

The



# Chairman's Forum

*Opening the door to new ideas*

**Newsletter**

*Gerrish Smith Tuck, Consultants and Attorneys*

*August 2018*

Welcome to this month's edition of *The Chairman's Forum Newsletter*. In this edition, we look at some common mistakes organizations make in stock repurchase transactions, we analyze some recent headlines regarding FinTech companies and the impact they may or may not have on your organization, we critique how community banks utilize and market their technology, and we share some exciting news regarding a new M&A conference.

From updating corporate transactions to being aware of the latest technology, you can see that the Chairman's job is never a dull one. We hope as you read this month's edition and look at some of these scenarios, you will question how your bank is handling things and consider ways to improve, modify or enhance various organizational protocols and your leadership of the organization. If we can help or answer your questions, don't hesitate to contact us.

Happy Reading!

Jeffrey C. Gerrish

Philip K. Smith

Greyson E. Tuck

*Gerrish Smith Tuck  
700 Colonial Road, Suite 200  
Memphis, TN 38117  
Phone (901) 767-0900  
[www.gerrish.com](http://www.gerrish.com)*

**Copyright © 2018 – Philip K Smith**

Any accounting, business or tax advice contained in this communication, including attachments and enclosures, is not intended as a thorough, in-depth analysis of specific issues, nor a substitute for a formal opinion, nor is it sufficient to avoid tax-related penalties. If desired, Gerrish Smith Tuck would be pleased to perform the requisite research and provide you with a detailed written analysis. Such an engagement may be the subject of a separate engagement letter that would define the scope and limits of the desired consultation services.



The

# Chairman's Forum

*Opening the door to new ideas*

Newsletter

*Gerrish Smith Tuck, Consultants and Attorneys*

*August 2018*

## *Chairman's Summary*

- ◆ Avoid common mistakes in stock repurchase transactions.
- ◆ Should you be afraid of FinTechs?
- ◆ Poor use and marketing kills technology.
- ◆ Get the right M&A advice.
- ◆ A bright outlook for community banks.

## *Avoid Common Mistakes in Stock Repurchase Transactions*

One of the best corporate transactions a financial institution can often undertake is a stock repurchase program. Often, we will describe this to a client as a strategy of “purchasing your own bank” as opposed to spending the time and capital looking for another entity to acquire. While it may not sound as trendy or sophisticated to merely buy back your own stock as opposed to buying another bank, somewhat surprisingly you may find that repurchasing your own stock is more accretive on an earnings per share basis than buying another bank. Therefore, it is incumbent in considering stock repurchase transactions to avoid some common mistakes we often see. We have described some of those below.

Clearly, one of the benefits of offering to purchase stock from stockholders is to provide a liquidity mechanism whereby stockholders can convert their shares to cash when they might not otherwise be able to, particularly for an illiquid community bank stock. However, we often see financial institutions struggle with this idea because they generally are aware that, while certain stockholders want to sell stock, other individuals may want to buy stock. Therefore, we will sometimes see financial institutions engage in a stock repurchase transaction, but then immediately turn around and offer to resell those shares to other individuals who may want to buy stock thereby discounting some of the benefits that have been gained through consolidation of ownership, increasing earnings per share, improvement in return on equity, etc. So, do not assume that a stock repurchase transaction has to immediately be accompanied by an offer to resell those shares. Consider taking the benefits of simply reducing your total stockholder base and having a smaller number of shares outstanding. Furthermore, if you were going to reissue or resell shares, you need to follow certain corporate formalities as outlined further below.

If you are a non-public company, at what price should you acquire the shares? Should you go and get a valuation to tell you the correct price? While you might think getting a valuation is the correct answer, and we see some institutions do that, for a non-public company we typically recommend not getting a valuation. Rather, the Board of Directors, within its fiduciary duties, can really set the price wherever it wants, provided it has some reasonable basis to do so and provides full disclosure related to other recent

stock acquisition prices that may have been less than or greater than the price that is being offered.

The reason we do not recommend getting a valuation is because it can often limit the Board's actions in ways that it might not anticipate. For example, if you receive a relatively low valuation and there is a large block that is available for repurchase, but the seller wants a little bit of a premium, it might be argued to be a breach of the Board's duties to purchase at a price greater than a stated valuation. Likewise, any attempt to offer less than the stated valuation would likely result in a seller declining to sell at the discounted price and the Board would be required to disclose that valuation. So, continue to reap the benefits of being a private company by not having a formal valuation for stock repurchase purposes.

Be sure you are following the corporate formalities that are required. If your organization (typically your bank holding company) is initiating a stock repurchase transaction and making offers to buy stock from stockholders, understand that you are asking your stockholders to make an investment decision to sell their shares. As a result, certain corporate formalities need to be followed including full disclosure of all relevant financial and related terms, recent trading prices for other shares, a "program" to repurchase shares must be open for at least 20 business days, you will need some formal documentation for stockholders to attest to their ownership of the shares and perhaps to deal with circumstances of lost stock certificates and similar issues. So, don't try to handle the repurchase of

shares informally, ensure that you have the appropriate corporate documentation.

