

NEW YORK BANKERS ASSOCIATION, BRENT WEITZBERG

Proposal and Comment Information

Title: Regulatory Modernization and Relief for Mutual Holding Companies (Reg Q and MM), R-1895

Comment ID: FR-2026-0027-01-C42

Submitter Information

Organization Name: New York Bankers Association

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Attached please find comments from the New York Bankers Association.

October 5, 2026

Via Electronic Submission

Benjamin McDonough
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

**Re: Regulatory Modernization and Relief for Mutual Holding Companies;
Docket No. R-1895; RIN 7100-AH26**

Dear Mr. McDonough:

The New York Bankers Association (NYBA)¹ appreciates the opportunity to comment on the Board of Governors of the Federal Reserve System's proposed amendments to Regulations Q and MM concerning the regulatory framework for mutual holding companies and mutual banking organizations (the Proposal)². Mutual banks comprise a significant portion of NYBA's membership and they play a vital role in communities across New York State. Their member-owned structure allows them to take a long-term view, reinvesting earnings in their institutions and the communities they serve rather than managing to the expectations of outside shareholders. Particularly in smaller and local markets, mutual institutions are deeply rooted community partners, supporting local families and businesses, expanding access to credit, and providing a stable source of financial services through changing economic cycles. Preserving a strong and viable mutual banking sector is therefore important not only to the institutions themselves, but also to the communities they serve and to the diversity and resilience of New York's banking system.

Yet the very structure that gives mutual institutions their distinctive community-focused purpose also creates significant constraints on their ability to raise capital. For too long they have been hindered by outdated regulatory structures that discourage growth and constrain fair competition.

¹ NYBA is comprised of the smaller community, mid-size regional, and large banks across every region of New York State. Together NYBA members employ nearly 150,000 New Yorkers, safeguard \$2 trillion in deposits, and extend nearly \$145 billion in home and small business loans. NYBA members also support their communities through an estimated \$200 million in community donations and 500,000 employee volunteer hours.

² <https://www.federalregister.gov/documents/2026/08/04/2026-15774/regulatory-modernization-and-relief-for-mutual-holding-companies>

The Proposal is an important modernization of the regulatory framework for mutual institutions, including clearer regulatory capital treatment for mutual capital certificates and special deposits, greater flexibility for dividend waivers, and relief from other regulatory requirements applicable to mutual holding companies. Collectively, these reforms would make the regulatory framework more flexible and better suited to the distinctive structure and capital needs of mutual institutions. Just as importantly, they would help ensure that mutual institutions in New York can remain competitive, financially strong, and positioned to continue serving their members and communities without sacrificing the mutual form.

I. Summary of the Comment

NYBA strongly supports proposed changes governing dividend waivers and mutual capital instruments. Both are important tools for institutions operating within the mutual structure. A well-designed framework for dividend waivers can promote capital preservation while allowing mutual holding companies to meet appropriate obligations at the holding-company level, while broader recognition of mutual capital instruments as permanent, loss-absorbing capital can provide mutual institutions with additional flexibility to raise and maintain capital.

We believe the Proposal should serve as a foundation for broader reform. In particular, the Board's proposed treatment of mutual capital certificates provides a useful template for all mutual bank regulators to develop clear, consistent, and predictable standards for special deposits and other instruments that share the essential characteristics of mutual capital certificates. A broader framework that recognizes multiple forms of permanent, loss-absorbing mutual capital would give mutual institutions greater flexibility to strengthen their balance sheets, support responsible growth, and meet the needs of their communities without sacrificing the mutual form. We concur with the Board that these reforms are also important to ensuring that mutual banks can compete effectively for customers and capital with credit unions and other financial institutions that operate under different structural, tax, and regulatory frameworks.

NYBA therefore encourages the Board to view finalizing this Proposal not as an endpoint, but as an important first step toward a modern, durable, and flexible capital framework that supports the long-term viability and competitiveness of mutual banking.

NYBA recommends several refinements that would make the Proposal more effective and workable in practice, and we urge the Board to finalize a clear, standardized framework for mutual capital as expeditiously as possible.

