

FVCBANK

AUDIT COMMITTEE CHARTER

Approved by the Audit Committee: November 9, 2021

Last approved by the Board of Directors: November 19, 2021

FVCBANKCORP, INC.
Audit Committee of the Board of Directors
Audit Committee Charter

I. PURPOSE

The primary function of the Audit Committee (the “Committee”) of the Board of Directors of FVCBankcorp, Inc. (together with its consolidated subsidiaries from time to time, but excluding each subsidiary whose board of directors or similar governing body has established its own audit committee, the “Company”) is to provide assistance to the Board of Directors in fulfilling its fiduciary responsibilities in overseeing the Company’s accounting and financial reporting processes, public disclosure activities and the audits of the financial statements of the Company, and monitoring the internal controls over financial reporting. The Committee shall assist the Board oversight and monitoring of (i) the quality and integrity of the financial statements, (ii) the performance of the independent auditors and the Company’s internal audit function, (iii) the independent auditors’ qualifications and independence, and (iv) the Company’s compliance with legal and regulatory requirements.

II. ORGANIZATION

(a) Members

The Committee shall be composed of at least three (3) directors (members). The members shall be appointed at least annually by the Board of Directors and shall serve for a term of one year or until their successors have been appointed. The Committee Chairman shall be a member designated by the Board of Directors. The Board of Directors, in appointing members, shall determine that all members are independent for purposes of audit committee service as determined in accordance with applicable law, regulations of the Securities and Exchange Commission (the “Commission”) (See Appendix A), the Rules of The Nasdaq Stock Market (See Appendix B) and the applicable provisions of Part 363 (Annual Independent Audits and Reporting Requirements) of the Federal Deposit Insurance Corporation Rules and Regulations (“FDICIA Rules”) (see Appendix C). Among other matters affecting independence, no employee of the Company, the Chairman or Vice Chairman of the Board, nor any party receiving compensation or other fees, other than Board of Director fees (including fees as a committee member of the Board of Directors), from the Company or its affiliates shall be a member of the Committee. At a minimum, all Committee members shall have, as determined by the Board of Directors (a) the ability to read and understand fundamental financial statements, including the Company’s balance sheet, income statement, cash flow statement, and key performance indicators; and (b) the ability to understand key business and financial risks, related controls and control processes. As determined by the Board of Directors, at least one member of the Committee shall be an “audit committee financial expert” as defined by the Securities and Exchange Commission (See Appendix D) and contemplated by the Rules of the Nasdaq Stock Market (See Appendix B).

Committee membership standards will be maintained in accordance with applicable federal and state banking laws and regulations, including Part 363 of the FDICIA Rules.

(b) Meetings

The Committee will meet at least four (4) times a year and more frequently if necessary in order to carry out the responsibilities of the Committee. The Committee reserves the right to meet at other times as required and/or to meet with or without members of management, internal audit or the independent auditors. Meetings may be conducted in whole or in part by means of teleconference, it being understood that members are encouraged to attend meetings in person whenever reasonably possible. In addition to the minimum required meetings or other special meetings, the Committee may approve matters by unanimous written consent, including by electronic transmission. For the transaction of business at any meeting of the Committee, a majority of the members shall constitute a quorum. The act of a majority of the Committee members participating at any meeting of the Committee at which a quorum is present shall be the act of the Committee.

At the Committee's discretion, other directors and management of the Company may attend meetings of the Committee, but this attendance shall be in a non-voting capacity. It is anticipated that the President and Chief Executive Officer (CEO) and the Chief Financial Officer (CFO) of the Company will attend all meetings of the Committee unless specifically requested otherwise.

The Committee shall endeavor to provide an open avenue of communication between the internal auditor and independent auditor, management and the Committee. On a regular basis (at least annually), however, the Committee shall meet separately in executive session without representatives of management to discuss matters the Committee in its sole discretion believes should be discussed privately. At least annually, the Committee (or the Committee Chairman or other designated Committee member) shall also meet separately in executive session with the CEO, the CFO, the controller (or other chief accounting officer), the independent auditors and the chief internal auditor (or outside firm providing the internal audit function) to discuss matters the Committee in its sole discretion believes should be discussed privately. The Committee shall report on its activities to the Board of Directors on a regular basis.

(c) Minutes

Minutes and other relevant records of meetings and decisions shall be prepared for all meetings of the Committee to document the Committee's discharge of its responsibilities and other matters coming before the meeting. The minutes shall provide an accurate record of the proceedings and shall be approved by the Committee and then presented to the Board of Directors at its next regularly scheduled meeting. Such minutes shall be made available to the independent auditors, regulators and, as determined by the Committee, other parties as designated by the Committee.

III. AUTHORITIES AND DUTIES

The Committee shall be directly responsible, in its capacity as a committee of the Board of Directors, for the appointment, compensation, retention and oversight of the work of the

independent auditor (including resolution of disagreements between management and the independent auditor regarding financial reporting) for the purpose of preparing or issuing an audit report or related work, and each such independent auditor shall report directly to the Committee. In this regard, the Committee shall exercise sole authority to appoint, evaluate, and, as necessary, replace the independent auditor (subject, if applicable, to shareholder ratification).

