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LEGAL UPDATE

FRB Issues Proposal to Amend MHC and Capital Regulations
Most Significant Proposed Revisions in 15 Years

On July 31, 2026, the Federal Reserve Board (the "FRB") requested comment on a sweeping proposal *here* to amend its rule governing mutual holding companies ("MHCs") (Regulation MM) and its capital rule (Regulation Q) to provide capital treatment for mutual capital certificates and special deposits issued by mutual institutions. The proposed revisions could, if adopted, dramatically change the landscape for MHCs and mutual banks and their access to capital and provide new incentive for credit unions to convert to bank charters. The comment period for the proposal ends on October 5, 2026.

Regulation MM

Regulation MM applies to thrift (i.e., federally chartered savings institutions) MHCs but not state bank (i.e., state chartered savings institutions) MHCs. While state bank MHCs are not subject to Regulation MM and are governed by the FRB's supervision and regulation under the Bank Holding Company Act of 1956, as amended, and by relevant state law, many state bank MHCs have entered into commitments with the FRB to comply with certain provisions of Regulation MM as condition to the formation of their MHC. Accordingly, Regulation MM effectively applies to all MHCs.

According to the FRB, since it assumed the regulation of federally chartered MHCs from the former Office of Thrift Supervision (the "OTS") in 2011, it has found the regulatory framework for MHCs to be overly complicated and burdensome. Regulation MM has not been amended since its adoption in 2011, and the FRB views that MHCs would benefit greatly from updates, clarifications, and modernizations to Regulation MM that would reduce burdens consistent with safe and sound operations. More importantly, the proposed revisions contain important revisions to the manner in which MHCs can raise capital and the attractiveness of MHC minority stock offerings.

The FRB proposes the following revisions to Regulation MM:

Dividend Waivers. A dividend waiver occurs when the board of directors of an MHC agrees not to receive a dividend when such a payment is concurrently paid to public shareholders. When an MHC waives its right to receive a dividend declared by its subsidiary holding company, the dividend that would otherwise be allocated to the MHC is instead distributed on the stock held by other stockholders of the MHC's subsidiary holding company (the "minority stock") or retained as capital. By providing MHCs the enhanced ability to waive dividends, it will increase the attractiveness and market value of the minority stock, thereby improving the MHCs' ability to raise capital in a minority stock offering and without conducting a full conversion.

Currently, MHCs are bifurcated between those that waived dividends before December 1, 2009 ("legacy waiver MHCs") and those that did not ("non-legacy waiver MHCs"). Legacy waiver MHCs may continue to waive dividends if they provide 30-day notice to the FRB and affirm that a majority of MHC members eligible to vote have approved the waiver within the last 12 months. However, the process for non-legacy waiver MHCs to waive dividends is far more onerous. Non-legacy waiver MHCs are required to either have (i) a majority of its board of directors approve the waiver, with any directors who would benefit directly or indirectly from the waiver, abstaining from the vote; or (ii) any MHC insider who would benefit from the waiver waive the right to receive any dividend. Because directors and other insiders of non-legacy waiver MHCs are often stockholders of the subsidiary holding company, such a requirement effectively prevents a non-legacy MHC from waiving dividends. Before the adoption of these strict dividend waiver requirements, MHCs routinely waived dividends, minority stock had generally higher dividend payouts as compared to full conversion stock and the market value of minority stock was closer to full conversion stock as a result.

To level the playing field between legacy waiver MHCs and non-legacy waiver MHCs, the FRB proposes to:

- eliminate the requirement that legacy waiver MHCs affirm that a majority of members eligible to vote have approved the waiver within the last 12 months;

- require legacy waiver MHCs to make appropriate disclosures regarding dividend waivers to new members at time of opening of a deposit account or loan relationship; and

- allow non-legacy waiver MHCs also to waive dividends without requiring that either (i) a majority of the entire MHC board of directors approve the waiver, with any directors who would benefit directly or indirectly from the waiver, abstaining from the vote, or that (ii) any MHC insider who would benefit from the waiver waive their right to receive any dividend, but instead affirm to the FRB that, in a vote held within the past 10 years, members have approved the dividend waiver. And, importantly, non-legacy waiver MHCs would not be required to obtain the approval of a dividend waiver by majority of members eligible to vote, rather instead by the lower standard of a majority of votes *cast* by members eligible to vote.

