

From: ac@drivermgmtco.com
Sent: Thursday, November 30, 2023 4:49 PM
To: Comments
Subject: [EXTERNAL MESSAGE] October 11, 2023 - Guidelines Establishing Standards for Corporate Governance and Risk Management for Covered Institutions - \$10 Billion or More; Comment Request (RIN 3064-AF94)

FDIC,

I am the managing member of Driver Management Company LLC, the general partner of Driver Opportunity Partner I LP. For the sake of clarity, I will refer to both those entities, together with myself, as “Driver.”

Driver invests exclusively in depository institutions and is considered an “activist investor.” Driver is more than familiar with many of the governance issues (a board that is dominated by, and will not challenge, a CEO; extremely homogeneous boards, etc.) and often seeks to replace directors who are not adequately serving stockholders with new independent directors, often with a wealth of relevant experience gained from serving as CEO or CFO of other depository institutions.

I had planned to send more detailed comments on the proposed guidance and rule-making but, unfortunately, time slipped by

I would, however, like to address three points:

First, stockholders can see bad corporate governance long before a board admits it. That fact is one of the reasons why Driver exists. A board that is infused with a culture of “go along to get along,” that won’t challenge management, that is dominated by a CEO, etc., is not a board that is going to move quickly, if at all, to remedy those issues. The proposed guidance and rule-making contemplates that incumbent boards will fix themselves. While that may happen occasionally, it is often a box-checking exercise to little effect. Good corporate governance means allowing stockholders, the owners of the covered institution, to replace directors when needed. For publicly traded banks and BHCs, stockholders can only replace directors through a proxy contest, a costly and risky proposition played out on a field tilted sharply in the incumbent board’s favor. While there are very specific things that can be done to level the playing field, those specifics may be far beyond the ambit of the proposed guidance and rule-making. However, even some acknowledgment that it may be stockholders, not the incumbent board, that has to act to improve governance and risk management would be welcome.

Second, and much more specifically, boards should be required to have at least as many meetings without the CEO or any other management director present as they have with the CEO or other management director present, even if it is just a regularly scheduled independent director only session at the end of a board meeting. Unless such meetings or sessions are mandated, too often boards that are dominated by CEOs will fail to call such meetings or sessions with sufficient regularity for fear of incurring the dominating CEO’s ire. Unless a board is able to frequently meet without the CEO present—in order to discuss and form a consensus on significant issues—directors will be less likely to challenge management (if they feel they are the only voice), which encourages CEOs to dominate the discussion and decision-making process.

Third, in my experience, the diversity most needed on boards is geographic. Too often, boards are made up of individuals from the same community and can develop a loyalty to each other as well as a fear of breaking out of lockstep due to possible repercussions outside the board room. Put simply, many bank boards are just too cozy and an expectation that a board will include individuals with no social or other of the ties that develop among reasonably prominent individuals in a community will help ensure a diversity of perspectives at the board level.

I am happy to discuss the above if requested,

Abbott Cooper

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