All audit and permitted non-audit services, and the compensation, fees and terms for such services provided by the independent auditor shall be subject to pre-approval by the Committee, subject to the *de minimis* exception for permitted non-audit services described in Section 10A(i)(1)(B) of the Securities Exchange Act of 1934, as amended (See [Appendix A](#)) which are approved by the Committee prior to the completion of the audit. (By approving the audit engagement, an audit service within the scope of the engagement shall be deemed to have been preapproved.) The Committee may form and delegate authority to subcommittees consisting of one or more members when appropriate, including the authority to grant pre-approvals of audits and permitted non-audit services, provided that decisions of such subcommittee to grant pre-approvals shall be presented to the full Committee at its next scheduled meeting.

The Committee shall be provided with appropriate funding, as determined by the Committee, in its capacity as a committee of the Board of Directors, for payment of (i) compensation to the independent auditors employed by the Company for purposes of rendering or issuing an audit report or performing other audit, review or attest services, (ii) compensation to any advisers employed by the Committee and (iii) ordinary administrative expenses of the Committee that are necessary or appropriate in carrying out its duties. The Committee shall have the authority to retain its own legal, accounting, financial and other advisers, as it determines necessary to carry out its duties. The Committee shall have full access to all books, records, facilities and personnel of the Company.

The Committee shall confirm annually to the Board of Directors that all responsibilities outlined in this Charter have been carried out in all material respects. The Committee shall review and reassess the adequacy of this Charter annually and recommend any proposed changes to the Board of Directors for approval. The Committee shall evaluate the Committee's own performance from time to time as it deems necessary, or as requested by the Board of Directors.

(a) Oversight of the Relationship with the Independent Auditors

The Committee shall:

1. At least annually, obtain and review a report by the independent auditors describing the firm's internal quality-control procedures, and any material issues raised by the most recent internal quality-control review, or peer review, of the firm, or by any inquiry or investigation by governmental or professional authorities, within the preceding five years, respecting one or more independent audits carried out by the firm, and any steps taken to deal with any such issues. This report shall include a copy of the independent auditor's most recent peer review report.

2. At least annually, review and evaluate the lead partner of the independent auditors, and review the audit firm for reasonable determination of fees and capabilities.
3. Monitor the rotation of audit partners as required by law.
4. Set clear hiring policies for employees and former employees of the independent auditors.
5. At least annually, obtain and review a report by the independent auditors delineating all relationships between the independent auditors and the Company, and engage in a dialogue with the independent auditors with respect to any disclosed relationships or services that may impact the objectivity and independence of the independent auditors. Evaluate the qualifications, performance and independence of the independent auditors, taking into account the opinions of management and internal auditors. The Committee shall present its conclusions with respect to the independent auditors to the Board of Directors.
6. Discuss with the independent auditors all matters required to be communicated to audit committees in accordance with Statement of Auditing Standards No. 114.
7. Receive and review reports of the independent auditors of (i) all critical accounting policies and practices to be used, (ii) all alternative treatments within GAAP for policies and practices related to material items that have been discussed with management, including ramifications of the use of such alternative disclosures and treatments, and the treatment preferred by the independent auditors, and (iii) other material written communications between the independent auditors and management, such as any management letter or schedule of unadjusted differences.
8. Ensure that audit engagement letters comply with the provisions of Part 363 of the FDICIA Rules before engaging an independent public accountant. Be familiar with the notice requirements in § 363.4(d) and guideline 20 under Part 363 of the FDICIA Rules regarding the selection, change, or termination of an independent public accountant. Ensure that management sends a copy of any notice required under § 363.4(d) under Part 363 of the FDICIA Rules to the independent public accountant when it is filed with the FDIC. (See Appendix C.)

(b) Oversight of Financial Reporting and Disclosure Matters

The Committee shall:

1. Review with management and the independent auditors the annual audited financial statements. Review with management and the independent auditors: (i) issues regarding accounting principles and financial statement presentation, including any significant changes in the Company's selection or application of

accounting principles; (ii) major issues as to the adequacy of the internal controls and any special audit steps adopted in light of material control deficiencies and the adequacy of disclosures about changes in internal control over financial reporting; (iii) the effect of regulatory and accounting initiatives, as well as off-balance sheet structures, on the financial statements of the Company; and (iv) the basis for each of the reports contemplated by Sections 36(b)(2), (c) and (d) under the Federal Deposit Insurance Act (*i.e.*, (x) the reports of the Company's chief executive officer and chief accounting regarding preparation of financial statements, establishment, maintenance and effectiveness of internal controls and procedures, and compliance with safety and soundness laws and regulations, (y) the attestation by the Company's independent auditors to such reports, and (z) the report of the Company's independent auditors regarding the Company's audited financial statements).

2. Review with management and the independent auditors the results of the audit and the audited financial statements. This review will include any restrictions on the scope of the independent auditors' activities or on access to requested information and any significant disagreements with management.
3. Discuss with management any financial information provided to shareholders, including earnings press releases. The discussion may be general in nature and need not discuss in advance each earnings release.

(c) Oversight of the Internal Audit Function

The Committee shall:

1. Appoint, discharge, set the compensation, and oversee the scope of the work of the internal audit personnel employed by the Company (or outside firms providing the internal audit function) to conduct the internal audit program. The internal audit function shall report directly to the Committee.
2. Review with management and the CFO the purpose, plans, activities, staffing (including outsourcing), and organizational structure of the internal audit function. The Board of Directors has adopted a charter for the internal audit function, a copy of which is attached hereto as Appendix E.
3. Review with management the independent auditors and the outside firms providing any internal audit function to ensure the adequacy of the scope of the internal audit function.
4. At least annually, review the effectiveness of the internal audit function, which may involve consultation with any outside firms providing any internal audit support.

