

THE FEDERAL RESERVE'S RISK COMMITTEE REGIME

David A. Wishnick*

When financial institutions take excessive risks, their losses can harm the public. After the object lesson of the Global Financial Crisis, Congress turned to corporate governance as an instrument of financial regulation. Through the Dodd–Frank Act, Congress granted the Federal Reserve (“Fed”) authority to reform board risk committees at the largest Fed-regulated financial institutions. These Dodd–Frank risk committees are now the products of federal corporate governance regulation. But to what end? Has the Fed taken the opportunity provided by Congress to reorient risk committees toward prudential control of financial risk?

This Article answers that question through a critical evaluation of the Fed’s risk committee regulation and oversight. Drawing on rulemakings, guidance documents, supervisory materials, and corporate disclosures, the Article develops a detailed picture of the Fed’s implementation of the Dodd–Frank mandate across four aspects of risk committee design: functions, composition, member compensation, and exposure to liability. The analysis shows that despite being a prudential regulator, the Fed has not materially promoted a prudential orientation for regulated risk committees. Rather, the Fed has been reticent, forgoing many opportunities to orient Dodd–Frank risk committees away from shareholder value maximization and toward the public interest in financial risk control.

Despite the Fed’s missed opportunities, the Article contends that the Dodd–Frank risk committee mandate could be revived. To that end, the Article sketches reform options available to the Fed and the tradeoffs they may entail. These options include explicit mandates to alter committee charters and member compensation, along with internal standards favoring enforcement actions against individual board members when risk committees fail at their fundamental task. Taken together, these possibilities demonstrate the value of revisiting the corporate governance responsibilities allocated to the Fed by the Dodd–Frank Act.

* Associate Professor of Law, Georgetown University Law Center. For helpful comments and conversations, I thank Dan Awrey, Don Langevoort, Michael Ohlrogge, Anthony Santomero, Hillary Sale, and audiences at the Law & Society Association Annual Meeting, the American Association of Law Schools Annual Meeting, and the Financial Regulation Midyear Conference at the Wharton School. For research assistance, I thank Andrew Bellah, Maddie Bowen, Niamke Nelson, and Kelina Rodgers.

TABLE OF CONTENTS

INTRODUCTION	494
I. THE PUBLIC INTEREST IN BANK RISK GOVERNANCE	499
A. The Public Stakes of Bank Risk	499
B. The Dodd–Frank Risk Committee Mandate	504
II. THE FED’S RISK COMMITTEE REGIME	508
A. Functions	508
B. Composition.....	512
C. Compensation	515
D. Liability	517
III. THE FUTURE OF THE RISK COMMITTEE	521
A. Giving Up on Board Governance	521
B. Waiting for Congress.....	523
C. The Stakes of Waiting.....	526
D. Reviving the Regulatory Mandate.....	530
CONCLUSION	536
APPENDIX A.....	538
APPENDIX B.....	542

INTRODUCTION

Excessive risk-taking by Wall Street’s largest financial institutions has long posed a threat to the public interest. Among the many parties tasked with controlling those risks, the directors of firms like JPMorgan Chase and Bank of America occupy a complicated position. On the one hand, they govern firms designed to make money for the benefit of their shareholders.¹ On the other hand, when the firms’ financial risks are poorly constrained, they can foment serious crises.² The relationship between the largest financial institutions and the public interest in financial risk control therefore raises fundamental questions for financial regulation.

In the Dodd–Frank Act of 2010, Congress tasked the Federal Reserve (“Fed”) with remaking the relationship through the administrative process.³ The impetus was the Global Financial Crisis of 2008 (“GFC” or “Crisis”).⁴ In the years

1. See, e.g., *In re Citigroup Inc. S’holder Derivative Litig.*, 964 A.2d 106, 139 (Del. Ch. 2009).

2. See, e.g., SENIOR SUPERVISORS GRP., RISK MANAGEMENT LESSONS FROM THE GLOBAL BANKING CRISIS OF 2008 4, 22 (2009), <https://www.sec.gov/news/press/2009/report102109.pdf> [<https://perma.cc/NFW3-ZRF9>].

3. See Dodd–Frank Wall Street Reform and Consumer Protection Act of 2010, 12 U.S.C. § 5365(h).

4. See Thomas C. Baxter, Jr., *The Rise of Risk Management in Financial Institutions and a Potential Unintended Consequence – The Diminution of the Legal Function*, BUS. L. TODAY (Apr. 2, 2019), <https://businesslawtoday.org/2019/04/rise-risk-management-financial-institutions-potential-unintended-consequence-diminution-legal-function/> [<https://perma.cc/YRX9-6JVQ>].

leading up to the GFC, directors at the largest banks may have satisfied the low bar for risk oversight set by Delaware corporate law's *Caremark* doctrine,⁵ but they allowed their firms to spark an economic, political, and social disaster.⁶ Legislators blamed the directors and sought to better align the governance of large banking institutions with the public interest.⁷ To do so, they empowered the Fed to regulate the design and operation of board risk committees at the largest bank holding companies ("BHCs") and foreign banking organizations ("FBOs")—a set including many of the most systemically important financial institutions operating in the United States.⁸ Their risk committees thus became the objects of direct federal regulation.

New federal regulatory power over corporate governance is always notable for its potential divergence from state-law frameworks.⁹ Indeed, prior scholarship has highlighted some possibilities and limits inherent in Dodd–Frank's grant of authority over risk committees.¹⁰ However, existing literature has paid less attention

5. See *In re Citigroup Inc.*, 964 A.2d at 129–30. I emphasize that they *may* have cleared *Caremark* bar. See Frank Partnoy, *Delaware and Financial Risk*, in *THE CORPORATE CONTRACT IN CHANGING TIMES: IS THE LAW KEEPING UP?* 130, 132 (Steven Davidoff Solomon & Randall Stuart Thomas eds., 2019) (arguing that while "*Citigroup* was correctly decided, . . . the result might have been the opposite if the complaint been framed differently, with relevant and important facts").

6. On the scope of the public subsidies directed toward the largest banks, see ADAM TOOZE, *CRASHED: HOW A DECADE OF FINANCIAL CRISES CHANGED THE WORLD* 166–201 (2018).

7. See, e.g., *Lessons Learned in Risk Management Oversight at Federal Financial Regulators: Hearing Before the Subcomm. on Secs., Ins., & Inv. of the S. Comm. on Banking, Hous., & Urb. Affs.*, 111th Cong. 18–20 (2009) [hereinafter *Lessons Learned Hearing*] (colloquy between Sen. Jim Bunning and witnesses).

8. See Dodd–Frank Wall Street Reform and Consumer Protection Act of 2010, 12 U.S.C. § 5365(h) (requiring the Board of Governors of the Federal Reserve System to "issue regulations requiring [certain] bank holding compan[ies]" to establish risk committees). Bank holding companies are corporate entities that possess controlling investments in insured depository institutions and often similarly own other financial entities, such as broker–dealers. See 12 U.S.C. § 1841(a); MICHAEL S. BARR, HOWELL E. JACKSON & MARGARET E. TAHYAR, *FINANCIAL REGULATION: LAW AND POLICY* 715–21 (3d ed. 2021). Foreign banking organizations are institutions that operate or control certain banking institutions in the United States. See 12 C.F.R. § 211.21(o) (2025); Mackenzie Humble, Note, *The Treacherous Landscape for Foreign G-SIBs: The IHC Framework and Financial Stability*, 2020 COLUM. BUS. L. REV. 336, 347–53.

9. See, e.g., Hillary A. Sale, *Public Governance*, 81 GEO. WASH. L. REV. 1012, 1027–34 (2013); William L. Cary, *Federalism and Corporate Law: Reflections Upon Delaware*, 83 YALE L.J. 663, 692–96 (1974).

10. See, e.g., Jeremy C. Kress, *Domesticating Foreign Finance*, 73 FLA. L. REV. 951, 977, 1010 (2021) (discussing risk committee requirements applicable to FBOs with intermediate holding companies); Steven L. Schwarcz, *Systematic Regulation of Systemic Risk*, 2019 WIS. L. REV. 1, 41–44 & n.268 [hereinafter Schwarcz, *Systematic Regulation of Systemic Risk*] (discussing the limits of the risk committee requirements); Steven L. Schwarcz, *Misalignment: Corporate Risk-Taking and Public Duty*, 92 NOTRE DAME L. REV. 1, 30–31 (2016) [hereinafter Schwarcz, *Misalignment*] (same); Jeremy C. Kress, *Board to Death: How Busy Directors Could Cause the Next Financial Crisis*, 59 B.C. L. REV. 877, 926–27 (2018) (arguing that risk committee requirements should address the problem of

to the Fed's ongoing exercise of the authority through regulation and supervision. This Article contributes to the literature by providing a comprehensive evaluation of the Fed's post-Dodd–Frank approach to risk committee construction.

That approach first took concrete shape in 2014, when the Fed finally promulgated regulations implementing the risk committee mandate.¹¹ Over a decade on, real-world events have tested the Fed's risk committee regime, and it has come up short. Specifically, Dodd–Frank-mandated risk committees at two systemically important institutions—Silicon Valley Bank (“SVB”) and Credit Suisse—failed to stop disastrous risk-management errors before the downfall of those institutions during the banking panic of 2023. SVB's committee tolerated breaches of important internal risk controls and approved transactions that increased SVB's exposure to rising interest rates.¹² On Credit Suisse's long road to collapse, its United States-based risk committee allowed risk-taking so reckless that the institution lost \$5.5 billion extending credit to a single rich person's family office.¹³ In the wake of these monitoring failures, both SVB and Credit Suisse received extensions of

director overcommitment); Kristin N. Johnson & Steven A. Ramirez, *New Guiding Principles: Macroprudential Solutions to Risk Management Oversight and Systemic Risk Concerns*, 11 U. ST. THOMAS L.J. 386, 416–18, 420–26 (2014) (advocating for a macroprudential complement to microprudential Dodd–Frank risk oversight measures); Urska Velikonja, *The Political Economy of Board Independence*, 92 N.C. L. REV. 855, 861 n.30, 899–903 (2014) (arguing that board reforms often displace substantive regulations for reasons of political economy); Claire A. Hill & Brett H. McDonnell, *Reconsidering Board Oversight Duties After the Financial Crisis*, 2013 U. ILL. L. REV. 859, 864–65, 877 (discussing policy opportunities related to risk committee regulation); Kristin N. Johnson, *Addressing Gaps in the Dodd-Frank Act: Directors' Risk Management Oversight Obligations*, 45 U. MICH. J.L. REFORM 55, 106–07 (2011) (discussing the risk committee as a potential instrument of control over systemic risk).

11. See 12 C.F.R. § 252 (2019) (originally promulgated in 79 Fed. Reg. 17,240 (Mar. 27, 2014)).

12. See discussion *infra* Section III.C.

13. See CREDIT SUISSE GRP. SPECIAL COMM. OF THE BD. OF DIRS., REPORT ON ARCHEGOS CAPITAL MANAGEMENT 141 (2021), <https://www.sec.gov/Archives/edgar/data/1159510/000137036821000064/a210729-ex992.htm> [<https://perma.cc/Y4K7-3TMQ>]. “Family office” refers to an organizational vehicle through which a rich family group invests its assets. See Anupreeta Das & Juliet Chung, *New Force on Wall Street: The ‘Family Office,’* WALL ST. J. (Mar. 8, 2017, at 17:18 ET), <https://www.wsj.com/articles/the-new-force-on-wall-street-family-offices-1488991396> [<https://perma.cc/8G7D-3ERQ>].

extraordinary public financial support.¹⁴ Fed-regulated risk committees had failed to prevent the very mischief that Congress targeted.¹⁵

These recent lapses of risk oversight raise serious questions about the Fed's risk committee regime and the possibilities for its reform. As institutions of bank governance,¹⁶ risk committees embody a basic tension between shareholder value and the public interest. Rational bank shareholders seek greater financial risk than is socially optimal.¹⁷ Rather than investing in risk management at an optimal level to preserve a bank's soundness and financial stability—the prudential priorities at the heart of bank regulation—their shareholders are content socializing losses from their firms' worst bets.¹⁸ This basic misalignment raises the question of whether the design of governance institutions such as the risk committee can be remade to reorient banks toward prudential levels of financial risk. Prior scholarship has tended to focus on the ways this tension manifests in the corporate law of fiduciary duty and in the background ideology animating bank governance.¹⁹ The risk committee experiment highlights its regulatory dimensions.

14. The Federal Deposit Insurance Corporation (“FDIC”) backstopped SVB to the tune of \$16.1 billion in losses to its Deposit Insurance Fund. *See* BD. OF GOVERNORS OF THE FED. RESRV. SYS., 2023-SR-B-013, MATERIAL LOSS REVIEW OF SILICON VALLEY BANK 10 n.6 (2023) [hereinafter SVB MATERIAL LOSS REVIEW], <https://oig.federalreserve.gov/reports/board-material-loss-review-silicon-valley-bank-sep2023.pdf> [https://perma.cc/5TGX-QWA7]. To facilitate the emergency sale of Credit Suisse to UBS, the Swiss National Bank provided \$100 billion in liquidity assistance, and the Swiss government guaranteed it would bear up to \$9 billion in losses. Margot Patrick et al., *UBS Agrees to Buy Credit Suisse for More than \$3 Billion*, WALL ST. J. (Mar. 19, 2023, at 18:56 ET), <https://www.wsj.com/articles/ubs-offers-1-billion-to-take-over-credit-suisse-bfac51fa> [https://perma.cc/PA5V-YAXD].

15. *See, e.g.*, BASEL COMM. ON BANKING SUPERVISION, REPORT ON THE 2023 BANKING TURMOIL 1 (2023), <https://www.bis.org/bcbs/publ/d555.pdf> [https://perma.cc/V9N8-3GJM] (discussing the role of “risk management practices and governance arrangements” in the 2023 failures).

16. Note that throughout, despite the imprecision, I adopt the practice of using the words “bank” and “banks” as shorthand for the BHCs and FBOs covered by the risk committee regime. *See, e.g.*, DARRELL DUFFIE, HOW BIG BANKS FAIL AND WHAT TO DO ABOUT IT 4–7 (2011). I also use the word “banks” in a functional sense. Prior to the Crisis, some of the economy's largest investment banks operated outside federal banking law's purview and were subject only to light-touch supervision by the Securities and Exchange Commission. *See* Jill E. Fisch, *Top Cop or Regulatory Flop? The SEC at 75*, 95 VA. L. REV. 785, 791–92 (2009). That ended when those banks either failed or reorganized as bank holding companies, thereby gaining access to Federal Reserve support and submitting themselves to Federal Reserve supervision. *See id.* at 792.

17. *See, e.g.*, Saule T. Omarova, *Bank Governance and Systemic Stability: The “Golden Share” Approach*, 68 ALA. L. REV. 1029, 1031–32 (2017); John Armour & Jeffrey N. Gordon, *Systemic Harms and Shareholder Value*, 6 J. LEGAL ANALYSIS 35, 37–38 (2014); Dan Awrey, William Blair & David Kershaw, *Between Law and Markets: Is There a Role for Culture and Ethics in Financial Regulation?*, 38 DEL. J. CORP. L. 191, 232 (2013); Jonathan R. Macey & Maureen O'Hara, *The Corporate Governance of Banks*, 9 FRBNY ECON. POL'Y REV. 91, 97–98 (2003).

18. *See* discussion *infra* Section I.A.

19. *See, e.g.*, Schwarcz, *Misalignment*, *supra* note 10, at 23–28.

To shed light on the regulatory dimensions of bank governance, this Article analyzes the Fed's choices regarding risk committee orientation. Has the Fed taken the opportunities provided by Congress to "repurpose" risk committees toward the goal of prudential control of financial risk?²⁰ Should the Fed consider renewed efforts to do so in the future? The Article's answers to these questions flow from analysis of four design elements at the heart of risk committees' contributions to corporate governance. These four elements are the risk committees' functions, composition, member compensation, and exposure to liability. These are commonly viewed as the essential determinants of corporate governance institutions' real-world objectives and their effectiveness in pursuing those objectives.²¹ For each institutional dimension, I analyze statutory text, rulemaking and guidance documents, reports on supervisory processes, enforcement actions, "shadow" governance documents,²² and securities disclosures to develop a detailed picture of the Fed's decisions regarding risk committee governance and their on-the-ground effects.

The analysis reveals missed opportunities across the four design dimensions. First, the Fed has not imposed an explicitly prudential purpose on Dodd-Frank risk committees. Second, the Fed has not employed its discretion over committee composition to depart from the shareholder-centric culture of risk management as an expert discipline. Third, the Fed has not regulated risk committee compensation to link directors' financial incentives to prudential priorities. Fourth, the Fed has failed to hold risk committee members accountable for knowing and reckless failures to ensure compliance with risk limits, ensure timely resolution of risk-related supervisory matters requiring attention, and ensure the maintenance of sound risk appetites in the zone of insolvency. All told, the analysis shows the Fed as a corporate governance reformer in action, but one that has missed numerous opportunities to embed the public's interest in preventing financial-institution failures into risk committee design and operation.

How should policymakers and scholars think about the Fed's turn as a reticent corporate-governance reformer? One response is to view the Fed's choices as overdetermined. The Fed's institutional priorities and political constraints provide plausible explanations for wariness over wading directly into matters of corporate governance design.²³ The centripetal force of shareholder-focused corporate

20. Cf. John Gerard Ruggie, *Corporate Globalization and the Liberal Order: Disembedding and Reembedding Governing Norms*, in *THE DOWNFALL OF THE AMERICAN ORDER: LIBERALISM'S END?* 144, 147 (Peter J. Katzenstein & Jonathan Kirschner eds., 2022) (discussing "corporate repurposing" as a political project); Jill E. Fisch & Steven Davidoff Solomon, *Should Corporations Have a Purpose?*, 99 *TEX. L. REV.* 1309, 1323, 1339 (2021) (evaluating contemporary, privately ordered "repurposing" efforts).

21. See Stephen M. Bainbridge & M. Todd Henderson, *Boards-R-Us: Reconceptualizing Corporate Boards*, 66 *STAN. L. REV.* 1051, 1069–74 (2014); Awrey, Blair & Kershaw, *supra* note 17, at 231–45.

22. See Yaron Nili & Cathy Hwang, *Shadow Governance*, 108 *CALIF. L. REV.* 1097, 1105 (2020) (defining shadow governance documents as "non-charter, non-bylaw [governance] document[s]").

23. See Peter Conti-Brown & David A. Wishnick, *Technocratic Pragmatism, Bureaucratic Expertise, and the Federal Reserve*, 130 *YALE L.J.* 636, 694–96 (2021).

governance ideology provides another.²⁴ But as with any agency, the Fed's policy positions remain provisional and alterable within the bounds of law and reasoned justification.²⁵ The cautionary tales of SVB and Credit Suisse justify revisiting the Fed's current choices.

To begin that work, the Article sets out reform possibilities and sketches the tradeoffs they entail. Across each of the four design elements that determine committee priorities, the Fed possesses options under current law to better orient risk committees toward a substantive conception of prudential risk control. These include explicit mandates to alter committee charters and member compensation, along with internal standards favoring enforcement actions against individual board members when risk committees fail at their fundamental task. To be sure, these reform possibilities are not costless; in considering such reforms, the Fed would need to weigh potential countervailing effects, such as challenges to board recruitment and information flow, and negative effects on the Fed's broader administrative and political position. The Article's goal is not to argue for any one combination of reform options, but rather to demonstrate the value of revisiting the corporate governance responsibilities allocated to the Fed by the Dodd–Frank Act.

The Article proceeds in three parts. Part I situates the Dodd–Frank risk committee mandate against the backdrop of fundamental misalignment between bank shareholders' risk appetite and the public interest. Part II analyzes the Fed's implementation of the risk committee mandate in light of the misalignment problem across four dimensions: the committee's functions, composition, member compensation, and exposure to liability. Part III examines rationales, possibilities, and limits the Fed should take into account when considering the future of the Dodd–Frank risk committee mandate.

