The Fed's proposed guidance to enhance the effectiveness of bank and bank holding company directors has the promise of overturning many years of banking agency efforts to hold bank directors accountable for management functions and overburdening them

Many banking agency proposals and guidance over many years have added burdens and regulatory risks to banks and their directors and officers.

This Fed proposal is different. See 82 F.R. 37219 (August 9, 2017). Also see https://www.federalreserve.gov/newsevents/pressreleases/bcreg20170803a.htm

It recognizes that there is too much existing bank regulatory guidance that detracts from and interferes with the fundamental duties of directors.

For many years, AABD has urged the Fed and the other federal banking agencies to reduce regulatory burdens on bank directors. Its most recent report cites more than 800 provisions in statute, rule or guidance that impose regulatory burdens on bank directors. See AABD's Bank Director Regulatory Burden Report, 2014 Edition, by David Baris and Loyal Horsley, available on Amazon.

Recommendations from the Report, which adopted the recommendations of the 2012 Bank Director Regulatory Burden Report, can be found here.

AABD had also urged the banking agencies to reduce regulatory burdens on bank directors through the decennial banking agency review of burdensome regulations.
http://aabd.org/wp-content/uploads/2018/02/EGRPAcommentletter09-02-14.pdf
http://aabd.org/wp-content/uploads/2018/02/letter-on-EGRPRA-review-09.03.15.pdf

Among other things, the Fed's proposal would refocus the Fed's supervisory expectations for the largest firms' boards of directors on their core responsibilities – which include setting a clear and consistent strategic direction for the firm, supporting independent risk management, and holding management accountable.

It would clarify the distinction between boards of directors and management, which, under current guidance, is often confused or treated as if there is no distinction.

It would identify existing supervisory guidance that could be eliminated or revised.

Although the proposal is in the context of boards of large ($50 billion or more) bank holding companies, the “attributes” of bank directors identified in the proposal are worthy goals for directors of banks of all sizes.

This is an important, groundbreaking proposal. We thank all of you who submitted comments.

We encourage the other federal banking agencies to support the Fed’s proposal and work cooperatively with the Fed to address interagency policy statements and their own guidance to minimize unnecessary regulatory burdens and clarify the role of the board of directors as distinct from that of management.

I am available to answer any questions. You may email me at dbaris@aabd.org or call me at (202) 463-4888.

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