unfounded, and the FDIC already has visibility into indirect investments in FDIC-supervised institutions. As such, the Proposal would create a duplicative regulatory process with no apparent benefit.
- The Proposal's costs outweigh its benefits. The Proposal would impose significant costs by:
 - (1) discouraging investments in FDIC-supervised institutions, thus harming those institutions and the economy;
 - (2) raise compliance costs and lower returns for investors in banking institutions; and
 - (3) require an extensive reallocation of labor within the FDIC to handle duplicative work.These costs significantly outweigh any potential benefits associated with the Proposal, which benefits have not been explained in the Proposal.

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Notes

[1] FDIC, Regulations Implementing the Change in Bank Control Act, 89 Fed. Reg. 67002 (Aug. 19, 2024) (Proposal).

[2] A more detailed summary of the proposal is provided in [ICI Memorandum 35805](#) (August 13, 2024).

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