I. THE PUBLIC INTEREST IN BANK RISK GOVERNANCE

A. *The Public Stakes of Bank Risk*

The business of banking is built around risk.²⁶ To be successful, a bank must take calculated financial risks that pay off in the aggregate.²⁷ To remain in operation, a bank must avoid risks that lead it into insolvency or illiquidity.²⁸ These realities create the need for a delicate balance between seeking profit and maintaining resilience.

When banks fail, their shareholders are generally unhappy about it. After all, shares of failed banks usually are worth next to nothing.²⁹ Upon losing their investments, bank shareholders might file lawsuits alleging securities fraud and

24. See Dorothy S. Lund & Elizabeth Pollman, *The Corporate Governance Machine*, 121 COLUM. L. REV. 2563, 2578–609 (2021).

25. See Cristina M. Rodríguez, *Foreword: Regime Change*, 135 HARV. L. REV. 1, 94–95, 115–16 (2021).

26. See BARR, JACKSON & TAHYAR, *supra* note 8, at 148–52.

27. See *id.* at 151–52.

28. See *id.* at 149.

29. See, e.g., Vikram Barhat, *What Happens if a Company's Stock Falls to Zero?*, MORNINGSTAR (Apr. 27, 2023), <https://www.morningstar.ca/ca/news/234575/what-happens-if-a-companys-stock-falls-to-zero.aspx> [<https://perma.cc/F3FE-2L77>].

breach of general corporate-law fiduciary duties.³⁰ They might even complain publicly about the idiocy of bank management.³¹ But sour grapes about bad investment outcomes do not tell us much about bank shareholders' *ex ante* incentives. Sometimes even good bets lose money. The fundamental problem animating much of the field of bank regulation has to do with those incentives. In the absence of public regulation, those incentives will lead shareholders to prefer that banks take on more financial risk than is socially optimal.³²

In other words, when bankers make calculations about risk that serve shareholder interests, they sometimes externalize some of the costs of their mistakes. There are three main reasons for this basic divergence between social welfare and shareholder value.

First, bank runs can be contagious. When one bank's depositors rush to retrieve their deposits, their actions can cast doubt on the solidity of other banks.³³ One reason has to do with depositors' sources of information about their banks' finances. Most bank depositors do not scrutinize their banks' balance sheets.³⁴ Instead, they rely on an imperfect mix of information, and changes in the perceived strength of one bank can affect beliefs about other banks.³⁵ To draw a loose analogy, just as news of quality problems at one McDonald's might cast doubt about the quality of food at another McDonald's, news of financial trouble at one bank can raise questions about the soundness of other banks.³⁶ Worse, to satisfy depositors' demands for cash, banks may need to sell assets at whatever price they can get.³⁷ These "fire sale" prices can depress the market value of assets held by other banks, contributing to rational doubts about their solvency, as well.³⁸ Finally, large banks are also interconnected in a web of credit relations. As one's creditworthiness decreases, it can trigger a spiral of increased precaution-taking that mitigates

30. See, e.g., *In re Lehman Bros. Sec. & ERISA Litig.*, 799 F. Supp. 2d 258, 265 (S.D.N.Y. 2011); *In re Countrywide Fin. Corp. Derivative Litig.*, 554 F. Supp. 2d 1044, 1056 (C.D. Cal. 2008).

31. See Larry Fink, *Larry Fink's Annual Chairman's Letter to Investors*, HARV. L. SCH. F. ON CORP. GOVERNANCE (Mar. 17, 2023), <https://corpgov.law.harvard.edu/2023/03/17/larry-finks-annual-chairmans-letter-to-investors/> [<https://perma.cc/E4DU-NBNE>] (describing SVB's failure as a "classic asset-liability mismatch").

32. See, e.g., Beverly Hirtle & Anna Kovner, *Bank Supervision*, 14 ANN. REV. FIN. ECON. 39, 41 (2022) ("A particularly important idea in [the economics literature on banking] is that because bank owners and managers do not internalize the full set of costs of bank failure or severe distress, they will engage in riskier behavior or be willing to bear a higher risk of failure than is optimal from a social perspective.").

33. See Gary Gorton, *Clearinghouses and the Origin of Central Banking in the United States*, 45 J. ECON. HIST. 277, 279–80 (1985).

34. See Tri Vi Dang, Gary Gorton & Bengt Holmström, *The Information View of Financial Crises*, 12 ANN. REV. FIN. ECON. 39, 49 (2020).

35. See Gorton, *supra* note 33, at 279–80.

36. See *id.*

37. See MARKUS BRUNNERMEIER ET AL., *THE FUNDAMENTAL PRINCIPLES OF FINANCIAL REGULATION* 15–18 (2009), <https://www.princeton.edu/~markus/research/papers/Geneva11.pdf> [<https://perma.cc/7XKJ-Q2TB>].

38. See *id.*

counterparty risk but also reduces interbank credit.³⁹ Taken together, run contagion, fire sale effects, and spirals of counterparty risk can, especially in moments of widespread panic and fear, lead to swift credit contractions.⁴⁰ Shareholders do not internalize the costs of these spiraling dynamics to the banking industry as a whole.⁴¹

The second source of divergence between social welfare and bank shareholder value arises from the operation of federal deposit insurance. During the Great Depression, Congress established the Federal Deposit Insurance Corporation (“FDIC”) to insure deposits up to statutory caps at covered institutions.⁴² Today, the limit is \$250,000, with an exception—the “systemic risk exception”—for situations where the leaders of the financial regulatory state decide that protecting uninsured depositors will prevent systemically harmful instability.⁴³ FDIC insurance helps prevent bank runs because insured depositors are guaranteed access to their deposits even if banks go under—making the act of running unnecessary for most depositors.⁴⁴ But the dark side of this system is that bank losses now sometimes fall on the shoulders of the FDIC’s Deposit Insurance Fund.⁴⁵ This creates a moral hazard: a condition under which “insurance against loss . . . reduce[s] incentives to prevent or minimize the cost of loss.”⁴⁶ A range of third parties share the cost. The Deposit Insurance Fund itself is capitalized by fees on banks.⁴⁷ These fees are meant to be risk based.⁴⁸ But large banks may not always pay premiums commensurate to their contribution to expected losses.⁴⁹ Instead, the patrons of other banks in the insurance system may bear some of the losses. This is a second form of externalization.

The third major source of divergence between shareholder value and social welfare stems from a further source of moral hazard: actions taken by the Fed to stabilize the financial system during times of turmoil. Before the FDIC is called into

39. See *id.* at 18–22.

40. See *id.* at 22–23.

41. See *id.*

42. See Christopher W. Shaw, “*The Man in the Street Is for It*”: *The Road to the FDIC*, 27 J. POL’Y HIST. 36, 49–51 (2015); *The History of FDIC*, FED. DEPOSIT INS. CORP., <https://www.fdic.gov/90years> [<https://perma.cc/BP6X-4VMU>] (last visited Mar. 8, 2026).

43. See Michael Ohlrogge, *Why Have Uninsured Depositors Become De Facto Insured?*, 100 N.Y.U. L. REV. 345, 347–48, 379–81 (2025).

44. See Patricia A. McCoy, *The Moral Hazard Implications of Deposit Insurance: Theory and Evidence*, in 5 CURRENT DEVELOPMENTS IN MONETARY AND FINANCIAL LAW 417, 421–22 (2008).

45. See Ohlrogge, *supra* note 43, at 347–48.

46. Tom Baker, *On the Genealogy of Moral Hazard*, 75 TEX. L. REV. 237, 238–39 (1996); see McCoy, *supra* note 44, at 422–25 (evaluating the moral hazard dangers of deposit insurance).

47. See Ohlrogge, *supra* note 43, at 365.

48. See McCoy, *supra* note 44, at 428–30.

49. See Shih-Cheng Lee, Chien-Ting Lin & Ming-Shann Tsai, *The Pricing of Deposit Insurance in the Presence of Systematic Risk*, 51 J. BANKING & FIN. 1, 3 (2015). When the Deposit Insurance Fund is particularly taxed by bank failures, as it was in 2023, the FDIC imposes special assessments on banks participating in the system. See Ohlrogge, *supra* note 43, at 365.

action, the Fed sometimes takes a range of actions to stave off bank failures.⁵⁰ Public subsidies to ailing banks range far wider than the Deposit Insurance Fund. They encompass the range of “extraordinary” measures that the Fed tends to take when banks—especially the largest, most systemically important banks—are in trouble.⁵¹ These measures include offering to lend through the Fed’s discount window and establishing emergency facilities to prop up prices in critical markets at moments when typical liquidity providers are exiting those markets.⁵² Together, these sources of Fed backstopping provide a valuable de facto subsidy to banks.⁵³ Notably, these subsidies tend to be largest for the “too-big-to-fail” banks, which enjoy the competitive advantage of reduced capital costs as a result.⁵⁴ All this further enables the largest banks to privatize their gains from risk-taking while socializing their losses.

Crucially, the incentive misalignment between shareholders and the public interest worsens as a bank’s financial position erodes—as it enters the “zone of insolvency.” The “zone of insolvency” denotes a situation where, absent countervailing forces, a residual claimant will rationally seek opportunities to take risks that offer a fighting chance of survival.⁵⁵ These bets—known in the literature as “gamble for resurrection”—may be net-negative expected value but are attractive to the residual claimant in cases where the downside falls on others.⁵⁶ Creditors have long dealt with the problem through contractual protections triggered by indicia of financial distress.⁵⁷ In the banking context, the FDIC and the Fed similarly wish to protect against gambling for resurrection. The question then becomes: how will they do so? Corporate governance intervention is one tactic among many for combatting the runaway incentive misalignments arising as banks become distressed.

To see the misalignments in action, consider the failed Wall Street dealer bank, Lehman Brothers. Its downfall was a pivotal moment in the spiraling of the Global Financial Crisis.⁵⁸ Lehman was active in a wide variety of money markets

50. See LARRY D. WALL, *SO FAR, SO GOOD: GOVERNMENT INSURANCE OF FINANCIAL SECTOR TAIL RISK* 10–11 (2021), <https://www.atlantafed.org/-/media/Project/Atlanta/FRBA/Documents/research/publication/policy-hub/2021/11/08/13-government-insurance-of-financial-sector-tail-risk.pdf> [https://perma.cc/3DA5-AUAQ].

51. See *id.* at 1, 10–11.

52. See *id.* at 10–11.

53. See Saule T. Omarova, *The “Too Big to Fail” Problem*, 103 MINN. L. REV. 2495, 2500–01 (2019).

54. See Antje Berndt, Darrell Duffie & Yichao Zhu, *The Decline of Too Big to Fail*, 115 AM. ECON. REV. 945, 968–72 (2025) (discussing evidence of too-big-to-fail subsidies).

55. See Douglas G. Baird & M. Todd Henderson, *Other People’s Money*, 60 STAN. L. REV. 1309, 1323–28 (2008).

56. See Mark J. Flannery, *Maintaining Adequate Bank Capital*, 46 J. MONEY, CREDIT & BANKING 157, 162 (2014) (“An insolvent firm’s owners operate with extremely poor incentives . . . [I]ts managers prefer to raise portfolio risk, gambling for resurrection.”).

57. See Jared A. Ellias & Robert J. Stark, *Bankruptcy Hardball*, 108 CALIF. L. REV. 745, 759–62 (2020).

58. See, e.g., TOOZE, *supra* note 6, at 149.

and investment markets.⁵⁹ Beginning in 2007, the bank suffered increasing losses from its exposure to mortgage-backed securities and from its financial counterparties' loss of confidence in the bank's creditworthiness.⁶⁰ But rather than rein in its financial risk, Lehman ratcheted it up.⁶¹ As the Lehman bankruptcy examiner concluded, leaders "chose to disregard indications from Lehman's risk-management systems that the firm was undertaking excessive risk."⁶² Crucially, its board of directors tolerated increases in risk it knew about and also failed to obtain information regarding the extent of others.⁶³ To put things mildly, these risks ultimately did not pay off. The firm went down in a fiery crash of losses across different portfolios.⁶⁴ But were they, in expectation, out of line with shareholders' interests? It is hard to say. When a bank is staring failure in the face, sometimes drastic bets are the only type that hold any possibility of putting shareholders (and equity-compensated bankers) back in the money.

In keeping with the theoretical account advanced in this Section so far, Lehman's risk-taking externalized massive costs onto the public. The ripple effects across money markets proceeded in a classic run-like fashion, contracting short-term credit and contributing to an economic recession.⁶⁵ Though the government famously let Lehman itself fail, the fallout prompted the Fed to provide extraordinary support to embattled firms in the subsequent days.⁶⁶ Ultimately, in the collective memory of policymakers and industry participants, Lehman has come to stand for a moment when the failure of one large bank pushes the financial system over the precipice into freefalling disaster.⁶⁷

In failures like those of Lehman Brothers and other major Wall Street banks during the Global Financial Crisis, there are many parties to blame. From CEOs to accountants, investors to regulators, numerous actors could have dampened things by acting differently. So too, could the actors at the heart of this Article, the board members. In the case of Lehman, for instance, its board of directors tolerated, blessed, ignored, and failed to inquire about its extensive and excessive risks.⁶⁸ Its weakness as a brake on risk-taking has led commentators to conclude that Lehman

59. See Rosalind Z. Wiggins, Thomas Piontek & Andrew Metrick, *The Lehman Brothers Bankruptcy A: Overview*, 1 J. FIN. CRISES 39, 42–44 (2019).

60. See *id.* at 44–48.

61. See Report of Anton R. Valukas, Examiner at 50, *In re Lehman Bros. Holdings Inc.*, 433 B.R. 113 (Bankr. S.D.N.Y. 2010) (No. 08-13555) [hereinafter Valukas Report] (noting that Lehman increased its firm-wide risk limit multiple times during its slide into insolvency).

62. *Id.* at 168.

63. See *id.* at 139–56.

64. See Wiggins, Piontek & Metrick, *supra* note 59, at 44–48, 50.

65. See DUFFIE, *supra* note 16, at 25–42; Rosalind Z. Wiggins & Andrew Metrick, *The Lehman Brothers Bankruptcy H: The Global Contagion*, 1 J. FIN. CRISES 172, 173 (2019).

66. See Wiggins & Metrick, *supra* note 65, at 197–98.

67. See, e.g., *id.* at 189–91.

68. See Valukas Report, *supra* note 61, at 139–56.

“failed during . . . 2008 in large part due to ineffective oversight by the board of directors.”⁶⁹

B. The Dodd–Frank Risk Committee Mandate

After the Crisis, leading legislators concluded that shoddy board oversight of financial risk had contributed to it.⁷⁰ Reform was squarely on the legislative agenda. But how would Congress craft a board risk oversight requirement? What would be its animating purpose?

Two competing visions emerged during the legislative process. The first treated board risk oversight as a shareholder protection problem. Shareholders had, after all, suffered serious losses in 2008.⁷¹ Perhaps corporate governance reform aimed at general board effectiveness could prevent similar losses in the future. The legislative proposal that represented this view was called the Shareholder Bill of Rights Act.⁷² Championed by Senators Charles Schumer and Maria Cantwell, the Shareholder Bill of Rights Act would have placed a board risk committee mandate alongside other reforms aimed at empowering shareholder control of public corporations.⁷³ It would have imposed the risk committee requirement on public companies across industries, and it would have authorized the Securities and Exchange Commission (“SEC”) to design and administer it.⁷⁴

The Shareholder Bill of Rights approach to board governance reform did not win out. Instead, the Dodd–Frank Act incorporated a competing vision for the risk committee that focused not on shareholder protection, but rather on a different legislative purpose: financial stability. Financial stability refers to the resilience of the financial system as a whole to economic, geopolitical, and operational shocks.⁷⁵ Alongside the safety and soundness of individual banks, financial stability constitutes a core goal of prudential financial regulation.⁷⁶

69. David F. Larcker & Brian Tayan, *Lehman Brothers: Peeking Under the Board Facade*, STAN. CLOSER LOOK SERIES, June 4, 2010, at 1, <https://www.gsb.stanford.edu/sites/default/files/publication-pdf/cgri-closer-look-03-lehman-brothers-board.pdf> [<https://perma.cc/K5SG-QDF6>].

70. Senator Jack Reed espoused the view that banks had been “incapable” of monitoring risk due to broken “governance structures.” *Lessons Learned Hearing*, *supra* note 7, at 1. Reed’s colleague across the aisle, Senator Jim Bunning, declared the “need to hold directors . . . accountable” so that they would be “more careful in the future.” *Id.* at 4.

71. See, e.g., Yair J. Listokin & Inho Andrew Mun, *Rethinking Corporate Law During a Financial Crisis*, 8 HARV. BUS. L. REV. 349, 362–63 (2018).

72. See WEIL GOTSHAL, WEIL BRIEFING: SEC DISCLOSURE AND CORPORATE GOVERNANCE 3–4 (2009), https://www.weil.com/-/media/files/pdfs/weil_briefing_sec_cg_june_19.pdf [<https://perma.cc/K4LK-HW2S>] (discussing Shareholder Bill of Rights Act, S. 1074, 111th Cong. (2009)).

73. See *id.*

74. See *id.*

75. See Hilary J. Allen, *What Is “Financial Stability”? The Need for Some Common Language in International Financial Regulation*, 45 GEO. J. INT’L L. 929, 942–44 (2014).

76. See Jeremy C. Kress & Jeffery Y. Zhang, *The Macropprudential Myth*, 112 GEO. L.J. 569, 578–79 (2024).

The prudential basis of risk governance reform found its champion in Senator Christopher Dodd. By contrast to the Schumer–Cantwell proposal, which emphasized its focus on shareholders’ concerns, Dodd’s proposed legislation was styled the Restoring American Financial Stability Act.⁷⁷ It differed from the Shareholder Bill of Rights Act in three principal ways. First, rather than applying to public companies in all different industries, the Dodd bill focused its risk committee requirement on large financial institutions.⁷⁸ This decision targeted a class of firms that had precipitated the Crisis; it was their risk-taking that had externalized such heavy costs on parties unable to protect themselves through contract.⁷⁹ Second, rather than granting rulemaking authority to the investor-focused SEC, the Dodd approach proposed giving authority to a new agency, the “Agency for Financial Stability.”⁸⁰ Third, instead of locating its risk governance provisions alongside other provisions related to shareholder protection, the Dodd proposal placed such reforms alongside a range of regulatory controls on financial risk-taking.⁸¹ In the Restoring American Financial Stability Act’s approach to excessive financial risk, corporate governance reform was one tactic alongside many others.

The ultimate statute, the Dodd–Frank Wall Street Reform and Consumer Protection Act of 2010, embraces the prudential focus of the Dodd proposal in most ways.⁸² While it differs by providing risk committee rulemaking and oversight authority to the Fed, not a new Agency for Financial Stability,⁸³ the Fed has long been oriented toward prudential policy goals.⁸⁴ It is certainly far closer in its priorities to the envisioned Agency for Financial Stability than the SEC.⁸⁵ And the rest of the risk committee details—the industry-specific scope of the mandate, the mandate’s purpose, and its statutory location—tracked the Restoring American Financial Stability Act’s blueprint.⁸⁶

The enacted risk committee mandate is found in § 165 of the Dodd–Frank Act.⁸⁷ In essence, it states that the Fed must issue regulations requiring the largest Fed-regulated institutions—mainly BHCs and FBOs, which this Article refers to as “banks,” despite the imprecision—to establish or maintain risk committees and that

77. See PAUL, WEISS, RIFKIND, WHARTON & GARRISON, LLP, CORPORATE GOVERNANCE PROPOSALS IN SENATOR DODD’S RESTORING AMERICAN FINANCIAL STABILITY ACT OF 2009 DISCUSSION DRAFT 1 (2009) [hereinafter PAUL, WEISS DODD ACT REPORT], <https://www.paulweiss.com/media/1397108/24nov09-cg.pdf> [<https://perma.cc/R78B-3JFV>].

