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*Low-Hanging Fruit: Bold Ideas for Increasing
Shareholder Value & Eliminating Adverse Consequences*

**Washington Bankers Association
Northwest Bank Executive Conference
December 3-5, 2017
Seattle, Washington**

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PRACTICES

Banking and Finance
Financial Institutions Corporate and
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Fair Lending
Consumer Financial Compliance and
Litigation

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EDUCATION

JD, Duke University School of Law, 1985
BA, State University of New York, 1982

BAR ADMISSIONS

Texas

Peter's practice focuses on corporate and regulatory representation of a wide range of financial institution franchises.

Peter is Practice Group Leader of the Financial Institutions Section of Hunton & Williams LLP, a national firm. During the past several years, Peter has devoted substantial time to strategic planning, bank compensation and defense of enforcement matters, including concerning fair lending and BSA. He has counseled institutions on more than 300 M&A transactions, hundreds of securities offerings, including over a dozen IPOs and capital planning, over 50 de novo banks, and hundreds of administrative and other enforcement actions. He was a guest lecturer for Harvard's Kennedy School of Public Policy in Beijing, China. His team also composed ICBA's manual on how banks can access FinTech.

Relevant Experience

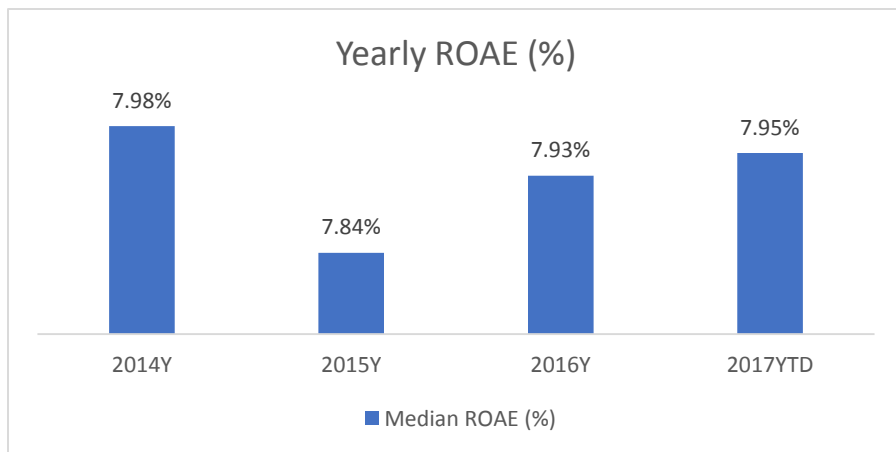
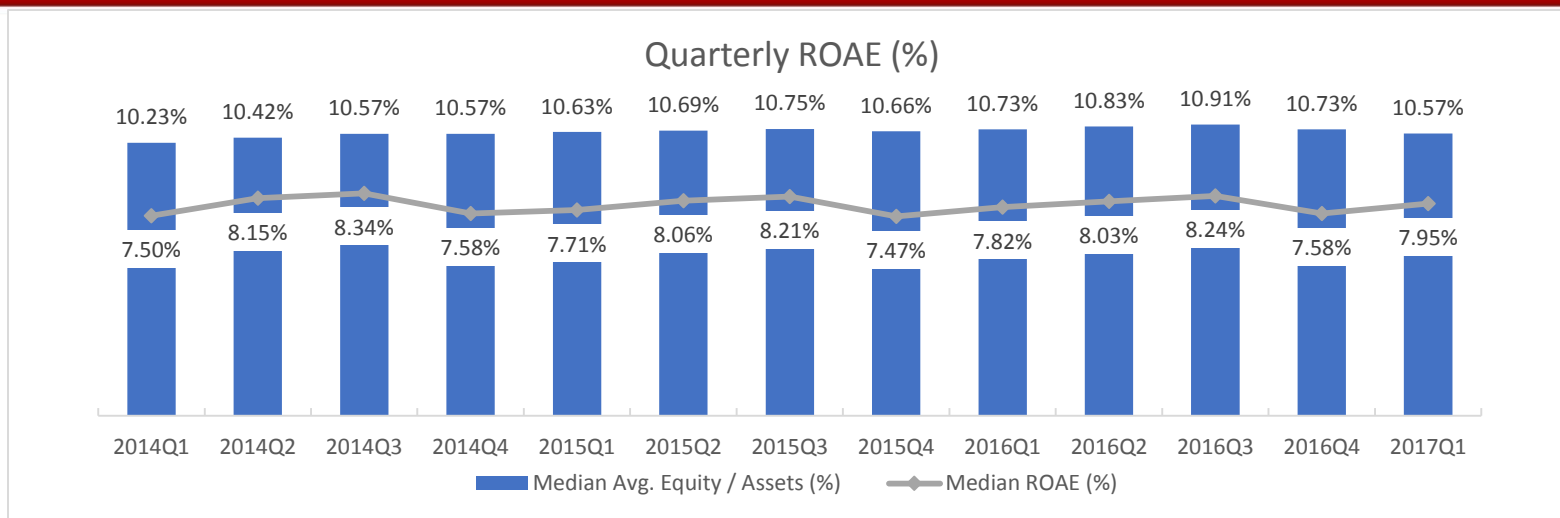
Representation includes:

