November 20, 2026

The Honorable Travis Hill
Chairman of the Board of Directors
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

The Honorable Jonathan V. Gould
Comptroller of the Currency
Office of the Comptroller of the Currency
400 7th Street SW
Washington, DC 20219

Brandon Milhorn
President & CEO
Conference of State Bank Supervisors
1300 I St NW, Suite 700 East
Washington, DC 20005

Re: Coordinated Approach to Mutual Capital

Dear Sir:

The American Bankers Association (ABA)[1] and the Independent Community Bankers of America (ICBA)[2] write to encourage the federal and state banking regulators to develop a unified approach to the regulatory treatment of capital instruments issued by mutual banking organizations.

Attached are two recent letters that reflect our organizations' support for modernizing the capital framework for mutual institutions: ICBA's letter and ABA's letter addressing the Board's proposal, *Regulatory Modernization and Relief for Mutual Holding Companies*, Docket No. R-1895; RIN 7100-AH26.

[1] The American Bankers Association is the voice of the nation's $26.5 trillion banking industry, which is composed of small, regional, and large banks that together employ over 2 million people, safeguard $20.7 trillion in deposits and extend $13.9 trillion in loans.

[2] The Independent Community Bankers of America® has one mission: to create and promote an environment where community banks flourish. We power the potential of the nation's community banks through effective advocacy, education, and innovation. As local and trusted sources of credit, America's community banks leverage their relationship-based business model and innovative offerings to channel deposits into the neighborhoods they serve, creating jobs, fostering economic prosperity, and fueling their customers' financial goals and dreams. For more information, visit ICBA's website at www.icba.org.

The Federal Reserve's proposal provides an important opportunity to establish a common regulatory framework for mutual capital. In particular, its proposed model terms for mutual capital certificates offer a useful template for determining when instruments issued by mutual institutions should qualify as regulatory capital, including CET1 or AT1, based on the instruments' substantive capital characteristics.

ABA and ICBA urge the FDIC, OCC, CSBS, and state banking authorities to work with the Federal Reserve to build on this approach and establish clear, consistent, and predictable standards that can apply across mutual charters and jurisdictions. A coordinated framework should permit mutual institutions to issue qualifying capital instruments under standardized terms and receive consistent regulatory capital treatment regardless of charter type, primary regulator, or state of organization.

A unified approach is particularly important because mutual institutions do not have the same access to external equity capital as stock institutions. Mutual banks generally rely heavily on retained earnings to build capital, which can constrain their ability to respond to unexpected losses, support prudent growth, invest in technology and cybersecurity, pursue strategic opportunities, and meet changing community needs. Well-designed mutual capital instruments can provide an additional source of permanent, loss-absorbing capital without requiring an institution to abandon the mutual form.

We believe the Federal Reserve proposal provides a strong template for such coordination. Key principles include recognition of the economic substance and loss-absorbing capacity of mutual capital instruments; appropriate standards for permanence, subordination, distribution discretion, and redemption; a clear and reliable path to capital recognition for instruments that satisfy standardized terms; and consistent treatment through mergers, reorganizations, charter conversions, and changes in primary regulator.

Common standards would give mutual banks greater certainty regarding capital eligibility, facilitate investor understanding of the instruments, reduce unnecessary legal and transaction costs, and provide supervisors with a consistent basis for reviewing issuance and redemption. Just as importantly, a coordinated framework would help preserve the mutual charter as a viable long-term ownership model while supporting safety and soundness and the ability of mutual institutions to serve their communities.

Upon the Board's finalization of the proposed rule, we urge the FDIC, OCC, CSBS, and state banking authorities to use the resulting framework as a template for coordinated action across the mutual banking sector.

ABA and ICBA would welcome the opportunity to work with your organizations, the Federal Reserve, and state regulators on the development of a unified approach. We would also be pleased to convene interested mutual institutions and other stakeholders to assist in that work.

Thank you for your consideration. We look forward to working with you to establish a modern, durable, and consistent framework for mutual capital.

Sincerely,

American Bankers Association

Independent Community Bankers of America

American Bankers Association

G. Joseph Pigg
Senior Vice President
Sustainable Finance & Mortgage Policy
jpigg@aba.com

October 5, 2026

Via Electronic Submission

Benjamin McDonough
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Re: **Regulatory Modernization and Relief for Mutual Holding Companies; Docket No. R-1895; RIN 7100-AH26**

Dear Mr. McDonough:

The American Bankers Association (ABA) appreciates the opportunity to comment on the Board of Governors of the Federal Reserve System's proposed amendments to Regulations Q and MM concerning the regulatory framework for mutual holding companies and mutual banking organizations (the Proposal)[1]. The Proposal is an important modernization of the regulatory framework for mutual institutions, including clearer regulatory capital treatment for mutual capital certificates and special deposits, greater flexibility for dividend waivers, and relief from other regulatory requirements applicable to mutual holding companies. Collectively, these reforms would make the regulatory framework more flexible and better suited to the distinctive structure and capital needs of mutual institutions.

I. Summary of the Comment

ABA strongly supports proposed changes governing dividend waivers and mutual capital instruments. Both are important tools for institutions operating within the mutual structure. A well-designed framework for dividend waivers can promote capital preservation while allowing mutual holding companies to meet appropriate obligations at the holding-company level, while broader recognition of mutual capital instruments as permanent, loss-absorbing capital can provide mutual institutions additional flexibility to raise and maintain capital.

We believe the Proposal should serve as a foundation for broader reform. In particular, the Board's proposed treatment of mutual capital certificates provides a useful template for all mutual bank regulators to develop clear, consistent, and predictable standards for special deposits and other instruments that share the essential characteristics of mutual capital certificates. A broader

[1] https://www.federalregister.gov/documents/2026/08/04/2026-15774/regulatory-modernization-and-relief-for-mutual-holding-companies

framework that recognizes multiple forms of permanent, loss-absorbing mutual capital would give mutual institutions greater flexibility to strengthen their balance sheets, support responsible growth, and meet the needs of their communities without sacrificing the mutual form. We concur with the Board that these reforms are also important to ensure that mutual banks can compete effectively for customers and capital with credit unions and other financial institutions that operate under different structural, tax, and regulatory frameworks.