78. See *id.* at 2.

79. See TOOZE, *supra* note 6, at 166–201.

80. PAUL, WEISS DODD ACT REPORT, *supra* note 77, at 2.

81. See *id.* at 1–4.

82. See Dodd–Frank Wall Street Reform and Consumer Protection Act of 2010, 12 U.S.C. § 5365(h).

83. See *id.*

84. See Mark B. Greenlee, *Historical Review of “Umbrella Supervision” by the Board of Governors of the Federal Reserve System*, 27 REV. BANKING & FIN. L. 407, 407 (2008).

85. See John C. Coffee, Jr. & Hillary A. Sale, *Redesigning the SEC: Does the Treasury Have a Better Idea?*, 95 VA. L. REV. 707, 740–43, 774–79 (2009).

86. See 12 U.S.C. § 5365(h).

87. Dodd–Frank Wall Street Reform and Consumer Protection Act § 165(h).

the Fed may issue such regulations for smaller institutions, as well.⁸⁸ Per the statute, these banks' risk committees must "be responsible for the oversight of the enterprise-wide risk management practices" of the bank.⁸⁹ Additionally, the risk committees must include a Fed-determined number of independent directors and a risk-management expert with experience at a large, complex firm.⁹⁰ Beyond that, § 165 grants the Fed authority to establish standards that, in its determination, "are appropriate" to achieve the prudential goals of safeguarding individual bank soundness and systemic financial stability.⁹¹

In 2014, the Fed promulgated its risk committee regulations.⁹² After a revision of thresholds in 2019, the Fed's standards apply, with variations depending on entity type and size, to Fed-supervised banking organizations with consolidated assets of \$50 billion or more.⁹³ Through its rules, the Fed has implemented the particulars of Congress's requirements and extended into the policy space created by Congress's permissive grants of rulemaking authority.⁹⁴ These decisions will be the major topic of the analysis that follows.

The stakes of the Fed's decisions are high. Through its risk committee regulations, the Fed imposed governance reforms on some of the largest corporations in the country. As of the fall of 2024, eight of the covered institutions were among the 100 largest companies listed on public securities markets in the United States.⁹⁵ Banks covered by the mandate include "too-big-to-fail" household names like JPMorgan Chase (\$4.2 trillion in consolidated assets) and Citigroup (\$2.4 trillion), along with the U.S. subsidiaries of foreign "national champions" such as HSBC (\$233 billion in U.S. consolidated assets) and UBS (\$203 billion).⁹⁶ Until they fell during the banking panic of 2023, SVB Financial Group and Credit Suisse's

88. 12 U.S.C. § 5365(h)(2); *see* discussion *supra* notes 20–22 and accompanying text. Note that the statute imposes the requirement on nonbank financial companies supervised by the Fed, as well, § 5365(h)(1), but that at the time of this writing, there were no such companies. *See Designations*, U.S. DEP'T OF TREASURY, <https://home.treasury.gov/policy-issues/financial-markets-financial-institutions-and-fiscal-service/fsoc/designations> [<https://perma.cc/97FF-MZM5>] (last visited Mar. 8, 2026). On the history and rationale of risk-committee formation prior to the Dodd–Frank Act, *see* René M. Stulz et al., *Why Do Bank Boards Have Risk Committees?* 13–20 (Nat'l Bureau of Econ. Rsch., Working Paper No. 29106, 2021).

89. 12 U.S.C. § 5365(h)(3)(A).

90. *Id.*

91. *Id.* § 5365(b)(1)(B).

92. 12 C.F.R. § 252 (2019) (originally promulgated in 79 Fed. Reg. 17,240 (Mar. 27, 2014)).

93. *See* scattered sections of 12 C.F.R. pt. 252 ("Regulation YY"); 84 Fed. Reg. 59,032, 59,056 (Nov. 1, 2019).

94. *See infra* Part II.

95. These are JPMorgan Chase, Bank of America, Wells Fargo, American Express, Morgan Stanley, Goldman Sachs, Charles Schwab, and Citigroup.

96. *Large Holding Companies*, FED. FIN. INST. EXAMINATION COUNCIL NAT'L INFO. CTR. (Sep. 30, 2024) [hereinafter *Large Holding Companies*, Sep. 2024], <https://www.ffiec.gov/npw/Institution/TopHoldings> [<https://perma.cc/4UJ4-559V>].

U.S. subsidiary, CS USA, were covered too.⁹⁷ The covered banks are not the only major financial firms in the country, of course. Asset managers like BlackRock or Vanguard are not banks, nor are market makers like Citadel Securities or Virtu Financial.⁹⁸ But the large banks subject to the risk committee standards constitute the most systemically important set of financial institutions governed under a single prudential regime in the country. The banks' ability to provide credit and maintain soundness underwrites the health of the broader economy.

The Fed's authority over bank risk committees is part of a long history of federalized corporate governance regulation. As William Cary argued 50 years ago, the federal oversight of corporate governance can, and often does, serve different purposes than state corporate law.⁹⁹ The former can serve statutory purposes that move beyond—and are even foreign to—state corporate doctrine.¹⁰⁰ In the case of the risk committee mandate, Congress's federalization aims to enlist board oversight in the longstanding legislative and regulatory fight against the mischief of excessive bank risk-taking.¹⁰¹

The fact that the risk committee mandate fits within a prudential regulatory program is crucial to understanding its import. Prudential regulation aims to safeguard bank soundness and financial stability.¹⁰² By contrast, typical shareholderist governance reforms aim to resolve principal-agent problems arising from the divergence of interests between shareholders and corporate leaders.¹⁰³ Many corporate governance reforms within Dodd-Frank indeed fit that typical model. These include "shareholder empowerment" provisions such as the requirement of a shareholder "say on pay" vote on executive compensation.¹⁰⁴ Debates over the success of such reforms tend to turn on whether they have led to increases in shareholder value or firm value.¹⁰⁵ But the risk committee mandate aims at different ends than shareholder-empowerment reforms do. The statutory objectives animating the risk committee mandate—bank soundness and financial

97. See *Large Holding Companies*, FED. FIN. INST. EXAMINATION COUNCIL NAT'L INFO. CTR. (Dec. 31, 2022), <https://www.ffiec.gov/npw/Institution/TopHoldings> [<https://perma.cc/LY9Q-7CZN>].

98. Regarding the Big Three, see Dorothy S. Lund, *Asset Managers as Regulators*, 171 U. PA. L. REV. 77, 83–90 (2022). Regarding some major market makers, see Yesha Yadav, *The Failed Regulation of U.S. Treasury Markets*, 121 COLUM. L. REV. 1173, 1215–18 (2021).

99. See Cary, *supra* note 9, at 692–96.

100. See *id.* at 699–703; see also Andrew Verstein, *The Corporate Governance of National Security*, 95 WASH. U. L. REV. 775, 814–18 (2018) (discussing the effects of national security interest representation on corporate boards).

101. Cf. Samuel L. Bray, *The Mischief Rule*, 109 GEO. L.J. 967, 968–70 (2021) (discussing the interpretive importance of a statute's "generating problem").

102. See Kress & Zhang, *supra* note 76, at 578–82.

103. See Lund & Pollman, *supra* note 24, at 2573–78.

104. See Stephen M. Bainbridge, *Dodd-Frank: Quack Federal Corporate Governance Round II*, 95 MINN. L. REV. 1779, 1783 (2011).

105. See *id.* at 1808; Jill Fisch, Darius Palia & Steven Davidoff Solomon, *Is Say on Pay All About Pay? The Impact of Firm Performance*, 8 HARV. BUS. L. REV. 101, 102–03 (2018).

stability—may be achieved even if their achievement generates some harm to shareholder value.

The risk committee mandate's sector-specific tradeoffs exemplify an important frontier in the study of corporate governance. While the subject tends to be studied and taught as a unified field with the principal-agent problem at its heart, the institutions of corporate governance are protean.¹⁰⁶ In various industrial settings, including public utility provision and military supply, scholars are increasingly examining the role of corporate governance in achieving sector-specific policy goals.¹⁰⁷ An examination of the risk committee mandate likewise provides a valuable case study into the making and potential role of corporate governance in the financial sector. The next Part turns to that case study.

II. THE FED'S RISK COMMITTEE REGIME

This Part analyzes whether the Fed's implementation of the risk committee mandate has promoted a prudential orientation for covered risk committees. To do so, it draws on statutes, rulemaking and guidance documents, reports on supervisory processes, enforcement actions, governance documents, and securities disclosures to develop a detailed picture of the Fed's decisions regarding risk committee design and oversight. The analysis proceeds across the four essential aspects of committee design: the committee's functions, its composition, its members' compensation, and its members' exposure to liability. As prior literature has noted, these design elements determine the purposes and effectiveness of board governance.¹⁰⁸ For each, I examine the Fed's statutory requirements and permissions, how the Fed has employed its authority, and how banks have responded. In particular, how has the Fed engaged, if at all, with the tension between shareholder-focused risk oversight and the public interest? Based on the collected evidence, the Part's bottom-line conclusion is that the Fed has missed numerous opportunities to orient the risk committee away from shareholder value maximization and toward the prudential control of financial risk.

A. Functions

A board committee's functions reflect the purpose to which it is put as an organ of broader corporate governance. Its functions also reflect ideas about how to achieve that purpose. What is the committee meant to monitor? How is it meant to evaluate corporate decisions? How is it meant to engage with corporate management? Such questions have long been analyzed and debated regarding other board committees, such as the audit committee or the compliance committee.¹⁰⁹ By

106. See Dorothy S. Lund, *Toward a Dynamic View of Corporate Purpose*, 109 MINN. L. REV. 2089, 2152–54 (2025).

107. See generally Aneil Kovvali & Joshua C. Macey, *Private Profits and Public Business*, 103 TEX. L. REV. 711 (2025) (discussing public utilities); Verstein, *supra* note 100 (discussing certain defense contractors).

108. See Bainbridge & Henderson, *supra* note 21, at 1069–74; Awrey, Blair & Kershaw, *supra* note 17, at 231–45.

109. See, e.g., John Armour, Brandon Garrett, Jeffrey Gordon & Geeyoung Min, *Board Compliance*, 104 MINN. L. REV. 1191, 1198, 1201 (2020); Jill E. Fisch & Caroline M. Gentile, *The Qualified Legal Compliance Committee: Using the Attorney Conduct Rules to Restructure the Board of Directors*, 53 DUKE L.J. 517, 552–66 (2003).

analyzing such questions, this Section sheds light on the Fed's construction of Dodd–Frank risk committees.

Regarding those committees' functions, the text of the Dodd–Frank mandate requires little and permits much. The text's sole functional requirement is that risk committees must be “responsible for the oversight of the enterprise-wide risk management practices” of covered firms.¹¹⁰ Enterprise-wide risk management refers to the corporate function designed to assess, prepare for, defend against, detect, and respond to potential harms to the corporation's goals.¹¹¹ Today, a significant portion of large corporations have independent risk-management departments, which sit alongside finance, human resources, legal, and similar divisions within the firm.¹¹² It is this risk-management function—typically headed by a Chief Risk Officer¹¹³—that Dodd–Frank requires the risk committee to monitor.¹¹⁴ Beyond being “responsible” for that “oversight,” the statute imposes no further requirements regarding committee function.¹¹⁵

The statute does, however, offer an important permission. Specifically, the statute authorizes the Fed to “establish . . . other prudential standards” for covered firms that the agency “determines are appropriate.”¹¹⁶ This textual permission creates a wide realm of discretion for the Fed in designing the committees' functional obligations. It also solidifies that the risk committee mandate is a prudential governance regulation, not a shareholderist one.

Yet despite the prudential alignment of the statute, the Fed has largely avoided employing its statutory authority to tie risk committee duties to prudential goals. The Fed's rules about risk committee functions, found in Regulation YY,¹¹⁷ reveal as much by what they do not say as by what they do say. Crucially, they do not link risk committee responsibilities to the prudential goals of bank safety and soundness or financial stability. They do not require risk committees to ensure that bank risk-management systems are designed to, for instance, “ensure the safety and soundness of the institution” or “prevent unsound or excessive risk-taking” or any other functional objective that would place prudential goals front and center. Instead, they adopt a process-focused set of requirements for committee functionality.

The process-focused functional requirements are numerous. A committee must periodically approve and review its banking organization's risk-management policies.¹¹⁸ It must receive reports from the Chief Risk Officer and make reports to the full board, maintaining records of their decisions along the way.¹¹⁹ It must

110. 12 U.S.C. § 5365(h)(3)(A).

111. See Stephen M. Bainbridge, *Caremark and Enterprise Risk Management*, 34 J. CORP. L. 967, 969–70 (2009).

112. See Baxter, *supra* note 4.

113. *Id.*

114. See, e.g., 12 C.F.R. § 252.22(a)(1), (3) (2019).

115. 12 U.S.C. § 5365(h)(3).

116. *Id.* § 5365(b)(1)(B).

117. 12 C.F.R. § 252 (2019).

118. See, e.g., *Id.* § 252.22(a)(1) (2019).

119. See, e.g., *Id.* § 252.22(a)(2)–(3) (2019).

oversee the operation of the bank's "global risk-management framework."¹²⁰ All these responsibilities are now governance imperatives at the largest banks. But toward what end? For the most part, the Fed's regulations do not say.

The sole context in which Regulation YY establishes a prudential orientation for committee oversight is with regard to liquidity risk. Liquidity risk refers to "the risk to an institution's financial condition or safety and soundness arising from its inability (whether real or perceived) to meet its contractual obligations."¹²¹ The run-like dynamics among dealer banks during the worst of the Global Financial Crisis were, in part, manifestations of liquidity risk.¹²² In Regulation YY, the Fed requires the boards of covered banks with \$100 billion or more in consolidated assets—the largest of the large—to ensure risk-management systems address threats to safety and soundness posed by liquidity risk.¹²³ This language provides a substantive goal toward which to orient some of the risk committee's procedural obligations. But while it is significant, it also serves to highlight the absence of regulatory language regarding functional oversight of *other* risks—for instance, credit risk, market risk, and interest rate risk, to name a few.¹²⁴ For these risks, the Fed's risk committee regulations remain substantively silent.

To the extent the regulations do establish criteria for evaluating the management of the wide range of risks other than liquidity risk, they do not help adjudicate disputes between shareholder interests and the public interest. Regulation YY requires the risk committee to ensure that the bank's risk-management systems are "commensurate" with the details of the bank's business—its "structure, risk profile, complexity, [and] activities."¹²⁵ This provides little guidance to committee members in moments of tension between shareholders and the public. Instead, it allows the banks themselves to define the appropriate substantive objectives of risk committee oversight for most of the risk-management function.

To be sure, it is possible that despite the substantive thinness of Regulation YY's risk committee requirements, the Fed is influencing banks to adopt prudential functions for their risk committees through other means. After all, the Fed not only regulates the covered banks; it also supervises them.¹²⁶ Supervision involves a close and relatively informal relationship between Fed examiners and the banks they oversee.¹²⁷ In general, Fed supervision aims to ensure boards of directors

120. See, e.g., 12 C.F.R. § 252.22(a)(1)–(2) (2019).

121. *Supervisory Policy and Guidance Topics: Liquidity Risk Management*, BD. OF GOVERNORS OF THE FED. RESRV. SYS. (Sep. 5, 2023), https://www.federalreserve.gov/supervisionreg/topics/liquidity_risk.htm [<https://perma.cc/NE7C-NKBF>].

122. See DUFFIE, *supra* note 16, at 23–42.

123. 12 C.F.R. § 252.34(c) (2019).

124. See JOËL BESSIS, *RISK MANAGEMENT IN BANKING* §§ 1.2, 3.2–.11 (3d ed. 2010).

125. E.g., 12 C.F.R. § 252.22(a)(2) (2019).

126. See Daniel K. Tarullo, *Bank Supervision and Administrative Law*, 2022 COLUM. BUS. L. REV. 279, 286–315.

127. See *id.*

conduct their work in service of banking organizations' safety and soundness.¹²⁸ But most of the Fed's supervision takes place outside of public view.¹²⁹ It is a difficult question, therefore, whether Fed examiners are influencing bank risk committees to adopt clearly prudential functions and priorities in these unobservable moments.

One source of evidence as to whether the banks have designed their risk committees to perform prudential functions is the text of risk committee charters. Board committee charters are what Cathy Hwang and Yaron Nili have called "shadow" governance documents.¹³⁰ Charters inform committee agenda-setting and define the priorities around which committee members are educated and coordinate with each other.¹³¹ Regulation YY requires covered risk committees to have official charters.¹³² Do Fed-regulated risk committee charters express priorities that orient the committees toward prudential goals?

A look at the committee charters at the largest Fed-regulated banking organizations—those with \$250 billion or more in consolidated assets—can shed light on that question. Those organizations' charters, numbering 16 as of September 30, 2024, are available through the banks' SEC filings in the Electronic Data Gathering, Analysis, and Retrieval ("EDGAR") database or from the banks' investor-relations webpages.¹³³ Though they do not constitute a representative sample, they do capture the most important risk committees from both policy and market perspectives. The banks in the set are the most likely to be treated as "systemically important" by the Fed and other financial regulators, meaning that their failures would be regarded as posing significant risks to the soundness of other banks and to the stability of the financial system as a whole.¹³⁴

Of the 16 largest banks' risk committee charters, a minority of 6 explicitly provide prudential criteria to substantively guide committee activities. Five—those of Charles Schwab, JPMorgan Chase, Morgan Stanley, Truist, and U.S. Bancorp—are particularly notable because they demonstrate the possibility of directly requiring risk committees to prioritize the safety and soundness of the banking organizations or their insured depository subsidiaries.¹³⁵ Four establish this

128. See BD. OF GOVERNORS OF THE FED. RESRV. SYS., SR 21-3/CA 21-1: SUPERVISORY GUIDANCE ON BD. OF DIRECTORS' EFFECTIVENESS 1 (2021), <https://www.federalreserve.gov/supervisionreg/srletters/SR2103.pdf> [<https://perma.cc/3SNG-FKY6>].

129. See, e.g., Peter Conti-Brown, *The Curse of Confidential Supervisory Information*, BROOKINGS (Dec. 20, 2019), <https://www.brookings.edu/articles/the-curse-of-confidential-supervisory-information/> [<https://perma.cc/69PT-Z5G7>].

130. Nili & Hwang, *supra* note 22, at 1105, 1110–11.

131. See *id.* at 1124–26; Lisa M. Fairfax, *Board Committee Charters and ESG Accountability*, 12 HARV. BUS. L. REV. 371, 389 (2022).

132. See, e.g., 12 C.F.R. § 252.22(a)(3)(i) (2019).

133. The list of these banks comes from *Large Holding Companies*, Sep. 2024, *supra* note 96. See *infra* Appendix A.

134. See MARC LABONTE, CONG. RSCH. SERV., R42150, SYSTEMICALLY IMPORTANT OR "TOO BIG TO FAIL" FINANCIAL INSTITUTIONS 19–20 (2018).

135. A sixth, BMO, expresses focus on "monitoring the . . . soundness of the Bank's risk culture," but not the soundness of the banking organization or any of its subsidiaries. BMO FIN. GRP., BANK OF MONTREAL: RISK REVIEW COMMITTEE CHARTER 2

prioritization on a broad basis. At Charles Schwab, for instance, the risk committee must “hold senior management accountable for . . . managing the Corporation’s activities in a safe and sound manner.”¹³⁶ JPMorgan’s committee charter states that “the Risk Committee has a duty to seek to preserve the safety and soundness of [JPMorgan’s insured depository subsidiaries].”¹³⁷ Similar language focuses the risk committees at Truist and U.S. Bancorp on the safety and soundness of their insured depository subsidiaries.¹³⁸ One, from Morgan Stanley, is narrowly targeted on the necessity of overseeing executive compensation to “ensur[e]” it is “consistent with the safety and soundness of the Company.”¹³⁹ Regardless of scope, these five charters show the possibility of focusing committee activities on prudential goals. In moments of conflict, adherence to such language would require committee members to prioritize the public interest in financial risk control over shareholders’ interests in maximizing shareholder value.

