GREENE COUNTY BANCORP, MHC

Via Certified Mail - Return Receipt Requested

October 28, 2011

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

Re: Comments on Section 239.8(d) of Interim Final Rule Regarding Dividend Waivers by Mutual Holding Companies – Docket No. R-1429 RIN No. 7100 AD-80

Dear Ms. Johnson:

This comment letter on the above-referenced Interim Final Rule is being submitted on behalf of Greene County Bancorp, MHC (the "MHC"), a federally-chartered mutual holding company, Greene County Bancorp, Inc. (the "Company"), a federally-chartered mid-tier stock holding company and The Bank of Greene County (the "Bank"), a federally chartered savings bank. The Bank began operations in 1889, and completed its mutual holding company reorganization and minority public offering of common stock in 1998. As of June 30, 2011, the Company had consolidated assets of approximately $547.5 million and consolidated equity capital of approximately $48.1 million. The Bank operates from its main office in Catskill, New York, 12 branch offices in Greene, Albany and Columbia counties, New York. The Bank is the largest independent bank headquartered in Greene County. The Company's minority common stock (consisting of approximately 44.3% of the total outstanding shares) is traded on the NASDAQ capital market under the symbol GCBC.

The Bank had total assets of $141.7 million at the time of its mutual holding company reorganization and stock offering in 1998, and has nearly quadrupled in size since then. Our growth has been particularly remarkable given the very slow growth of our market area in Upstate New York. The Bank is now one of the leading mortgage lenders in our market and we are committed to remaining an independent community bank dedicated to serving the banking needs of our customers. The Bank decided to undertake a mutual holding reorganization and minority stock offering rather than a "full" standard conversion to stock form, based on the experience of other converting savings banks in our market area. That is, nearly every savings bank that converted to stock form in the Hudson Valley market area from Poughkeepsie to Albany elected to sell within 3 to 5 years after their conversion. Moreover, we believe that many converting savings institutions were not prepared for the immediate transition from mutual to full stock

P.O. Box 470 • Catskill, NY 12414
Phone (518) 943-2600 Fax (518) 943-4431
www.tbogc.com

ownership and the challenge of prudently reinvesting the new capital raised. Management believes that the Bank would have been under significant pressure to either sell control or reinvest the capital raised in a standard conversion in a relatively short period of time to produce reasonable returns for our stockholders. Instead, the board of directors elected to go public incrementally by forming a mutual holding company and selling approximately 44.5% of the Company's stock in a minority stock offering. The mutual holding company structure is simply the safer and more prudent capital raising vehicle for mutual savings banks. The board of directors and management of the Company believe that the minority stock offering was clearly the right choice for the Bank.

A key to the mutual holding company structure and the ability to raise capital is the ability to pay reasonable dividends to minority stockholders who have invested risk capital in our bank. The mutual holding company structure was authorized by Congress more than 30 years ago, and it has been used to raise billions of dollars of capital for community banks around the nation. We believe the Federal Reserve Board's first priority should be to preserve and, where possible, enhance the mutual holding company structure. This should be the case particularly in the current economic environment where banks are having difficulty raising equity capital. Yet, Section 239.8 of Regulation MM of the Interim Final Rule (the "Interim Final Rule"), if adopted in final form, would have the opposite result. That is, the member vote and other requirements of the Interim Final Rule would effectively prevent mutual holding companies from waiving cash dividends which *would eliminate the mutual holding company as a viable long-term structure for savings banks.*

The former Office of Thrift Supervision ("OTS") had the most experience of any banking regulator in chartering and regulating mutual holding companies, and the OTS amended its original rules regarding dividend waivers after witnessing first hand their adverse effect on mutual holding companies. After nearly a decade of experience with the mutual holding company structure and the need for mutual holding companies to be able to pay reasonable dividends to minority stockholders without penalizing those stockholders receiving the dividend, the OTS amended its dividend waiver rules in 2000. The new OTS rules specifically allowed mutual holding companies to waive the receipt of dividends if the waiver would not have an adverse effect on the safe and sound operation of the subsidiary bank and the board of directors of the mutual holding company determined the waiver was consistent with their fiduciary duties. Very importantly, the new OTS rules provided that mutual holding company dividend waivers would not cause dilution to minority stockholders in the event of a "second-step" conversion of a mutual holding company to stock form. The new rules provided much needed certainty to mutual institutions that were evaluating their capital raising alternatives, and, importantly, to mutual holding company investors. (Under the prior OTS rules these investors were never quite sure whether and by how much their ownership interest would be diluted in the event of a conversion of a mutual holding company to stock form.) The new OTS rules worked very well as they eliminated uncertainty over dividend waivers and allowed mutual holding companies to grow and raise unprecedented amounts of capital. Moreover, there is no evidence that any mutual members have been harmed or treated unfairly in any way as a result of mutual holding company dividend waivers. A better case could be made that members benefit from the

ability of a mutual holding company to waive dividends, which allows them to grow and maintain their existence. On the other hand, there is no question that the Interim Final Rule will have an adverse impact on public stockholders and the viability of the mutual holding company structure.