- hired by national law firm as an expert on banking regulation;
- facilitated over a dozen strategic planning retreats in 2017;
- convinced the U.S. Treasury to issue the first community development financial institution designation for a for-profit indirect lender (a lender that buys loans). The U.S. Treasury had previously not approved such entities to be CDFIs for policy reasons;
- obtained the first ever shelf charter (a charter that was not activated until a bank failed) to buy assets and assume liabilities from the FDIC as receiver of failed banks;
- proposed to senior regulatory personnel changes to the Shared National Credit ("SNC") review process and how that process may be enhanced;
- lead counsel in merger of equals creating a \$13 billion bank;
- lead counsel on the North American Corporate Deal of the Year (Middle Market) – The M&A Atlas Awards – for Cascade Bancorp, Inc.'s successful topping bid to acquire Home Federal Bancorp, Inc., a NASDAQ-listed bank;
- Finance Monthly Deal Maker of the Year Award 2014 – Cascade Bancorp, Inc.'s successful community bank topping bid in connection with Cascade's agreement to acquire Home Federal Bancorp;
- more representations of buyers, sellers and credit committees of firms involved in 363 bankruptcy actions than any other firm;
- more M&A transactions than any firm over the last 16 years (according to *SNL Financial*, December 2016);
- number 1 in 2013 with 19 M&A transactions and in 2014 with 20 M&A transactions, number 2 in 2016 with 15 transactions (according to *SNL Financial*);
- hundreds of capital offerings, including over 12 IPOs;
- hundreds of fair lending, CMPs, and other enforcement actions;
- testimony before Panel of the House Judiciary Committee regarding Operation "Choke Point" in July 2014;
- myriad compliance issues before all of the federal bank regulatory authorities, including the CFPB; and negotiations of administrative actions; and
- worked with Puerto Rico taxing authorities to create a tax structure to allow Puerto Rican bank holding companies to issue trust preferred securities.



For the last 20 years, he has served as co-editor of ICBA's Newsletter, "SUBCHAPTER S: THE NEXT GENERATION." He is the author of numerous articles in law and banking publications. His article, "Acquisitions of Failed Banks – Present Risk and Opportunity," was voted the second best article appearing in The Risk Managers Association Journal of 2011. He has spoken at over 250 banking conferences and seminars, including for over the last 12 years, ICBA's annual conference. Mr. Weinstock is listed in Chambers USA "Leaders in Their Field" for banking.

Community Bank Return on Average Equity



- Median values are derived from a nationwide population of regulated depositories with total assets under \$10.0B in the respective time period shown
 - As of Q1'17, there are 5,503 regulated depositories with assets under \$10.0B

- Source: SNL Financial
- Top Tier Consolidated Bank Holding Companies, Savings & Loan Holding Companies, Commercial Banks, Savings Banks, and Savings & Loan Associations with Total Assets < \$10.0B in the respective time period shown

It is important to remember that there are two occasions in which repurchases should not take place, even if the company's shares are underpriced. One is when a business both needs all its available money to protect or expand its own operations and is also uncomfortable adding further debt. Here, the internal need for funds should take priority. This exception assumes, of course, that the business has a decent future awaiting it after the needed expenditures are made.