(d) Compliance Oversight Responsibilities

The Committee shall:

1. Approve the selection (and replacement) of, and monitor the performance of, the Company's Compliance Officer. The Company's Compliance Officer shall report directly to the Committee; however, as to administrative matters, the Compliance Officer shall report to management. In the event the Company engages an outside firm or firms to provide the compliance function, then the Committee shall appoint, discharge, compensate and oversee the work of any such outside firms. Any such firms shall report directly to the Committee.
2. Review the effectiveness of management's system for monitoring and reporting to the Board of Directors and the Committee, compliance with laws and regulations and the results of management's investigation and follow-up (including disciplinary action if any) of any instances of noncompliance.
3. Obtain regular updates (at least quarterly) from management (including the Company's Compliance Officer) and Company legal counsel or Compliance Officer regarding the status of current compliance matters (including testing), and work with external professionals regarding anticipated new or modified rules and regulations.

(e) Other Responsibilities

The Committee shall:

1. Appoint, discharge, compensate and monitor the external loan review function, which will be discharged by engaging a qualified consultant. The firm providing the external loan review function shall report directly to the Committee.
2. Consider the effectiveness of the Company's internal control system. Understand the scope of the internal auditors' (or outside firms' providing the internal audit function) and independent auditors' review of internal controls over financial reporting, and obtain reports on significant findings and recommendations from the independent auditors and the internal auditors (or outside firms providing the internal audit function), together with management's responses.
3. Appoint, discharge, compensate and monitor the Company's external review of the information technology security functions, which will be discharged by engaging a qualified consultant. The firm providing the Company's information technology security function shall report directly to the Committee.
4. Consider effectiveness of Chief Financial Officer and Controller in discharge of financial reporting duties.

5. Except as provided in 5 a) and 5 b) below, conduct an appropriate review of all related party transactions for potential conflicts of interest subject to the provisions of this Charter.
 - a. Loans to directors and officers are transactions subject to Reg O and governed by the Bank's Reg O compliance policy.
 - b. Directors' fees and compensation (including fees related to Board of Director committees) shall be governed by the Board of Directors; Compensation to Company employees who are also directors shall be reviewed by, and approved by the Company's Compensation Committee (if any) and/or the Board of Directors (exclusive of such employees).
6. Review the Bank's Whistleblower Policy, which contains the process for: (i) the receipt, retention, and treatment of complaints regarding accounting, internal accounting controls, or auditing matters, and (ii) the confidential, anonymous submission by employees or others of questionable accounting or auditing matters.
7. Review the process for communicating the Company's Code of Conduct to Company personnel, and for monitoring compliance with the Code of Conduct. Review reports regarding violations of the Company's Code of Conduct to determine adherence to such code.
8. Conduct an initial review of particular Company policies requested by the Board of Directors or management, and recommend changes prior to adoption by the Board of Directors.
9. Discuss with management and internal auditors, as it deems appropriate, the Company's major policies with respect to integrating risk assessment and risk management of the Company.
10. Institute and oversee special investigations as needed.
11. Encourage continuing education of Committee members related to accounting principles and procedures, current accounting and regulatory topics and audit committee functions.
12. Perform other activities related to this Charter as specifically requested by the Board of Directors and as agreed to by the Audit Committee.

IV. LIMITATIONS

While the Committee has the responsibilities and powers set forth in the Charter, it is not the duty of the Committee to plan or conduct audits or compliance examinations, or to determine

that the Company's financial statements and disclosure are complete and accurate and/or in accordance with generally accepted accounting principles and applicable rules and regulations. These are the responsibility of management and the independent auditors. Nor is it the duty of the Committee to assure the compliance with laws and regulations.

Appendix A

Selected Provisions of the Securities Exchange Act of 1934, as Amended and the Rules Thereunder

Sec. 10A(i)(1) OF THE SECURITIES EXCHANGE ACT OF 1934

(i) *Preapproval Requirements*

(1) *In General.*

(A) **AUDIT COMMITTEE ACTION.**—All auditing services (which may entail providing comfort letters in connection with securities underwritings or statutory audits required for insurance companies for purposes of State law) and non-audit services, other than as provided in subparagraph (B), provided to an issuer by the auditor of the issuer shall be preapproved by the audit committee of the issuer.

(B) **DE MINIMIS EXCEPTION.**—The preapproval requirement under subparagraph (A) is waived with respect to the provision of non-audit services for an issuer, if—

(i) the aggregate amount of all such non-audit services provided to the issuer constitutes not more than 5 percent of the total amount of revenues paid by the issuer to its auditor during the fiscal year in which the nonaudit services are provided;

(ii) such services were not recognized by the issuer at the time of the engagement to be non-audit services; and

(iii) such services are promptly brought to the attention of the audit committee of the issuer and approved prior to the completion of the audit by the audit committee or by 1 or more members of the audit committee who are members of the board of directors to whom authority to grant such approvals has been delegated by the audit committee.

Sec. 10A(m)(3) OF THE SECURITIES EXCHANGE ACT OF 1934

(3) **INDEPENDENCE.**—

(A) **IN GENERAL.**—Each member of the audit committee of the issuer shall be a member of the board of directors of the issuer, and shall otherwise be independent.

(B) **CRITERIA.**—In order to be considered to be independent for purposes of this paragraph, a member of an audit committee of an issuer may not, other than in his or her capacity as a member of the audit committee, the board of directors, or any other board committee—

(i) accept any consulting, advisory, or other compensatory fee from the issuer; or

(ii) be an affiliated person of the issuer or any subsidiary thereof.