ABA therefore encourages the Board to view finalizing this Proposal not as an endpoint, but as an important first step toward a modern, durable, and flexible capital framework that supports the long-term viability and competitiveness of mutual banking**.**

ABA recommends several refinements that would make the proposal more effective and workable in practice, and we urge the Board to finalize a clear, standardized framework for mutual capital as expeditiously as possible.

ABA recommends that the Board:

1. **Finalize the proposed CET1 and AT1 model term sheets** and confirm that conforming mutual capital certificates are eligible for the corresponding regulatory capital category.
2. **Recognize the economic substance of the instruments**, including their paid-in nature, permanence, deep subordination, distribution discretion, and ability to absorb losses on a going-concern basis.
3. **Create a clear path to capital recognition** for certificates conforming to the model terms, without repetitive, transaction-specific negotiations over settled eligibility criteria.
4. **Permit disclosure of nonbinding target distribution rates**, provided distributions remain fully discretionary, noncumulative, and nonmandatory.
5. **Retain appropriate redemption safeguards**, including prior regulatory approval and, for AT1 calls, replacement-capital or post-redemption capital adequacy requirements.
6. **Clarify treatment in reorganizations and combinations** so that certificates continue according to their terms and do not lose capital eligibility solely because of a merger, recapitalization, charter conversion, or holding-company reorganization.
7. **Finalize and further streamline the proposed dividend-waiver framework** by eliminating the annual member vote for legacy waiver MHCs, adopting the ten-year majority-of-votes-cast standard for non-legacy MHCs, removing impractical insider and director restrictions, and establishing a clear notice process grounded in fiduciary duties, appropriate member disclosure, and safety-and-soundness review.
8. **Coordinate with the OCC, FDIC, and state regulators** to secure consistent recognition across mutual charters, organizational structures, and jurisdictions.
9. **Apply Basel principles proportionately**, focusing on genuine capital-quality characteristics rather than importing requirements unrelated to the risks or organizational form of community-based mutual institutions

Upon completion of a final rulemaking, we urge the Board to coordinate with the Office of the Comptroller of the Currency (OCC), Federal Deposit Insurance Corporation (FDIC), and state banking authorities to adopt the final approach to mutual capital to achieve consistent treatment for all mutuals.

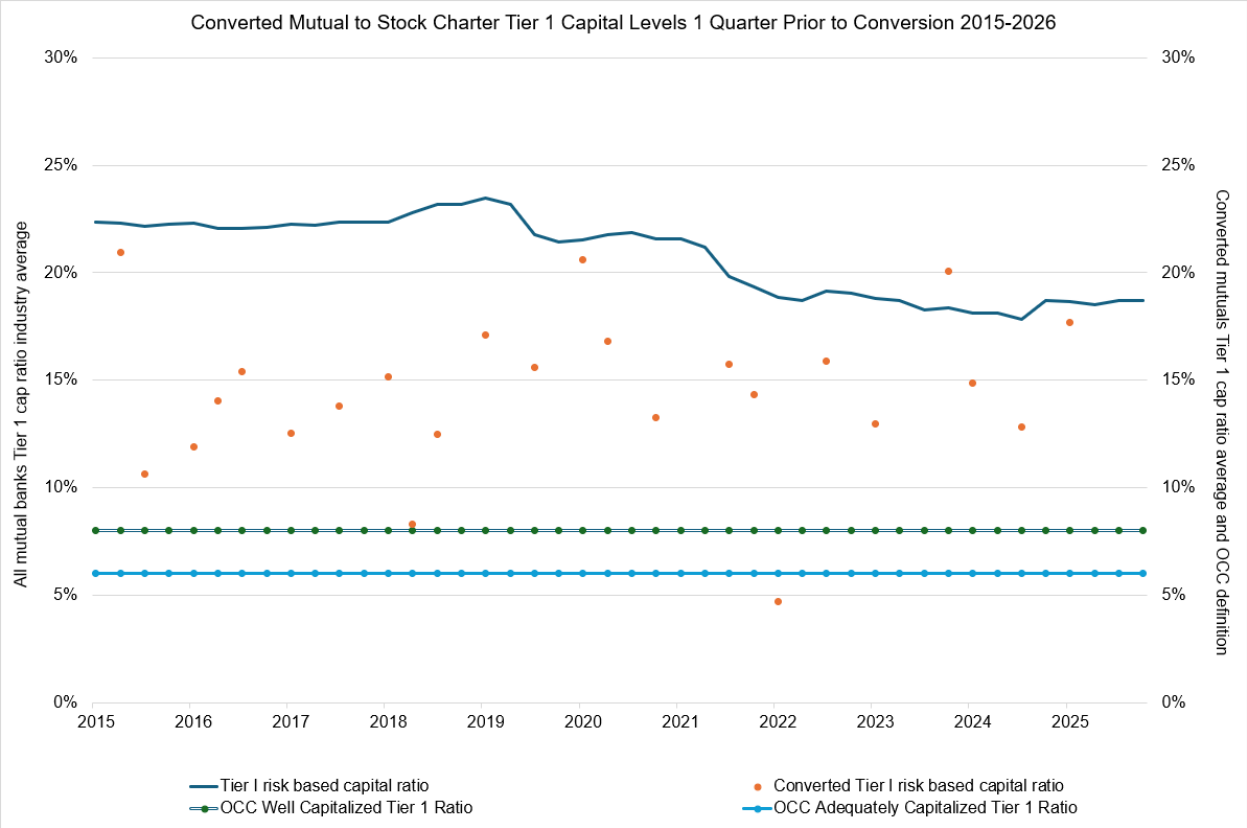
We share our detailed views on our support for the Proposal and for its broad adoption below:

II. Mutual Banks Need Access to a Reliable Source of External Capital

Mutual banking organizations are owned by their members rather than external shareholders. This structure supports a long-term focus on customers, communities, and institutional stability. It also contributes to the diversity and resilience of the banking system. The Board's proposal recognizes, however, that mutuality creates a capital-raising constraint because mutual banking organizations generally cannot issue common stock.

Retained earnings therefore remain the principal source of capital for many mutual banks. Reliance on retained earnings alone can limit a mutual institution's ability to respond promptly to unexpected losses, support prudent balance-sheet growth, invest in technology and cybersecurity, expand service to underserved communities, or pursue strategic combinations. ABA has long called for a consistent framework through which mutual banks can raise CET1 or Tier 1 capital and for uniform treatment by the federal banking agencies and state regulators.