NYBA recommends that the Board:

1. **Finalize the proposed CET1 and AT1 model term sheets** and confirm that conforming mutual capital certificates are eligible for the corresponding regulatory capital category;
2. **Recognize the economic substance of the instruments**, including their paid-in nature, permanence, deep subordination, distribution discretion, and ability to absorb losses on a going-concern basis;
3. **Create a clear path to capital recognition** for certificates conforming to the model terms, without repetitive, transaction-specific negotiations over settled eligibility criteria;
4. **Permit disclosure of nonbinding target distribution rates**, provided distributions remain fully discretionary, noncumulative, and nonmandatory;
5. **Retain appropriate redemption safeguards**, including prior regulatory approval and, for AT1 calls, replacement-capital or post-redemption capital adequacy requirements;
6. **Clarify treatment in reorganizations and combinations** so that certificates continue according to their terms and do not lose capital eligibility solely because of a merger, recapitalization, charter conversion, or holding-company reorganization;
7. **Finalize and further streamline the proposed dividend-waiver framework** by eliminating the annual member vote for legacy waiver MHCs, adopting the ten-year majority-of-votes-cast standard for non-legacy MHCs, removing impractical insider and director restrictions, and establishing a clear notice process grounded in fiduciary duties, appropriate member disclosure, and safety-and-soundness review;
8. **Coordinate with the Office of the Comptroller of the Currency (OCC), Federal Deposit Insurance Corporation (FDIC), and state regulators** to secure consistent recognition across mutual charters, organizational structures, and jurisdictions;
9. **Apply Basel principles proportionately**, focusing on genuine capital-quality characteristics rather than importing requirements unrelated to the risks or organizational form of community-based mutual institutions.

Upon completion of a final rulemaking, we urge the Board to coordinate with the OCC, FDIC, and state banking authorities to adopt the final approach to mutual capital to achieve consistent treatment for all mutuals.

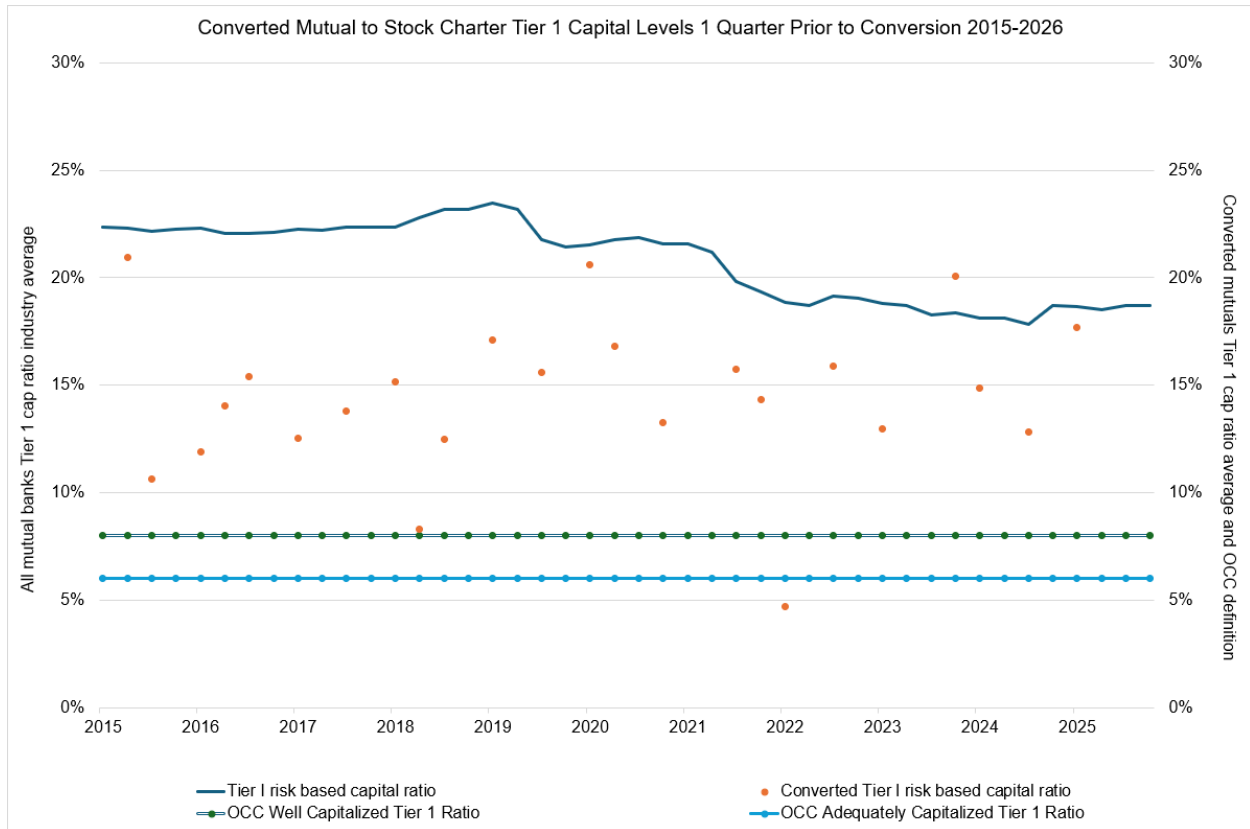
We share our detailed views on our support for the Proposal and for its broad adoption below:

II. Mutual Banks Need Access to a Reliable Source of External Capital

Mutual banking organizations are owned by their members rather than external shareholders. This structure supports a long-term focus on customers, communities, and institutional stability. It also contributes to the diversity and resilience of the banking system. The Board's Proposal recognizes, however, that mutuality creates a capital-raising constraint because mutual banking organizations generally cannot issue common stock.

Retained earnings therefore remain the principal source of capital for many mutual banks. Reliance on retained earnings alone can limit a mutual institution's ability to respond promptly to unexpected losses, support prudent balance-sheet growth, invest in technology and cybersecurity, expand service to underserved communities, or pursue strategic combinations. NYBA has long supported both a consistent framework through which mutual banks can raise CET1 or Tier 1 capital and uniform treatment of such capital by the federal banking agencies and state regulators.

The chart below, showing the capital position one quarter prior to conversion of every mutual bank that converted charters since 2015, underscores the need to modernize the capital framework for mutual institutions. While most of the mutuals that ultimately converted to stock form had capital levels above OCC recommendations in the quarter before conversion, nearly all had capital levels below the average for other mutual institutions. This suggests that meeting regulatory capital expectations does not necessarily provide mutual institutions with sufficient flexibility to support growth and remain competitive over time. Because mutuals do not have the same access to external equity capital as stock institutions, a constrained ability to raise capital can place additional pressure on an otherwise viable mutual institution to convert to stock form. Modernizing the rules to provide mutuals with practical, reliable ways to raise capital would therefore do more than strengthen individual institutions: it would help preserve the mutual charter as a viable long-term ownership model and reduce the circumstances in which conversion becomes the most practical way to obtain additional capital.



Mutual capital certificates and other similar instruments can address this structural limitation without requiring an institution to convert to stock form or dilute member control. The appropriate regulatory question is whether an instrument’s substantive terms provide the permanence, subordination, distribution flexibility, and loss absorption expected of the relevant capital category.

III. Qualifying Mutual Capital Instruments Are Genuine Loss-Absorbing Capital

The Board describes CET1 as the most loss-absorbing form of regulatory capital and AT1 as capital intended to absorb losses on a going-concern basis. The Proposal provides that mutual capital certificates may qualify as CET1, AT1, or Tier 2 capital depending on their terms.

Properly structured mutual capital certificates are not deposits, ordinary indebtedness, or short-term funding instruments. They represent paid-in funds that remain available to the issuer and stand behind depositors and creditors. Under the proposed CET1 term sheet, certificates would represent paid-in capital classified as equity under U.S. generally accepted accounting principles, and certificate holders would have a claim only on residual assets after depositors, general creditors, subordinated debt holders, and other more senior claimants have been paid in full.

This structure allows the capital supplied by certificate holders to absorb losses before those losses reach depositors or senior creditors. The certificates consequently provide the same central prudential function expected of regulatory capital: they create a financial cushion that supports the institution's continued operation and protects the Deposit Insurance Fund and the financial system.

