AMERICA'S MUTUAL BANKS
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Mutual Alert

FDIC Issues Notice of Proposed Rulemaking on Corporate Governance and Risk Management Guidelines with Republican Directors Dissenting

The FDIC announced a **notice of proposed rulemaking** (NPR) to add guidelines on corporate governance and risk management for FDIC-supervised depository institutions (IDIs) with $10 billion or more in assets. The NPR was approved by the Board of Directors via notational vote on October 3, which avoided a public discussion. The two republican board members voted against the proposal issuing their own statements of opposition.

While the guidelines state that they apply to IDIs with more than $10 billion in assets, they specifically reserve the authority to apply them to smaller institutions. They provide an outline of the obligations that the board of directors at covered institutions should follow to ensure good corporate governance; including; including setting goals, developing a code of ethics, and overseeing senior management. They clearly were not designed to apply to mutual banks and adopt a one-size-fits-all approach. For example, in the discussion of board composition, the guidelines emphasize the need for diversity without qualifying the need for any particular business experience applicable to banking. They also cite geographic diversity as desirable without taking into account the local market area of most community banks, not to mention mutual banks.

Additionally, the guidelines would require the establishment of a risk management program with a three-line-of-defense model to monitor and report risks, an independent risk management function, and an internal audit unit. A risk management program is expected to effectively communicate an institution's risk profile and policies to ensure compliance by employees. The most significant aspect of the proposal relates to the Chief Risk Officer (CRO), who is expected to be appointed to oversee an independent risk oversight unit and report directly to the risk committee. The guidelines contemplate the CRO will highlight any differences with the CEO in risk assessment which has caused some observers to wonder if the risk unit will constitute a shadow management.

FDIC Vice Chairman, Travis Hill, while supportive of the concept of sound corporate governance and appropriate controls, state his skepticism that many of the provisions should rise to the level of enforceable safety and soundness standards and suggested the guidelines are a "one-size-fits-all" approach. He questioned whether the absence of a board self-assessment, a written code of ethics, and a comprehensive statement based on a bank's risk profile should constitute a violation of safety and soundness standards. He decried, in the section of the guidelines dealing with diversity, the absence of any mention of business and appropriate banking qualifications and criticized the requirement that the directors have an affirmative obligation to report violations of regulation and law given the complexity of bank regulation.

FDIC Director, Jonathan Mckernan, took issue with numerous aspects of the proposal. He objected to the implication that front line units would not "own the risks of their activities." He noted the difference between the OCC guidelines, which implies a FDIC required management role for the board that would require it to affirmatively assure regulatory compliance and establish risk policies. He further criticized the board composition guidelines as going beyond assuring independence and instead promoting racial, gender, and ethnic diversity. He also criticized the requirement that there be one sole risk officer, unlike the OCC requirement, which contemplates multiple CROs. Finally, he questioned the legality of the concepts embodied in the guidelines discussion of non-shareholder constituencies.

The FDIC is accepting comments on the proposed guidelines for 60 days. The comment period is expected to close in early December. AMB will submit comments notwithstanding that the guidelines appear to exclude most all mutual banks until the FDIC decides otherwise. We are mindful of mission creep and the tendency of examiners to apply "best practices."

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