

FDIC Governance - Statement of FDIC Corporate Governance for Supervisory Matters

I. LEGAL FRAMEWORK

By Statute, Management of the FDIC is Vested in the FDIC Board: The Federal Deposit Insurance Act (FDI Act) vests responsibility for management of the FDIC in its 5-member Board of Directors (Board).¹

The Board Has Adopted Bylaws² Reiterating that Management of the FDIC is Vested in the Board. Specifically:

Article IV, Section 5 of the Bylaws (entitled, "Powers of the Board of Directors") states that:

- "The management of the [FDIC] shall be vested in the Board of Directors, which shall have all powers specifically granted by the provisions of the Federal Deposit Insurance Act and other laws of the United States and such incidental powers as shall be necessary to carry out the powers so granted."

II. DELEGATIONS OF THE FDIC BOARD'S AUTHORITIES

The Board Has Delegated Day-to-Day Management of the FDIC to the FDIC Chairman

Article VI, Section 4(a) of the Bylaws delegates to the FDIC Chairman:

- The daily executive and administrative functions and operations of the FDIC and grants the FDIC Chairman the general powers and duties usually vested in the CEO of a corporation, and
- The authority to provide oversight over the direction and operations of each of the FDIC's various divisions and offices. The FDIC Chairman is also authorized to appoint another Corporate officer to be so responsible with respect to one or more divisions or offices.

The FDIC's Bylaws Allow the Board to Delegate its Powers to Special and Standing Committees of the Board or to Officers and Agents of the FDIC

- "Within the limitations of the law, the Board of Directors may delegate any of its specific or incidental powers to any standing or special committee of the Corporation or to any officer or agent of the Corporation upon such terms and conditions as it shall prescribe, except the power to amend these Bylaws or to adopt new bylaws."³

The FDIC Board has Established Standing Committees to Carry out Certain Delegated Functions

- In 2013, the FDIC Board established, or reestablished as in the past, four standing committees, to act on certain matters or to make recommendations to the Board on various matters presented to it: the Assessment Appeals Committee, the Audit Committee, the Case Review Committee, and the Supervision Appeals Review Committee.⁴ Two of these standing committees -- the Case Review Committee and the Supervision Appeals Review Committee -- are particularly relevant to the FDIC's supervision of banks.

FDIC Board Delegation to the Supervision Appeals Review Committee (SARC) for an Independent Review of Appeals by Banks of Material Supervisory Determinations made by FDIC Examiners and Other Staff:

- As required by the Riegle Community Development and Regulatory Improvement Act of 1994 (Riegle Act)⁵ the FDIC Board established and delegated to the SARC authority to consider and

decide appeals by banks⁶ of "material supervisory determinations," most commonly bank examination composite ratings of all types, component ratings, and examiner findings that affect ratings. As mandated by the Riegle Act, the SARC is an internal-to-the-FDIC appellate process that offers banks a high level review of their material supervisory determinations that is independent from the supervisory division within the FDIC (i.e., Risk Management Supervision (RMS) or Depositor and Consumer Protection (DCP)) that originally made the material supervisory determination.

- The SARC has three voting members, one of whom is the Chair designated by the FDIC Chairman from among the FDIC's internal Board members. The two additional members are deputies or special assistants to each of the other inside Board members, and the General Counsel participates as a non-voting member. As is the case with all Board standing committees, the SARC periodically submits reports of its actions to the full FDIC Board.
- Consistent with the statutory mandate for an independent appellate process, neutral Legal Division staff (those that were not previously involved in the underlying material supervisory determination) provide staff support to the SARC and the SARC Chair. Officials and staff from the Division responsible for making the material supervisory determination do not meet or communicate with the SARC Chair or other Committee members on the substance of the material supervisory determination being appealed through the SARC process. SARC members may ask for and receive technical information from staff in the relevant supervisory division; if meetings are necessary on such technical matters, neutral Legal Division staff is also present.

