

July 17, 2014

Donna Deale, Designated Federal Official
Office of the Comptroller of the Currency
400 7th Street, S.W.
Washington, DC 20219

Re: MSAAC Written Statements

Dear Ms. Deale:

The American Bankers Association (ABA) on behalf of its many mutually chartered members is pleased to submit this written statement for consideration by the Mutual Savings Association Advisory Council of the Office of the Comptroller of the Currency (OCC) during its meeting on July 23, 2014.

Specifically, ABA urges the OCC to favorably consider H.R. 4252, “The Mutual Bank Choice and Continuity Act of 2014,” introduced by Rep. Rothfus (R-PA). The bill has been co-sponsored by Representatives Andy Barr (R-KY), Blaine Luetkemeyer (R-MO), Patrick Tiberi (R-OH), Steve Stivers (R-OH) and Mike Kelly (R-PA). The legislation addresses two key issues for mutuals – raising capital and providing additional charter flexibility.

As we have frequently stated, mutual banks have a long history of serving their communities and promoting local growth. There are over 580 mutually chartered institutions with \$275 billion in assets across the country, ranging in size from well under \$100 million to over \$1 billion. Together mutual banks employ over 43,000 employees, paying over \$890 million in salaries and benefits.

The ABA focuses on the needs of mutuals primarily through its Mutual Institution Council -- an open committee of approximately 100 mutual institutions that seeks to provide tools and innovations to their mutual brethren. One of the challenges faced by mutuals is compliance with Basel III. Mutual banks have no shareholders and are limited in their ability to raise capital. Some issued trust preferred securities using their holding company. With the elimination of that option, mutuals are left with retained earnings as their only source of Tier 1 capital. In addition, there have been charter innovations that have had some level of success in Congress and could provide further flexibility for federally chartered mutuals. The legislation introduced by Representative Rothfus solves both issues in a targeted manner that seeks to provide flexibility and fit within the existing regulatory structures. The legislation seeks to:

- Create a mutual capital certificate that allows mutuals to raise needed Tier 1 capital for regulatory and lending requirements; and

- Create a mutual national charter that will allow mutual banks to diversify their assets and better serve their communities.

Without access to markets, mutual banks can only raise additional capital through retained earnings – a slow process that requires long-term planning. Boosting earnings is challenging in most times, but especially so in the current environment, with increased expenses resulting from the Dodd-Frank Act. And, if a mutual is unable to boost earnings to raise capital, it will have no choice but to shrink to meet higher capital ratios. For these reasons, mutual institutions are conservatively run by necessity and their resilience during the crisis demonstrates the wisdom of that approach (only 19 failed during the 2007 to June 2014 time period). Mutually chartered institutions are operated with an eye to the long term. They contribute to their communities because as their communities grow, they grow.

Mutual institutions, because they are dependent on retained earnings, lack access to national credit markets, are often unable to raise new capital – pledged deposits are cumbersome and rarely, if ever used, and mutual capital certificates, if ever issued, are no longer specifically authorized as they were under obsolete regulation 12 U.S.C. 563.74 (1994). Using the mutual holding company structure, mutual institutions were able access the national credit markets through the Trust Preferred market. However, that option is no longer available.

For these reasons, H.R. 4252 proposes to create a mutual capital certificate that provides Tier One treatment. The OCC may differ on the particulars of the capital instrument; however, ABA urges the OCC to work positively with ABA and Representative Rothfus and others in Congress to solve the capital flexibility need. Mutuals deserve a capital tool that allows them to grow in a safe and sound manner while meeting regulatory requirements and serving their communities.

Mutual National Charter

Creating a national mutual charter is another step that would allow mutuals to better serve their communities. A national mutual charter would provide mutuals the same charter options as stock banks as well as the ability to diversify their balance sheets. It does not amend the Home Owners Loan Act, but provides an alternative for those mutuals that choose not to be concentrated home lenders.

Today, a stock institution can choose whether to serve its customers with a national or state commercial bank charter, a state savings bank charter or a state or federal savings and loan association charter. Stock institutions can determine the charter that best fits their business model and convert to a different charter, bank or thrift, as they deem best. Presently mutual institutions do not have that range of choices – a mutual institution can only be a federal or state savings association or a state mutual bank.

Although the powers of banks and thrifts have become more similar in recent years, there are significant differences. Most notably, due to the “qualified thrift lender” requirement, savings associations operate subject to specific limitations on the aggregate amount of commercial loans

they can make and are required to focus more heavily on residential mortgage lending. While this may work for some, H.R. 4252, provides a diversified lender option without reopening the Dodd-Frank Act.

Mutual institutions should be offered the same charter options as their stock based counterparts. Incentivizing mutual institutions to convert to stock to obtain a national bank charter would not only be unfair to the institutions and their communities, but it would invite these institutions to take more risk to meet the ongoing earnings pressure from shareholders.

Conclusion

Mutuals have experienced and survived much and they deserve a fair chance to continue to promote their future and the future of their communities. ABA appreciates the ability to express the particular concerns of mutually chartered banks and the communities they serve. If you have any questions on the issues raised or wish to discuss any of the items further, please contact either of the undersigned at 202-663-5434 (dcausey@aba.com) or 202-663-5588 (rdavis@aba.com).

Sincerely,



C. Dawn Causey
General Counsel



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