The second exception, less common, materializes when a business acquisition (or some other investment opportunity) offers far greater value than do the undervalued shares of the potential re-purchaser.

To recap Berkshire's own repurchase policy: I am authorized to buy large amounts of Berkshire shares at 120% or less of book value because our Board has concluded that purchases at that level clearly bring an instant and material benefit to continuing shareholders. By our estimate, a 120%-of-book price is a significant discount to Berkshire's intrinsic value, a spread that is appropriate because calculations of intrinsic value can't be precise.

Warren Buffett
Letter to Shareholders
Berkshire Hathaway, Inc.
February 25, 2017

EXTERNAL FUNDING

Cost of Cash (Before Tax)	6.00%
Marginal Tax rate	40%
Cost of Cash (After Tax)	3.60%

Price/Earnings Multiple

% of Shares Repurchases	8x	10x	12x	14x	16x
2%	1.45%	1.31%	1.16%	1.01%	.87%
4%	2.97%	2.67%	2.37%	2.07%	1.77%
6%	4.54%	4.09%	3.63%	3.17%	2.71%
8%	6.19%	5.57%	4.94%	4.31%	3.69%
10%	7.91%	7.11%	6.31%	5.51%	4.71%
12%	9.71%	8.73%	7.75%	6.76%	5.78%
14%	11.59%	10.42%	9.25%	8.07%	6.90%
16%	13.56%	12.19%	10.82%	9.45%	8.08%
18%	15.63%	14.05%	12.47%	10.89%	9.31%
20%	17.80%	16.00%	14.20%	12.40%	10.60%

Director Redemptions

- Source of funds:
 - BOLI and seller financing
- Pros for seller:
 - Basis step upon death
 - Pricing
- Pros for buyer:
 - Certainty
 - Pricing
 - Pay out

- Trendline
- Agreements
- SERP/SAR
 - Quid pro quo
 - Deferral
- Change in control
- Stock options/restricted stock
- Salary continuation plans

- Amount of ESOP's basis (usually fmV at time of employer contribution or employee purchase) is taxed as ordinary income in year of distribution. Everything above that is capital gains
- Require retiring employees to sell their shares. A specific form of investment is not a protected right
 - The key is that the company cannot retain discretion to liquidate or not liquidate. It has to commit one way or the other
- ESOP distributions can be delayed but must start no later than the 6th year after employee is terminated (unless leveraged ESOP)

Broadening Employee Ownership through an Existing ESOP

Strategy	Accelerated Liquidation of Company Stock Accounts (“Reshuffling”)	Investing S Corp Quarterly Distributions in Company Stock	Make Matching and/or Nonelective Contributions in Company Stock	Leverage the Purchase of Company Stock	One-time Offering of Company Stock for purchase with 401(k) accounts
Description	Generally, ESOP provides for liquidation of Company Stock Account when participants receive a distribution. AA could be amended to liquidate the Company Stock Account at a set date following termination of employment w/o regard to whether employee elected to receive a distribution.	Ordinarily, the Investment Fiduciary is to establish an investment policy. That policy could specify that all S Corp distributions would be invested in company stock. The policy could also specify that all or a portion of the cash contributions should be invested in company stock.	Ordinarily, under the Plan Information section of the Adoption Agreement, the Matching and Elective Contribution Accounts are part of the ESOP. The Company could determine to make matching or nonelective contributions in the form of company stock.	The ESOP borrows an amount from or guaranteed by the holding company. It would purchase shares of company stock. The shares so purchased would initially be held in an unallocated suspense account and released as the loan is paid.	A securities offering under which employees may voluntarily use funds in the Non-ESOP portion of the plan, including amounts rolled over from IRAs and qualified plans of previous employers, to purchase shares of company stock.
Who Benefits and is ownership broadened?	Participants who have cash in their ESOP accounts that is used to liquidate the terminated participant’s shares. This may include participants who previously did not have shares allocated to their accounts.	Participants with current company stock balances since only their accounts receive the quarterly distribution. Does not expand number of employees allocated shares.	All participants who are eligible to share in the contribution, including participants who were not previously allocated shares.	Participants who would otherwise receive the contributions and/or S Corp distributions that are used to pay the loan. Includes participants who were not previously allocated shares.	Participants who voluntarily elect to use funds in their Non-ESOP Accounts to purchase shares. Participants with the largest balances can purchase the most shares.
Company Financial Commitment and Deduction	None. Only funds available in the plan are used to liquidate shares.	None. If the Company eliminates or reduces the quarterly distribution, shares purchased are correspondingly reduced.	No increase required. Stock contribution is deductible to the extent of the FMV of the shares on the date of contribution. Allows deduction without cash outlay.	Company would incur an obligation to make sufficient contributions and/or pay S Corp distributions to allow plan to pay off loan. The contributions are deductible.	No deduction but amounts received from sale of securities are excluded from Company’s income.

