

INTERPRETATIVE LETTER 2019-02 (May 28, 2019)

THE BOARD OF DIRECTORS OF A STATE BANK, SUBJECT TO CONDITIONS OF THIS GUIDANCE, MAY ACT INFORMALLY WITHOUT A FORMAL VOTE AT A REGULARLY CONVENED MEETING OF THE BOARD

Illinois State banks have inquired of the Illinois Department of Financial and Professional Regulation, Division of Banking (Division) whether a bank board of directors may “act informally” without a formal vote at a regularly convened meeting. The Illinois Banking Act (IBA) does not expressly address whether, as a matter of corporate governance, a bank’s board may act informally.

However, under certain conditions, the IBA authorizes State banks to adopt corporate governance procedures available to business corporations or limited liability corporations:

Sec. 5. A bank organized under this Act or subject hereto shall be a body corporate and politic and shall, without specific mention thereof in the charter, have all the powers conferred by this Act and the following additional general corporate powers:

- (3) To make, alter, amend, and repeal bylaws, not inconsistent with its charter or with law, for the administration of the affairs of the bank. If this Act does not provide specific guidance in matters of corporate governance, the provisions of the Business Corporation Act of 1983 may be used if so provided in the bylaws, and if the bank is a limited liability company, the provisions of the Limited Liability Company Act shall be used. [Emphasis added.] 205 ILCS 5/5.

That is, when the IBA does not provide specific guidance in a matter of corporate governance, a State bank may adopt procedures permitted under the Illinois Business Corporation Act of 1983 (BCA) or the Limited Liability Company Act (LLCA) -- as long as the bank’s bylaws provide that the bank may look to the BCA or LLCA (as the case may be) for guidance on matters of corporate governance.

Regarding informal action by a board of directors, section 8.45 of the IBCA sets forth a procedure:

- (a) Unless specifically prohibited by the articles of incorporation or by-laws, any action required by this Act to be taken at a meeting of the board of directors of a corporation, or any other action which may be taken at a meeting of the board of directors or a committee thereof, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the directors

entitled to vote with respect to the subject matter thereof, or by all the members of such committee, as the case may be.

- (b) The consent shall be evidenced by one or more written approvals, each of which sets forth the action taken and bears the signature of one or more directors. All the approvals evidencing the consent shall be delivered to the secretary to be filed in the corporate records. The action taken shall be effective when all the directors have approved the consent unless the consent specifies a different effective date.

- (c) Any such consent signed by all the directors or all the members of a committee shall have the same effect as a unanimous vote and may be stated as such in any document filed with the Secretary of State under this Act. 805 ILCS 5/8.45.

Section 805 ILCS 180/15-1(e) of the LLCA provides similar authority.

In sum, to act informally, a bank board of directors must meet the following conditions:

- (1) The bank's bylaws must provide that the bank may derive corporate governance procedures from, as the case may be, the BCA or LLCA as provided in IBA section 5(3).
- (2) Informal action, as described in BCA section 8.45 (or LLCA section 180/15-1(e)) by the bank's board of directors is otherwise in accordance with the bank's charter and bylaws.
- (3) Informal action does not contravene any informal or formal enforcement action of the Division or appropriate federal banking agency.
- (4) The bank and its board obtain advice of counsel as necessary to formulate policies, procedures and documentation that will ensure the board's informal actions are indeed valid and effective actions of the board.

Authority derived from the BCA and LLCA pursuant to IBA section 5(3), as discussed above or generally, extends only to matters of corporate governance procedures where the IBA does not provide specific guidance. No other authority is derived from BCA or LLCA under Section 5(3).

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