Most large-bank risk committee charters, however, do not embrace the prudential priorities animating the Dodd–Frank Act’s mandate. Of the 16 largest banks’ committee charters, 10 contain no reference to the prudential considerations of safety, soundness, or financial stability.¹⁴⁰ Instead of identifying prudential goals that could guide the committees’ work, these 10 charters tend to articulate committee functions in procedural language, with nods to nebulous goals, such as the “overall adequacy” or “effective[ness]” of a bank’s risk-management function.¹⁴¹ These charters are consistent with the thin conception of risk committee function in the Fed’s own regulations.

B. Composition

If “personnel is policy,”¹⁴² then the orientation and effectiveness of risk committees will depend in part on their composition. Two determinants of composition are particularly notable. First, committee composition depends on the process by which members are selected. Who chooses board members, and how do they get appointed to committees? Second, composition depends on membership

(May 27, 2025), <https://www.bmo.com/corporate-governance/files/en/trc-charter-en.pdf> [<https://perma.cc/7N4V-77FU>].

136. CHARLES SCHWAB CORP., RISK COMMITTEE CHARTER 1 (2024), https://content.schwab.com/web/retail/public/about-schwab/schw_risk_charter_oct2024.pdf [<https://perma.cc/DWC4-S5T9>].

137. *Risk Committee: Committee Charter*, JPMORGAN CHASE (July 2023) [hereinafter JPMORGAN CHASE, *Risk Committee Charter*], <https://www.jpmorganchase.com/about/governance/committees/risk-committee> [<https://perma.cc/UC7H-R2TQ>].

138. See CITIGROUP INC., RISK MANAGEMENT COMMITTEE CHARTER 1 (Feb. 16, 2023), https://www.citigroup.com/rcs/citigpa/akpublic/storage/public/riskmanagement_charter.pdf [<https://perma.cc/PQH4-CM4X>].

139. *Risk Committee Charter*, MORGAN STANLEY (Oct. 20, 2025) [hereinafter MORGAN STANLEY, *Risk Committee Charter*], <https://www.morganstanley.com/about-us-governance/rcchart> [<https://perma.cc/U34U-HL7Q>].

140. The banks whose charters lack reference are Bank of America, Citigroup, Wells Fargo, Goldman Sachs, PNC, TD Group, Capital One, Bank of New York Mellon, State Street, and American Express. See *infra* Appendix A.

141. CITIGROUP INC., *supra* note 138, at 1.

142. THOMAS J. WEKO, *THE POLITICIZING PRESIDENCY: THE WHITE HOUSE PERSONNEL OFFICE, 1948–1994*, at 89–90 (1995).

rules. Do individuals need to possess certain characteristics to serve on the committee, or does the committee need to include individuals with certain characteristics? Selection processes operate within the bounds of membership rules to determine committee composition. This Section asks whether the Fed has used its authority over committee composition to orient risk committees toward prudential risk control.

At the outset, it is important to highlight the limits to the Fed's statutory authority over risk committee composition. Crucially, Dodd–Frank does not give the Fed authority to alter selection processes for bank directors. These processes include nominations and proxy voting processes governed by federal securities regulation and state corporate law.¹⁴³ For many years, scholars have debated just how shareholder-friendly these processes really are,¹⁴⁴ but one thing they are *not* is oriented toward the selection of prudentially minded directors representing the public interest. One could imagine selection processes that would be explicitly public regarding. For instance, regulators could appoint committee members, as was done with the boards of the Federal National Mortgage Association (“Fannie Mae”) and the Federal Home Loan Mortgage Corporation (“Freddie Mac”) after their public rescue during the Crisis.¹⁴⁵ Or as Saule Omarova has proposed, one could imagine public servants themselves holding seats on risk committees.¹⁴⁶ The Dodd–Frank Act did not make these approaches available to the Fed.

Although the Dodd–Frank Act does not authorize the Fed to alter director-selection processes, it does authorize the Fed to design risk committee membership rules. Specifically, the Act directs the Fed to establish rules relating to committee-member independence and experience.¹⁴⁷ Regarding independence, the statute is permissive. It enables the Fed to devise independence rules that are “appropriate” for the covered banking organizations.¹⁴⁸ The Fed, in turn, has found it appropriate for covered BHC risk committees to have independent chairs, while covered FBO risk committees need only have a member lacking recent personal or immediate-familial experience as an executive at the FBO.¹⁴⁹ Regarding experience, the statute requires that at least one committee member have “experience in identifying, assessing, and managing risk exposures of large, complex firms.”¹⁵⁰ The Fed has largely reproduced these requirements in its committee composition rules, with the added detail that for covered BHCs and the largest FBOs, the experienced committee member must have gained their experience at a *financial* firm.¹⁵¹

143. See Geeyoung Min, *Shareholder Direct Democracy*, 7 EMORY L.J. 381, 392–409 (2024).

144. See, e.g., Bo Becker & Guhan Subramanian, *Improving Director Elections*, 3 HARV. BUS. L. REV. 1, 2–4 (2013); Lisa M. Fairfax, *The Future of Shareholder Democracy*, 84 IND. L.J. 1259, 1260–62 (2009).

145. See Daniel Thompson & Rosalind Z. Wiggins, *The Rescue of Fannie Mae and Freddie Mac – Module A: The Conservatorships*, 3 J. FIN. CRISES 282, 297–98 (2021).

146. See Omarova, *supra* note 17, at 1050–51.

147. 12 U.S.C. § 5365(h)(3)(B)–(C).

148. *Id.* § 5365(h)(3)(B).

149. See, e.g., 12 C.F.R. §§ 252.22(a)(4)(ii), 252.144(b)(1)(v)(B) (2019).

150. 12 U.S.C. § 5365(h)(3)(C).

151. See, e.g., 12 C.F.R. §§ 252.22(a)(4)(i), 252.155(a)(5)(i) (2019).

With these choices, the Fed has piggybacked on preexisting, shareholder-focused institutions. This is easiest to see regarding independence. The Fed's rules defining independence for risk committee purposes in large part consist of SEC regulations and requirements established by stock exchanges for their listed companies.¹⁵² These approaches to independence aim at insulating directors from management influence.¹⁵³ But while it may be better from the public perspective for the risk committee to be led by an independent director as opposed to an inside director, nothing in the Fed's risk committee rules requires an independent director to be independent from shareholders' risk preferences. Indeed, the central justification for board independence generally has been its expected contributions to shareholder value.¹⁵⁴

The Fed's experience rules, too, piggyback on a shareholder-focused institution—the professional field of risk management. Often, to possess “experience . . . managing risk exposures of large, complex firms” is to have been steeped in a culture that treats shareholder value as its highest priority.¹⁵⁵ The professional culture of risk management is relatively new, having only existed for a few decades; in that time, the field has evolved to focus on the goal of taking optimal risks from the perspective of shareholders.¹⁵⁶ Risk experts' claims to authority within the firm tend to depend on their ability to employ quantitative tools in service of safe paths to profit.¹⁵⁷ Directors who possess corporate risk-management backgrounds will bring their experiences in shareholder-centric risk culture with them.¹⁵⁸ To be sure, experience in such culture may be beneficial in terms of being able to mount a credible challenge to bank management.¹⁵⁹ But though expertise may be necessary, it is far from sufficient, and risk expertise, in particular, may create more problems than it solves. If experienced risk committee members approach their monitoring role with the same priorities that guided their work as managers—that is, the enhancement of the firm's value for the benefit of shareholders—then they will fail to prioritize the prudential goals animating the statutory risk committee requirement.

152. See, e.g., Sarbanes-Oxley Act, 15 U.S.C. §§ 7201–7266; 12 C.F.R. § 252.22(a)(4)(ii)(C) (2019).

153. See Jeffrey N. Gordon, *The Rise of Independent Directors in the United States, 1950–2005: Of Shareholder Value and Stock Market Prices*, 59 STAN. L. REV. 1465, 1496–99 (2007).

154. See, e.g., *id.*

155. E.g., 12 C.F.R. § 252.144(a)(1)(ii) (2019).

156. See Kim Pernell, Jiwook Jung & Frank Dobbin, *The Hazards of Expert Control: Chief Risk Officers and Risky Derivatives*, 82 AM. SOCIO. REV. 511, 514–18 (2017).

157. See *id.*; Anette Mikes, *Risk Management and Calculative Cultures*, 20 MGMT. ACCT. RSCH. 18, 34–36 (2009).

158. For interview evidence consistent with this hypothesis, see Stulz et al., *supra* note 88, at 28–36.

159. For discussion of some of the dynamics, see Yaron Nili & Roy Shapira, *Specialist Directors*, 41 YALE J. ON REGUL. 652, 664 (2024); Christopher M. Bruner, *Corporate Governance Reform in Post-Crisis Financial Firms: Two Fundamental Tensions*, 60 ARIZ. L. REV. 959, 974–80, 984–85 (2018).

C. Compensation

Board members of large financial institutions do not work for free. Their compensation creates strong incentives to serve on boards and is an instrument for aligning their efforts with incentivized priorities.¹⁶⁰ Through combinations of different elements, such as cash grants, equity awards, holding requirements, and vesting schedules, compensation packages give directors a personal stake—“skin in the game”—aligned with directorial success, however so defined.¹⁶¹ For risk committee members at covered banks, Congress has given the Fed significant powers to define directorial success and align compensation incentives with it. But the Fed has hardly used those powers.

The sources of Fed authority over director compensation both predate Dodd–Frank and were strengthened by it. Since 1991, the Fed and other federal banking agencies have possessed the power to impose safety-and-soundness standards on the compensation paid to certain insured depository institution leaders, including directors.¹⁶² Despite this statutory authority, Fed oversight of director and officer compensation under this authority was, in the years leading to the Crisis, minimal.¹⁶³ This was especially the case regarding the largest Wall Street banks.¹⁶⁴ To strengthen this weak oversight, Dodd–Frank included a new requirement that the Fed and other federal financial regulators prohibit incentive-based compensation arrangements if they “encourage[] inappropriate risks” because they are “excessive” or otherwise could lead to “material financial loss.”¹⁶⁵ This source of authority, found in § 956 of the Act, has driven much debate but no concrete regulation.¹⁶⁶

Initially, policymakers and scholarly commentators alike were enthusiastic about banker-compensation reform. High-powered incentives had motivated excessive risk-taking prior to 2008; it would only be sensible to rein those incentives in.¹⁶⁷ In 2010, federal financial regulators issued interagency guidance focusing on

160. See Lily Fang & Sterling Huang, *The Governance of Director Compensation*, 155 J. FIN. ECON., May 2024, at 2–3.

161. See SKADDEN EXEC COMP. & BENEFITS GRP., SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP AND AFFILIATES, 2024 COMPENSATION COMMITTEE HANDBOOK 115–22 (2024) [hereinafter SKADDEN COMPENSATION COMMITTEE HANDBOOK], https://www.skadden.com/-/media/files/publications/2024/04/2024_compensation_committee_handbook.pdf [<https://perma.cc/CW24-REH8>].

162. See Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. No. 102-242, sec. 132, § 39, 105 Stat. 2236, 2267–70 (codified at 12 U.S.C. § 1831p–1).

163. Frederick Tung, *Pay for Banker Performance: Structuring Executive Compensation for Risk Regulation*, 105 NW. U. L. REV. 1205, 1224 (2011).

164. See *id.*

165. 12 U.S.C. § 5641(b); see Dodd–Frank Wall Street Reform and Consumer Protection Act of 2010, 12 U.S.C. § 5641.

166. See Evan Weinberger, *Fed Faces Heat from Fellow Regulators on Banker Bonus Proposal*, BLOOMBERG L. (May 8, 2024, at 02:00 MT), <https://news.bloomberglaw.com/banking-law/fed-faces-heat-from-fellow-regulators-on-banker-bonus-proposal> [<https://perma.cc/Z4EX-EGG7>] (discussing proposed rulemakings in 2011, 2016, and 2024 that did not lead to promulgated rules).

167. See Tung, *supra* note 163, at 1241–47 (discussing scholarly proposals); Alain Sherter, *Geithner Tells G-20 that Executive Comp Reform is “Crucial,”* CBS NEWS MONEYWATCH (Sep. 5, 2009, at 12:01 ET), <https://www.cbsnews.com/news/geithner-tells->

the oversight of executive compensation but did not address director compensation.¹⁶⁸ In 2011 and again in 2016, federal financial regulators proposed joint rulemakings to implement § 956.¹⁶⁹ But while these proposals earned accolades from some quarters in the commentariat, they became victims of what John Coffee has called the “regulatory sine curve.”¹⁷⁰ The regulatory sine curve refers to the hypothesis that enthusiasm for regulation is high in the wake of major crises but wanes as memories fade and good times resume.¹⁷¹ The experience with banker incentive compensation is consistent with the hypothesis. For over a decade, the basic interagency rulemaking proposal has been sitting on the shelf. In 2024, a subset of the agencies attempted to revive it.¹⁷² This time around, the Fed was no longer a part of it.¹⁷³ Fed Chair Jerome Powell stated that his opposition stemmed from not “understand[ing] the problem” that the proposal was meant to solve.¹⁷⁴ Without the Fed, the proposed rulemaking was effectively a dead letter.

In the absence of regulation, how have banks compensated their risk committee members? Corporate disclosures hold the answer. A review of the 2024 proxy statements for the same set of systemically important banks analyzed in Section II.A reveals that these large banks—or, really, their boards, which typically set the terms of their own compensation¹⁷⁵—have arrived at some common practices.¹⁷⁶ First, risk committee chairs always, and members typically, receive extra compensation above baseline board-member levels.¹⁷⁷ For instance, in 2023, all JPMorgan Chase directors earned a baseline of \$100,000 in cash and \$250,000 in stock awards.¹⁷⁸ Risk committee members received an extra \$15,000 retainer, and the chair received a \$25,000 retainer.¹⁷⁹ These committee retainers were equivalent to the extra compensation earned by members of JPMorgan Chase’s audit committee.¹⁸⁰ The common practice of providing extra compensation to audit committee chairs and members is longstanding and reflects their heavy workload

g-20-that-executive-comp-reform-is-crucial/ [https://perma.cc/6N48-ARPX] (quoting then-Secretary of the Treasury, Timothy Geithner, on the importance of financial executive compensation reform).

168. See Guidance on Sound Incentive Compensation Policies, 75 Fed. Reg. 36,395, 36,399 (June 25, 2010).

169. See Weinberger, *supra* note 166.

170. See John C. Coffee, Jr., *The Political Economy of Dodd-Frank: Why Financial Reform Tends to Be Frustrated and Systemic Risk Perpetuated*, 97 CORN. L. REV. 1019, 1029 (2012).

171. See *id.* at 1029–37.

172. See Weinberger, *supra* note 166.

173. See *id.*

174. *Id.*

175. See *id.*; CORP. LS. COMM., CORPORATE DIRECTOR’S GUIDEBOOK 2741, 2812 (7th ed., 2020) (discussing the unavoidable conflicts of interest).

176. The proxy statements were available through the banks’ SEC filings on EDGAR or their investor relations webpages.

177. See *infra* Appendix B.

178. JPMorgan Chase & Co., Annual Meeting of Shareholders Proxy Statement 2024 (Schedule 14A) 29 (Apr 8, 2024), <https://www.sec.gov/Archives/edgar/data/19617/000001961724000273/jpm-20240406.htm> [https://perma.cc/P9JV-VZDH].

179. *Id.*

180. *Id.*

and expertise requirements.¹⁸¹ At all the banks studied, the extra pay to risk committee chairs and members matches the extra pay to audit committee chairs and members.¹⁸² Second, setting aside the extra cash for the committee work, at all banks studied, risk committee members received a mix of compensation—that is, a ratio between cash and equity-based instruments—that was identical to all other directors.¹⁸³ In other words, for a given bank that provided base compensation to other directors with a 60/40 split, risk committee members also received a base with a 60/40 split. While there was diversity in these ratios across banks, there was no intra-board diversity.

Decisions about pay represent important ways of aligning committee members with priorities for their work.¹⁸⁴ The pay practices for board members at the largest Fed-supervised banking organizations show that the designers of director compensation packages do not differentiate between the risk committee and other committees in terms of shareholder-aligned compensation incentives. Rather, risk committee chair and member compensation follows the same basic structure as compensation for directors serving on other committees under the shareholder-centric board paradigm.

D. Liability

In the battle against corporate mischief, organizational and individual liability regimes play crucial roles.¹⁸⁵ The imposition of liability is particularly powerful because it influences conduct through two interrelated forces. The first is the force of material sanctions: by imposing monetary penalties and other consequences—such as de-licensure or even prison—liability regimes deter mischief by threatening actors' interests.¹⁸⁶ The second force is the expressive effect of liability: by declaring that an actor has violated a standard of conduct, the imposition of liability sets norms about improper conduct in a given business context.¹⁸⁷ Ultimately, the imposition of liability represents a public answer to the question of what constitutes acceptable corporate behavior.

For corporate boards generally, the most famous source of liability is Delaware's *Caremark* doctrine, which imposes a duty of oversight on directors.¹⁸⁸ But *Caremark* has not had much bite for banks. The doctrine features a famously

181. See WACHTELL, LIPTON, ROSEN & KATZ, *AUDIT COMMITTEE GUIDE 23* (2024), <https://www.wlrk.com/wp-content/uploads/2024/04/Audit-Committee-Guide-2024.pdf> [<https://perma.cc/Y489-C48L>].

182. See *infra* Appendix B.

183. See *id.*

184. See SKADDEN COMPENSATION COMMITTEE HANDBOOK, *supra* note 161, at 115–22.

185. See, e.g., Jennifer Arlen & Reinier Kraakman, *Controlling Corporate Misconduct: An Analysis of Corporate Liability Regimes*, 72 N.Y.U. L. REV. 687, 689–94 (1997).

186. See Jennifer Arlen & Lewis A. Kornhauser, *Battle for Our Souls: A Psychological Justification for Corporate and Individual Liability for Organizational Misconduct*, 2023 U. ILL. L. REV. 673, 717, 720–21.

187. See *id.* at 702–05, 721–23.

188. See *In re Caremark Int'l Inc. Derivative Litig.*, 698 A.2d 959, 971 (Del. Ch. 1996).

high pleading bar, and in multiple bank cases, the bar has spelled the end of attempts to hold leaders accountable for financial risk-management lapses.¹⁸⁹

Caremark, however, is hardly the end of the story for bank directors. They are also exposed to liability under federal banking law.

The Fed possesses a range of authorities enabling it to impose civil liability on its supervised banks and their key leaders, including risk committee members. First, if the Fed believes that one of its supervised banking organizations or an affiliated party (including a director) has violated, is violating, or is likely to violate “a law, rule, . . . regulation,” or supervisory condition, then the Fed may initiate enforcement proceedings.¹⁹⁰ There are many such laws and rules that govern Dodd–Frank risk committees and their members. For instance, if a bank or director were violating any aspect of Regulation YY, the Fed would have cause to initiate an enforcement action against them.¹⁹¹ Second, the Fed can impose liability based on a set of standard-based triggers. These are hit if the Fed believes that a supervised bank or affiliated party has engaged, is engaging, or is likely to engage in an “unsafe or unsound practice.”¹⁹² This broad grant of enforcement authority reflects the protean aspect of the misconduct that can destroy banks.¹⁹³ It is meant to encompass acts and omissions, including novel forms of conduct, that unacceptably increase the risk of bank failure.¹⁹⁴

Since promulgating its risk committee rules, the Fed has brought enforcement actions predicated on problems with committee oversight of financial risk-taking against three institutions: Citigroup; Credit Suisse’s successor, UBS; and Deutsche Bank.¹⁹⁵ Notably, however, the Fed has refrained from bringing any action

189. See Partnoy, *supra* note 5, at 130.

190. 12 U.S.C. §§ 1818(b), 1847; see DIV. OF SUPERVISION & REGUL., BD. OF GOVERNORS OF THE FED. RSRV. SYS., BANK HOLDING COMPANY SUPERVISION MANUAL § 2110.0.2 (2019), <https://www.federalreserve.gov/publications/files/2000p4.pdf> [https://perma.cc/9A2S-HGV8].