Broadening Employee Ownership through an Existing ESOP (cont'd)

Strategy	Accelerated Liquidation of Company Stock Accounts ("Reshuffling")	Investing S Corp Quarterly Distributions in Company Stock	Make Matching and/or Nonelective Contributions in Company Stock	Leverage the Purchase of Company Stock	One-time Offering of Company Stock for purchase with 401(k) accounts
General	Although it doesn't cost anything, accelerating the liquidation of shares probably does the least to expand ownership. It does prevent former employees from continuing to share in the growth of the company and S Corp distributions.	Participants generally do not direct the investment of "ESOP Accounts," which is defined as the matching and nonelective accounts. An investment decision is being made by the trustee regardless of whether company stock or other investments are purchased.	Although this is an easy way to expand beneficial ownership of company stock, the impact at the participant level is slow because only future contributions are utilized.	Allows significant and immediate increase in plan ownership but impact at participant level is only realized as the loan is paid off. This may be some years. Can be beneficial to buy out retiring, deceased or dissident shareholders.	Allows immediate increase in beneficial ownership at participant level. Typically allows the key employees to purchase significant number of shares with pre-tax dollars and then shelter the growth on that investment in the plan and thereafter in an IRA.

1. ISOs/NQSOs

A. Tax:

- Grant
- Exercise
- Sale of shares

B. Limitations on ISOs:

- Dollar limit on first exercise
- Duration

2. Alternatives

- A. Pay cash equal to intrinsic value of options
- B. Permit cashless exercise of options
- C. Substitute SERP/SAR equal to intrinsic value of options
- D. Loan
- E. New option plan
- F. Expiration

- Data security breaches
- Revocation of licenses and access to services
- Price increases
- Early termination fees
- Termination assistance
- Limitation of liability

- Statement of need and definition
- Goals of the capital plan
- Risk management and capital planning
- Current status
- Regulatory requirements
- New capital rules for community banks

- Board guidelines
 - Credit indicators
 - Liquidity indicators
 - Interest rate risk (IRR) indicators
 - Earnings

- Contingency stages
 - Capital look-out phase
 - Stage 1 capital adequacy crisis
 - Stage 2 capital adequacy crisis

- Alternatives for increasing capital
- Dividend policy
- Projections
- Capital plan reviews

- Consolidated capital guidelines – BHC 5% leverage and three risk-based ratios
- Now applicable at \$1 billion in total assets
- Arbitrage opportunity
- Enhanced arbitrage for small one-bank BHCs

- Institution market is welcoming smaller issuers because of Kroll bond ratings and search for yield
- Kroll rating
 - 50 bps
- Retail
 - Regulation D – accredited investors
- Institutional

