AMERICA'S MUTUAL BANKS
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By E-mail: regs.comments @ federalreserve.gov

Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW.
Washington, DC 20551
Attn: Jennifer J. Johnson , Secretary

Re: Docket No. OP–1416

Dear Ms. Johnson,

America's Mutual Banks ("AMB"), a coalition of mutual financial institutions, submits this letter in response to the request for comments made by the Board of Governors of the Federal Reserve System (the "Board") in Docket No. OP-1416 (the "Notice") that provides notice of intent to apply certain supervisory guidance to savings and loan holding companies ("SHLC") in accordance with the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Dodd-Frank Act").

America's Mutual Banks was formed for the purpose of advocating for issues unique to mutual savings institutions. We are composed of persons and institutions who are committed to the preservation and advancement of mutuality as a viable business model for FDIC depository institutions. Our goal is to be the voice to promote the mutual agenda among Federal and State legislators, regulators and other policymakers. Another major goal is to educate legislators, regulators and other stakeholders on the unique attributes of the mutual form of ownership. We strive to preserve a mutual institution's freedom of choice with respect to Federal or State charter and form of corporate charter. Most importantly, AMB operates on the basis of inclusivity and represents the interests of mutuals regardless of charter, location or size.

AMB includes mutual holding companies with no public stockholders ("Simple MHC's") among its membership, but does not include mutual holding companies with public stockholders. While many Simple MHC's are already regulated by the Board, other Simple MHC's are currently regulated by the OTS and will be regulated by the Board after the transfer of powers from the OTS. Part of AMB's initiative is to elevate the mutual profile among regulators and policymakers. As you may recall, the Notice at no point mentioned mutual holding companies.

As of December 31, 2010, there were 116 Simple MHCs with total assets of $79.2 billion. These companies had an average leverage capital ratio of 10.38% and an average nonperforming assets to total assets ratio of 2.13%. Of these Simple MHCs, 37 with

assets totaling $17.1 billion are currently regulated by the OTS. The remaining 79 Simple MHCs with total assets of $62.1 are currently regulated by the Board. Most Simple MHCs have no operations at the holding company level. In addition many state chartered mutuals are seriously considering becoming Board members.

AMB's areas of concern are only on those issues which uniquely effect Simple MHCs. We defer to our national and state trade groups in areas of general industry concern. Our members are sensing that the playing field is increasingly tilting in an unfair direction While not intentional, the actions taken by Congress and the regulators risk putting mutuals in a position of disadvantage. The Collins Amendment[1] is a prime example. While the purpose of the amendment was to standardize minimum capital requirements for bank holding companies ("BHCs") and their subsidiaries, the few exemptions contained in the amendment allowing certain capital components to be grandfathered did not treat all institutions equally. For example, the language regarding the small bank exemption[2], as well as the Board discussion in the Notice[3], indicates that small SHLCs may not fall under the traditional community bank exemption. This will have a profound effect on Simple MHCs regulated as SLHCs in that they do not have the same sources of capital since they cannot issue common stock to the public. This is particularly onerous on a Simple MHC with a federal thrift in that it must forfeit its federal charter and flip to a state savings bank. Only then could the Simple MHC become a BHC and arguably fall under the small bank exemption of the Collins Amendment.[4] AMB is confident that Congress did not intend this provision to deplete the ranks of federal thrifts by forcing conversion to state charters. Indeed we anticipate the OCC would be particularly concerned if the Collins Amendment had such a consequence. An interpretation of the Collins Amendment which denies small SLHCs an exemption would hasten the demise of the federal charter.

Currently, the Board's approach to holding company supervision is based on size and complexity. Will the Board use the same size criteria for SLHCs as is used for BHCs? And would the Board classify a Simple MHC as complex merely because it is an unusual form of corporate organization? As previously stated, most simple MHCs have no operations at the holding company level and therefore should not be categorized as complex.

AMB would like clarification on whether the Board anticipated that most Simple MHCs would be categorized as "community banking organizations" given that only 18 of 116 Simple MHCs have total assets greater than $1 billion and the largest Simple MHC has total assets less than $8 billion. Simple MHCs are community banks, and it is important that the Board specifically recognizes this in its supervisory program. More importantly, the pressures and the market influence that encourage traditional stock holding

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[1] 12 U.S.C. 5371.
[2] 12 U.S.C. 5371(b)(5)(C).
[3] ("Small BHCs that are subject to the Small Bank Holding Company Policy Statement (Appendix C of 12 CFR part 225) are exempt from these requirements. Section 171 of the Act did not expressly provide a similar exemption for small SLHCs.").
[4] 12 U.S.C. 5371(b)(5)(C).

companies to leverage their assets are not present with Simple MHCs. Thus the issuance of forms of equity other than common stock is not motivated by the need to avoid the dilution of existing interests to the gain of common stockholders. While in a perfect world the Board may insist on the highest form of equity – common stock – for mutuals, such a standard is impossible to comply with.