The fact that a mutual capital certificate does not convey the same governance or ownership rights as common stock should not diminish its regulatory capital treatment where the instrument otherwise meets the applicable criteria. Mutuality necessarily requires distinctions from the conventional stock-company form. Capital eligibility should turn on economic substance and loss-absorbing capacity, not on whether the issuer can replicate other features of a stock institution unrelated to capacity to absorb losses.

IV. CET1 Treatment Is Appropriate for Certificates Meeting the Board's Most Stringent Terms

NYBA supports CET1 treatment for mutual capital certificates that satisfy the proposed CET1 term sheet and the applicable requirements of section 217.20(b) of Regulation Q. We offer the following comments on the appropriateness of CET1 for these instruments.

A. Paid-In Capital and Residual Loss Absorption

The proposed CET1 certificate would be issued directly by the mutual banking organization, fully paid in, and classified as equity under GAAP. In liquidation, receivership, insolvency, or a similar proceeding, the certificate would constitute a claim on residual assets after satisfaction of all depositors, general creditors, subordinated debt holders, and other senior claims.

These provisions are critical. A fully paid-in instrument adds actual resources to the institution and does not depend on a future funding commitment. Residual ranking ensures that those resources remain the first private funds available to bear losses after retained earnings and other equally subordinated capital. The proposed instrument therefore performs the fundamental economic role of CET1 even though the mutual organizational form does not permit issuance of conventional common shares.

NYBA recommends that the final rule expressly confirm that satisfying the model CET1 terms establishes a clear path to CET1 eligibility, subject to compliance with otherwise applicable accounting and legal requirements. Institutions should not have to obtain transaction-specific interpretations of substantially identical terms after the Board has determined that the standardized structure satisfies Regulation Q.

B. Fully Discretionary and Noncumulative Distributions

Under the proposed CET1 terms, distributions could be made only if declared by the issuer's board of directors or an authorized board committee and distributions are paid from net income, retained earnings, or surplus associated with other CET1 instruments. The issuer would retain full discretion to cancel distributions without triggering default, payment in kind, or other restrictions, and distributions would be noncumulative and nonmandatory.

These features materially enhance loss absorption. An institution experiencing stress can conserve capital immediately by cancelling distributions. Because unpaid amounts do not accumulate as an enforceable obligation, cancellation does not merely defer a liability. It leaves resources within the institution where they remain available to absorb losses and support operations.

NYBA supports allowing issuers to disclose a target distribution rate, provided the offering materials state clearly that the target is neither mandatory nor cumulative. The ability to communicate a target rate will assist investors in evaluating the instrument without impairing the issuer's unconditional discretion to cancel distributions.

C. No Fixed Maturity or Investor Redemption Right

The proposed CET1 certificates would be perpetual, would have no maturity date, and could not be redeemed at the holder's demand. Redemption by the issuer would remain discretionary and subject to prior Board approval.

These provisions establish permanence. Conventional debt becomes less reliable as regulatory capital as maturity approaches because the issuer must repay or refinance it. A perpetual certificate has no such repayment horizon. The certificate proceeds remain available through changing economic and credit cycles unless the regulator determines that redemption is consistent with the institution's continued capital adequacy.

The absence of a holder put right is equally important. Investors cannot withdraw the capital precisely when the institution may need it most. Similarly, the absence of terms that create an expectation or economic incentive to redeem helps prevent the nominally perpetual instrument from operating as short-term or refinancing-dependent funding.

V. AT1 Treatment Is Appropriate for Certificates That Provide Permanent Going-Concern Loss Absorption

Not every useful mutual capital instrument must satisfy the more restrictive CET1 criteria. The proposed AT1 term sheet provides an appropriate alternative for perpetual instruments that remain deeply subordinated and available to absorb losses on a going-

concern basis but offer somewhat greater flexibility in their distribution and call provisions.

A. Tier 1 Capital Should Reflect Economic Function

Tier 1 capital consists of CET1 and AT1 capital. Under the Basel framework, CET1 is the highest-quality form of regulatory capital because it absorbs losses immediately, while AT1 also provides going-concern loss absorption but does not satisfy every CET1 criterion. Only perpetual instruments are eligible for AT1 treatment under that framework.

