U.S. Chamber of Commerce

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April 22, 2024

Jonathan McKernan
Director
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

Re: FDIC Monitoring of Investment Funds' Passivity Agreements

Dear Director McKernan:

The U.S. Chamber of Commerce ("Chamber") writes to comment on reports of your intention to request the Federal Deposit Insurance Corporation ("FDIC") vote on a resolution that directs the FDIC's Division of Risk Management Supervision to develop a plan to "regularly examine large asset managers with a stake of more than 10% in FDIC-regulated banks to ensure they are not improperly influencing bank operations."[1] If this plan is instituted – whether in a new rule or guidance – it is essential that stakeholders are given an opportunity to provide robust input through a public notice and comment process.

The FDIC, Federal Reserve Board ("FRB"), and the Office of the Comptroller of the Currency ("OCC") maintain rules and guidance governing passivity commitments issued to asset managers. These commitments allow certain asset managers to invest in a bank up to a certain threshold without being deemed in "control" of that bank under various banking laws. Asset managers are currently required to self-certify that they comply with their passivity commitments. If an investment company is ever deemed to be non-compliant with the Bank Holding Company Act, the Change in Bank Control Act, or Regulation O, it could be subject to additional oversight from the federal banking regulators and prudential banking requirements that are neither designed for nor consistent with its business model, including capital and liquidity requirements required of a bank holding company as well as significant additional investment restrictions.

Recognizing that the FDIC's approach to passivity commitments has been the result of a variety of interagency rulemakings, statements, agreements, and other

[1] "US bank regulator eyes scrutiny of asset manager stakes in banks," Reuters (April 2, 2024), available at https://www.reuters.com/business/finance/us-regulators-probe-role-asset-managers-banks-wsj-2024-04-02/.

guidance over the past decades, we strongly encourage the FDIC to employ care as it considers possible changes to its processes for overseeing passivity commitments. The draft plan under consideration[2] shows a wide range of asset management acts, practices, policies, and programs that could come under FDIC scrutiny through a potential monitoring plan, some of which may be considered subjective or otherwise not provide clarity to the market. As part of its assessment, the FDIC should also evaluate and make publicly available for comments its analysis regarding the extent to which any change to passivity agreements or new methods for assessing funds' compliance with such agreements could have consequences beyond asset managers, including for our banking system and capital markets. Any concerns regarding passivity should not disrupt the important role that asset managers and other investors play in supporting robust liquidity for shares of publicly traded banking organizations.

Moreover, as part of what we hope will be a careful and deliberative process, it is essential that the FDIC closely coordinate with the FRB and OCC to ensure any changes to the FDIC's processes do not create conflicting or duplicative requirements. Considering the attendant impacts of any rule changes on asset managers and possibly investors, the FDIC should also coordinate with the Securities and Exchange Commission ("SEC"). As the primary regulator of asset managers, the SEC can provide expertise on the market for index funds while also presenting their views on a potential increase in oversight and enforcement of asset managers by an agency not their primary regulator.

Thank you for your attention to these comments. Should the FDIC decide to move forward in developing a plan to monitor asset managers' compliance with passivity commitments, the Chamber stands ready to provide additional input.

Sincerely,

Tom Quaadman
Executive Vice President
Center for Capital Markets Competitiveness
U.S. Chamber of Commerce

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[2] "FDIC's McKernan Offers Plan to Review BlackRock and Vanguard's Bank Stakes," Capitol Account (April 3, 2024), available at https://www.capitolaccountdc.com/p/fdics-mckernan-offers-plan-to-review.