



Federal Deposit Insurance Corporation

550 17th Street NW, Washington, D.C. 20429-9990

December 7, 2021

Nicholas Podsiadly
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Federal Deposit Insurance Corporation
550 17th Street N.W.
Washington, DC 20429

Dear Nick:

I have received your letters of November 26, 2021, and December 6, 2021. I am greatly concerned about the unprecedented position taken in the letters, given your duties to the Board of Directors. The conclusion expressed therein has no support in the law, as it is contrary to the governance structure explicitly established by Congress in the Federal Deposit Insurance Act.

As you know, Congress created the FDIC in 1933 as a multimember body managed by a Board of Directors appointed by the President of the United States. Consistent with that directive, the Corporation has operated since that time as a cooperative body in which decisions are made by majority vote. Yet your letters assert — without any factual basis or legal citation — that [REDACTED]

[REDACTED] This assertion is legally frivolous, and you restate it in your letter of December 6, 2021. The plain implication of your assertion is that the Chairperson has total control over the FDIC, not the Board created by Congress and composed of members appointed by the President.

Your letters fail to cite any provision of law or the FDIC bylaws. In fact, your conclusion has no support in the law or bylaws. To the contrary, under the Federal Deposit Insurance Act, the vote of a majority of the FDIC Board of Directors plainly constitutes an official decision of the Corporation. Further, under the FDIC bylaws, the Board of Directors may vote by writing on FDIC business — and the circulation and recognition of such voting is not under the control of the FDIC Chairperson, General Counsel, or Executive Secretary. The attached memorandum provides a clear articulation of why this is the case, with analysis of and citations to law and the FDIC bylaws.

To be clear, I believe that the FDIC Chairperson plays a critical role in the administration of the FDIC and as a voting member of the Board of Directors. However, the Chairperson cannot simply veto any

decision or action by the majority of the Board or prevent individual board members from exercising their responsibilities.

The attached memorandum explains why the position and instructions in the letter of November 26, 2021, and reiterated in the letter of December 6, 2021, are contrary to the statute as it has existed for decades, as well as the FDIC bylaws. Accordingly, the matter circulated for a vote on November 26, 2021, and approved by a majority of the Board on December 6, 2021, is a binding decision that must be recorded by the FDIC Executive Secretary. Your instruction to the contrary is invalid, and the Executive Secretary should disregard it accordingly.

Sincerely,

Rohit Chopra /s/
Director

Memorandum — Authority of FDIC Board, Particularly with Respect to Written Voting

For the reasons explained below, under the Federal Deposit Insurance Act, the vote of a majority of the FDIC Board of Directors clearly constitutes an official decision of the Corporation. Further, under the FDIC bylaws, the Board of Directors clearly may vote by writing on FDIC business, and the circulation and recognition of such voting is not under the control of the FDIC Chairperson, General Counsel, or Executive Secretary.

I. Federal Deposit Insurance Act

a. Authority of the Board of Directors

The Federal Deposit Insurance Act, as amended, establishes the Federal Deposit Insurance Corporation in its current form and its composition. *See* 12 U.S.C. §§ 1811(a), 1812(a)(1).¹ The Act provides that three of the Board’s five members are “inside Directors” appointed by the President, that one is the Comptroller of the Currency, and that one is the CFPB Director. 12 U.S.C. § 1812(a)(1).² The Act indicates that the President, with the advice and consent of the Senate, designates one of the inside Directors as Chairperson and another of the inside Directors as Vice Chairperson. *See* 12 U.S.C. § 1812(b). Currently, the Board has four members, one of which has been designated Chairperson; one of the inside Director positions is vacant, and the President has not designated a Vice Chairperson.

