The
Board Chair Forum
Newsletter

Opening the door to new ideas

Gerrish Smith Tuck, Consultants and Attorneys
February 2021

In this month's edition of the Board Chair Forum Newsletter, we take a quick look at some of the various topics we are seeing community banks addressing in strategic planning sessions. Likewise, we also address how corporate governance continues to take a lead role as boards consider their strategic plans and the outlook in 2021 and beyond. We offer up some ideas on best practices in that regard.

We also remind you to take a look at your corporate documents occasionally and not wait until you have a problem in order to try to fix something. Be proactive in terms of what you are doing in that regard, and make sure it is part of your overall corporate governance planning.

Finally, we look at the sometimes touchy subject of diversity, and specifically diversity in our boards of directors. We take a brief review of a comment in a recent publication that suggests that if organizations are not willing to be proactive in terms of promoting diversity, we may have our friendly regulators trying to mandate it for us. We think you will find this outlook interesting.

Keep up the good work and we hope you enjoy this month's edition.

Happy Reading!

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NEWSLETTER

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Board Chair's Summary

- Strategic Planning Time Again
- Corporate Governance Work is Ongoing
- Changes to your Articles and Bylaws
- Is Diversity a Good Thing?

Strategic Planning Time Again

As we move away from January and deeper into the first quarter of the year, more organizations are renewing their strategic planning efforts. This year, we are seeing that take on a bit of a new approach for many of our clients. For example, when we are facilitating strategic planning sessions, we are now often surveying the attendees on the bank's responses to COVID, with things like effectiveness of PPP, the ability to react quickly, any exposure that has been presented from lack of technology, and other factors. In essence, it asks each bank to do a post-mortem on how they survived (and are still surviving) COVID.

In particular, we find those discussions turn to what the board's role had been and how the Board Chair governed during those times. Did our organization demonstrate an ability to adapt to an unprecedented challenge? Did we try too long to assume everything would be back to normal in a few months? Were we willing to reallocate capital resources away from a pet project toward a greater investment in technology? Those are the types of key focuses that will help our organization strategically plan for the future.

Similarly, you can't talk about the impact of COVID on community banks without talking about the impact of technology. Are we now appropriately structured to allow remote working on a permanent basis? Did we (or do we still need to) advance our technology platform to allow video conferencing, electronic signatures on documents, rethink how technology has changed the future of our branches? Along those same lines, we often ask our clients two key questions, the first of which is, "Is there anything we started doing as a result of COVID that we need to continue long-term as one of our key strategies?" Secondly, "Is there anything that we stopped doing during COVID that, from a strategic standpoint, we do not need to reinstitute?" Asking your board and executive management team these kinds of critical questions can set a new direction and tone for your organization in the future.

Corporate Governance Work is Ongoing

With the onset of the spring strategic planning season, corporate governance continues to be a key topic. We think it often remains a key hot button for many banks because there is so much information out there that is confusing as to what organizations should be doing and how they should do it. Keep in mind that corporate governance, for non-public organizations, is simply a roadmap for how to manage your affairs. In that sense, it helps you exercise your fiduciary duties. In essence, it is a "do the right thing" guideline.

But even smaller organizations can take to heart corporate governance needs in terms of how board meetings are run (do you use a consent agenda?), the committee structure of your organization (do you have an audit committee comprised of outside directors, even if that is not required?), succession planning (do you conduct board and management evaluations or have some type of written succession plan for the board and management?), capital planning (do you have a written dividend policy that is tied to your overall capital plan?). Continuing your institution's focus on corporate governance may seem like a daunting task because there is always something new coming down the pike, but helping your board recognize that corporate governance is not a burden that requires you to check multiple boxes, but rather, are best practices that help organizations create more organizational efficiency and improve profitability. Therefore, the Board Chair should help set a culture within the board and the management team of embracing new corporate governance techniques.

