

The



Opening the door to new ideas

Chairman's Forum

Newsletter

Gerrish Smith Tuck, Consultants and Attorneys

February 2017

Now that the first couple of months of the new year are drawing to an end, it seems most of us have settled into a more standardized routine. As a result, we are seeing more of our clients around the country focusing on annual stockholders meetings, implementing strategic initiatives that were considered the previous year, outlining new plans, structures and strategies for 2017 and setting a timetable for their strategic planning sessions later in the year.

This renewed focus is resulting in a number of clients contacting us with questions that initially seem pretty common, but we thought it would be important to share some of these with you to pass along some practical advice in a number of different areas. Of particular concern for many clients has been dealing with Board of Director issues, the relationship with stockholders, the mechanics of the annual stockholders meeting and similar fundamental issues. Therefore, we hope you will find some interest in these items and will find that they can be of benefit to you.

We also look forward to seeing many of you at the Independent Community Bankers of America Annual Convention in San Antonio during the month of March. Please do not hesitate to stop us during the Convention or speak to us following one of our presentations if we can be of help to you or just to say a friendly hello. We would love to have the opportunity to chat with you.

Happy Reading!

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and

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Chairman's Summary

- ◆ Corporate documents and records should generally be available to directors and shareholders.
- ◆ Be mindful of new market competitors.
- ◆ Mergers of equals (still) don't work.
- ◆ "Staying the course" and contentment are strategies.

Give 'Em What They Want

We have encountered a number of situations where a Board of Directors has somewhat been caught off-guard by demands from a fellow director or a stockholder asking for certain corporate records. This might include minutes of Board meetings, minutes of shareholder meetings, a copy of a stockholders list, the Charter and Bylaws of the company or something similar. Most states have certain statutory provisions that govern the documents that directors or stockholders have a right to inspect. But, generally speaking, most documents are subject to review (and in many cases copying) by directors or stockholders. Often times, the request is made during periods of disagreement, argument or dissension. As a result, a request is normally met with panic, a scramble to see what the Articles and Bylaws say, a request for someone like our firm to conduct an analysis of state law to see if documents have to be provided, etc.

While it is true that some provisions in state law can work to an organization's benefit to restrict the ability of a director or, more likely, a stockholder, to review documents by putting a requirement for the request to be made in writing, to state a specific purpose or some other administrative procedure, the documents generally are available for inspection. But the laws might work to your benefit. For example, if a stockholder demands a copy of a stockholder list, your state law may only require that a list of stockholders be provided. It may not, for example, require that you provide the number of shares each stockholder owns, a mailing address, a requirement to provide the list in alphabetical order or anything similar. So, read your statutes carefully. But, generally speaking, our typical advice is to not necessarily delay something that is ultimately going to be required anyhow. If someone needs or wants a copy of a stockholder list, corporate minutes or something else because they are concerned with a lack of transparency, we generally do not have any problems providing that.

Often, the hesitancy to provide corporate documents or the failure to respond to the requesting party only confirms suspicions in that party's mind that there may be things transpiring that are somehow misleading or misguided, when that is really not the case. If someone is requesting documents for what you think may be ultimately a hostile reason such as future litigation, initiating a proxy battle where you are not confident you have the votes or something similar, then use the full effect of your lawyers, state law and provisions in your Articles and Bylaws to delay, but otherwise we generally recommend as much transparency as possible in allowing those who have rightful access to the documents to view them on a timely basis.

Be Mindful of New Market Competitors

As Chairman of the Board, one of the large oversight items that you likely are constantly monitoring is the ebb and flow of different competitors within your market. Historically, we have viewed the competitors in our market as the other community banks across or down the street from us that are similar to us. Sometimes, it may mean the larger national or regional bank that we compete against who try to market themselves as community banks. More recently, we are finding ourselves in greater competitive situations with credit unions (and their non-CRA, non-tax status) as well as others like farm credit.