The chart below, showing the capital position one quarter prior to conversion of every mutual bank that converted charters since 2015, underscores the need to modernize the capital framework for mutual institutions. While most of the mutuals that ultimately converted to stock form had capital levels above OCC recommendations in the quarter before conversion, nearly all had capital levels below the average for other mutual institutions. This suggests that meeting regulatory capital expectations does not necessarily provide mutual institutions with sufficient flexibility to support growth and remain competitive over time. Because mutuals do not have the same access to external equity capital as stock institutions, a constrained ability to raise capital can place additional pressure on an otherwise viable mutual institution to convert to stock form. Modernizing the rules to provide mutuals with practical, reliable ways to raise capital would therefore do more than strengthen individual institutions: it would help preserve the mutual charter as a viable long-term ownership model and reduce the circumstances in which conversion becomes the most practical way to obtain additional capital.



Mutual capital certificates and other similar instruments can address this structural limitation without requiring an institution to convert to stock form or dilute member control. The appropriate regulatory question is whether an instrument's substantive terms provide permanence, subordination, distribution flexibility, and loss absorption expected of the relevant capital category.

III. Qualifying Mutual Capital Instruments Are Genuine Loss-Absorbing Capital

The Board describes CET1 as the most loss-absorbing form of regulatory capital and AT1 as capital intended to absorb losses on a going-concern basis. The Proposal provides that mutual capital certificates may qualify as CET1, AT1, or Tier 2 capital depending on their terms.

Properly structured mutual capital certificates are not deposits, ordinary indebtedness, or short-term funding instruments. They represent paid-in funds that remain available to the issuer and stand behind depositors and creditors. Under the proposed CET1 term sheet, certificates would represent paid-in capital classified as equity under U.S. generally accepted accounting principles, and certificate holders would have a claim only on residual assets after depositors, general creditors, subordinated debt holders, and other more senior claimants have been paid in full.

This structure allows the capital supplied by certificate holders to absorb losses before those losses reach depositors or senior creditors. The certificates consequently provide the same central

prudential function expected of regulatory capital: they create a financial cushion that supports the institution's continued operation and protects the Deposit Insurance Fund and the financial system.

The fact that a mutual capital certificate does not convey the same governance or ownership rights as common stock should not diminish its regulatory capital treatment where the instrument otherwise meets the applicable criteria. Mutuality requires distinctions from the conventional stock-company form. Capital eligibility should turn on economic substance and loss-absorbing capacity, not on whether the issuer can replicate other features of a stock institution unrelated to capacity to absorb losses.

IV. CET1 Treatment Is Appropriate for Certificates Meeting the Board's Most Stringent Terms

ABA supports CET1 treatment for mutual capital certificates that satisfy the proposed CET1 term sheet and the applicable requirements of section 217.20(b) of Regulation Q. We offer the following comments on the appropriateness of CET1 for these instruments.

A. Paid-In Capital and Residual Loss Absorption

The proposed CET1 certificate would be issued directly by the mutual banking organization, fully paid in, and classified as equity under GAAP. In liquidation, receivership, insolvency, or a similar proceeding, the certificate would constitute a claim on residual assets after satisfaction of all depositors, general creditors, subordinated debt holders, and other senior claims.

These provisions are critical. A fully paid-in instrument adds actual resources to the institution and does not depend on a future funding commitment. Residual ranking ensures that those resources remain the first private funds available to bear losses after retained earnings and other equally subordinated capital. The proposed instrument therefore performs the fundamental economic role of CET1 even though the mutual organizational form does not permit issuance of conventional common shares.

ABA recommends that the final rule expressly confirm that satisfying the model CET1 terms establishes a clear path to CET1 eligibility, subject to compliance with otherwise applicable accounting and legal requirements. Institutions should be required to obtain transaction-specific interpretations of substantially identical terms after the Board has determined that the standardized structure satisfies Regulation Q.

B. Fully Discretionary and Noncumulative Distributions

Under the proposed CET1 terms, distributions could be made only if declared by the issuer's board of directors or an authorized board committee and distributions are paid from net income, retained earnings, or surplus associated with other CET1 instruments. The issuer would retain full discretion to cancel distributions without triggering default, payment in kind, or other restrictions, and distributions would be noncumulative and nonmandatory.

These features materially enhance loss absorption. An institution experiencing stress can conserve capital immediately by cancelling distributions. Because unpaid amounts do not accumulate as an enforceable obligation, cancellation does not merely defer a liability. It leaves resources within the institution where they remain available to absorb losses and support operations.

ABA supports allowing issuers to disclose a target distribution rate, provided the offering materials state clearly that the target is neither mandatory nor cumulative. The ability to communicate a target rate will assist investors in evaluating the instrument without impairing the issuer's unconditional discretion to cancel distributions.

C. No Fixed Maturity or Investor Redemption Right

The proposed CET1 certificates would be perpetual, would have no maturity date, and could not be redeemed at the holder's demand. Redemption by the issuer would remain discretionary and subject to prior Board approval.

These provisions establish permanence. Conventional debt becomes a less reliable form of regulatory capital as it approaches maturity, since the issuer must either repay or refinance the obligation. A perpetual certificate has no such repayment horizon. The certificate proceeds remain available through changing economic and credit cycles unless the regulator determines that redemption is consistent with the institution's continued capital adequacy.

The absence of a holder put right is equally important. Investors cannot withdraw the capital precisely when the institution may need it most. Similarly, the absence of terms that create an expectation or economic incentive to redeem helps prevent the nominally perpetual instrument from operating as short-term or refinancing-dependent funding.

V. AT1 Treatment Is Appropriate for Certificates That Provide Permanent Going-Concern Loss Absorption

Not every useful mutual capital instrument must satisfy the more restrictive CET1 criteria. The proposed AT1 term sheet provides an appropriate alternative for perpetual instruments that remain deeply subordinate and available to absorb losses on a going-concern basis but offer somewhat greater flexibility in their distribution and call provisions.

A. Tier 1 Capital Should Reflect Economic Function

Tier 1 capital consists of CET1 and AT1 capital. Under the Basel framework, CET1 is the highest-quality form of regulatory capital because it absorbs losses immediately, while AT1 also provides going-concern loss absorption but does not satisfy every CET1 criterion. Only perpetual instruments are eligible for AT1 treatment under that framework.