(C) **EXEMPTION AUTHORITY.**—The Commission may exempt from the requirements of subparagraph (B) a particular relationship with respect to audit committee members, as the Commission determines appropriate in light of the circumstances.

Rule 10A-3(b) UNDER THE SECURITIES EXCHANGE ACT OF 1934

(b) Required standards—

(1) Independence.

(i) Each member of the audit committee must be a member of the board of directors of the listed issuer, and must otherwise be independent; provided that, where a listed issuer is one of two dual holding companies, those companies may designate one audit committee for both companies so long as each member of the audit committee is a member of the board of directors of at least one of such dual holding companies.

(ii) Independence requirements for non-investment company issuers. In order to be considered to be independent for purposes of this paragraph (b)(1), a member of an audit committee of a listed issuer that is not an investment company may not, other than in his or her capacity as a member of the audit committee, the board of directors, or any other board committee:

(A) Accept directly or indirectly any consulting, advisory, or other compensatory fee from the issuer or any subsidiary thereof, provided that, unless the rules of the national securities exchange or national securities association provide otherwise, compensatory fees do not include the receipt of fixed amounts of compensation under a retirement plan (including deferred compensation) for prior service with the listed issuer (provided that such compensation is not contingent in any way on continued service); or
(B) Be an affiliated person of the issuer or any subsidiary thereof.

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Appendix B

Selected Rules of The Nasdaq Stock Market

Rule 5605(a)(2) (Definitions)

“Independent Director” means a person other than an Executive Officer or employee of the Company or any other individual having a relationship which, in the opinion of the Company’s board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director. For purposes of this rule, “Family Member” means a person’s spouse, parents, children and siblings, whether by blood, marriage or adoption, or anyone residing in such person’s home. The following persons shall not be considered independent:

(A) a director who is, or at any time during the past three years was, employed by the Company;

(B) a director who accepted or who has a Family Member who accepted any compensation from the Company in excess of \$120,000 during any period of twelve consecutive months within the three years preceding the determination of independence, other than the following:

(i) compensation for board or board committee service;

(ii) compensation paid to a Family Member who is an employee (other than an Executive Officer) of the Company; or

(iii) benefits under a tax-qualified retirement plan, or non-discretionary compensation.

Provided, however, that in addition to the requirements contained in this paragraph (B), audit committee members are also subject to additional, more stringent requirements under Rule 5605(c)(2).

(C) a director who is a Family Member of an individual who is, or at any time during the past three years was, employed by the Company as an Executive Officer;

(D) a director who is, or has a Family Member who is, a partner in, or a controlling Shareholder or an Executive Officer of, any organization to which the Company made, or from which the Company received, payments for property or services in the current or any of the past three fiscal years that exceed 5% of the recipient’s consolidated gross revenues for that year, or \$200,000, whichever is more, other than the following:

(i) payments arising solely from investments in the Company’s securities; or

(ii) payments under non-discretionary charitable contribution matching programs.

(E) a director of the Company who is, or has a Family Member who is, employed as an Executive Officer of another entity where at any time during the past three years any of the Executive Officers of the Company serve on the compensation committee of such other entity; or

(F) a director who is, or has a Family Member who is, a current partner of the Company’s outside auditor, or was a partner or employee of the Company’s outside auditor who worked on the Company’s audit at any time during any of the past three years.

(G) in the case of an investment company, in lieu of paragraphs (A)-(F), a director who is an “interested person” of the Company as defined in Section 2(a)(19) of the Investment Company Act of 1940, other than in his or her capacity as a member of the board of directors or any board committee.

Rule 5605(c)(2)(A) (Audit Committee Composition)

Each Company must have, and certify that it has and will continue to have, an audit committee of at least three members, each of whom must: (i) be an Independent Director as defined under Rule 5605(a)(2); (ii) meet the criteria for independence set forth in Rule 10A-3(b)(1) under the Act (subject to the exemptions provided in Rule 10A-3(c) under the Act); (iii) not have participated in the preparation of the financial statements of the Company or any current subsidiary of the Company at any time during the past three years; and (iv) be able to read and understand fundamental financial statements, including a Company’s balance sheet, income statement, and cash flow statement. Additionally, each Company must certify that it has, and will continue to have, at least one member of the audit committee who has past employment experience in finance or accounting, requisite professional certification in accounting, or any other comparable experience or background which results in the individual’s financial sophistication, including being or having been a chief executive officer, chief financial officer or other senior officer with financial oversight responsibilities.

Appendix C

Selected Provisions of Part 363 of the Federal Deposit Insurance Corporation Rules and Regulations and the Guidelines and Interpretations Thereunder

§ 363.1 Scope and definitions.

(a) Applicability. This part applies to any insured depository institution with respect to any fiscal year in which its consolidated total assets as of the beginning of such fiscal year are \$500 million or more. The requirements specified in this part are in addition to any other statutory and regulatory requirements otherwise applicable to an insured depository institution.

(b) Compliance by subsidiaries of holding companies.

(1) For an insured depository institution that is a subsidiary of a holding company, the audited financial statements requirement of § 363.2(a) may be satisfied:

(i) For fiscal years ending on or before June 14, 2010, by audited consolidated financial statements of the top-tier or any mid-tier holding company.