Select Community & Regional Bank Debt Issuances

Issue Date	Deal Size (\$mm)	Issuer	Type	Fixed Rate	Floating Rate	Maturity	Structure / Call Features	Ratings						Orig. Spread to UST (bps)	Assets (\$b)	Mkt. Cap. (\$mm)
								Moody's	S&P	Fitch	Kroll	EJ	Other			
03/30/17	\$300.0	Home BancShares, Inc.	HC - Sub.	5.625% to 04/22;	3mL + 3.575%	04/15/27	10NC5 @ 100%	-	-	-	BBB-	-	-	10T + 320.7	\$9.8	\$3,957.3
03/24/17	\$8.9	Texas Citizens Bancorp, Inc.	HC - Sub.	N/A	N/A	N/A	10NC5 @ 100%	-	-	-	-	-	-	N/A	\$0.4	-
03/21/17	\$18.6	Investar Holding Corporation	HC - Sub.	6.000% to 03/22;	3mL + 3.945%	03/30/27	10NC5 @ 100%	-	-	-	BBB-	-	-	~10T + 357.7	\$1.2	\$187.9
03/16/17	\$100.0	Hanmi Financial Corporation	HC - Sub.	5.450% to 03/22;	3mL + 3.315%	03/30/27	10NC5 @ 100%	-	-	-	BBB	-	-	~10T + 291.9	\$4.7	\$1,028.8
03/16/17	\$15.0	USAmeriBancorp, Inc. ¹	HC - Sub.	6.250% to 04/21;	3mL + 4.945%	04/01/26	10NC5 @ 100%	-	-	-	BBB-	-	-	~10T + 319.7	\$4.0	\$473.2
03/13/17	\$125.0	Fulton Financial Corporation ²	HC - Sr.	3.600%	-	03/16/22	5NCL	Baa1	-	BBB+	-	-	-	5T + 155	\$18.9	\$3,264.3
03/10/17	\$100.0	Cullen/Frost Bankers, Inc. ³	HC - Sub.	4.500%	-	03/17/27	10NCL	A3	BBB+	-	-	-	-	10T + 195.0	\$30.2	\$5,776.7
03/08/17	\$25.0	Metropolitan Bank Holding Corp.	HC - Sub.	6.250% to 03/22;	3mL + 4.260%	03/15/27	10NC5 @ 100%	-	-	-	BBB-	-	-	~10T + 388.7	\$1.2	-
03/06/17	\$75.0	Ameris Bancorp	HC - Sub.	5.750% to 3/22;	3mL + 3.616%	03/15/27	10NC5 @ 100%	-	-	-	BBB-	-	-	~10T + 323.1	\$6.9	\$1,715.3
03/02/17	\$100.0	Durant Bancorp, Inc.	HC - Sub.	5.875% to 3/22;	3mL + 3.742%	03/15/27	10NC5 @ 100%	-	-	-	BBB-	-	-	~10T + 339.6	\$5.8	-
02/23/17	\$35.0	Capital Funding Bancorp, Inc.	HC - Sub.	7.500% to 03/22;	3mL + 5.600%	03/01/27	10NC5 @ 100%	-	-	-	-	A-	-	~10T + 516.3	\$0.7	-
02/15/17	\$80.0	NexBank Capital, Inc. ⁴	HC - Sr.	5.500% to 03/21;	3mL + 4.355%	03/16/26	10NC5 @ 100%	-	-	-	BBB	-	-	~10T + 316.3	\$4.6	-
02/13/17	\$10.0	Eagle Bancorp Montana, Inc.	HC - Sr.	5.750%	-	02/15/22	5NCL	-	-	-	-	-	-	~5T + 455.4	\$0.7	\$79.3
02/13/17	\$8.5	Northpointe Bancshares, Inc.	HC - Sub.	7.000% to 2/22;	3mL + 4.950%	02/15/27	10NC5 @ 100%	-	-	-	-	A-	-	~10T + 448.9	\$0.6	-
02/07/17	\$25.0	Malvern Bancorp, Inc.	HC - Sub.	6.125% to 2/22;	3mL + 4.145%	02/15/27	10NC5 @ 100%	-	-	-	BBB-	-	-	~10T + 367.2	\$0.9	\$133.2
01/20/17	\$27.0	Southern National Bancorp	HC - Sub.	5.875% to 1/22;	3mL + 3.950%	01/20/27	10NC5 @ 100%	-	-	-	BBB-	-	-	~10T + 340.7	\$1.1	\$197.9
