

From: Duncan Ramsay
Sent: Sunday, 16 November 2014 2:12 PM
To: Board Expectations
Subject: Improving APRA's board engagement

Mr P Brennan

I refer to APRA's letter of 7/10/14.

I welcome the opportunity to provide feedback.

I have two material concerns, namely:

1. the letter and the Aid for Directors are not clear on the role of non-executive directors (NEDs).

I believe that the documents have a hidden assumption that boards are comprised solely of NEDs. However, a board can include a minority of executive directors under APRA's governance standard.

For example, paragraphs one, two and five of the letter distinguish between board and management.

Another instance is the last paragraph in the first column on page 4 of the Aid for Directors, especially the last two sentences.

I request that APRA clarifies the role of NEDs; and

2. lack of emphasis on industry skills and experience.

Paragraph four on page one of the Aid for Directors mentions "an appropriate mix of skills and experience".

I believe the monitoring/oversight role of NEDs requires at least two of them on the board to have say general insurance skills and experience. If not, it must be difficult to understand the nuances of reports from management and act as a realistic check on their views on strategy and operations.

I request that APRA highlights the importance of industry skills and experience.

I hope that you find these comments useful. I am happy to expand on them.

Please note this email is written in my personal capacity and not on behalf of former or future employers.

Regards

Duncan Ramsay

Tel:

From: Duncan Ramsay
Sent: Sunday, 7 December 2014 2:14 PM
To: Board Expectations
Subject: Improving APRA's board engagement

Dear Mr Brennan

I refer to my submission a few weeks ago.

page 4, first column of the Aid for Directors includes 'the board is expected to be ultimately and finally accountable'.

I believe this should say "the board is generally accountable".

this is because the buck does not always stop with a director so to speak, as defences provided by law may apply.

for example, the business judgment rule in section 180(2) of the Corporations Act; proper reliance by a director under section 189 of that Act; and relief from liability under sections 1317S(2) and 1318(1) of that Act.

these examples are more relevant to a non - executive director.

I refer you to the comments by Santow J as he then was in ASIC v Adler (2002) 41 ACSR 72 at paragraph 372 and also by Santow J in Vines v ASIC (2007) 62 ACSR 1 at paragraph 731.

Both these cases involved the HIH liquidation so they are on point.

again my submission is my own view and not on behalf of current or future employers.

Regards

Duncan Ramsay

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