



**MINUTES OF
AMERICA'S MUTUAL BANKS**

APRIL 10, 2017 MEETING

Chairman Boulier chaired the meeting and called it to order at 1:03 pm ET. The following institutions and persons were in attendance:

Locke Lord LLP

- Doug Faucette

Institutions and Representatives

- Ion Bank—Chuck Boulier
- First County Bank—Rey Giallongo
- Maspeth Federal—Tom Rudzewick
- First Federal of Lakewood—Tom Fraser
- Ridgewood Savings Bank—Peter Boger
- First Federal Savings—Paul Simmons
- John Marvin—Raymond Federal Bank

Topics of Discussion

1. Adoption of Minutes

Chairman Boulier asked for comments regarding the draft minutes of the March 6, 2017 meeting. A motion was made to approve the minutes, the motion was seconded and all voted in favor. The minutes were approved.

2. Feedback on Annual Meeting Speakers and Format

Chairman Boulter and others stated that they enjoyed the speakers and the format. However, it made for a very long day because of the ABA mutual conference and virtually no break in between. Mr. Faucette stated that if everyone was able to come on a special day to a special place every year, then it would be fine but the reality is that we have to combine them. For future reference, it was suggested that we not be so attentive to the ABA all day. Take a break in the afternoon because usually the program gets pretty weak by then. Mr. Marvin said that he particularly enjoyed the speaker from the legal foundation. His presentation was excellent especially because it was somewhat outside the box. Mr. Faucette commented that "it's not outside the box anymore" because Senator Toomey is currently challenging lending rules based on that legislation. He has asked the GAO to determine whether the 2013 guidance on leveraged lending constitutes a rule for purposes of the Congressional Review Act. Mr. Faucette stated that, it's open season on all the agencies who have been so cavalier about their rules. The worst is the emergency rules that are effective immediately and are supposed to be quickly followed up with the final comment in the rule making process but the temporary rule literally lasts for years. The Heritage Foundation is not putting money into these companies as an academic issue, they're sharpening the point of the spear. Mr. Marvin also mentioned that he thought Rep. Luetkemeyer's presentation was great. He said further that he didn't realize his banking roots and thought that he was outstanding. Other members agreed and said further that it was great that Luetkemeyer was the chairman of the subcommittee because that originates all legislation on banking. He is very savvy and he has the inside track for that. The more we continue to cultivate him, the better.

3. Introduction of H.R. 1595, "The MCC Bill", and Meeting with Congressman Rothfus

Mr. Faucette stated that he thought it was going to be a brush off meeting, but it turned out to be an hour and a half breakfast meeting. "We talked about a wide range of things and one thing became very clear to me, Rothfus, I think, is not feeling the love from the ABA. It looked to me like he was very open to working with us. He actually said he'd like some speaking engagements." Cong. Rothfus encouraged Mr. Faucette to talk to his staffer. Mr. Faucette said that he had a meeting scheduled with a staffer on Friday but had to cancel because he had to attend an emergency board meeting. However, the meeting with the staffer was rescheduled for the following week. Mr. Faucette said that he will try to roll in our old mutual income certificate bill and add some features to the MCC bill that will be more attractive.

4. Introduction of H.R. 1426 "The National Bank Investment Powers Election Bill"

Mr. Faucette stated that, this is the bill that Comptroller Curry supports because it's very similar to the legislation that is on the books in Massachusetts for their savings banks. A lot of the savings banks don't even want to be called saving banks. They say, we're a commercial bank. I say, "Yes, but you're mutual." "Yes, we're mutual commercial bank." I say, "Yes, but you're really not classified that way." But the fact is, they're right. If you looked at their asset composition, it looks more like a commercial bank than it doesn't. They still have tax issues but the long and short of it is, Comptroller Curry has always been enamored with this. The big

mutual insurance companies that own thrifts have promoted this for some time because it gives them broader investment powers through their subs. Because if they were to convert their subs to a national bank, they would lose their grandfathered savings and loan holding company status. So if you want to know what truly is behind the bill, its preservation of the grandfather authority. Curry says he is opposed to the MCC because it doesn't meet the Fed's capital regulations.

5. Luetkemeyer Hearing on Restraints on Lending

Mr. Faucette stated that Cong. Luetkemeyer's agenda was to point out that regulation is hurting the heartland, the middle of the country and small towns. He had a number of witnesses that testified how bank regulation has been stifling growth in these areas. Initially, the focus was to create an agenda and he's been doing that with a number of hearings. One such hearing was the hearing regarding de novo's where the witnesses all testified that the reason why there were no new banks was because regulation is so burdensome that nobody wants the charter. What will follow from the hearing has already begun - the introduction of various bills to facilitate, by repealing or exempting from existing regulations, growth and lending by community banks. The most relevant thing that we've seen is from Congresswoman Love, because this was part of the plan. They were going to lead with the hearings then shortly thereafter they want to introduce her bill.

