



**MINUTES OF
AMERICA'S MUTUAL BANKS**

JUNE 19, 2017 MEETING

Acting Chairman, Peter Boger, chaired the meeting and called it to order at 1:04 pm ET. The following institutions and persons were in attendance:

Locke Lord LLP

- Doug Faucette
- Dan Weitzel

Institutions and Representatives

- Ridgewood Bank—Peter Boger
- First Shore Federal—Marty Neat
- First Federal FS&LA of San Rafael—Paul Simmons
- Raymond Federal Bank—John Marvin

Topics of Discussion

1. Approval of the June 5, 2017 Meeting Minutes

Mr. Faucette stated that the minutes had not yet been finalized. Upon completion at a later date, they will be distributed and considered for approval.

2. House Passes H.R. 10 including Flex Act , Small Bank Holding Company Relief, But Scant Else for Mutual Banks

Mr. Faucette stated that most of the provisions in H.R. 10 have no direct impact on mutual banks, but rather were directed to big bank and mega bank issues like living wills, Volcker Rule and other issues that may not be particularly useful or apply to mutual banks.

Greater than 75% of the Choice Act does not have a direct impact on mutuals. The important thing is to try to focus on the positives. Mutual banks make the same investments as national banks but mutuals are still treated as second class citizens. The OCC's proposal to allow thrifts to adopt national bank powers would eliminate the QTL test limitations for federal thrifts who make the switch.

Acting Chairman Boger asked if mutuals are allowed to opt out of the QTL test. Mr. Faucette stated that the proposal does allow for that. However, that may not be a great victory for mutuals. It's a victory for federals, but was not engineered for mutuals even though it was pitched as such by the OCC and ABA. It was pushed by the big insurance companies looking for a way to preserve their national bank - type investments.

Mr. Simmons stated that he is a federal mutual and it's very unlikely that he would convert to a national bank or employ national bank powers. He stated further that he is satisfied with what his bank is already doing.

Mr. Faucette stated that for most smaller mutuals that is a typical response. However, there are larger mutuals that have ambitions to expand their investments in lending that are enthusiastic about this. As for state chartered mutuals, there are a number of states that still have state chartered S&Ls and there is nothing in the bill that relieves them from the QTL test. That may portend the end of many state chartered savings associations but Mr. Simmons' comment is very appropriate because many smaller savings associations have no incentive to change their charter or powers because they won't reap the benefits. As was discussed at our last meeting, the OCC's statistics show a rapidly declining base of federally chartered institutions because they don't want to pay the assessment. It's cheaper to be state chartered.

If a bank is close to being \$1 billion in assets or wants to merge with another institution that would get it to \$1 billion in assets, it would be very beneficial to increase the small bank holding company capital exemption. The Choice Act contains a provision to increase that definition from \$1 billion to \$10 billion in assets. That is very significant, but not if there is no desire to get to \$1 billion. For those who are under that threshold, it is not that meaningful. But it may encourage \$500 – \$600 million asset institutions to merge with one another and that would reduce the number of mid-sized mutuals.

3. House Passes Amendment No. 4 By Cong Faso (R. NY) to CHOICE Act to Repeal MHC Dividend Waiver Restriction

Mr. Faucette stated that there is little industry support of the dividend waiver restriction because of the small number of mutual holding companies. Rep. John Faso (R-NY), has determined that it would be a good idea to reverse the Dodd Frank provision against dividend waivers for mutual holding companies. He introduced an amendment to the Choice Act, which the chairman allowed, and it is now part of the bill. However, this does not directly benefit mutuals. But of the provisions that do, the ABA was not involved in the consolidated capital provision or the dividend waiver provision. There is very little for mutuals in the Choice Act. That speaks volumes of the increased need for renewed efforts for mutual banks to get organized.

4. ICBA Camden Fine Sends Strong Letter of Endorsement to Sponsors of S. 1284

Mr. Faucette stated that AMB did get the ICBA to send a strong letter of endorsement on our bill in the Senate on the consolidated capital exemption. That is the bill that was introduced by Senator Orrin Hatch. We now have a vehicle in the Senate to match the Choice Act provision. The only difference is that the Senate bill is \$5 billion and the Choice Act is \$10 billion. The treasury report, in response to a President Trump executive order to report on ways to relieve the burdens on banks, recommended that the small bank capital exemption definition be raised to \$2 billion. Mr. Faucette stated that at least all three are in excess of the current \$1.0 billion.

5. Treasury Issues Report to White House on Regulatory Reform

Mr. Faucette stated that the treasury report has various provisions which present thresholds of \$10 billion dollars, i.e., the CFPB threshold and the qualified lending threshold. There is a growing acceptance that \$10 billion is the relevant threshold for distinguishing community banks from large banks. As for the consolidated capital exemption, even though the House democrats said that they could live with \$5 billion, the republicans went to \$10 billion, which has always been considered a bargaining chip. According to the FRB, if an institution is \$10 billion in assets or lower, it is considered to be a community bank. It would be very difficult for the FRB to now say that a bank is not a community bank if it has between \$5 billion and \$10 billion in assets. We are well on our way to republicans embracing \$10 billion in assets as the threshold but the democrats may not embrace it as quickly.

