KILPATRICK TOWNSEND
ATTORNEYS AT LAW

KILPATRICK TOWNSEND & STOCKTON LLP
www.kilpatricktownsend.com

Suite 900 607 14th St., NW
Washington DC 20005-2018
t 202 508 5800 f 202 508 5858

November 1, 2011

VIA EMAIL (regs.comments@federalreserve.gov)

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

Re: Interim Final Rule Relating to Savings and Loan Holding Companies Docket No. R-1429; RIN No. 7100 AD 80

Dear Ms. Johnson:

On behalf of Clifton Savings Bank, Clifton, New Jersey, Gouverneur Savings and Loan Association, Gouverneur, New York and Tempo Bank, Trenton, Illinois (individually the "Bank" and collectively, the "Banks") and their respective mid-tier stock holding companies (Clifton Savings Bancorp, Inc., Gouverneur Bancorp, Inc. and Sugar Creek Financial Corp.) and mutual holding companies (Clifton MHC, Cambray Mutual Holding Company and Sugar Creek MHC), we hereby submit comments on Docket No. R-1429- Interim Final Rule ("IFR") issued by the Board of Governors of the Federal Reserve System ("FRB") on August 11, 2011. Our comments are primarily focused on the provisions of Regulation MM set forth at 12 C.F.R. Section 239.8(d), which address dividend waivers by grandfathered mutual holding companies ("Grandfathered MHCs").

As discussed in more detail below, the Banks and their respective mutual holding companies ("MHCs") and mid-tier stock holding companies believe that the requirement of Regulation MM that Grandfathered MHCs receive member approval of dividend waivers is inconsistent with the Dodd–Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"), unduly burdensome on MHCs, unnecessary to protect the interests of MHC members, and likely to result in the inability of MHCs to waive dividends, or subject MHCs and their mid-tier holding companies to adverse tax consequences if they choose to pay dividends without the MHC waiver.

Under the former Office of Thrift Supervision ("OTS") regulations, dividend waivers required the review and approval of an MHC's board of directors. A board of directors is required to act in accordance with its fiduciary duties in all matters, including in connection with the decision to waive dividends. Under the former OTS regulations, the OTS was required to review and approve each dividend waiver to ensure such waiver would not be detrimental to the safe and sound operation of the subsidiary savings association. Under Dodd-Frank this responsibility was transferred to the applicable Federal Reserve Bank. The addition of an MHC member vote requirement under the IFR, which is not required by Dodd-Frank, provides no protection to MHCs or their members. Instead, the member vote requirement imposes an unnecessary burden on MHCs, both in terms of significant expense and loss of management resources that will be shifted from the management of the Bank to seeking the required member vote. For the reasons set forth in this letter, we request that the FRB eliminate the requirement that a majority of eligible members vote in favor of dividend waivers by Grandfathered MHCs.

I. Background

Clifton Savings Bank, Gouverneur Savings and Loan Association and Tempo Bank reorganized into the MHC structure and conducted their minority stock offerings in 2004, 1999 and 2007, respectively. Each of the Banks operates in a three-tier structure with an MHC owning a majority of the common stock of the mid-tier holding company and the mid-tier holding company owning 100% of the outstanding stock of the subsidiary bank.

Each of the mid-tier holding companies of the Banks have declared and paid dividends to their minority stockholders in the years since their minority offerings. Each of the MHCs have waived receipt of all, or nearly all, dividends declared by the mid-tier holding companies since the mid-tier holding companies began paying dividends. Clifton Savings Bancorp, Inc., Gouverneur Bancorp, Inc. and Sugar Creek Financial Corp. have paid dividends since 2004, 2000 and 2009, respectively. On a cumulative basis, Clifton MHC, Cambray Mutual Holding Company and Sugar Creek MHC have waived approximately $25.2 million, $3.2 million and $100,000 of dividends, respectively.

Clifton MHC, Cambray Mutual Holding Company and Sugar Creek MHC are all Grandfathered MHCs under the provisions of Dodd-Frank and the IFR.

In particular, since their respective mutual holding company reorganizations and minority stock offerings, depositors/members of each of the Banks/MHCs and minority shareholders of each of mid-tier holding companies have expected and relied upon dividends paid by the mid-tier holding company, due in large part by the respective MHC's ability to waive dividends in compliance with the OTS' regulatory framework. This regulatory framework for MHC dividend waivers was described in detail in the proxy statements for the MHC reorganizations (mailed to all voting depositors/members) and the offering prospectuses for the minority stock offerings (mailed to all potential shareholders). The OTS' dividend waiver requirements continued to be disclosed to shareholders and the general public annually in connection with each entity's public company filings with the Securities and Exchange Commission (also mailed annually to minority shareholders). As set forth below, the IFR's member vote requirement will likely result in the inability of MHCs to waive dividends and, therefore, cause mid-tier holding companies to either not pay dividends or pay dividends and incur adverse income tax consequences with such payment. This unexpected shift in regulatory requirements and impact on the payment of dividends will likely result in significant negative pressure on the price and liquidity of the mid-tier holding company's common stock.