The FDI Act also provides for the authorities of the Corporation and who exercises those authorities. Section 9 of the Act provides the Corporation with a list of ten “Corporate Powers.” *See* 12 U.S.C. § 1819. As relevant here, that section states that the Corporation “shall have such power”:

- “To exercise by its Board of Directors, or duly authorized officers or agents, all powers specifically granted by the provisions of this Act, and such incidental powers as shall be necessary to carry out the powers so granted;”
- “To prescribe, by its Board of Directors, bylaws not inconsistent with law, regulating the manner in which its general business may be conducted, and the privileges granted to it by law may be exercised and enjoyed;” and
- “To prescribe by its Board of Directors such rules and regulations as it may deem necessary to carry out the provisions of this chapter or of any other law which it has the responsibility of

¹ The FDIC was created by the Glass-Steagall Act of 1933 with a three-member Board of Directors. *See* Banking Act of 1933, Pub. L. 73-66, § 8, 48 Stat. 168. Before 1950, the FDIC’s enabling statute was part of the Federal Reserve Act. *See id.* Congress created the Federal Deposit Insurance Act in 1950. *See* Federal Deposit Insurance Act, 64 Stat. 873 (1950). The Board was expanded to five members in 1989. *See* Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub. L. 101-73, Title II, § 203(a), 103 Stat. 188. The Dodd-Frank Act replaced the Director of the Office of Thrift Supervision with the CFPB Director on the FDIC Board. *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, Title III, § 336(a), 124 Stat. 1540 (2010).

² The Act also indicates that “[i]n the event of a vacancy in the office of the Comptroller of the Currency or the office of Director of the Consumer Financial Protection Bureau . . . the acting Comptroller of the Currency or the acting Director of the Consumer Financial Protection Bureau, as the case may be, shall be a member of the Board of Directors in the place of the Comptroller or Director.” 12 U.S.C. § 1812(d)(2).

administering or enforcing (except to the extent that authority to issue such rules and regulations has been expressly and exclusively granted to any other regulatory agency).”

12 U.S.C. § 1819(a).

The FDI Act indicates that “[t]he management of the Corporation shall be vested in a Board of Directors.” 12 U.S.C. § 1812(a)(1). The Act also indicates that “[t]he Board of Directors shall administer the affairs of the Corporation fairly and impartially and without discrimination” and that “[t]he Board of Directors of the Corporation shall determine and prescribe the manner in which its obligations shall be incurred and its expenses allowed and paid.” 12 U.S.C. § 1820(a).

These provisions make it quite clear that, under the FDI Act’s plain text, authority to make decisions for the Corporation resides in the Board of the Directors. It is the Board that “exercises ... all powers specifically granted by the provisions of this Act” as well as the incidental powers, the Board that “prescribes ... bylaws not inconsistent with law,” and the Board that “prescribes ... such rules and regulations as it may deem necessary.” 12 U.S.C. § 1819(a). It is the Board in which “[t]he management of the Corporation” is “vested.” 12 U.S.C. § 1812(a)(1). And it is the Board that “administer[s] the affairs of the Corporation fairly and impartially and without discrimination” and that “determine[s] and prescribe[s] the manner in which its obligations shall be incurred and its expenses allowed and paid.” 12 U.S.C. § 1820(a).

Further, Supreme Court precedent makes clear that, unless a statute specifies otherwise, a majority of the quorum of a multimember agency is authorized to act on behalf of the agency. In *FTC v. Flotill Products*, 389 U.S. 179 (1967), the Court considered a challenge to a decision by the Federal Trade Commission. The FTC’s regulations provided that three Commissioners, out of the five that serve on the FTC by statute, constitute a quorum of the body. *See id.* at 181. Accordingly, three FTC Commissioners participated in the decision in question in the case, with two voting in favor and one against. *Id.* at 180. The decision was challenged on the theory that a vote of two Commissioners was insufficient to make a decision for the five-member Commission. *Id.* The Court rejected the challenge, holding that “in the absence of a contrary statutory provision, a majority of a quorum constituted of a simple majority of a collective body is empowered to act for the body.” *Id.* at 183; *see also United States v. Ballin*, 144 U.S. 1, 6 (1892) (“[T]he general rule of all parliamentary bodies is that, when a quorum is present, the act of a majority of the quorum is the act of the body.”).

b. Authority of the Chairperson, General Counsel, and Executive Secretary

In contrast, there is no indication in the FDI Act that the Chairperson, General Counsel, or Executive Secretary has the authority to prevent the majority of the FDIC Board from making decisions for the Corporation. Five sections of the FDI Act refer to the Chairperson. Most significantly, section 2 of the FDI Act provides with respect to the Chairperson:

(b) Chairperson and Vice Chairperson

(1) Chairperson

1 of the appointed members shall be designated by the President, by and with the advice and consent of the Senate, to serve as Chairperson of the Board of Directors for a term of 5 years.

