

THE



*Opening the door to new ideas*

# Chairman's Forum

NEWSLETTER

***Gerrish Smith Tuck, Consultants and Attorneys***

*December 2019*

Merry Christmas and Happy Holidays! As we close out the year, we think back on the countless Board meetings, stockholder meetings, strategic planning sessions, conferences, conventions, webinars, telephone conferences, office meetings and other opportunities we have had to meet with wonderful community bankers all across the country. From Washington state to Florida, from Maine to southern California, from Texas to North Dakota and (almost) every town in between, 2019 has been a busy year for us, but a great year for many of our clients and we appreciate the opportunities you have extended to us whether in good times or difficult times for your organizations to allow us to be a part of your organizations on a direct level as your counsel and advisor or indirectly by allowing this and our other newsletters to be a part of the materials your organizations value for advice.

In this year's final edition of *The Chairman's Forum Newsletter*, we will take a look at some ongoing critical issues Boards face and some recent circumstances we have encountered in the hope that it brings you more information about how to improve the performance of your Boards and your organizations in general. We are blessed to have all of you as our clients and friends and we look forward to a productive 2020. Happy New Year and we hope to see all of you soon.

Happy Reading!

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## *Chairman's Summary*

- ◆ How does your organization make decisions?
- ◆ Should the Board or Board members retain consultants?
- ◆ Your fiduciary duties are more important than your personal interests.
- ◆ What is the Outlook for 2020?

## *How Does Your Organization Make Decisions?*

As we mentioned in the cover letter, we have been in all kinds of different organizations this year in all different parts of the country. However, if there is perhaps one commonality we find among almost every community bank Board of Directors it is in a key fact of how they process information and ultimately make critical decisions. The interesting commonality is that almost never is the decision made purely in an economic or monetary vacuum.

By way of example, consider a bank that is thinking about selling, or a bank that is thinking about buying another bank, or a bank that is trying to decide if it should deploy capital to repurchase its stock, or an organization thinking about implementing an employee stock ownership plan, or any of a number of different big decisions an organization might make. We find that community banks focus intently on the economic proposition that decision will bring to bear and its impact on stockholder value, specifically, but rarely is that the ultimate and sole deciding factor. Rather, we see community banks all across the country take into consideration the impact the decision will have on their local

community, how could it impact other industries within their market, how will the families of owners feel about a decision, how will our employees be benefitted or harmed beyond mere economics if a decision is made, etc. You see the beauty of being a Chairman or a Board member of a community bank Board is that your sole deciding factor on any particular item of concern is rarely bottom-line profitability, does it add more dollars to stockholders' pockets or similar concerns. The good news (but sometimes making the decision more difficult) is that we do in fact consider the impact on our communities, the impact on our employees, the impact on our customers. So, as you go into 2020, continue to keep that bedrock principle in mind and continue to live out those mission statements you have developed where your community, your customers, your employees and your community banking family are of significant value to you.

### ***Should the Board or Board Members Retain Consultants?***

Some of you are probably giving this question a strong eyeroll given that you know our firm is both a law firm and a consulting firm. So, you would certainly assume we would be all in favor of Boards hiring outside consultants to assist them particularly if it involves your hiring of our firm! There is some truth to that, but let us add a bit more color to the discussion.

We certainly think that Boards can be benefitted through the input and advice of outside consultants like our firm or others. That generally goes without saying. But consider this, as Chairman of the Board are you comfortable with a few of your directors going out and hiring their own consultant to get their own advice on an issue being considered by the Board? Our guess is many of you, in that scenario, might take a slightly different approach. Why didn't they come to the Chairman of the Board and mention this? Why wasn't this a consideration for the entire Board to hire its own consultant? Why did only a few of the directors hire an outside consultant to advise them specifically? Is this setting the Board up

into different camps who each go to get their own consultant to advise on a particular question or concern being addressed by the Board? Is there a certain division among the Board that is creating this such as the outside Board members feeling as though they need to hire their own consultant to advise the outside Board members compared to the information they are receiving from inside Board members?