II. Comments on Regulation MM

A. The Imposition of a Member Vote Requirement Effectively Eliminates the Ability of Grandfathered MHCs to Waive Dividends Contrary to Dodd-Frank

As discussed in more detail below, the requirements of a member vote to approve dividend waivers will be expensive, onerous and unpredictable. As a result, it is likely Grandfathered MHC's will choose not to pursue a member vote and therefore will be precluded from waiving dividends. Such a result is not consistent with Dodd- Frank.

Mutual and MHC members have limited voting rights in their mutual and MHC entities and historically have taken little interest in the governance or operations of the mutual entity, typically not exercising their voting rights. Their main interest is to get interest on their deposits. This is one of the reasons that "running" proxies are authorized and used for general corporate matters, such as the election of directors and charter amendments, that do not directly affect members' rights. For a mutual to stock conversion or a mutual holding company reorganization, which are significant corporate transactions that alter member rights, the regulations of the OTS required approval by a majority of the members entitled to vote and prohibited the use of running proxies. While obtaining the vote for these types of transactions has historically been very time consuming and expensive, the effort and expense could be justified given the nature of the corporate transaction being proposed.

The provisions of Dodd-Frank track verbatim the OTS' regulations regarding dividend waivers and do not require MHC member approval of dividend waivers. Specifically, Dodd-Frank provides that the FRB may not object to a dividend waiver by a Grandfathered MHC if: (i) the waiver would not be detrimental to the safe and sound operation of the savings association; and (ii) the board of directors of the Grandfathered MHC expressly determine that the dividend waiver is consistent with the fiduciary duties of the board of directors to the mutual members. This Dodd-Frank provision is consistent with the manner in which the OTS regulated dividend waivers and does not suggest that any additional burden should be imposed on Grandfathered MHCs, such as the IFR's requirement that a majority of all eligible members of an MHC approve dividend waivers. Dodd-Frank merely requires the board of directors of a Grandfathered MHC to conclude that the waiver of dividends is consistent with the board's fiduciary duties to the members of the MHC and permits the FRB to determine the form and substance of the board resolution adopted by the board of directors of a Grandfathered MHC in reaching such conclusion. The review of the "form and substance" should merely involve a review that the directors did in fact consider the positive and the negative effects of a dividend waiver and concluded, in accordance with its fiduciary duties to the members of the MHC, that the waiver was appropriate. Requiring the vote of a majority of all eligible members in favor of a dividend waiver is a substantive additional requirement and is unrelated to the Dodd-Frank required review of the "form and substance" of the board resolution approving a dividend waiver.

B. Obtaining Member Approval of the Dividend Waiver is Onerous and Expensive

Section 239.8(d)(2)(iv) of Regulation MM requires that the vote of members on the dividend waiver be obtained annually at a meeting of members and requires a proxy statement that contains certain specified information regarding the proposed dividend waiver. As discussed herein, depositor members do not typically vote and therefore significant effort is required to obtain a majority vote of all eligible members. Member apathy, not member opposition, makes obtaining the vote very difficult. A failure to vote has the same effect as a vote against a proposal when the vote of all eligible members is the vote standard. As a result of these requirements, MHC management would spend considerable time on the proxy solicitation and the MHC would likely need to retain counsel to assist in the preparation of a proxy statement and would have to retain a proxy solicitor to assist in obtaining the necessary vote. The cost to the MHC for such third party advisors and the annual printing and mailing to all Bank depositors of proxy materials and follow-up solicitation materials would be substantial.

C. The Requirement of a Member Vote to Approve a Dividend Waiver is Inconsistent with HOLA and the Charter and Bylaws of the MHC

Under the Home Owners' Loan Act of 1933, as previously in force and as amended by Dodd-Frank ("HOLA"), there is no statutory requirement that the members of an MHC have voting rights other than in connection with certain specified transactions consistent with the statutory language governing mutual savings associations and the voting rights of members of such associations. This limited voting right approach to mutual members is consistent with the limited ownership rights a member has with respect to the mutual entity. The HOLA requires the approval of members for a mutual to stock conversion, and the regulations of the OTS required member approval of certain other types of significant transactions. The forms of MHC Charter and MHC Bylaws adopted by the FRB as part of Regulation MM are consistent with the HOLA and the OTS' regulations, which limited the ability of members to vote on corporate matters. Specifically, members have the right to vote for the election of directors, to amend the charter of the MHC, and amend the bylaws of an MHC (although such bylaws can be amended by the board of directors without approval by the members). Running proxies can be utilized to obtain each of these votes. A member vote to approve a dividend waiver is inconsistent with these limited voting rights specified by HOLA and the MHC Charter and Bylaws.

