THE
Board Chair Forum
NEWSLETTER

Opening the door to new ideas

Gerrish Smith Tuck, Consultants and Attorneys
October 2026

As we enter the fall season and have had the opportunity to continue crisscrossing the country, we are happy to report cooler weather in most areas, but with some pockets of heat and humidity still around. Similarly, we have found the range of issues impacting community banks to be all over the board as well. In this month's edition of *The Board Chair Forum Newsletter*, we address a number of those issues, including the necessity to update corporate documents periodically for good corporate governance, dealing with board conflict, and knowing how to respond to solicitations received from outside third parties. In one form or another, all of these issues are being confronted by a great number of our community bank clients from coast to coast. Likewise, we see this trend continuing into 2027.

As we are in the midst of the busy fourth quarter strategic planning season, we are also happy to report that most community banks already have a pretty good strategic planning process and are addressing the most critical issues impacting them rather than being caught up in esoteric "strategic" discussions. It certainly makes for a better planning session when we are able to drive discussion toward the key issues that materially impact the organization's independence and value. We hope to have the opportunity to help many more of you with your strategic planning in 2027, and we will have further guidance in that regard in the upcoming editions. Enjoy this month's edition and let us know if you have questions.

Happy Reading!

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Board Chair's Summary

- ***Update Your Corporate Documents***
- ***How Do You Manage Board Conflict?***
- ***Are You Ready for Your Annual Meeting?***
- ***When Does the Board Need to Know About an Offer to Buy the Bank?***

Update Your Corporate Documents

A recurring theme we have seen this year is boards of directors asking us to assist them with reviewing and updating their basic corporate documents. Those documents typically are the Articles of Incorporation and Bylaws of the bank holding company, as well as the Articles of Incorporation and Bylaws of the bank. In addition, we occasionally see documents that are related which may also need to be reviewed and updated, which might include a Stockholders Agreement, Family Ownership Agreement, a Standstill Agreement, or any other type of ancillary document that impacts the governance of the organization, the voting of shares, the holding of meetings and the like. This overall review may also involve a review of committees and committee charters.

One of the primary reasons we have seen more boards doing this, in addition to the fact that we periodically recommend that as a best corporate governance practice, is that a close scrutiny often points out the fact that there are at least three different "truths" that exist at the same time. The first is what your corporate documents say you should be doing, the second is what state law says you should be doing (which may not be consistent with

the documents), and the third is what the board or the organization is actually doing in practice, which may not be the same as either of the first two! We've seen this play out in even small technical ways, such as the Articles or Bylaws of the holding company requiring at least 30 days' notice of an annual meeting, state law suggesting that the notice period can be as short as 20 days, and then the actual organization's practice is to send materials out 15 days in advance.

If you haven't reviewed your corporate documents in a while, it is probably worth doing that. And, of course, we would recommend having some firm help you with that. We have even found a few tidbits of information in some of the corporate documents that not only are outdated but are somewhat interesting. A recent one we reviewed had an entire section labeled, *"Incompetents and Spendthrifts."* This particular section read as follows: *"Shares held by an incompetent or spendthrift may be voted by the incompetent or spendthrift in person or by proxy, and no such vote shall be subject to disaffirmance or avoidance unless, before the vote, the secretary or other officer or agent of the corporation authorized to tabulate the votes has actual knowledge that the shareholder has been adjudged an incompetent or spendthrift or actual knowledge that judicial proceedings for appointment of a guardian have been filed."* That's a mouthful! It was fun to ask this organization if they felt like they had a lot of stockholders who might be considered "incompetent." We will refrain from passing along their comments, but as you can see in this scenario, this was clearly antiquated and outdated language that needed to be removed.

