

# SafeAlert



A loss control advisory from the ABA-sponsored insurance program underwritten by Progressive

## “Opportunistic Investors” Raise Threat

We have recently seen a number of community banks become targets for opportunistic investors. Typically:

*While no bank can totally eliminate the threat of an activist investor, the Board and management can proactively mitigate the potential exposure through due diligence.*

- An individual or group of investors buys a block of shares.
- They demand a meeting with the Board and management to discuss ways to maximize shareholder value.
- They voice concerns about management, undermine past decisions and question the level of corporate governance.
- They demand a seat on the Board.
- They demand a sale of the bank at higher than market value.
- If their efforts are rebuked, they initiate a proxy fight to install their slate of representatives on the Board.
- If all else fails, they bring suit against the bank, the Board and management alleging mismanagement and negligence.

How can a bank prepare for, prevent or defend itself from such an event?

**While no bank can totally eliminate the threat, due diligence can mitigate potential exposure:**

- Outside directors must be greater in number than inside directors, and must be independent, active and committed to the on-going governance of the bank.**
- Directors must discuss the effectiveness of management on a regular basis (at least annually), and discussions should be documented in the Board minutes.**
- Directors should approve a clearly-stated strategic plan after open discussion and continually monitor progress in achieving the plan.**
- Directors must be provided adequate information and reports to ensure that they receive a complete and accurate picture of the operations of the bank.**
- The audit committee must be outside directors who closely review audit and regulatory reports and verify that recommendations are followed and weaknesses corrected.**
- The Board and management must maintain open dialogue, be open to suggestions and diligently work towards achieving what’s best for the bank and its shareholders.**

If your bank is planning any transitions, changes, or significant governance events, make sure that you receive counsel from a well-qualified law firm. If you are contacted by an investor who has purchased a block of shares and is now making demands, advise counsel or retain an attorney as soon as possible. The future of your bank may depend on your actions.

*For more information, contact Tom Hruby, Loss Control Manager, at 800-274-5222.*