The Board's proposed approach is consistent with this distinction. A mutual capital instrument that meets the CET1 model terms should receive CET1 treatment. An instrument that remains perpetual and fully subordinated but contains permissible AT1 features should qualify as AT1. This tiered framework gives mutual institutions meaningful flexibility without weakening the quality of regulatory capital.

B. Distribution Flexibility Does Not Undermine Capital Quality

The proposed AT1 instruments would provide for noncumulative and nonmandatory distributions, and the issuer would retain discretion to cancel distributions without default or an obligation to make payment in kind. The AT1 terms would allow an issuer to establish and disclose a target distribution rate, including a rate adjusted periodically by reference to general market interest rates, but would prohibit credit-sensitive resets, step-ups, or other provisions creating an incentive to redeem.

ABA supports these conditions, which appropriately balance marketability (and thus utility as a capital raising tool) and prudential strength. Investors require enough information to price the instrument, while the bank must retain the ability to conserve resources during stress. Prohibiting credit-sensitive resets and step-ups prevents deterioration in the issuer's condition from making the instrument more expensive or encouraging redemption when loss-absorbing capacity is most needed.

C. Calls Must Not Undermine Permanence

Under the proposed AT1 term sheet, certificates would be perpetual, and holders would have no right to require redemption. An issuer call generally could not be exercised until at least five years after issuance, would require prior Board approval, and would require replacement with an equal amount of qualifying CET1 or AT1 instruments or a demonstration that the issuer would remain appropriately capitalized after redemption.

These safeguards preserve the permanent character of AT1. A call provision should not be treated as a de facto maturity date, and neither investors nor supervisors should assume that an instrument will be redeemed on its first call date. The replacement-capital or post-redemption-capital requirement further ensures that an issuer cannot use redemption to weaken its loss-absorbing capacity.

ABA recommends that the final rule state clearly that supervisory review of a proposed redemption will focus on the issuer's capital position, risk profile, and compliance with the terms of the rule. A predictable standard will reinforce market discipline while avoiding uncertainty about capital recognition.

VI. Permanence Is Essential to the Prudential Value of Mutual Capital Instruments

- Permanence is not merely a formal requirement. It determines whether capital will remain available throughout a period of stress. ABA supports the proposed rule's approach to mutual capital instruments as permanent capital and notes that mutual capital instruments should be treated as permanent capital when they have no stated maturity date;
- provide no holder right to accelerate or require repayment;
- permit issuer redemption only with prior regulatory approval;
- contain no step-up, credit-sensitive reset, or other incentive to redeem;
- do not create an expectation at issuance that the instruments will be repurchased; and
- survive a reorganization, recapitalization, or merger in accordance with their terms, except where properly addressed in insolvency, liquidation, or receivership.

ABA specifically supports instruments that can replace maturing subordinated debt with permanent capital and strengthen loss-absorbing capacity.

The final rule should preserve these core requirements while avoiding conditions unrelated to permanence or loss absorption. Once an instrument meets the standardized criteria, regulatory capital recognition should not depend on ad hoc negotiations with supervisors that make issuance costly, uncertain, or impractical.

VII. Deep Subordination Ensures That Certificates Protect Depositors and Creditors

Subordination is another essential feature distinguishing regulatory capital from ordinary liabilities. The proposed CET1 instruments meet this requirement as they would rank behind all liabilities and other obligations. They would be unsecured, unguaranteed, and free from any arrangement that legally or economically enhances their seniority. Likewise, the proposed AT1 instruments would be subordinated to depositors, general creditors, and subordinated debt holders in payments and in receivership, insolvency, liquidation, or similar proceedings.

This ranking is central to the loss-absorbing nature of the instruments. Holders knowingly place their funds at risk ahead of depositors and creditors. If the institution incurs losses, the investment is available to absorb those losses before senior claims are impaired.

For CET1 eligibility, the instrument should represent the mutual institution's most subordinated external capital claim and participate in residual assets only after all senior claims have been satisfied. For AT1 eligibility, the instrument may rank senior to the residual membership interest but must remain junior to depositors, creditors, and subordinated debt.

The final rule should clearly describe these relative priorities and should avoid terminology that assumes the existence of conventional common shares. Uniform priority provisions are particularly important because differences in state corporate, insolvency, and receivership law can otherwise create uncertainty for issuers, investors, and regulators.

VIII. The Proposal Is Consistent with the Basel Framework

The Basel capital framework emphasizes the quality and loss-absorbing capacity of capital rather than prescribing a single corporate form for every institution. Basel III identifies CET1 as the highest-quality capital because it absorbs losses immediately. AT1 provides additional going-concern loss absorption, while Tier 2 is principally gone-concern capital that absorbs losses before depositors and general creditors in failure.

The Board's proposed model terms reflect those principles:

- **Permanence:** CET1 and AT1 instruments are perpetual and have no maturity date.
- **Subordination:** The instruments rank behind depositors and creditors, with CET1 representing the most subordinated capital claim.
- **Distribution discretion:** Distributions are noncumulative, nonmandatory, and cancellable without default.
- **No incentive to redeem:** The terms prohibit features that would create an expectation or economic incentive for early redemption.
- **Controlled redemption:** Redemptions require regulatory approval, and AT1 calls are subject to minimum timing and capital-replacement safeguards.
- **Going-concern availability:** The proceeds remain within the institution, and distributions can be suspended to preserve resources during periods of stress.

Those attributes are consistent with Basel's distinction between loss-absorbing going-concern capital and ordinary debt. Mutual capital instruments should therefore be recognized as implementation of established capital principles within the mutual governance framework, rather than as an exception to those principles.

At the same time, the final rule should apply Basel principles in a manner proportionate to the structure and risk profile of U.S. mutual institutions. Basel alignment should confirm capital quality, not impose requirements designed for internationally active banking organizations that are unrelated to whether the instrument is permanent, subordinated, and loss absorbing. ABA supports clarification of mutual capital treatment in future Basel discussions while recognizing the importance of an appropriate framework for community banks.

IX. A Uniform Instrument Is Necessary for a Functional Market

The benefits of the proposal will be diminished if substantially identical instruments receive different treatment depending on the issuer's charter, primary federal regulator, state of organization, or supervisory region.

ABA urges the Board to finalize this proposal and use the final rule as a framework to coordinate with the OCC, FDIC, and state regulatory authorities to establish a uniform approach to mutual capital available to:

- mutual state member and non-member banks;
- federal and state mutual savings associations;
- mutual bank holding companies and mutual savings and loan holding companies; and
- appropriate stock subsidiaries wholly owned within a mutual organization.