191. See 12 C.F.R. pt. 252 (Regulation YY).

192. See 12 U.S.C. § 1818(b)(1).

193. Such misconduct includes “any action, or lack of action, which is contrary to generally accepted standards of prudent operation, the possible consequences of which, if continued, would be abnormal risk of loss or damage to an institution, its shareholders, or the agencies administering the insurance funds.” *In re Seidman*, 37 F.3d 911, 926 (3d Cir. 1994) (internal quotation marks omitted) (quoting *Financial Institutions Supervisory Act of 1966: Hearings on S. 3158 and S. 3695 Before the H. Comm. on Banking & Currency*, 89th Cong., 2d Sess. 49–50 (memorandum submitted by John Horne)); see *Simpson v. Off. of Thrift Supervision*, 29 F.3d 1418, 1425 (9th Cir. 1994) (similar).

194. See *Franklin Sav. Ass’n v. Dir., Off. of Thrift Supervision*, 934 F.2d 1127, 1145–46 (10th Cir. 1991).

195. See UBS Group AG, 2023 WL 5170657, at *5–7 (Bd. of Governors of the Fed. Rsrv. Sys. July 21, 2023) [hereinafter UBS Order]; Written Agreement Between Deutsche Bank AG and Federal Reserve Bank of New York, No. 23-013-WA/RB-FB, at 6–9 (July 17, 2023) [hereinafter Deutsche Bank Order], <https://www.federalreserve.gov/newsevents/pressreleases/files/enf20230719a2.pdf> [https://perma.cc/LPL8-EWGT]; Citigroup Inc., 2020 WL 6372793, at *3–4 (Bd. of Governors of the Fed. Rsrv. Sys. Oct. 7, 2020) [hereinafter 2020 Citigroup Order]. Others relate to misconduct—such as consumer protection violations, anti-money laundering violations—or anti-competitive behavior in the pricing of financial

relating to committee oversight of financial risk at SVB, despite its destructive slide into insolvency. Analysis of the Fed's enforcement choices and public justifications in these cases indicates that the Fed's enforcement priorities focus mainly on committee process, not substance. In the one instance where the Fed has directly linked risk committee oversight of financial risk to a substantive, prudential responsibility—the Credit Suisse case—it did so in a half-measure.

The Fed's actions against Citigroup and Deutsche Bank avoid explicit connection of risk committee actions or inactions to institutional safety and soundness or broader financial stability. Instead, they focus on committee process. Regarding Citigroup, the Fed sanctioned failures of risk management and board risk oversight in 2020 and again in 2024.¹⁹⁶ Citigroup had materially neglected to address information technology infrastructure challenges, leading to a range of operational failures over the years.¹⁹⁷ These included a \$900 million mistaken payment to Revlon bondholders and ongoing problems with data quality in its risk-control functions.¹⁹⁸ Though the Fed did not directly fault Citigroup's risk committee, it did highlight the importance of the risk committee's governance obligations stemming from Regulation YY.¹⁹⁹ A similar framing prevailed in the Fed's 2023 enforcement action against Deutsche Bank, which faulted the organization for general failures of model risk management.²⁰⁰ The Fed's enforcement actions against Citigroup and Deutsche Bank should therefore be seen as expressing and incentivizing a particular view of good risk committee governance. It is a process-focused view. Though the Fed's orders sanctioning Citigroup and Deutsche Bank discuss necessary process reforms, none discuss specific instances of unsafe or unsound practices.²⁰¹ None articulate a substantive conception of the risk committee's role.

products and services. *See, e.g.*, Matt Egan, *Wells Fargo Finds Even More Customers That It Overcharged*, CNN (July 13, 2018, at 16:15 ET), <https://money.cnn.com/2018/07/13/news/companies/wells-fargo-scandal-refunds/index.html> [<https://perma.cc/V5CS-AZFG>] (discussing enforcement actions related to consumer deception and anti-competitive pricing). These are distinct from enforcement actions related to the mismanagement of financial risk, which is the key form of risk regarding which shareholders' interests are misaligned with the public interest.

196. *See* 2020 Citigroup Order, *supra* note 195, at *3–4, *6–7; Citigroup Inc., 2024 WL 3469615, at *2 (Bd. of Governors of the Fed. Rsrv. Sys. July 10, 2024) [hereinafter 2024 Citigroup Order].

197. *See* 2024 Citigroup Order, *supra* note 196, at *1–3.

198. *See id.* at *1–2; Eric Talley, *Discharging the Discharge-for-Value Defense*, 18 N.Y.U. J.L. & BUS. 147, 162–64 (2021).

199. *See* 2020 Citigroup Order, *supra* note 195, at *1, *4. Citigroup's ongoing failure to comply with its information technology and risk-management reform obligations led the Fed to impose a \$60 million civil money penalty in 2024. *See* 2024 Citigroup Order, *supra* note 196, at *2–3.

200. *See* Deutsche Bank Order, *supra* note 195, at 6–9. This action was taken in conjunction with a separate enforcement action relating to Deutsche Bank's anti-money laundering deficiencies. *See* Press Release, Bd. of Governors of the Fed. Rsrv. Sys., Federal Reserve Board Announces Two Enforcement Actions Against Deutsche Bank AG, Its New York Branch, and Other U.S. Affiliates (July 19, 2023), <https://www.federalreserve.gov/newsevents/pressreleases/enforcement20230719a.htm> [<https://perma.cc/52AG-DSV9>].

201. *See* 2020 Citigroup Order, *supra* note 195, at *1; 2024 Citigroup Order, *supra* note 196, at *3. Notably, the Office of the Comptroller of the Currency took a contrasting

By contrast, the Fed's enforcement against Credit Suisse in 2023 took a cautious step toward defining a substantive role for Dodd–Frank risk committees. In 2021, Credit Suisse suffered a \$5.5 billion loss due to its exposure to a family office's highly leveraged positions in equity derivatives markets.²⁰² Two years later, following Credit Suisse's government-supported merger into UBS, the Fed imposed penalties for the risk-oversight failures that contributed to the losses.²⁰³ In its enforcement action, the Fed drew two notable links between risk committee oversight and substantive risk control. First, it identified specific risk-management failures that constituted unsafe and unsound practices.²⁰⁴ These included failures to remedy breaches of internal risk-control rules and failures to maintain effective data infrastructures for risk management.²⁰⁵ While these were not explicit acts or omissions of the risk committee itself, they were managerial acts and omissions occurring under the purview of the risk committee. Second, the Fed explicitly tied board oversight responsibilities to the safety and soundness of UBS's U.S. subsidiaries.²⁰⁶ The immediate impact of the order was muted. Issuing the order *after* Swiss authorities and UBS rescued Credit Suisse left UBS shareholders monetarily harmed but was too slow to send preventive signals to Credit Suisse. Further, the order aimed only at the firm, not at individuals responsible for the poor risk oversight. Though the Credit Suisse order puts weight behind a substantive, prudential view of the risk committee's role, it does so hesitantly.

The Fed's enforcement inaction surrounding SVB's collapse shows even greater hesitancy. As described in greater detail in Part III below, prior to SVB's collapse, its risk committee tolerated decisions to increase the bank's interest rate risk and liquidity risk. The committee also tolerated a culture of ignorance about financial risk at the bank. Despite a range of colorably unsound practices, the Fed did not bring any enforcement actions against SVB, let alone its individual board members. By contrast, the FDIC has begun pursuing suits alleging state-law breaches of fiduciary duty, negligence, and gross negligence.²⁰⁷ Though the Fed possessed authority to impose liability on SVB and its risk committee members in the lead-up to its failure, it stuck to friendlier modes of supervisory engagement.

As with its choices regarding functions, the Fed's enforcement choices have taken limited steps toward promoting a prudential focus for Dodd–Frank risk committees. While the UBS and Deutsche Bank orders do link risk committee

approach in its enforcement actions against Citigroup's insured depository institution subsidiary, Citibank. *See generally* Citibank, Nat'l Ass'n, 2020 WL 8185093 (Off. of the Comptroller of the Currency Oct. 7, 2020) (listing findings of unsafe and unsound practices).

202. *See* Emily Glazer, Maureen Farrell & Margot Patrick, *Inside Credit Suisse's \$5.5 Billion Breakdown*, WALL ST. J. (June 7, 2021, at 09:33 ET), <https://www.wsj.com/finance/banking/inside-credit-suisse-5-5-billion-breakdown-archegos-11623072713> [<https://perma.cc/C5TH-95FF>].

203. *See* UBS Order, *supra* note 195, at *4, *12.

204. *See id.* at *4–5.

205. *Id.*

206. *See id.* at *5.

207. *See* Kevin LaCroix, *FDIC Files Liability Action Against Former SVB Executives*, THE D&O DIARY (Jan. 20, 2025), <https://www.dandodiary.com/2025/01/articles/banks/fdic-files-liability-action-against-former-svb-executives/> [<https://perma.cc/VA3Q-F3AK>].

activity to the public interest in bank soundness, the Fed's lack of enforcement against SVB complicates even those modest messages. On net, the Fed's decisions across these cases suggest that risk committees and their members will only be held responsible for actions that impose downside risk of financial loss on the public in extraordinary situations.

* * *

Pursuant to the Dodd–Frank mandate, the Fed has now engaged in risk committee regulation and supervision for over a decade. This Part has shown how the Fed has employed its statutory discretion across four aspects of risk committee design and oversight. The analysis shows that the Fed has been cautious. With a few exceptions, the Fed has passed up opportunities to orient risk committees toward prudential control of financial risk. In other words, the Fed has been a reticent reformer of board governance.

III. THE FUTURE OF THE RISK COMMITTEE

Thus far, the Article has shown how the Fed's on-the-ground reform of bank risk governance has failed to live up to the goals of the Dodd–Frank Act. Rather than regulating to align risk committee design with the public interest in prudential risk control, the Fed has proven to be a reticent reformer of corporate governance. As a result, today's committees are shareholderist institutions. This Part evaluates potential responses to that ineffectiveness.

A. Giving Up on Board Governance

The first potential response is to turn away from corporate governance institutions as potential contributors to the project of prudential regulation. This type of response has a long pedigree in debates over corporate governance and negative externalities. Scholars have often pointed out that corporate governance institutions exercise a good deal of control over the extent to which their firms externalize costs onto third parties.²⁰⁸ Altering governance institutions thus appears to be an attractive tactic. But is it the *best* tactic? Many scholars today subscribe to the view that the best methods of regulation are likely to be external to the corporation.²⁰⁹ Taxes, capital regulations, structural separations—these external regulatory approaches are likely to outperform efforts aimed at the internal governance of corporate conduct.²¹⁰ Corporate governance reforms are just not winners in debates over “instrument choice.”²¹¹ It is better to go find other options.

The focus on finding regulatory options external to corporate governance is also prominent in justifications for shareholder primacy. Standard arguments for shareholderist governance institutions envision a system in which

208. See Einer Elhauge, *Sacrificing Corporate Profits in the Public Interest*, 80 N.Y.U. L. REV. 733, 741–44 (2005).

209. See, e.g., Lucian A. Bebchuk & Roberto Tallarita, *The Illusory Promise of Stakeholder Governance*, 106 CORN. L. REV. 91, 94 (2020).

210. See *id.*

211. For a critical examination of debates over regulatory instrument choice, see William Boyd, *The Poverty of Theory: Public Problems, Instrument Choice, and the Climate Emergency*, 46 COLUM. J. ENV'T L. 399, 409–22, 439–48 (2021).

shareholder-focused governance turbocharges profitable production while public regulation controls negative externalities.²¹² According to the standard case, so long as regulation does a good job of controlling those externalities, then shareholder value maximization will maximize welfare for all parties.²¹³

But in some industrial contexts, external regulatory options are unavailable, ineffective, or unreliable. Banking is one of those industries. From the Great Depression to the Global Financial Crisis, the past century has been marked by banking crises that fomented economic catastrophes, causing astronomical levels of spillover harm.²¹⁴ There might be any number of external regulatory approaches that in principle could deal once and for all with the fundamental public problem of banking crises. Other countries have successfully adopted some of those approaches.²¹⁵ But in the United States, such external regulatory solutions have remained elusive.²¹⁶ Whether for political, ideological, or other reasons, bank regulation is often a cracked rib in the ship of state.

The uncertainty about any theoretical “best” instruments for external regulation means that it becomes attractive to develop multiple regulatory instruments at once. These overlapping instruments may sometimes be redundant.²¹⁷ But when goals are important, and confidence about any given instrument’s success is partial, overlap has its virtues.²¹⁸ In the context of bank regulation, corporate governance reforms are best seen as one of many overlapping regulatory instruments within the U.S. financial regulatory portfolio. Indeed, Dodd–Frank’s long list of interventions can be understood as an acknowledgement and embrace of a layered approach to financial risk regulation.

In the fallen world of imperfect regulation, focusing in on a single instrument is risky business. The Fed’s recent experience with bank capital requirements illustrates the point. Over the past few years, the Fed put nearly all of its bank-regulatory eggs in the basket of heightened capital requirements pursuant to the so-called “endgame” of the Basel III capital framework.²¹⁹ It did little in the

212. See Mark J. Roe, *Corporate Purpose and Corporate Competition*, 99 WASH. U. L. REV. 223, 255–56 (2021).

213. See *id.* at 258.

214. See Amir Sufi & Alan M. Taylor, *Financial Crises: A Survey*, in 6 HANDBOOK OF INTERNATIONAL ECONOMICS 291, 292 (Gita Gopinath, Elhanan Helpman & Kenneth Rogoff eds., 2022).

215. See CHARLES W. CALOMIRIS & STEPHEN H. HABER, FRAGILE BY DESIGN: THE POLITICAL ORIGINS OF BANKING CRISES AND SCARCE CREDIT 479–90 (2014).

216. See generally *id.* at 153–282 (comparing and contrasting bank regulation in the United States and Canada).

217. See Matthew C. Turk, *Overlapping Legal Rules in Financial Regulation and the Administrative State*, 54 GA. L. REV. 791, 797, 811–14 (2020).

218. See *id.*; Paul Tucker, *The Lender of Last Resort and Modern Central Banking: Principles and Reconstruction*, 79 BANK FOR INT’L SETTLEMENTS PAPERS 10, 24 (2014); Jacob E. Gersen, *Administrative Law Goes to Wall Street: The New Administrative Process*, 65 ADMIN. L. REV. 689, 712–13 (2013); Lucian A. Bebchuk & Holger Spamann, *Regulating Bankers’ Pay*, 98 GEO. L.J. 247, 280–82 (2010).

219. See *How the Basel Endgame Derailed*, CAPITOL ACCT. (Sep. 25, 2024), <https://www.capitolaccountdc.com/p/how-the-basel-endgame-derailed> [https://perma.cc/2HK5-XTPY]. The “endgame” of Basel III refers to the current round of technical

wake of SVB to address corporate governance problems. It did not join other financial regulators in revisiting bank executive compensation under Dodd–Frank’s § 956.²²⁰ Instead, it saved most of its administrative capacity for the Basel endgame.²²¹ But it came to naught. Stymied by an aggressive campaign by affected banks to push against the new Basel proposal, the Fed backed away from it.²²² The Basel endgame illustrates the ups and downs of bank regulation in the United States. Given those ups and downs, it is worth considering the potential utility of corporate governance reform as one among a variety of regulatory instruments rather than rejecting it in hopes of finding a silver bullet.

B. Waiting for Congress

Following the rationale of embracing second-best governance tools, an increasing range of voices have suggested openness in theory to using corporate governance institutions to constrain financial risk-taking.²²³ But openness in theory need not translate to enthusiasm for particular reforms. A second sensible approach to the failures of Dodd–Frank’s risk committee mandate, even among people disposed to think bank risk-taking poses a serious problem of negative externalities, might be to move on. Sometimes, regulatory efforts just don’t work out. If the mandate has not delivered reliable risk control, then maybe the best response is to go back to the legislative drawing board.

Nor would much love be lost. Though industry lawyers and consultants banged the drum to alert their clients,²²⁴ the truth is that the risk committee implementation was nobody’s idea of a landmark regulatory event. Nor has experience transformed it. It has been unabashedly celebrated in exactly zero law review articles, and it has been written off in a few.²²⁵ Over a decade on, it is all too

requirements implementing the Basel III capital framework. See MARC LABONTE & ANDREW P. SCOTT, CONG. RSCH. SERV., R47855, *BANK CAPITAL REQUIREMENTS: BASEL III ENDGAME 2* (2023).

220. See discussion *supra* notes 169–74.

221. See *How the Basel Endgame Derailed*, *supra* note 219.

222. See Michael S. Derby & Michelle Price, *Federal Reserve’s Powell Backs Basel Changes, Says No Date Yet for Publishing New Draft*, REUTERS (Sep. 18, 2024, at 13:35 MT), <https://www.reuters.com/markets/us/federal-reserves-powell-backs-basel-changes-says-no-date-yet-publishing-new-2024-09-18/> [<https://perma.cc/UX4K-A4NB>].

223. See sources cited *supra* notes 17 & 23.

224. See, e.g., COVINGTON & BURLING LLP, *FEDERAL RESERVE FINALIZES ENHANCED PRUDENTIAL STANDARDS FOR LARGE U.S. BANK HOLDING COMPANIES AND FOREIGN BANKING ORGANIZATIONS 1* (2014), https://web.archive.org/web/20240616124156/https://www.cov.com/-/media/files/corporate/publications/2014/02/federal_reserve_finalizes_prudential_standards_for_us_bank_holding_companies_and_foreign_banking_organizations.pdf [<https://perma.cc/47GZ-RC3J>]; Pam Martin, *Federal Reserve Board Approves Final Rule Establishing Enhanced Prudential Standards for Bank Holding Companies and Foreign Banking Organizations with More Than \$50 Billion in Total Consolidated Assets*, KPMG, (Feb. 2014), <https://assets.kpmg.com/content/dam/kpmg/pdf/2014/02/feb19-2013-regulatory-alerts.pdf> [<https://perma.cc/KNW9-VEE8>].

225. See, e.g., Schwarcz, *Systematic Regulation of Systemic Risk*, *supra* note 10, at 41 n.268 (lamenting that risk committees at systemically important financial institutions “are not required to undertake the most important job they should be performing—to reduce systemic harm”); Schwarcz, *Misalignment*, *supra* note 10, at 30–31 (similar).

easy for policymakers and scholars to treat risk committees as half-baked products in the Dodd–Frank kitchen sink. As Part II documents, the Fed’s implementation of the risk committee mandate left the fundamental misalignment between shareholderist governance and the public interest in prudential financial risk levels in place.