01/11/17	\$17.5	Jeff Davis Bancshares, Inc.	HC - Sub.	6.750% to 1/22;	3mL + 4.690%	01/15/27	10NC5 @ 100%	-	-	-	-	BBB+	-	~10T + 421.3	\$0.8	\$88.9
12/29/16	\$20.0	Frontier Bancshares, Inc.	HC - Sub.	6.250% to 12/21;	3mL + 4.180%	12/31/26	10NC5 @ 100%	-	-	-	-	-	-	~10T + 377.4	\$0.8	-
12/22/16	\$12.0	Patriot National Bancorp, Inc.	HC - Sr.	7.000%	-	12/22/21	5NCL	-	-	-	-	-	-	~5T + 496.5	\$0.7	\$55.6
12/--/16	\$22.0	Arbor Bancorp, Inc.	HC - Sub.	6.000% to 12/21;	3mL + X.XXX%	12/--/27	10NC5 @ 100%	-	-	-	-	-	-	~10T + XXX.X	\$1.3	-
12/15/16	\$17.0	Congressional Bancshares, Inc.	HC - Sub.	7.000%	-	12/30/26	10NCL	-	-	-	-	BBB	-	~10T + 465.9	\$0.8	-
12/15/16	\$7.0	Congressional Bancshares, Inc.	HC - Sub.	6.500% to 12/21;	3mL + 4.695%	12/30/26	10NC5 @ 100%	-	-	-	-	BBB	-	~10T + 415.9	\$0.8	-
12/12/16	\$16.0	HomeBancorp, Inc.	HC - Sub.	7.000% to 12/21;	3mL + 5.100%	12/31/26	10NC5 @ 100%	-	-	-	BBB-	-	-	~10T + 452.8	\$1.0	-
12/12/16	\$45.0	Old Second Bancorp, Inc.	HC - Sr.	5.750% to 12/21;	3mL + 3.850%	12/31/26	10NC5 @ 100%	-	-	-	BBB-	-	-	~10T + 327.8	\$2.1	\$301.5
12/07/16	\$75.0	Flushing Financial Corporation	HC - Sub.	5.250% to 12/21;	3mL + 3.440%	12/15/26	10NC5 @ 100%	-	-	-	BBB	-	-	~10T + 290.9	\$6.0	\$836.5
12/02/16	\$35.0	Green Bancorp, Inc.	HC - Sub.	8.500% to 12/21;	3mL + 6.685%	12/15/26	10NC5 @ 100%	-	-	-	-	BBB+	-	~10T + 611.7	\$3.9	\$447.4
11/30/16	\$150.0	Union Bankshares Corporation	HC - Sub.	5.000% to 12/21;	3mL + 3.175%	12/15/26	10NC5 @ 100%	-	-	-	BBB	-	-	~10T + 262.4	\$8.3	\$1,472.3
11/08/16	\$120.0	Pinnacle Financial Partners, Inc.	HC - Sub.	5.250% to 11/21;	3mL + 3.884%	11/16/26	10NC5 @ 100%	-	-	-	BBB	-	-	~10T + 339.4	\$11.0	\$2,521.4
10/28/16	\$11.0	Catskill Hudson Bancorp, Inc.	HC - Sub.	7.250% to 11/21;	~3mL + 5.890%	12/31/26	10NC5 @ 100%	-	-	-	-	-	-	~10T + 540.2	\$0.5	\$11.8
10/27/16	\$50.0	Enterprise Financial Services Corp	HC - Sub.	4.750% to 11/21;	3mL + 3.387%	11/01/26	10NC5 @ 100%	-	-	-	BBB	-	-	10T + 290.5	\$3.9	\$669.4
10/27/16	\$10.0	Marquis Bancorp, Inc.	HC - Sub.	7.000% to 10/21;	3mL + 5.760%	10/30/26	10NC5 @ 100%	-	-	-	-	-	-	10T + 529.7	\$0.4	-
10/14/16	\$16.0	Tri-County Financial Group Inc.	HC - Sub.	7.000% to 10/21;	3mL + 5.862%	10/15/26	10NC5 @ 100%	-	-	-	-	-	-	~10T + 520.0	\$0.9	\$96.4
10/13/16	\$10.0	Carolina Trust BancShares, Inc.	HC - Sub.	6.900% to 10/21;	3mL + 5.718%	10/15/26	10NC5 @ 100%	-	-	-	-	-	-	10T + 527.7	\$0.4	\$28.4
10/04/16	\$50.0	CNB Financial Corporation	HC - Sub.	5.750% to 10/21;	3mL + 4.550%	10/15/26	10NC5 @ 100%	-	-	-	BBB-	-	-	~10T + 406.3	\$2.3	\$297.5

