Mutual Alert

Date: May 27, 2011

To: America's Mutual Banks

Re: Meeting with FDIC

On Thursday, May 26, 2011, members of America's Mutual Banks met with senior officials of the FDIC to discuss the regulation of mutual institutions in the post Dodd-Frank Act era. Representing AMB were Mr. Jose Guerrero, Chairman, President and CEO of Spencer Savings Bank, SLA, Elmwood Park, NJ, Mr. Robert Rey, President of NVE Bank, Englewood, NJ and Doug Faucette of Locke Lord Bissell & Liddell LLP. Representing the FDIC were six members of the senior staff, including Mr. Christopher Spoth, Senior Deputy Director Supervisory Examinations, Mr. Martin Thompson Senior Review Examiner Division of Risk Management Supervision, Sylvia Plunkett, Senior Deputy Director, Compliance CRA Examinations and Enforcement, and J. C. Watkins, Deputy Director Supervisory Examinations.

Mr. Faucette began the meeting by introducing the two representatives of AMB. He explained the goals of AMB to be the voice for mutuals and to raise the awareness and understanding of mutual institutions among regulators and policymakers. Mr. Faucette explained that mutuals are community institutions that generally have higher capital and lower risk profiles than commercial banks. He referred to Chairman Bair's testimony that morning in which she emphasized the role of community banks in small business lending and how significant mutuals are as a portion of community bank lending. He also reminded the staff the role they play in housing finance.

Mr. Faucette discussed the perception of many mutuals that with the influx of new FDIC staff there is a growing gap in the understanding of the distinct characteristics of mutuals. He pointed out that the FDIC's Advisory Committee on Community Banking lacked a true mutual representative (one member is now an executive with a mutual only due to his stock bank being acquired and the other a former credit union and MHC with public stockholders). He also discussed recent examples of regulatory issuances which did not take into account the mutual form of organization. It appeared that some of the FDIC staff in attendance were not completely familiar with the mutual form. Mr. Faucette stated that one of the purposes for the meeting was to familiarize the senior staff with issues relating to mutuality, as it is the "tone at the top" that sets the policy for the entire agency.

Mr. Rey continued the discussion with background information on his institution, explaining that his bank has been in existence for more than 100 years and maintains strong capital. He explained that as a portfolio lender the bank was a cautious lender retaining most all

the risk of its loans. He explained that mutuals present minimal risk to the insurance fund citing as evidence the approximately 12 mutuals that have failed during the crisis as compared with close to 400 stock companies. He expressed his concern that the regulators are taking a "one size fits all" approach to supervision which may not take into account the unique attributes of mutuality. He explained that mutuals have limited sources of capital and that while NVE, like many other mutuals, maintains high capital ratios, other institutions may not have as much capital and will not be able to easily meet the higher capital requirements. Mr. Rey spoke at length on how the FDIC should support new capital instruments for mutual institutions and that the FDIC should not object to hybrid instruments if they are subordinate to the FDIC's claims in a receivership.

Mr. Rey also spoke about the importance of NVE to the local community, as the bank received recently a community service award.

Mr. Guerrero then spoke about his institution, Spencer Savings Bank, SLA. He stated that his bank, too, is highly capitalized and receives high CAMEL ratings. He discussed his concern regarding the sharing of information between the OCC (the agency that will issue rules for state savings associations, such as Spencer) and the FDIC (the agency that will enforce those rules). He discussed his concern that the agencies are using "too broad a brush" in their supervision of banks and not taking into account the special features of mutuals.

Mr. Guerrero also stated that mutuals are limited to retained earnings in the manner in which they can raise capital. He pointed out that mutuals cannot raise capital through the sale of stock, but then neither could troubled stock banks, and that it was only through the establishment of the TARP program that many troubled stock banks were able to raise capital directly from the U.S. Treasury to survive.

Mr. Guerrero stated that mutuals provide additional cushion against losses through the posting of additional reserves, which may not be available to stock institutions. He stated that Spencer Savings has adequate reserves.

The AMB representatives also discussed with the FDIC staff the agencies' regulation on compensation. It was noted that the proposal does not take into account mutual institutions. Both Mr. Rey and Mr. Guerrero expressed their concern that the compensation data accumulated by the FDIC may be misapplied and that the compensation of mutuals will be wrongly compared to the compensation paid by stock banks. Mr. Faucette offered that misapplied compensation data that is negatively viewed by the FDIC could result in higher deposit insurance premiums under the FDIC's proposed risk based insurance regulation.

Mr. Thompson of the FDIC questioned whether banks can perform their own compensation analysis. Mr. Faucette responded by stating that that was not possible as the information was not publicly available. He explained that without the ability to analyze the individual components of peer group compensation banks subject to adverse supervisory comment would have no way to rebut any criticism. He requested that the FDIC make publicly available the compensation data that it collects perhaps in a form that did not identify the actual names of the executives involved.. Mr. Thompson stated that the FDIC currently performs peer analysis without risk of overregulation. All the AMB representatives urged the FDIC to publish policies and examiner guidance which distinguish between stock and mutual banks with respect to compensation matters.

The topic then shifted to capital and the Collins amendment to the Dodd-Frank Act. The discussion turned toward FDIC acceptance of other forms of capital for mutuals, including Net

Worth Capital Certificates, Mutual Capital Certificates and Income Capital Certificates. Mr. Spoth noted his familiarity with these forms of capital. Mr. Faucette stated that guidance needs to be issued on whether MCCs are includable as Tier 1 capital. In addition, Mr. Spoth stated he will research whether MCCs would be excluded by the Collins amendment. AMB offered to also look in to this issue. Mr. Faucette stated that generally, the Collins amendment was disadvantageous to mutuals. He also stated that the sentiment of the FDIC, as expressed by the Chair, was that common equity was the highest form of capital and that this too was a disadvantage to mutuals. Mr. Faucette also raised the issue that some believe that in order to take advantage of the Fed's small bank capital policy, an institution would have to be a state savings bank, and that that option may not be available in every state.

Mr. Faucette also offered that he would provide to Mr. Spoth a copy of AMB's comment letter to the Fed on its savings and loan holding company guidance. He also urged the FDIC to take into consideration mutuals when the FDIC and the other agencies begin their Dodd-Frank required study on capital raising opportunities for small banks. Mr. Faucette also urged the FDIC to engage in examiner training on distinctions between mutual and stock companies, especially in regions where there appears to be little experience with mutuals among the FDIC staff. Mr. Faucette also inquired about whether there was a coordinating committee among the FDIC, Federal Reserve, OCC and Treasury with respect to mutuals. Mr. Spoth responded that there was none.

Mr. Spoth stated that Mr. George French, a senior capital and compensation policy official at the FDIC, who was not at the meeting, would be available for future discussions with AMB on the impact of FDIC policies on mutuals.

The meeting ended on a very cordial note with all in attendance agreeing that further dialogue between the FDIC and AMB would be warranted as the FDIC addresses issues that AMB believes are particularly of concern to mutuals. Mr. Spoth noted that, at the risk of hyperbole, mutual institutions coming together to form a coalition was brilliant, and that a voice for mutuals was indeed needed.