(2) Vice Chairperson

1 of the appointed members shall be designated by the President, by and with the advice and consent of the Senate, to serve as Vice Chairperson of the Board of Directors.

(3) Acting Chairperson

In the event of a vacancy in the position of Chairperson of the Board of Directors or during the absence or disability of the Chairperson, the Vice Chairperson shall act as Chairperson.

(c) Terms

...

(3) Continuation of service

The Chairperson, Vice Chairperson, and each appointed member may continue to serve after the expiration of the term of office to which such member was appointed until a successor has been appointed and qualified.

12 U.S.C. § 1812(f)(b).

As relevant here, this provision indicates merely that the President designates a Board member as Chairperson of the Board; it gives no indication of contradicting the provisions cited above that state that the management of the Corporation is vested in the Board itself. Further, the other references to the Chairperson in the FDI Act also cannot plausibly be viewed as contradicting those provisions, as the other references do not provide the Chairperson with administrative, executive, or managerial authority over the Corporation.³ Moreover, as described below, courts interpreting similar corporate law statutes have unequivocally indicated that a board's chairperson cannot prevent a board from making decisions. There is therefore no indication whatsoever in the Act that the Chairperson has authority to prevent the majority of the FDIC Board from making decisions for the Corporation.

The FDI Act does not mention the FDIC's General Counsel. The only reference in the FDI Act to the FDIC's Executive Secretary is in section 2 of the Act and is not relevant for present purposes. That

³ The other four references to the Chairperson in the FDI Act are in sections 10, 38, 49, and 233. *See* 12 U.S.C. § 1820(k)(5) (FDI Act § 10) (indicating that the Chairperson is "the head of an agency" for purposes of granting "a waiver, on a case by case basis," of certain restrictions on Federal examiners of financial institutions); 12 U.S.C. § 1831z(b) (FDI Act § 49) (requiring Chairperson to submit a bi-annual report to Congress on the FDIC's survey regarding the unbanked); 12 U.S.C. § 1834a(d)(2) (FDI Act § 38) (providing that Chairperson is a member of the Community Enterprise Assessment Credit Board); 12 U.S.C. § 1831o(h)(3)(C)(ii) (FDI Act § 233) (providing Chairperson with certain responsibilities with respect to critically undercapitalized institutions).

section states that “each member of the Board of Directors shall certify under oath that such member has complied with” certain restrictions on holding other offices and that “such certification shall be filed with the secretary of the Board of Directors.” 12 U.S.C. § 1812(e)(3).

II. FDIC Bylaws and Regulations

a. Authority of the Board of Directors

As noted above, the FDI Act provides the Corporation with the “power ... [t]o prescribe, by its Board of Directors, bylaws not inconsistent with law” and “[t]o prescribe by its Board of Directors such rules and regulations as it may deem necessary.” 12 U.S.C. § 1819(a). As described below, the FDIC bylaws and regulations largely mirror those Act provisions and also provide more detail as to the administration of the Corporation.

Like the FDI Act, the FDIC bylaws clearly state that the Board has authority to make decisions for the Corporation. The bylaws state that “[t]he management of the Corporation shall be vested in the Board of Directors, which shall have all powers specifically granted by the provisions of the Federal Deposit Insurance Act and other laws of the United States and such incidental powers as shall be necessary to carry out the powers so granted.” Bylaws Article IV § 5.

b. Authority of the Chairperson, General Counsel, and Executive Secretary

As with the FDI Act itself, the FDIC bylaws provide no indication that the FDIC Chairperson has authority to prevent the Board of Directors from making decisions or managing the Corporation’s affairs. Rather, with respect to the Chairperson’s responsibilities, the bylaws state:

Within the limitations of the Federal Deposit Insurance Act and other laws of the United States, the Chairperson shall manage and direct the daily executive and administrative functions and operations of the Corporation and shall otherwise have the general powers and duties usually vested in the office of the chief executive officer of a corporation. He or she shall also be responsible for providing oversight over the direction and operations of each of the Corporation’s various divisions and offices but may from time to time, as appropriate and in accordance with applicable law, designate other officers of the Corporation to be responsible for providing such oversight with respect to one or more divisions or offices of the Corporation.