Uniformity would yield several concrete benefits. It would provide institutions with confidence about capital eligibility, give investors a common set of terms for comparing offerings, reduce legal and transaction costs, facilitate market acceptance, and give supervisors a consistent basis for reviewing issuance and redemption, and prevent regulatory arbitrage.

The final rule should provide a regulatory safe harbor or similarly reliable recognition mechanism for instruments that conform to the model terms. Institutions should remain free to request recognition of instruments with alternative terms, but use of the model should substantially eliminate the need for institution-specific interpretive review.

A uniform approach adopted by all agencies and based upon the finalized version of this Proposal should also resolve the treatment of instruments following mergers, reorganizations, recapitalizations, charter conversions, or changes in primary regulator. Qualifying capital should not unexpectedly lose recognition solely because an institution completes an otherwise permissible corporate transaction.

X. Dividend Waivers Are an Important Capital-Raising Tool that Helps to Preserve Mutuality and Should Be Governed by a Streamlined, Uniform Framework

ABA supports the Board's proposed reduction of the procedural burdens associated with dividend waivers. Dividend waivers are an important component of the capital framework for mutual holding companies because they help preserve the attractiveness of minority stock issued by a mid-tier holding company. When a mutual holding company waives its pro rata dividend, the waived amount allows the mid-tier company to pay a more competitive dividend than it would otherwise be able to pay. It also ensures capital preservation and reduces the amount of dividends the bank would otherwise need to pay the company to fund the company's cash dividends to public stockholders, stock repurchases and operations. Doing so improves the organization's ability to attract investors in future capital raises. This mechanism allows an institution to access external capital while retaining its mutual form.

Dividend waivers and mutual capital instruments should be viewed as complementary tools. Mutual capital certificates provide a means of raising permanent, loss-absorbing capital directly. Dividend waivers support the marketability of minority stock issued within the mutual holding company

structure. Both address the same structural limitation: unlike stock-form institutions, mutual banking organizations have limited access to external equity capital.

A. ABA Supports Eliminating the Annual Member Vote for Legacy Waiver MHCs

Under the existing framework, a legacy waiver MHC must provide 30 days' notice to the Board, its board must determine that the waiver is consistent with its fiduciary duties to members, and the institution must affirm that a majority of members eligible to vote approved the waiver within the preceding 12 months. The proposal would eliminate the annual member-vote requirement while retaining the board's fiduciary-duty determination.

ABA supports this change. The annual vote imposes recurring proxy solicitation, member outreach, administrative, and governance costs even where members have repeatedly approved the same practice. The Board states that much of the current burden arises from obtaining annual approval from a majority of all members eligible to vote, and that members have continued to approve the waivers.

A determination by the Board of Governors that the waiver is consistent with the directors' fiduciary duties to members provides an appropriate governance safeguard. Directors remain legally responsible for considering the interests of the mutual institution and its members. Home Owners' Loan Act (HOLA) also permits the Board of Governors to object where a proposed waiver would be detrimental to the safe and sound operation of the institution, and the underlying dividend remains subject to applicable statutory limitations.

Requiring a member vote every year does not materially enhance these protections. Instead, it creates unnecessary expense and uncertainty around a capital-management practice that may form part of an institution's long-term capital strategy. ABA therefore recommends that the Board finalize the elimination of the annual member-vote requirement for legacy waiver MHCs.

B. Non-Legacy MHCs Should Have a Practical and Predictable Waiver Process

The proposal would also permit non-legacy waiver MHCs to waive dividends without requiring that directors (either directly or indirectly benefiting) abstain from the board vote or that benefiting insiders waive their own dividends. A non-legacy MHC would have to affirm that its members approved dividend waivers in a vote held within the preceding ten years. Approval would require a majority of votes cast rather than a majority of all members eligible to vote.

ABA supports the Board's decision to remove conditions that have effectively prevented many non-legacy MHCs from using dividend waivers. As the Board recognizes, insider ownership and overlapping service on the boards of the MHC, mid-tier holding company, and subsidiary institution can make the existing abstention and insider-waiver requirements impractical. The existing conditions therefore constrain the ability of non-legacy MHCs to enhance the marketability of minority shares and raise capital while preserving mutuality.

The proposed majority-of-votes-cast standard is also more workable than a requirement based on all members eligible to vote. A standard that effectively treats nonparticipation as opposition can make approval dependent on response rates rather than the judgment of members who choose to participate.

ABA supports the proposed ten-year approval period as a substantial improvement over recurring approval requirements. Dividend waivers are generally an element of an institution's capital structure and governance framework, not an isolated annual transaction. Once members have received adequate disclosure and approved the practice, repeating the process frequently would add cost without producing more informed oversight.

C. The Final Rule Should Minimize the Distinction Between Legacy and Non-Legacy MHCs

Although ABA recognizes the statutory background underlying the distinction between legacy and non-legacy MHCs, the final rule should avoid perpetuating unnecessary competitive differences between otherwise similarly situated institutions.

The prudential merits of a dividend waiver do not depend on whether the institution first waived dividends before or after December 1, 2009. The relevant considerations are whether the waiver is consistent with the directors' fiduciary duties, whether members have received meaningful disclosure, and whether the waiver is consistent with safety and soundness. The Board's economic analysis recognizes that differing treatment could perpetuate a competitive imbalance between legacy and non-legacy MHCs.

ABA therefore recommends that the Board use the maximum flexibility available under HOLA to align the two frameworks. At a minimum, both categories should benefit from clear notice requirements, predictable supervisory standards, and the absence of duplicative procedural hurdles.

Over time, the Board should consider whether further alignment is possible through regulation, interpretation, or legislative recommendations.

D. Fiduciary Duties, Disclosure, and Safety-and-Soundness Review Adequately Address Potential Conflicts

The Board recognizes that directors or officers who hold minority shares could benefit from a decision to waive the MHC's dividend. ABA agrees that potential conflicts should be addressed, but additional categorical restrictions are unnecessary where established fiduciary, disclosure, and prudential protections apply.

First, HOLA requires the thrift MHC's board to determine that the waiver is consistent with its fiduciary duties to the institution's members. Directors and officers remain subject to legally enforceable duties of care and loyalty when considering a waiver.