The Interim Final Rule follows the former OTS rules in part, but adds a member vote requirement as a precondition to a mutual holding company's decision to waive dividends, and other restrictive requirements that effectively eliminate the ability of mutual holding companies to waive dividends. The stated purpose of the member vote and other restrictions in the rule is to address a perceived conflict of interest associated with a mutual holding company's decision to waive dividends. We believe that the Federal Reserve has overstated the nature and extent of any potential conflict of interest, and that there are ways of addressing this potential conflict without restricting the ability of mutual holding companies from paying dividends and weakening their ability to raise capital. We recognize the significant time constraints and challenges imposed on the Federal Reserve Board and other federal banking agencies in promulgating new rules pursuant to the Dodd-Frank Act. However, we respectfully request that the Federal Reserve Board and staff consider and examine the mutual holding company structure, including the relative rights and interests of the mutual and stock portions of the structure, in light of the nearly 20 years of experience that the industry has had with mutual holding companies and dividend waivers by such companies. We further request that the Federal Reserve Board reconsider and reevaluate the provisions of Section 239.8 of the Interim Final Rule that would adversely affect mutual holding companies and their ability to raise capital.

Provisions of proposed Section 239.8 of the Interim Final Rule exceed the parameters contemplated by Section 625(a) of the Dodd-Frank Act and place an undue burden on "Grandfathered MHCs" (OTS-chartered mutual holding companies that were formed, sold stock and waived dividends prior to December 1, 2009). The Bank of Greene County and its holding companies worked closely with other mutual holding companies and their representatives in drafting the language of Section 625(a) of the Dodd-Frank Act, which was intended to preserve the existing rights of mutual holding companies that had previously waived the receipt of dividends pursuant to OTS regulations and to continue to allow these mutual holding companies to waive dividends without dilution of minority stockholders in the event of a second-step conversion to stock form. Grandfathered MHCs, like the MHC, have complied with OTS dividend waiver rules, which allowed the boards of directors of mutual holding companies to make dividend waiver decisions while considering, as required for all company matters, their fiduciary duties to the mutual members. As noted above, these waivers were also subject to review by the OTS. Proposed Section 239.8 questions the ability of MHC directors to make those fiduciary decisions and implies that they are incapable of making decision that are in the best interests of a mutual holding company and its members due to a perceived conflict of interest. Section 239.8 would require the board of Grandfathered MHCs to incur the unnecessary cost of soliciting proxies from mutual members to obtain the approval of a majority of the total eligible votes of members to approve the waiver. As discussed below, it is highly unlikely that the MHC would be able to obtain the necessary vote, regardless of cost. Moreover, it suggests that those MHC directors who happen to be stockholders of the subsidiary also should waive their individual right to

receive a dividend. This is punitive and singles out mutual holding company boards as being uniquely unqualified to address potential conflicts of interest. The member vote requirement is also contrary to the specific standards of Section 625(a) of the Dodd-Frank Act which provides that the Federal Reserve Board may not object to a dividend waiver if certain listed conditions (none of which include a member vote) are met. A member vote is a substantive change and contrary to the express language of the Dodd-Frank Act, and, therefore, not authorized by Congress.

Our legal counsel, Luse Gorman Pomerenk & Schick, through a separate comment letter, is providing a comprehensive legal analysis of the reasons why all mutual holding companies (including non-Grandfathered MHCs) should be permitted to waive the receipt of dividends without dilution of minority stockholders in the event of a second-step conversion to stock form. We will not repeat those legal arguments here, but we agree with and support such arguments and they have been reviewed and discussed with our board of directors. Our major concern with the Interim Final Rule revolves around the presumption of an "inherent conflict of interest" on the part of a mutual holding company board of directors who are also stockholders of the dividend paying subsidiary. The fiduciary duties of a mutual holding company board of directors align with those of the mutual members. The mutual members benefit from a strong, stable financial organization. If the mutual holding company is not a viable option for raising capital, then a savings institution must convert fully to stock form. A standard conversion, however, effectively eliminates the rights of mutual members. Therefore, we do not understand how the Federal Reserve Board or other regulators could be acting in the interests of mutual members by promulgating a rule that adversely affects mutual holding companies and would cause mutual boards to favor a standard conversion to raise capital.

