



**ICGN**

International Corporate Governance Network  
*Inspiring good governance & stewardship*

Mr. James P. Sheesley, Assistant Executive Secretary  
Attention: Comments / Legal OES (RIN 3064–AF94)  
Federal Deposit Insurance Corporation  
550 17th Street NW  
Washington, DC 20429

Submitted via email

7 February 2024

Dear Assistant Executive Secretary Sheesley,

**Proposed Addition of Appendix C to Part 364 of the FDIC’s Rules and Regulations**

The International Corporate Governance Network (ICGN) appreciates the opportunity to comment on the Proposed Addition of Appendix C to Part 364 of the FDIC’s Rules and Regulations, which are intended to set the FDIC’s expectations for covered institutions regarding corporate governance, risk management, and oversight by the board of directors.

Led by investors responsible for assets under management of US\$77 trillion, ICGN is an authority on global standards of corporate governance and investor stewardship. Headquartered in London, our membership is based in more than 40 countries - largely in Europe and North America, with growing representation in Asia. The ICGN Global Governance Principles and Global Stewardship Principles, written from an investor perspective, are widely used by our members in their company assessments and voting decisions, and by regulators when developing corporate governance rules.<sup>1</sup>

**ICGN supports the FDIC’s objective to enhance corporate governance and risk management frameworks within the remit of the boards of directors of financial institutions** under its jurisdiction. The proposed guidelines state that:

Strong corporate governance is the foundation for an insured depository institution’s safe and sound operations. An effective governance framework is necessary for an insured depository institution to remain profitable, competitive, and resilient through changing economic and market conditions. The board of directors serves a critical role in maintaining an insured depository institution’s safety and soundness and continued financial and operational resilience.

ICGN agrees. Boards of directors have a fiduciary duty to investors to preserve and enhance value over the long-term. Less than one year ago, ICGN issued its “Statement on Systemic Disruption in the Banking Industry”, in response to the failure of two U.S. banks. What ICGN said then applies today:

The effectiveness of corporate governance and the ability of investors to hold boards to account on behalf of the investing public is once again under scrutiny. This latest debacle demonstrates that boards that have weak corporate governance controls and limited oversight are ineffective in holding management accountable for poor capital allocation strategies, human capital management, and the evaluation of social and

---

<sup>1</sup> [ICGN Global Governance Principles \(2021\)](#), [ICGN Global Stewardship Principles \(2020\)](#)

economic risk factors to the detriment of investors and wider society. In short, such failures demonstrate that a lack of good corporate governance ultimately impacts long-term corporate value, upon which we all rely.<sup>2</sup>

**During our review of the proposed Guidelines, ICGN found a substantial alignment with the ICGN Global Governance Principles**, which serve as global standard for well-governed companies. We noticed a few areas, however, where additional language could provide institutions with greater clarity. **We would respectfully ask the FDIC to consider these additions:**

- Boards of directors should have high standards of business ethics and foster an ethos of integrity throughout the company to engender a strong corporate culture, adhering to laws and regulations;
- Boards should have oversight of the institution's risk assessment and management frameworks (including emerging risks and material sustainability-related risks that may affect value creation). They should also have oversight and set policies for the institution's reporting systems, effective internal controls and internal audit, and high-quality external audit.<sup>3</sup>
- We agree with the requirement that "when determining the Board's composition, the Board should consider how the selection of and diversity among board members collectively and individually may best promote effective, independent oversight of management". ICGN recommends that the majority of board members be independent, and that boards comprise a genuinely diverse group of individuals, to ensure effective, equitable and inclusive decision-making.<sup>4</sup>
- Whilst ultimate responsibility for a company's risk management approach rests with the full board, having a Risk Committee can be an effective mechanism to bring the transparency, focus and independent judgement needed to oversee the company's approach to risk management and internal controls.
- The Chief Risk Officer (CRO) should maintain their independence and objectively assess the risks of the covered institution. The CRO may have a dotted line authority to the Chair of the Audit or Risk Committee and the CEO.
- Each year, the Board should approve the updated risk management program, based on the risk profile of the institution and the risk appetite statement.
- Performance measures in incentive-based plans should integrate risk considerations so that there are no rewards for taking inappropriate risks.
- The Board should include provisions in the incentive plans of the CEO and senior officials that enable the institution to withhold the payment of any sum ('malus'), or recover sums paid ('clawback'), in the event of serious misconduct or a material misstatement in the institution's financial statements.<sup>5</sup>
- Finally, the proposed guidelines, focus on FDIC-supervised institutions with total assets of \$10 billion or more. Whilst ICGN agrees that larger institutions tend to have more complex business structures, we encourage smaller institutions to also introduce strong corporate governance and risk management practices.

Thank you again for the opportunity to share our perspective on the proposed Guidelines. If you would like to follow up with questions or comments, please contact our Global Policy

---

<sup>2</sup> [ICGN Statement on Systemic Disruption in the Banking Industry \(1\).pdf](#), 23 March 2023.

<sup>3</sup> [ICGN Global Governance Principles 2021.pdf](#), pp. 8-9.

<sup>4</sup> *Ibid*, Principle 3.1, p. 15

<sup>5</sup> [ICGN Global Governance Principles 2021.pdf](#), p. 21

Director, Séverine Neervoort ([severine.neervoort@icgn.org](mailto:severine.neervoort@icgn.org)) or Carol Nolan Drake, Senior Policy Manager ([carol.nolandrake@icgn.org](mailto:carol.nolandrake@icgn.org)).

Yours faithfully,



**Kerrie Waring**  
**Chief Executive Officer, ICGN**

Cc: Cristina Ungureanu, Chair, ICGN Global Governance Committee