

## **AUDIT COMMITTEE CHARTER**

The board of directors of Fidelity Bankshares, Inc. has created a committee of directors known as the AUDIT COMMITTEE, with the authority, responsibility and specific duties are described below. This charter governs the operations of the AUDIT COMMITTEE.

### **COMPOSITION**

The AUDIT COMMITTEE shall be comprised of at least three directors each of who are independent of management and operating executives. Members of the AUDIT COMMITTEE shall be considered independent as long as they do not accept any consulting, advisory, or other compensatory fee from the Company or its subsidiaries. The members of the AUDIT COMMITTEE must also meet the independence requirements of the Nasdaq National Market. All AUDIT COMMITTEE members shall be financially literate, and at least one member shall be an "audit committee financial expert" as defined by Securities and Exchange Commission regulations. The board shall annually appoint the members for the AUDIT COMMITTEE. One of the members shall be appointed committee chairman by the board of directors.

### **AUTHORITY**

The AUDIT COMMITTEE may be requested by the board of directors to investigate any activity of the institution, and all employees are directed to cooperate as requested by members of the committee. The AUDIT COMMITTEE is empowered to retain persons having special competence as necessary to assist the committee in fulfilling its responsibility.

### **RESPONSIBILITY**

The primary responsibility of the AUDIT COMMITTEE is to oversee the Company's financial reporting process on behalf of the board of directors and report the results of their activities to the board. While the AUDIT COMMITTEE has the responsibilities and powers set forth in its Charter, it is not the duty of the AUDIT COMMITTEE to plan or conduct audits or to determine that the Company's financial statements are complete and accurate and are in accordance with generally accepted accounting principles. Management is responsible for the preparation, presentation, and integrity of the Company's financial statements and for the appropriateness of the accounting principles and reporting policies that are used by the Company. The independent auditors are responsible for auditing the Company's financial statements and for reviewing the Company's unaudited interim financial statements.

Consistent with their fiduciary duty, the AUDIT COMMITTEE is to serve as a focal point for communication between noncommittee directors, the independent auditors, the internal audit and compliance function, and management as their duties relate to financial accounting, reporting, controls and regulatory compliance. The AUDIT COMMITTEE is to assist the board of directors in fulfilling its fiduciary responsibilities as to accounting policies, reporting practices and the sufficiency of auditing relative thereto and regulatory compliance. It is to be the board's principal agent in ensuring the independence of the institution's independent accountants, internal audit: function, the integrity of management, and the adequacy of disclosures to stockholders.

### **MEETINGS**

The AUDIT COMMITTEE is to meet as least four times per year, and as many more times as that committee deems necessary to fulfill its duties.

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### ATTENDANCE

At least a majority of the members of the AUDIT COMMITTEE are to be present at all meetings. As necessary or desirable, the chairman may request that members of management, the Chief Risk Officer, the Internal Auditor, Compliance Officer, Security Officer and representatives of the independent auditors be present at meetings of the committee.

### MINUTES

Minutes of each meeting are to be prepared and sent to committee members and the directors who are not members of the committee.

### DUTIES AND RESPONSIBILITIES

The AUDIT COMMITTEE, in carrying out its responsibilities, believes its policies and procedures should remain flexible, in order to best react to changing conditions and circumstances. The AUDIT COMMITTEE should take appropriate actions to set the overall corporate "tone" for quality financial reporting, sound business risk practices and ethical behavior.

The AUDIT COMMITTEE is to:

- I. Review and reassess the adequacy of this Charter annually and submit it to the Board for approval.
2. Advise the Board with respect to the Company's policies and procedures regarding compliance with Company's Code of Conduct and report any violations of the Code to the Board.
3. Evaluate the institution's compliance with and effectiveness of the Bank's administrative and operating policies and procedures, and accounting internal control system, by review of written reports from the chief risk officer, the internal and external auditors and monitor management's response and actions to correct any noted deficiencies;
4. Evaluate the institution's compliance with federal and state laws and regulations (safety and soundness and compliance) and any agreements with the regulators by review of the compliance officer's reports, examination reports and other correspondence from the regulatory authorities and management's response to these reports;
5. Evaluate the institution's compliance with board established lending policies and underwriting standards for loans by review of an internal audit report generated at least annually, which reviews a sample of loans originated or purchased during a period, affiliated person loans, and loans in excess of a certain dollar amount; determined by the Audit Committee.
6. Review all regulatory examination reports submitted to the Bank and management's response to them;
7. Review all significant accounting changes; and
8. Review major changes to the Company's auditing and accounting principles and practices as suggested by the independent auditor, internal auditors or management.
9. Review the annual audited financial statements with management and the independent accountants, including major issues regarding accounting and auditing principles and practices as well as the

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adequacy of internal controls that could significantly affect the Company's financial statements.