The initial reason for authorizing the mutual holding company structure was to provide a vehicle that would allow savings associations to raise capital and grow responsibly. As noted above, in many instances, the conversion of a mutual savings bank to a fully public stock organization in a single transaction can result in a surplus of capital that may lead to unsafe investment and growth decisions. Allowing a "partial conversion" using the mutual holding company structure, enables mutual banks to raise capital incrementally and promote measured growth which does not put the bank at risk. However, a minority stock offering will be far less attractive to investors and will raise less capital (because of the lower valuation of minority stock) if minority stockholders do not have the ability to achieve a return on their investment. Since minority stockholders do not have a controlling vote and there is limited potential for capital appreciation from a sale of control of a mutual holding company, a dividend is an important part of the overall return that investors seek in exchange for the capital they have invested and the risk that they have incurred. Most, if not all (as was the case with the Company's offering in 1998), initial stockholders who invest in a mutual holding company minority stock offering are depositors of a savings institution. A dividend paying stock also attracts more investors and enhances the interest in, and market valuation of, future capital raises. (We note that if a mutual holding company cannot waive dividends, the value of the subsidiary bank or mid-tier holding company's stock would be less compared to the value of stock sold in a standard conversion to stock form.) A strong, flexible organization aligns perfectly with the long term interests of mutual members.

The ability of mutual holding company directors, through a dividend waiver, to allow capital to remain in the organization and provide a reasonable return to minority stockholders enhances future capital flexibility and fully supports the long term interests of the mutual members.

The decision of the MHC to waive its receipt of dividends surely is not designed to benefit our directors, but will benefit all of our public stockholders, including all of our stockholders who were depositors and mutual members who bought stock in our initial public offering and our Employee Stock Ownership Plan, which benefits the Bank and all of our employees by making them co-owners of our organization. To imply that MHC directors who are also stockholders are not acting prudently and unable to make fiduciary-guided decisions is a discredit to those directors. Mutual holding companies are not unique in this regard from other fully stock companies, as public company directors are frequently required to make decisions that involve actual or perceived conflicts of interest. Going to the other extreme and requiring that mutual holding company directors not own any shares of their mid-tier company or bank subsidiary is contrary to the belief that directors should have a shared interest in the company they serve. We understand, for example, that directors of national banks are required to own stock in their bank or its holding company. In addition, we note that it is often preferable to have the same individuals serve on the board of each entity in the mutual holding company structure, as they have the greatest understanding of the operations of the overall organization and multiple different boards may be confusing and disruptive to the efficient operation of a banking organization.

The Interim Final Rule requires directors of Grandfathered MHCs to document how they have addressed the conflict of interest. We do not believe there is a conflict that cannot be addressed by having directors exercise their normal fiduciary responsibilities, or, for example, having waived dividends added to a liquidation account in the event of a conversion of our MHC to stock form. But suggesting that directors who have demonstrated their support for an organization such as the Bank by investing personal resources in its capital stock, must waive their right to receive dividends that are paid to all stockholders is punitive, contrary to the interests of the MHC and its members, and contrary to best corporate practices.

The proposed language will require a yearly vote of the mutual holding company members in order to qualify for a dividend waiver. We understand that the Federal Reserve Board would not allow "running proxies" to be used to obtain member approval, so approval of a majority of members eligible to vote would be needed each year. This would present a significant problem for the MHC and again, questions the ability of the MHC directors to make business decisions that benefit the organization as a whole. Requiring an annual positive vote of the majority of those members eligible to vote establishes an ongoing requirement normally reserved for major organizational decisions. Third-party proxy solicitors would be necessary to obtain the vote, causing the MHC to incur unnecessary annual expenses, which is in no one's best interest. We are not aware of any mutual member being adversely affected by the hundreds of mutual holding company dividend waivers that have occurred over the years. The members do not have an ownership interest or stake that is akin to that of stockholders, and consequently simply don't care about this issue. The conflict of interest issue identified in the Interim

Final Rule is difficult to identify and understand even for those directly involved in regulating or evaluating mutual holding company dividend waivers, and members of a mutual holding company would be hard pressed to understand why they are being asked to vote on a dividend waiver, much less how a waiver would affect them.