Also, think of the amendment of your corporate documents as an opportunity to expand and improve what you are doing from a governance standpoint. For example, do your corporate documents appropriately define the roles of the Board, your committees, officers, etc. We often find outdated language that needs to be modified, such as when the documents go into depth about the duties of the cashier of the bank. Most banks no longer have that titled position. Furthermore, do your corporate documents contain anti-takeover provisions that in today's current M&A environment would put more control in the hands of the Board of Directors? We think those types of provisions should be added as well, and there are other areas that might need modification. Do your documents contain preemptive

rights or cumulative voting rights? That's an issue that should be addressed as well, depending on your unique circumstances. So, the point is, if you haven't reviewed your corporate documents in a while, it's probably time to take a fresh look at them (so that no one thinks you are incompetent or a spendthrift).

How Do You Manage Board Conflict?

The past 12 to 24 months have seen us involved with quite a number of what we might softly call “disagreements” among board members. Frankly, though, some of these have been full-blown disputes, with lots of animosity, hurt feelings, and yelling and screaming in the boardroom. We have encountered so much of this in the past 12 months that we actually modified our standard listing of bank services to clarify that among the things we are often asked to do is board and management level “dispute resolution.” The Board Chair normally has the job to help moderate, manage, and massage friction among board members, shareholders, and management. While in some circumstances there may be one party that is actually and technically “right,” more often than not, we see in most circumstances that there is enough wrong on both sides of a dispute, or even where both parties are right, given potential circumstances, that some type of middle ground needs to be reached or more drastic measures like removal of a director need to be undertaken. We find these types of interpersonal issues important for the ways in which they can negatively impact the overall value of an organization or slow its progress, and we are always happy to help play a part in the resolution, even if it is to mediate the disagreements. However, it should be noted that the Board Chair should take the lead (perhaps with outside assistance) in addressing the issues head-on. Rarely does sweeping issues under the carpet or hoping they will die down and go away ever really work.

These types of circumstances may also help reestablish for the Board what its best practices are. For example, what if a director is writing highly inflammatory op-ed pieces for the local paper that fall starkly on one side of the political aisle. Can you see how that could cause problems in a Board and for an organization? If a board member is out of line in how he or she is dealing with shareholders in the community, or in the things the director

is saying about the organization and perhaps the actions of the Board that are supposed to be confidential, that could raise serious problems. So dispute resolution needs to be just that. The dispute needs to be resolved sooner rather than later. While direct confrontation may not be the answer, simply hoping the problem will go away rarely works either.

Are You Ready for Your Annual Meeting?

For most of you, the "fun" event of the annual meeting is still months away after the first of the year. But it is not too soon to start thinking about that. In particular, we are seeing more and more organizations modify the traditional annual meeting to account for modern realities. Most organizations are no longer renting the local event center in town or clearing out the boardroom to make room for more chairs and more people to show up, providing a nice spread of food, and then having the CEO give a 45-minute talk on the current state of the bank in addition to holding shareholder votes on directors and other key matters. More organizations are streamlining things.

In addition, will your annual meeting materials that are distributed to stockholders contain a QR code? If you don't know what that is, we suspect the answer is no, that you will not include that. But, we are seeing more organizations indicate that their meetings will be held both in person and also hosted virtually. When the event is handled in that way, stockholders can attend the "old fashioned" way, or they can join a video conference or dial in from any phone and participate by phone. We have seen banks beginning to explain to shareholders, for example, if the bank uses a platform like Microsoft Teams, how the application can be installed on a phone or a computer so that stockholders can attend in that fashion. The organization normally then provides a link to the meeting or provides a QR code that allows the stockholder to log in, review documents, etc.

Even for our clients in the more rural communities, the modern necessities of life seem to demand more meetings being held in this fashion. Give some consideration to that for 2027 if you have not already. You may find it improves attendance, (if you want that), and results in greater engagement for your group.

When Does the Board Need to Know About an Offer to Buy the Bank?

If your bank President/CEO or even the Board Chair or one of the directors, receives an inquiry about your bank possibly selling, does that need to be reported to the full Board? Because we are long time highly skilled lawyers and sophisticated consultants, we can absolutely 100% say, without reservation or hesitancy, . . . "it depends." It may depend on what was actually said or provided, it may depend on the circumstances under which it was conveyed, it may depend on outside environmental factors, and a whole host of issues. In fact, perhaps we will even address this question more directly later in the year, right around the holidays. Those of you familiar with our newsletter may be asking, wait a minute, did Mr. Potter make an offer to acquire the Bailey Building and Loan? Stay tuned for the December edition.

