



**MINUTES OF
AMERICA'S MUTUAL BANKS**

MAY 15, 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
- First County Bank—Bob Granata
- First Shore Federal—Marty Neat
- First Federal—Paul Simmons
- Raymond Federal—John Marvin

Topics of Discussion

1. Adoption of Minutes

Chairman Boulier asked for comments regarding the draft minutes of the May 1, 2017 meeting. A motion was made to approve the minutes, the motion was seconded and all voted in favor. The minutes were approved.

2. OCC MSAAC May Meeting and New Member Appointments To Committee

Mr. Faucette stated that, the appointments have been delayed for more than 6 months. The committee has been reconstituted with 9 members and AMB has good representation. The OCC is planning on filling the 10th position on the committee which remains vacant. Tom Fraser is on the committee as well as Dan Moore. However, there is one constant problem. The OCC controls the agenda and decides what is important to mutuals. There was a speaker from the New York Region who watches trends among OCC mutual bankers. He gave a presentation that showed that only 7% of OCC supervised assets are Mutuals. Federals represent 25% of OCC supervised banks. Asset representation is very low. Mutual Federals represent 46% of all OCC regulated Federals. They compared the totals from 23 mutual holding companies and 148 Federal mutual banks. There are only 171 mutuals in the OCC but by the end of 2017, mutuals may represent the majority of Federals they regulate. The desire of stock federal associations to remain S&L's chartered by the OCC is rapidly diminishing.

Beth Knickerbocker, who heads the office of technology and innovation, gave a brief presentation. Tom Fraser was interested in a collaborative effort to share the cost of technology but OCC staff members viewed his question as relating to service corporation powers.

Carrie Moore, legislative director of the OCC, gave a brief presentation and did not address anything regarding relief for Mutuals. The Acting Controller, Norega, made a few interesting points about Mutuals. There were roundtable discussions mostly about credit unions, instead of other more important issues.

There was discussion regarding the class action lawsuit concerning the merger between two Mutuals in Kansas City. One of the committee members is the CEO of FF Kansas City whose directors who were on the merged mutual are named defendants. The OCC and the ABA filed Amicus briefs.

There was no discussion of what can be done to relieve the burden on Mutuals.

3. ICBA, ABA and State Trade Group Opposition to NCUA's Alternative Capital Proposal

Mr. Faucette stated that, it is very difficult to stop the credit unions from getting what they want and it is hard for mutual banks to take unreasonable positions to seek alternative capital. The credit unions' membership is large enough. There is concern among non- mutuals and the banking trade groups oppose whatever the credit unions try to do, even if it may not be in the best interest of their mutual members. The mutuals should try to get on board with the proposal, but the Banking trade groups have been tentative at best as to their mutual members interests. They are opposed to any alternative capital for credit unions.

4. OCC and ABA Amicus Briefs in FF Of Kansas City Breach of Fiduciary Duty Claim Against Directors Approving a Mutual Merger

Mr. Faucette stated that, the OCC's Brief is not very compelling. However, it is significant that it did file the brief and it is a positive development for federal mutuals. It cited 48510_3

many of its own releases as persuasive authority for the court. The ABA brief was more articulate in explaining why there was no standing for the plaintiffs. It essentially said that they are not stockholders and don't have the same rights as stockholders. Consequently, they don't have a claim of injury if their theoretical percentage of ownership on liquidation is diluted. There was concern raised on the call about the impact of a statement in the brief that there is no fiduciary duty to depositors by the board of directors of the federal mutual association. The OCC's Amicus doesn't repudiate that statement. The ABA brief stated that it is the only trade group that exclusively represents Mutuals. It would have significant negative consequences for Mutuals if the court decides that there are no fiduciary duties whatsoever to members in that they are just depositors. Such a ruling would create a precedent with profound results. As it stands now, the conversion rules and the concept of a fiduciary duty to treat members fairly are the only things that prevent stock companies from acquiring Mutuals. This case is really about member rights and no such rights against dilution exist in members. Mutuals could not merge or even grow if it diluted a depositor's inchoate right to share in the distribution of the residual net worth in the unlikely event of liquidation.

5. Analysis of CHOICE Act

Mr. Faucette stated that, the Choice Act will pass the House, but the issue becomes what parts of this Act will be taken out by the Senate when it is vetted by them. For traditional banks, there is a 10% capital threshold to become a qualifying bank. That keeps them outside of many of the requirements that others have to meet who are under the 10% threshold on lending. The Choice Act attempts to pass into law the concept of exempting from many Dodd Frank provisions banks with a high level of capital. That would be a good thing for mutual members since very few of them are under the 10% threshold. Regarding the Regulatory Relief bill, any loan that is held in portfolio is considered a qualifying mortgage, which would be helpful to many Mutuals. Also, The Rothfus bill is incorporated into the Choice Act. The small bank holding companys' policy statement raises the threshold from \$1 to \$10 billion. Last Congress, Congresswoman Love introduced it for \$5 billion and reintroduced it this session as HR1948 to increase it to \$10 billion. However, the Committee draft still had \$5 billion. After contacting Cong. Love's office regarding the error, the Bill was revised to increase the threshold as \$10 billion. There is a provision required for a 60-day turnaround for final exams. The Bill would also reverse a recent decision in the Second Circuit that provided that a loan wasn't valid when made if it was subsequently sold, assigned or transferred. As to the applicable usury rate, CFPB reforms will eliminate its supervisory and regulatory authority and make it exclusively an enforcement agency. The Volcker rule was repealed. The Durbin amendment is also repealed by the Bill- a wholesale repudiation of Dodd-Frank. It also repeals the Chevron decision of 1984. There is a repeal of the small business data collection powers of the CFPB. Regarding executive compensation, the provisions restrict claw backs but also prescribe reasonableness of compensation. In sum this Bill would also eliminate extensive authority in the agencies.

6. FDIC Liquidation of Guaranty Bank MHC

Mr. Faucette stated that, Gerald Levy was the CEO of Guaranty Bank for a long time then formed a mutual holding company and put his son in charge of it. The bank failed because they got caught up high overhead over 100 supermarket branches.

With the first failure of a mutual holding company, the FDIC and other agencies may be doing post mortems about what they can do to prevent this from happening again. Be prepared for new policies on MHCs.

Mutual holding companies have been very safe but this a negative precedent that will doubtlessly be used to justify more controls.

7. Resignation of Comptroller Curry and Trump Replacement By an Outside Acting Comptroller

Mr. Faucette stated that, Comptroller Curry was fine but got influenced by some who convinced him that FinTech charter was a good idea. As a result, not only did the state banking regulators turn on him, but the trade groups did as well. A week after his term expired, The Trump administration reached to their transition team to appoint an outside Acting Comptroller. Rumored appointee Joseph Otting needs to get vetted but there is no indication of when that will happen.

8. Community Bank Political Influence Grows

Mr. Faucette stated that, the Trump administration seems to support community bankers but is not as vocal about major banks. It sends a message to the regulatory infrastructure that community banks need relief. The tone from the top seems to be that this Administration is pro-community banks.

Mr. Neat stated that, the Mutuals are in a better place today with the Administration than they were 6 years ago. As long as President Trump keeps shooting himself in the foot there won't be a highly favorable environment for action because it's too easy to be anti-Trump. The system is not working and President Trump needs to take some responsibility for it. Until that happens, little will be done.

9. Next Meeting Schedule

The next AMB meeting was set for Monday, June 5, 2017, at 1:00 pm ET.

Chairman Boulter 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 at 2:02 pm.