10. Review an analysis prepared by management and the independent auditor of significant financial reporting issues and judgments made in connection with the preparation of the Company's financial statements.
11. Review with management and the independent auditor the Company's quarterly financial statements prior to the filing of its Form 10-Q, and annual report on Form 10-K. Unless already provided to the full Board of Directors, the AUDIT COMMITTEE shall be furnished with copies of earnings releases and formal earnings guidance provided to financial analysts and rating agencies prior to dissemination.
12. Meet periodically with management to review the Company's major financial risk exposures and the steps management has taken to monitor and control such exposures.
13. Meet at least annually with the chief financial officer, the chief risk officer, the senior internal auditing executive and the independent auditor in executive sessions. Periodically review entity wide risk assessment prepared with chief risk officer.
14. Review and approve the audit plan of the internal auditors, including the extent to which the planned audit scope relates to identifying weaknesses in internal controls and review of the institution's EDP procedures and controls.
15. Review the significant reports to management prepared by the internal auditing department and management's responses.
16. Review the appointment and replacement of the senior internal auditing executive.
17. Meet with the independent auditor prior to the start of the annual external audit to review the proposed audit scope, planning and staffing.
18. Discuss with the independent auditor the matters required to be discussed by Statement on Auditing Standards No. 61 relating to the conduct of the audit.
19. Review with the independent auditor any problems or difficulties the auditor may have encountered and any management letter provided by the auditor and the Company's response to that letter. Such review should include:
  - (a) Any difficulties encountered in the course of the audit work, including any restrictions on the scope of activities or access to required information.
  - (b) Any changes required in the planned scope of the internal audit.
20. Receive periodic reports from the independent auditor regarding the auditor's independence, discuss such reports with the auditor, and if so determined by the AUDIT COMMITTEE, recommend that the Board take appropriate action to insure the independence of the auditor.
21. Obtain from the independent auditor assurance that Section 10A of the Private Securities Litigation Reform Act of 1995, regarding required disclosures of corporate fraud to management, the AUDIT COMMITTEE and the Board of Directors, has not been implicated.
22. Be directly responsible for the appointment, retention and termination of the independent auditor, which firm is ultimately accountable to the AUDIT COMMITTEE and the Board. Annually,

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evaluate the performance of the independent auditor and, if so determined by the AUDIT COMMITTEE, recommend that the Board replace the independent auditor.

23. Approve the fees to be paid to the independent auditor and pre-approve all audit and non-audit services provided by the independent auditors. It shall not engage the independent auditors to perform specific nonaudit services proscribed by law and regulation.
24. Establish hiring policies for employees or former employees of the independent auditors that meet the SEC regulations and Nasdaq listing standards.
25. Prepare the report required by the rules of the Securities and Exchange Commission to be included in the Company's annual proxy statement.
26. Review with the Company's General Counsel legal matters that may have a material impact on the financial statements, the Company's compliance policies and any material reports or inquiries received from regulators or governmental agencies.

At least annually, the AUDIT COMMITTEE shall obtain and review a report by the independent auditors describing:

- The firm's internal quality control procedures.
- Any material issues raised by the most recent internal quality control review, or peer review, of the firm, or by any inquiry or investigation by governmental or professional authorities, within the preceding five years, respecting one or more independent audits carried out by the firm and any steps taken to deal with any such issues.
- All relationships between the independent auditor and the Company (to assess the auditor's independence).

While the AUDIT COMMITTEE has the responsibilities and powers set forth in this Charter, it is not the duty of the AUDIT COMMITTEE to plan or conduct audits or to determine that the Company's financial statements are complete and accurate and are in accordance with generally accepted accounting principles. This is the responsibility of management and the independent auditor. Nor is it the duty of the AUDIT COMMITTEE to conduct investigations, to resolve disagreements, if any, between management and the independent auditor or to assure compliance with laws and regulations and the Company's Code of Conduct.