There is a short answer to all of this, which is that, if whatever has occurred actually constitutes an offer, then that offer needs to be presented to the Board and the appropriate next steps need to be taken. Of course, that then raises the question of what constitutes an offer and what doesn't. We will continue to expand on that in coming newsletters, but we wanted to provide you the feedback that we provided to one of our clients on an actual scenario they encountered upon receiving a letter addressed to their bank president by another bank. Our client admitted he wasn't sure if it was an actual offer or not and wasn't sure how that impacted what his obligations were related to his Board. With some slight editing to protect the confidentiality of the engagement, here is the actual response we provided to the client, and we hope you may find it helpful:

> Your intuition about the e-mail you received is correct. This correspondence is somewhat in the nature of a general solicitation that otherwise might not require any action on your part. However, we are familiar with the entity that sent the letter to you and know that they have some serious interest in making acquisitions so it is closer to an actual offer than we might otherwise suggest, and therefore we think you need to likely do something more than simply throwing it in the garbage. So, our recommendation is as follows:

1. You should notify the Board of the existence of the email at the next meeting and share its contents with them.

2. You should include a reference in your board minutes to having received this type of letter and having contacted our firm to get some outside advice in order to demonstrate that you are exercising appropriate fiduciary duties and seeking specialized outside assistance.

3. If your board has been considering some type of transaction or is interested in hearing more specifically what this party could offer, then we think it is appropriate to respond to them. However, you might do that in a more formal manner, using our firm or someone else to be the intermediary, so that it doesn't immediately put you and the Board in the weeds on something that may not go anywhere.

4. If the Board is of the mindset of "thanks but no thanks, we have a plan to stay independent," then I don't view it as an actual legal offer that triggers a board duty to do anything. (There is no price, no terms, etc.) Therefore, you can simply add it to the garbage can where you put other general solicitations and I don't even think a reply is required.

5. If you believe at least a basic courtesy reply is appropriate to advise that you are not interested, that might also be appropriate, and if you need our help in reviewing that or giving you comments on how to better prepare it, we are happy to do so.

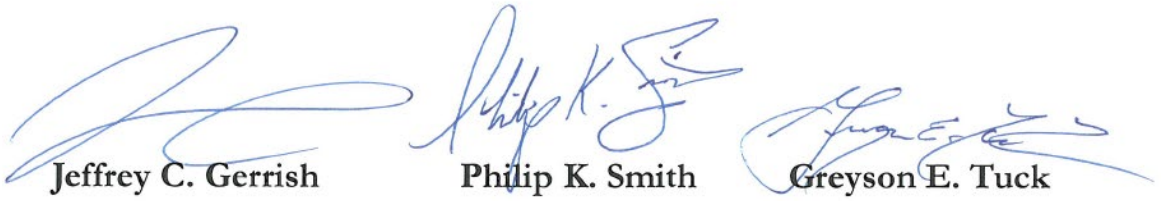
As you can see, we stood a little bit by the proposition that "it depends." In essence, we told them that the letter really did seem like a fishing expedition, but it was a fishing expedition by a legitimate potential buyer that was known to have the resources available to make an acquisition, so some minor additional steps were appropriate. Keep these kinds of situations and circumstances in mind in this continuing M&A environment.

Meeting Adjourned

We are rapidly rushing through the fourth quarter, it seems, on all fronts, and will soon be in the throes of the November and December holiday season. The issues confronting community banks rarely seem to wane, so we hope you found this month's edition helpful. As we briefly teased in the last section, we will be revisiting Bedford Falls

again in December. So, keep an eye out for that. Or maybe watch the movie “It's a Wonderful Life” in advance so that you're prepared for the test!

Until next time,



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