Changes to your Articles and Bylaws

Every so often, we recommend that organizations pull out their Articles of Incorporation (or Charter in some states) and their Bylaws. If you have a bank holding company, the primary documents will be those of the bank holding company rather than the bank. We recommend that you dust those off, read through them (or hire some firm like ours to review them and give you feedback) to make sure they are up-to-date. Often, we find that if the documents are not periodically updated and reviewed, then the stale provisions can create unexpected problems. For example, we often recommend that organizations eliminate cumulative voting in the election of directors. Many organizations still have that kind of provision buried in their documents. But, would you really want one stockholder who has a certain number of shares to be able to put their own representative on the board of directors even if a majority of all the other shares did not favor that? More typically, you would want each director to be selected by a majority of all the outstanding shares. That is one of those issues that never is an issue until it becomes an issue.

We recently saw an article where one of the most well-known activist shareholders, the Stilwell Group, criticized the change in a corporate document to remove cumulative voting, and the Stilwell Group provided a letter to stockholders saying that the company has "performed dismally" and that the group therefore intends to nominate a director to serve. It would have been much better for that company to take that clean-up measure for its Bylaws prior to having some type of problem, because, now, it certainly looks as though the organization is simply trying to prevent this individual from getting on the board after they pointed out negative bank performance. Particularly those of you that are large organizations with a more fluid stockholder base need to be mindful of what your corporate documents actually provide. We have seen circumstances where something as simple as trying to remove a director for cause can be difficult if the corporate documents have not been modernized in some time, or have outdated provisions. So, the goal is to take a look at those every so often, have them reviewed and scrutinized for modifications that might be appropriate, and then have the new provisions adopted before you have a problem.

Is Diversity a Good Thing?

In the social fabric of today's modern bank, more issues surrounding the topic of diversity, equity, and inclusion are being raised, and that idea is beginning to permeate boardrooms across the country for all size organizations. So, is diversity a good thing? We can certainly think of numerous everyday examples where everyone would recognize that diversity is appropriate. Could you field a football team and be successful with 11 quarterbacks? Could an NBA team thrive only with point guards? Could your financial institution survive with only operations personnel and no lenders? In those examples, it is clear you want different types of people doing different kinds of things. So, we all recognize the need for diversity. The more difficult question, obviously, comes when we start talking about diversity of the types of people themselves, rather than the functions they perform. Should we have different genders represented on the board of directors? Should we have different races or ethnicities represented on the board? Should we have people of different types of faith on the board? Should we have people of different types of educational backgrounds on the board? Should we have individuals whose upbringing occurred in different parts of the country on our board? You can see that the list of the different types of "diversity" questions could go on and on. For almost every organization, the short answer to those kinds of questions is, quite simply, yes, diversity has its benefits. The primary benefit that any type of diversity brings to any situation is different skillsets as well as preventing group-think, where everyone has a singular perspective.

A recent article in the *American Banker* took this issue a step further with a headline that read, "Diversify Your Leadership Before Regulators Do It For You?" It sounds like a little bit of a threat, doesn't it? The article went on to question whether organizations will "proactively steer toward diversity when filling their talent pool or get run over by new government policies designed to force them to do better, faster." The point being made in the article is that if organizations take it upon themselves to be more proactive, there won't be a need for any government intervention because, as we all know, a government mandated diversity program would rarely be the best solution. We are certainly not proponents of developing quota systems nor mandating some minimum amount of diversity, but the point is that each organization can change its outlook to be intentional about finding more diverse candidates when opportunities present themselves. Doing so will likely only make your organization stronger and better positioned for an ever-changing workforce and population.

Meeting Adjourned

We are continuing to see an increase in merger and acquisition activity from both buyers and sellers as we move away from year-end. Within that arena, there are still plenty of banks not looking to be either a buyer or a seller, but simply managing their organization for independence, relevance, and profitability for shareholders. So, regardless of which camp you are in, please know you have plenty of company with your fellow bankers out there. Let's all keep working to make our industry stronger, and congratulations to all of you who daily work to make your own banks and communities the best they can be.

Until next time,

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