While the common stock issued by a mid-tier stock holding company to its mutual holding company parent is of the same class as the common stock sold to the public, it has substantially different characteristics that make it more like a separate class of stock. Common stock of the Company that is owned by the MHC is not transferable and is not traded on an exchange. Moreover, unlike the common stock held by minority stockholders, neither the MHC nor the members invested risk capital in the Company's common stock. Members do not have the right to force a liquidation of the MHC or the Bank, or to receive any distribution of the assets of the MHC other than in the event of a liquidation of the MHC. We do not believe there has ever been a voluntary liquidation of a mutual holding company and distribution of its surplus to members. Members also do not have the right to receive any dividends paid by the Company to the MHC. Members also have no right to receive any distribution on the MHC's common stock interest in the Company in the event of a conversion of the MHC to a full stock form. Instead, members simply have the first right to purchase such stock at fair value like other members of the public. Members of the MHC consist of the FDIC-insured depositors/creditors of the Bank who receive a return on their deposits in the form of interest. Members are first and foremost depositors/customers who are interested in preserving the safety of their accounts and maintaining a strong financial organization. Allowing mutual holding companies to waive dividends without diluting minority stockholders will enhance the ability of companies like the Company to attract equity capital which will be a source of strength to their subsidiary banks. If members truly had an issue with mutual holding company dividend waivers, they would have voiced their concerns many years ago.

The Company believes that paying dividends to minority stockholders, with the MHC waiving dividends, will help build long term stockholder loyalty and value by providing minority stockholders with a reasonable dividend and overall return on their investment. This is particularly important for community banks with a local stockholder base and generally in the current weak economic environment where stockholders have suffered significant losses on financial institution stocks. These stockholders are seeking dividend paying stocks to improve their overall return on investment. Additionally, a stronger stock price may increase the Bank's presence in its retail markets because of our local stockholder base. The MHC has continued to waive substantially dividends paid by the Company, which management believes is an important reason why the Company's common stock has continued to perform well which will facilitate any capital raising efforts in the future. As a Grandfathered MHC, the ability to waive dividends was certainly recognized and preserved in the Dodd-Frank Act. We believe this intent and practice is being challenged, not because of any financial issues or safety and soundness concerns, but because of a change in regulators and a bias against mutuality and the mutual holding company structure. The Interim Final Rule is inherently unfair to our stockholders and members who have trusted their investments with us.

Mutual community savings banks have a long history of providing service to their communities and most have a goal of growing, prospering and continuing as independent organizations. The mutual holding company structure and the ability of these organizations to waive dividends without any "windfall" benefit to minority stockholders have been key to fostering this responsible growth. Adopting a rule that has a negative effect on the ability of mutuals and mutual holding companies to raise capital makes no sense and is counter-intuitive, particularly in the current economic environment.

We respectfully request that the Federal Reserve eliminate any member vote requirement for Grandfathered MHCs under the Interim Final Rule since there is nothing in Section 625 of the Dodd-Frank Act that gives the Federal Reserve the authority to require such an affirmative vote. Rather, the statute requires that a board of directors analyze whether a dividend waiver would be consistent with its fiduciary duties to the mutual members. Such analysis does not require board members, who are also stockholders, to waive their individual right to receive dividends. Lastly, we believe, for the reasons discussed above, that the Federal Reserve Board should permit non-Grandfathered MHCs to waive dividends under the same standards as those granted to Grandfathered MHCs under Section 625(a) of the Dodd-Frank Act since non-Grandfathered MHCs can also address perceived conflicts of interest without having a member vote and minority stockholder dilution in the event of a second-step conversion to stock form. Anything short of this will effectively prevent all non-Grandfathered MHCs from waiving dividends and significantly limit their ability to raise capital and remain viable entities in the long term.

Finally, we note that although there are fewer than 100 publicly-traded mutual holding companies at the present time, the viability of the mutual holding company structure is very important to all mutual institutions, including credit unions that may wish to convert to savings bank charters. Most mutual institutions have very limited knowledge or understanding of the Federal Reserve Board's Interim Final Rule or of the significance of mutual holding company dividend waivers to the attractiveness and viability of the mutual holding company structure. However, mutual institutions fully understand the value of having greater flexibility in the way capital is raised and in how they convert to stock companies. The mutual holding company has been a highly successful capital raising and conversion vehicle for mutual institutions, and we respectfully request that the Federal Reserve Board reconsider the restrictions imposed on mutual holding company dividend waivers in the Interim Final Rule that would irreparably harm mutual holding companies and the mutual holding company structure. Most significantly, these restrictions include the requirement to obtain a member vote prior to waiving the receipt of dividends, restrictions on the ability of mutual holding company board members/stockholders to vote on dividend waivers, any requirement that directors and management waive their right to receive dividends if they are stockholders, and any second-step conversion dilution of minority stockholders resulting from mutual holding company dividend waivers.

Thank you for allowing us the opportunity to comment on the Interim Final Rule. If left unchanged, it will have a significant adverse impact on our entire organization. It also could cause our boards of directors to convert the MHC to stock form

notwithstanding our current plan to remain an independent community bank in the mutual holding company structure.

Please do not hesitate to contact me if you have any questions regarding this letter or The Bank of Greene County.

Sincerely,

Donald E. Gibson
President and Chief Executive Officer

cc: Eric Luse, Esq. (202) 274-2002