The proposal would **facilitate the member approval process**:

- ***Approval Standards and Procedures for MHC Reorganizations.*** Regulation MM contains approval standards and procedural requirements for a stand-alone mutual thrift to reorganize into the MHC structure. Although the FRB currently does not propose to amend these standards or requirements, it invites comment on whether they should be amended in any way to reduce burden to the reorganizing mutual. What value, if any, is served by the member vote requirement for reorganization into the MHC structure is among the items on which comment is invited.

- ***Running Proxies.*** A "running" proxy is a proxy conferring general authority to vote on any and all matters at any meeting of members of a mutual institution. Mutual institutions typically obtain running proxies from their customers when they open their accounts at the institution. Regulation MM prohibits the use of running proxies to vote for an MHC reorganization, mutual-to-stock conversion, dividend waiver, or any other material transaction. Although the FRB does not propose to change its approach to running proxies, it invites comments on all aspects of its rules related to running proxies, including whether they should be used to vote on any or all of these matters.

Acquisitions of Other MHCs. With respect to an MHC's acquisition of another MHC, Regulation MM currently provides that the approval of the members of the constituent MHCs must be obtained *if mandated by the FRB in writing*. The FRB has generally not required member approval in recent transactions but the regulation is silent as to the factors that the FRB will consider in determining whether to require member approval. The FRB proposes to amend Regulation MM to include the following factors it would evaluate in considering whether to require membership approval.

The proposal would take steps to **modernize the process**:

- **Alternatives to Postal Mail Requirements.** Regulation MM contains numerous requirements for MHCs to communicate with their members via U.S. mail. The FRB proposes to permit the use of email and other available technology as alternatives for MHCs to communicate with their members.

- ***Abolish Requirement to Use Model Charter and Bylaws.*** Ther FRB proposes to abolish the requirement that MHCs and their subsidiary holding companies adopt the respective model charters and bylaws included as appendices to Regulation MM, although it would retain the authority to review proposed charters and bylaws as part of its review of the formation of MHCs and their subsidiary holding companies. Institutions would be able to continue to use the models if they so choose.

- ***Permit Chartering Mid-Tier Holding Companies in any State.*** The FRB proposes to eliminate the requirement that subsidiary holding companies of federally chartered MHCs have federal charters, allowing them instead to be chartered under any state law regardless of whether from the state in which its main office is located or in which its MHC parent or subsidiary depository institution operates. This will put federally chartered MHCs on the same footing as state-chartered MHCs, which may use state-chartered stock corporations as their mid-tier.

Benefit Plan Stock Issuances. Currently, Regulation MM does not distinguish between stock issuances in a public offering and stock issuances to a stock benefit plan, such as an employee stock ownership plan ("ESOP"), a stock option plan or a restricted stock/management recognition plan (collectively, "stock benefit plans"). Rather than include many varied requirements regarding the size of each plan, the FRB proposes to require only that:

- all stock benefit plans not, at any given time, hold in the aggregate more than either 4.9% of the outstanding shares of the subsidiary holding company's common stock or 4.9% of the subsidiary holding company's stockholders' equity; and

- at the close of a proposed issuance, the amount of stock authorized to be issued or acquired by all stock benefit plans may not exceed, in the aggregate, 25% of the outstanding shares of the subsidiary holding company's common stock or 25% of its stockholders' equity.

The proposed requirements are somewhat unclear as to how the relative percentages will be applied to the various types of equity plans (restricted stock, stock options and employee stock ownership plans) and how this will impact the current stock benefit plans routinely adopted by MHCs for minority offerings and full conversions.