Generally speaking, we disfavor the Board dividing into camps and hiring their own experts to give them separate advice. However, we recognize that there could be an unusual circumstance where that could be in the best interest of organizations. In particular, our firm has often been engaged by outside directors when a bank has regulatory or other issues to give the outside Board members advice perhaps separate and distinct from what information they were receiving from insiders. But as Chairmen or as Board members, often the key way to prevent your Board from being divided into different camps who feel some pressure to hire their own outside experts is through a simple fundamental process of openness, honesty and transparency. Interestingly, that process begins with the Chairman of the Board absolutely encouraging or even demanding that opposing viewpoints or opinions be aired inside the boardroom. We do not all have to go along to get along. We do not all have to agree on a course of action in order for the Board to move forward by a majority vote. Chairmen should ask for opposing views, ask for dissenting opinions or even occasionally the Chairmen may be the one to raise an opposite argument even if he or she is not in support of it in order to at least begin some discussion of alternatives. So, while outside consultants to the Board are not a bad thing and can be appropriate in some circumstances, if they are being used because Board members do not feel they are getting appropriate information or there are already divisions into camps, see if that can be thwarted by more openness in dialog, discussion and more transparency.

## **Your Fiduciary Duties Are More Important Than Your Personal Interests**

Over the second half of the year, we have encountered a number of situations, often involving acquisition scenarios, where Board members have had to confront the difficult task of fulfilling their fiduciary duties or serving their own personal interests. Now, naturally, you would think that would be an easy choice because exercising your fiduciary duties intentionally means putting the organization above your self-interest. Standing alone, that seems like an easy decision to make, but consider if you are a Board member or a Chairman of an organization that has been thinking about selling. Perhaps even consider you have been in the process of negotiating with one or more potential buyers for six months or so and the transaction appears to be almost at the eleventh hour of getting a deal actually signed, so that deal would be of great economic benefit to you immediately, but yet the overall terms or structure of the deal do not seem to be favorable overall to your community, other stockholders, the employees of your organization or other financial or non-financial factors. Would you be willing to walk away from an otherwise viable deal, reinitiate discussions with other parties or take other dramatic steps when you feel like you are already many months down the road and your personal interests would be served by moving forward to close the deal?

We have faced several situations where a Board of Directors has had to make the difficult decision somewhat at the eleventh hour to terminate a deal to walk away from negotiations that were not producing results, to back out of further discussions with a party that seemed like a great partner on the front-end, but after further negotiation and due diligence more viable opportunities seemed better.

Those circumstances are never “clean” and, rather, are often difficult. But your fiduciary duties remain constant throughout a transaction even after you are

beginning to count your money or think about what size boat you want to buy with the proceeds. Therefore, continue to keep your core fiduciary duties at the forefront of your thoughts throughout transactions.

### **What is the Outlook for 2020?**

As we get ready to head into 2020, we wanted to share with you some summary information we have provided to a number of banks around the country as part of the outlook for 2020 and some key things Boards and Chairmen should be aware of. As somewhat of a summary listing, please note these core fundamental issues we are outlining as top strategies for 2020:

1. Focus on core profitability and improving your overall efficiency.
2. Make the tough decision to eliminate unprofitable products, services and branches in 2020.
3. Ensure your organization is in the correct structure (bank holding company, Subchapter S, branch structure).
4. Deal with emerging issues before they become a problem including creating liquidity for stockholders and focusing on Board, management and ownership succession.
5. Make strategic decisions on deployment of capital. Do you have too little capital and need more? Do you have too much and need to use it?
6. Continue to focus on attracting and retaining key management and implement the types of incentives necessary to do so.
7. Engage in smart, practical strategic planning, not esoteric concepts.

## *Meeting Adjourned*

Another Chairman's Forum year comes to a close and we are looking forward to seeing many of you at the annual Chairman's Forum meeting to be held in Naples, Florida in January. Until then and until our next newsletter, we hope you have a blessed holiday season, a joyous new year celebration, and prosperity and health in the new year.

Until next time,



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