THE
Board Chair Forum
Opening the door to new ideas

Gerrish Smith Tuck, Consultants and Attorneys
February 2024

As we began 2024, *The Board Chair Forum Newsletter* took a pause to conduct the Annual Board Chair Forum Conference which we held in Marco Island, Florida. What a great event we had, with banks from 17 different states represented, with asset sizes that ranged from just under $100 million to just over $1 billion. If you were unable to join us this January, we hope you will make plans to join us in January of 2025, when we will again host the event in conjunction with the Barret School of Banking at Marco Island on the dates of January 9-10.

Also, as we move into the new year, we are looking forward to the Independent Community Bankers of America (ICBA) Annual Convention to be held in Orlando this year, where our firm will be facilitating and moderating the Bank Director Current Issues Seminar as well as some of the roundtable discussions and other learning lab presentations. Of course, if you are unable to make either of these events, we are always available to come to your bank, so don't fail to keep your Board educated just because you are unable to attend - we will bring the information to you.

For this month's edition of *The Board Chair Forum Newsletter,* we look at a number of issues that came out of this year's Board Chair Forum and various concerns for the Board Chair, other board members, and executive management as you try to weather 2024 and prepare for 2025. We think you will find that most of the comments from the attendees at this year's conference on the various topics mirror what you are facing in your part of the country as well. We are finding the issues are similar from the state of Washington to Vermont and Minnesota to Texas. We hope this information is helpful to you.

We hope you enjoy this month's reading and we look forward to seeing many of you soon.

Happy Reading!

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Board Chair's Summary

Corporate Governance Revisited

One of the new topics we are seeing emerge in 2024 is a renewed focus on corporate governance. The question is what does that really mean for a privately-held community bank that is not publicly reporting? We are seeing that take on lots of different forms, and in particular, we are seeing the regulators begin to focus on this more.

By way of example, we have had banks criticized for, of all things, the structure and composition of board minutes. The bank either did not disclose enough, or had too much information but not enough substance. As one director responded to us, "We always provided that information and I am shocked that they finally got around to reading it!" The point is that good corporate governance means efficiently and effectively running your organization in a way that creates value but checks all the boxes of the things you are supposed to do. The primary person in charge of that is likely the Board Chair in terms of how meetings are run, the types of topics covered, how efficient the proceedings are, the reports that come out of that and how the minutes reflect what happens at the meetings. We are beginning to see more organizations ask us to evaluate their corporate governance processes, review board packages, make recommended

changes to Articles, Bylaws and committee structures, etc., so if we can help you improve your corporate governance, please let us know.

If you are a publicly reporting company, your corporate governance duties are somewhat statutorily and regulatorily outlined. For privately-held companies, it is a bit more nuanced, which in some ways makes it more difficult. How do you know if you have good corporate governance? The point is not to become like a public company if you are not, but to put in place the best practices for how you run your organization that create value and promote efficiency. That does not mean a $250 million organization has to develop a Climate Policy or immerse itself in DEI/ESG issues. Rather, run your organization and your meetings and facilitate discussions in a way that best promotes value, as well as organizational efficiency.

Sell or Be Sold?

As with the Board Chair Forum Conference we host, it's that time of year again when you may be attending a few beginning-of-the-year conferences on a national level or a more local level, including some of the ones we present and where we speak. In addition, there typically is at least one national M&A conference, normally in the western part of the United States, that is actually hosted and facilitated by someone other than our firm (shocking, we know!). What some of our clients tell us from attending one of the other conferences is that while it is very well-done and generally presents good information, the attendees often feel like it is only about "how to sell your bank." Sometimes we jokingly call those kinds of conferences a "Sell or Be Sold" conference because many of our clients come away from it and respond to us that it seemed like the entire mission of the conference was to get you to sell your bank. As we saw one recent quote, sometimes attending particular conferences like that or asking your investment banker if you should sell your bank is like asking your barber if you should get your hair cut - the answer is always "yes"! So if you are a non-public company in a typical community bank structure that is privately-held with a limited number of stockholders, you may not find much benefit in hearing presenters from the large investment banking houses and New York firms talk about the PE ratios of publicly-reporting institutions. Our experience has been that community bankers often focus on the more tangible "boots on the ground" kinds of issues, like, when do you tell your stockholders, or what do you do if you receive an unsolicited offer but do not want to sell? So, make sure you are getting the kind of advice and information you need from the convention and conference dollars that you spend.

Or, as we had one Board Chair suggest, he divides his Board up and sends different directors to different conferences so they get a full array of information from all different viewpoints.

Our purpose is not to disparage any particular conference, because we understand and believe that all of these types of conferences provide wonderful benefits to the right types of attendees and most all are well-managed with excellent speakers and presenters. The point for many community banks and community bank Board Chairs is, again, to simply make sure the conference meets your needs, and for many community banks that often means focusing on the myriad of ways you can preserve your independence rather than having to sell, the tactics and strategies you can put in place to protect yourself, and how, if you find yourself in the middle of an M&A environment, you can maximize value for your shareholders, while not forsaking your customers, community, and employees. Simply put, make sure you are getting the right information that benefits your organization the most, whatever structure it is in.

