

## TRANSFORMING DIRECTORS INTO EMERITUS DIRECTORS—WITH STYLE AND APPRECIATION

That old standby, "mandatory retirement," is a cop-out

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As promised in my last blog, "Getting The Ineffective Director Off The Board," I thought I would address the issue of the "older" director. This really involves the question of when a director has reached the age at which the director is no longer contributing to the bank: How does the rest of the Board deal with the director? The director's family? And the director's business relationships? And how to do this while still keeping the Board's collective eye on the goal to enhance the value for the shareholders?

The mandatory retirement cop out

To clarify one matter, mandatory retirement for directors is a poor substitute by a board for the exercise of good judgment and addressing difficult issues directly. Mandatory retirement, at whatever age is selected (and I have seen some as low as 70 and as high as 85) is an arbitrary cutoff that kicks in irrespective of the director's ability, activity, cognitive level, and general contribution to the bank.

It is, in the vernacular, the "chicken" way out for a Board.

Besides that, when a board for the first time implements a mandatory retirement age, it generally "grandfathers" all of the existing board members, so the mandatory retirement age may not kick in for 25 or 30 years.

So it really does not solve the problem.

I have been with many boards where I would just as soon get rid of a 55-year-old director and keep the 75-year-old director who contributes. A mandatory retirement age does not distinguish.

Attacking the issue head on instead

So for the sake of this discussion, let's assume that the bank does not have a mandatory retirement age. If that is the case, how do you evaluate your more-seasoned directors? The answer is, you evaluate them the same way you evaluate your less-seasoned or younger directors.

• Do they attend meetings?

• Do they stay awake at least 95% of the time?

• Do they contribute?

- Is this more than just a social hour for them?
- Are they active in their trade or business in the community?
- Do they refer business?
- Do they understand what is going on?
- Do they have institutional knowledge that the other directors might not have?

Once you determine that an older director does not meet the criteria for a "qualified" director, the question becomes, what does the board do?

Consider the emeritus appointment

My general recommendation is to consider "promoting" that older/ineffective director into a Director Emeritus position.

The Director Emeritus is not a "directorship" at all. It is a director only in name, not in liability or ability to vote.

The good news associated with that is that the director has no liability as a director of the bank.

The bad news is the director does not have a vote on the board, although typically the director attends all board meetings or at least those board meetings which the Director Emeritus desires to attend.

The discussion of shifting to emeritus status generally needs to occur not only with the older director, but with the director's family. The benefit for the director is that it is a "promotion," one which relieves the director of the obligation to attend meetings, yet provides the director with the opportunity to do so. The benefit to the family is that it eliminates the potential of directors' liability against the director or eventually the director's estate. A combination of those two discussions are generally necessary to move the director into the emeritus position.

My experience is that each bank that creates a Director Emeritus position seems to specifically tailor criteria for that position. To wit:

- Some banks pay the director for some period of time.
- Some pay at a reduced rate.
- Some allow the director to continue on with benefits.
- Some include the director in all meetings.
- Some still allow the director to serve "ex officio" on committees.
- Some maintain health benefits for the director (always important if they exist), and the like.
- Some also, at the time the director moves into the Emeritus position, throw some kind of a party marking the director's retirement and the like.

The bottom line of this is if you have older directors who are not productive, let's move them off the board into an emeritus position so you can move in younger, or at least more productive directors into those slots without expanding the board.

Realizing none of this is easy-good luck.

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At the opening of this blog, I noted the issue of business relationships needs to be addressed as well. This is important, and complicated, enough that I feel it deserves a separate, future blog.-Jeff

#### About the Author

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