American Bankers Association
Building Success. Together.

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The Honorable Michael Grimm
U.S. House of Representatives
512 Cannon House Office Building
Washington, DC 20515

Dear Representative Grimm:

The American Bankers Association (ABA) is pleased to represent more than 600 mutually chartered institutions, including 158 mutual holding companies holding more than $253 billion in assets. As you know, mutual savings banks are some of the oldest financial institutions in the United States and they have deep roots in the fabric of our communities. ABA's membership includes just over 75 percent of the mutually chartered, taxpaying industry and we are proud to advocate on their behalf.

ABA's Mutual Institutions Council (MIC) serves to address issues of particular interest to mutually chartered financial institutions and to provide a forum for the discussion and development of legislative and regulatory recommendations and actions. The Executive Committee of this 110-member body has recently met and discussed your bill, H.R. 4217, the Mutual Community Bank Competitive Equality Act. What follows are some thoughts and suggestions for your consideration.

First, ABA's MIC is pleased by your willingness to advocate on behalf of the mutual bank industry. The industry has thrived for almost 200 years by focusing on the local communities it serves. Its hallmarks are creativity, steadfastness, and reliability – reliability that the mutual bank will be around for the next generation of depositors, borrowers, and communities. In the vein of promoting the continued viability of the mutual bank charter we offer the following:

1. National Mutual Bank. ABA's MIC supports creation of a national mutual bank charter and supported language in the House-passed version of the Dodd-Frank Act that authorized such a charter. Unfortunately, this provision did not make into the final bill because the Senate declined to accept it during conference. The House language mirrored many of the provisions of the federal savings association mutual charter, but also allowed a national mutual savings bank to become a fully diversified lender without subjecting it to the real estate concentration requirements of the Home Owners Loan Act. Balance sheet diversification is not new to many state chartered mutual savings banks and the House language preserved many of the tried and true governance procedures of the federal savings association charter, including voting rights for depositors. In contrast, H.R. 4217 does not contain any include similar provisions. ABA's MIC supports legislation that more closely follows the House version of the national mutual bank charter and would encourage inclusion of this legislative approach in H.R. 4217.

2. Mutual Investment Certificates. Mutuals have benefited from creative legislation over the years, including the Competitive Equality Banking Act of 1987 that, among other things, created the federal mutual holding company charter. ABA's MIC is in strong support of

tools that allow taxpaying mutuals to increase their capital levels. An investment certificate or similar instrument could be a useful addition to retained earnings. A full understanding of the process or method by which these certificates are structured and how they are treated for accounting purposes is important, as is certainty about their inclusion in Tier 1 capital. There are many questions that need to be answered in order to provide strong regulatory guidance on the use and inclusion of the certificates. ABA offers its assistance in the greater development of this legislative language and exploration of its issues to eliminate surprises.

3. Mutual Holding Company Dividends. The Federal Reserve Board's (FRB) proposed Regulation MM, implementing Section 625 of the Dodd-Frank Act, makes it virtually impossible for any mutual holding company (MHC) to waive a dividend in order to compensate minority shareholders for their minority position. ABA's MIC appreciates your willingness to address this inflexible rule. To date, the FRB's view is that the dividend must be paid to the MHC so that the MHC may serve as a "source of strength" to the subsidiary institution. Arguments to the contrary are many, yet there is little indication that the FRB will be persuaded by any of them. H.R. 4217 attempts to provide a path around the FRB's proposed rule by setting up an outside group to approve dividends that is completely independent and thereby not hampered with a potential conflict of interest. ABA's MIC appreciates the effort to seek a solution to a problem that impacts all MHCs (whether state or federal), but suggests that creating another process adds to costs, will attract the opposition of the FRB, and may not solve the underlying concerns of the FRB in its proposed Regulation MM.

4. The Optional "Preserving Mutuality Bylaws". These optional bylaws freeze the mutual as a mutual. Similar bylaw provisions have been employed by the National Credit Union Administration to prohibit credit unions (tax exempt mutuals) from becoming taxpaying mutual banks. ABA and ABA's MIC have long opposed such bylaw requirements in the credit union industry because such provisions make it almost impossible to change direction if needed, whether by supervisory action (lack of capital for expansion or regulatory requirements) or to serve the communities where the mutual is located (expansion of services and communities). Mutuality is a choice and, like all choices, there may be a day when that choice changes. There are mutual institutions that currently have a variation of the H.R. 4217 bylaw provisions. There is little need to codify what is already available. For these reasons, ABA's MIC is opposed to this provision.

5. Tax-Qualified Charitable Foundations. Much of the section dealing with MHCs establishing tax-qualified charitable foundations may be found in existing law. One provision that is not in current law is H.R. 4217's proposed provision on the ability of the MHC or the underlying subsidiary to contribute stock to the charity at a value that reflects the fully converted price of the organization (the second stage conversion). That price would be determined by an independent appraiser. That means that rather than contributing at the value on the day of creation of the charity, the value of the contribution would reflect a speculative value of the fully stock entity (whenever or if ever that happens). It is hard to imagine an argument that justifies the tax deduction on that basis. ABA's MIC suggests that a better approach would be to make sure that the value of the contribution is measured on the day of the donation to the charity and be treated like any other stock contribution to a charity.

6. Private Right of Action. The Savings and Loan Holding Company Act prohibits a company, or any affiliate of a company, from holding, voting, or soliciting the proxies of a mutual institution. Section 5 of H.R. 4217 creates a private right of action for federal savings associations to prevent a violation if this law. Only a very narrow group of mutual institutions would benefit from this provision. Similar legislation was introduced in the last Congress by Congressman Gary Ackerman (D-NY), drawing the ire of some and spurring Congresswoman Carolyn Maloney (D-NY) to introduce a counter bill. The Office of Thrift Supervision opposed the Ackerman bill as unnecessary. The ABA's MIC suggests that there are other concepts in H.R. 4217 that have more national impact and would encourage more consideration of those provisions.

Again, ABA's MIC applauds you for taking up the cause of mutuality. The concepts of a national mutual bank charter and mutual investment certificates bear further exploration and investigation. ABA and its MIC are happy to engage in a dialogue that results in legislation that can be enacted to benefit all taxpaying mutually chartered institutions. We look forward to working with you.

Sincerely,

James Ballentine