However, if you are looking toward the future at who our true competitors are likely to be, there is an argument that your competitors in the future may not be the companies you most anticipate. Anecdotally, since the first of the year, our firm has received close to a dozen calls from different types of financial technology companies looking to acquire a bank charter, to organize a new bank, to affiliate with an existing bank charter or something similar as a way of leveraging a financial institution for technology-based services, payment processing or something similar that will likely be a competitor to community banks now and in the future. So, as you continue to lead and guide your organization, it is no longer enough to merely look across the street at your fellow community bank and try to match rates with them and compete on local market loans. Rather, as Chairman, be mindful of the entire financial services market (domestic, international and digital) that is continuing to emerge that will likely form a basis of stiff competition in the future. In doing so, look for opportunities

where your bank can become part of the growing financial technology platforms to better serve your customers.

Mergers of Equals (Still) Don't work

Our firm often harps on the idea that mergers of equals really do not exist. Parties to a proposed merger of equals rarely wind up with half of one Board and half of another Board, equal asset sizes, dividing the management team and the employees or other silly notions of creating a “co-equal” financial institution. Someone is the buyer and someone is the seller.

Often, where two banks of about the same asset size are proposing a combination, we have been asked about the best way to go about blending the cultures of the banks. Our short response is, you don't! One bank's culture is going to dominate and become the culture for the entire organization. It is better to get that resolved and understood on the front-end. Recently, a comment from one of our clients shed an interesting light on this area of discussion as his organization pursued what both parties were describing as a merger of equals. The numbers seemed to make sense, the parties were willing to do a deal, the due diligence went fairly well and then they got around to looking at the softer, cultural types of issues. The interesting comment from this client was that they thought a merger of equals might be possible because they shared common values. But, as they dug deeper, the banker explained to us that, while they shared common values, common values did not equate to common cultures.

So, for example, we both may be over the top in our dedication to customer service, sacrificing short-term profitability for more investment in our communities, a like-minded value system in how we treat our

employees, but the cultural implications of the two organizations and how they go about living out those values and structuring their organizations around those principles may be entirely different. In that particular situation, common values did not equal common culture and the failure to have a common culture made all the other aspects of a merger of equals impossible to pull together. So, continue to beware of the alleged “merger of equals”.

“Staying the Course” and Contentment are Strategies

In the ever-increasing fast-paced world we all live in, there always seems to be a drive for bigger, better, faster, more efficient, greater profitability, greater asset size, etc. We often see those desires manifest themselves in the strategic planning process for the scores of banks where we conduct retreats across the country each year. In many of those, we see the Board struggle with the idea of what they should be doing next, what’s the next big project they should focus on, what are the competitors doing, are they being left behind because they haven’t grown as fast as other banks, are there products and services out there that they don’t know about that they should be offering, are they behind in technology, and similar concerns. Recently, one client expressed to us his concern that, as banks seem to be much more optimistic in the new year and are looking at new plans and strategies, his lament was that he felt like his organization really lacked a big strategic initiative to undertake. While his bank was performing well, not subject to regulatory criticism, had happy stockholders, was providing value through dividends and liquidity-type programs, it seemed to him the organization must be lacking because of the failure to have a large strategic initiative they were pursuing. This had even caused some dissension in the

Board with some Board members thinking everything was fine and other Board members thinking that things can't possibly be fine unless you are constantly looking for the next opportunity. Both schools of thought may have their right place for any given organization. But we encourage many of our clients to not necessarily feel the need to go along with the group-think mentality.

For this particular organization, and perhaps for yours as well, the Chairman of the Board came to the realization that there was nothing wrong with taking a year and being content with where they were. There was nothing wrong with having a strategic initiative to simply manage what you already have in a way that continues to provide value for stockholders. If the bank is successful, if the stockholders are happy, if the regulators have no concerns, staying the course and being content with where you are for a period of time may be the most important strategy you can employ. So, give yourself and your other Board members a break that perhaps the year does not have to be packed wall-to-wall with new ideas and new initiatives. Be thankful for what you have and enjoy the benefits knowing there will come a season when it will be time once again to begin the chase for the next big thing.

Meeting Adjourned

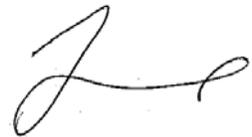
We trust that the first two months of the year have been good to you and we look forward to seeing many of you in San Antonio at the ICBA Convention. We would welcome the opportunity for you to attend Jeff Gerrish's session or Philip Smith's session and we look forward to being with many of you and your Boards throughout the year. Let us know any time we can be of assistance.

Until next time,



Philip K. Smith

and



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