FDIC Board Delegation to the Case Review Committee for Review and Approval of Certain Administrative Enforcement Actions:

- The FDIC Board delegated to the Case Review Committee (CRC) broad authority to consider matters related to the FDIC's administrative enforcement actions against banks and their officers, directors, and other institution-affiliated parties (IAPs) under section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) and other laws.⁷ The CRC may also issue guidelines related to matters within its jurisdiction.⁸
- The CRC consists of five voting members: the Chair of the CRC, who is appointed by the FDIC Chairman and who must be an internal appointive director of the FDIC Board. The four other CRC members are deputies or special assistants to each of the other FDIC Board members. The General Counsel serves as a non-voting member.
- The FDIC Board has delegated to the CRC Chair the authority to determine whether certain enforcement matters⁹ should be reviewed and considered by the CRC or whether they may be handled by the relevant FDIC Division Director under authority that has been delegated to him or her by the FDIC Board.¹⁰ If the CRC Chair determines that prior review by the CRC is appropriate, the CRC reviews and determines whether or not to approve the issuance of an order or notice with respect to the matter. As part of an approval determination, the CRC may place defined parameters or express limitations on the issuance of an order or notice by a Division Director under his or her delegated authority.
- After approval by the full CRC, the CRC in certain cases authorizes the CRC Chair to address follow-up questions that may arise post-CRC review.
- Upon a request from a relevant Division Director or the General Counsel and approval by the CRC Chair, the CRC is authorized to consider and provide guidance on any matter related to enforcement actions. The CRC Chair also has independent authority to determine whether consideration of such a matter is appropriate.

- The CRC Chair provides Board-level oversight of the exercise of delegated authority by the relevant Division Directors to carry out enforcement actions,¹¹ including those that may affect FDIC policy, attract unusual attention or publicity, or involve an issue of first impression.¹² The CRC Chair may request briefings on enforcement actions or enforcement-related matters from any FDIC staff member in order to determine whether an enforcement matter should be heard by the full CRC. The CRC Chair provides guidance to, and receives information from, relevant FDIC supervisory and Legal Division staff on enforcement cases or matters within the CRC's jurisdiction.¹³
- When making a determination as to whether prior review and approval by the CRC of an order or notice is appropriate, the CRC Chair may confer with the other members of the Board of Directors about proposed enforcement matters, including those that may affect FDIC policy, attract unusual attention or publicity, or involve an issue of first impression.
- After the FDIC has filed a notice of charges or similar notice (indicating that an enforcement case is in litigation), the CRC Chair (and other FDIC Board members) may not have any substantive involvement in the enforcement action.¹⁴ FDIC staff is directed not to discuss substantive enforcement matters with any FDIC Board member once a notice of charges or similar notice has been filed.

Through the FDIC's Bylaws, the FDIC Board Has Described the Specific Powers and Duties of the Director of RMS to Include the Exercise of General Supervision and Control over the Depository Institution Risk Management Supervision and Examination Functions of the FDIC, and the Director of DCP to Include the Exercise of General Supervision and Control over the FDIC's Programs for Promoting Compliance with Consumer Protection and Related Laws and the FDIC's Compliance Examination Program

- The FDIC's Bylaws¹⁵ authorize the Director of RMS to: exercise general supervision and control over the performance of the depository institution regulation, supervision, and risk management (safety and soundness) examination functions of the FDIC; work with [other division directors] to determine trends in the operation of insured depository institutions and bring adverse trends to the attention of the FDIC Board; decide all questions relating to the supervision and examination of, and, with the advice of the General Counsel, determine compliance with all applicable laws and regulations related to safe and sound operations by, all insured depository institutions which the FDIC has the authority to examine or supervise; ... review and process applications or requests from depository institutions that require the FDIC's prior consent or nonobjection; and initiate or recommend the initiation of administrative enforcement proceedings relating to risk management (safety and soundness) matters against insured depository institutions and their officers, directors, or other persons participating in the conduct of their affairs.
- The FDIC's Bylaws¹⁶ authorize the Director of DCP to: exercise general supervision and control over the FDIC's programs for promoting compliance with consumer protection, fair lending, community reinvestment, civil rights, and other related laws and over the FDIC's compliance examination program as a mechanism for detecting and then correcting violations thereof; determine trends within insured depository institutions regarding consumer protection, fair lending, community reinvestment, and civil rights issues and bring adverse trends to the attention of the FDIC Board; take appropriate action upon complaints filed by consumers of the services of insured depository institutions which allege unfair or deceptive acts or practices by insured depository institutions; decide all questions relating to the supervision and examination of, and determine, with the advice of the General Counsel, compliance with all applicable consumer protection, fair lending, community reinvestment, civil rights, and other related laws and regulations by, all insured depository institutions which the FDIC has the authority to examine or supervise; and initiate or recommend the initiation of administrative enforcement proceedings relating to compliance matters against insured depository institutions and their officers, directors, or other persons participating in the conduct of their affairs.