6. Reintroduction of Love Bill Raising the Small Bank Limit to \$5 Billion

Mr. Faucette stated that Congresswoman Love introduced her bill as a separate bill, not part of the Choice Act. The bill is HR1948. Not only does it increase the \$1 billion dollar threshold but it goes up to \$10 billion. Frankly, few of our members need \$10 billion but some members may like it. I'm not certain exactly how this is going to go on the Senate side, meaning that there's a fair chance this may move before 2018. It may move of its own accord and could be a boon to mutuals and any bank that's not publically held. Originally we thought the introduction was going to be \$5 billion. Mr. Faucette expressed confidence that the bill will pass the House. However, as usual, the issue is going to be how it's received with the Senate. The amount of time he has spent with various Senate members and their staffers on both sides of the isle has led him to believe that its chances are much better than anybody had originally thought.

Chairman Boulter agreed and said that he sent that alert to the CBA along with the large mutuals in this state. And bottom line is the CBA was going to reach out to Congressman Heinz to get his support for the bill because it has immediate impact to every mutual from a capital planning standpoint.

Mr. Faucette said that's an excellent idea and we all should do the same with our elected representatives. This is the back door to the capital markets for mutuals. We have pushed our mutual income certificate or investment certificate and it's - going to take us forever to get that done, that's a target of opportunity. If things start moving and the train starts rolling maybe we can couple our current bill on to it. This has a life of its own because it's of wider appeal. There are more banks affected by this bill than almost anything else because when you talk about raising the threshold to \$10 billion, you're talking about over 90 percent of all the banks in the United States.

Chairman Boulter agreed that it is a good point. Another member commented that, this says a lot about the confidence of the Congress regarding the Fed as a community bank regulator.

7. Meeting with Senator Sherrod Brown (D. OH)

The meeting was a discussion of the general Republican agenda and how the Democrats would proceed with their own agenda. What was interesting about that meeting was Senator Brown, who is the ranking member of the banking committee, very much understood what the administration's pecking order is. It's not a surprise to anyone that health care was going to come out first, then tax reform, then a few other things. So it's going to be awhile for banking reform to come through. Brown has been generally sympathetic to community bank relief. He's no Elizabeth Warren. She has a different agenda and he's not opposed to her agenda, but he's willing to distinguish between J.P. Morgan and First Federal of "Podunk". She paints all banks with the same brush simply because, politically, it confuses her constituents if you try to say there are good and bad banks. So, as a political approach I think Senator Brown and his staff have indicated that they are open and will work with Senator Crapo and his staff provided there isn't a partisan blow out and an application of party line discipline to prevent working with the Republicans. Mr. Faucette said he's a very key player and reasonable. He wants to get something done. He wants to get reelected. He knows Ohio is a source of many community banks and he wants to respond accordingly. He spoke at the ABA meeting, which says something because the mere fact that a democrat of that ranking status would participate in a ABA meeting is kind of remarkable.

8. Class Action Against Mutual to Mutual Merger in Kansas

Mr. Faucette stated that this is an interesting case in a couple of ways. First of all, the class action wasn't filed until after the deal closed. He found that odd because if you're a class action lawyer you like to have leverage. The deal closed and then maybe they didn't want to file a bond and sometimes that's why they sue after deals close. The simple facts are, the Mutual acquired had fairly decent capital ratio. For explanation purposes, let's assume the acquirer had 9 percent. It acquired another mutual that had a capital ratio of, maybe, 18 percent. The theory behind the case is dilution of the residual interest in the net worth. The acquired mutual also had the old charter provisions. They had not reviewed their charter in some time and they had the old share institutional language that talked about distributing the earnings and any residual interest to the members. Similar language is in the current charter so I don't know that that defect in their corporate documents exposed them any more than the current charters would. But, what I do know is the lawyers didn't see fit to get a member vote for that deal. The disappearing institution members were having their interest in the rights to the residual interest diluted by being acquired by a much larger mutual with much smaller capital ratio. So, the theory is that it was an unlawful dilution and a breach of fiduciary duty of the directors of the disappearing company. Now, the OCC probably got caught with their pants down. They probably should have required some sort of simple proxy vote on this with disclosure and they would have gotten the approval anyway, but they didn't. This may not be a good case if you read the caselaw that has been accumulated over the past 30 years. The case law says the residual interest is not an ownership right. The plaintiffs will have a hard time getting past a dismissal motion on that. But, a lot of judges don't understand it that way. So, they might well continue resulting in either a settlement or a fast dismissal.

Chairman Boulier commented that, we're going to follow it and see how it plays out. Mr. Faucette said that he wants to get a little feedback from the OCC and see what their take on it is. Rightfully, the OCC or the ABA should be filing amicus brief on that. But it's doubtful.

9. Speech at Massachusetts Bankers Association - Mutual Bank Program

Mr. Faucette said that he gave as many plugs to AMB as he could. "I made it very plain what we support and why we support it." It was a good opportunity to talk to many mutuals. I think I got a fair amount of interest which I'll follow up with. And, people are saying, yes, we may want to become members.

Chairman Boulier asked Mr. Faucette if the Massachusetts bankers reached out to him. Mr. Faucette said, yes, they reached out and asked me to come speak for their mutual day. They are not adverse to us. It's just that they're affiliated with the ABA so they have to be careful.

10. Schedule of Next Meeting

The next AMB meeting was set for Monday, May 1, 2017, at 1:00 pm ET.

Chairman Boulier asked if there was anything else to discuss. Hearing no comments, he called for a motion to adjourn. A motion was made and seconded and passed unanimously.

The meeting was adjourned.