AA|BD The American Association of Bank Directors

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January 28, 2016

The Honorable Martin J. Gruenberg
Chairman
Federal Deposit Insurance Corporation
550 17th St, NW
Washington, DC 20429

RE: Bank Director Regulatory Burdens

Dear Chairman Gruenberg:

The American Association of Bank Directors (AABD) is the only nonprofit trade association in the United States solely devoted to the interests of bank directors and their advocacy, education and information needs. It is from our unique perspective that we ask you to consider the following observations as part of your agency's review of rules and guidance addressing bank director duties and responsibilities.

First, AABD strongly believes that it is not the responsibility of bank boards of directors to address minutia and perform management functions that divert attention from their fundamental responsibility of exercising good faith judgment to meet their duties of care and loyalty. This approach to the proper separation of board and management responsibilities was articulated in a 2014 speech by Federal Reserve Governor Daniel Tarullo as follows:

> . . . Boards must of course . . . help ensure that good corporate governance compliance systems are in place. But it has perhaps become a little too reflexive a reaction on the part of regulators to jump from the observations that a regulation is important to the conclusion that the board must certify compliance through its own processes. We should probably be somewhat more selective in creating the regulatory checklist for board compliance and regulatory consideration. There are some MRAs that clearly come to the board's attention, but the failure to discriminate among them is almost surely distracting from strategic and risk-related analyses and oversight by boards.

In the final September 2014 rulemaking for its "heightened expectations" guidelines for national and federal savings banks with assets of $50 billion or more, the OCC responded to comments of AABD and other commentators to revise its proposed guidelines to differentiate between the roles of the board of directors and bank management and to make clear that bank boards are not required to assume management responsibilities. This is a principle that the AABD believes that all the federal bank regulatory agencies should consider in reviewing all their existing and prospective issuances.

Second, we underscore an observation we previously made twice to the agencies in connection with their review of regulations pursuant to the Economic Growth and Regulatory Paper Reduction Act (EGRPRA). That is, in both of our comment letters (September 2, 2014 and September 3, 2015), we noted that it has been (and continues to be) a substantial omission of the agencies not to include regulatory guidance issuances in their EGRPRA review.

In AABD's 2014 publication entitled "Bank Director Regulatory Burden Report" we documented over 225 separate OCC guidance statements that directly impose responsibilities on bank directors, 180 such FDIC guidance statements and 140 Federal Reserve guidance statements. Regulatory guidance is often enforced as if they are statutes or regulations. Noncompliance is cited in reports of examination and if the agency believes that noncompliance with guidance constitutes unsafe or unsound banking practices, it may use its enforcement powers against banks and members of their board and management.

Because these guidance statements often substantially impact the operations of banking organizations and boards of directors in ways similar or identical to formal regulations, and because they are so numerous and substantially interfere with bank board efforts to meet their fundamental duties of care and loyalty, it is vital that they be addressed by each of the agencies either in their EGRPRA review or independent of the EGRPRA review. Despite our prior letters, the agencies have not responded to our comments and the burdens on bank directors from both guidance and regulations continue to accumulate. As stated earlier, these burdens distract boards from effectively pursing their legitimate duties as board members and not management. A copy of our comment letters on EGRPRA and the pages of the 2014 AABD Bank Board Regulatory Burden Report relating to FDIC guidance addressing bank board responsibilities are enclosed.

Among the recommendations that AABD has previously made and continues to advocate are the following:

- The FDIC should review its current regulations and written guidance to determine the overall impact on bank directors, and revise or rescind those that are overly burdensome or require bank directors to perform management functions;

- The FDIC should incorporate into its procedures a requirement that as to future regulations and guidance, it will consider the impact on bank directors and not add new burdens unless the benefits of the proposed regulation or guidance clearly outweigh the burdens placed on bank directors;

- Provisions placing burdens on bank directors, whether in statute, regulation, or regulatory guidance, should be specifically identified, consolidated and clarified so that bank directors may have full and easy access to such issuances; and

- The FDIC should adopt a rule to recognize that boards of directors may delegate management duties to management and rely reasonably on management (consistent with the laws of all fifty states).

Thank you for your consideration of this letter. To reiterate, the FDIC has the authority to review its guidance and regulations entirely independent of the ongoing joint agency EGRPRA review.

We would be pleased to meet with you and your staff to discuss further.

Sincerely,

/s/
Richard M. Whiting
Executive Director

/s/
David Baris
President

Enclosures