



July 15, 2019

VIA ELECTRONIC SUBMISSION

Ann E. Misback
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

Re: Control and Divestiture Proceedings (Federal Reserve Board Docket No. R-1662, RIN 7100-AF 49)

Dear Ms. Misback:

The American Investment Council (the "AIC") appreciates the opportunity to submit this letter to the Board of Governors of the Federal Reserve System (the "FRB") on the notice of proposed rulemaking (the "Proposal") regarding the definition of control under the Bank Holding Company Act ("BHC Act") and the Home Owners' Loan Act ("HOLA").¹

The AIC is an advocacy, communications, and research organization established to advance access to capital, job creation, retirement security, innovation, and economic growth by promoting responsible long-term investment. In this effort, the AIC develops, analyzes, and distributes information about the private equity and private credit industry and its contributions to the U.S. and global economy. Established in 2007, and formerly known as the Private Equity Growth Capital Council, the AIC is based in Washington, DC. The AIC's members are the world's leading private equity and private credit firms, united by their commitment to growing and strengthening the businesses in which they invest.²

Investments by our member institutions provide an important source of capital to banking organizations and, in particular, community and regional banking organizations. For example, the Federal Deposit Insurance Corporation has acknowledged that private investors can provide significant support to struggling

¹ Control and Divestiture Proceedings, 84 Fed. Reg. 21634 (May 14, 2019).

² For further information about the AIC and its members, please visit our website at <http://www.investmentcouncil.org>.

institutions.³ In the aftermath of the financial crisis, private equity investors provided approximately \$7 billion of new equity capital into the banking system.⁴ These investments were extremely successful in improving banking organizations, earning a median annualized rate of return of 13.83%.⁵

Introduction

The Proposal is intended to simplify and make transparent the FRB's standards for determining whether one company has the power to exercise a controlling influence over the management or policies of another company and therefore controls the other company for purposes of the BHC Act and HOLA.⁶ In large part, the Proposal would codify a significant portion of the FRB's relevant practices and precedents but would also make certain targeted adjustments thereto.⁷

The AIC appreciates the FRB's efforts to increase the simplicity, transparency, and consistency of the FRB's, and its staff's, interpretation of the controlling influence prong of the definition of control under the BHC Act and HOLA. The AIC also supports the FRB's reconsideration of, and willingness to make adjustments to, certain past precedent. The proposed rules regarding divestiture of control, for example, would not only provide added clarity but also would acknowledge that FRB precedent has been unduly restrictive. The AIC encourages the FRB similarly to reconsider other aspects of the Proposal that would introduce uncertainty regarding, or otherwise unnecessarily restrict, investments in banking organizations. This letter explains how aspects of the Proposal would have such an effect and respectfully requests amendments that would address these concerns and allow the final rule to better facilitate non-controlling investments in banking organizations.

In response to the invitation for comments, the AIC respectfully requests that the FRB modify the following aspects of the proposed control framework to avoid unnecessarily discouraging private investment.

- I. The FRB should provide additional flexibility for business relationships, which the AIC believes are needlessly constricted in the Proposal.

³ Final Statement of Policy on Qualifications for Failed Bank Acquisitions, 74 Fed. Reg. 45440, 45440 (Sept. 2, 2009) (“The FDIC is aware of the need for additional capital in the banking system and the contribution that private equity capital could make to meeting this need...”).

⁴ Robert DeYoung et al., Private Equity Investment in U.S. Banks at 2 (Mar. 18, 2018) (unpublished manuscript), <https://business.depaul.edu/about/centers-institutes/financial-services/Documents/DeYoung%20Kowalik%20Torna.pdf>.

⁵ *Id.* at 32.

⁶ *See, e.g.*, memorandum from FRB staff regarding the Proposal (Apr. 16, 2019).