This misalignment is not new. Ironically, in the legal literature, the most prominent policy response to the problem of misalignment aims at heightening directors’ state-law fiduciary duties. Even in 2003, when shareholder value maximization was ascendant and the Global Financial Crisis had not yet shaken anyone’s intellectual foundations, Professors Macey and O’Hara were already calling for an expanded bank director duty to “take solvency risk explicitly and systematically into account when making decisions.”²²⁶ Since then, scholars have posed a range of well-supported rationales for similar corporate-law changes, along with methods of implementation.²²⁷ These proposals would move the boards of a major economic sector away from the standard picture of fiduciary law taught in most law schools, extolled in most venues for director education, and long understood to be the standard baseline for corporate law.²²⁸

Yet such a shift would be insufficient on its own to reorient directorial actions—that is, to effectuate a “repurposing” of the risk committee, let alone the larger bank board.²²⁹ The problem is that fiduciary liability is but one among the panoply of forces that govern corporate governance. As Professors Lund and Pollman have recently detailed, corporate decision-making gets “orient[ed] . . . toward shareholders” by law, institutions, and culture all at once.²³⁰ Everything from federal securities law to Department of Labor regulations, the votes of leading institutional investors, the cultural products of business-school education, and more function together to create what they liken to a “corporate governance machine.”²³¹ It would take much more than a shift in fiduciary duty to overcome the influence of the corporate governance machine on bank directors. So the question becomes: how might such a multifaceted shift come about?

Skepticism about tinkering with corporate governance details is pervasive. Scholars of bank regulation are no strangers to pessimism about such corporate governance tinkering. The Global Financial Crisis, writes Professor Omarova, “made abundantly clear that the modern system of corporate governance, with its traditional focus on solving specific principal-agent problems within a firm, is not a sufficiently reliable or consistent mechanism for managing th[e] insidious and . . . pervasive conflict” between bank shareholders and the public interest.²³² Nor are legal scholars alone here. Financial economists, too, have likened the Crisis

226. Macey & O’Hara, *supra* note 17, at 92.

227. See, e.g., Listokin & Mun, *supra* note 71, at 384–87; Armour & Gordon, *supra* note 17, at 61–70; Hill & McDonnell, *supra* note 10, at 866–77; Schwarcz, *Misalignment*, *supra* note 10, at 30–31.

228. See Lund & Pollman, *supra* note 24, at 2578–609.

229. Ruggie, *supra* note 20, at 147 (discussing “corporate repurposing” as a political project).

230. Lund & Pollman, *supra* note 24, at 2565.

231. *Id.* at 2578–609.

232. Omarova, *supra* note 17, at 1032.

to being “slapped in the face by the invisible hand.”²³³ Such a devastating break warrants structural overhaul, not minor changes within the governance paradigm that allowed the Crisis in the first place.

To that end, several scholars have proposed plans for comprehensive bank-board redesign. Professor Omarova, for instance, has proposed public selection of a “Golden Share” director who would sit as an observer on the risk committee, ready to take control of governance levers when signs of trouble arise.²³⁴ Professor Allen has proposed the installation of an entire slate of public directors, representing a further move along the public–private continuum of bank governance arrangements.²³⁵ Each of these proposals embraces transformative statutory change in the name of aligning bank governance with the public interest.

But Congress operates on its own schedule. What are reformers to do if a legislative moment is not forthcoming?²³⁶ One response—a valuable response—is to continue to build out a blueprint of the transformational vision, ready to be rolled out if the legislative moment does one day arise.²³⁷ Another response—a complementary response—is to look to the law as it exists today. Are meaningful reforms possible within the current statutory structure?

The two paths are not exclusive. It is entirely possible for actors within the world of financial policymaking to pursue both. The question then becomes whether renewed efforts under Dodd–Frank’s risk committee mandate would hinder or help promising proposals for legislative change. If pursuing reforms within the existing Dodd–Frank statutory structure was to undermine political will for new legislation over a relevant time horizon, then that would be a reason to turn away from the risk committee experiment as a site of corporate governance reform. Better to retain political will for bigger-ticket legislative success. If, on the other hand, regulatory and supervisory risk committee reforms would be neutral or complementary to attractive legislative proposals, then that would counsel in favor of considering those reforms. A complete resolution of such balancing would require assessing political dynamics that are well beyond the scope of this Article. But some relevant considerations relate to legislative design itself. Two such considerations support the view that regulatory reform would assist, not hinder, future legislative efforts.

First, regulatory reform can provide evidence about the types of corporate governance reforms that work and do not work. Regulatory successes can be “proofs of concept” for broader legislative change, and regulatory failures can support the

233. GARY B. GORTON, *SLAPPED BY THE INVISIBLE HAND: THE PANIC OF 2007* 13 (2010).

234. See Omarova, *supra* note 17, at 1043–58.

235. See Hilary J. Allen, *The Pathologies of Banking Business as Usual*, 17 U. PA. J. BUS. L. 861, 901–02 (2015).

236. For discussion of what produces legislative moments, see, for example, Peter Conti-Brown & Michael Ohlrogge, *Financial Crises and Legislation*, 4 J. FIN. CRISES 1, 2–7 (2022).

237. For other such blueprints, see generally ANAT ADMATI & MARTIN HELLWIG, *THE BANKERS’ NEW CLOTHES: WHAT’S WRONG WITH BANKING AND WHAT TO DO ABOUT IT* (2024); Lev Menand & Morgan Ricks, *Rebuilding Banking Law: Banks as Public Utilities*, 41 YALE J. ON REGUL. 591 (2024).

sensible allocation of legislative resources. If the Fed can conduct more governance experiments under the current legislation before the next legislative moment happens to arise, then the product of that future moment may be improved by the light of prior regulatory experience. In particular, Fed efforts might reveal where reforms are most compatible with existing bank institutions and norms, and where they most provoke private-sector pushback. They might help identify which types of reform generate the most meaningful risk control and which are just window-dressing.

Second, further regulatory efforts on risk committee reform might alter the composition of constituencies within banks themselves. Reforms to the design and operation of Dodd–Frank risk committees have the potential to cultivate internal norms among directors and risk-management personnel that treat prudential governance as technically achievable and institutionally legitimate.²³⁸ Regulatory efforts that successfully embed prudential norms into governance routines and board culture would have the added benefit of reorienting private-sector actors toward a prudential perspective during future debates about financial legislation. This could reduce the gap between today’s status quo—both in terms of institutional design and in terms of public rhetoric—and the prudential perspective underlying most legislative proposals. In this way, regulatory reform could support conditions that make legislative reform more likely to succeed in practice.

C. *The Stakes of Waiting*

The stakes of waiting for Congress also play out in terms of opportunities for excessive financial risk-taking that continue to exist in the banking industry. The recent case of Silicon Valley Bank illustrates this well. Before becoming the second-largest bank failure in U.S. history, SVB operated a “plain vanilla” business model.²³⁹ Mainly, SVB borrowed from tech-sector depositors at low interest rates, and it invested in Treasury securities paying slightly higher interest rates.²⁴⁰ Treasury securities tend to be safe investments; the likelihood of the debtor—the federal government—defaulting on the securities is quite low.²⁴¹ For many years, SVB’s simple business model worked safely.

But even low-risk Treasuries can create serious problems under some circumstances. For banks, locking in long-term interest rates can be dangerous when

238. Cf. Cary Coglianese, Richard Zeckhauser & Edward Parson, *Seeking Truth for Power: Informational Strategy and Regulatory Policymaking*, 89 MINN. L. REV. 277, 288–305 (2004) (discussing regulatory strategies aimed at discovering and cultivating constituencies within firms).

239. See Isaac Chotiner, *The Regulatory Breakdown Behind the Collapse of Silicon Valley Bank*, NEW YORKER (Mar. 19, 2023), <https://www.newyorker.com/news/q-and-a/the-regulatory-breakdown-behind-the-collapse-of-silicon-valley-bank> [https://perma.cc/U99T-KA99] (quoting Peter Conti-Brown as noting the “plain-vanilla” quality of SVB’s portfolio).

240. See MICHAEL S. BARR, BD. OF GOVERNORS OF THE FED. RESRV. SYS., REVIEW OF THE FEDERAL RESERVE’S SUPERVISION AND REGULATION OF SILICON VALLEY BANK 18–22 (2023) [hereinafter FED REVIEW OF SVB SUPERVISION AND REGULATION], <https://www.federalreserve.gov/publications/files/svb-review-20230428.pdf> [https://perma.cc/G3LP-DJNP].

241. See Anna Gelpern & Erik F. Gerding, *Inside Safe Assets*, 33 YALE J. ON REGUL. 363, 387–406 (2016).

interest rates start to rise.²⁴² The fall of SVB shows why. In its growth years, SVB bought a portfolio of securities that was profitable when compared to the interest it was then paying its depositors.²⁴³ Everything went wrong when the Fed started raising interest rates to fight inflation.²⁴⁴ As interest rates rose, SVB's depositors sought higher interest rates on their cash.²⁴⁵ Suddenly, the rates SVB was earning on its securities portfolio looked paltry in comparison to what it would take to keep its depositors happy.

This turnabout in relation to interest rates—known as “repricing risk” or “gap risk”—is a longstanding threat to even the plainest of banks.²⁴⁶ It was responsible, for instance, for much of the trouble during the Savings and Loan Crisis of the late 1980s and early 1990s.²⁴⁷ Chastened by that crisis, supervisors have long exhorted banks to adopt risk controls tied to prospects for income and losses in different interest-rate environments.²⁴⁸ But SVB's controls fell short of the ideal.

Under the Fed's rules, SVB's risk committee was responsible for monitoring those risk controls. In the year prior to SVB's collapse, its risk committee did *plenty* of monitoring. The committee was staffed by plenty of experts, and it paid attention to the bank's risks.²⁴⁹ But it failed to avoid excessive risk-taking. Instead, it took a series of actions indicating that the risk committee approved of the bank's

242. See Peter Hoffmann et al., *Who Bears Interest Rate Risk?*, 8 REV. FIN. STUDS. 2921, 2932 (2019).

243. See SVB MATERIAL LOSS REVIEW, *supra* note 14, at 11–12; FED REVIEW OF SVB SUPERVISION AND REGULATION, *supra* note 240, at 63 (noting that SVB's deposits were “predominantly non-interest-bearing”).

244. See SVB MATERIAL LOSS REVIEW, *supra* note 14, at 15, 42.

245. See FED REVIEW OF SVB SUPERVISION AND REGULATION, *supra* note 240, at 21–24.

246. See BEATA LUBINSKA, INTEREST RATE RISK IN THE BANKING BOOK: A BEST PRACTICE GUIDE TO MANAGEMENT AND HEDGING 9 (2021).

247. See William C. Handorf, *CAMEL to CAMELS: The Risk of Sensitivity*, 17 J. BANKING REGUL. 273, 274 (2016). For an account of how SVB's debacle fit the pattern at the heart of the S&L Crisis, see Anna Gelpern, *Silicon Rhymes with Savings and Loan (and It's a Ratchet)*, YALE J. ON REGUL.: NOTICE & COMMENT (Mar. 29, 2023), <https://www.yalejreg.com/nc/silicon-rhymes-with-savings-and-loan-and-its-a-ratchet-by-anna-gelpern/> [<https://perma.cc/GUK6-XU28>].

248. See, e.g., BD. OF GOVERNORS OF THE FED. RSRV. SYS., SR 96-13, JOINT POLICY STATEMENT ON INTEREST RATE RISK (1996); Memorandum from Stanley J. Poling, Dir. Div. of Acct. & Corp. Servs. Fed. Deposit Ins. Corp. on Assessment of Interest Rate Risk, to Regional Directors (Aug. 12, 1994); OFFICE OF THE COMPTROLLER OF THE CURRENCY, COMPTROLLER'S HANDBOOK § 405, at *5–6 (1994), Westlaw OCCHNBE.

249. SVB's risk committee was staffed by directors including a former global information technology leader at JPMorgan, the former managing partner of Accenture's Banking and Capital Markets group, a former managing partner at Ernst & Young, and a former Undersecretary of the Treasury. See SVB Fin. Grp., 2023 Proxy Statement (Schedule 14A), at 15–20, 25–26 (Apr. 27, 2023) [hereinafter SVB Proxy Statement], <https://www.sec.gov/Archives/edgar/data/719739/000071973923000032/sivb-20230303.htm> [<https://perma.cc/K7QT-HLB5>].

attempts to gamble for resurrection after it became common knowledge that SVB was in a poor financial position.²⁵⁰

First, and most damningly, the risk committee approved a series of decisions to terminate interest-rate hedges in the year before the bank's failure. In situations where banks face serious threats to their solvency, terminating hedges is a method that increases the volatility of the bank's financial outcomes, thereby increasing its shareholders' expected value.²⁵¹ Indeed, when a bank is in trouble, dropping hedge positions is a textbook way to gamble for resurrection on behalf of shareholders.²⁵² In 2022, SVB was in exactly that position. The bank's risk committee well knew that the institution was in dire straits.²⁵³ In particular, the bank was exposed to significant interest rate risk, which was triggering a range of red flags within the bank's risk-management system.²⁵⁴ The bank also maintained a significant set of derivatives positions that hedged against the interest rate risk.²⁵⁵ Yet despite the evident significance of the bank's exposure to interest rate risk, the risk committee approved of managers' decisions to close out hedge positions throughout 2022.²⁵⁶ Doing so was critical in producing earnings per share that met Wall Street equity analyst expectations.²⁵⁷ By trading away downside risk protection to boost short-term financial performance, SVB's risk committee enabled classic shareholder-centric conduct.

Second, on the heels of that financially engineered boost to short-term earnings, the risk committee allowed a transfer of \$294 million from SVB's insured depository institution to its corporate parent.²⁵⁸ The transaction's goals were to stabilize SVB's share price and create the financial conditions that would enable SVB to deliver financial upside to shareholders through either of two tactics: dividend payouts or share repurchases.²⁵⁹ Under normal conditions, transfers from bank subsidiaries to corporate parents do not raise serious concerns. They allow public shareholders to enjoy the fruits of successful banking enterprises. But when banks are facing financial troubles, these transfers—known as bank-to-parent dividends—have mixed effects. On the one hand, paying routine dividends signals

250. Regarding gambling for resurrection, see discussion *supra* note 56 and accompanying text.

251. See Bengt Holmström & Jean Tirole, *Liquidity and Risk Management*, 32 J. MONEY, CREDIT & BANKING 295, 309 (2000).

252. See *id.*

253. See FED REVIEW OF SVB SUPERVISION AND REGULATION, *supra* note 240, at 13–14, 61–62.

254. See *id.*

255. See *id.* at 62–64.

256. See *id.*

257. See Complaint at 23–25, Fed. Deposit Ins. Corp. v. Becker, No. 5:25-cv-569 (N.D. Cal. Jan. 16, 2025).

258. See *id.* at 25–29.

259. See *id.* On dividends and share repurchases, see generally Alice Bonaimé & Kathleen Kahle, *Share Repurchases*, in HANDBOOK OF CORPORATE FINANCE 176 (David J. Denis ed., 2024).

strength to the marketplace.²⁶⁰ On the other hand, their payouts reduce underlying financial strength and raise the specter of socially costly risk shifting.²⁶¹ For SVB, the regularity of bank-to-parent dividends, at least, did not need to be maintained to ensure the confidence of the marketplace. Due to its increased risk profile, SVB had not transferred a bank-to-parent dividend since 2020.²⁶² But in late 2022, three months before SVB's collapse, its leaders sought to make use of the temporary earnings boost generated from the termination of its interest-rate hedges to support such a transfer.²⁶³ The risk committee allowed the transaction to proceed despite internal and external red flags that SVB faced the most severe downside risks of its corporate life.²⁶⁴ By then, directors did not even need to glean signals of excessive risk from the bank's own risk metrics. Instead, they could rely on market signals: SVB's stock had lost 30% of its value after its third-quarter earnings call disclosed heavy losses.²⁶⁵ *The Wall Street Journal* even published a story on interest rate-driven losses, illustrated by a picture of SVB's CEO.²⁶⁶ Nevertheless, SVB went forward with the payments.²⁶⁷ It did so in order to help support the ability of its top-level entity to make payouts to shareholders.²⁶⁸ It allocated scarce resources toward shareholder priorities at the expense of maintaining a solid financial defense against a bank run.

Third, the risk committee tolerated significant breaches of the bank's own limits on interest rate risk. Banks use systems of internal limits to constrain risk-taking within safe bounds.²⁶⁹ Throughout 2022, SVB's risk committee received warnings from that system. In April 2022, for instance, changes in SVB's financial position and broader market conditions caused the bank to breach an important risk limit.²⁷⁰ This limit was like a warning light on a car dashboard: it was designed to

260. Eric Floyd, Nan Li & Douglas J. Skinner, *Payout Policy Through the Financial Crisis: The Growth of Repurchases and the Resilience of Dividends*, 118 J. FIN. ECON. 299, 313 (2015).

261. See Abhishek Srivastav, Seth Armitage & Jens Hagendorff, *CEO Inside Debt Holdings and Risk-Shifting: Evidence from Bank Payout Policies*, 47 J. BANKING & FIN. 41, 50 (2014); see also Jeremy C. Kress, *Who's Looking Out for the Banks?*, 93 U. COLO. L. REV. 897, 913 (2022) (evaluating the risk that dividend payouts "exploit the federal safety net").

262. See Complaint, *supra* note 257, at 25; CAL. DEP'T OF FIN. PROT. & INNOVATION & FED. RSRV. BANK OF S.F., REPORT OF JOINT EXAMINATION 7 (2021), <https://www.federalreserve.gov/supervisionreg/files/svb-2020-camels-examination-report-20210503.pdf> [<https://perma.cc/A5LN-DDWV>].

263. See Complaint, *supra* note 257, at 25–29.

264. See *id.*

265. SVB MATERIAL LOSS REVIEW, *supra* note 14, at 28.

266. See Jonathan Weil, *Rising Interest Rates Hit Banks' Bond Holdings*, WALL ST. J. (Nov. 11, 2022, at 05:30 ET), <https://www.wsj.com/articles/rising-interest-rates-hit-banks-bond-holdings-11668123473> [<https://perma.cc/9WCB-56AW>].

267. See Complaint, *supra* note 257, at 26–28.

268. See *id.* at 26.

269. See, e.g., DAVID MURPHY, UNDERSTANDING RISK: THE THEORY AND PRACTICE OF FINANCIAL RISK MANAGEMENT 49–50 (2008); BASEL COMM. ON BANK SUPERVISION, CORPORATE GOVERNANCE FOR BANKS 2, 10–11 (2015), <https://www.bis.org/bcbs/publ/d328.pdf> [<https://perma.cc/KC82-TEJU>].

270. See FED REVIEW OF SVB SUPERVISION AND REGULATION, *supra* note 240, at 62–64.

provoke inspection and corrective action. It indicated that, if interest rates were to rise sharply, SVB might end up in a financial equivalent of a wreck. Rather than ordering managers to reduce the bank's risk profile, the committee allowed the risk experts to go "under the hood" of the bank's risk-control engine and change the limit specifications.²⁷¹ The breach disappeared. The underlying risk did not. Eleven months later—and after a few more internal limit breaches along the way—rising interest rates drove SVB into insolvency.²⁷² The risk committee's unwillingness to demand compliance with the bank's own risk limits shows a committee aligned with shareholders' interests in socially excessive levels of risk.

The costs of SVB's failure fell in part on the public. Once SVB's depositors took notice of the bank's precarious financial position, they ran on the bank.²⁷³ To stop the run, public actors took extraordinary action. Jointly, the Fed, the FDIC, and the Secretary of the Treasury concluded that SVB's failure threatened "serious adverse effects on economic conditions or financial stability."²⁷⁴ To prevent the worst of those effects, the FDIC provided support to SVB's depositors to the tune of \$16 billion.²⁷⁵

D. Reviving the Regulatory Mandate

The case of SVB illustrates the dramatic consequences of risk committee laxity; it also illustrates the consequences of waiting for a comprehensive legislative reform moment rather than investing in tactical governance reforms that are available under current law. Rather than giving up on corporate governance reform or waiting for Congress to bolster it, the Fed should consider whether to resuscitate it as an instrument of bank risk regulation. Doing so would have the benefit of using statutory authority that the Fed already possesses, and it would enable the Fed to revisit prior choices in light of a decade of experience that was punctuated by the failure of SVB, not to mention the shifting perspectives on shareholder primacy across the political spectrum. Far from being a dead letter, the Dodd–Frank risk committee mandate offers the Fed multiple new ways of orienting risk committees toward the public interest in prudential risk control.