### ***Should You Be Afraid of FinTechs?***

There has been a lot of talk in the past about financial technology companies, sometimes called FinTechs, taking over the world of banking and diminishing what your organization otherwise does. However, we believe a lot of that is simply overhyped conjecture. Our personal experience has been that, when we are often contacted by financial technology companies looking to make an acquisition of a small bank charter or looking to get into the business of banking, they really have no understanding of how to function in the regulated environment. When those entrepreneurial types are confronted with the idea of submitting biographical and financial reports to federal regulators, perhaps becoming subject to some type of Community Reinvestment Act (CRA) requirements and dealing with periodic examinations of their businesses, they often “run for the hills”.

Recently, the OCC has begun developing procedures for FinTech companies to receive a national FinTech charter, but there is talk about that type of charter being subject to at least some minimal CRA requirements, certain licensing requirements, etc. While FinTechs initially think that having national preemption over various state law licensing requirements will be beneficial to them, we think they really do not know what they are asking for. We think they will soon discover that regulation of an entrepreneurial company by a bank regulatory agency will prove far less appealing than not pursuing a bank charter. Therefore, as you consider the

various competitive factors impacting your organization, perhaps we keep FinTechs in mind, but we do not let it alter our smartly developed strategic plans.

### ***Stop Killing Your Technology Plans***

As Chairman of the Board, you probably consider that one element of your overall strategic plan should be to have a well-developed, well thought out and fully implemented technology plan. This goes for internal technology in terms of data processing functions, backroom operations and the like, but it also deals with your customer-facing technology such as your webpage, mobile banking products and similar functions. As Chairman, you should ask yourself these difficult questions: “How many of our technology products do I personally use?; Do I require Board members to frequently access and utilize our technology products?” Technology should not be thought of as a strategy for customers less than a certain age, it should be thought of as a tool that benefits all consumers and customers. How can we expect our Board members to be the chief marketers of our organization if they don’t use our products and services that save the organization the most money and provide the best service functions?

Likewise, consider how you are marketing and implementing your technology. For example, we have seen more than one bank highly tout their mobile banking or their “e-suite” of electronic products. Then, the bank is so proud of these products that, in order to sign up for all of the new technology functions and on-line banking, the only thing you have to do is find your local branch, come down and sit in the lobby for 30 minutes, wait

to see a customer service representative and then spend an hour signing all of the documents and getting ready to take advantage of the latest technology. Obviously, that seems counterintuitive to most consumers of technology. So, it is not enough to merely have technology, but to market it and implement it in an efficient way and with the full support and use by the Board of Directors.

### ***Do M&A Correctly***

Obviously, there is a lot of talk in the current environment about mergers and acquisitions, particularly among community banks. However, we often see community banks lose the correct focus of how to approach deals as either a buyer or a seller or in considering the market as an entity remaining independent because they attend conferences or seminars that are not geared specifically for community banks. That is why we are happy to announce our second community bank M&A conference this year. We will be hosting that conference in conjunction with the Independent Community Bankers of America on October 29 and 30 in downtown Nashville, Tennessee. If you have not been to Nashville lately, there are tons of new hotels that have been built, the downtown area is booming, major professional sports franchises like the NFL's Titans and NHL's Predators and, of course, all of the best music you can handle up and down Nashville's famous Music Row. So, we would encourage you if you have any interest on any aspect of the current M&A environment to join us for this one-of-a-kind workshop in Nashville. To learn more, you can click on the following link: [Mergers & Acquisitions](#)

## *Meeting Adjourned*

As we close this edition of *The Chairman's Forum Newsletter*, we wanted to point out a positive bright spot. We have the opportunity to teach at a number of the banking schools across the country. In doing so, we have the opportunity to see some of the upcoming banking talent who are committed to being the leaders of your organizations in the future and we are extremely excited about their dedication to the profession, their engagement, their excitement in evolving technology and their outlook on the future. In all of the other various tasks and duties you have as Chairmen, don't miss the opportunity to provide a complimentary or encouraging word to some of the younger officers at your institution. They need to know that there is a future for them, that you appreciate their dedication and willingness to serve the industry and, in doing so, you will greatly prepare your organization for long-term success.

Until next time,



Jeffrey C. Gerrish



Philip K. Smith



Greyson E. Tuck

*Gerrish Smith Tuck  
700 Colonial Road, Suite 200  
Memphis, TN 38117  
Phone (901) 767-0900  
www.gerrish.com*

### **HOW TO CONTACT US:**

If you have questions or comments about the newsletter or would like to ask a follow-up question, please email Philip Smith at [psmith@gerrish.com](mailto:psmith@gerrish.com).

Copyright © 2018 – Philip K Smith

Any accounting, business or tax advice contained in this communication, including attachments and enclosures, is not intended as a thorough, in-depth analysis of specific issues, nor a substitute for a formal opinion, nor is it sufficient to avoid tax-related penalties. If desired, Gerrish Smith Tuck would be pleased to perform the requisite research and provide you with a detailed written analysis. Such an engagement may be the subject of a separate engagement letter that would define the scope and limits of the desired consultation services.