(ii) For fiscal years ending on or after June 15, 2010, by audited consolidated financial statements of the top-tier or any mid-tier holding company provided that the consolidated total assets of the insured depository institution (or the consolidated total assets of all of the holding company's insured depository institution subsidiaries, regardless of size, if the holding company owns or controls more than one insured depository institution) comprise 75 percent or more of the consolidated total assets of this top-tier or mid-tier holding company as of the beginning of its fiscal year.

(2) The other requirements of this part for an insured depository institution that is a subsidiary of a holding company may be satisfied by the top-tier or any mid-tier holding company if the insured depository institution meets the criterion specified in § 363.1(b)(1) and if:

(i) The services and functions comparable to those required of the insured depository institution by this part are provided at this top-tier or mid-tier holding company level; and

(ii) The insured depository institution has as of the beginning of its fiscal year:

(A) Total assets of less than \$5 billion; or

(B) Total assets of \$5 billion or more and a composite CAMELS rating of 1 or 2.

(3) The appropriate Federal banking agency may revoke the exception in paragraph (b)(2) of this section for any institution with total assets in excess of \$9 billion for any period of time during which the appropriate Federal banking agency determines that the institution's exemption would create a significant risk to the Deposit Insurance Fund.

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§ 363.3 Independent public accountant.

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(f) Independence. The independent public accountant must comply with the independence standards and interpretations of the AICPA, the SEC, and the PCAOB. To the extent that any of the rules within any one of these independence standards (AICPA, SEC, and PCAOB) is more or less restrictive than the corresponding rule in the other independence standards, the independent public accountant must comply with the more restrictive rule.

(g) Peer reviews and inspection reports.

(1) Prior to commencing any services for an insured depository institution under this part, the independent public accountant must have received a peer review, or be enrolled in a peer review program, that meets acceptable guidelines. Acceptable peer reviews include peer reviews performed in accordance with the AICPA's Peer Review Standards and inspections conducted by the PCAOB.

(2) Within 15 days of receiving notification that a peer review has been accepted or a PCAOB inspection report has been issued, or before commencing any audit under this part, whichever is earlier, the independent public accountant must file two copies of the most recent peer review report and the public portion of the most recent PCAOB inspection report, if any, accompanied by any letters of comments, response, and acceptance, with the

FDIC, Accounting and Securities Disclosure Section, 550 17th Street, NW., Washington, DC 20429, if the report has not already been filed. The peer review reports and the public portions of the PCAOB inspection reports will be made available for public inspection by the FDIC.

(3) Within 15 days of the PCAOB making public a previously nonpublic portion of an inspection report, the independent public accountant must file two copies of the previously nonpublic portion of the inspection report with the FDIC, Accounting and Securities Disclosure Section, 550 17th Street, NW., Washington, DC 20429. Such previously nonpublic portion of the PCAOB inspection report will be made available for public inspection by the FDIC.

§ 363.4 Filing and notice requirements.

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(d) Notice of engagement or change of accountants. Each insured depository institution shall provide, within 15 days after the occurrence of any such event, written notice to the FDIC, the appropriate Federal banking agency, and any appropriate State bank supervisor of the engagement of an independent public accountant, or the resignation or dismissal of the independent public accountant previously engaged. The notice shall include a statement of the reasons for any such resignation or dismissal in reasonable detail.

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§ 363.5 Audit committees.

(a) Composition and duties. Each insured depository institution shall establish an audit committee of its board of directors, the composition of which complies with paragraphs (a)(1), (2), and (3) of this section. The duties of the audit committees shall include the appointment, compensation, and oversight of the independent public accountant who performs services required under this part, and reviewing with management and the independent public accountant the basis for the reports issued under this part.

(1) Each insured depository institution with total assets of \$1 billion or more as of the beginning of its fiscal year shall establish an independent audit committee of its board of directors, the members of which shall be outside directors who are independent of management of the institution.

(2) Each insured depository institution with total assets of \$500 million or more but less than \$1 billion as of the beginning of its fiscal year shall establish an audit committee of its board of directors, the members of which shall be outside directors, the majority of whom shall be independent of management of the institution. The appropriate Federal banking agency may, by order or regulation, permit the audit committee of such an insured depository institution to be made up of less than a majority of outside directors who are independent of management, if the agency determines that the institution has encountered hardships in retaining and recruiting a sufficient number of competent outside directors to serve on the audit committee of the institution.

(3) An outside director is a director who is not, and within the preceding fiscal year has not been, an officer or employee of the institution or any affiliate of the institution.

(b) Committees of large institutions. The audit committee of any insured depository institution with total assets of more than \$3 billion as of the beginning of its fiscal year shall include members with banking or related financial management expertise, have access to its own outside counsel, and not include any large customers of the institution. If a large institution is a subsidiary of a holding company and relies on the audit committee of the holding company to comply with this rule, the holding company's audit committee shall not include any members who are large customers of the subsidiary institution.

(c) Independent public accountant engagement letters.

(1) In performing its duties with respect to the appointment of the institution's independent public accountant, the audit committee shall ensure that engagement letters and any related agreements with the independent public accountant for services to be performed under this part do not contain any limitations of liability provisions that:

(i) Indemnify the independent public accountant against claims made by third parties;

(ii) Hold harmless or release the independent public accountant from liability for claims or potential claims that might be asserted by the client insured depository institution, other than claims for punitive damages;

or

(iii) Limit the remedies available to the client insured depository institution.

(2) Alternative dispute resolution agreements and jury trial waiver provisions are not precluded from engagement letters provided that they do not incorporate any limitations of liability provisions set forth in paragraph (c)(1) of this section.