D. A Member Vote is Unnecessary to Protect the Interests of Members of MHCs

Section 625(a)(11)(C) of Dodd-Frank requires that the board of directors of a Grandfathered MHC conclude that the proposed dividend waiver is consistent with the fiduciary duties of the board of directors to the mutual members of the MHC. The FRB states in the preamble to the IFR that a conflict of interest exists because directors of an MHC are also stockholders of the mid-tier holding company that is declaring dividends to its stockholders. The FRB suggests in the preamble to the IFR, as well as in the regulatory language itself, that the directors should consider waiving their rights as individual stockholders to receive dividends in order to address this perceived conflict of interest.

The concept of dual directorships where there are parent and subsidiary corporations is not unusual. Courts have recognized that directors who serve as directors in different tiers of companies controlled by the same entity may owe a fiduciary duty to each corporation. In Delaware, the applicable standard requires that "individuals who act in a dual capacity as directors of two corporations, one of whom is the parent and the other the subsidiary, owes the same duty of good management to both corporations, and in the absence of an independent negotiating structure, or the director's total abstention from any participation in the matter, this duty is to be exercised in light of what is best for both companies." *(Weinberger v. UOP, Inc., 457 A.2d 701, 710-711 (Del. 1983)).* Delaware law specifically provides that decisions by directors who have an interest in a transaction are protected from invalidation if such transaction is found to be fair to the corporation. See *Delaware General Corporation Law, Section 144 (8 Del.C. §144)*. It is a well-settled principle of corporate law that a director is considered to be "interested" in a matter if he or she will be materially affected, either to his benefit or his detriment, by a decision of the board of directors, in a manner not shared by the corporation and the stockholders.

In the case of each of the Banks, each director of the Bank is also a member of the Bank's MHC and is a stockholder of the mid-tier holding company. As such, the determination by the board of directors of each of the MHCs that the waiver of dividends by the MHC is in the best interests of the MHC and its members affects the individual MHC directors to the exact same degree as any other member of the MHC. There is no benefit or detriment to MHC members that is any different than any perceived benefit or detriment to directors of the MHC who are also members.

Members of an MHC have no legal rights to the assets or capital of an MHC except to the extent an MHC dissolves or liquidates. The only way in which an MHC member could be disadvantaged by dividend waivers would be in a second-step conversion. The OTS addressed this issue by requiring that waived dividends not be considered when determining the exchange ratio for the public stock outstanding in connection with a second-step conversion. For Grandfathered MHCs, Dodd-Frank continued the OTS treatment of dividend waivers in second-step conversions and Regulation MM incorporates that treatment.

E. Waiver of Dividends Allows for Retention of Capital at the Mid-Tier Holding Company and Avoids Adverse Tax Consequences

In the event MHCs are unable to waive dividends because attaining the required member vote is too expensive or onerous, MHCs will be unable to avoid adverse income tax consequences associated with not being able to waive dividends and mid-tier holding companies will be unable to retain funds at the mid-tier holding company for investment, which allows the mid-tier holding company to serve as a source of strength for the subsidiary banking institution.

MHCs typically do not own 80% or more of the issued and outstanding common stock of the mid-tier holding company. Consequently, any dividends paid to an MHC by a mid-tier holding company will be treated as taxable income to the MHC. In effect, this will result in double taxation since the mid-tier holding company is paying dividends with after-tax income and the MHC would be required to pay tax on the dividends received from the mid-tier holding company. As a result, the IFR's member vote requirement will likely result in mid-tier holding companies either not paying dividends or paying dividends and incuring adverse income tax consequences with such payment.

In addition, with a waiver of dividends, the amount of money that would have been paid to the MHC can remain at the mid-tier holding company and can be invested in securities or other investments without incurring additional tax liability, or can be downstreamed to the subsidiary savings bank if needed. The funds that are waived by an MHC and retained by its subsidiary stock holding company increase the value of the mid-tier holding company and benefit the MHC as the majority stockholder of the mid-tier holding company without adverse tax consequences. As a result, the members of the MHC would benefit since any increase in the value of the mid-tier holding company's stock will benefit the MHC members in the unlikely event of any liquidation of the MHC.

III. Conclusion

In conclusion, Clifton Savings Bank, Gouverneur Savings and Loan Association and Tempo Bank respectfully request that the FRB amend the Interim Final Rule to remove the requirement that an MHC's members approve dividend waivers by Grandfathered MHCs.

* * * * *

We appreciate the opportunity to comment on the Interim Final Rule. If you have any questions or would like us to elaborate further on any of the points discussed herein, please do not hesitate to contact Paul M. Aguggia of Kilpatrick Townsend & Stockton LLP at (202) 508-5812.

Very truly yours,

Kilpatrick Townsend & Stockton LLP

Kilpatrick Townsend & Stockton LLP

cc: John A. Celentano, Jr., Clifton Savings Bank (via e-mail)
Charles C. VanVleet, Gouverneur Savings and Loan Association (via e-mail)
Robert J. Stroh, Tempo Bank (via e-mail)