KENNETH H. THOMAS, PH.D

November 1, 2011

Ms. Jennifer Johnson
Secretary
Board of Governors of the Federal Reserve System
20th St. and Constitution Ave., NW
Washington, DC 20551

Subject: Comment on Mutual Holding Company Dividend Waivers (# R-1429)

Dear Ms. Johnson:

Please accept this comment regarding the Interim Final Rule ("IFR") for Docket # R-1429 related to dividend waivers at Savings and Loan Holding Companies (also referred to here as "Mutual Holding Companies" or "MHCs")

Introduction

This comment is based on my more than forty (40) years of experience in the financial services industry as both a consultant to and board member for both bank and mutual holding companies and their subsidiary banks. My consulting experience is primarily related to regulatory and compliance issues, most notably the Community Reinvestment Act of 1977 (CRA) on which I have testified to Congress and written books and articles (see www.CRAHandbook.com).

As you know I have submitted numerous comments to the Board of Governors of the Federal Reserve System ("Fed") over the last several decades, mainly involving corporate expansion activities oftentimes touching on CRA and related regulatory issues.

From these past comments and my published work on CRA you will note that I feel that FDIC-insured banks have a responsibility to their communities that should be considered in all public policy initiatives, and the present one is no exception. I also believe federal financial institution regulators likewise have a mandate to consider community development and CRA issues as well as safety and soundness in their public policy efforts. Again, the present MHC proposal is no exception.

The Proposal Will Have an Adverse Impact on Capital Preservation and the Local Community

The Dodd-Frank Act ("Dodd Frank") clearly recognized the benefits of the MHC structure for stockholders, depositors, and the larger community, especially in an environment where capital preservation and community development are ongoing and critical concerns.

I am concerned, however, that the IFR dividend waiver member vote requirement and potential payment of dividends to an MHC not only ignores the intent of Dodd-Frank in these two regards but goes in the opposite direction by having an adverse impact on both (1) capital preservation and (2) the local community:

1. Adverse impact of proposal on capital preservation

   A. The proposal will impose a needless additional regulatory burden and expense on MHCs through a new member vote requirement. This expense will not be limited to the actual notice and vote tallying but also incidental legal, accounting, and customer support expenses that otherwise would not exist. This expense will likely be in the six-figure range for most MHCs, and this is money that they could better spend on lending and serving their local communities.

   B. A dividend payment to the MHC by banks not willing or able to secure this proposed waiver from such a vote would result in additional taxes which would be a deadweight loss to the MHC *and* the bank.

   C. The payment of dividends to the MHC also will reduce capital at the bank level and therefore reduce its ability to use that capital to serve community needs through lending and community development activities.

All of these likely adverse outcomes of a member vote requirement and MHC dividend payment will reduce bank income and therefore capital, which was the opposite intent of Dodd-Frank. Furthermore, such additional stress on the financial position of impacted banks could not come at a worse time as they are struggling to recover from the Great Recession and facing the possibility of a Double Dip Recession.

2. Adverse impact of proposal on the local community

   A. Any increase in expenses and loss of capital as identified above will reduce the ability of a bank to serve community needs through normal lending activities as well as community development loans, investments, and services.

B. The member vote requirement has the potential to create confusion and unnecessary anxiety among depositors receiving the required voting information, especially in the current highly volatile financial crisis environment of weekly bank failures. These members have never received such a communication and many if not most do not even understand the MHC structure, much less the fact that the OTS was merged into the OCC and the Fed now has supervisory powers over the MHC. Thus, this proposal has the potential to unnecessarily confuse and cause anxiety among these depositors, many of whom are senior citizens very concerned about their nest eggs at the banks in these troubled times.

C. The member vote requirement has the further potential to create even more bad PR with the public by depositors, minority stockholders and others, including the media, who may misinterpret the new requirement in terms of an adverse impact on the bank's financial stability. Again, in these unsettled times, this potentially could cause depositors to move their accounts from the bank or minority stockholders to sell their shares.

All of these potential adverse impacts on the local community in terms of depositors, minority stockholders, and the ability of the bank to meet community needs create needless collateral damage that again was never intended by Dodd-Frank.

Conclusion

In my opinion, the present proposal regarding member approval of the dividend waiver and the potential payment of a dividend to the MHC represents *bad public policy* and therefore should be eliminated from the final rule.

It is my further opinion that this proposal would subject the Fed to further criticism from numerous sources. It is no secret that the Fed and Chairman Bernanke have been under an inordinate amount of criticism and pressure recently not only from Republican Presidential hopefuls and the Congress but also the Occupy Wall Street movement and other sources.

A common thread of these complaints has been that the Fed generally has been consumer unfriendly and out of touch with Main Street America, especially those unemployed and foreclosed upon individuals who continue to suffer from the Great Recession (again, something the Fed is also blamed for). In fact, this is one of the reasons why Dodd-Frank created the new Consumer Financial Protection Bureau.

This poorly thought out proposal could not come at a worse time for Chairman Bernanke who would likely be subject to even additional criticism by members of Congress, consumer activists, the media, and others.

In addition to eliminating the member vote and potential MHC dividend payment requirement from the final rule, the Fed should consider making this proposal more consumer responsive by providing incentives to banks with *outstanding* records of serving their communities. This could be done by reducing and/or eliminating various *additional* requirements for MHCs whose banks have Outstanding CRA ratings.

Sincerely,

Ken Thomas

Kenneth H. Thomas, Ph.D.