The Board's proposed approach is consistent with this distinction. A mutual capital instrument that meets the CET1 model terms should receive CET1 treatment. An instrument that remains perpetual and fully subordinated but contains permissible AT1 features should qualify as AT1. This tiered framework gives mutual institutions meaningful flexibility without weakening the quality of regulatory capital.

B. Distribution Flexibility Does Not Undermine Capital Quality

The proposed AT1 instruments would provide for noncumulative and nonmandatory distributions, and the issuer would retain discretion to cancel distributions without default or an obligation to make payment in kind. The AT1 terms would allow an issuer to establish and disclose a target distribution rate, including a rate adjusted periodically by reference to general market interest rates, but would prohibit credit-sensitive resets, step-ups, or other provisions creating an incentive to redeem.

NYBA supports these conditions, which appropriately balance marketability (and thus utility as a capital raising tool) and prudential strength. Investors require enough information to price the instrument, while the bank must retain the ability to conserve resources during stress. Prohibiting credit-sensitive resets and step-ups prevents deterioration in the issuer's condition from making the instrument more expensive or encouraging redemption when loss-absorbing capacity is most needed.

C. Calls Must Not Undermine Permanence

Under the proposed AT1 term sheet, certificates would be perpetual, and holders would have no right to require redemption. An issuer call generally could not be exercised until at least five years after issuance, would require prior Board approval, and would require replacement with an equal amount of qualifying CET1 or AT1 instruments or a demonstration that the issuer would remain appropriately capitalized after redemption.

These safeguards preserve the permanent character of AT1. A call provision should not be treated as a de facto maturity date, and neither investors nor supervisors should

assume that an instrument will be redeemed on its first call date. The replacement-capital or post-redemption-capital requirement further ensures that an issuer cannot use redemption to weaken its loss-absorbing capacity.

NYBA recommends that the final rule state clearly that supervisory review of a proposed redemption will focus on the issuer's capital position, risk profile, and compliance with the terms of the rule. A predictable standard will reinforce market discipline while avoiding uncertainty about capital recognition.

VI. Permanence Is Essential to the Prudential Value of Mutual Capital Instruments

Permanence is not merely a formal requirement. It determines whether capital will remain available throughout a period of stress. NYBA supports the proposed rule's approach to mutual capital instruments as permanent capital and notes that mutual capital instruments should be treated as permanent capital when they:

- have no stated maturity date;
- provide no holder right to accelerate or require repayment;
- permit issuer redemption only with prior regulatory approval;
- contain no step-up, credit-sensitive reset, or other incentive to redeem;
- do not create an expectation at issuance that the instruments will be repurchased; and
- survive a reorganization, recapitalization, or merger in accordance with their terms, except where properly addressed in insolvency, liquidation, or receivership.

NYBA specifically supports instruments that can replace maturing subordinated debt with permanent capital and strengthen loss-absorbing capacity.

The final rule should preserve these core requirements while avoiding conditions unrelated to permanence or loss absorption. Once an instrument meets the standardized criteria, regulatory capital recognition should not depend on ad hoc negotiations with supervisors that make issuance costly, uncertain, or impractical.

VII. Deep Subordination Ensures That Certificates Protect Depositors and Creditors

Subordination is another essential feature distinguishing regulatory capital from ordinary liabilities. The proposed CET1 instruments meet this requirement as they would rank behind all liabilities and other obligations. They would be unsecured, unguaranteed, and free from any arrangement that legally or economically enhances their seniority. Likewise, the proposed AT1 instruments would be subordinated to depositors, general

creditors, and subordinated debt holders in payments and in receivership, insolvency, liquidation, or similar proceedings.

This ranking is central to the loss-absorbing nature of the instruments. Holders knowingly place their funds at risk ahead of depositors and creditors. If the institution incurs losses, the investment is available to absorb those losses before senior claims are impaired.

For CET1 eligibility, the instrument should represent the mutual institution's most subordinated external capital claim and participate in residual assets only after all senior claims have been satisfied. For AT1 eligibility, the instrument may rank senior to the residual membership interest but must remain junior to depositors, creditors, and subordinated debt.

The final rule should clearly describe these relative priorities and should avoid terminology that assumes the existence of conventional common shares. Uniform priority provisions are particularly important because differences in state corporate, insolvency, and receivership law can otherwise create uncertainty for issuers, investors, and regulators.

