James L. Ford

October 31, 2011

Jennifer J. Johnson, Secretary
Board of Governors of
The Federal Reserve System
20th Street and Constitution Ave., NW
Washington, DC 20551
Email: regs.comments@federalreserve.gov

Re: Docket No. R-1429

Dear Members of the Board:

I appreciate the opportunity to comment on the interim final rule regarding the waiver of dividends to Mutual Holding Companies ("MHCs"). Over the past 36 years, I have worked with numerous savings and loan associations and savings banks, helping them to operate in a safe and sound manner for the benefit of all of their stakeholders (depositor / members, regulators, stockholders and the communities they serve). A significant part of my experience has involved raising capital in mutual-to-stock thrift conversions and MHC reorganizations.

I generally applaud the Board's actions to implement regulations following the passage of the Dodd-Frank Act. However, I believe that its proposed regulations pertaining to the MHC dividend waiver issue are overly burdensome, unnecessarily costly and will prove detrimental to the financial well-being of MHCs and their constituent members. Section 625 of the Dodd-Frank Act grandfathered the waiver of dividends to MHCs, based on the existing regulations of the former Office of Thrift Supervision ("OTS"). As I will discuss below, I believe that these pre-existing regulations from the OTS are strong and appropriate, protecting both depositor / member interests, as well as working towards the best interests of an MHC organization and all of its stakeholders, taken as a whole.

1. *Mutual members already receive significant economic benefit from generally above-average rates on deposits, lower service fees and better customer service from their mutually-owned financial institution.*

It is highly appropriate for the dividend waiver regulations to address how best to protect the economic interests of the MHC members. It is, after all, the primary fiduciary duty of the board of directors of an MHC to protect and appropriately share the economic wealth created by such

a financial institution among all of its member-owners, both now and in the future. Years ago, the interest paid on deposits to members was called a "dividend", which implicitly recognized how depositor / members were to be rewarded for his deposit / investment in the mutual thrift. It is important to note that depositor / members still generally receive above average interest rates on their deposits, as well as lower fees and better customer service. In fact, when working on the strategic plans with the senior executives of MHCs, I usually find this to be a significant strategic planning issue – these management teams genuinely put a top priority on rates paid to depositors, as they recognize that many of their depositor / members are on fixed incomes. By doing so, these MHC management teams are striving to fulfill the core mission of thrifts, which is the promotion of thrift and homeownership.

2. *Few members will ever share in the dividends paid to the MHC.*

In contrast, forcing an MHC to receive dividends may reduce the ability of MHC bank subsidiaries to pay higher rates on deposits, to the detriment of existing members.

Experience has shown that the top-tier MHC of most all MHC organizations purposely has a de minimis level of assets (other than its stock in the public mid-tier holding company) and activity. In most MHC reorganizations that raise tens of millions in their initial public offerings, only about $50,000 is up-streamed to the top-tier MHC from the IPO proceeds. This allows the MHC organization to retain more capital at the subsidiary Bank level and avoid duplicative expenses that might appropriately be shared by both the Bank and the top-tier MHC. This strategy to contain costs and economic activity at the Bank level is especially important for smaller MHC organizations that typically have less than 50 employees. By allowing the MHC to waive its dividend, these cost-efficient and capital-efficient dynamics are preserved.

Moreover, I believe that the trade-off of paying a higher level of interest to depositors now, versus having depositors forgo higher current dividend levels in order to preserve such economic value in the MHC for later distribution is easily characterized as in the best interest of depositor / members. Normally, while all depositor / members receive a priority right to purchase stock in their mutually-owned financial institution, less than 5% of depositors will purchase stock in either the initial IPO of the MHC reorganization or its second-step conversion to stock. To me, the fair distribution of such economic distribution is more important than the form of such distribution. Interest earned and paid to depositors – paid in the present – is significantly more beneficial to depositor / members than dividends held in reserve by an MHC for later distribution.

