RESOLUTION

WHEREAS, the Change in Bank Control Act (the "CBCA"), section 7(j) of the Federal Deposit Insurance Act (12 U.S.C. § 1817(j)), generally provides that no person shall acquire control of any insured depository institution unless the person has provided the appropriate Federal banking agency prior written notice of the transaction and the banking agency has not disapproved of the proposed transaction; and

WHEREAS, the FDIC has issued rules and regulations at subpart E of part 303 (12 C.F.R. §§ 303.80–.88) (the "FDIC's CBCA Rules") that set forth the applicable filing requirements and processing procedures for a notice to acquire direct or indirect control of a State nonmember insured bank or State savings associations (each such bank or association, an "FDIC-supervised institution") pursuant to the CBCA (a "Notice"); and

WHEREAS, companies that sponsor, manage, or advise investment companies, other pooled investment vehicles, and institutional accounts, including some advised by third-party managers (each such company, vehicle, or account, a "fund," and, together with the company that sponsors, manages, or advises one or more funds, a "fund complex") acquire and hold the voting securities of FDIC-supervised institutions (each such bank or association, an "FDIC-supervised institution") and controlling affiliates of FDIC-supervised institutions; and

WHEREAS, the FDIC has provided or entered into, and may in the future provide or enter into, statements, agreements, and other regulatory comfort that fund complexes rely on to acquire and hold up to a specified percentage of the voting securities of one or more FDIC-supervised institution, or a controlling affiliate of an FDIC-supervised institution, without being considered to control directly or indirectly the FDIC-supervised institution for purposes of certain Federal banking laws enforced by the FDIC (each such existing or future statement, agreement, or other regulatory comfort, "FDIC control comfort"); and

WHEREAS, FDIC control comfort includes the passivity agreements between and among the FDIC and one or more fund complexes; and

WHEREAS, a fund complex's reliance on FDIC control comfort is conditioned on its compliance with the passivity commitments or other conditions included in the FDIC control comfort; and

WHEREAS, due in part to the growing popularity of funds that track the S&P 500 index and other stock indexes, several of these fund complexes have experienced recently large

increases in their holdings of voting securities of FDIC-supervised institutions or their controlling affiliates;[1] and

WHEREAS, several of these fund complexes have proposed, without being deemed to control an FDIC-supervised institution for purposes of certain Federal banking laws, to increase their holdings in some controlling affiliates of FDIC-supervised institutions to as much as 24.9 percent of a class of voting securities and to have director representation on the board of directors of controlling affiliates; and

WHEREAS, the growing role played by these fund complexes raises important policy issues, including as to whether any fund complex might alone, or acting in concert with another fund complex or any other person, control directly or indirectly an FDIC-supervised institution for purposes of certain Federal banking laws enforced by the FDIC; and

WHEREAS, the FDIC's program for monitoring compliance with the passivity commitments and other conditions of FDIC control comfort relies primarily on periodic certifications of compliance by the applicable fund complex; and

WHEREAS, the CBCA gives the FDIC authority to take depositions, issue subpoenas, and take other steps to investigate whether a person has violated, or is about to violate, the prohibition on any person acquiring control directly or indirectly of an FDIC-supervised institution (including through any of its controlling affiliates) unless the FDIC has been given at least 60-days prior written notice and, within that time, the FDIC has not disapproved the proposed acquisition; and

WHEREAS, pursuant to the exemption under 12 C.F.R. § 303.84(a)(8), an acquisition of voting securities of a depository institution holding company for which the Board of Governors of the Federal Reserve System (the "Board of Governors") reviews a Notice does not require a Notice to the FDIC under the FDIC's CBCA Rules; and

WHEREAS, "the FDIC's longstanding practice [is] to recognize this exemption only when the Board of Governors actually reviews a Notice under the Change in Bank Control Act

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[1] Lucian A. Bebchuk & Scott Hirst, Big Three Power, and Why It Matters, 102 B.U. L. REV. 1547, 1552 (2022) ("[W]e estimate that, as of the end of 2021, the Big Three [Vanguard, BlackRock, and State Street] collectively held a median stake of 21.9% in S&P 500 companies, which represented a proportion of 24.9% of the votes cast at the annual meetings of those companies."); Lucian A. Bebchuk & Scott Hirst, The Specter of the Giant Three, 99 B.U. L. REV. 721, 736 (2019) ("[T]he average share of the votes cast at S&P 500 companies at the end of 2017 was 8.7% for BlackRock, 11.1% for Vanguard, and 5.6% for [State Street] . . . . As a result, for S&P 500 companies, the proportion of the total votes that were cast by the Big Three was about 25.4% on average . . . .").

