

Mutual Alert



AMB Files Comment Letter with Federal Reserve Board Proposing Changes to Interim Regulation on Small Bank Holding Company Exemption to Accommodate Mutual Banks and Mutual Holding Companies

On October 29, 2018, AMB filed the attached comment letter with the Federal Reserve Board (“FRB”) regarding the FRB’s recent adoption of an interim regulation to implement the Congressionally mandated increase in the asset size for Bank and S&L Holding Companies to qualify for the exemption provided in the Small Bank Holding Company Policy Statement. The AMB comment letter is the only comment letter filed as of the comment period deadline by any trade group that notes the Board’s failure to revise the qualitative requirement of the regulation could make most Mutual Holding Companies with minority stockholders ineligible for the exemption. The reason for this is the FRB took no action to modify the existing qualitative requirement disqualifying companies that have a material amount of debt or equity securities registered with the SEC.

AMB’s comment letter states its belief that this failure could be easily construed to effectively exclude Mutual Holding Companies with SEC registered securities from the exemption. It also pointed out that mutual banks seeking to form a Mutual Holding Company without minority stockholders seeking to raise debt and downstream Tier I equity would also be effected. It explained that the lack of clarity as to the meaning of “material amount” could arbitrarily exclude all Mutual Holding Companies otherwise eligible from issuing public securities. This could cause mutual holding companies to incur the unnecessary added expense of a private issuance at a higher interest rate. It also cited the FRB’s Reg MM which requires MHCs to register their common equity with the SEC and noted the burden the qualitative requirement places on them solely because they are subject to the SEC registration requirement of Reg MM but otherwise exempt from SEC registration--a classic Washington “Catch 22”. In as much as most MHCs with minority stockholders have exhausted their ability to remain mutual and issue more common equity, they are particularly burdened by the interim regulation. AMB’s comment letter explained the vestigial nature of the requirement and called for the FRB to revise it to eliminate any disqualifying effect it may have on MHCs.

Finally, the letter sought assurance that the FRB would consider the comment letters and take timely action to revise the regulation to cure its deficiencies. It cited the FRB's troubling precedent of Reg MM which, although adopted without prior notice and comment shortly after the passage of Dodd-Frank, has never been adopted in final form even though numerous and significant comment letters were received during the comment period.