

2009: SURVIVE OR THRIVE?

1. UNDERSTAND HOW TO DEAL WITH THE REGULATORS.

2009 will continue the 2008 unprecedented regulatory aggression. Nearly every bank will have the opportunity to receive some kind of “paper” - enforcement action - from the regulators. How you handle that enforcement action could have a significant impact on the bank’s ability to take advantage of opportunities over the next several years. Hamstrung by an enforcement action that is unwarranted - your bank will have none. For information on dealing with the regulators in an uncertain environment, please email ldandridge@gerrish.com.

2. FOCUS ON LIQUIDITY.

Contingency liquidity planning is critical for every community bank. There have been a number of (as yet unpublicized) bank failures due to the lack of liquidity where the bank simply could not get funding from the Federal Reserve, the Federal Home Loan Bank, its local community or anywhere else to meet the withdrawal demands of its depositors. Each bank must establish a contingency liquidity plan.

3. FOCUS ON CAPITAL.

Contingency capital planning is also critical. Since community banks do not depend on the federal government for a bailout, the bank needs to have a contingency capital plan that can be implemented if necessary. There are numerous alternative sources of capital that can be identified and provided.

4. FOCUS ON THE PROFIT FUNDAMENTALS.

The fundamentals of banking involve making a profit. The secret formula for making a profit in banking (Revenues - Expenses = Profit) is still applicable. It requires some basic assessment of how well your bank is exercising the fundamentals of generating revenues, including new sources and reducing expenses, including loan loss reserve and other similar expenses.

5. PLAN FOR THE RECOVERY.

It is likely community banking will be in this trough through at least mid 2010. Now is the time for those banks, particularly those that are “haves”, i.e. those simply not fighting for survival, to plan for what to do in the short term and what to do in the long term recovery. This involves your board of directors establishing strategies at the 30,000 foot level and management creating

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operational and tactical plans to implement those strategies. If you do not plan for it, it will not happen.

6. ASSESS EXPANSION OPPORTUNITIES.

For the banks that are “haves”, geographic expansion opportunities will abound. This will involve not only failed institutions and acquisitions from the FDIC but acquisitions of both healthy and moderately troubled institutions simply looking for an exit because they have had all the fun they can stand, or one of the other customary reasons such as lack of management or board succession. For the “have nots”, i.e. troubled institutions, it may involve spinning off branches to reduce asset size and boost the capital ratio while getting a premium in the process. In any event, assess your expansion opportunities, they should be plentiful.

7. EDUCATE YOUR BOARD ON RISK MANAGEMENT.

Risk management is coming to the forefront for community banks. The board of directors’ job is not to “manage” the risks. That is the job of management. The board’s job is simply to ensure that processes are in place to identify, assess and report on the risks. Educate your board on the risk management process.

Focusing on these fundamental areas in 2009 should assist your community bank and holding company in continuing to be a “have” and in continuing to be in a position to take advantage of opportunities.

PICK UP IN MERGER AND ACQUISITION ACTIVITY

Last year, the large investment banking houses (at least those who remain) were singing the blues about the lack of merger and acquisition activity. The merger and acquisition activity for 2009, at the \$100 million and below bank size, will probably be fairly dramatic. This will involve healthy banks looking for an exit as well as unhealthy banks looking for a solution. Acquisitions from the regulators and acquisitions of branches also should be plentiful. Please let us know how our consulting firm can help run the numbers or our law firm can help negotiate and implement the transaction.

COMMUNITY BANKERS REVOLT

Community bankers, it is time to revolt! The treatment community bankers have received at the hands of the regulators and the U.S. Treasury is nothing short of totally appalling. What is the problem?

1. How about the unbridled use of enforcement actions with no consideration of the public consequences for the community banks?
2. How about regulation by intimidation, such as we have never seen?
3. How about the insistence of bringing enforcement actions against banks that are on life support (flogging before execution scenario)?
4. How about the failure of the Treasury to allocate any funds to provide meaningful real estate price supports where it really impacts community banks?
5. How about the total failure to provide forbearance for community banks who find themselves mired in a situation they did not create?
6. How about the 20 basis point special deposit insurance assessment to solve a problem that community banks did not create?