The Fed's opportunities for reviving the risk committee mandate can be mapped across each of the four design elements that determine committee priorities. In what follows, I sketch the elements out, evaluate their significance, and consider significant potential costs to their adoption. The goal is not to offer a complete cost–benefit analysis of any particular suite of reform options, but rather to demonstrate

271. *See id.*

272. *See id.* at 3, 59, 62–64; Silicon Valley Bank (Cal. Dep't of Fin. Prot. & Innovation Mar. 10, 2023), <https://dfpi.ca.gov/wp-content/uploads/sites/337/2023/03/DFPI-Orders-Silicon-Valley-Bank-03102023.pdf> [<https://perma.cc/EL36-NGU7>] (order declaring SVB insolvent and taking possession of its property and business).

273. *See* Telis Demos, *What Happened with Silicon Valley Bank?*, WALL ST. J. (Mar. 14, 2023, at 15:00 ET), <https://www.wsj.com/articles/silicon-valley-bank-svb-financial-what-is-happening-299e9b65> [<https://perma.cc/S7PA-LVW9>].

274. MARC LABONTE, CONG. RSCH. SERV., IF12378, BANK FAILURES: THE FDIC'S SYSTEMIC RISK EXCEPTION 1–2 (2024) (quoting 12 U.S.C. § 1823(c)(4)(G)(i)(I)).

275. *See* SVB MATERIAL LOSS REVIEW, *supra* note 14, at 10 n.6.

the extent of the Fed's authority to engage in meaningful corporate governance reform.

Functions. First, the Fed has significant authority to reorient bank risk committees by redefining their functions. What exactly are risk committees *for*? As Section II.A laid out, even a careful examination of the Fed's risk committee rules and the largest banks' own committee charters reveals little about the substantive purpose of the risk committee's existence. Instead, the functions assigned to the committee are process-focused, without clear connection to substance.²⁷⁶ The Fed, under Dodd–Frank's authority,²⁷⁷ can remedy this functional confusion by expressly linking the committee's activities to the goals of ensuring bank soundness and financial stability.

The SVB case demonstrates the paucity of today's requirements. The closest the Fed's current rules come to demanding explicitly prudential governance requirements is by requiring the risk committee to “approve[] and periodically review[]” the covered bank's policies regarding its internal processes and systems for risk management.²⁷⁸ There is no doubt that SVB's risk committee did just that. Indeed, it met many more times than the typical risk committee in the final year of SVB's life—a demonstration of the committee's process virtues.²⁷⁹ Given the sheer volume of its deliberations, it is unsurprising that the Fed has not brought an enforcement action against SVB or any of its directors. But the fact that even SVB's risk committee may have complied with the functional obligations of Regulation YY is a telling demonstration of those obligations' insufficiency.

The Fed can remedy this troubling result by imposing substantive criteria for external scrutiny of risk committee oversight. Dodd–Frank gives the Fed authority to impose prudential governance standards related to risk committee “oversight of the enterprise-wide risk management practices” of covered firms.²⁸⁰ Under the aegis of this authority, the Fed can assign risk committees a clearer, more prescriptive set of tasks. Such tasks would cash out the committee's purpose through verifiable obligations.²⁸¹ These could include explicit and substantive review, approval, and reporting obligations. For instance, on the ground that it ensures bank soundness, the Fed could task the risk committee with reviewing and approving risk limit construction and enforcement. In 2023, SVB's risk committee was arguably compliant with its oversight obligations, merely because it maintained a book of risk

276. See *supra* notes 125–32 and accompanying text.

277. See *supra* notes 128–34 and accompanying text.

278. 12 C.F.R. § 252.22(a)(1).

279. SVB Proxy Statement, *supra* note 249, at 23; see Matt Kelly, *The Web of Risks Wrapped Around SVB*, RADICAL COMPLIANCE (Apr. 10, 2023), <https://www.radicalcompliance.com/2023/04/10/the-web-of-risks-wrapped-around-svb/> [<https://perma.cc/S4EB-ETSZ>] (describing the number of risk committee meetings as “whopping”).

280. 12 U.S.C. § 5365(h)(3)(A).

281. As Professors Fisch and Davidoff Solomon have argued, the instrumental value of any effort to repurpose corporate governance is dependent on how measurable and enforceable its attendant obligations are. See Fisch & Davidoff Solomon, *supra* note 20, at 1322–23.

limits and deliberated about their implementation;²⁸² in the future, a similar risk committee could be held to the requirement that their oversight choices actually maintain substantive soundness. Similarly, the Fed could task the risk committee with reviewing and approving policies related to dividends and balance-sheet management on the grounds that they align with the maintenance of a sound financial condition. SVB's directors would have fallen short of such a requirement in late 2022.²⁸³ Lastly, the Fed could require committee members to uphold an affirmative duty to report on concerns about risks to safety and soundness to bank supervisors. By contrast to the current requirements, which do not speak to the underlying objectives of risk committee monitoring, these substantive demands would orient risk committee members' work toward prudential goals. These demands would also do more to lay the groundwork for director liability.

The Fed also has statutory authority to align risk committee functions with favorable cultural norms. As scholars and policymakers have long known, law and regulation can change cultures by expressing approval of favored values.²⁸⁴ This "expressive function" of law is widespread.²⁸⁵ Among scholars of corporate law, it holds a key place in the description and the legitimation of the Delaware Chancery Court's tendency to moralize about fiduciary duty even in cases where corporate "sinners" suffer no material consequences.²⁸⁶ But expressive effects are not limited to the pronouncements of judges. Regulatory agencies, too, can express approval or disapproval for different corporate norms. Just as the SEC can use its administrative efforts to express moral opprobrium for Ponzi scheming or defrauding the elderly,²⁸⁷ the Fed can use rules about risk committee functions to shape directors' cultural views about risk governance.

To be a norm entrepreneur for Dodd–Frank risk committees, the Fed could focus on the language of risk committee charters. As Professor Fairfax has written, committee charters are "focal points" for directors in developing understandings of their roles.²⁸⁸ The language of charter documents represents an "acknowledgement of the responsibilities [that board members] are agreeing to embrace."²⁸⁹ Today, risk committee charters lack any explicit commitment to prioritizing bank soundness over shareholder interests. A simple revision to Regulation YY could require covered banks to revise their charters to adopt a prudential perspective on bank priorities. An explicit statement that the committee "shall oversee the institution's risk-management systems to ensure they prioritize the safety and soundness of the

282. See discussion *supra* notes 269–72 and accompanying text.

283. See discussion *supra* text accompanying notes 256–64.

284. See Cass R. Sunstein, *On the Expressive Function in Law*, 144 U. PA. L. REV. 2021, 2026 (1996).

285. *Id.* at 2025–29.

286. See Edward B. Rock, *Saints and Sinners: How Does Delaware Corporate Law Work?*, 44 UCLA L. REV. 1009, 1015, 1105 (2006).

287. On the expressive choices of SEC enforcement, see James J. Park, *Rules, Principles, and the Competition to Enforce the Securities Laws*, 100 CALIF. L. REV. 115, 132–43 (2012).

288. Lisa M. Fairfax, *Board Committee Charters and ESG Accountability*, 12 HARV. BUS. L. REV. 371, 389 (2022).

289. *Id.* at 390.

institution at all times, including when so doing may diverge from the interests of shareholders” would provide a targeted regulatory prompt to risk committee members to turn away from shareholders’ interests in moments of conflict.

Composition. The Fed can also tap into its authority over committee composition to help determine committee culture and priorities. Section II.B documented how Dodd–Frank provides the Fed a limited authority to craft membership requirements but not to alter the preexisting selection processes associated with the shareholder proxy system. This authority, limited as it is, may still be employed to influence risk committee orientation toward prudential ends.

First, as with the preceding discussion of committee functions, committee compositional requirements can expressively support prudential norms. The current rules require “experience . . . managing risk exposures of large, complex financial firms.”²⁹⁰ This requirement again leaves open the question of what such management really ought to be about. The Fed should not leave the question open. Instead, the Fed should be explicit and state that qualified candidates must have experience managing financial risk to ensure the soundness of the institution at which they worked. In other words, qualified risk committee members should at least be acculturated to the norms and processes of financial institutions that operate within prudential regulatory regimes. As with the expressive changes proposed above regarding committee functions, this change would be consistent with a broader expressive picture aimed at reorienting risk committee directors toward prudential ends.

The Fed could also revise compositional requirements to support the development of a culture of professional public interestedness among risk experts. Such cultures are common among self-regulated professions. Lawyers pledge to represent their clients diligently and serve the public interest through pro bono work;²⁹¹ accountants pledge to uphold the public confidence and serve the public interest through their truthful representations.²⁹² Risk management is not quite a self-regulated profession in the same ways as law or accounting. The professional institutions of risk management are only a few decades old.²⁹³ Nevertheless, among those institutions, an ideal of public-oriented risk expertise has taken at least a rhetorical hold. The Global Association of Risk Professionals requires that its members “[s]hall comply with all applicable laws, rules, and regulations.”²⁹⁴ The Institute of Risk Management goes farther, requiring members to “deal with regulators in an open and co-operative manner” and “not only work[] within the law, but within the spirit of the law.”²⁹⁵ These voluntary conduct pledges stand in sharp contrast with the prevailing reports of social scientists about the true priorities of

290. 12 C.F.R. § 252.22(a)(4)(i).

291. See MODEL RULES OF PRO. CONDUCT r. 1.2, 6.1–6.4 (A.B.A. 2023).

292. See CODE OF PRO. CONDUCT §§ 0.300.030–0.300.040 (AM. INST. OF CERTIFIED PRACTICING ACCTS. 2025).

293. See Pernel, Jung & Dobbin, *supra* note 156, at 513–15.

294. CODE OF CONDUCT § 4.1 (GLOBAL ASSOC. OF RISK PROS. 2025).

295. CODE OF CONDUCT §§ 1.2–1.3 (INST. OF RISK MGMT., 2015).

risk-management professionals, which focus on shareholder value.²⁹⁶ The Fed can intervene in this internal debate by requiring all directors qualifying as experienced risk managers to have fulfilled their role while adhering to one of the codes of conduct that embeds a public-oriented service requirement into the “risk expert” professional identity.

Compensation. A third dimension along which the Fed possesses untapped statutory authority is director compensation. Four decades of scholarship in law and economics have emphasized the principle that compensation packages should be designed to construct incentives aligning corporate leaders with socially optimal corporate objectives.²⁹⁷ While there may be limits to the level of calibration incentive compensation can achieve,²⁹⁸ risk committee compensation is presently far from that limit.

The voluminous literature on bank executive compensation has coalesced around a consensus in favor of deviation from shareholder-centric incentive pay packages.²⁹⁹ For Professors Bhagat, Bolton, and Romano, for instance, the best approach would be to require bank executive compensation to take the form of restricted equity.³⁰⁰ By locking up compensation for a few years after bank executives leave the firm, they aim to align their incentives with long-term firm value and the protection of the “public fisc.”³⁰¹ For Professor Tung, the best approach would require pay to include subordinated debt as a means of counteracting existing incentives to gamble with creditors’ and guarantors’ money.³⁰² Despite differences among the ideal version of banker compensation, what unites these scholars is a view that financial regulators should adopt strong regulatory measures to realign bank executive compensation with the public interest in bank risk control.

The case for regulating risk committee compensation is even stronger than the case for regulating the compensation of bank executives. Because Congress meant the risk committee to be an institutional bulwark against excessive financial risk-taking, rationales for altering bank executive pay apply *a fortiori* to risk committee member compensation. The Fed should use its Dodd–Frank authorities to develop risk committee-specific compensation rules or guidelines.³⁰³ Whether taking the form of one of the above proposals, reduced equity-based compensation,

296. See Pernell, Jung & Dobbin, *supra* note 156, at 515; Mikes, *supra* note 157, at 25.

297. See Sanjai Bhagat, Brian Bolton & Roberta Romano, *Getting Incentives Right: Is Deferred Bank Executive Compensation Sufficient?*, 31 YALE J. ON REGUL. 523, 525–27 (2014); Victor Brudney, *Corporate Governance, Agency Costs, and the Rhetoric of Contract*, 85 COLUM. L. REV. 1403, 1422–23 (1985).

298. See Kelli A. Alces & Brian D. Galle, *The False Promise of Risk-Reducing Incentive Pay: Evidence from Executive Pensions and Deferred Compensation*, 38 J. CORP. L. 53, 55 (2012).

299. See Bebchuk & Spamann, *supra* note 218, at 249; Bhagat, Bolton & Romano, *supra* note 297, at 547.

300. See Bhagat, Bolton & Romano, *supra* note 297, at 536–44.

301. *Id.* at 536, 542.

302. See Tung, *supra* note 163, at 1229–36.

303. See 12 U.S.C. §§ 5365(b)(1)(B), 5641(b).

a deferral or clawback period tied to the enduring soundness of the institution, or some other incentive-compatible compensation design mechanism, the Fed would do well to telegraph prudential priorities to risk committee members through their pay.

Liability. Finally, while compensation provides carrots to orient risk committee oversight, the Fed's enforcement authority enables it to orient with sticks as well. As documented in Section II.D, the Fed possesses authority to hold risk committees accountable for unsafe and unsound oversight practices, but it has missed opportunities both to bring enforcement actions and to use those actions to communicate a clear requirement for prioritizing risk committees' soundness. In the future, it could change enforcement practices in two ways. First, an enforcement policy designed to orient risk committees toward prudential purposes would expand the range of potential liability triggers. This enforcement policy would look more skeptically at the types of actions described in Section III.C, and it would scrutinize actions violating the prudential review and approval requirements proposed above.³⁰⁴ In a case like SVB's, the Fed would be better equipped to bring enforcement actions against directors who knowingly approved or tolerated managerial decisions to gamble for resurrection in the final months of the bank's life. Second, instead of emphasizing process violations in its public communications about enforcement, the Fed could express clear opprobrium about the unsoundness of underlying financial outcomes. Doing so would increase the salience of risk committee-related enforcement actions and connect them explicitly with a prudential vision of the risk committee's purpose.

Tradeoffs. While the Fed has multiple routes potentially available to it to revive the risk committee mandate, none is without potential downsides. In considering the options described above, the Fed would do well to weigh their potential benefits in terms of realigned risk oversight against potential hindrances to effective governance and to the Fed's ability to achieve competing administrative priorities.

The most important governance tradeoffs for the Fed to consider will relate to recruitment, information flow, and collaboration. To dispatch their duties, risk committees need to be able to recruit qualified members. Those members, in turn, need access to information to fulfill their monitoring obligations. And to translate monitoring into governance of conduct, risk committee members need to work collaboratively with the broader board and the management team. Each of these desiderata may be affected by a different combination of the reforms sketched above. For instance, increased exposure to liability may deter some would-be directors from joining the candidate pool and may complicate collaborative dynamics among corporate leaders.³⁰⁵ The deterrence of some potential candidates and the alteration of board dynamics are not inherently bad outcomes, of course. Similarly, any new responsibility to vet specific details of risk control could spur

304. See *supra* notes 268–76 and accompanying text.

305. See Bernard Black, Brian Cheffins & Michael Klausner, *Outside Director Liability*, 58 STAN. L. REV. 1055, 1140 (2006); Donald C. Langevoort, *The Human Nature of Corporate Boards: Law, Norms, and the Unintended Consequences of Independence and Accountability*, 89 GEO. L.J. 797, 817–31 (2001).

new informational demands, potentially yielding a more informed board.³⁰⁶ However, a responsibility to convey concerns to supervisors could have a countervailing effect, diminishing the free flow of communication between management and the committee and increasing the value of managerial lobbying for board allegiance.³⁰⁷ It may be that some combinations of committee reforms would not produce improvements in risk control sufficient to justify any harms to the broader project of board monitoring.

A second category of potential cost relates to the Fed. No agency possesses an unlimited capacity for new endeavors. The Fed, in particular, has borne the weight of growing responsibilities in recent years.³⁰⁸ That broader context must inevitably inform the decision whether to expend agency resources on new approaches to risk committee regulation and supervision. Not only would the Fed contend with longstanding political dynamics surrounding the balance of federal and state power over the governance of financial institutions; it also would weigh any effort's effects on high-stakes conflicts over Fed independence.³⁰⁹ Such political considerations, though obviously beyond the scope of this Article, could well be paramount in determining the wisdom of any course of action.

Ultimately, the sketch of reform possibilities offered in this Section is meant to serve as a foundation for future debate and action, not a final blueprint for a new risk committee framework. The ideas presented demonstrate that meaningful regulation of bank risk governance is possible pursuant to existing Dodd–Frank authority; they show that the Fed's approach over the past decade reflects policy choices, not legal constraints. By revisiting the Dodd–Frank risk committee regime, the Fed could begin to better align risk committees with the public interest. In doing so, it would not only learn from the recent history of risk committee ineffectiveness; it could also fulfill Congress's post-Crisis vision for corporate governance reform that plays a valuable role in preventing financial crises.

CONCLUSION

Excessive bank risk-taking is among the most harmful and recurring problems in American public regulation. After the Global Financial Crisis, Congress sought to reform bank governance to contain it. Through the Dodd–Frank Act, Congress enlisted the Fed to design and supervise mandatory risk committees on the boards of the largest banks. Despite Congress's enlistment, the Fed has been a reticent reformer of bank governance, missing numerous opportunities to orient risk committees away from shareholder value maximization and toward the public interest in prudential risk control. Though statutorily vested with broad authority

306. On the value of such a board, see Ronald J. Gilson & Jeffrey N. Gordon, *Board 3.0: An Introduction*, 74 *BUS. LAW.* 351, 357–58 (2019).

307. See Adam B. Badawi, *Influence Costs and the Scope of Board Authority*, 39 *J. CORP. L.* 675, 685–94 (2014); Mark J. Roe, *German Codetermination and German Securities Markets*, 5 *COLUM. J. EUR. L.* 199, 200–03 (1999).

308. See, e.g., Conti-Brown & Wishnick, *supra* note 23, at 643–44.

309. See *id.* at 694–98; Roberta Romano, *Market for Corporate Law Redux*, in 2 *THE OXFORD HANDBOOK OF LAW AND ECONOMICS: PRIVATE AND COMMERCIAL LAW* 358, 384–85 (Francesco Parisi ed., 2017) (discussing the balance of state and federal authority over key aspects of post-Crisis corporate governance).

over risk committee design, the Fed has largely confined its efforts to process-based requirements. As a result, risk committees at the largest banks remain misaligned with the prudential goals that motivated their creation. But the current risk committee configuration is not set in stone. Given the stakes of the risk committee's monitoring role, the Fed should revisit its risk committee requirements and supervisory priorities. Doing so would provide the Fed with a renewed chance to fulfill Dodd–Frank's prudential vision for bank risk governance.

APPENDIX A

Analysis of Risk Committee Charters at the Largest U.S. Bank Holding Companies and Foreign Banking Organizations

This Appendix presents a review of discussion of safety, soundness, and financial stability in the risk committee charters of large bank holding companies and foreign banking organizations. The set of institutions contains all bank holding companies and foreign banking organizations with total assets greater than \$250 billion as of September 30, 2024. The institutions are ranked by total assets.

