

New Director and Next Generation Banker Session – Corporate Governance, Regulatory Oversight and You

Presented By:

Philip K. Smith, President

Gerrish Smith Tuck, Consultants and Attorneys

**Ohio Department of Commerce
Division of Financial Institutions
Ohio Bankers Day Conference
Hilton Columbus at Easton
Columbus, Ohio
March 15, 2017**

Gerrish Smith Tuck

Consultants and Attorneys

700 Colonial Road, Suite 200

Memphis, Tennessee 38117

Telephone (901) 767-0900

Facsimile (901) 684-2339

www.gerrish.com

psmith@gerrish.com



**2017 OHIO BANKERS DAY
COLUMBUS, OHIO
MARCH 15-16, 2017**

Overview

- Directors' Duties and Responsibilities
- Management Duties and Responsibilities
- Real Duty: Enhance Shareholder Value
- Basic Duties in Corporate Governance

Directors' Legal Duties

- Duty of care: reasonably prudent bank or bank holding company director
- Duty of loyalty
 - Avoid conflict of interest
 - Avoid misappropriation of corporate opportunities

Directors' Legal Duties

- Hire competent management: best insurance
- Establish appropriate policies and procedures
- Advise management: no micro management
- Develop business
- Respond to unsolicited offers
- Strategic planning
- Appropriate corporate governance

Management Duties

- Be Responsive to the Board
- Implement Board Strategic Direction
- Question the Board of Directors
- Develop and Implement Tactical and Operational Steps to Meet Strategic Initiatives

Biggest Liability Risks

- Shareholders
- Regulators
- FDIC: Bank Closures

The Risk Is Manageable:

**Business Judgment Rule –
The Right To Be Wrong.**

The Real Job of Directors and Management

- Direct and not be led
- Manage without blindly following
- Hire good management/ right to rely on management
- Provide accurate and appropriate information to the Board
- Enhance shareholder value
- Beneficial result – good corporate citizenship

Primary Duty: Enhance Shareholder Value

- Earnings per share growth
- Return on Equity
- Liquidity for the stock
- Cash flow / appropriate dividend policy
- Appropriate regulatory relations

Basic Issues in Corporate Governance

- What is it?
- Does it matter to me?
- Non-public companies - a road map
- Public companies - Sarbanes-Oxley, Dodd-Frank

A Capable and Reliable Board of Directors

- Integrity/successful
- Capacity, understanding, interest, time
- Board size
- Use of executive session
- Majority truly independent
- No micro management

Compensate Fairly

- Heightened duties
- Compensation for the risks?
- Equity plans (stock options/restricted stock)
- Additional compensation for chairman and committee chairman?

Require Continuing Education

- Education budget
- Various education policy alternatives
- Regulatory requirement?

Establish Procedures for Succession

- Goal: Enhance shareholder value
- Succession failure/loss of independence
- Mandatory retirement
- Evaluation

Corporate Governance Warning Signs

- Board package received on date of meeting
- Directors sign and approve documents without adequate review
- Board doesn't listen to management
- Board rubber stamps management

Corporate Governance Warning Signs

- Tough questions regarded as undesirable
- Corporate minutes are useless
- Management antagonistic to director questions
- CEO shields Board from the management team

Conclusion

- Primary job of directors and management is to enhance shareholder value
- Work in a cohesive manner with a “healthy tension”
- Boards and management should question each other
- A unified strategic mission and direction

New Director and Next Generation Banker Session – Corporate Governance, Regulatory Oversight and You

Presented By:

Philip K. Smith, President

Gerrish Smith Tuck, Consultants and Attorneys

**Ohio Department of Commerce
Division of Financial Institutions
Ohio Bankers Day Conference
Hilton Columbus at Easton
Columbus, Ohio
March 15, 2017**

Gerrish Smith Tuck

Consultants and Attorneys

700 Colonial Road, Suite 200

Memphis, Tennessee 38117

Telephone (901) 767-0900

Facsimile (901) 684-2339

www.gerrish.com

psmith@gerrish.com



**2017 OHIO BANKERS DAY
COLUMBUS, OHIO
MARCH 15-16, 2017**

Beyond Relational Databases - February 2014

<http://www.dmrri.com/publications/Risk%20Magazine/201402%20Beyond%20Relational%20Databases.pdf>

Unwilling or Unable? - March 2014

<http://www.dmrri.com/publications/Risk%20Magazine/201403%20Unwilling%20of%20Unable.pdf>

Underestimating the Risk Data Challenge - May 2014

<http://www.dmrri.com/publications/Risk%20Magazine/201405%20Underestimating%20the%20Risk%20Data%20Challenge.pdf>

Cyber Fears? Go Modular - September 2014

<http://www.dmrri.com/publications/Risk%20Magazine/201409%20Cyber%20Fears%20-%20Go%20Modular.pdf>

The Era of Computational Abundance - and its risks - January 2015

<http://www.dmrri.com/publications/Risk%20Magazine/201501%20Computational%20Abundance.pdf>

Still in Denial – May 2015

<http://www.dmrri.com/publications/Risk%20Magazine/201505%20Still%20in%20Denial.pdf>

Geeks at the Gates – June 2015

<http://www.dmrri.com/publications/Risk%20Magazine/201506%20Geeks%20at%20the%20Gates.pdf>

Agility versus Transparency – July 2015

<http://www.dmrri.com/publications/Risk%20Magazine/201507%20Agility%20versus%20Transparency.pdf>