Acting Chairman Boger asked, should mutuals write a letter asking for uniformity on these issues. Mr. Faucette stated that a meeting should be set up with the treasury representative who wrote the report. It should be pointed out to him that there was nothing said about mutuals in the entire report. Treasury should be letting community banks know that it is a strong proponent of them. Unfortunately, the treasury report is a byproduct of President Trump appointing a Wall Street executive to be Secretary of the Treasury. They are not hostile to mutuals' ideology, they are just unaware of it.

Another issue of concern about the report is the appendix that mentions the various groups that commented or were asked to comment on the report, and mutuals were not asked to comment. Looking closer at the institutions, they are all mega institutions, i.e., insurance companies and banks and approximately five smaller banks that are headed by a representative of the ABA or ICBA committees. The entire report seems to be political messaging. Even though mutuals were neglected, we have put them on notice and they may be inclined to make amends.

Acting Chairman Boger asked Mr. Faucette if he would be able to get AMB a meeting with senior staff at Treasury. Mr. Faucette stated that he will try by asking for a meeting with Secretary of the Treasury Mnuchin and let him push it down to his counselor, Craig Phillips, who authored the report.

6. Big Banks, Community Banks, Mutuals and the Treasury Report

Mr. Faucette stated that there are a couple of insights by looking at who was asked to comment on the Treasury Report. Industry trade groups, American Express, American Institute of Certified Public Accountants, Aflac, Zions Bank, Bernstein, Allstate Corporation, America Airlines credit union, ABA, American Counsel Life Insurance, Bank of Montreal, Bank of New York, Bank of the West, Barclay's, Bayview Assets, BB&T, Compass, Blackstone - a who's who of the "big boys". It's a long list of household names but something must have been missed when the executive order was issued. There's nothing in the executive order that asks for any comment. This serves as a great reminder that mutuals need to raise their profile with Treasury. That should be the plan going forward. The word, mutual, was not mentioned once. Moreover, the mutual capital certificate concept never got through the Choice Act drafting process.

Acting Chairman Boger asked, where are the other mutuals that are getting duped by the ABA. Mr. Faucette stated that many of them don't belong to the ABA, which has vastly exaggerated their mutual ranks and may not have 100 mutuals at this point. Most of the mutuals don't have time to get involved in some of the political issues, but they can't afford not to be involved. They need to be aware of what's going on and voice their opinions about particular policies, expressing their support or displeasure. Unfortunately, they are very passive on the issues. There seems to be a human tendency to conclude that everything will work out fine and they will be taken care of because they are good people. There is very little participation or response because they think that it's just somebody else who wants something from them. They seem to be unaware of how disadvantaged they are right now in the political and regulatory world.

Mr. Faucette asked if anyone has watched what Governor Chris Christie of New Jersey is doing to Blue Cross Blue Shield, Horizon in New Jersey. Like all mutuals, it has a significant amount of reserves, which are there to cover potential claims, particularly regarding Obamacare. According to Gov. Christie, Horizon pays their executives large sums of money and pays expensive lobbyists, both in-house and outside. Gov. Christie has determined that he has an opioid abuse problem in New Jersey and he has proposed in a speech to the legislature to literally grab \$300 million of Horizon's reserves and fund an opioid abuse program. Horizon is very concerned because Gov. Christie calls it "excess" reserves. But Horizon's position is that they are a mutual and need the reserves; they are not "excess" reserves. Gov. Christie is waging war against the mutual form as it exists in the health insurance world, to grab a large portion of Horizon's reserves. Gov. Christie said that he can't foresee the democrats voting against this because they would be voting against addressing opioid abuse for poor people. But the democrats have said that this move by Gov. Christie is a talking point. A number of New Jersey legislators have also come out and criticized this as being unlawful. Steve Forbes wrote an op-ed in Forbes Magazine about how this was an unlawful taking, why it made no sense because these really weren't excess reserves and why Christie was dead wrong. The analogies as to mutual banks should be very clear. If Gov. Christie can get away with this, there is no reason why politicians wouldn't be tempted to try the same with mutual banks. There is no distinction between the rights of mutual banks and the rights of Blue Cross Blue Shield. They both are basically nonprofits which pay heavy taxes in the state of New Jersey. If politicians are allowed to do this, wherever they can find an easy way to get their hands on "excess" reserves, it will happen.