⁷ *See, e.g., id.*

- II. The FRB should permit investors to use typical minority protective rights to ensure their investment expectations are fulfilled. These rights are vital investment safeguards that do not give rise to controlling influence concerns.
- III. The FRB should raise the total and voting equity control thresholds to allow for more meaningful private investment, and modify the total equity presumption to reflect the statutory presumption of non-control where investors hold less than 5% ownership of a class of voting securities.
- IV. Other aspects of the total equity calculation should be revised to remove unnecessary uncertainty that will chill investment. Specifically, the calculation of total equity should be clarified by eliminating the “functionally equivalent to equity” test and the requirement to recalculate total equity should be modified to ensure control does not result merely from the action of third parties.
- V. The FRB should permit additional director representation and management interlocks to encourage investment and to allow banking organizations access to the expertise of their investors.
- VI. The FRB should consider the absence, as well of the presence, of indicia of control in making determinations under the controlling influence test, which would more faithfully adhere to the BHC Act, HOLA, and FRB precedent as well as provide additional flexibility.
- VII. The FRB should revise the exclusion from the presumptions for shares held in a fiduciary capacity to adhere more closely to those statutory exclusions and, therefore, ensure acquisitions made in a fiduciary capacity are not unduly restricted.
- VIII. The FRB should not disturb existing investments by applying new presumptions retroactively and should provide blanket passivity commitment relief to avoid unnecessary and unjust compliance burdens.

* * *

I. The final rule should permit additional flexibility with respect to business relationships.

The Proposal includes an unduly restrictive approach regarding business relationships, which the FRB should adjust to allow private equity and private credit firms to have mutually beneficial dealings with banking organizations.

In making its control determinations, the FRB has historically considered both the size and nature of business relationships between two companies, as well as whether

they are on market terms.⁸ This approach was based on the rationale that a “substantial” business relationship, such as one on which the banking organization depends, could give an investor the means to influence a company’s management and policies.⁹

In an attempt to codify this treatment, the Proposal presents a tiered approach when an investor holds 5% or more of any class of voting securities in a company. Control would be presumed if the amount of an investor’s business relationships with the company exceeds certain specified revenue and expense thresholds for either the investee company or investor.¹⁰

These proposed restrictions on business relationships would significantly limit the ability of investors with relatively minor percentages of voting equity to maintain ordinary-course lending, deposit, and other mutually beneficial relationships with banking organizations. Based on the revenues and expenses of the investee banking organization, even the 10% threshold generally would not appear to capture the significant counterparties of most organizations. Moreover, the Proposal would include within the calculation business relationships that, as the FRB has recognized, do not provide the ability to exert a controlling influence, such as debt that is payable on demand and business relationships that are easily replaced.

Moreover, the annual revenue and expenses test is inappropriate for private equity and private credit. Revenues and expenses in many years for private equity and private credit may be relatively minor, especially considered in light of the funds’ assets under management (“AUM”). Private equity and private credit make long-term investments, and returns on those investments generally are not realized for many years. Similarly, annual expenses associated with operating these funds are de minimis. Therefore, the proposed metrics, even on a consolidated basis, would overstate the importance of the business relationship to the investor (and, of course, be of no direct relevance to the investee banking organization). This problem is particularly acute for smaller fund complexes, where revenues may have greater year-to-year variations.

In addition, the required monitoring of annual revenue and expenses would not only add burden and thereby chill investment, but it would also encourage unnecessary involvement of the investor in the investee.

Therefore, we recommend the following modifications to address these issues:

- Eliminate investor measures. The presumption should not consider the revenues or expenses of the investor. For the reasons explained above, this

⁸ See 84 Fed. Reg. at 21641.

⁹ See *id.*

¹⁰ See 84 Fed. Reg. at 21658-59 (to be codified at 12 C.F.R 225.32(d)(4), (e)(3)(ii), (f)(4)).

change is vital to continue to allow business relationships between private investors and banking organizations. Moreover, investor-based measures are not relevant to the ability of any investor to control another company. If investor-based measures are not eliminated entirely, then, at a minimum, another metric for asset managers should be used, such as consolidated assets under management.

- Increasing the thresholds. The proposed business relationship thresholds should be modified as follows: (1) no restrictions for investments of 9.99% or less of any class of voting securities; (2) 20% of the second company's revenues for investments of 10% to 14.99% of any class of voting securities; and (3) 10% of the second company's revenues for investments of 15% to 24.99% of any class of voting securities. We understand that these figures are consistent with what other commenters will suggest.
- Eliminating ongoing monitoring. The FRB should allow firms to comply with the business relationships requirement by relying on the information available at the time a voting equity threshold is crossed. This approach would make monitoring, and the additional involvement in the banking organization, unnecessary. Thus, parties could negotiate only for the information most relevant to their investment and other business relationships.
- Excluding arms-length relationships. Consistent with FRB precedent,¹¹ the presumption should be modified to exclude arms-length, non-exclusive business relationships, including those where comparable relationships are available from independent third parties in competitive markets and the relationship is on market terms. These would include, for example, common forms of deposit relationships and debt securities.

