



United States House of Representatives
One Hundred Eighteenth Congress
Committee on Financial Services
2129 Rayburn House Office Building
Washington, DC 20515

October 29, 2024

The Honorable Martin J. Gruenberg
Chairman
Federal Deposit Insurance Corporation
550 17th Street, NW,
Washington, D.C. 20429

Dear Chairman Gruenberg:

On July 30, 2024, the Board of the Federal Deposit Insurance Corporation (FDIC) voted on partisan lines to approve Director Chopra's proposal to issue a Notice of Proposed Rulemaking (NPRM) to amend the FDIC's regulations implementing the Change in Bank Control Act (CBCA).¹ The proposal amends FDIC regulations by eliminating a provision² that currently exempts firms from providing notice to the FDIC when acquiring voting securities of a depository institution holding company if the Board of Governors of the Federal Reserve System is already reviewing a notice pursuant to the CBCA.³

After issuing the NPRM, the FDIC extended the comment period from October 18, 2024 to November 18, 2024, to allow additional time for the public and stakeholders to provide input on the rule.⁴ Despite the extended comment period, it is our understanding the FDIC is requiring asset management firms to enter into new passivity agreements with the agency no later than October 31, 2024 or potentially be found in noncompliance. The FDIC is taking such action almost three weeks before the comment file closes.⁵ Additionally, it is unclear whether the new requirements imposed in the NPRM have been approved by the entire FDIC Board, or the extent to which there is interagency coordination.

To be clear, interagency coordination on this issue is critical. Director Hsu did not support the first CBCA amendment proposal submitted by Director Chopra on April 25, 2024 stating "[the FDIC should not be] creating more process and opportunities for turf battles or

¹ Fed. Deposit Insurance Corp., Regulations Implementing the Change in Bank Control Act, 89 Fed. Reg. 67002 (August 19, 2024) (notice of proposed rulemaking).

² 12 C.F.R. § 303.84(a)(8)

³ 89 Fed. Reg. 67002 (Aug. 19, 2024).

⁴ Fed. Deposit Insurance Corp., Regulations Implementing the Change in Bank Control Act; Extension of Comment Period, 89 Fed. Reg. 84,108 (October 21, 2024) (notice of proposed rulemaking; extension of comment period).

⁵ Evan Weinberger, *FDIC Plan to Review Vanguard, BlackRock Bank Stakes Draws Fire*, BLOOMBERG LAW, Oct. 21, 2024, <https://news.bloomberglaw.com/banking-law/fdic-plan-to-review-vanguard-blackrock-bank-stakes-draws-fire>.

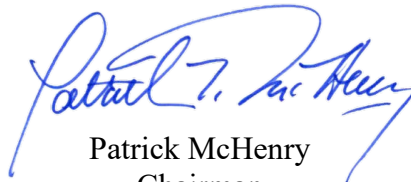
fragmentations.”⁶ In fact, when Director Chopra proposed the change for a second time on July 30, 2024, Director Hsu stated that “the NPRM includes a commitment by the FDIC to work with the Federal Reserve Board and the OCC to develop an interagency approach.... Should the agencies agree upon an approach, I would expect them to issue an interagency NPRM prior to finalizing.”⁷

The FDIC’s actions to move forward on a rule without accommodating full input from all FDIC Directors nor substantively reviewing public comments raise serious legal questions regarding the agency’s internal rulemaking processes.

To that end, please produce any documents provided to asset management firms related to the proposed amendments to the CBCA in question, including the letters and term sheets sent to such firms on August 2, 2024 and October 4, 2024, respectively. Additionally, please provide a briefing to Committee staff to address the justification for the enforcement of passivity agreements by October 31, 2024, and any interagency and intra-FDIC dialogue on the NPRM.

Please provide the briefing and produce the aforementioned documents no later than 5:00 p.m. on November 8, 2024. The Committee on Financial Services has jurisdiction to oversee the activities of the Federal Deposit Insurance Corporation pursuant to Rule X of the Rules of the House of Representatives. Thank you for your attention to this important matter.

Sincerely,



Patrick McHenry
Chairman



Bill Huizenga
Chairman of the Subcommittee on
Oversight and Investigations



Andy Barr
Chairman of the Subcommittee on
Financial Institutions and
Monetary Policy

⁶ Michael J. Hsu, Acting Comptroller of the Currency, Office of the Comptroller of the Currency, Statement on the FDIC’s Proposals Related to Change in the Bank Control Act (April 25, 2024).

⁷ Michael J. Hsu, Acting Comptroller of the Currency, Office of the Comptroller of the Currency, Statement at the FDIC Board Meeting Proposal Regarding the Change in Bank Control Act Regulations and Procedures (July 30, 2024).