Second, the proposal would require legacy MHCs to provide appropriate dividend-waiver disclosures to new members when they open a deposit account or establish a loan relationship. For non-legacy MHCs, the proxy materials used to obtain member approval must explain the proposed waiver and the board's reasons for requesting it.

Third, all waivers would remain subject to applicable safety-and-soundness limitations. HOLA permits the Board to object if a waiver would be detrimental to the safe and sound operation of the thrift, and dividends paid by the subsidiary depository institution remain subject to applicable legal restrictions.

Taken together, these protections appropriately address potential conflicts without imposing requirements that effectively prevent use of the waiver authority. ABA supports the Board's conclusion that the board's fiduciary-duty determination is sufficient, in conjunction with disclosure and safety-and-soundness oversight, to address potential conflicts.

E. Supervisory Administration Should Be Clear and Predictable

To make the revised waiver framework effective, the final rule should provide an objective and timely notice process. Institutions should know what information must be included in a notice, the limited grounds on which the Board may object, and when a proposed waiver may proceed.

ABA recommends that the Board:

1. retain a notice-based process rather than requiring transaction-specific applications or approvals;
2. limit the required submission to information necessary to confirm compliance with the rule, fiduciary obligations, and safety-and-soundness standards;
3. provide that a conforming waiver may proceed upon expiration of the applicable notice period unless the Board issues a written objection;
4. permit a single board resolution and notice to cover a defined series of anticipated waivers, subject to the institution's continuing duty to reassess the waiver when circumstances materially change; and
5. coordinate supervisory administration across the Federal Reserve Banks so that similarly situated institutions receive consistent treatment.

These recommendations would preserve the Board's ability to address institution-specific prudential concerns while reducing uncertainty and recurring expenses.

ABA urges the Board to finalize the proposed streamlining and, where legally permissible, further reduce differences between legacy and non-legacy MHCs. A uniform, predictable framework based on board accountability, meaningful member disclosure, and safety-and-soundness oversight would appropriately protect members while allowing dividend waivers to serve their intended capital-raising purpose.

Conclusion

ABA strongly supports the Board's proposal to clarify the regulatory capital treatment of mutual capital certificates and codify model terms for certificates qualifying as CET1 and AT1 capital.

Properly structured mutual capital certificates are genuine loss-absorbing capital. Their paid-in character, perpetual duration, deep subordination, discretionary noncumulative distributions, and restricted redemption ensure that funds remain available to absorb losses and support an institution through periods of stress. These features satisfy the prudential purposes underlying Tier 1 capital and align with the Basel framework's emphasis on high-quality going-concern loss absorption.

Most importantly, the proposal provides a foundation for a uniform mutual capital instrument. ABA urges the Board to build on that foundation by adopting clear eligibility standards, providing reliable recognition for instruments that conform to the model terms, and working with the other federal and state banking regulators to achieve consistent treatment across mutual charters nationwide.

The proposed dividend-waiver reforms are an important part of this broader capital framework. By eliminating unnecessary annual voting requirements and providing non-legacy MHCs with a practical path to use dividend waivers, the Board would improve the ability of mutual organizations to attract minority investment without abandoning mutuality. ABA urges the Board to finalize these reforms and administer them through a consistent, predictable notice process that relies on directors' fiduciary duties, meaningful disclosure to members, and established safety-and-soundness protections.

A standardized and broadly recognized mutual capital instrument will strengthen the safety and soundness of mutual banking organizations, preserve charter diversity, expand responsible access to capital, and enable mutual banks to continue serving their members and communities without sacrificing their mutual form.

ABA appreciates the Board's consideration of these comments.

Sincerely,



Joseph Pigg
Senior Vice President and Counsel
Sustainable Finance and Mortgage Policy
American Bankers Association

Alice P. Frazier, Chair
Michael J. Burke, Jr., Chairman-Elect
Shon B. Myers, Vice Chairman
Jill Sung, Treasurer
Douglas E. Parrott, Secretary
Jack E. Hopkins, Immediate Past Chairman
Rebeca Romero Rainey, President and CEO

October 5, 2026

Benjamin W. McDonough
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

RE: **Comments—RIN 7100-AH26, Regulatory Modernization and Relief for Mutual Holding Companies**

Dear Secretary McDonough:

The Independent Community Bankers of America ("ICBA")[1] appreciates the opportunity to comment on the Board of Governors of the Federal Reserve System's (the "Board") Notice of Proposed Rulemaking concerning Regulatory Modernization and Relief for Mutual Holding Companies ("Proposal" or "Proposed Rule").[2]

Mutual banks ("Mutuals") comprise approximately 10 percent of the more than 4,000 federally insured banks in America[3] and are established and maintained for the benefit of their communities, depositors and borrowers. As the Proposal notes, Mutuals "focus uniquely on their members and their local communities and can prioritize long-term stability over near-term profits."[4] Because Mutuals are member-owned, these institutions are driven naturally by long-term financial health and stability. However, Mutuals cannot readily access the capital markets. They rely almost entirely on retained earnings to build capital, leaving them at a disadvantage to stock-form banks.

---

[1] The Independent Community Bankers of America® has one mission: to create and promote an environment where community banks flourish. We power the potential of the nation's community banks through effective advocacy, education, and innovation. As local and trusted sources of credit, America's community banks leverage their relationship-based business model and innovative offerings to channel deposits into the neighborhoods they serve, creating jobs, fostering economic prosperity, and fueling their customers' financial goals and dreams. For more information, visit ICBA's website at www.icba.org.
[2] Board of Governors of the Federal Reserve System, *Regulatory Modernization and Relief for Mutual Holding Companies,* 91 Fed. Reg. 49490 (Aug. 4, 2026) (to be codified at 12 C.F.R. pts 217, 239).
[3] Federal Deposit Insurance Corporation, *Mutual Institutions, Excel 2023* (2023), https://www.fdic.gov/banker-resource-center/mutual-institutions. As of 2023, there were 426 Mutual Banks. The FDIC has not updated its count since 2023.
[4] Regulatory Modernization, supra note 2, at 49491.

Seeking to mitigate these regulatory disadvantages, this Proposal gives much-needed relief on reducing unnecessary regulatory burdens to Mutual Bank Holding Companies ("MHCs"). Specifically, the Proposed Rule would eliminate certain dividend waiver requirements, revise certain post-conversion requirements, eliminate MHC subsidiary requirements, amend capital treatment, and revise or clarify other provisions of regulation governing Mutuals.

