



November 6, 2003

The Honorable Donald E. Powell  
Chairman  
Federal Deposit Insurance Corp.  
500 17<sup>th</sup> Street, N.W.  
Washington, DC. 20429

The Honorable John M. Reich  
Vice Chairman  
Federal Deposit Insurance Corp.  
500 17<sup>th</sup> Street, N.W.  
Washington, DC. 20429

The Honorable John D. Hawke, Jr.  
Comptroller of the Currency  
Office of the Comptroller of the Currency  
250 E Street, S.W.  
Washington, DC 20219

The Honorable James E. Gilleran  
Director  
Office of Thrift Supervision  
1700 G Street, N.W.  
Washington, DC 20552

Re: Deference to State Law in Conversions

Gentlemen:

America's Community Bankers ("ACB")<sup>1</sup> strongly urges the Federal Deposit Insurance Corporation ("FDIC") to grant a waiver of the depositor vote requirement in the New Haven Savings Bank application to convert from mutual to stock form. Such a waiver would permit the conversion to proceed in accordance with applicable Connecticut law and would be consistent with the precedent in granting depositor vote waivers to state-chartered savings banks that do not have depositor voting as a matter of state law.

ACB represents over 90 percent of the mutual depository institutions in the United States, including the majority of state mutual savings banks. We are very concerned about the future of those savings banks that wish to remain mutual, as well as those that chose to convert. Last summer, ACB testified before the Joint Committee on Banks and Banking of the Massachusetts legislature against a bill that we believe would ultimately force

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<sup>1</sup> America's Community Bankers represents the nation's community banks. ACB members, whose aggregate assets total more than \$1 trillion, pursue progressive, entrepreneurial and service-oriented strategies in providing financial services to benefit their customers and communities.

mutual institutions to convert to stock form. We filed an *amicus* brief on behalf of Gorham Savings Bank when depositors of the Maine state-chartered savings bank asserted that they had a right to a distribution of capital. ACB argued that management and the board of a savings bank are responsible for the operations of the bank, including deciding how much capital to have within the required regulatory framework. ACB also filed a letter with the federal district court on behalf of Pathfinder Bancorp, a mutual holding company that was being sued by a minority shareholder who claimed that the board of the mutual holding company had not properly exercised its fiduciary duty in rejecting an unsolicited offer to acquire the mutual holding company. In each of these examples, we participated because we believed that an adverse outcome would negatively impact the ability of mutual institutions to choose their future course of action, independent or not.

ACB has a long-held policy position that the mutual to stock conversion process should be rational and that a mutual institution should have the ability to convert if its board and management believe that it is in the institution's best interests and consistent with its operating strategy. Unless there is a supervisory concern or risk to the deposit insurance funds, the decision to convert should not be influenced or driven by parties other than those that are charged with the responsibility for running the institution – the board, management and, in the case of a Connecticut savings bank, the Corporators.

We also strongly believe that the preservation of the dual banking system is vital to our banking system. The corporate governance procedures of state-chartered savings banks, including voting rights and elections of directors, are appropriately matters of state law. We understand that the Connecticut Banking Commissioner approves the use of a Corporator vote because the rights and responsibilities of the Corporators are established by state law and policies. In fact, the Commissioner has been involved in every step of the conversion process to ensure that it complies with such law.

In matters of governance that do not involve the safety and soundness of the institution or the risk to the deposit insurance funds, we firmly believe that state law should be followed. We are very concerned that if this conversion is not permitted to proceed in accordance with state law that a troubling precedent will be established that could adversely affect all mutual institutions, including state-chartered mutual savings banks. Furthermore, failure to follow state law will undermine carefully constructed and comprehensive conversion rules.

A request for the waiver of the depositor vote requirement was filed with the appropriate regional office pursuant the FDIC regulations governing mutual to stock conversions.<sup>2</sup> The FDIC regulation states that a waiver can be requested when compliance with the requirement would be inconsistent or in conflict with state law. In making the request for the waiver, the institution must demonstrate that the waiver would not result in any detriment to the safety and soundness of the institution, entail a breach of fiduciary duty

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<sup>2</sup> 12 CFR 303.162

on the part of the institution's management or otherwise be detrimental or inequitable to the institution, its depositors, any other insured institutions, the federal deposit insurance funds, or to the public interest.

We understand the FDIC has consistently granted depositor vote waivers to savings banks chartered in those states that do not require or even contemplate a depositor voting. Connecticut law specifically states that it does not require a vote of depositors as part of a conversion of a mutual savings bank. Instead, it requires a vote of the Corporators. The group of Corporators of any mutual savings bank in Connecticut is made up of leaders in the community. As contemplated, these individuals take their responsibilities seriously and participate in meetings by asking management questions about the strategic goals of the institution. A decision to not grant the waiver of the depositor vote calls into question the judgment of the Corporators who have already approved the transaction.

In the particular example of New Haven Savings Bank, one result of the planned conversion is that the savings bank will contribute at least \$30 million to a charitable foundation that will be dedicated to supporting charities and not for profit activities in the greater New Haven community. New Haven Savings Bank also has announced that it intends to use the proceeds of the conversion, in part, to acquire two Connecticut stock savings banks. A strong, Connecticut-based community bank will benefit customers, the local community, and the overall state economy. This is particularly true given that the ongoing industry consolidation is impacting Connecticut directly. The likelihood that these banks would be acquired by out of state financial institutions if New Haven Savings Bank is not able to consummate the transaction is high. The result would be a loss of local decision-making and community involvement, which too many communities are facing today due to acquisitions by out of state banks.

ACB strongly believes that management and the board should make decisions about conversion and charter form based on the business plan and operating strategy of the savings bank. A well-considered, strategic decision to convert should be permitted to proceed in a rational manner that is in accordance with state law. There is no safety and soundness reason for the FDIC not to grant the waiver for the New Haven Savings Bank conversion. The Corporators have overwhelmingly approved the conversion and all other legal requirements have been met. We strongly urge the FDIC to grant the waiver and permit the conversion to occur based on the vote of Corporators.

Thank you for the opportunity to give you our views on this matter. Please contact me at (202) 857 3110 or [dcasey@acbankers.org](mailto:dcasey@acbankers.org) if you have any questions.

Sincerely,



Diane Casey-Landry

