The
Board Chair Forum
Opening the door to new ideas

Gerrish Smith Tuck, Consultants and Attorneys
January 2025

Welcome to the new year! The *Board Chair Forum Newsletter* is off to a great start in 2025 based on the tremendous turnout and great discussion by Board Chairs, Directors, and other leaders at the annual Community Banking Board Chair Forum that we hold every year. On January 9th and 10th we had 46 attendees from 21 different states in Marco Island, Florida for a wide-ranging open forum discussion of key issues impacting community banks. We believe it was our best Forum yet, and we want to send special thanks and appreciation to the Barret School of Banking and its Executive Director, Chris Kelley, for hosting and sponsoring the event.

In this month's *Board Chair Forum Newsletter,* you will see some of the key topics and takeaways from the event and we hope many more of you will try to attend next year. We also hope you will gain some insights from some of the additional discussions we are highlighting in this month's newsletter, and we look forward to your questions and comments.

Happy Reading!

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Board Chair's Summary

- ***Focus on the Fundamentals***
- ***Trump Won - Now What?***
- ***Board Lessons from Silicon Valley Bank***
- ***Strategically Plan to do Strategic Planning***

Focus on the Fundamentals

At the 2025 Board Chair Forum we held in Marco Island, Florida, it was interesting for us to hear how, with all of the new issues and concerns being faced by the community bank Board Chairs and Boards of Directors in general, there is a constant need in the midst of all of that chaos to continue focusing on the fundamentals. Yes, there is an appropriate time and place for the Board to be rightfully engaged in discussions about mergers and acquisitions, how best to position the organization from a technology standpoint, how the community bank can use artificial intelligence in a meaningful way, what changes in regulations might occur under a new administration, and other key factors. However, for many Board Chairs, it is also about going back to the fundamentals to ensure that the Board of Directors is fulfilling its core obligations in the most basic way.

Key examples where the Board Chair should lead include simple things like the length of board meetings and the topics covered. When is the last time you updated your agenda? Do you spend your meeting time merely discussing loans and financial information from the past quarter, or do you allocate specific time for strategic discussions and positioning the organization for the next year? Has your committee structure changed in recent years? If not, it needs to be updated, we would suspect. What committee do you have that is responsible for new technology initiatives? What committee do you have that has the responsibility for working with management and overseeing investment activities?

Similarly, what does the composition of your Board look like? Do you have mandatory retirement but not really use it? If you do not have mandatory retirement, do you have a written list of director expectations against which board members can be evaluated? Should board members be required to have a minimum number of education hours a year (this is certainly a growing trend among community bank boards)? If the Board Chair is an insider of the organization, which director is appointed as the Lead independent outside Director in charge of executive sessions for the Board? Do you periodically hold executive sessions as a matter of good corporate governance?

The list of these types of fundamental questions could go on for pages, but we hope you see the point here. At the beginning of the year, it is often a good time to revisit the most fundamental aspects of what community bank boards do, because later throughout the year as we get into our routines, whatever we have started at the beginning of the year becomes the routine, and often it may not be the best way to structure your Board, meet governance requirements, etc. We believe it is the Board Chair's job to fundamentally assess what the Board is doing on the most basic elements of Board operation and to make changes where appropriate. If we can ever be of assistance in helping you evaluate all of that and determine if changes are needed or make recommendations, we would be happy to do so.

Trump Won - Now What?

Well, since the *Board Chair Forum Newsletter* was last published, we have had a Presidential swearing in ceremony and a transfer of power without any major problems (thank goodness!). So, now that the new administration has been fully inaugurated and appears to be moving at record pace, at least in terms of Executive Orders and other preliminary items, in what ways will the change in administration impact your bank? Will there be any impact at all? And if so, will that impact be positive or negative?

We find that many of our clients across the country, regardless of their personal politics or their like or dislike for the newly elected President and Vice President, generally believe the Trump Administration will produce results that are favorable to the overall business climate as well as to financial institutions in general. The most likely area we will see some substantive change may initially be in the area of regulatory relief. So, a word of caution in this area. While we believe deregulation is appropriate and necessary for the banking industry and for community banks in particular, and while it is without argument that regulatory costs and burdens fall disproportionately on community banks and smaller banks in general, history has shown us that during times of deregulation there also tends to be increased profitability for banks as organizations are willing to take on more risk. That initially seems like a positive, but that increased profitability may often be the result of a more lax approach to regulatory compliance and loan underwriting, which often leads to asset quality concerns in the middle of the next economic cycle. As a result, our caution is to take advantage of all the benefits of deregulation, but do not allow a mindset to creep into the Board that the organization can now let down its guard on credit quality, loan underwriting, or even compliance. Those regulations are likely to still play a prominent role in the health of your bank and regulators will always be regulators with a core focus on Capital, Asset quality, Management, Earnings performance, organizational Liquidity, and Sensitivity to interest rate changes. So, stay on your guard!

In looking at some of the recent pronouncements, there may be a number of possible areas where community banks will benefit under the new Trump administration. Some of the key areas we have seen mentioned are set forth below. However, we would caution that these are only possibilities and not guarantees. Some of the more important items we have seen are as follows:

- Credit Union legislation

- Tiered regulation
- Reduction of emphasis of CFPB
- New agency heads at the FDIC, OCC and CFPB
- Freeze on new rulemakings
- Reversal of Biden-era rules and policies, including ESG matters
- Shift in exam focus to risk-based supervision
- Appointment of National Crypto Council
- Reduced obstacles to *de novo* bank formation
- Curtailment or revision of the 2023 Merger Guidelines to encourage M&A
- Potential easing of regulations regarding digital assets and fintech.