- Through a 2002 Board Resolution, the FDIC Board delegated to the Division of Supervision and Consumer Protection (DSC – now RMS and DCP) the authority to act on a broad range of specific supervisory matters under delegated authority, including bank application filings and a broad range of enforcement actions against banks and IAPs.¹⁷

III. RESERVATION OF THE FDIC BOARD'S DELEGATED AUTHORITY WITH RESPECT TO MAJOR MATTERS

- **The Board's "Major Matters" Resolution Reserves all Delegated Matters to the FDIC Chairman and the FDIC Board if they are "Major" Matters**

In 2007, the FDIC Board approved a "Major Matters" resolution that states the following: "...[N]otwithstanding any delegation of authority to any Committee of the [FDIC] Board or officer or employee of the FDIC ... or any description of the specific powers and authorities of the officers of the [FDIC] contained in the Bylaws, the [FDIC] Board reserves to itself consideration of matters "which would establish or change existing Corporation policy, could attract unusual attention or publicity, or would involve an issue of first impression." The Major Matters Resolution also states that "... each Division and office Director (or duly authorized designee), through his or her immediate supervisor (if any), is responsible and accountable for ensuring that matters that may be [Major Matters] are brought to the attention of the FDIC Chairman to determine whether such matters should be considered by the [FDIC] Board."¹⁸

¹ 12 USC 1812(a)

² The FDIC Bylaws were originally adopted by the Board on December 12, 1989.

³ FDIC Bylaws, Art. IV, Sec. 5 and Article V, Sec. 1.

⁴ FDIC Standing Committee Resolution, No. 081158 (July 9, 2013).

⁵ Section 309(a), Public Law 103-325; *108 Stat. 2160 (Sept. 23, 1994)*.

⁶ As used in this document, the term "banks" is intended to refer to insured depository institutions.

⁷ FDIC Standing Committee Resolution, No. 081158 (July 9, 2013), pages 3-8.

⁸ *Id.*, at page 6.

⁹ The types of enforcement actions explicitly within the CRC's authority are: (a) removal, suspension, and prohibition actions under section 8(e) of the FDI Act; (b) civil money penalty (CMP) actions (with some exceptions); (c) restitution actions under section 8(b)(6) of the FDI Act; (d) actions to suspend or prohibit IAPs charged in any information, indictment, or complaint as set forth in section 8(g) of the FDI Act; and any other administrative enforcement actions that "may affect Corporation policy, attract unusual attention or publicity, or involve an issue of first impression. See, FDIC Standing Committee Resolution, No. 081158 (July 9, 2013), pages 4-5. Other enforcement matters are delegated by the FDIC Board in the FDIC Bylaws to the relevant division directors and do not require CRC review (e.g., Flood Act CMPs). Such other matters may be further sub-delegated in accordance with the authority delegated to each division director.

¹⁰ See Board Resolution. No. 071098 (December 3, 2002), as amended (Delegation of Authority Relating to Filings and Enforcement Matters).

¹¹ Board Resolution No. 072277 (April 6, 2004).

Attachment to PR-61-2016

¹² FDIC Standing Committee Resolution No. 081158 (July 9, 2013), page 5.

¹³ FDIC Standing Committee Resolution No. 072277 (April 6, 2004) and FDIC Standing Committee Resolution No. 081558 (July 9, 2013).

¹⁴ The FDIC's Standing Committee Resolution states that this CRC firewall preserves the impartiality of the members of the [FDIC] Board of Directors, who may be called to rule upon a recommended decision of an administrative law judge in the enforcement proceeding. FDIC Standing Committee Resolution, No. 081158 (July 9, 2013), at pp. 7-8.

¹⁵ FDIC Bylaws, Art. VI, Sec. 4(m).

¹⁶ FDIC Bylaws, Art. VI, Sec. 4(s).

¹⁷ See Board Resolution. No. 071098 (December 3, 2002), as amended (Delegation of Authority Relating to Filings and Enforcement Matters), as clarified by Board Resolution No. 078555 (August 10, 2010) to account for the established of the Division of Depositor and Consumer Protection.

¹⁸ FDIC Board Res. No. 074956 (June 19, 2007).