Bylaws Article VI § 4(a). This language about “manag[ing] and direct[ing] the daily executive and administrative functions of the Corporation” stands in stark contrast to the language quoted above about “management of the Corporation,” which is “vested in the Board,” Bylaws Article IV § 5. Further, as discussed below, as a matter of corporate law, “the general powers and duties usually vested in the office of the chief executive officer of a corporation,” which this bylaw invests in the Chairperson, certainly would not include controlling the activity of a corporation’s board of directors.

The FDIC bylaws also provide for certain other officers of the FDIC and describe how they are appointed. The bylaws provide a list of those officers, including the General Counsel. *See* Bylaws

Article VI § 1. Further, the bylaws provide that officers other than the Chairperson and Vice Chairperson “shall be appointed by the Board of Directors, upon the recommendation of the Chairperson, and shall hold their respective offices for such terms as the Board of Directors shall determine.” Bylaws Article VI § 2.

With respect to the General Counsel, the bylaws also state:

The General Counsel shall be the chief legal officer of the Corporation and legal adviser to the Board of Directors and the officers of the Corporation; render all legal services necessary to enable the Board of Directors and the Corporation’s various respective duties and responsibilities; and otherwise have the powers and perform the duties usually vested in the general counsel of a corporation.

The General Counsel shall also be responsible for performing or overseeing the duties of the secretary of the Board of Directors of the Corporation....

Bylaws Article VI § 4(k).

In turn, with respect to the Executive Secretary, the bylaws indicate that “[t]he [FDIC] General Counsel may appoint, or recommend the appointment by the appropriate appointing authority of, an Executive Secretary to perform the duties of the secretary of the Board of Directors of the Corporation.” Bylaws Article VI § 4(k).

As noted above, the FDIC bylaws indicate that the Chairperson “shall manage and direct the daily executive and administrative functions and operations of the Corporation and shall otherwise have the general powers and duties usually vested in the office of the chief executive officer of a corporation” and is “responsible for providing oversight over the direction and operations of each of the Corporation’s various divisions and offices.” Bylaws Article VI § 4(a). It seems reasonable to interpret this provision as allowing the Chairperson to generally manage the General Counsel and Executive Secretary’s activity, at least on a “daily” basis. It would not be reasonable, however, to interpret this general management provision to trump more specific provisions regarding those officers’ duties. *See, e.g., Nitro-Lift Techs., L.L.C. v. Howard*, 568 U.S. 17, 21 (2012) (noting “the ancient interpretive principle that the specific governs the general”).

c. Written Voting

The FDIC bylaws provide that the FDIC Board may transact business at meetings or by written voting (often called “notational votes”). *See* Bylaws Article IV § 6. With respect to written voting, the bylaws state:

The Board of Directors may transact business by the circulation of written items to all members of the Board of Directors who can be contacted after a reasonable effort and in sufficient time to permit action where a majority of the members participate, in writing, in the disposition of each item of business and where such disposition, including the vote of each member with respect to each item of business, is recorded in the minutes of the proceedings of the Board of Directors, unless any one member of the

Board of Directors provides written notice to the Executive Secretary of his or her request to transact said business at a meeting of the Board of Directors.

Bylaws Article IV § 6(g).⁴

It seems plain from this provision that a majority of the Board may make decisions for the Corporation by written vote, and it is difficult to see how this provision could be interpreted to allow the Chairperson, General Counsel, or Executive Secretary to determine what business gets circulated by the Board for a vote.

The written voting bylaws provision does not mention the Chairperson or indicate that Chairperson presides over written voting.⁵ Further, the provision states that “[t]he Board of Directors may transact business by the circulation of written items,” Bylaws Article IV § 6(g), not that the Executive Secretary or General Counsel circulates items for a vote. In notable contrast, the FDIC bylaws specifically indicate that the Chairperson “preside[s] at all meetings of the Board of Directors” except when unavailable. *See* Bylaws Article IV § 6(e).⁶ And FDIC regulations specifically exclude “[d]ecision-making by circulating written material to individual Board members” from the definition of “meeting.” *See* 12 C.F.R. § 311.2.

