AMERICA'S MUTUAL BANKS
701 8TH STREET, NW. SUITE 700 . WASHINGTON, D.C. 20001

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Michael R. Brickman,
Deputy Comptroller For Thrift Supervision
Office of the Comptroller of the Currency
400 7th Street, SW, Washington, D.C. 20219

Dear Mr. Brickman:

I am writing in response to the Notice dated March 5, 2018 of the forthcoming MSAAC meeting and invitation for written comments. I am doing so on behalf of our members who have asked me to share their experience with the examination staff particularly with the interpretation by some field examiners, with headquarters concurrence, of OCC Bulletin 2012-16, "Guidance for Evaluating Capital Planning and Adequacy" (the "Capital Guidance"). It replaced OTS CEO Memorandum 380 "Capital Management" March 15, 2001. The Capital Guidance addresses capital planning and assessing capital adequacy. It provides a risk based approach to assessing capital planning and adequacy. It discusses in detail risk factors which require higher levels of capital citing a variety of activities that support maintaining higher capital levels. Ironically, the examples given of enhanced risk are seldom present in mutual institutions.

Under the heading "Maintaining a Strategy to Ensure Capital Adequacy and Contingency Planning" the Capital Guidance discusses both internal and external sources of capital. In that discussion the Capital Guidance identifies as an option for capital "in the case of a mutual institution, a partial or full conversion to stock". That sentence was not in the predecessor OTS Memorandum 380. OCC Bulletin 2014-35, "Characteristics and Supervisory Considerations of Mutual Federal Associations " (the " Mutual Bulletin") lists conversion to stock or formation of a mutual holding company with a minority stock issuance as an alternative form of raising capital. The Mutual Bulletin does recognize that "the mutual form of ownership is firmly imbedded in the (mutual) institutions roots and conversion to stock is not a preferred option".

We believe the Capital Guidance and Mutual Bulletin read together were not intended to convey the message that conversion to stock is but another arrow in the quiver that a mutual bank possesses in managing its capital. Nonetheless, the recital of conversion to stock or mutual holding company stock issuance in the Mutual Bulletin does more to confirm than dissuade the notion expressed in the Capital Guidance that conversion is a mutual bank's capital raising option.

Our members do not believe that conversion to stock is a routine or first option for a mutual bank. Seldom is a poorly run bank's problems solved by conversion. If anything public ownership merely compounds management's burdens. Indeed public ownership is fundamentally inconsistent with the mutual legal form. A simple sentence in the Mutual Bulletin that "the mutual form of ownership is firmly imbedded in the (mutual) institution's roots" is far too subtle to convey that message. It woefully understates the culture, history and mission of the mutual model nationally and internationally. Examiners should suffer no doubt that mutuality is more than a form of organization but a selfless commitment that an institution has made and kept to its constituency and (as recognized by the Mutual Bulletin) by almost half of all mutuals for over one hundred years. Mutual banks have no ownership interest that can be bought and sold. Indeed, no individual can profit from the operations of a mutual. Conversion to stock form is not a capital management tool comparable to issuing additional stock or debt to the public as in a stock company but is an abandonment of a historic commitment. When Congress empowered the federal government to charter mutual banks it did not do so with the expectation that mutuality was an initial stage of an inevitable metamorphosis to a fully owned public stock company. In some states, mutual banks were barred constitutionally from abandoning mutuality in favor of the stock form. Similarly, reorganization to a mutual holding company is not an inevitable stage in a metamorphosis to a second step full conversion. We have documented cases where examiners have impressed upon recently formed MHCs with excessive newly raised capital to include second step conversion in their capital plans. Moreover, in one instance examiners criticized the lack of an updated capital plan when an extensive one was filed with the MHC reorganization.

It is only when a mutual abandons its mutuality or a MHC abandons its mutual majority status is conversion an option. It has been the policy of the OTS and presumably the OCC to remain neutral with respect to conversion. Conversion is a choice but not one that is favored or disfavored. Actions by the OCC or its staff favoring the stock form would be perceived by mutuals as abandonment of the OCC's statutory mandate contained in the Home Owners Loan Act. A mutual board of directors is free to determine a change in its form of ownership but such a change should not be motivated or influenced by regulatory bias. Directors are entirely too susceptible to supervisory suggestion that conversion should be "an option on the table." Moreover, professional depositors seeking private gain are happy to reinforce that suggestion.

In some cases we have seen aggressive litigation tactics intended to bully a Board into abandoning its mutual or MHC status. These concerns are not academic but real.

The fiduciary commitment to mutuality is a deep one but becomes more difficult with the temptations of the marketplace and the lack of a dynamic regulatory system that supports the mutual model. If regulatory bias is perceived by fiduciaries it can add to the temptations and disturb their commitment. The OCC has recently witnessed the second largest federal mutual announce a partial conversion after many decades of championing mutuality.

The wording of the Capital Guidance and Mutual Bulletin, not surprisingly, has led some examiners to press for a formal recitation of conversion as an option in a mutual's capital plan with no apparent sensitivity that such a position is tantamount to pressuring a mutual to plan for abandonment of its very existence. While the converted bank will exist in a stock form, it will never again have the luxury of serving one constituency- its community. Indeed, empirical evidence is that the bank in all likelihood will cease to exist altogether in five years after conversion. It is evident from reports by our members that the examiners are not sensitive to the fundamental inconsistency such a plan presents to a mutual bank. They are not to be criticized as a reading of the Capital Guidance and the Mutual Bulletin would suggest that they are acting true to stated policies.

This exercise of examiner discretion has in many cases resulted in recommendations that a mutual Board formally adopt stock conversion as a capital option even when the bank was significantly overcapitalized. In another example, a bank held by a mutual holding company and grossly overcapitalized having recently raised capital in the market was given a MRA in its report for failure to incorporate a second step capital raise in its capital plan. In yet another case, a MHC was criticized for having no dividend policy when in fact it had emphatically disclosed it would not pay dividends -- a reasonable decision in view of the obstacles Dodd-Frank and the FRB have imposed on MHCs attempting to pay dividends.

We support documenting in an articulate and practical manner a plan for a mutual bank to maintain capital compliance. We do not support lumping a full or partial conversion in the options considered in a capital plan as just additional management tools unless it is a last resort. Reduction in size, risk profile of assets, improvement in earnings and expenses along with the use of alternative capital instruments are all options that do not require the sacrifice of mutuality. It is unfortunate that the Capital Guidance does not reflect a more sophisticated view of the mutual form in that it omits a host of other strategies to maintain adequate capital from those listed. We urge the OCC to readdress both the Capital Guidance and the Mutual Bulletin to capture the subtleties of the mutual form and respect the cultural commitment that most mutuals have made to their continued existence in that form. With the favorable swing in the economy it is expected that the banking industry will experience another growth cycle. It would be unfortunate if a lack of understanding and dynamic policy by the OCC to accommodate mutual growth would deny them the benefits.

Very truly yours,

Chuck Boulier
Chairman
America's Mutual Banks