The

Chairman's Forum

Opening the door to new ideas

Newsletter

Gerrish Smith Tuck, Consultants and Attorneys
April 2019

Springtime is upon us and that often involves some element of "spring cleaning". For many of us, that will be the house, the garage, cleaning off our golf clubs or other personal adventures. But in the banking arena, that can mean taking a fresh look to think about ways to clean up our banks a bit. In this month's edition of *The Chairman's Forum Newsletter*, we look at a number of different issues in that regard which might help us clean up things from a corporate governance standpoint, clean up areas or issues where there could be regulatory concerns, clean up the structure of our Board of Directors, clean up the use of technology within our organizations or even clean up our stockholder lists in ways that improve the value of our organizations. We will discuss all of these issues in this month's newsletter and hope that you will find it beneficial.

At the end of the newsletter, we also point out one of the upcoming workshops that we will be presenting and hope many of you will choose to attend. If you have questions on any of these matters, we look forward to hearing from you.

Happy Reading!

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Chairman's Summary

- Continue to be cautious with the regulators.
- Two ideas to improve board governance.
- Use technology to improve your organization.
- Consider attending our upcoming Community Bank Merger and Acquisition Workshop.

Regulatory Good News / Bad News

In a recent edition of *The Chairman's Forum Newsletter*, we mentioned the pronouncements by FDIC Chairman Jelena McWilliams citing her comments about making sure organizations are clean and healthy without necessarily having examiners going in to look for dirt. In response to that, we had a couple of positive comments from our clients, including one who mentioned that, for the first time that he could recall, at an examination the regulatory personnel made a few comments or suggestions, the bank immediately undertook to make the suggested changes and, as a result, there was no write-up or mention of those in the exam report. Doesn't that seem to be the way it ought to be? That certainly is good news. We hope to see more of that type of regulatory attitude.

However, on the bad news side, we are equally seeing a few more instances of regulators being regulators. In particular, there seems to be a total misunderstanding by some frontline examiners of the true distinction between large banks and community banks. If we ever get to a point of a bifurcated or tiered system of regulations so that small banks are not grouped with large banks, it is our great hope that we are also able to carve out some specific examination teams or a dedicated agency that does nothing but examine smaller community banks.

Take, for example, some recent comments we have had from a client who had an examination team indicating that the bank needed to change some of its procedures, protocols, reevaluate its risk analysis and rating primarily because the examiner told the bank he had recently been at a large regional multi-state organization that had different processes and procedures in place. In addition, the examiner wanted to know why the bank had a very large individual depositor in their bank and why that customer would not want to put their money in a larger bank! Can you believe that?! Clearly, there is a disconnect with many examiners of the true role that community banks play. So, as a leader of a community bank, keep looking and hoping for a return to rationality with the examiners when they are examining your organization, but also be prepared to defend your actions and activities as a community bank in light of your location, your size and your overall risk profile. You know your bank better than they do.

Good Board Governance Practices

As Chairman, you may often find yourself in the role of trying to determine best practices including good corporate governance for your Board of Directors. Recently, we have been assisting a number of community banks with various considerations in this regard and wanted to pass along a few that we thought might be helpful.

The first consideration would be to think about implementing a formal director emeritus program. In its simplest form, if someone is a director emeritus, it simply means that they previously were a regular member of the Board of Directors, they previously had full voting rights and carried all of the traditional duties, obligations and responsibilities as a board member. However, once director emeritus status is bestowed or achieved, the individual still participates, to the extent they want to but is not otherwise required to, in all typical board activities. That means attending monthly board meetings, sitting in on committee meetings, attending the annual strategic planning session, asking questions and fully participating in board meetings, using their authority, power and influence to shape the direction of the organization, change votes and all other facets of being a director. However, the one critical difference is that they no longer have an actual vote and are not formally elected by stockholders.

This may often be an excellent board succession tool. So, rather than setting some mandatory retirement age and then having a director rotate off the board once reaching that age, a director meeting that age might move to a director emeritus status (if a majority of the board wants them to and the director accepts that role) so they continue to be involved in the overall affairs of the bank and/or holding company, but simply no longer have a legal vote. That type of structure may allow you to add new board members and continue to promote fresh ideas without the downside of being the Chairman who always kicks off all of the old folks. Think of it as a "mandatory emeritus" status.