Pros and Cons of Debt Alternatives

	<u>Bank Stock Loan</u>		<u>Sub-debt</u>
Pros:	<ul style="list-style-type: none"> Cheaper coupon Flexible prepayments 	Pros:	<ul style="list-style-type: none"> Capital treatment Interest only No collateral No financial covenants
Cons:	<ul style="list-style-type: none"> Principal repayment Collateral Covenants Guarantees? 	Cons:	<ul style="list-style-type: none"> Higher coupon 5-year lock-out

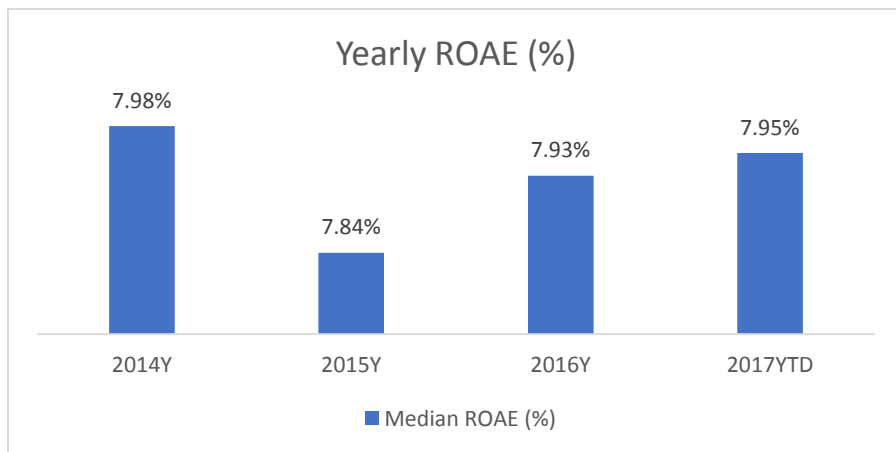
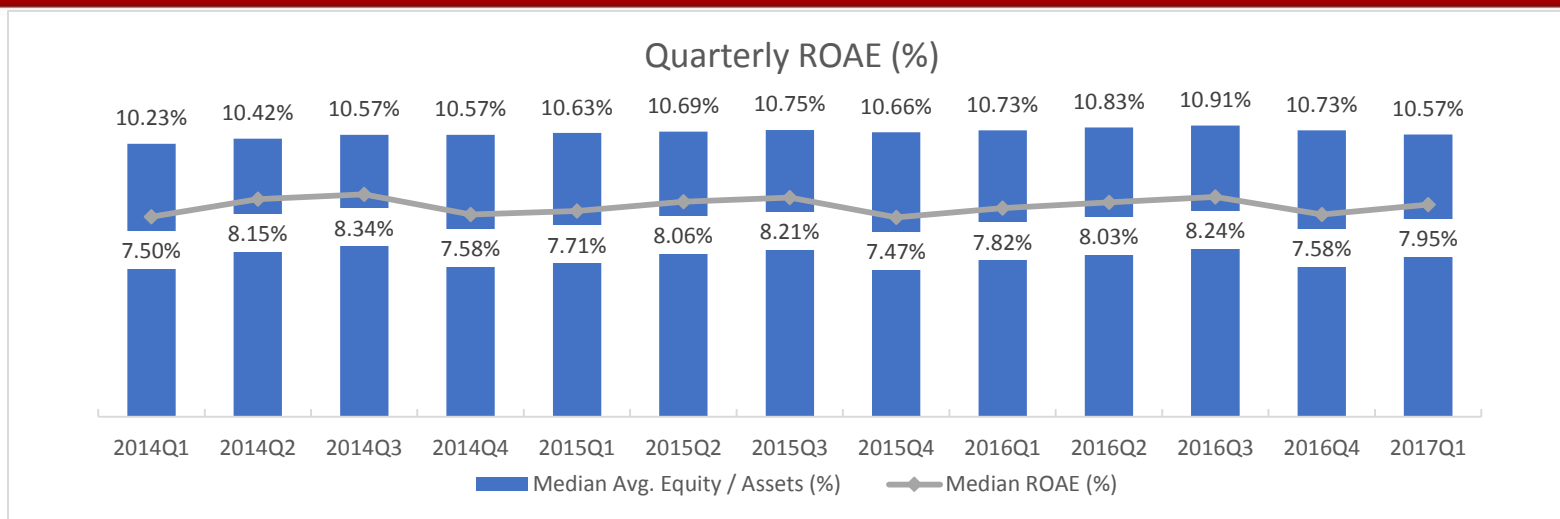
Fiduciary duty is to the hypothetical long-term investor who has no need for current liquidity.