Community bankers, it is time for a community bankers’ revolt. If you are interested in obtaining more information about this, or joining the cause, financially or otherwise, please contact Jeff Gerrish or Philip Smith, or log on to www.communitybankersrevolt.com.

MANAGEMENT STUDY?

If you get stuck with a cease and desist order, written agreement or some other enforcement action that requires a management study and we have not helped you negotiate the enforcement action, please call us for the management study. Unfortunately, we have lots of experience.

NOW IS THE TIME FOR SUB S

If you have not converted to Sub S, now may be the opportune time. Most of the banks and holding companies for which Sub S conversions were easy have already done it. Now, with the number of shareholders allowed, i.e. 100 shareholders counting six generations of one family as one shareholder, may be the opportune time.

If you can achieve a vote of 50% of the shares in favor (in most cases) that is enough to establish a Subchapter S for your bank and holding company if the formation process is structured properly. Part of the formation process will involve the forced elimination of ineligible shareholders, and in some cases smaller shareholders. The shareholders must be eliminated at "fair value" as that is defined under state law. What better time to do that than while bank valuations are at their lowest point in recent memory.

Keep in mind that with a Subchapter S transaction structured as a "force out" merger, the holding company can also take that opportunity to eliminate other categories of shareholders, including, for example, those living out of state, those who do not do business with the bank, those who have not submitted a proxy in the last several years, or other legitimate categories. If you would like any further information on Subchapter S or to receive a significant number of "Client and Friends" memos from our firm on Subchapter S, please call or email Jeff Gerrish.

Gerrish McCreary Smith
Established 1988

Our Mission

THE CLIENT'S NEEDS COME FIRST

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DEFERRAL OF INTEREST ON TRUST PREFERRED SECURITIES

One of the benefits of trust preferred securities is the right to defer interest payments for up to 20 consecutive quarters without being in default. This, of course, is meant to be a failsafe provision to be used as a last resort when there is insufficient cash available to the issuing holding company to service the trust preferred. Deferral is not without consequences. During the deferral period, interest compounds quarterly, and the issuing holding company cannot pay any dividends on its stock or repurchase any shares.

If it should become necessary to exercise the right to defer interest payments, it is essential that proper notice be given to the trustee under the trust preferred indenture. Make sure to check your own documents carefully, but most trust preferred indentures require notice to be given to the trustee not later than the regular record date. Generally, the term "regular record date" means the 15th day prior to an interest payment date, whether or not such date is a business day.

Hopefully, deferral will not be necessary, but, if it is, make sure to give notice to the trustee at the right time.

GERRISH'S MUSINGS

Gerrish's Musings is a twice-per-month subscription newsletter based on Jeff Gerrish's recent experiences with community banks around the nation. It is designed for bank directors and officers and is "choked full" of relevant, practical commentary to benefit community bank boards and officers.

Gerrish's Musings is available by email for your entire board for one nominal subscription price. For further information, please contact Linda Dandridge at (901) 684-2323 or ldandridge@gerrish.com.

RESOURCE MATERIALS

Gerrish McCreary Smith, Consultants and Attorneys, in connection with various speaking engagements around the country, have created high quality "handout" booklets. The titles for some of these publications are listed below.