Can You Train a Director?

Recently, we have encountered a number of banks that are looking to implement, for lack of a better term, "director training." In many of our recent engagements, we have been asked to come to meet with a Board of Directors on a full or part-day basis, not for strategic planning but specifically for "training" purposes. This involves discussing with board members their fiduciary duties, how to handle special situations like repurchasing shares from stockholders, and the merger and acquisition market, as well as dealing with overall corporate governance matters. The role of a director seems to be getting more and more difficult as more and more regulations are put into place and there are greater expectations on directors from regulators. In particular, the larger your organization grows, the more the duties and responsibilities increase. We are also seeing many boards, often at the request of the Board Chair, mandate minimal director education hours for their board members, and as a result, that has led to a spike in the number of director training sessions that we are doing. The point is not to try to force directors into a regimented way of thinking or acting, but to give them full advice on their duties and responsibilities and give them the tools to better do their job for the benefit of the organization as well as their own fiduciary duties. Knowledge is power.

Taking a Tough Stance with Directors

Do directors need "tough love"? In many cases, we think they probably do. It may fall to the Board Chair to demonstrate that "love." What we often find are that board members, by and large, are generally nice people. That is wonderful and great, but it sometimes overshadows the point that being a director is also filled with fiduciary responsibilities, and the failure to exercise those duties can result in personal liability, so sometimes a little tough love might be appropriate.

For example, are directors constantly reminded that talking about board business outside of the boardroom is a breach of their duties? They probably need to be reminded. Do you have directors who are unwilling or unable to utilize the products and services the bank offers? For example, consider how many of your directors actually use online banking, bill pay, receive electronic statements, utilize your peer-to-peer payment transfer system, etc. Directors who are not immersing themselves in the technology that the bank is offering would perhaps have difficulty positioning the organization for success in the future in a rapidly evolving technological world because they do not understand or use the products that would keep the organization relevant. So, if directors are not using the bank's technology, should they be asked to do so or to not stand for reelection? That is some real tough love. We believe you should require your directors to learn how to use the products and services the bank offers and the organization should be willing to provide the training that is necessary. Let's be honest, we come from a generation that is used to reading the instructions, but the new technology generation simply figures it out as they go, under the idea that the technology is very user-friendly and "intuitive." For those of us that are a bit older, we prefer the written instructions, as probably do many of your directors, so provide that instruction and offer the training, but do not allow yourself to wind up with a board of directors that has no idea how to use the products and services you offer.

Need more tough love? What do you do about directors that fall asleep during meetings? At one planning session where this issue came up, the answer was that everyone tries to speak more quietly in order to not wake them up! We hope they were joking, but we were not sure - it was less than clear. Our answer would be, wake them up, give them some coffee, and mandate that they have to stay awake during meetings. If the meetings just seem too long and arduous for that to happen, tough love requires you to find new directors. Directors have a job to do. Make sure they are doing it.

Creating a Market for Your Stock Doesn't Always Work

What do you do if you are trying to create a market for your stock in order to make it more liquid, encourage trading, and thereby drive up the price of the shares, but it doesn't work? We have run into this situation a number of times in the past few months where an organization decided to "list" their shares in one or more ways so that they thought they had some type of quasi-market trading and could thereby have a strong "market value" for their shares that stockholders could access. Whether the shares are listed through a private listing service or you decide to have your stock "traded" on the pink sheets, or whether you even go to the point of somewhat formally having your shares listed on the OTCQX exchange, unless you have multiple thousands of stockholders, you are going to find that merely being "listed" on those exchanges may create absolutely no additional value. In many recent circumstances, what we have found is that the stock is trading on those exchanges (to the extent it trades at all) at book value or less, and book value is often less than the inherent value of the organization if it were to sell, so the perception of a "market price" never materializes. Why is that? The answer is that most organizations that are listed in that way are not truly large enough to materially impact the price of their own shares. For example, if a $900 million company lists their stock on the OTCQX, and the following week Wells Fargo announces some material fraud loss, it is likely that the community bank stock on the exchange will decline merely because the general market for all bank stocks has declined, even though the community bank may be performing extremely well.

So, in a few recent planning sessions where we have confronted this issue, the directors have wanted to know how best to handle that situation. Our advice might be different than what you would expect, but it has been to simply ignore the "market value" and ignore what is happening on the exchange, and use your holding company to create your own market, buy back shares, and drive up the price. In order to have a true market value, you must have a true market, and most of those listing services for smaller organizations simply create no more liquidity than is created by a holding company repurchasing its own shares.

Meeting Adjourned

As we move into the first quarter of the year, we look forward to seeing many of you at the upcoming ICBA Annual Convention in Orlando, where our firm will be hosting the Bank Director Current Issues Seminar in advance of the Annual Convention. In addition, as early year planning sessions get into full swing, we encourage you to book your dates throughout the year as early as possible to avoid conflicts.

Finally, let us know anytime you have specific questions you would like for the Board Chair Forum Newsletter to address and we will be happy to try to provide some feedback and commentary.

Stay safe.

Until next time,

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