Mutual Alert

OCC Proposes Implementing Flex Act, Further Blurring the Distinction Between Federal Stock Associations and National Banks. State Chartered Savings Associations Excluded

AMB has supported vigorously providing mutual banks with national bank powers over the years. Monday, the OCC proposed its much anticipated regulation under the Flex Act to provide federal associations in existence on December 31, 2017, the power to elect to operate as"covered savings associations" by adding a new part 101 to its regulations. A "covered savings association" will have the same rights and privileges and is subject to the same duties and restrictions of a national bank. A "covered association" will remain a Federal, keeping its charter and bylaws and be treated as such for corporate governance purposes. In effect it will be a "super-federal" but still inferior in some respects to a national bank. The OCC has attempted to make clear that there are a *number of provisons of the statutes applying to mutuals that are unique and not superseded by the National Bank provisions of the regulations.* The Proposal makes clear that " covered associations" will not be subject to QTL limitations even though the statutory language is silent on this point and there is no indication that the Federal Reserve Board has concurred in this interpretation.

Federals will have to forego the exercise of any powers not permitted for national banks to elect "covered association" status. Service corporation investment powers may be the most significant power that may have to be sacrificed by some Federals. Some types of investment in insurance and real estate may no longer be permitted for a "covered assocition". However, OCC staff is unaware of significant service corporation operations that would be abandoned. There is also an issue whether the body of law that has been built up over the years affirming the preemption of state laws by federal rules will be effected. It is possible that with even the continuence of the federal charter, states will argue that preemption case law regarding state Federal S&L regulation does not apply. Nonetheless, for those Federals seeking an aggressive business plan with less reliance on real estate finance, this regulation is a legislative and competitive win. It also provides a particular benefit to mutuals to expand their powers to be more commercial bank like. This is their only avenue since they are barred from converting to national banks without sacrificing their mutual charters.

However, state chartered thrift institutions and credit unions will be unable to elect "covered association"status as they do not meet the December 31, 2017 cut-off date. This failure by Congress to include state chartered savings associations in the statute leaves them *no choice* to acquire broader powers and remain a savings association. That is, even if state law would

permit expanded state savings association powers, QTL would continue to apply as a limitation. State mutual savings associations in states with savings bank powers should seriously considereing converting to mutual savings bank status. If that is not available to them, then stock conversion and conversion to national bank is the only path to escape QTL limits on lending. AMB is opposed to regulatory bias which creates uneccessary pressure on mutuals to forego their mutual form. Congress should address the failure to include state chartered S&Ls.

The OCC has attempted to maintain flexibility on various issues and specifically invites comments on whether it should follow a more liberal interpration of some of the provsions such as the retention of limited service corporation powers. AMB will be submitting a comment and seeks your input on areas of particular interest. Public comments are due 60 days from publication in the Federal Register.