Acting Chairman Boger commented that this is very unnerving. Mr. Faucette stated that it would be more unnerving if Gov. Christie was making progress but it's doubtful that he is. Acting Chairman Boger said that it sounds like the old White Paper. Mr. Faucette stated that the White Paper was more about giving it away in depositor distributions and merely suggested that the government should take it. In this case, Gov. Christie is jumping that stage and attempting to just take the reserves. He claims to have an opioid abuse problem in New Jersey and what better source to fund a program to address it than the "excess" reserves of Horizon. Gov. Christie believes that there is no way that the democrats are not going to vote for his proposal because this it is right up their alley.

The real question is, what's going to happen in the U.S. Senate before summer recess. The democratic mood is clearly not to even address the Choice Act. There may be one-off bills which are also in the Choice Act, which may have a change of passing. One of those one-off bills is the consolidated capital exemption, S. 1284. Mr. Faucette went on to say that there is a great deal in the Treasury's report and the Choice Act that is of no relevance to the day to day operations of mutuals. While the Choice Act, and/or its provisions, if enacted, may have an impact on mutuals, no one can point with any degree of precision what that impact will be. Taking all the restrictions off the biggest banks might be good for the country, but not for community banks. AMB needs to renew its efforts to expand its membership base because many of the members don't participate in the bi-weekly phone calls. Some of them claim to read the minutes but yet they are never heard from. It's not getting better and the opportunities are presenting themselves for legislative and regulatory relief. It is not certain that any of this will happen, given the divisiveness of the congress. But it will not happen if mutuals don't have a seat at the table.

7. Recent Mutual Transactions: Penn Community Acquires Chelton Savings Bank, IBM Associated Credit Union Buys Florida Bank

Mr. Faucette stated that Penn Community was formed by the merger of two large mutuals in Pennsylvania. It is acquiring a very small mutual savings bank with approximately \$26 million in assets. First Federal of Lakewood (an AMB member) is acquiring a small mutual in West Virginia. Mr. Faucette remarked that what we are seeing is that some of the very small mutuals are realizing that they can't survive on their own, they can't grow and can't convert, so they don't have much choice. The IBM Associated Florida Credit Union just purchased a Florida stock bank. Now we have credit unions buying banks, which is a process that has been gaining popularity. If a mutual bank wanted to acquire a credit union, the NCUA would fight the transaction tooth and nail. That is one of the topics that should be discussed with Treasury. Credit unions continue to be allowed to acquire banks while there is a hard stop on transactions going the other way.

Acting Chairman Boger stated that, based upon Senator Schumer's recent comments, credit unions seem to be sacrosanct. Mr. Faucette stated that it is a complete waste of political capital to talk to politicians about credit unions. There is so little political capital to be spent by the banking industry, to spend any of it on the credit union issue is spending what you have with no likelihood of return.

Acting Chairman Boger commented that another attempt should be made to regain tax exempt status for mutual banks. Because mutuals are similar to credit unions, they should fight the fight along those lines. Mr. Faucette agreed with the possibility of that option, but mutuals can't agree on basic things. Imagine trying to get the tax exemption for mutuals. How many mutuals would actually get involved in that campaign? As soon as they realize the big mutuals were involved, the smaller ones would remain on the sidelines. Unless mutuals are willing to pay for representatives to go to Washington DC to walk the congressional hallways regularly, they will never have the amount of clout necessary. Senator Elizabeth Warren focused on that issue. She didn't agree with the tax exemption but suggested that mutual banks move to be regulated by the NCUA. Mr. Faucette replied to Senator Warren that, in order to do that, mutuals would have to be tax exempt also. Sen. Warren said that she wouldn't support tax exempt status, but mutual banks would have a friendlier regulator. Mutuals are not the big banks, however, the big banks feel that they are only getting crumbs because they have big appetites. They have big money at stake and they are seeking big things. It is a pay for play congress.

Mr. Marvin commented that even in his own state where he is on the board of the local ICBA, they believe that they can't give up the push for tax exemption equality, so they keep pounding their heads against the wall time after time.

Mr. Faucette stated that it's ok for theater purposes to remind legislators that this is unfair but that it should always be at the bottom of the agenda. It should not go unmentioned but it has a low priority given the likelihood of ever having any success. If one of the big credit unions were to go under and it threatens the insurance fund, then there may be some movement. But the strategy should be a proposal to define what an exempt credit union is and it's no more than \$10 billion in assets. If that ever happened, credit unions like Pentagon Federal and others would be exposed.

8. Next Meeting and Summer Schedule

Mr. Faucette proposed that there be a summer hiatus after the next meeting. It was suggested that monthly meetings be held during the summer, July 17 and August 21 respectively. The date for regular meetings to resume will be discussed at the August 21st meeting. A motion for same was made, seconded and passed unanimously.

The next AMB meeting was set for Monday, July 17, 2017, at 1:00 pm ET.

The meeting was adjourned by unanimous vote at 1:52 pm.