Gerrish McCreary Smith Memos to Clients and Friends on the following topics (available free of charge):

- American Recovery and Reinvestment Action of 2009 and TARP
- Attracting Core Deposits
- C Corp versus S Corp Comparison
- Civil Money Penalty Process
- Conversion of Credit Union to Mutual Savings Association
- Conversion of Credit Union to Stock Institution
- Conversion of Mutual Savings Association to Stock Institution
- Counting Shareholders for SEC Purposes
- Dealing with the Regulators in an Uncertain Environment
- Effecting Share Repurchases
- Electronic Board Book Programs
- Enforcement Action Issues: The Administrative Law Hearing
- ESOP Tax-Free Rollover Requirements
- FDIC Appeals Process
- Going Private by Reclassification of Stock
- Incentive Compensation Plans
- Responding to Unsolicited Offers
- Restricted Stock Plans
- SEC Executive Compensation Rule
- Section 409A Deferred Compensation Issues
- Small Bank Holding Company Policy Statement
- Subchapter S Shareholder Consents
- Subchapter S Tax-Exempt Income
- Taxation of Stock Redemptions
- Ten Rules for Capital
- Treasury and Authorized but Unissued Shares

The following publications are available for a nominal charge:

Controlling Your Destiny – Washington Bankers Association

Corporate Governance: What is a Director to Do? Realities Post-Enron – American Bankers Association

Directors Responsibilities in Mergers & Acquisitions: Responding to the Unsolicited Offer – The Assemblies for Bank Directors

Directors' Liability – Arkansas Bankers Association

Environment in 2020 – Community Bankers Association of Illinois

Everything You Need to Know About Stockholders - Western Independent Bankers

Is a Holding Company in Your Bank's Future - Western Independent Bankers

Is Your Strategic Planning a Waste of Time? – American Bankers Association

Managing Through the Current Regulatory Environment – Virginia Bankers Association

Mastering the Mundane: Excelling at the Unusual (includes discussion of general duties, mergers and acquisitions, stock redemptions, regulatory enforcement actions) – Independent Community Bankers of America

Matters of Importance to Community Banks (focusing on 10 specific issues for community banks) – Independent Community Bankers of America

Overview of the Role of the Community Bank Director – Community Bankers Association of Georgia

The Pros and Cons of Converting to Subchapter S / Community Banks: The Right Stuff for the Future - Community Bankers of Wisconsin

The Role of the Chairman in a Changing Environment - American Bankers Association

Stock Ownership of Community Banks – Independent Community Bankers of America

Strategic Planning in a Difficult Environment - Florida Bankers Association

Strategic Planning Today – Independent Community Bankers of America

Surviving the Short Term and Excelling at the Long Term - Independent Community Bankers of America

10 Issues of Critical Importance for Profitable Community Banking – West Virginia Association of Community Bankers

Ten Essentials for Community Bank Directors – Tennessee Bankers Association

The Primary Role of the Director: Enhancing Shareholder Value – Missouri Independent Bankers Association

If you are interested in any of these publications, please call or email Linda Dandridge at (901) 684-2323 or ldandridge@gerrish.com.

Please visit our web site at: www.gerrish.com
We would appreciate your feedback.



SCHEDULE YOUR STRATEGIC PLANNING NOW!

Several members of
Gerrish McCreary Smith
facilitate strategic planning sessions
for community banks. With the
planning season rapidly approach-
ing, please call or email for a pro-
posal and to secure a date for your
Board's retreat.

GERRISH McCREARY SMITH AFFILIATED RESOURCES

Over the last 21 years or so of exclusively helping community banks across the nation, we have developed relationships with various service providers who we believe provide the best services in their particular niche. This includes branch location specialists, stock appraisers, fairness opinion providers, IPO managers, equipment lease sales, securities transfer agents, loan review, compliance review, auditors, bank technology specialists, executive placement and the like.

If you need any of these services and are not sure who to call, please let me know and we will provide some recommenda-
tions.

Jeff Gerrish

WELCOME TO OUR NEW PROFESSIONALS

Gerrish McCreary Smith P.C., Attorneys and
Gerrish McCreary Smith, LLC, Consultants are
pleased to announce that Clifton V. "Doc" Bodine,
III and Greyson E. Tuck have joined both firms as
associates.

Both of these professionals bring a wealth of expe-
rience to our legal and consulting firms in areas
that are of immediate importance to our clients.
View both Doc and Greyson's biographies at
www.gerrish.com. Doc Bodine can be reached at
(901) 684-2309, dbodine@gerrish.com. Greyson E.
Tuck can be reached at (901) 684-2311,
gtuck@gerrish.com.