Board Lessons from Silicon Valley Bank

We are sure most everyone will remember Silicon Valley Bank, which in 2023 was the first major bank failure that occurred in a number of years. At the end of 2024, the FDIC indicated the possibility of suing six former officers and 11 former directors of Silicon Valley Bank, so, whenever you hear of bank directors being sued, it is worth taking note and trying to learn some lessons from the nature of the allegations being made against them. From a recent article published on the matter, some of the key takeaways are discussed below.

Along with criticizing the officers, it appears a key focus was on the argument that the directors should be held accountable for breaches of their fiduciary duties in mismanaging the bank's investment portfolio. Additionally, it was noted that directors who served in the same position as directors of the bank holding company allowed the payment of a dividend from the bank to the holding company, even though the bank was experiencing financial distress. It was argued, therefore, that as a result of those actions by the directors, the bank suffered billions of dollars in loss and ultimately leading to the bank's closure by the regulators.

In reading that allegation, what is the takeaway for your Board? We would suspect that a typical answer might be to question why the Board is being sued for management practices. Aren't bank management or the investment officers the primary parties responsible for making investment decisions, not the Board of Directors? Isn't it the bank management that makes a recommendation to transfer funds from the bank to the holding company for whatever reason, and the Board is merely a general oversight function and should not be micromanaging day-to-day bank activities? We would suspect those would be perfectly valid defenses that might be argued by the directors, but the point here is that at some level the regulatory agencies believe that the Board bears some responsibility. For most of our clients, we see this evidenced even in your typical examination reports, with somewhat of the catchall terms like "enterprise risk management" or "board duties." These oversight functions seem hard to pin down and it is true they tend to be brought to the forefront anytime there is a problem because the regulators can always point to statements like "failure to exercise proper oversight" or "inappropriate enterprise risk management functions" to say that the Board was not doing enough.

It may be that the directors of Silicon Valley Bank wind up bearing no liability (and we believe there is a good argument that they probably should not be held liable or maybe, at a minimum, the directors' and officers' insurance policy should cover their actions), but it points out the fine line directors continue to have to walk between not micromanaging the bank yet maintaining their fiduciary duties of "oversight" and appropriate "enterprise risk management." It remains a truism of director service that you should not micromanage, but it also points out the obligation of directors to question activities of management, exercise oversight functions and act on concerns they see, ask appropriate and often probing questions of management, and if it doesn't look right, it doesn't feel right, or it is not the way you would manage your own organization, it is probably best to take a different course of action.

Strategically Plan to do Strategic Planning

Do you have a strategic plan to do strategic planning? By that we mean have you thought about it, do you have a date, time and location in mind, have you thought about the types of issues or emerging trends you would want to cover, will you use an outside facilitator, etc. As most of you know, we facilitate scores of planning sessions every year (82 total in 2024), but far too often we see banks almost forget about strategic planning and rush into it at the last minute, trying to throw something together, and occasionally calling us at the last minute to see if we have time to come to their bank and talk about a few things. Might we suggest a better approach.

The Board Committee should take some time to really think strategically about what you want your strategic planning efforts to look like and what you want them to accomplish. No, you do not need an outside facilitator every year (although we are happy to fulfill that role and often do), but you should give some thought to what needs to actually be addressed at your meeting. In particular, you need to consider if you want your planning session to be a bit more focused on "intangible" items like discussing the Mission Statement, revisiting Strengths, Weaknesses, Opportunities, and Threats, making sure you outline a new Vision Statement, really focusing on employee engagement and a new customer experience, etc. We believe all those are appropriate and valid discussion points for some organizations.

Alternatively, you may find that your current need is to focus a bit more on "tangible" items. How do we get out from under our MOU, where do we want our capital to be positioned, do we want to pursue growth in the coming year or do we really want to focus on improving asset quality, what are the shareholders' expectations of return on equity, do we need to change our organizational structure, etc.

One of the things we tell our clients and future clients is that no two strategic planning sessions are alike, and that includes strategic planning sessions in separate years for the same organization. There should be no template that you follow to check the boxes just to try to make the regulators happy. If you are going to take the time and spend the time to do planning, give it some strategic thought ahead of time, get some buy-in of what really needs to be accomplished and then set about doing that. By making a plan for your plan, you will find that your time is better spent, it is more efficient, and produces better results. Of course, we would be remiss to not say that if you are looking to hire an outside facilitator, you should always get that on your calendar early, particularly for those firms or institutions where available slots tend to fill up quickly!

Meeting Adjourned

Looking ahead to 2026 (since of course you need to be thinking strategically well in advance) the next Community Banking Board Chair Forum is scheduled to take place at the JW Marriott at Marco Island on January 26-27, 2026. We will be sending sign-up information in future newsletters, but you will want to book your spots early since we were at capacity this past year. If we continue to have tremendous support for the Forum, we will even consider hosting a separate Forum in a different part of the country if there is enough demand. So, if you would like to see a Forum held in the middle of 2025, we would welcome your feedback along with some indication of where you think a good location might be. We would love to hear from you. Let's all have a great year!

Until next time,

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