Stock Benefit Plans in MHC Conversion Transactions. Regulation MM would be amended to provide that, in the 12 months after conversion, stock benefit plans cannot, in the aggregate, exceed 15% of the number of shares of the resulting stock holding company issued in the conversion. Additionally, to provide converting institutions added flexibility in the 12 months after conversion, the FRB proposes to allow such institutions to establish a stock option plan or management recognition plan in connection with the mutual-to-stock conversion. This revision would allow more flexibility with respect to how stock benefit plans utilize restricted stock awards versus stock option awards.

Stock Repurchases. Currently, Regulation MM generally prohibits stock repurchases during the first year after a minority stock issuance or a conversion stock issuance, subject to limited exceptions. The FRB proposes to allow repurchases of stock in the first year after a minority stock issuance or conversion issuance, if the stock issuance plan or business plan submitted in connection with the issuance or conversion contemplates stock repurchases.

The FRB invites comments on all aspects of its proposal to allow stock repurchases within the first year of a stock issuance or conversion issuance, including whether to retain the current limitations but reduce the limitation from one year to six months, or to some other time period.

Eliminate and Streamline Applications. The rules eliminate or streamline certain application requirements that contain duplicative information contained in other publicly-filed documents.

State Registration of Offers of Stock. Regulation MM would be amended to provide that, notwithstanding the requirement to offer shares of stock in a minority stock issuance or conversion stock issuance to all eligible account holders, supplemental eligible account holders, and other voting members, institutions that do not meet the standards to list their shares on a national or regional exchange need only register their shares under state "blue sky" securities laws in states in which 5% or more of their depositors reside. This will significantly reduce the expense of conducting an offering for smaller institutions by reducing the number of states in which it was forced to register.

Regulation MM Commitments Made by Bank MHCs. As previously noted, state bank MHCs generally have entered into commitments with the FRB to comply with certain provisions of Regulation MM when a state bank forms an MHC or a state bank MHC converts to stock form. The FRB proposes not to obtain Regulation MM commitments from mutual bank holding companies in the ordinary course, but would continue to seek targeted commitments from mutual bank holding companies on a case-by-case basis, where appropriate. With respect to mutual bank holding companies that have previously provided Regulation MM commitments, they would be able to contact the FRB, following the issuance of a final rule, to seek relief from these commitments. Absent unusual circumstances, the FRB would expect to be receptive to requests for relief.

Regulation Q and Mutual Capital Certificates

To further support mutual institutions' capital raising ability, the FRB proposes to amend Regulation Q to specifically authorize that special deposits and mutual capital certificates issued by a mutual banking organization, including an MHC, can qualify as common equity tier 1, additional tier 1, or tier 2 capital, respectively, if all of the qualifying criteria are satisfied. This would put MHCs on the same footing as federally chartered mutual savings banks that have the authority to issue mutual capital certificates under current OCC regulations.

In October 2025, FRB staff published on the FRB's website two model terms sheets *here* and *here* to clarify how mutual institutions may issue mutual capital certificates that qualify as regulatory capital and requested public comment on the term sheets by June 30, 2026. To help mutual institutions develop capital instruments eligible for consideration under Regulation Q, the FRB proposes to include the term sheets, as amended to reflect certain feedback from public comment, as appendices to Regulation Q.

The FRB also proposes to amend the Mutual Holding Company Model Charter to include optional language authorizing the issuance of mutual capital certificates.

These revisions could increase the marketability of mutual capital certificates and becoming a more routine and an accepted form of investment vehicle with clearer investment terms and conditions, including more specific terms on the payment of “dividends.” The revisions will also specifically allow the issuance of mutual capital certificates without triggering the minority or conversion stock offering procedures that require a vote by members, offering to all eligible depositors and other cumbersome requirements and procedures.

Conclusion and Takeaways

This proposal, if adopted, would represent a material change to the regulation of MHCs and, by extension, mutual banks and significantly enhance their access to capital. It is unknown whether other federal and state regulators of mutual institutions will adopt similar revisions but, based on our experience, we are hopeful that they will follow the FRB.

The FRB invites comment on the proposal, which are due October 5, 2026.

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