Appendix A to Part 363—Guidelines and Interpretations

1. **Measuring Total Assets.** To determine whether this part applies, an institution should use total assets as reported on its most recent Report of Condition (Call Report) or Thrift Financial Report (TFR), the date of which coincides with the end of its preceding fiscal year. If its fiscal year ends on a date other than the end of a calendar quarter, it should use its Call Report or TFR for the quarter end immediately preceding the end of its fiscal year.

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3. **Compliance by Holding Company Subsidiaries.** ... An institution that does not meet the criteria in § 363.1(b)(2) must satisfy the remaining provisions of this part on an individual institution basis and maintain its own audit committee....

...

13. **General Qualifications.** To provide audit and attest services to insured depository institutions, an independent public accountant should be registered or licensed to practice as a public accountant, and be in good standing, under the laws of the State or other political subdivision of the United States in which the home office of the institution (or the insured branch of a foreign bank) is located. As required by section 36(g)(3)(A)(i), the accountant must agree to provide copies of any working papers, policies, and procedures relating to services performed under this part.

14. [Reserved.]

15. **Peer Review Guidelines.** The following peer review guidelines are acceptable.

(a) The external peer review should be conducted by an organization independent of the accountant or firm being reviewed, as frequently as is consistent with professional accounting practices.

(b) The peer review (other than a PCAOB inspection) should be generally consistent with AICPA Peer Review Standards; and

(c) The review should include, if available, at least one audit on an insured depository institution or consolidated depository institution holding company.

16. [Reserved.]

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26. **Notices Concerning Accountants.** With respect to any selection, change, or termination of an independent public accountant, an institution's management and audit committee should be familiar with the notice requirements in § 363.4(d) and guideline 20, and management should send a copy of any notice required under § 363.4(d) to the independent public accountant when it is filed with the FDIC. An insured depository institution that is a public company and files reports required under the Federal securities laws with its appropriate Federal banking agency, or is a subsidiary of a public company that files such reports with the SEC, may use its current report (e.g., SEC Form 8--K) concerning a change in accountant to satisfy the notice requirements of § 363.4(d) subject to the criterion of § 363.1(b)(1) regarding compliance with the audited financial statements requirement at the holding company level.

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27. **Composition.** The board of directors of each institution should determine whether each existing or potential audit committee member meets the requirements of section 36 and this part. To do so, the board of directors should maintain an approved set of written criteria for determining whether a director who is to serve on the audit committee is an outside director (as defined in § 363.5(a)(3)) and is independent of management. At least annually, the board of each institution should determine whether each existing or potential audit committee member is an outside director. In addition, at least annually, the board of an institution with \$1 billion or more in total assets as of the beginning of its fiscal year should determine whether all existing and potential audit committee members are "independent of management of the institution" and the board of an institution with total assets of \$500 million or more but less than \$1 billion as of the beginning of its fiscal year should determine whether the majority of all existing and potential audit committee members are "independent of management of the institution." The minutes of the board of directors should contain the results of and the basis for its determinations with respect to each existing and potential audit committee member. Because an insured branch of a foreign bank does not have a separate board of directors, the FDIC will not apply the audit committee requirements to such branch. However, any such branch is encouraged to make a reasonable good faith effort to see that similar duties are performed by persons whose experience is generally consistent with the Rule's requirements for an institution the size of the insured branch.

28. “Independent of Management” Considerations. It is not possible to anticipate, or explicitly provide for, all circumstances that might signal potential conflicts of interest in, or that might bear on, an outside director’s relationship to an insured depository institution and whether the outside director should be deemed “independent of management.” When assessing an outside director’s relationship with an institution, the board of directors should consider the issue not merely from the standpoint of the director himself or herself, but also from the standpoint of persons or organizations with which the director has an affiliation. These relationships can include, but are not limited to, commercial, banking, consulting, charitable, and family relationships. To assist boards of directors in fulfilling their responsibility to determine whether existing and potential members of the audit committee are “independent of management,” paragraphs (a) through (d) of this guideline provide guidance for making this determination.

(a) If an outside director, either directly or indirectly, owns or controls, or has owned or controlled within the preceding fiscal year, 10 percent or more of any outstanding class of voting securities of the institution, the institution’s board of directors should determine, and document its basis and rationale for such determination, whether such ownership of voting securities would interfere with the outside director’s exercise of independent judgment in carrying out the responsibilities of an audit committee member, including the ability to evaluate objectively the propriety of management’s accounting, internal control, and reporting policies and practices. Notwithstanding the criteria set forth in paragraphs (b), (c), and (d) of this guideline, if the board of directors determines that such ownership of voting securities would interfere with the outside director’s exercise of independent judgment, the outside director will not be considered “independent of management.”

(b) The following list sets forth additional criteria that, at a minimum, a board of directors should consider when determining whether an outside director is “independent of management.” The board of directors may conclude that additional criteria are also relevant to this determination in light of the particular circumstances of its institution. Accordingly, an outside director will not be considered “independent of management” if:

