

# Weathering the Storm:

## *A Guide to Banking in Uncertain Times*

Session 6: Management and Boards—Matters of Focus  
Moving Forward

A Jones Walker Webinar Series  
May 18, 2010

## Introduction and Overview

- ❖ This is the final of six sessions addressing issues for bankers navigating a difficult banking environment.
- ❖ The first five sessions dealt with the current regulatory environment, the regulatory enforcement process, and the raising of capital and disposition of problem assets.
- ❖ This session will focus on:

### **Management and Boards: Matters of Focus Moving Forward**

## The Board's Contribution to Successful Examinations

**The Board should review the prior examination in detail no less than ninety days prior to the next visitation or examination to ensure all criticisms have been rectified**

## The Board's Contribution to Successful Examinations

**Consider double-teaming corrective measures to ensure they are undertaken correctly**

**Team management with a board member**

**Assign individual board members ongoing responsibility for a specific agenda item so one person has “ownership” and can see trends over time**

## The Board's Contribution to Successful Examinations

**Board members should participate in the loan discussion during the exam process**

**The entire Board should attend the exit interview; however, individual board members should be discouraged from one-on-one discussions with regulators**

## The Board's Contribution to Successful Examinations

**The Board should cap and monitor concentration risks on a micro scale**

**Any concentration (25%) or more should be identified**

## Record Retention Is Not a Dusty Topic

It is easy to hold on to a record for a specified period of time. It is much more difficult to be disciplined and dispose of documents which feel “important”

Conversely it is difficult to “hold” documents under a litigation hold when an employee is concerned about incrimination

## Record Retention Is Not a Dusty Topic

**The failure to administer a uniform and robust document destruction program can leave your bank in a very difficult position**



## Record Retention Is Not a Dusty Topic

- Improper record retention can result in your bank being vulnerable during litigation or in exams.
- Every employee and board member should receive regular retention and disposal training.
- The bank should be vigilant in forcing disposal and preventing policy avoidance.

## Record Retention Is Not a Dusty Topic

- There should be repercussions for a violation of the Bank's policies. A record that is not disposed of properly and timely is a potential smoking gun.
- Bank management must be alert to all the new media which can be used to store records and update the Bank's policies accordingly.

## Best Practices For Committee Meetings, Including Minute Taking

- **Ensure that committees are actually reporting to the Board. Inclusion in the board package may not be enough.**

## Best Practices For Committee Meetings, Including Minute Taking

- **Review committee charters annually and tweak as appropriate. Do not retain requirements that the committee does not meet.**

## Best Practices For Committee Meetings, Including Minute Taking

- Minutes should be taken in a manner that reflects actions taken in the same degree of detail as the Board. Do not overstate the committee's responsibility so as to avoid suggesting the Board “rubber stamps.”

## Hot Topics For Enforcement Actions

- **BSA/AML is a hot topic once again.**  
**2010 revisions to the FFIEC Manual make this an easy target.**

## Hot Topics For Enforcement Actions

**Fair lending is a hot topic for a variety of reasons, including subprime concerns and consumer advocacy**

## Insurance Coverage Issues In This Regulatory Environment

- Individual directors should seek expanded personal coverage.



## Insurance Coverage Issues In This Regulatory Environment

- **Golden parachute and indemnification provisions are strictly applied.**

## Insurance Coverage Issues In This Regulatory Environment

- The FDIC as receiver claims the blanket bond.
- The best insurance is preventative medicine.

## Insurance Coverage Issues In This Regulatory Environment

- **Business interruption, flood and agreed amount coverages should be reviewed.**

## Strategic Planning: Dos and Don'ts

- Do be realistic
- Do support expansion with true capital
- Do establish capital levels commensurate with risk
- Do plan for a future less dependent on real estate lending

## Strategic Planning: Dos and Don'ts

- Do not materially change your business plan without considering regulatory approval
- Do not overstate results
- Do not rely on borrowed capital
- Do not rely on one-price pricing

## Question & Answer Session

## Contact Information

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