Similarly, it would not be reasonable to interpret the Chairperson’s role of “manag[ing] and direct[ing] the daily executive and administrative functions and operations of the Corporation,” Bylaws Article VI § 4(a), to include controlling the Board’s written voting. The “daily executive and administrative functions and operations of the Corporation” would clearly not include written voting by the Board of Directors itself. Such voting is plainly not part of the day-to-day work of the FDIC. Moreover, as discussed below, the executive and administrative authority invested in a corporate Chairperson and CEO unequivocally does not include controlling the voting of a corporation’s board. Further, there is again no indication that this general provision about the Chairperson’s role trumps the specific language that “[t]he Board of Directors may transact business by the circulation of written items.” Bylaws Article IV § 6(g). Additionally, the bylaw about the Chairperson’s role indicates that it applies “[w]ithin the limitations of the Federal Deposit Insurance Act and other laws of the United States.” Bylaws Article VI § 4(a). And, as noted below, such an interpretation of the Chairperson’s role would wrest authority from the Board in a manner clearly contrary to the FDI Act.

The written voting bylaws provision does indicate that a written vote must be “recorded in the minutes of the proceedings of the Board of Directors.” Bylaws Article IV § 6(g). This provision does not indicate *who* records such a vote; it seems conceivable that the Directors could do so themselves or direct any Board employee to do so. That said, as noted above, the bylaws provide that the General Counsel is “responsible for performing or overseeing the duties of the secretary of the Board of Directors of the Corporation” and may appoint an Executive Secretary “to perform the duties of the

⁴ In contrast, the bylaws indicate that the bylaws themselves “may be amended or a new bylaw adopted at any meeting of the Board of Directors by a majority vote....” Bylaws Article VIII.

⁵ Of course, as a Board member, the Chairperson could “provide[] written notice to the Executive Secretary of his or her request to transact said business at a meeting of the Board of Directors.” Bylaws Article IV § 6(g).

⁶ That said, the most reasonable interpretation of the bylaws is that two Board members may call a “special meeting” on agenda items of their choosing. *See* Bylaws Article IV § 6(b); *see also Atkins v. Wilson*, 788 S.E.2d 228, 234 (S.C. App. 2016) (reaching similar conclusion regarding similar municipal corporation law provision).

secretary of the Board of Directors of the Corporation.” Bylaws Article VI § 4(k). It seems reasonable to interpret this provision as implicitly charging the General Counsel or the Executive Secretary with the secretarial task of recording written votes of the Board. Nonetheless, there is no indication that this “duty” somehow provides the General Counsel or Executive Secretary with discretion to control the Board of Director’s voting or ignore a majority vote of the Board. To the contrary, the written voting bylaws provision plainly states that “[t]he Board of Directors may transact business by the circulation of written items.” Bylaws Article IV § 6(g) (emphasis added). The only role even implicitly suggested for the General Counsel or Executive Secretary by this provision is the “duty” to record the vote of the Board.

It is also clear that it would be contrary to the FDI Act to interpret the FDIC bylaws to provide the Chairperson, General Counsel, or Executive Secretary with discretion to control the Board of Director’s voting or ignore a majority vote of the Board. As noted above, the FDI Act indicates that “[t]he management of the Corporation shall be vested in a Board of Directors,” 12 U.S.C. § 1812(a)(1), and provides no indication that the Chairperson, General Counsel, or Executive Secretary has the authority to prevent the majority of the FDIC Board from making decisions for the Corporation. Further, the Act indicates that the Corporation may “prescribe, by its Board of Directors, bylaws *not inconsistent with law*.” 12 U.S.C. § 1819(a) (emphasis added). And the bylaw describing the Chairperson’s role indicates that it applies “[w]ithin the limitations of the Federal Deposit Insurance Act and other laws of the United States.” Bylaws Article VI § 4(a). Accordingly, interpreting the bylaws to allow the Chairperson, General Counsel, or Executive Secretary to prevent the majority of the FDIC Board from making decisions for the Corporation would be contrary to the statute, effectively providing the Chairperson *ultra vires* authority to control the FDIC.