Warren Buffett: “I believe in running the company for shareholders that are going to stay, rather than the ones that are going to leave.”

- Directors have no absolute legal duty to:
 - Explore a proposal to buy the bank
 - Meet with, discuss or negotiate a bid
 - Submit a bid to shareholders, even if the bid is a premium to market

- Decision to “just say no” is a fiduciary decision. It must be:
 - Well-informed
 - Based on strategic plan
 - Supported by projections
- Key to strategic plan:
 - Plan should consider short- and long-term interests
 - Analyze the data (historical and prospective)
 - True roadmap for asset growth based on reasonable assumptions
 - Risk appetite
 - Subchapter S
 - High stock price/value is best takeover defense
 - Assistance from investment banker?

Community Bank Return on Average Equity



- Median values are derived from a nationwide population of regulated depositories with total assets under \$10.0B in the respective time period shown
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- Maybe 8% core ROAE in this interest rate/economic environment is enough?
- Between 1991 and 2006, ROEs exceeded the inflation rate by 10% on average (less than 7% for 2013 – 6/30/17)

What to do?

- Nothing – we already chin the bar on 8% ROAE
- Nothing – when we clean up our problems, we will chin the bar
- Nothing – we are Subchapter S and we are clipping our coupons
- Take action to invest in the future because we are not generating an 8% ROAE

Advance planning is key. With advance planning:

- Board does not have to present offer to shareholders
- Board can authorize management to “Just Say No” to an unsolicited offer
- Management must instruct or notify the board of inquiries
- Key is strategic plan
 - Plan should consider short- and long-term interests
 - Analyze the data (historical and prospective)
 - True road map for asset growth based on reasonable assumptions
 - Risk appetite
 - High stock price/value is best takeover defense
 - Assistance from investment banker?

- Retain structural defenses (or consider adding to them)
- Consider amending the bylaws to:
 - Eliminate removal of directors by shareholders without cause
 - Eliminate shareholder action by consent
 - Extend advance notice to make proposals and structure
 - Extend advance notice to nominate directors
 - Require director nominee disclosure
 - Institute director qualifications (third-party compensation)
 - Adopt exclusive forum for shareholder class action
 - Provide structure around proxy access, shareholder meetings, etc.

Consider amending articles/certificates:

- Shareholder percentage to call meeting
- Staggered board
- Super majority voting
- Fair price provision
- Drag/tag agreements and ROFO agreements
- ESOP
- Standstill agreements

Mortgage

- Bad boy fees on loans
- Internet
- MLOs
- Fixed rate?
- Fees
- Deposits

- Bad boy fees on loans
- Construction CRE
- Documentation/loan processing fees

- Specialized agreement
- Higher risk
 - Customer due diligence
 - Risk assessments
 - Limits
 - Monitoring
- Profit center
- Third-party risk policy

- 20%/50% risk weights
- “Any time/any reason”
- Capital fee
- Non-use fee

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