AA|BD The American Association of Bank Directors

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February 7, 2017

The Honorable Thomas J. Curry
Comptroller of the Currency
400 7th Street, SW
Washington, DC 20219

Dear Comptroller Curry:

In your speech before The Clearing House on November 30, 2016, you stated that the OCC is considering whether to mandate the separation of the chairman and chief executive roles at national and federal savings banks.

This is a subject that AABD has studied and followed for many years. For the reasons set forth below, we urge that the OCC not mandate such a separation.

At first blush, it could make sense to require the chairman of the board to be an outside board member. Such a separation would symbolize the board's independent character. While many banks have organized their boards that way, many have not.

But what does the separation really mean in practice?

It's hard to tell unless you are a member of the board and management. Or perhaps a national bank examiner.

In AABD's experience, outward manifestations of "independence" do not necessarily signify authentic independence. On the flip side, outward manifestations of non-independence do not necessarily indicate a lack of independent thought or action.

The proxy advisory firms like to use the chairman/CEO separation as a litmus test of board independence because they are not in the position of individuals who have close familiarity with a company's actual people and governance. All they can do is judge independence from outward appearances.

The proxy advisory firms have challenged public companies that have a unified chairman/CEO innumerable times and have been frequently voted down. Most of the time, the shareholders don't buy into their arguments that separating the chairman and CEO functions will make the bank safer or more profitable.

In our view, the OCC doesn't need to set up a mandatory separation because it has access to "inside information" – the real internal functioning of the bank and its governance. In contrast to the proxy advisory firms, which have no inside knowledge, the OCC has examining and oversight powers. It examines banks regularly on site and oversees banks offsite. It has access to board and board committee minutes and reports. It may interview any insider, including directors, it wishes. It has subpoena and enforcement powers.

In addition, there is little, if any, empirical evidence that companies with separate chairmen and CEOs are more successful or safer than those which don't. In a recent article ("Chairman and CEO: The Controversy over Board Leadership", June 24, 2016), David F. Larcker and Brian Tayan of Stanford University's Rock Center for Corporate Governance, concluded that "[m]ost research finds that the independence status of the chairman is not a material indicator of firm performance or governance quality."

Without clear empirical proof that a separation of the chairman and CEO is necessary for safety and soundness, AABD believes that the OCC should not press banks to make this change. Bank boards, shareholders, and managements are aware of the considerations for and against separation, and boards and their shareholders should have the freedom to make this choice on their own.

AABD has urged bank boards to have robust corporate governance processes, including annual evaluations of board performance to help assure that the board is an independent voice in the institution. It is during these annual reviews that consideration may be given to whether the chairman and CEO should be separate or not, or if they are not, to appoint a lead director or other non-management board member to have influence or control over the board agenda and reporting process.

There are many other corporate governance measures that proxy advisory firms recommend, but they are formulaic in character. They have no choice. The banking agencies do have a choice. They have a better way of evaluating the effectiveness and independence of bank boards.

Thank you for your consideration.

Sincerely,

David Baris

David Baris
President
American Association of Bank Directors