VIII. The Proposal Is Consistent with the Basel Framework

The Basel capital framework emphasizes the quality and loss-absorbing capacity of capital rather than prescribing a single corporate form for every institution. Basel III identifies CET1 as the highest-quality capital because it absorbs losses immediately. AT1 provides additional going-concern loss absorption, while Tier 2 is principally gone-concern capital that absorbs losses before depositors and general creditors in failure.

The Board's proposed model terms reflect those principles:

- **Permanence:** CET1 and AT1 instruments are perpetual and have no maturity date.
- **Subordination:** The instruments rank behind depositors and creditors, with CET1 representing the most subordinated capital claim.
- **Distribution discretion:** Distributions are noncumulative, nonmandatory, and cancellable without default.
- **No incentive to redeem:** The terms prohibit features that would create an expectation or economic incentive for early redemption.
- **Controlled redemption:** Redemptions require regulatory approval, and AT1 calls are subject to minimum timing and capital-replacement safeguards.
- **Going-concern availability:** The proceeds remain within the institution, and distributions may be cancelled so that resources remain available during stress.

Those attributes are consistent with Basel's distinction between loss-absorbing going-concern capital and ordinary debt. Mutual capital instruments should therefore be recognized as implementation of established capital principles applicable to the mutual form of governance, not as an exception to them.

At the same time, the final rule should apply Basel principles in a manner proportionate to the structure and risk profile of U.S. mutual institutions. Basel alignment should confirm capital quality, not impose requirements designed for internationally active banking organizations that are unrelated to whether the instrument is permanent, subordinated, and loss absorbing. NYBA supports clarification of mutual capital treatment in future Basel discussions while recognizing the importance of an appropriate framework for community banks.

IX. A Uniform Instrument Is Necessary for a Functional Market

The benefits of the Proposal will be substantially diminished if substantially identical instruments receive different treatment depending on the issuer's charter, primary federal regulator, state of organization, or supervisory region.

NYBA urges the Board to finalize the Proposal and use the final rule as a framework to coordinate with the OCC, FDIC, and state regulatory authorities to establish a uniform approach to mutual capital available to:

- mutual state member and non-member banks;
- federal and state mutual savings associations;
- mutual bank holding companies and mutual savings and loan holding companies; and
- appropriate stock subsidiaries wholly owned within a mutual organization.

Uniformity would yield several concrete benefits. It would provide institutions with confidence about capital eligibility, give investors a common set of terms for comparing offerings, reduce legal and transaction costs, facilitate market acceptance, and give supervisors a consistent basis for reviewing issuance and redemption, and prevent regulatory arbitrage.

The final rule should provide a regulatory safe harbor or similarly reliable recognition mechanism for instruments that conform to the model terms. Institutions should remain free to request recognition of instruments with alternative terms, but use of the model should substantially eliminate the need for institution-specific interpretive review.

A uniform approach adopted by all agencies and based upon the finalized version of this Proposal should also resolve the treatment of instruments following mergers, reorganizations, recapitalizations, charter conversions, or changes in primary regulator.

Qualifying capital should not unexpectedly lose recognition solely because an institution completes an otherwise permissible corporate transaction.

X. Dividend Waivers Are an Important Capital-Raising Tool that Helps to Preserve Mutuality and Should Be Governed by a Streamlined, Uniform Framework

NYBA supports the Board's proposed reduction of the procedural burdens associated with dividend waivers. Dividend waivers are an important component of the capital framework for mutual holding companies because they help preserve the attractiveness of minority stock issued by a mid-tier holding company. When a mutual holding company waives its pro rata dividend, the waived amount allows the mid-tier company to pay a more competitive dividend than it would otherwise be able to pay. The waiver also ensures capital preservation and reduces the amount of dividends the bank would otherwise need to pay the company in order to fund the company's cash dividends to public stockholders, stock repurchases and operations. Doing so improves the organization's ability to attract investors in future capital raises. This mechanism allows an institution to access external capital while retaining its mutual form.

Dividend waivers and mutual capital instruments should be viewed as complementary tools. Mutual capital certificates provide a means of raising permanent, loss-absorbing capital directly. Dividend waivers support the marketability of minority stock issued within the mutual holding company structure. Both address the same structural limitation: unlike stock-form institutions, mutual banking organizations have limited access to external equity capital.

