AMERICA'S MUTUAL BANKS
701 8TH STREET NW SUITE 700. WASHINGTON, D.C. 20001

November 1, 2011

Jennifer Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N W
Washington, DC 20551

Re: Docket No. R-1429 / RIN No. 7100-AD-80
VIA ELECTRONIC MAIL: regs.comments@federalreserve.gov

Dear Ms. Johnson,

America's Mutual Banks appreciates the opportunity to provide comments to the Board of Governors of the Federal Reserve System's (the "Board") on the interim final rule on savings and loan holding companies, found at Regulation LL and mutual holding companies, found at Regulation MM. AMB is a coalition of state- and federally-chartered mutual financial institutions, including some state-chartered members of the Federal Reserve and mutual holding companies with no public stockholders, located throughout the United States.

AMB 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-insured depository institutions. We join cooperative financial institutions throughout the world in participating in the launch of the United Nation's recognition of 2012 as the "Year of Cooperatives" in celebrating cooperative financial institutions and how they have made the world a better place. Our goal is to be the voice to promote in the U.S. the virtues of 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.[1]

[1] AMB's areas of concern are only on those issues which uniquely effect mutual financial institutions. We defer to our national and state trade groups in areas of general industry concern.

CONTINUATION OF PROTECTIONS FOR MUTUAL INSTITUTIONS

AMB requests that the Board in its regulations clarify that it will continue and enforce one of the critical provisions of the Home Owners' Loan Act (the "HOLA") which was intended to protect mutual institutions. Section 10(h) of the HOLA (12 U.S.C. § 1467a(h)) provides the following:

> **(h) Prohibited acts**
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> It shall be unlawful for—
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> (1) 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;

This section was enacted during a period in which savings and loan holding companies, and those persons that controlled savings and loan holding companies, were unlawfully acquiring control of mutual institutions. Often the violation was revealed long after control was acquired and the damage was done. In order to stem the tide of multi-state holding companies acquiring control of savings institutions, Congress enacted subsection (h) to prohibit any savings and loan holding company from holding, soliciting or exercising even a single proxy of a mutual institution.

Although Congress' intention was clear to prevent any form of control or controlling influence over a mutual institution, the language of the provision resulted in some companies, who were not registered holding companies, raising the argument that they were not subject to the prohibition. That is, they argued that a company that was not a registered savings and loan holding company, could conceivably acquire control of a mutual through the holding, soliciting and exercising of proxies, and not run afoul of the explicit prohibition of subsection (h), a banking version of the one bite rule. The General Counsel of the Federal Home Loan Bank Board addressed this issue in an opinion stating that a company that acquired control of a savings institution would be considered a savings and loan holding company and be subject to the prohibitions of the Savings and Loan Holding Company Act (now a part of the HOLA) as if it were a registered savings and loan holding company. O.P. G. C. July 20, 1970. The reasoning behind this opinion was that since a registered savings and loan holding company was prohibited altogether from controlling a mutual savings association, a company that was unregistered could not qualify for registration and therefore was also subject to an absolute prohibition from acquiring control of a mutual. In this regard then, AMB requests that the Board confirm the prior position as expressed by the FHLBB General Counsel that a company, as defined in the

HOLA, cannot acquire control of a mutual savings institution by holding, soliciting or exercising the proxies of a mutual institution. Moreover, AMB requests the clarification by the Board that any attempt by a company to acquire control of a mutual institution through the holding, soliciting or exercising of a mutual's proxies would likewise be a violation of the statute. It would not be appropriate to require a violation of the control regulations (i.e., the company in question to have actually acquired unlawful control and therefore become a de facto savings and loan holding company) before a violation of subsection (h) can occur.

MUTUAL HOLDING COMPANY DIVIDEND WAIVERS

Although AMB does not have any members that are mutual holding companies ("MHC") with public stockholders, AMB is dedicated to supporting methods for mutuals to raise capital consistent with their form of organization. Several of our members have issued trust preferred or subordinated debentures and rely on dividends from the subsidiary bank to service the dividend and interest payments. Thus, AMB supports the ability of a mutual board of directors to choose to reorganize in a mutual holding company form and issue shares to its members and those persons residing in its community. AMB continues to explore alternative capital instruments for mutuals but recognizes that presently the public issuance of shares is an attractive method for an MHC to raise capital, while retaining the benefits of the mutual form.

An area of concern to AMB is the provision in Regulation MM that would require MHC's to obtain the annual approval of members before the MHC may be permitted to waive its right to a dividend paid by its stock subsidiary. The waiver of dividends by an MHC has been an essential feature for a substantial majority of MHC with public stockholders. The waiver enables the stock subsidiary to pay a somewhat higher rate of dividend, which in turn, makes the sale of the minority shares more marketable, with the ultimate result being that MHC's are more easily able to raise capital. AMB believes that any viable means to raise capital should not be thwarted. The Board's proposal, however, will substantially lessen the viability of the MHC form which in turn will curtail or eliminate a proven method to raise capital.

In addition to the above, AMB believes it is more appropriate for the board of the MHC to decide whether dividends should be waived, rather than require an annual meeting of members as proposed by Regulation MM. AMB agrees with the Board's reasoning that a board of directors should decide whether a waiver of dividends is appropriate in a manner consistent with the directors' fiduciary duties. However, the additional step required by Regulation MM will result in significant costs resulting from the preparing, printing, mailing and soliciting proxies and holding a members' meeting. This additional burden can make the issue cost prohibitive for many institutions. Moreover, the divergence in practice and laws among the various states as to member voting rights or the absence thereof makes a one size fits all approach neither sensible

nor respectful of the diversity in the different state regulatory systems. AMB believes that the Board should weigh the costs both financial and intangible involved with a member proxy solicitation against other methods that may be utilized to protect the interests of members. One suggestion would be to require a committee of independent members of the board (e.g., directors who do not own stock in the subsidiary or receive any benefits under stock benefit plans) make the determination on whether dividends should be waived. In this regard, the board would be able to make its determination consistent with its fiduciary duties and in a manner that would not impose an undue burden on the bank. An alternative would be to require a committee of independent persons determine whether a waiver is appropriate. Such committee could be composed of persons who are not shareholders, depositors or borrowers of the institution. Such committee would be truly independent and would be able to make such a determination without a conflict of interest. In any event, the Board should suspend the provisions of the regulation regarding Board and member approval and study carefully the benefits against the loss of capital before it places such an onerous burden on MHCs. Surely, it has ample staff resources to do so.

America's Mutual Banks appreciates this opportunity to provide the above comments to the Board. 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,

Alton K. McRee
Chairman
America's Mutual Banks
www.americasmutualbanks.com