- (1) The director serves, or has served within the last three years, as a consultant, advisor, promoter, underwriter, legal counsel, or trustee of or to the institution or its affiliates.
- (2) The director has been, within the last three years, an employee of the institution or any of its affiliates or an immediate family member is, or has been within the last three years, an executive officer of the institution or any of its affiliates.
- (3) The director has participated in the preparation of the financial statements of the institution or any of its affiliates at any time during the last three years.
- (4) The director has received, or has an immediate family member who has received, during any twelve-month period within the last three years, more than \$100,000 in direct and indirect compensation from the institution, its subsidiaries, and its affiliates for consulting, advisory, or other services other than director and committee fees and pension or other forms of deferred compensation for prior service (provided such compensation is not contingent in any way on continued service). Direct compensation also would not include compensation received by the director for former service as an interim chairman or interim chief executive officer.
- (5) The director or an immediate family member is a current partner of a firm that performs internal or external auditing services for the institution or any of its affiliates; the director is a current employee of such a firm; the director has an immediate family member who is a current employee of such a firm and who participates in the firm’s audit, assurance, or tax compliance practice; or the director or an immediate family member was within the last three years (but no longer is) a partner or employee of such a firm and personally worked on the audit of the insured depository institution or any of its affiliates within that time.
- (6) The director or an immediate family member is, or has been within the last three years, employed as an executive officer of another entity where any of the present executive officers of the institution or any of its affiliates at the same time serves or served on that entity’s compensation committee.
- (7) The director is a current employee, or an immediate family member is a current executive officer, of an entity that has made payments to, or received payments from, the institution or any of its affiliates for property or services in an amount which, in any of the last three fiscal years, exceeds the greater of \$200 thousand, or 5 percent of such entity’s consolidated gross revenues. This would include payments made by the institution or any of its affiliates to not-for-profit entities where the director is an executive officer or where an immediate family member of the director is an executive officer.
- (8) For purposes of paragraph (b) of this guideline:

- (i) An “immediate family member” includes a person’s spouse, parents, children, siblings, mothers- and fathers-in-law, sons- and daughters-in-laws, brothers- and sisters-in-law, and anyone (other than domestic employees) who shares such person’s home.
 - (ii) The term affiliate of, or a person affiliated with, a specified person, means a person or entity that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.
 - (iii) The term indirect compensation for consulting, advisory, or other services includes the acceptance of a fee for such services by a director’s immediate family member or by an organization in which the director is a partner or principal that provides accounting, consulting, legal, investment banking, or financial advisory services to the institution, any of its subsidiaries, or any of its affiliates.
 - (iv) The terms direct and indirect compensation and payments do not include payments such as dividends arising solely from investments in the institution’s equity securities, provided the same per share amounts are paid to all shareholders of that class; interest income from investments in the institution’s deposit accounts and debt securities; loans from the institution that conform to all regulatory requirements applicable to such loans except that interest payments or other fees paid in association with such loans would be considered payments; and payments under non-discretionary charitable contribution matching programs.
- (c) An insured depository institution that is a public company and a listed issuer (as defined in Rule 10A--3 of the Securities Exchange Act of 1934 (Exchange Act)), or is a subsidiary of a public company that meets the criterion specified in § 363.1(b)(1) and is a listed issuer, may choose to use the definition of audit committee member independence set forth in the listing standards applicable to the public institution or its public company parent for purposes of determining whether an outside director is “independent of management.”
- (d) All other insured depository institutions may choose to use the definition of audit committee member independence set forth in the listing standards of a national securities exchange that is registered with the SEC pursuant to section 6 of the Exchange Act or a national securities association that is registered with the SEC pursuant to section 15A(a) of the Exchange Act for purposes of determining whether an outside director is “independent of management.”

...

30. Holding Company Audit Committees.

- (a) When an insured depository institution satisfies the requirements for the holding company exception specified in §§ 363.1(b)(1) and (2), the audit committee requirement of this part may be satisfied by the audit committee of the top-tier or any mid-tier holding company. Members of the audit committee of the holding company should meet all the membership requirements applicable to the largest subsidiary depository institution subject to part 363 and should perform all the duties of the audit committee of a subsidiary institution subject to part 363, even if the holding company directors are not directors of the institution.
- (b) When an insured depository institution subsidiary with total assets of \$1 billion or more as of the beginning of its fiscal year does not meet the requirements for the holding company exception specified in §§ 363.1(b)(1) and (2) or maintains its own separate audit committee to satisfy the requirements of this part, the members of the audit committee of the top-tier or any mid-tier holding company may serve on the audit committee of the subsidiary institution if they are otherwise independent of management of the subsidiary institution, and, if applicable, meet any other requirements for a large subsidiary institution covered by this part.
- (c) When an insured depository institution with total assets of \$500 million or more but less than \$1 billion as of the beginning of its fiscal year does not meet the requirements for the holding company exception specified in §§ 363.1(b)(1) and (2) or maintains its own separate audit committee to satisfy the requirements of this part, the members of the audit committee of the top-tier or any mid-tier holding company may serve on the audit committee of the subsidiary institution provided a majority of the institution’s audit committee members are independent of management of the subsidiary institution.
- (d) Officers and employees of a top-tier or any mid-tier holding company may not serve on the audit committee of a subsidiary institution subject to part 363.

31. Duties. The audit committee should perform all duties determined by the institution’s board of directors and it should maintain minutes and other relevant records of its meetings and decisions. The duties of the audit committee should be appropriate to the size of the institution and the complexity of its operations, and, at a minimum, should include the appointment, compensation, and oversight of the independent public accountant; reviewing with management and the independent public accountant the basis for their respective reports issued under §§ 363.2(a)

and (b) and §§ 363.3(a) and (b); reviewing and satisfying itself as to the independent public accountant's compliance with the required qualifications for independent public accountants set forth in §§ 363.3(f) and (g) and guidelines 13 through 16; ensuring that audit engagement letters comply with the provisions of § 363.5(c) before engaging an independent public accountant; being familiar with the notice requirements in § 363.4(d) and guideline 20 regarding the selection, change, or termination of an independent public accountant; and ensuring that management sends a copy of any notice required under § 363.4(d) to the independent public accountant when it is filed with the FDIC.