Books Available

- The Bank Directors Bible: Commandments for Community Bank Directors, 3rd Edition – A compilation of "Ten Commandment" articles for bank directors and executive officers on topics ranging from strategic planning to mergers and acquisitions to troubled banks.
- Gerrish's Glossary for Bank Directors – A readable glossary. All relevant terms defined with a little bit of fun thrown in. A must for your bank directors.

To obtain information about purchasing either of these books, please contact Linda Dandridge at (901) 684-2323 or ldandridge@gerrish.com.

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Please address comments or questions regarding the newsletter to Jeffrey C. Gerrish, Gerrish McCreary Smith, PC, 700 Colonial Road, Suite 200, Memphis, TN 38117, or to our email address: gms@gerrish.com.

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ESOPs IN SUB S: SO GOOD IT SHOULD BE ILLEGAL!

The use of an Employee Stock Ownership Plan (“ESOP”) or a 401(k) Employee Stock Ownership Plan (“KSOP”) in a Subchapter S is so good it should be illegal. An ESOP in a Subchapter S simply becomes a cash cow. This is due to the fact that although the ESOP receives “tax distributions” from the bank or holding company, like any other shareholder, the ESOP, unlike every other shareholder, pays no taxes on the income allocated on the shares it holds, i.e. it does not have to forward any money to the government. Those distributions, which for most shareholders are forwarded directly to the government to pay their pro rata portion of the tax, are retained by the ESOP, which simply accumulates the cash with which it can purchase shares of shareholders desiring to sell or purchase shares from the company, thereby increasing capital.

Other qualified retirement plans, such as the 401(k) (without the ESOP feature), profit sharing plans, and IRAs (with some limitations) are qualified to hold Sub S stock but they are required to pay unrelated business income tax (“UBIT”) on Sub S earnings. The ESOP is designed to be not only an employee benefit but a financing tool and a means to create liquidity for shareholders. In a Sub S, it serves all three purposes in spades. The creation of an ESOP in a Sub S is not without complicated review of issues such as the ESOP Anti-Abuse Law and other areas. There are also certain specific provisions that need to be addressed when a Sub S is used in an ESOP to ensure that the total number of shareholders do not exceed the maximum amount of shareholders allowed for the Subchapter S corporation (currently 100, counting six generations with a common ancestor as one shareholder).

If you need any further information about Sub S or the use of ESOPs, with or without Sub S, please contact us.

TROUBLED BANK ACQUISITIONS

Troubled bank acquisitions are a hot topic in the community banking sector. The near future will present healthy institutions a number of opportunities to acquire their less fortunate troubled counterparts. The following five principles are essential to planning for and executing a successful troubled bank acquisition:

- Decide early whether a troubled bank acquisition will be pursued – The board of directors should determine whether a troubled bank acquisition fits within the organization’s long-term strategic plan long before an opportunity to acquire a troubled institution presents itself. This will allow the Board to fully consider and debate the viability of a troubled bank acquisition while being free from the time constraints normally associated with these types of transactions.
- Identify the ideal target – The board of directors should identify the ideal troubled acquisition candidate. Identifying the ideal troubled candidate does not require a board to pinpoint a specific institution. Instead, the board should lay out the general characteristics of the ideal troubled bank. The board should pay special attention to geographic location, asset size, asset quality, earnings, market share and the like.
- Use outside assistance to determine the structure of the acquisition – Recent troubled bank acquisitions have come in all shapes and sizes. With a number of different options available, a bank should rely on outside attorneys or consultants to determine which transaction structure will yield the greatest likelihood of success.