III. Corporate Law

a. Authority of Corporate Boards, Chairpersons, and Officers

It seems appropriate to look to the law of corporations in interpreting the FDI Act, particularly with respect to the authority of the Board of Directors, Chairperson, and FDIC Officers. As indicated by the Federal Deposit Insurance Corporation’s name and as described above, the FDI Act establishes the FDIC as a “corporation,” 12 U.S.C. § 1811(a), and the FDIC bylaws invests the Chairperson with “the general powers and duties usually vested in the office of the chief executive officer of a corporation,” Bylaws Article VI § 4(a). Further, in a case involving the FDIC, the Supreme Court indicated that “Congress acts against the background of the total corpus juris of the states.” *Atherton v. FDIC*, 519 U.S. 213, 218 (1997) (quotation marks omitted). And the corporate laws of many states closely resemble the FDI Act with respect to corporate management.⁷

⁷ As the FDI Act states that “[t]he management of the Corporation shall be vested in a Board of Directors,” 12 U.S.C. § 1812(a)(1), the Model Business Corporation Act states that “all corporate powers shall be exercised by or under the authority of the board of directors, and the business and affairs of the corporation shall be managed by or under the direction, and subject to the oversight, of the board of directors,” Model Business Corporation Act § 8.01(b) (Sept. 2021). States have incorporated this language into their own statutes in language closely resembling the FDI Act. *See, e.g.*, Del.

As a matter of corporate law, there seems to be no support for the proposition that a corporation's chairperson or corporate officers can block the corporation's board from making decisions for the corporation or take action contrary to its wishes. Courts have clearly articulated that "a chief executive officer may not act in a manner contrary to the express desires of the board of directors,"⁸ that "officers have a duty to comply with the board's directives,"⁹ and that "[u]ltimately, the Board of Directors controls the company, not the CEO."¹⁰ Further, this requirement clearly applies with respect to corporate officers who also serve as chairperson of the board.¹¹ Accordingly, it seems clear that the instructions of the FDIC Board of Directors must be implemented by the Corporation's officers and that the Chairperson cannot block such instructions.

b. Bylaws and Board Authority

Corporate law precedent is also clear that a corporation's bylaws cannot restrict the authority of a corporate board provided for by law or in the corporation's chartering documents. *See* 8 Fletcher Cyc. Corp. § 4166 (2021) ("[C]orporate bylaws cannot make an act ultra vires or illegal[; n]either can the bylaws restrict the powers of the board of directors...."). As the Delaware Supreme Court has stated, "where a by-law provision is in conflict with a provision of the charter, the by-law provision is a nullity." *Centaur Partners, IV v. Natl. Intergroup, Inc.*, 582 A.2d 923, 929 (Del. 1990) (quotation marks omitted). Indeed, in reaching this conclusion, the Delaware Supreme Court has cited a provision of Delaware law that bears a striking resemblance to the FDI Act's provision on FDIC bylaws. *Compare id.* ("The Delaware General Corporation Law provides: 'the bylaws may contain any provision, not inconsistent with law or with the certificate of incorporation.' 8 Del. C. § 109(b).") *with* 12 U.S.C. § 1819(a) (stating that the FDIC may "prescribe, by its Board of Directors, bylaws not inconsistent with law").

IV. Conclusion

For the reasons provided above, under the Federal Deposit Insurance Act, a vote of a majority of the FDIC Board of Directors clearly constitutes an official decision of the Corporation, and the FDIC Board may clearly vote on FDIC business in writing without the approval of the FDIC Chairperson, General Counsel, or Executive Secretary.

Code Ann. tit. 8, § 141(a) ("The business and affairs of every corporation organized under this chapter shall be managed by or under the direction of a board of directors, except as may be otherwise provided in this chapter or in its certificate of incorporation."); Tex. Bus. Orgs. Code Ann. § 21.401; Va. Code Ann. § 13.1-673; *see generally* 2 Fletcher Cyc. Corp. § 505 (2021) ("Under most statutes, the directors are entrusted with the control and management of the business of the corporation.").

⁸ *Amalgamated Bank v. Yahoo! Inc.*, 132 A.3d 752., 781 (Del. Ch. 2016).

⁹ *Lebanon County Employees' v. Amerisourcebergen*, 2020 WL 132752, at *21 (Del. Ch. Jan. 13, 2020), *aff'd on other grounds*, 243 A.3d 417 (Del. 2020).

¹⁰ *Stradtman v. Republic Services, Inc.*, 2015 WL 3650736, at *9 (E.D. Va. June 11, 2015).

¹¹ *See, e.g., Lane v. Chowning*, 610 F.2d 1385, 1388 (8th Cir. 1979); *see generally* 1 Treatise on the Law of Corporations § 8:7 (3d ed. 2021) (noting that courts "are hesitant to accord autonomous power to the chairman of the board").