Appropriate additional duties could include:

- (a) Reviewing with management and the independent public accountant the scope of services required by the audit, significant accounting policies, and audit conclusions regarding significant accounting estimates;
- (b) Reviewing with management and the accountant their assessments of the effectiveness of internal control over financial reporting, and the resolution of identified material weaknesses and significant deficiencies in internal control over financial reporting, including the prevention or detection of management override or compromise of the internal control system;
- (c) Reviewing with management the institution's compliance with the Designated Laws and Regulations identified in guideline 7A;
- (d) Discussing with management and the independent public accountant any significant disagreements between management and the independent public accountant; and
- (e) Overseeing the internal audit function.

32. **Banking or Related Financial Management Expertise.** At least two members of the audit committee of a large institution shall have "banking or related financial management expertise" as required by section 36(g)(1)(C)(i). This determination is to be made by the board of directors of the insured depository institution. A person will be considered to have such required expertise if the person has significant executive, professional, educational, or regulatory experience in financial, auditing, accounting, or banking matters as determined by the board of directors. Significant experience as an officer or member of the board of directors or audit committee of a financial services company would satisfy these criteria. A person who has the attributes of an "audit committee financial expert" as set forth in the SEC's rules would also satisfy these criteria.

33. **Large Customers.** Any individual or entity (including a controlling person of any such entity) which, in the determination of the board of directors, has such significant direct or indirect credit or other relationships with the institution, the termination of which likely would materially and adversely affect the institution's financial condition or results of operations, should be considered a "large customer" for purposes of § 363.5(b).

Appendix D

SEC Definition of Audit Committee Financial Expert

The rules of the Securities and Exchange Commission (the “SEC”) define the term “audit committee financial expert” as a person who has the following attributes:

- an understanding of generally accepted accounting principles and financial statements;
- the ability to assess the general application of such principles in connection with the accounting for estimates, accruals and reserves;
- experience preparing, auditing, analyzing or evaluating financial statements that present a breadth and level of complexity of accounting issues that are generally comparable to the breadth and complexity of issues that can reasonably be expected to be raised by the company’s financial statements, or experience actively supervising one or more persons engaged in such activities;
- an understanding of internal control over financial reporting; and
- an understanding of audit committee functions.

An audit committee financial expert must have acquired such attributes through:

- education and experience as a principal financial officer, principal accounting officer, controller, public accountant or auditor or experience in one or more positions that involve the performance of similar functions;
- experience actively supervising a principal financial officer, principal accounting officer, controller, public accountant, auditor or person performing similar functions;
- experience overseeing or assessing the performance of companies or public accountants with respect to the preparation, auditing or evaluation of financial statements; or
- other relevant experience.

The SEC recommends that the board of directors evaluate the totality of an individual’s education and experience and consider all available facts and circumstances, including, but not limited to, the following qualitative factors identified by the SEC:

- the level of the person’s accounting or financial education, including whether the person has earned an advanced degree in finance or accounting;
- whether the person is a certified public accountant, or the equivalent, in good standing, and the length of time that the person actively has practiced as a certified public accountant, or the equivalent;
- whether the person is certified or otherwise identified as having accounting or financial experience by a recognized private body that establishes and administers standards in respect of such expertise, whether that person is in good standing with the recognized private body, and the length of time that the person has been actively certified or identified as having this expertise;
- whether the person has served as a principal financial officer, controller or principal accounting officer of a company that, at the time the person held such position, was required to file reports pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended (“SEC Reports”), and if so, for how long;
- the person’s specific duties while serving as a public accountant, auditor, principal financial officer, controller, principal accounting officer or position involving the performance of similar functions;
- the person’s level of familiarity and experience with all applicable laws and regulations regarding the preparation of financial statements that must be included in the SEC Reports;
- the level and amount of the person’s direct experience reviewing, preparing, auditing or analyzing financial statements that must be included in the SEC Reports;
- the person’s past or current membership on one or more audit committees of companies that, at the time the person held such membership, were required to file the SEC Reports;

- the person’s level of familiarity and experience with the use and analysis of financial statements of public companies; and
- whether the person has any other relevant qualifications or experience that would assist him or her in understanding and evaluating the public company’s financial statements and other financial information and to make knowledgeable and thorough inquiries whether:
 - the financial statements fairly present the financial condition, results of operations and cash flows of the public company in accordance with generally accepted accounting principles; and
 - the financial statements and other financial information, taken together, fairly present the financial condition, results of operations and cash flows of the public company.

The SEC intends that the board of directors would use the foregoing list as guidance rather than a mechanical checklist in assessing whether a person qualifies as an audit committee financial expert. The fact that a person previously has served on an audit committee does not, by itself, justify the board of directors in “grandfathering” that person as an audit committee financial expert under the definition. Similarly, the fact that a person has experience as a public accountant or auditor, or a principal financial officer, controller or principal accounting officer or experience in a similar position does not, by itself, justify the board of directors in deeming the person to be an audit committee financial expert. In addition to determining that a person possesses an appropriate degree of knowledge and experience, the board must ensure that it names an audit committee financial expert who embodies the highest standards of personal and professional integrity. In this regard, a board should consider any disciplinary actions to which a potential expert is, or has been, subject in determining whether that person would be a suitable audit committee financial expert.

Appendix E

See Internal Audit Charter