ICBA welcomes these proposed changes and applauds the Board for its attention to these issues, which have not been visited in more than 15 years. While ICBA believes this Proposed Rule is essential, we urge the Board to consider: (1) further expanding mutual banks' ability to access capital; (2) coordinating with the Federal Deposit Insurance Corporation ("FDIC"), the Office of the Comptroller of the Currency ("OCC"), and state banking agencies to create a unified approach to how regulators treat Mutuals; and (3) continuing to pursue reforms that strengthen the long-term viability of the mutual bank charter.

ICBA's Recommendations:

I. Further Expand Mutual Banks' Ability to Access Capital

ICBA appreciates the Board's efforts to provide greater clarity regarding the regulatory capital treatment of mutual capital instruments. The Proposal would clarify that mutual capital certificates ("MCCs") and special deposits may qualify as common equity tier 1, additional tier 1, or tier 2 capital when the applicable eligibility criteria are satisfied, while also codifying model term sheets for mutual capital certificates. These changes represent an important step toward providing mutual banking organizations with greater capital-raising flexibility. Nevertheless, as discussed below, ICBA believes the Board can build upon these important reforms by ensuring that mutual institutions can access these capital-raising opportunities without first being required to organize a MHC.

ICBA encourages the Board to establish a framework that permits Mutuals to issue qualifying capital instruments directly, provide clear and predictable regulatory capital treatment for these instruments, preserve flexibility among permissible forms of capital, and ensure that the resulting instruments are viable for both Mutuals and certificate owners.

a. Allow Mutual Banks to Issue MCCs Directly Without Forming a MHC

Mutual institutions should be permitted to issue MCCs directly rather than having to create a MHC to issue such instruments. The process to create a MHC is currently overly burdensome, requiring Mutuals to spend significant time and resources on legal counsel to structure and create a MHC. This can be a deterrent for Mutuals, particularly if the MHC is formed for the sole purpose of issuing MCCs.

ICBA recommends that the Board standardize a set of guardrails that satisfy the applicable regulatory capital requirements while providing a clear road map for raising capital and avoiding lengthy regulatory review.

b. Standardize the Core Requirements for MCCs

ICBA recommends that the Board establish standardized core features for mutual capital instruments. Mutual institutions that issue instruments consistent with those standards should have a clear and predictable path to regulatory capital treatment, without the need for costly and time-consuming institution-specific review. While the explicit inclusion of regulatory text requirements and key terms are certainly helpful in establishing core requirements, ICBA encourages the Board to consider adding more expansive model form language or boilerplate agreements that could serve as the basis for MHC's MCCs. While MHCs would likely engage legal counsel and other professionals to curate instrument language that is bespoken to a particular institution, such model forms could provide a baseline for expediency (discussed below). Of course, ICBA would strongly recommend that the Board include language that any such model form is voluntary and not exclusive to MCC approval.

c. Establish Streamlined Processes for Issuing Qualifying Instruments

ICBA appreciates the Board's efforts to provide greater certainty regarding the regulatory capital treatment of mutual capital instruments. The Board should build upon this approach by establishing a streamlined issuance framework that allows institutions whose instruments satisfy clearly defined criteria to access capital without unnecessary delay, expense, or regulatory uncertainty. For example, if a MCH objectively satisfies the requirements discussed above, such as adoption of a model form MCC, ICBA recommends that the Board make a final determination of MCC's adequacy within a predetermined timeframe. This would be akin to the 'shot clock' framework the FDIC recently established with its merger activity proposed rule. Under this framework, a MCC application would be deemed 'accepted and approved' if the Board does not indicate otherwise by a certain predetermined timeframe, such as 90 days.

d. Provide Clear and Predictable Tier 1 Capital and Regulatory Capital Treatment

ICBA has long encouraged federal banking regulators to issue uniform rules to allow Mutuals to issue capital instruments that would qualify as common equity tier 1 capital without prior approval.[5] ICBA supports the Board's proposal to clarify that MCCs and special deposits may qualify as Common Equity Tier 1 or Additional Tier 1 Capital. This is an important step towards providing Mutuals with greater access to permanent, loss-absorbing capital while preserving their structure. However, ICBA encourages the Board to go further by establishing clear and standardized terms under which qualifying mutual capital instruments will receive Tier 1 treatment, thereby reducing the need for costly, lengthy review. As examples, a model form certificate language, discussed in section (a)(1), and the 'shot clock,' discussed in (a)(2), would

[5] Indep. Cmty. Bankers. Of Am., *Mutual and Savings Institutions*, https://www.icba.org/mutual-and-savings-institutions (last visited Sept. 22, 2026).

be two mechanisms to achieve such standardization and certainty.

A framework that combines predictable capital treatment with flexibility on the permissible instruments would allow Mutuals to better select instruments appropriate to their circumstances while operating within clear regulatory parameters.

e. Reduce Barriers to Raising Capital While Preserving the Mutual Model

Current capital constraints create pressure to convert to stock form. This Proposal is a positive step, but more modernization is needed. Mutual institutions should be able to grow and serve their community while preserving their mutual identity. Standardizing capital authority, as discussed above, would enable Mutuals to refinance the high-cost, outstanding subordinated debt, likely benefiting from the much more advantageous rates and terms of mutual certificates. Modernized capital rules would allow Mutuals to offset the naturally higher interest rates and duration risks carried on their balance sheets.

The Board should establish an ongoing policy of evaluating future capital rules and capital-support programs for the application to mutual institutions. This flexibility is important to achieve the ultimate objective of these reforms which should be to expand meaningful access to capital, rather than simply establishing forms that are difficult for Mutuals to use in practice.

f. Clarify ability to Invest in Mutual Capital Instruments

ICBA recommends the Board confirm the ability for mutual banks and other, non-mutual banks, to invest in mutual capital instruments, and that such investments may qualify as Public Welfare Investments ("PWI") or other activities eligible for CRA credit. Under PWI authority, national banks are permitted to make direct or indirect investments that benefit low- and moderate- income ("LMI") individuals, LMI areas, or efforts that spur economic development or job creation.[6]

II. Coordinate with the FDIC, OCC, and State Banking Agencies to Establish a Unified Regulatory Approach for Mutual Banks

ICBA encourages the Board to collaborate with the FDIC, OCC, and state banking agencies to establish a consistent regulatory approach to Mutuals and mutual capital instruments. A coordinated and consistent treatment of capital would provide Mutuals with certainty when evaluating capital-raising opportunities and ensure that institutions do not receive different regulatory treatment based solely on their regulator or corporate structure. The current structure does not provide Mutuals with clear guidance creating uncertainty for Mutuals.

