Mutual Alert

NEW JERSEY SENATE COMMERCE COMMITTEE TO CONSIDER DRAMATICALLY EXPANDED BILL TO REQUIRE MEMBER VOTING FOR SAVINGS BANKS AND THEIR MUTUAL HOLDING COMPANIES

January 19, 2021 | As we previously informed you, on July 28, 2020, New Jersey State Senators Bob Smith and Kristin Corrado introduced a bill, S2726, intended to require member voting for the election of mutual savings bank holding company boards of directors. Further, on October 19, 2020, Assemblyman John McKeon introduced an identical bill, A4824. At the time the Bills were introduced, they were a departure from decades long New Jersey law providing that the board of directors of a New Jersey savings bank mutual holding company are elected by the board of directors; similar to the law in most states. The Bills are promoted by a well-known investor and activist who is in reality targeting a specific New Jersey mutual savings association which he has been engaged in a contest for Board seats over a decade.

Amendments to the Senate bill, are scheduled to be considered by the Senate Commerce Committee on January 21, 2021, dramatically expanding the Bill's reach and intent. The amended S2726 would not only reach the election of the board of directors of savings bank mutual holding companies, but now applies a member voting requirement to the election of managers of savings banks that are not in a holding company structure. The additional language added to the bill has been substantially copied from the New Jersey Savings and Loan Act ("SL Act"). The bill now sets forth the definition of a member to include any depositor or borrower of a mutual association, mutual savings bank, or the member of the mutual holding company formed with a savings association or savings bank subsidiary. The language further defines the newly created voting rights of members to be virtually identical to the wording in the SL Act. It also sets forth in detail the method for conducting heretofore non-existent meetings of members and communication between members. The Bill expressly directs and cross references the reader to the applicable sections of the SL Act. It eliminates any distinction in governance procedure between savings banks and savings associations altogether. It becomes increasingly difficult to distinguish the two entities as a matter of law. This may raise significant classification issues under federal law for purposes of determining what lending restrictions apply to New Jersey savings banks.

The Bill also provides that in communications between members the term "mail" as used in the mirrored provisions of the SL Act shall be expanded to include "email, core processor distribution, internet, and any other form of electronic communication". This provision, while seemingly a recognition of changes in technology commonly employed by stock companies, fails to recognize the unique and fundamentally different nature of members in savings associations from stockholders. They are customers first (depositors/borrowers) and members

only secondarily. To conflate savings membership with stockholder status is a gross misunderstanding of the relationship between members and their associations. This provision also suggests complete ignorance of the electronic capabilities of most banking institutions, and the customer privacy and cyber security risks entailed in any such requirement.

There should be no doubt that the specific intent of this legislation is to abolish almost two centuries of law in order to transform the governance of state savings banks into state savings and loan associations and expose them to professional depositor efforts to force their conversion to stock.

The amended bill has been modified to read that it shall take effect immediately, but grandfathers mutual holding companies or savings banks chartered and approved by the New Jersey Commissioner of Banking prior to the effective date of the Bill. The grandfather is an obvious attempt to persuade other savings banks to withdraw their opposition and reinforces the impression that the legislation is directed at one specific institution. Of course, if a single supporter can lobby successfully the passage of this Bill, there is very little reason to suspect that he will not move next to eliminate the grandfather. Putting aside the fundamental unfairness of what many consider a bill of attainder, the Bill if passed into law, would affect approximately a dozen savings banks that have not yet formed a mutual holding company. Evidently, other savings associations or savings banks which might be harmed by this legislation are considered by its sponsor to be collateral damage.

This Bill should be an alarm and of grave concern to all savings banks regardless of where they are located. It is an object lesson in the fundamental misconception by many legislators, regulators, courts and others that mutual members are equivalent to stockholders in a stock bank. It may have a chilling effect on mutual holding companies in New Jersey. The professional depositors will be watching this carefully. If the Bill can be successfully run through an unwitting legislature in New Jersey, it will surely be attempted in other states. This legislation will be used as a road map and cited as precedent for other state legislators to follow. As we stated in our prior alert, this situation demonstrates the compelling need to educate legislators, regulators and others as to the fundamental differences between savings banks, savings associations and stock banks. One is reminded of the aphorism “We hang together or we hang.” It remains to be seen if New Jersey’s mutual banks will hang together or allow themselves to be separated from the herd one by one.

We urge you to bring this bill, even more so now in its amended form, to the attention of your trade associations as a dangerous threat to the long standing governance of mutual savings banks.

To read the entire text of the amended bill, please see the attached PDF.

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