A. NYBA Supports Eliminating the Annual Member Vote for Legacy Waiver MHCs

Under the existing framework, a legacy waiver MHC must provide 30 days' notice to the Board, its board must determine that the waiver is consistent with its fiduciary duties to members, and the institution must affirm that a majority of members eligible to vote approved the waiver within the preceding 12 months. The Proposal would eliminate the annual member-vote requirement while retaining the board's fiduciary-duty determination.

NYBA supports this change. The annual vote imposes recurring proxy solicitation, member outreach, administrative, and governance costs even where members have repeatedly approved the same practice. The Board states that much of the current burden arises from obtaining annual approval from a majority of all members eligible to vote, and that members have generally continued to approve the waivers.

A determination by the Board of Governors that the waiver is consistent with the directors' fiduciary duties to members provides an appropriate governance safeguard. Directors remain legally responsible for considering the interests of the mutual institution

and its members. The Home Owners Loan Act (HOLA) also permits the Board of Governors to object where a proposed waiver would be detrimental to the safe and sound operation of the institution, and the underlying dividend remains subject to applicable statutory limitations.

Requiring a member vote every year does not materially enhance these protections. Instead, it creates unnecessary expense and uncertainty around a capital-management practice that may form part of an institution's long-term capital strategy. NYBA therefore recommends that the Board finalize the elimination of the annual member-vote requirement for legacy waiver MHCs.

B. Non-Legacy MHCs Should Have a Practical and Predictable Waiver Process

The Proposal would also permit non-legacy waiver MHCs to waive dividends without requiring that directors (either directly or indirectly benefiting) abstain from the board vote or that benefiting insiders waive their own dividends. A non-legacy MHC would have to affirm that its members approved dividend waivers in a vote held within the preceding ten years. Approval would require a majority of votes cast rather than a majority of all members eligible to vote.

NYBA supports the Board's decision to remove conditions that have effectively prevented many non-legacy MHCs from using dividend waivers. As the Board recognizes, insider ownership and overlapping service on the boards of the MHC, mid-tier holding company, and subsidiary institution can make the existing abstention and insider-waiver requirements impractical. The existing conditions therefore constrain the ability of non-legacy MHCs to enhance the marketability of minority shares and raise capital while preserving mutuality.

The proposed majority-of-votes-cast standard is also more workable than a requirement based on all members eligible to vote. A standard that effectively treats nonparticipation as opposition can make approval dependent on response rates rather than the judgment of members who choose to participate.

NYBA supports the proposed ten-year approval period as a substantial improvement over recurring approval requirements. Dividend waivers are generally an element of an institution's capital structure and governance framework, not an isolated annual transaction. Once members have received adequate disclosure and approved the practice, repeating the process frequently would add cost without producing more informed oversight.

C. The Final Rule Should Minimize the Distinction Between Legacy and Non-Legacy MHCs

Although NYBA recognizes the statutory background underlying the distinction between legacy and non-legacy MHCs, the final rule should avoid perpetuating unnecessary competitive differences between otherwise similarly situated institutions.

The prudential merits of a dividend waiver do not depend on whether the institution first waived dividends before or after December 1, 2009. The relevant considerations are whether the waiver is consistent with the directors' fiduciary duties, whether members have received meaningful disclosure, and whether the waiver is consistent with safety and soundness. The Board's economic analysis recognizes that differing treatment could perpetuate a competitive imbalance between legacy and non-legacy MHCs.

NYBA therefore recommends that the Board use the maximum flexibility available under HOLA to align the two frameworks. At a minimum, both categories should benefit from clear notice requirements, predictable supervisory standards, and the absence of duplicative procedural hurdles. Over time, the Board should consider whether further alignment is possible through regulation, interpretation, or legislative recommendations.

D. Fiduciary Duties, Disclosure, and Safety-and-Soundness Review Adequately Address Potential Conflicts

The Board recognizes that directors or officers who hold minority shares could benefit from a decision to waive the MHC's dividend. NYBA agrees that potential conflicts should be addressed, but additional categorical restrictions are unnecessary where established fiduciary, disclosure, and prudential protections apply.