Holding Company Name	Rank	Total Assets (USD, thousands) ³¹⁰	Risk Committee Charter Document	Mentions Safety, Soundness, or Financial Stability?
JPMorgan Chase & Co.	1	\$4,210,048,000	Risk Committee: Charter ³¹¹	Yes
<i>Discussion:</i> JPMorgan’s charter states that, in “furtherance” of the responsibility to act on behalf of the holding company’s National Bank subsidiaries, “the Risk Committee has a duty to seek to preserve the safety and soundness of the Banks and exercises its oversight of the Banks’ risk committee matters with the understanding that the Banks’ interests are not to be subordinated to the interests of the parent holding company in a way as to jeopardize the safety and soundness of the Banks.” ³¹²				
Bank of America Corporation	2	\$3,324,293,000	Enterprise Risk Committee Charter ³¹³	No
Citigroup Inc.	3	\$2,430,663,000	Risk Management Committee Charter ³¹⁴	No

310. *Large Holding Companies*, Sep. 2024, *supra* note 96.

311. JPMORGAN CHASE, *Risk Committee Charter*, *supra* note 137.

312. *Id.*

313. BANK OF AM. CORP., ENTERPRISE RISK COMMITTEE CHARTER (2025), https://d1io3yog0oux5.cloudfront.net/_f7b35527a01d7afdce4efda6188ad8c/bankofamerica/db/791/7248/file/BAC+Enterprise+Risk+Committee+Charter+-+03-05-2025_ADA.pdf [https://perma.cc/VTJ4-DULK].

314. CITIGROUP, INC., RISK MANAGEMENT COMMITTEE CHARTER (2026), <https://www.citigroup.com/rcs/citigpa/storage/public/citigroup-rmc-charter.pdf> [https://perma.cc/3776-VSZM].

Wells Fargo & Company	4	\$1,922,125,000	Risk Committee Charter ³¹⁵	No
Goldman Sachs Group, Inc.	5	\$1,728,080,000	Risk Committee Charter ³¹⁶	No
Morgan Stanley	6	\$1,258,027,000	Risk Committee Charter ³¹⁷	Yes
<i>Discussion:</i> Morgan Stanley's charter requires coordination with the Compensation, Management Development and Succession committee, "including ensuring compensation practices are consistent with the safety and soundness of the Company and do not encourage excessive risk taking." ³¹⁸				
U.S. Bancorp	7	\$686,469,000	Risk Management Committee Charter ³¹⁹	Yes
<i>Discussion:</i> U.S. Bancorp's charter states that its Risk Management Committee must "question, challenge, and when necessary, oppose recommendations and decisions made by management that could . . . jeopardize the safety and soundness of the Bank" ³²⁰				
PNC Financial Services Group, Inc.	8	\$565,085,257	Risk Committee Charter ³²¹	No
TD Group US Holdings LLC	9	\$560,480,560	Risk Committee of the Board of Directors of the Toronto-Dominion	Ambiguous

315. WELLS FARGO & Co., RISK COMMITTEE CHARTER (2026), <https://www08.wellsfargomedia.com/assets/pdf/about/corporate/risk-committee-charter.pdf> [<https://perma.cc/U9PQ-43YC>].

316. GOLDMAN SACHS, RISK COMMITTEE CHARTER (2026), <https://www.goldmansachs.com/investor-relations/corporate-governance/corporate-governance-documents/risk-committee-charter.pdf> [<https://perma.cc/LL34-JB5E>].

317. MORGAN STANLEY, *Risk Committee Charter*, *supra* note 139.

318. *Id.*

319. U.S. BANCORP & U.S. BANK NAT'L ASS'N, RISK MANAGEMENT COMMITTEE CHARTER (2026), https://s203.q4cdn.com/711684571/files/doc_governance/2026/RMC-Charter-Final-1-27-26.pdf [<https://perma.cc/8FVA-SGBU>].

320. *Id.* at 1–2.

321. PNC FIN. SERVS. GRP., INC., RISK COMMITTEE CHARTER (2026), https://d1io3yog0oux5.cloudfront.net/_d59af0d4f543180a5e0e79577f4d526e/pnc/db/2456/23383/file/Charter+-+Risk+Committee+%2804-02-26%29+%28final%29.pdf [<https://perma.cc/JMQ6-2SPN>].

			Bank: Charter ³²²	
<i>Discussion:</i> While TD’s charter states that the Committee must ensure a “sound enterprise risk framework,” it does not discuss the soundness of the institution or its subsidiaries. ³²³				
Truist Financial Corporation	10	\$523,434,000	Charter of the Risk Committee of the Board of Directors of Truist Financial Corporation and Truist Bank ³²⁴	Yes
<i>Discussion:</i> Truist’s charter states, “Discharging the duties of risk oversight requires . . . that the members of the Committee . . . provide oversight and effective challenge of recommendations made by management that could cause the Corporation’s risk profile to exceed its risk appetite or jeopardize the safety and soundness of any of its bank subsidiaries” ³²⁵				
Capital One Financial Corporation	11	\$486,432,796	Charter of the Risk Committee of the Board of Directors ³²⁶	No
Charles Schwab Corporation	12	\$466,055,000	Risk Committee Charter ³²⁷	Yes
<i>Discussion:</i> Charles Schwab’s charter states, “The Committee assists the Board and other committees of the Board to oversee and hold senior management				

322. TORONTO-DOMINION BANK, CHARTER OF THE RISK COMMITTEE OF THE BOARD OF DIRECTORS (2025), <https://www.td.com/content/dam/tdcom/canada/about-td/pdf/corporate-profile/charters-mandates-and-related-reference-material/2025-risk-charter-en.pdf> [https://perma.cc/WM49-MKSC].

323. *Id.* at 3.

324. TRUIST FIN. CORP. & TRUIST BANK, CHARTER OF THE RISK COMMITTEE OF THE BOARD OF DIRECTORS OF TRUIST FINANCIAL CORPORATION AND TRUIST BANK (2021), https://filecache.investorroom.com/mr5ir_truist/210/download/Risk%20Committee%20Charter.pdf [https://perma.cc/2A3Q-HDV6].

325. *Id.* at 1.

326. CAPITAL ONE FIN. CORP., CHARTER OF THE RISK COMMITTEE OF THE BOARD OF DIRECTORS (2025), <https://investor.capitalone.com/static-files/9ac7ca78-10d8-487f-a2e8-8f151fd1d46e> [https://perma.cc/N9S3-B9L2].

327. CHARLES SCHWAB CORP., RISK COMMITTEE CHARTER (2025), https://content.schwab.com/web/retail/public/about-schwab/schw_risk_charter_oct2025.pdf [https://perma.cc/9HR3-TVP8].

accountable for . . . managing the Corporation’s activities in a safe and sound manner[.]” ³²⁸				
Bank of New York Mellon Corporation	13	\$427,461,000	Charter of the Risk Committee of the Board of Directors ³²⁹	No
State Street Corporation	14	\$338,481,000	Risk Committee Charter ³³⁰	No
BMO Financial Corp.	15	\$297,929,924	Risk Review Committee Charter ³³¹	Yes
<i>Discussion:</i> BMO’s charter states that the committee will perform the duty of “monitoring the appropriateness and soundness of the Bank’s risk culture.” ³³²				
American Express Company	16	\$270,979,000	Risk Committee Charter ³³³	No

328. *Id.* at 2.

329. *Charter of the Risk Committee of the Board of Directors, The Bank of New York Mellon Corporation*, BANK OF N.Y. MELLON CORP. (Aug. 11, 2025), <https://www.bny.com/corporate/global/en/investor-relations/corporate-governance/risk-committee.html> [https://perma.cc/6Y5G-HSQN].

330. STATE ST., RISK COMMITTEE CHARTER (2025), https://s203.q4cdn.com/888565246/files/doc_downloads/2025/03/Risk-Committee-Charter-2024-3-1-25.pdf [https://perma.cc/6WAF-9MY6].

331. BMO FIN. GRP., BANK OF MONTREAL RISK REVIEW COMMITTEE CHARTER (2025), https://www.bmo.com/dist/pdf/personal/about-bmo/risk_review_committee.pdf [https://perma.cc/7W22-7DPP].

332. *Id.* at 2.

333. AM. EXPRESS CO., RISK COMMITTEE CHARTER (2025), https://s26.q4cdn.com/747928648/files/doc_downloads/2025/12/17/Risk-Committee-Charter-12-17-2025.pdf [https://perma.cc/SRW6-BQL8].

APPENDIX B

Analysis of Risk Committee Compensation at the Largest U.S. Bank Holding Companies and Foreign Banking Organizations

This Appendix presents a review of compensation practices for risk committee members and chairs at large bank holding companies and foreign banking organizations. The set of institutions contains all bank holding companies and foreign banking organizations with total assets greater than \$250 billion as of September 30, 2024. The institutions are ranked by total assets.

1. JPMorgan Chase & Co.³³⁴
 - A. 2023 Base board member compensation: \$100,000 cash, \$250,000 equity
 - B. 2023 Additional Risk Committee member compensation: \$15,000 cash
 - C. 2023 Additional Audit Committee member compensation: \$15,000 cash
 - D. 2023 Additional Risk Committee chair compensation: \$25,000 cash
 - E. 2023 Additional Audit Committee chair compensation: \$25,000 cash
2. Bank of America Corp.³³⁵
 - A. 2023 Base board member compensation: \$120,000 cash, \$270,000 equity
 - B. 2023 Additional Enterprise Risk Committee member compensation: n/a
 - C. 2023 Additional Audit Committee member compensation: n/a
 - D. 2023 Additional Enterprise Risk Committee chair compensation: \$40,000 cash
 - E. 2023 Additional Audit Committee chair compensation: \$40,000 cash
3. Citigroup Inc.³³⁶
 - A. 2023 Base board member compensation: \$75,000 cash, \$150,000 equity
 - B. 2023 Additional Risk Management Committee member compensation: \$30,000 cash
 - C. 2023 Additional Audit Committee member compensation: \$30,000 cash
 - D. 2023 Additional Risk Management Committee chair compensation: \$50,000 cash
 - E. 2023 Additional Audit Committee chair compensation: \$50,000 cash

334. JPMorgan Chase & Co., *supra* note 178, at 29.

335. Bank of Am. Corp., 2024 Proxy Statement (Schedule 14A), at 50 (Mar. 11, 2024), https://www.sec.gov/Archives/edgar/data/70858/000119312524064529/d529855dde14a.htm#toc529855_23 [<https://perma.cc/FL23-HXQJ>].

336. Citigroup Inc., 2024 Notice of Annual Meeting and Proxy Statement (Schedule 14A), at 64 (Mar. 19, 2024), <https://www.sec.gov/Archives/edgar/data/831001/000114544324000041/citi4284971-def14a.htm> [<https://perma.cc/V7SJ-97PP>].

4. Wells Fargo & Co.³³⁷
 - A. 2023 Base board member compensation: \$100,000 cash, \$240,000 equity
 - B. 2023 Additional Risk Management Committee member compensation: n/a
 - C. 2023 Additional Audit Committee member compensation: n/a
 - D. 2023 Additional Risk Management Committee chair compensation: \$50,000 cash
 - E. 2023 Additional Audit Committee chair compensation: \$50,000 cash
5. Goldman Sachs Group, Inc.³³⁸
 - A. 2023 Base board member compensation: \$100,000 cash, \$350,000 equity
 - B. 2023 Additional Risk Committee member compensation: n/a
 - C. 2023 Additional Audit Committee member compensation: n/a
 - D. 2023 Additional Risk Committee chair compensation: \$25,000 cash
 - E. 2023 Additional Audit Committee chair compensation: \$25,000 cash
6. Morgan Stanley³³⁹
 - A. 2023 Base board member compensation: \$100,000 cash, \$260,000 equity
 - B. 2023 Additional Risk Committee member compensation: n/a
 - C. 2023 Additional Audit Committee member compensation: n/a
 - D. 2023 Additional Risk Committee chair compensation: \$40,000 cash
 - E. 2023 Additional Audit Committee chair compensation: \$30,000 cash
7. U.S. Bancorp³⁴⁰
 - A. 2023 Base board member compensation: \$100,000 cash, \$175,000 equity
 - B. 2023 Additional Risk Management Committee member compensation: \$15,000 cash
 - C. 2023 Additional Audit Committee member compensation: \$15,000 cash
 - D. 2023 Additional Risk Management Committee chair compensation: \$40,000 cash
 - E. 2023 Additional Audit Committee chair compensation: \$40,000 cash

337. Wells Fargo & Co., 2024 Annual Meeting of Shareholders (Schedule 14A), at 100 (Mar. 18, 2024), <https://www.sec.gov/Archives/edgar/data/72971/000007297124000084/wfc-20240315.htm> [<https://perma.cc/5LT3-6V5B>].

338. The Goldman Sachs Grp., Inc., Proxy Statement 2024 Annual Meeting of Shareholders (Schedule 14A), at 70 (Mar. 15, 2024), <https://www.sec.gov/Archives/edgar/data/886982/000119312524068743/d541341ddef14a.htm> [<https://perma.cc/K86R-W4EV>].

339. Morgan Stanley, Notice of 2024 Annual Meeting and Proxy Statement (Schedule 14A), at 50 (Apr. 5, 2024), https://www.sec.gov/Archives/edgar/data/895421/000114036124018302/ny20020759x1_def14a.htm [<https://perma.cc/2YGF-YB77>].

340. U.S. Bancorp, 2024 Proxy Statement (Schedule 14A), at 79 (Mar. 5, 2024), https://www.sec.gov/Archives/edgar/data/36104/000110465924031021/tm2327573d5_def14a.htm [<https://perma.cc/69J6-UK4T>].

8. PNC Financial Services Group, Inc.³⁴¹
- A. 2023 Base board member compensation: \$105,000 cash, \$170,000 equity
 - B. 2023 Additional Risk Committee member compensation: \$15,000 cash
 - C. 2023 Additional Audit Committee member compensation: \$15,000 cash
 - D. 2023 Additional Risk Committee chair compensation: \$30,000 cash
 - E. 2023 Additional Audit Committee chair compensation: \$30,000 cash
9. TD Group US Holdings LLC³⁴²
- Note: TD compensation is denominated in Canadian dollars.*
- A. 2023 Base board member compensation: \$130,000 cash, \$130,000 equity
 - B. 2023 Additional Risk Committee member compensation: \$17,500 cash
 - C. 2023 Additional Audit Committee member compensation: \$17,500 cash
 - D. 2023 Additional Risk Committee chair compensation: \$57,500 cash
 - E. 2023 Additional Audit Committee chair compensation: \$57,500 cash
10. Truist Financial Corp.³⁴³
- A. 2023 Base board member compensation: \$100,000 cash, \$180,000 equity
 - B. 2023 Additional Risk Committee member compensation: \$15,000 cash
 - C. 2023 Additional Audit Committee member compensation: \$15,000 cash
 - D. 2023 Additional Risk Committee chair compensation: \$45,000 cash
 - E. 2023 Additional Audit Committee chair compensation: \$45,000 cash
11. Capital One Financial Corp.³⁴⁴
- A. 2023 Base board member compensation: \$100,000 cash, \$210,050 equity
 - B. 2023 Additional Risk Committee member compensation: \$30,000 cash
 - C. 2023 Additional Audit Committee member compensation: \$30,000 cash
 - D. 2023 Additional Risk Committee chair compensation: \$70,000 cash
 - E. 2023 Additional Audit Committee chair compensation: \$70,000 cash

341. PNC Fin. Servs. Grp., Inc., Definitive Proxy Statement (Schedule 14A), at 46 (Mar. 13, 2024), <https://www.sec.gov/Archives/edgar/data/713676/000119312524066850/d540496ddef14a.htm> [<https://perma.cc/P22D-DPN3>].

342. Toronto-Dominion Bank, Notice of 2024 Annual and Special Meeting of Common Shareholders and Management Proxy Circular, at 25 (Feb. 20, 2024), <https://www.td.com/content/dam/tdcom/canada/about-td/pdf/td-investor-2024-proxy-en.pdf> [<https://perma.cc/3UML-6ZCB>].

343. Truist Fin. Corp., 2024 Proxy Statement (Schedule 14A), at 23 (Mar. 11, 2024), <https://www.sec.gov/Archives/edgar/data/92230/000119312524064251/d614580ddf14a.htm> [<https://perma.cc/9E6S-JKFT>].

344. Capital One Fin. Corp., Proxy Statement 2024 (Schedule 14A), at 55–56 (Mar. 20, 2024), <https://www.sec.gov/Archives/edgar/data/927628/000119312524072711/d643103ddef14a.htm> [<https://perma.cc/QK8P-GTMC>].

12. Charles Schwab Corp.³⁴⁵
- A. 2023 Base board member compensation: \$100,000 cash, \$215,000 equity
 - B. 2023 Additional Risk Committee member compensation: \$20,000 cash
 - C. 2023 Additional Audit Committee member compensation: \$20,000 cash
 - D. 2023 Additional Risk Committee chair compensation: \$50,000 cash
 - E. 2023 Additional Audit Committee chair compensation: \$50,000 cash
13. Bank of New York Mellon Corp.³⁴⁶
- A. 2023 Base board member compensation: \$110,000 cash, \$185,000 equity
 - B. 2023 Additional Risk Committee member compensation: \$15,000 cash
 - C. 2023 Additional Audit Committee member compensation: \$15,000 cash
 - D. 2023 Additional Risk Committee chair compensation: \$45,000 cash
 - E. 2023 Additional Audit Committee chair compensation: \$45,000 cash
14. State Street Corp.³⁴⁷
- A. 2023 Base board member compensation: \$100,000 cash, \$195,000 equity
 - B. 2023 Additional Risk Committee member compensation: \$20,000 cash
 - C. 2023 Additional Examining and Audit Committee member compensation: \$20,000 cash
 - D. 2023 Additional Risk Committee chair compensation: \$40,000 cash
 - E. 2023 Additional Examining and Audit Committee chair compensation: \$40,000 cash
15. BMO Financial Corp.³⁴⁸
- Note: BMO compensation is denominated in Canadian dollars.*
- A. 2023 Base board member compensation: \$87,500 cash, \$162,500 equity
 - B. 2023 Additional Risk Review Committee member compensation: n/a
 - C. 2023 Additional Audit and Conduct Review Committee member compensation: n/a
 - D. 2023 Additional Risk Review Committee chair compensation: \$55,000 cash

345. Charles Schwab Corp., 2024 Proxy Statement (Schedule 14A), at 32 (Apr. 5, 2024), <https://www.sec.gov/Archives/edgar/data/316709/000119312524087883/d522898dde14a.htm> [<https://perma.cc/7JXG-BP76>].

346. Bank of N.Y. Mellon Corp., 2024 Notice of Annual Meeting and Proxy Statement (Schedule 14A), at 44 (Feb. 29, 2024), <https://www.sec.gov/Archives/edgar/data/1390777/000119312524051895/d525388ddef14a.htm> [<https://perma.cc/4FJ7-2M2V>].

347. State St. Corp., Proxy Statement (Schedule 14A), at 16 (Apr. 3, 2024), https://www.sec.gov/Archives/edgar/data/93751/000114036124017636/ny20020131x1_def14a.htm [<https://perma.cc/8BJJ-MUT9>].

348. Bank of Montreal, Notice of Annual Meeting of Shareholders and Management Proxy Circular, at 35 (Feb. 7, 2024), https://www.bmo.com/ir/files/F24%20Files/BMOProxy_March2024.pdf [<https://perma.cc/AV6L-MJJG>].

- E. 2023 Additional Audit and Conduct Review Committee chair compensation: \$55,000 cash
16. American Express Co.³⁴⁹
- A. 2023 Base board member compensation: \$110,000 cash, \$220,000 equity
 - B. 2023 Additional Risk Committee member compensation: \$20,000 cash
 - C. 2023 Additional Audit Committee member compensation: \$20,000 cash
 - D. 2023 Additional Risk Committee chair compensation: \$40,000 cash
 - E. 2023 Additional Audit Committee chair compensation: \$40,000 cash

349. See Am. Express Co., American Express Proxy Statement 2024 (Schedule 14A), at 33 (Mar. 15, 2024), <https://www.sec.gov/Archives/edgar/data/4962/000119312524068837/d558747ddef14a.htm> [<https://perma.cc/JF3G-DKP2>].