II. Passive investors should be permitted contractual rights to protect their interests and economic expectations for the investment.

The Proposal would presume control where an investor with 5% or more of any class of voting securities of a company has one or more "limiting contractual right[s]."¹²

¹¹ The FRB has recognized that arms-length relationships present reduced control concerns in the past. *See, e.g.*, FleetBoston Financial Corp, Order Approving the Acquisition of Shares of a Bank Holding Company, 86 Fed. Res. Bull. 751, 754 (Nov. 2000) (indicating that "business opportunities that are not influenced by [an] ownership relationship and that can be documented to be on terms identical to transactions with third parties" do not result in control). *See also* Federal Reserve Board, Policy statement on equity investments in banks and bank holding companies at 13 (Sept. 22, 2008) (indicating that business relationships that are made with market terms, non-exclusive, and terminable without penalty are less likely to indicate a controlling influence), <http://www.federalreserve.gov/newsevents/press/bcreg/bcreg%2020080922b1.pdf> (hereinafter, "2008 Policy Statement").

¹² 84 Fed. Reg. at 21658 (to be codified at 12 C.F.R 225.32(d)(5)).

The Proposal explains the FRB’s view that contractual rights may raise controlling influence concerns when the rights “provide an investor with the ability to direct or block the major operational or policy decisions of the target company.”¹³ The Proposal gives, as an example, the right to veto decisions normally taken by the target’s board of directors or shareholders.¹⁴ The Proposal defines “limiting contractual right” as one that would “restrict significantly” the “discretion” of the company over major operational or policy decisions. The Proposal also provides a list of examples of rights that would and would not be considered limiting contractual rights.¹⁵

The Proposal’s definition of limiting contractual rights is unclear; determining whether a contractual provision “significantly” restricts the discretion of the company over major decisions is inherently subjective and therefore antithetical to the primary goals of the Proposal. Accordingly, we recommend deleting the definition and making the list of “examples” of limiting contractual rights an exclusive list. At a minimum, the FRB should replace the proposed definition with the FRB’s clearer articulation of the concern located in the preamble to the Proposal and quoted above.¹⁶

In addition, the examples of limiting contractual rights include rights that passive investors commonly use to help protect their investment expectations. Therefore, as proposed, certain of the examples risk deterring investments in banking organizations by prohibiting rights that are limited in scope or reinforce protections provided under the law.¹⁷ Specifically, in order to avoid impeding ordinary course rights to protect investor expectations, the final rule should not place restrictions on:

- Investments or expenditures, including how the target directs the investor’s funds;
- Maintenance of financial targets and limits;
- Payment of dividends and redemption of securities;
- Ability to engage in a public offering or to list or de-list securities on an exchange;

¹³ 84 Fed. Reg. at 21642.

¹⁴ *Id.*

¹⁵ 84 Fed. Reg. at 21663 (to be codified at 12 C.F.R 238.21(e)(5)).

¹⁶ The preamble of the Proposal also states that “the Board has viewed many of these contractual agreements as raising controlling influence concerns when the agreement has the effect of enhancing an investor’s influence over the target.” *Id.* at 21642. The AIC notes that, read broadly, this standard could apply to any contractual restriction and, accordingly, should not be used to define or interpret any final definition of limiting contractual right.

¹⁷ *Id.*

- Authorization of the issuance of junior debt securities or amendment of equity or debt securities; or
- Ability to alter accounting methods and policies, or its regulatory, tax, or liability status.

Each of the above is designed to protect the investor's investment and not to limit the scope of business activities in which management of the investee company may wish to engage.

Moreover, even more significant restrictions may not provide the ability to control an organization at the 5% voting equity threshold proposed. To address this issue, the FRB should increase the restriction on limiting contractual rights to those investments that exceed 9.99% of any class of voting security of the investee.

