



Mutual Alert

DOJ Rejects McWilliams prerogative to control Board agenda as Chairman

The DOJ in the attached opinion affirmed the right of a majority of the FDIC board to move a matter for vote over the objection of the Chairman. The DOJ Office of Legal Counsel supported the actions of the Democrat majority to bring a matter to vote rejecting the former FDIC Chairman's arguments that both practice and FDIC Bylaws gave the Chair the right to control the agenda. The opinion cites the absence of any statutory power which vests such power in the Chair. While an obvious consequence is that this will doubtlessly result in a more partisan Board, a less obvious result is the party that controls the White House will find it has a more independent Board. That is absent concurrence by the Chairman, if the two of the three members of the same party together with a third member of the other party agree on a matter, the Chairman will not be able to block it. Thus, the White House will not be able to influence Board actions solely through the Chairman.

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