- Perform extensive due diligence – Troubled banks are troubled for a reason. Any bank considering a troubled bank acquisition must perform extensive due diligence on the potential target. The due diligence should identify how the troubled bank arrived in its troubled condition and, more importantly, how much assistance is needed to “fix” the problem.
- Ensure proper resource allocation – Do not over-allocate financial and managerial resources to a troubled bank once the acquisition is complete. Doing so will likely result in not one, but two, troubled banks. Bank management should ensure proper resource allocation between the recently acquired troubled institution and the original, healthy institution following a troubled bank acquisition to yield the greatest likelihood of success.

The near term will present a number of troubled bank acquisition opportunities for healthy community banks. These opportunities can fit within a bank’s long-term strategic plans and return an acceptable profit so long as the five principles of acquiring a troubled institution are followed. For more information, please request a copy of the Gerrish McCreary Smith article, “Planning for and Executing a Successful Troubled Bank Acquisition”.

GOING GREEN



In the interest of “going green”, Gerrish McCreary Smith is contemplating discontinuing the paper version of its newsletter. In order to do this, we need your email address. Please email Linda Dandridge at ldandridge@gerrish.com, with the email address at which you would like to receive your next newsletter. Thanks for the help.

CUSTOM DIRECTOR PROGRAMS & PRESENTATIONS

In addition to facilitating numerous strategic planning retreats and proprietary director and officer training sessions, Gerrish McCreary Smith also has recently provided speakers for the following trade associations:

- American Bankers Association
- Arkansas Community Bankers
- Bank Holding Companies Association
- California Independent Bankers
- Community Bankers Association of Alabama
- Community Bankers Association of Georgia
- Community Bankers Association of Illinois
- Community Bankers Association of Indiana
- Community Bankers of West Virginia
- Federal Home Loan Bank of Kansas City
- Federal Home Loan Bank of Seattle
- Independent Bankers of Colorado
- Independent Community Bankers of America
- Independent Community Banks of North Dakota
- Independent Community Banks of South Dakota
- Indiana Bankers Association
- Iowa Independent Bankers
- Louisiana Bankers Association
- Michigan Association of Community Bankers
- Missouri Independent Bankers Association
- Montana Independent Bankers
- Tennessee Bankers Association
- Texas Bankers Association
- Virginia Association of Community Banks
- Washington Bankers Association
- Washington Independent Community Bankers Association
- Western Independent Bankers

Topics include enhancing shareholder value with or without sale, dealing with the regulators in an uncertain environment, corporate governance, strategic planning, mergers and acquisitions, employee benefits, mediation and other dispute resolutions, and similar topics.

Please email us or visit our website at www.gerrish.com for a complete listing of upcoming conferences and seminars at which we will be providing speakers. Gerrish McCreary Smith, Consultants and Attorneys, is also available to facilitate strategic planning retreats and proprietary director training designed for your board of directors.

NEWSLETTER HIGHLIGHTS

- 2009: Survive or Thrive?
- Pick Up In Merger And Acquisition
- Community Bankers Revolt
- Now Is The Time For Sub S
- Deferral Of Interest On Trust Preferred Securities
- ESOPs in Sub S: So Good It Should Be Illegal!
- Troubled Bank Acquisitions

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AREAS OF SERVICE

Gerrish McCreary Smith, LLC, Consultants and Gerrish McCreary Smith, PC, Attorneys are committed to the delivery of the highest quality, timely and most effective consulting and legal services **exclusively to community financial institutions** in the following areas:

FINANCIAL ADVISORY/ CONSULTING SERVICES

Financial Modeling	Subchapter S	Executive Compensation
Acquisition	Financial Analysis	Employee Benefits
Strategic Planning		Estate Planning
Capital Planning		Mergers & Acquisitions
Tax Planning		New Bank Formations
S Corporations		Going Private

LEGAL SERVICES

Mergers and Acquisitions	Securities Offerings
New Bank Formations	Holding Company Formations
Dealing with Regulators	Director and Officer Liability
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Employee Benefits	Executive Compensation
ESOPs	Federal and State Taxation
Private Securities Placements	General Corporate & Securities
Estate Planning for Executives	Probate
S Corp Formations	Going Private

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