III. The proposed treatment of total equity is unduly restrictive.

The FRB has traditionally placed less emphasis on the amount of nonvoting equity held by an investor when making control determinations, consistent with the nature of such instruments. The FRB has previously suggested that nonvoting equity investments are more likely to raise control concerns when they, in combination with voting equity, exceed one third of a target company's total equity.¹⁸

The Proposal goes further than past guidance by definitively presuming control based on ownership of total equity alone, establishing a maximum threshold of one third of a company's total equity. The Proposal explains that the FRB is concerned that investors with large nonvoting equity stakes "have a powerful incentive to wield influence over the company in which they have invested."¹⁹ It goes on to say that a company is likely to be responsive to the desires of its large nonvoting equity investors "to maintain stability in its capital base, enhance its ability to raise additional equity capital in the future, and to prevent the negative market signal that may be created by the sale of a large block of equity by an unhappy shareholder."²⁰

The Proposal invites comment on whether the FRB should allow a greater percentage of total equity without finding control. The thresholds are unnecessarily restrictive and should be modified. The relationship between nonvoting equity and control is, at best, attenuated. Moreover, the concerns regarding the incentive to control another company are not relevant to determining whether an investor has the ability to control the company. In addition, the presumption of control based exclusively on total equity would apply in circumstances where there is no indicia of control, which

¹⁸ See, e.g., 2008 Policy Statement at 10.

¹⁹ 84 Fed. Reg. at 21638.

²⁰ *Id.*

would appear to be inconsistent with the statutory presumption of non-control for investments below 5% of any class of voting security.²¹

Accordingly, we believe that the FRB may raise the total equity threshold to less than one half, for investments below 15% voting equity, and less than one third, for investments of 15% or greater, without risking such investors acquiring control.²² In addition, and consistent with the BHC Act, no total equity threshold should apply to investors that control less than 5% of each class of voting security of the target.

IV. Elements of the proposed treatment of total equity are inappropriately designed.

The Proposal also presents standards for evaluating whether interests are “functionally equivalent” to equity.²³ The “functionally equivalent” standard and certain of the examples thereunder (e.g., “extremely long-dated” and “inadequacy of the equity capital”) are highly subjective and unclear. The FRB explains that this standard is intended to prevent evasion and that the treatment of debt as equity under this standard would be unusual. Despite its intended rare use, the subjective and unclear standard would nonetheless require an in-depth analysis for many types of debt investments and produce uncertain answers, including those regarding valuation. These standards would therefore increase burden and frustrate investment and credit relationships. Moreover, this provision appears to frustrate a key purpose of the Proposal: to assist investors in understanding their regulatory obligations. Outside investors will be limited in their ability to tailor investments and transactions to the individual needs of the banking organizations because parties will be unable to obtain certainty regarding the regulatory treatment of their interests.

The Proposal also includes a requirement to recalculate total equity whenever an investor acquires control over, or ceases to control, a target’s equity interests.²⁴ By requiring recalculation when investors divest a target’s securities, the Proposal could trigger a control presumption even when investors take no action to increase their equity ownership or other indicia of control. For instance, a non-pro rata redemption of shares by the target could cause an investor to be presumed to control the target when the investor subsequently sells shares thereof. Similarly, a loss to the retained earnings of the target could cause an investor to be presumed to control when it subsequently sells shares. To avoid the possibility that control could result from

²¹ See 12 U.S.C § 1841(a)(3).

²² Notably, we have identified reports that the FRB has been willing to find no control for even higher amounts of total equity in certain circumstances. See MELANIE L. FEIN, FEDERAL BANK HOLDING COMPANY LAW 5-59 n.118 (3d ed. 2019) (indicating that the FRB permitted NationsBank to purchase non-voting, non-convertible securities representing 60% of an Alabama bank’s equity without controlling it).

²³ See 84 Fed. Reg. at 21660 (to be codified at 12 C.F.R 225.34(c)).

²⁴ See *id.* (to be codified at 12 C.F.R 225.34(e)).

actions of third parties or the disposition of shares, the recalculation requirement should not apply when a non-controlling investor ceases to control equity shares.

V. Additional director representation would benefit banking organizations and facilitate investment therein.

The FRB should increase the thresholds at which director representation and management interlocks trigger presumptions of control. In addition, it should increase the number of each that are permitted. This adjustment would facilitate mutually beneficial minority investments in banking organizations.

To implement its view that non-controlling investors should not exercise significant influence over major policy decisions at a company, the FRB has historically placed limits on investors' representation on an investee company's management and board of directors. The FRB currently permits investors to have up to two director representatives in a company without controlling it, assuming an FRB-regulated party controls the company and the investor's director representation is consistent with the investor's proportion of voting equity in the company.²⁵ The FRB also generally finds control where a company that controls 10% or more of a second company's voting securities has a management official interlock with the second company.²⁶

The Proposal changes this current treatment in key ways. First, it provides a tiered approach to board representation. For investments of 5% or more of any class of voting securities, the Proposal would require an investor's board representation to be less than 25% of the second company's board.²⁷ For investments of 10% or more, the Proposal also would prohibit 25% or greater representation on any board committee with power to bind the target.²⁸ Finally, for investments of 15% or more, the Proposal would prohibit the director representative from serving as chair of the board.²⁹

The Proposal also restricts management interlocks. For investments between 5% and 14.99% of any class of voting securities, it would allow an investing company to have one person serve as a senior management official of a second company but

²⁵ 2008 Policy Statement at 7.