First, HOLA requires the thrift MHC's board to determine that the waiver is consistent with its fiduciary duties to the institution's members. Directors and officers remain subject to legally enforceable duties of care and loyalty when considering a waiver.

Second, the Proposal would require legacy MHCs to provide appropriate dividend-waiver disclosures to new members when they open a deposit account or establish a loan relationship. For non-legacy MHCs, the proxy materials used to obtain member approval must explain the proposed waiver and the board's reasons for requesting it.

Third, all waivers would remain subject to applicable safety-and-soundness limitations. HOLA permits the Board to object if a waiver would be detrimental to the safe and sound operation of the thrift, and dividends paid by the subsidiary depository institution remain subject to applicable legal restrictions.

Taken together, these protections appropriately address potential conflicts without imposing requirements that effectively prevent use of the waiver authority. NYBA supports the Board's conclusion that the board's fiduciary-duty determination is sufficient, in conjunction with disclosure and safety-and-soundness oversight, to address potential conflicts.

E. Supervisory Administration Should Be Clear and Predictable

To make the revised waiver framework effective, the final rule should provide an objective and timely notice process. Institutions should know what information must be included in a notice, the limited grounds on which the Board may object, and when a proposed waiver may proceed.

NYBA recommends that the Board:

1. retain a notice-based process rather than requiring transaction-specific applications or approvals;
2. limit the required submission to information necessary to confirm compliance with the rule, fiduciary obligations, and safety-and-soundness standards;
3. provide that a conforming waiver may proceed upon expiration of the applicable notice period unless the Board issues a written objection;
4. permit a single board resolution and notice to cover a defined series of anticipated waivers, subject to the institution's continuing duty to reassess the waiver when circumstances materially change; and
5. coordinate supervisory administration across the Federal Reserve Banks so that similarly situated institutions receive consistent treatment.

These recommendations would preserve the Board's ability to address institution-specific prudential concerns while reducing uncertainty and recurring expenses.

NYBA urges the Board to finalize the proposed streamlining and, where legally permissible, further reduce differences between legacy and non-legacy MHCs. A uniform, predictable framework based on board accountability, meaningful member disclosure, and safety-and-soundness oversight would appropriately protect members while allowing dividend waivers to serve their intended capital-raising purpose.

XI. Conclusion

NYBA strongly supports the Board's Proposal to clarify the regulatory capital treatment of mutual capital certificates and codify model terms for certificates qualifying as CET1 and AT1 capital.

Properly structured mutual capital certificates are genuine loss-absorbing capital. Their paid-in character, perpetual duration, deep subordination, discretionary noncumulative distributions, and restricted redemption ensure that funds remain available to absorb losses and support an institution through periods of stress. These features satisfy the prudential purposes underlying Tier 1 capital and align with the Basel framework's emphasis on high-quality going-concern loss absorption.

Most importantly, the Proposal provides a foundation for a uniform mutual capital instrument. NYBA urges the Board to build on that foundation by adopting clear eligibility standards, providing reliable recognition for instruments that conform to the model terms, and working with the other federal and state banking regulators to achieve consistent treatment across mutual charters nationwide.

The proposed dividend-waiver reforms are an important part of this broader capital framework. By eliminating unnecessary annual voting requirements and providing non-legacy MHCs with a practical path to use dividend waivers, the Board would improve the ability of mutual organizations to attract minority investment without abandoning mutuality. NYBA urges the Board to finalize these reforms and administer them through a consistent, predictable notice process that relies on directors' fiduciary duties, meaningful disclosure to members, and established safety-and-soundness protections.

A standardized and broadly recognized mutual capital instrument will strengthen the safety and soundness of mutual banking organizations, preserve charter diversity, expand responsible access to capital, and enable mutual banks to continue serving their members and communities without sacrificing their mutual form.

We urge the Board to seize this opportunity to modernize the regulatory framework in a way that not only strengthens New York's mutual institutions today, but helps preserve mutual banking as a strong, competitive, and distinctly community-focused model for generations to come.

NYBA appreciates the Board's consideration of these comments and would welcome the opportunity to discuss these issues further.

Sincerely,
New York Bankers Association