The Notice provides guidance on Small, Noncomplex Holding Companies and for Small Shell BHCs (assets less than $1 billion). Will Simple MHCs that would otherwise meet the definitions of a Small Noncomplex BHC or a Small Shell BHC qualify for treatment under those guidelines? The Notice stated that for BHCs with consolidated assets of $1-10 billion and a satisfactory composite rating, a limited scope on site inspection is required every two years. Will the Board accept the current composite ratings from the OTS or will the Board require a new rating from the OCC? Our members have frequently experienced difficulties with the banking agencies and their appreciation of the mutual structure. On numerous occasions, the banking agencies have displayed a lack of understanding on the differences between the stock form and mutual form. Our members are also concerned that the Board may not defer to previous OTS examinations and instead initially institute full, several day onsite examinations If such onsite examinations are initially performed by the Board, we feel, absent any issues, further onsite examinations should not be necessary for Simple MHCs.

It is important that the Board understands the reasons behind why Simple MHCs are formed. Some Simple MHCs were formed to utilize the benefits of the structure to raise capital through subordinated debt and trust preferred securities. Other Simple MHCs were formed as a legal defense against any attempts resulting from the now repudiated FDIC whitepaper to divert capital from members. Unlike BHCs which have an incentive to increase leverage through borrowing, trust preferred securities or other hybrid securities in order to maximize returns on equity, Simple MHCs do not have pressure to enhance stockholders returns through leverage. Under Basel III, there are issues on whether Simple MHCs would be able to use the five year Dodd-Frank grandfather for trust preferred securities. Regardless of the outcome of Basel III, it is imperative that Simple MHCs have access to capital instruments unique to mutuals, such as mutual capital certificates.[5]

Although not mentioned in the Notice, the Savings and Loan Holding Company Act makes it unlawful for any savings and loan holding company or subsidiary thereof, or any director, officer, employee, or person owning, controlling, or holding with power to vote, or holding proxies representing, more than 25 percent of the voting shares, of such holding company or subsidiary, to hold, solicit, or exercise any proxies in respect of any voting rights in a savings association which is a mutual association.[6] A recent Court of Appeals case held that there was no implied private right of action for mutual savings associations under this statute.[7] Since a mutual cannot bring a private right of action to

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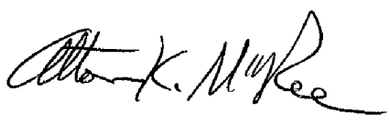
[5] See 12 CFR 563.74
[6] 12 U.S.C. 1467a(h)(1).
[7] Spencer Bank SLA v. Menlo Acquisition Co., Docket No. 08-1343, (3rd Cir. February 9, 2009) (unpublished).

enforce the statute, it is completely reliant on the Board for protection under this statute. It is imperative that the Board pledge to vigorously enforce this statute against companies. Without enforcement, companies and persons acting in concert with companies can own and solicit proxies of mutual savings associations or Simple MHCs, against the clear intent of the Congress in enacting the statute. It is of concern to mutual institutions that the Board affirm publicly its responsibility to administer and enforce this statute, particularly because it is tailored to protect mutuals and has no parallel in the Bank Holding Company Act. AMB urges the Board to take such action so as to deter attempts by companies and person acting in concert with companies from influencing control over mutual institutions.

Simple MHCs are more conservative in nature and place a greater emphasis on safety and soundness due to the absence of pressure to leverage returns on equity. Therefore Simple MHCs tend to have higher capital ratios. Simple MHCs, as a group, were not responsible for the crisis, but they are still subject to the burdens of Dodd-Frank, in some cases to a greater degree than other institutions. Because Simple MHCs have no stockholders, there may be a view that Simple MHCs are subject to less market discipline. However, Simple MHCs are susceptible to market discipline which is instilled by competition in their daily operations with a multitude of bank and bank-like competitors. If Simple MHCs were not competitive, they would demonstrate ratios and financial metrics inferior to other financial institutions. As an industry, this is not the case. In fact, Simple MHCs, on average, enjoy better ratios and financial metrics than other institutions. It is important that the Board recognize and understand Simple MHCs when creating the supervisory program for SLHCs. Simple MHCs need to be recognized as pure mutual institutions with a conservative banking model, and they should not be subject to increased supervision and regulation because of their unique structure. At a time when the Board's resources are strained to keep up with its increasing legislative responsibilities, dedicating any significant portion of its resources to the supervision of Simple MHCs is not warranted.

If you have any questions, please do not hesitate to contact me at 504-569-3441 or Douglas Faucette at 202-220-6961.

Best Regards,



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