²⁶ 84 Fed. Reg. at 21642.

²⁷ *Id.* at 21658 (to be codified at 12 C.F.R 225.32(d)(1)).

²⁸ *Id.* at 21659 (to be codified at 12 C.F.R 225.32(e)(2)).

²⁹ *Id.* (to be codified at 12 C.F.R 225.32(f)(2)).

prohibit that person from serving as CEO.³⁰ For larger investments, the Proposal would prohibit all senior management official interlocks.³¹

These thresholds may be increased without allowing investors to control the target company. For example, the BHC Act and HOLA permit an investor to own 24.99% of every class of voting securities of a company and to appoint 50% of its directors without controlling the company. The addition of the controlling influence prong to the BHC Act was not intended to simply reduce these limits or make them superfluous. Nonetheless, the Proposal could presume control at significantly lower amounts of both voting equity and director representation without additional indicia of control, contrary to basic principles of statutory interpretation as well as to legislative intent.

Moreover, banking organizations would benefit from relaxation of these restrictions. Investments are most likely to occur, and are most advantageous to banking organizations, when investee companies are able to take full advantage of the expertise investors have to offer. For example, the OCC's "Director's Book" recognizes this by encouraging banking organizations to take on independent directors, who facilitate diverse approaches to fulfilling the board's critical oversight responsibilities.³² By imposing restrictions on outside perspectives, therefore, the Proposal is limiting the ability of banking organizations to formulate creative solutions to problems across their operations, including with respect to risk management and business strategy. Although it may be possible to recruit other outside directors and managers, these directors may not be as qualified and would not have "skin in the game." We recommend the following specific changes:

- Increasing thresholds. The presumptions should be modified to incorporate higher voting equity thresholds. Specifically, the thresholds at 5%, 10%, and 15% ownership of any class of voting securities should be raised to 15%, 20%, and 25%, respectively. Regarding management, the restriction on CEO interlocks should be applied only to investors with 15% or more of any class of voting securities.
- Increasing permitted director representatives and senior management interlocks. The presumptions should be modified to permit more director representatives and senior management official interlocks. Specifically, investors should be permitted to have director representatives on up to one third of a board's seats (still well below the 50% otherwise permitted). Further, investors should be permitted to have two senior management

³⁰ *Id.* at 21658 (to be codified at 12 C.F.R 225.32(d)(2), (d)(3)).

³¹ *Id.* at 21659 (to be codified at 12 C.F.R 225.32(f)(3)).

³² Office of the Comptroller of the Currency, The Director's Book at 11-12 (July 2016) ("The ideal board is well diversified and composed of individuals with a mix of knowledge and expertise in line with the bank's size, strategy, risk profile, and complexity.").

officials up to 10% ownership of any class of voting securities, and one official up to 20%.

VI. The final rule should take into account the absence, as well as the presence, of indicia of control and other mitigating factors.

The FRB should consider ways to allow the absence of some indicia of control to compensate for the presence of others, in accordance with its current approach. The Proposal does not address this point. It generally would presume control based on a combination of ownership of voting equity and any one of many other factors. In certain circumstances, control also would be presumed based on one factor alone (e.g., total equity ownership).

The final rule should take into account all identified indicia of control and allow for non-control when most are not present. The controlling influence analysis considers the entirety of the relevant facts and circumstances. The absence of the indicia of control is considered as well as the presence; other parties' ability to control is also considered. We believe that this regulatory flexibility can be achieved without damaging the Proposal's goal of clarifying the controlling influence test by incorporating bright line rules as to when this is appropriate.