and not when the Board of Governors does not require and review a Notice," and "[a]ccordingly, if the Board of Governors determines to accept passivity commitments in lieu of a Notice, the FDIC will evaluate the facts and circumstances of the case to determine whether a Notice is required to be filed with the FDIC for the indirect acquisition of control of an FDIC-supervised institution"[2]; and

WHEREAS, the Board of Governors has determined to accept passivity commitments in lieu of Notices from at least two large fund complexes;[3] and

WHEREAS, the Board of Directors of the FDIC ("Board") has determined it is appropriate to enhance the FDIC's monitoring of compliance with the passivity commitments and other conditions of the FDIC control comfort provided to, or otherwise applicable to, any fund complex that (i) sponsors or manages one or more funds that track a broad-based equity index and (ii) owns or otherwise controls more than 5 percent of a class of voting securities of a large number of FDIC-supervised institutions or their controlling affiliates (each such fund complex, a "covered fund complex"); and

WHEREAS, the Board has determined that it should provide notice to covered fund complexes that the FDIC will begin requiring the covered fund complex to either (i) file a Notice with the FDIC with respect to any acquisition of voting securities of any FDIC-supervised institution, or its depository institution holding company, that equals or exceeds 10 percent of the class of that voting securities and thus gives rise to a presumption of control under the FDIC's CBCA Rules or (ii) rebut that presumption with respect to each such acquisition.

NOW, THEREFORE, BE IT RESOLVED, that the Board, on behalf of the FDIC, hereby suspends as of October 31, 2024, each passivity commitment or other similar arrangement with a covered fund complex, after which any such arrangements, and the corresponding rebuttal of the presumption of control, will continue only with respect to the

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[2] *See* Filing Requirements and Processing Procedures for Changes in Control With Respect to State Nonmember Banks and State Savings Associations, 80 Fed. Reg. 65,889, 65,897 (Oct. 28, 2015) ("The final rule also continues the FDIC's longstanding practice to recognize this exemption [under 12 C.F.R. § 303.84(a)(8)] only when the Board of Governors actually reviews a Notice under the Change in Bank Control Act and not when the Board of Governors does not require and review a Notice. Accordingly, if the Board of Governors determines to accept passivity commitments in lieu of a Notice, the FDIC will evaluate the facts and circumstances of the case to determine whether a Notice is required to be filed with the FDIC for the indirect acquisition of control of an FDIC-supervised institution.").

[3] *See* Letter from Mark E. Van Der Weide, General Counsel, Federal Reserve Board, to William J. Sweet, Jr., Retired Partner, Skadden, Arps, Slate, Meagher, and Flom LLP (Dec. 3, 2020) (BlackRock); Letter from Mark E. Van Der Weide, General Counsel, Federal Reserve Board, to Anne E. Robinson, Managing Director, General Counsel, and Secretary, The Vanguard Group, Inc. (Nov. 26, 2019) (Vanguard).

holdings of voting securities in the covered institutions listed in the covered fund complex's most recently executed self-certification to the FDIC, up to the percentage limitation included in that arrangement.

BE IT FURTHER RESOLVED, that the Board hereby directs the Director of the Division of Risk Management Supervision (Director, RMS), or designee, to begin after October 31, 2024, requiring each covered fund complex to either (i) file a Notice with the FDIC with respect to any acquisition of voting securities of any FDIC-supervised institution, or its depository institution holding company, that equals or exceeds 10 percent of the class of that voting securities and thus gives rise to a presumption of control under the FDIC's CBCA Rules or (ii) rebut that presumption with respect to each such acquisition.

BE IT FURTHER RESOLVED, that the Board hereby reserves to itself the approval of the FDIC's acceptance of any passivity commitment or other similar arrangement with any covered fund complex to rebut the presumption of control under the FDIC's CBCA Rules.

BE IT FURTHER RESOLVED, that the Board hereby authorizes and directs the Executive Secretary, or designee, to execute, on behalf of the FDIC, letters, substantially in the form attached as Attachment 1 to the memorandum submitted to the Board in connection with this matter, and include as appropriate the language included in that form applicable if the covered fund complex has an existing any passivity commitment or other similar arrangement with the FDIC.

BE IT FURTHER RESOLVED, that the Board hereby authorizes and directs the Director, RMS, or designee, to deliver the applicable letter to each covered fund complex.

BE IT FURTHER RESOLVED, that the Board hereby authorizes and directs the Executive Secretary, or designee, with the concurrence of the General Counsel, or designee, to make such technical, nonsubstantive, or conforming changes to the text of the letters prior to execution of the letters and their delivery as they deem necessary or appropriate.

BE IT FURTHER RESOLVED, that the Board hereby authorizes the Executive Secretary, or designee, or the Director, RMS, or designee, in each case with the concurrence of the General Counsel, or designee, to execute such documents and take such other actions as they deem necessary or appropriate to carry out the Board's objectives with respect to the foregoing.