The Board along with the FDIC, OCC, and state banking agencies should set standard terms that allow a mutual institution (in the form of federally or state chartered mutual banks, mutual

[6] 12 C.F.R. 24.

holding companies, or subsidiaries of mutual holding companies) to rely on a predictable process to determine whether an institution qualifies for capital treatment. This would create consistent treatment without having separate independent review. The treatment should also be consistent when a mutual institution undergoes an otherwise permissible organizational or regulatory change.

Absent inter-agency coordination, mutual institutions face risk of regulatory arbitrage. A joint standard would eliminate the duplicative and uncertain treatment of mutual instruments across regulators, thereby better ensuring marketability. These reforms would establish a more consistent federal framework in which Mutuals can operate.

III. Continue Reforms that Preserve and Strengthen the Long-Term Viability of the Mutual Bank Charter

a. Preserve and Strengthen the Mutual Charter

ICBA requests that the Board evaluate every aspect of the Proposed Rule through the lens of preserving mutual institutions' long-term viability. Many Mutuals over the past several decades have converted their charter due to constraints or inability to raise capital.[7] There is consistent pressure on Mutuals to convert to stock holding banks due to the regulatory requirements, costs, and expenses of trying to provide for their communities.[8] To ensure conversions do not occur as a result of regulatory burden, regulatory modernization should strengthen the mutual model and ensure their continuing viability.

b. Unfair Competition for the Same Services

In the Proposal, the Board acknowledges that the mission and structure of Mutuals closely resemble credit unions. Yet, as the Board also recognizes, "[m]utual banking organizations . . . are for-profit corporations that pay standard federal and state corporate taxes" while also being subject to "more stringent regulatory requirements."[9] Because of this, mutual banking organizations are at a "competitive disadvantage when [they] compete with credit unions for deposits and lending opportunities."[10] Plainly stated, while Mutuals may closely resemble credit unions, a significant competitive difference exists between these entities because Mutuals pay corporate taxes whereas credit unions do not.

---

[7] *See* Stavros Peristiani and Thierry A. Wizman, "*Mutual-to-stock conversions in the thrift industry in the 1990s*," Journal of Economics and Business, March–April 1997, pg., 95-116, Vol 49, Issue 2, finding that whereas mutuals in the 1980s were driven to convert as part of a general program to increase loanable funds for the purpose of increasing investment returns, conversions in the 1990s were driven more by the need to raise equity capital

[8] Worcester Business Journal, *Community Banks Hold Pat*, (Jan. 29, 2026), https://wbjournal.com/article/community-banks-hold-pat/.

[9] Regulatory Modernization, supra note 2, at 49505.

[10] *Id.*

ICBA has long protested that credit unions receive benefits from tax exemptions and a comparatively less stringent framework, which allows larger credit unions to displace community banks and reduce competition and consumer choice.[11] Despite this, community banks routinely outperform credit unions in high-poverty areas that credit unions receive a federal tax exemption to serve.[12] In light of this disparity, the Board should make it easier for Mutuals to serve their communities and avoid unnecessary acquisitions by credit unions.

c. Expand Regulatory Relief Beyond MHCs

The Board should ensure regulatory relief benefits all mutual institutions, not only those operating in an MHC structure. Many Mutuals are not MHCs, or do not have MHCs. Relief should be available to the broader mutual sector. ICBA recommends that the Board expand the issuance authority to the mutual bank level, rather than exclusively to MHCs, so that relief does not hinge on an institution's corporate structure.

d. Easing Dividend Waivers

ICBA commends the Board on its Proposal regarding dividend waivers. Dividend waivers allow MHCs to decline a dividend that its subsidiary pays to other shareholders. Rather than distributing the MHC's share of the dividend to the MHC, the funds may be paid to the subsidiary holding company's shareholders or retained as capital.

Under current regulations, MHCs that waived dividends before 2009 (i.e., 'legacy waiver MHCs') are subject to a less onerous process than non-legacy MHCs. Now, the Board would narrow the disparate treatment between the two by providing non-legacy MHCs a more viable pathway to waiving dividends. In particular, the Proposed Rule would permit non-legacy MHCs to rely on member vote within the previous 10 years and use majority of votes cast as the approval threshold (rather than majority of all eligible members).

ICBA welcomes these proposed changes, as reducing the burdens associated with dividend waivers would facilitate their greater use. In the alternative, Mutuals are required to make a tough decision: either pay a dividend to investors and the MHC or pay no dividend at all. Greater flexibility to waive dividends can make the subsidiary holding company's share more marketable, increasing their value and making it easier for the MHC to raise capital without converting to stock ownership.

---

[11] Indep. Cmty. Bankers of Am,. Credit Union Tax Exemption Advocacy, https://www.icba.org/credit-unions-advocacy (last visited Sept. 22, 2026).
[12] Indep. Cmty. Bankers of Am., ICBA Releases Data Showing Credit Union Acquisitions Harm Communities, https://www.icba.org/w/icba-releases-data-showing-credit-union-acquisitions-harm-communities (last visited Sept. 22, 2026).

CONCLUSION

ICBA appreciates the opportunity to provide comments to the Board on the Proposal to modernize regulations and provide relief for mutual holding companies. ICBA supports the Board's proposed changes to Regulations Q and MM as a vital step toward reducing unnecessary regulatory burdens and modernizing the rules for MHCs. By streamlining and removing certain duplicative forms, the rule will allow MHCs to operate more efficiently and provide appropriate relief.

We appreciate the Board's consideration of these comments and look forward to continued engagement on this matter. As explained in our comment, we ask the Board to further expand mutual banks' ability to access capital, for the Board to coordinate with the FDIC, OCC, and state banking agencies to create a collaborative approach to reduce the burdens placed on Mutuals, and, finally, to create an environment that strengthens the mutual bank charter by allowing institutions to thrive.

If you have any questions about the comments provided in this letter, please reach out to Michael Emancipator (michael.emancipator@icba.org) or Emma Ciric (emma.ciric@icba.org).

Respectfully submitted,

/s/

Michael Emancipator
Senior Vice President, Regulatory Counsel

/s/

Emma Ciric
Manager, Paralegal