A second governance consideration relates to your role as Chairman. This will apply if you are a Chairman who also serves as an officer of the organization, are part of a family ownership group or another dominant stockholder group or otherwise might be deemed to be an "insider". In those circumstances, we have found that it generally is best to have someone who serves in a role akin to a "Vice Chairman" or as a "Lead Outside Director". The idea is to have a non-insider be able to hold an executive session of all outside directors for the purpose of exercising fiduciary duties to ask questions of each other, explore issues with insiders and management members, and other typical things. Then, after those meetings are held, simply report the findings back to the President or other board members. It is not a requirement, but it certainly is a consideration as good corporate governance for closely held or family-run institutions.

Using Technology to Improve Your Organization

Most Chairmen that we run into are not necessarily the technology experts in their organizations. However, as Chairmen, you do not necessarily have to be technology experts to understand the importance and relevance of technology to your organizations and how it can be used to improve your boards, your management teams and really the entire culture of your organizations. Following are some examples of ways we have seen organizations use technology that you might consider as Chairmen.

The first is one that many of you are probably already using, but it was not widely used even a short time ago. That is the process of having electronic versions of your board materials, such as through electronic board books, a secure on-line data portal or other similar tools. Let's be honest, when that type of technology was first promoted for Boards of Directors as a way of saving the planet, helping grow more trees by reducing the cost and use of paper, many of us (particularly those of you whose banks are in timber country) rolled our eyes. But when we began to explore the ways in which the use of that technology could make our board members more informed before making decisions, could allow for a quicker and cheaper dissemination of information, we became interested in it. It could also be used as a recruitment tool for new directors to show the advancement of the board, ways in which a director can still be active in their trade or business and keep up with the daily informational needs of a bank director, while also being up to date on all the information needed for the upcoming board meeting and other critical functions. If you have not already adopted some type of electronic means of communicating board materials to your board members, now is the time to do so.

Secondly, we have recently experienced a bank that uses technology to promote and improve the sales culture for the overall organization. The result has been improved efforts by loan officers and more loans on the books for the bank. This was simply done by instituting a policy that all lending personnel have a bank-issued iPad that they use to carry with them to meet customers, have documents signed, show the latest products and services, etc. The loan officers are actually getting out from behind their desks and going out to meet prospects with the iPad in hand to talk about how they and the bank can help them. This can work for deposit customers and other types of customers as well. It has really energized the lending officers to present more of a sales face of the organization because it is more technology driven, more cutting edge and, frankly, more “fun”. Consider the example of car dealerships in today’s environment. All of them, as part of their sales efforts, continue to sell vehicles in the exact same way that they have done for decades. A large lot of vehicles, bright lights, balloons, sales tags, bright colors and salespeople who will meet you when you drive onto the lot, walk you around and show you the various vehicles and answer your questions and try to close the deal with you. But an equally important function of their sales process these days is technology-driven by creating an on-line market for their vehicles by posting information and pictures about every single vehicle they have on their lot on their website. In that fashion, most people now come to the lot with a few vehicles in mind that they want to see after they have done their browsing on-line. In essence, the dealership took the vehicles to the potential consumer. In a similar fashion, in banking, if we can reach out to potential customers through our websites or even through the use of iPads or other technology devices, rather than waiting for the customers to come to us, we may be able to reach a broader market.

Meeting Adjourned

A lot of the discussion in this month's newsletter centers around issues impacted by the current merger and acquisition environment. We continue to see that environment being fairly strong over the next 12 to 24 months, so be mindful of how it is impacting you in other ways. In addition, if the direct consideration of a purchase or sale is in your future, please remember that Gerrish Smith Tuck, in conjunction with the ICBA, will be hosting a specific workshop dealing with the unique issues associated with buying or selling a community bank. This Community Bank Merger and Acquisition Workshop will be held June 18 and 19 in St. Louis, Missouri.

To watch a promotional video about the workshop, Click Here.

For registration or other information, Click Here.

Until next time,

  

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