



October 29, 2018

Ann Misback, Secretary  
Board of Governors of the Federal Reserve System  
20th Street and Constitution Avenue, NW  
Washington, D.C. 20551

**Re: DC Docket No. R-1619  
RIN No 7100 AF 13  
Amendment to the Small Bank Policy Statement**

On behalf of America's Mutual Banks, we are pleased to comment on the amendments to its regulation that implement Section 2017 of the Economic Growth, Regulatory Relief and Consumer Protection Act (EGRRCPA).

America's Mutual Banks is an unincorporated association whose membership consists of banking institutions organized under the mutual form of ownership whether mutual banks or mutual holding companies. AMB's membership consists entirely of community based institutions and their Mutual Holding Companies dedicated to serving and fostering the economic growth of their communities. Community based, mutual form institutions are a historically vital part of the fabric of many communities and their future viability must be protected and enhanced.

The amendments are intended to implement the \$3 billion small bank policy statement and also make related and conforming revisions to the Boards' regulatory capital rule and requirements for bank and savings and loan holding companies.

Mutual banks and mutual holding companies (MHC) are particularly affected by the FRBs capital requirements. Mutual banks are affected indirectly in that the only access they have to the public markets that enable them to raise Tier 1 equity capital is through the formation of a MHC, the issuance of debt and the down-streaming of proceeds in exchange for Tier 1 qualified equity. MHCs with minority shareholders are similarly constrained in that most have substantially exhausted their authority to issue minority equity by reason of their initial stock issuance. By definition pursuant to Reg MM, a MHC cannot have outstanding common stock

## AMERICA'S MUTUAL BANKS

held by persons other than the MHC in an amount that exceeds minority ownership. Thus, the increase of the threshold, to \$3 billion will facilitate MHCs financial opportunities to support and fund acquisitions with holding company debt without diluting their capital levels (or forcing them to sacrifice their mutuality by completing a second step stock conversion). Financially, most mutuals and MHCs have relatively high capital ratios for ongoing operation but not enough capital to pursue significant growth by acquisition. We commend the Board for its action in amending the threshold to be effective immediately.

We are concerned however, that the Board's failure to revise the qualitative requirements of the Policy Statement referring to a material amount of securities registered with the SEC will frustrate the intention of Congress. Specifically, Appendix C to Part 225(iii) provides that an otherwise eligible holding company, "with a material amount of debt or equity securities outstanding...that are registered with the Securities and Exchange Commission" is not exempt from the Board's capital requirements which could be construed to effectively prevent the use of public debt for funding an acquisition or organic growth.

We believe this language is vestigial and originally intended to limit the use of the exception to closely-held and Sub S banks. Unfortunately, its effect could be to exclude almost all MHCs with minority shareholders. Moreover, it would arbitrarily favor private placements and SEC exempt issuances over public issuance even in cases where public issuances could materially reduce the cost of debt.

We urge the Board to clarify that this qualitative requirement prohibiting a material amount of securities registered with the SEC does not apply to mutual holding companies which by law are required to register their equity securities with the SEC. Furthermore, debt registered with the SEC by MHCs because of the minority equity limitation should also be allowed.

The relative share of total banking assets held by mutual banks and mutual holding companies has been steadily declining. However, the number of mutual banks has not declined as rapidly as community commercial banks. There has been a pronounced stagnation in the growth of mutual banks with most mutual banks excluded from the pool of acquirers during a period of substantial bank consolidation. Indeed, there are a number of small mutuals that exist in a sort of financial limbo too small to grow with capital too high to qualify for a supervisory conversion merger. The ability of larger mutual banks to acquire those banks without diluting their capital ratios is important in allowing these small mutuals a financial option to merge. We urge the Board to revise subparagraph (ii) in the Policy Statement to eliminate any reference to the material amount of securities as a disqualification from the Policy Statement as it applies to MHCs.

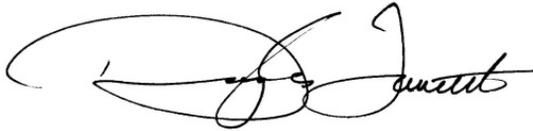
Finally, while we commend the Board for issuing an effective immediately interim regulation, we are concerned that it could be a substitute for considering public comments in a timely manner and the adoption of a final regulation. We cite the experience with Regulation MM which was adopted as an interim regulation shortly after the passage of the Dodd-Frank Act, but after several years has yet to be adopted in final form. We call upon the Board to follow the

## AMERICA'S MUTUAL BANKS

mandate of the Administrative Procedure Act and act in a timely manner in its consideration of the public comments to adopt the final regulation.

Thank you for the opportunity to comment.

Respectfully yours,

A handwritten signature in black ink, appearing to read "Douglas P. Faucette". The signature is fluid and cursive, with a large initial "D" and "F".

Douglas P. Faucette  
Counsel to America's Mutual Banks

DPF/kds