It is important to note that the priority rights to purchase stock in such MHC offerings have no value, as is always determined by an independent appraiser in such offerings. [Imagine the

howls from depositors if they were to receive a Form 1099 and be required to pay income tax on such unexercised rights.] In essence, by forcing the MHC to not waive its dividends, this new regulation will preserve economic value that will never be shared by the vast majority (95% or more) of depositor / members.

3. *Depositor / member interests are already substantially protected by both extensive regulatory oversight of dividends paid and waived, as well as the appropriate execution of the fiduciary duties of the MHC board of directors.*

There are already numerous controls on the dividend payments that can be paid to the minority public stockholders, making the new MHC dividend waiver regulation overly burdensome. The dividend policy associated with MHC reorganizations is clearly spelled out within the prospectus and business plan, as are the amounts of stock expected to be purchased by directors and senior management. OTS regulators approve or disapprove; and depositor / members cast their vote "for" or "against" an MHC reorganization based, in part, on such information. My experience has been that well over 95% of the votes cast in such proxy solicitations are in favor of such MHC reorganizations, including MHC reorganizations that expect to pay a 4.0% regular dividend to stockholders and waive such regular dividends to the MHC. Disclosure and approval of an MHC's dividend waiver should, therefore, not be an issue.

Section 239.8(d) expresses concern with "the inherent conflict of interest created by the waiver of dividends". I believe that the term "conflict of interest" mischaracterizes the situation, as it is the MHC board member's fiduciary duty to protect depositor / member interest – ***within the context of serving <u>all</u> of the stakeholder groups of the MHC organization.*** I believe it to be good and appropriate for an MHC director to be biased in favor of depositor / members, and also the MHC organization. I disagree with the characterization that an MHC board member and stockholder who votes in favor of a dividend waiver creates a conflict of interest, because such a vote represents a continuation of a policy that was fully disclosed in a prospectus and previously approved by the appropriate regulators. Moreover, such a vote should not be characterized as a self-serving conflict of interest. Rather, such a vote is more appropriately characterized as recognizing the need to serve <u>all</u> stakeholder of the MHC organization.

The distinction of an MHC board member being a party to one or more of these stakeholder groups is simply not relevant. Such an MHC dividend waiver vote is for the benefit of both a stakeholder group and also the whole MHC organization, not the individual director. While individuals within these groups of stakeholders will indeed have differing personal goals, all of these groups of stakeholders share a common mission in the promotion of thrift and homeownership by the MHC. I would hope and expect an MHC board member to recognize and diligently work towards the mission of the overall organization, rather than just one group

within the organization. I would also expect that a board member of a mutual that later reorganizes into an MHC would be consistent with his prior votes – votes that already were in favor of such dividend waiver at a point in time prior to the existence of the MHC.

4. *Annual proxy solicitations from depositor / members would be especially burdensome to a small or mid-sized MHC organization.*

Proxy solicitation is a very expensive process. I would estimate that proxy solicitation for a typical mid-sized MHC would have an all-in cost of approximately $5 to $10 per account. While the number of stockholders of a mid-sized MHC might total 500, the number of deposit accounts for that same institution might total 20,000. For such an MHC, this additional proxy solicitation expense could easily translate into upwards of $100,000 or more of additional expense per year. How would an MHC pay for such proxy solicitation? I believe that an MHC would do so by either reducing rates paid on deposits or reducing staff expense and a corresponding level of customer service – both to the detriment of depositor / members.

In summary, while I applaud the purpose and intent of Section 239.8(d) of Regulation MM, I believe that its implementation would be to the significant detriment of an MHC's depositor / member constituency. I am, therefore, hopeful that the Board will reconsider their new, more onerous restrictions being placed on the waiver of dividends to MHCs and revise Section 239.8(d) to be more in line with the proven regulations previously used by the OTS. I further believe that, by doing so, these regulations will more accurately "grandfather" the prior OTS regulations as was the intent of the Dodd-Frank Act.

I further believe that such revisions should be applied to all MHCs, whether or not "grandfathered". By doing so, I believe that the Board will be acting in the best interests of the depositor / members of <u>all</u> MHCs.

Sincerely,

James L. Ford

Cc: The Honorable Chris Van Hollen
United States House of Representatives