For example, none of the presumptions of control, consistent with FRB precedent, should apply when another shareholder controls a majority of any class of voting shares of a company.³³ Likewise, the FRB could revise the Proposal so that there are two levels of thresholds for certain indicia of control within a tier: one threshold where there are other indicia of control present and a higher one where there are no other indicia. In other words, an investor that controls 10% of a class of voting securities of a banking organization and has no director representative on the investee's board of director, no management interlock with the company, and no nonvoting equity should be able to have a greater percentage of business relationships with the company (without exerting a controlling influence over the company) than another 10% investor that has such additional relationships up to the permitted thresholds. These or similar amendments would provide additional flexibility without sacrificing clarity and would be more consistent with both the Proposal and with FRB precedent.

VII. The FRB should revise the fiduciary exclusion to more closely adhere to the fiduciary exclusions in the BHC Act and HOLA.

The Proposal would exclude from the presumptions of control voting and nonvoting securities of an investee company that the investor controls in a fiduciary capacity

³³ See, e.g., *Vickars-Henry Corp. v. Fed. Reserve Sys.*, 629 F.2d 629 (9th Cir. 1980); *Patagonia Corp.*, 63 Fed. Res. Bull. 288 (1977); cf. 84 Fed. Reg. at 21659 (to be codified at 225.32(d)(6)).

without sole discretionary authority to exercise the voting rights.³⁴ The FRB explains in the Proposal that this exception “implements the treatment of holdings provided by the BHC Act.”³⁵

However, the limitation that the investor not have sole discretionary voting authority only applies to the control of voting shares of a bank or bank holding company.³⁶ The AIC believes that this limitation should not be broader than that which Congress intended and not otherwise unduly restrict acquisitions made by fiduciaries acting in a fiduciary capacity. Accordingly, the FRB should revise the fiduciary exclusion so that the sole discretionary voting authority limitation only applies to voting securities of a bank or bank holding company (as those terms are defined in the BHC Act).

VIII. The FRB should not disturb prior investments and should eliminate the use of passivity commitments.

Consistent with its prior approaches, the FRB should make clear that the presumptions do not apply retroactively and, accordingly, investments made before the effective date of the final rule will not be treated as controlling because of them.³⁷ To do otherwise would substantially increase the burden of the rule, by potentially leading to the review of thousands of existing investments and any resulting renegotiation. As the Proposal does not merely codify existing FRB precedent, it would also disturb reasonable investment expectations, including vested rights, and essentially penalize prior conduct.³⁸

Moreover, the FRB should confirm that passivity commitments will no longer be necessary and should provide blanket relief from passivity commitments for existing investments, meaning that investors should not need to seek individual termination of and relief from them. For investors with passivity commitments that are relieved, the FRB also should clarify that existing investments will continue to be treated as non-

³⁴ 84 Fed. Reg. at 21647.

³⁵ *Id.*

³⁶ 12 U.S.C. §§ 1841(a)(5)(A), 1842(a)(A)(i).

³⁷ For example, the FRB explained in the preamble to its final rule regarding savings and loan holding company regulations, Regulation LL, that it generally did not “anticipate revisiting ownership structures previously approved by the OTS” but that it would apply the new control rules to new investments and “material transaction[s]” regarding existing investments. 76 Fed. Reg. 56508, 56510 (Sept. 13, 2011). *See also* Federal Reserve Final Rule, “Bank Holding Companies and Change in Bank Control (Regulation Y),” 62 Fed. Reg. 9290 (Feb. 28, 1997); Federal Reserve Final Conditions to Board Orders, “Amendments to Restrictions in the Board’s Section 20 Orders,” 62 Fed. Reg. 45292 (Aug. 27, 1997).

³⁸ *See, e.g., Landgraf v. USI Film Products*, 511 U.S. 244, 280 (1994) (defining retroactive effect to be the impairment of rights that a party possesses when it acted, increase of a party’s liability for past conduct, or imposition of new duties with respect to transactions already completed).

controlling as long as they are consistent with the final rule or the investor's previously-agreed passivity commitments.

Conclusion

Private equity and private credit offer banking organizations significant sources of capital and managerial expertise without seeking to control the organizations. The investments allow holding companies to serve as a source of financial and managerial strength to their subsidiary insured depository institutions and strengthen the safety and soundness of the organization. The Proposal should be modified, as explained above, so that any final rule does not discourage these non-controlling investments. By taking these steps, the FRB would facilitate mutually beneficial partnerships between banking organizations and private investors, which will serve to enhance safety and soundness, profitability, and economic growth.

The AIC appreciates the opportunity to comment on the Proposal and would be pleased to answer any questions that you might have concerning our comments.

Respectfully submitted,



Jason Mulvihill
Chief Operating Officer & General Counsel
American Investment Council