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VIA FEDERAL EXPRESS

August 24, 2007

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20052
Attn: OTS – 2007 – 0012

Re: Optional Charter Provisions for MHC Structure
No. OTS-2007-0012

Gentlemen:

I am writing this letter on behalf of the law firm of Malizia Spidi & Fisch, PC (“MS&F”) and Samuel J. Malizia, personally, in response to the Office of Thrift Supervision’s proposed rule published in the Federal Register on June 27, 2007 pertaining to “Optional Charter Provisions in Mutual Holding Company Structures.” I have personally specialized in the representation of financial institutions, in particular the conversion of thrift institutions from the mutual to stock form of organization, since 1981. Since 1991, the law practice of MS&F has specialized in the representation of public stock financial institutions and the conversion of mutual financial institutions into the mutual holding company and stock form of organization. For over 25 years, I have personally participated as counsel for the mutual to stock reorganization of over 100 thrift institutions. The six partners at MS&F have all actively acted as counsel collectively for over 150 financial institutions converting to the MHC and stock form of organization over the past 25 years. These reorganizations have included standard stock conversions, standard stock conversions with holding companies, mutual holding companies without public stock offerings and mutual holding companies with minority stock offerings.

We are writing this letter to strongly support the proposed amendment to the MHC regulations to permit the adoption of an optional charter provision that would prohibit any person from acquiring or offering to acquire beneficial ownership of more than 10% of the MHC’s subsidiary’s minority stock held by persons other than the subsidiary’s MHC. This amendment

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is very important in lieu of the action taken on June 27, 2007 by the OTS, which unfortunately did not adopt the proposed regulation that would have permitted the votes of the MHC to count for the approval of stock benefit plans implemented more than one year after the MHC stock offering (i.e., No. OTS-2007-0014).

During the 1970s, 1980s and early 1990s, hundreds of thrift institutions undertook standard and supervisory full mutual to stock conversions. During this entire period, the OTS regulations have generally provided that no person can acquire more than 10% of the outstanding stock of the company for three years after the stock conversion. Under these regulations, many converted thrift institutions were subject to stockholder activists who strongly encouraged or forced the sale of the company within three to five years after the stock conversion. As such, the introduction of the MHC alternative for federal institutions in the early 1990s was widely accepted by the industry. Our Firm was counsel for First Federal of Colorado, the first federal thrift institution to convert to an MHC and simultaneously conduct a minority stock offering. The initial MHC regulations were significantly different than the current regulations. The initial MHC regulations did not include subscription rights for the depositors. Some of our law firm's early MHC offerings (i.e., First Federal Bank of Colorado, Roxborough-Manayank Savings Association, Philadelphia, Pennsylvania) included a minority stock offering to the general public with no subscription rights for depositors. After the success of the initial federal MHC offerings, however, the OTS revised the MHC regulations and the MHC stock offering process has become very similar to standard conversions, with subscription rights being granted to eligible depositors. During the past five years, stockholder activism pressuring a sale of control has become so dominant that over 80% of the mutual to stock reorganizations handled by our firm have been MHC reorganizations rather than standard stock conversions. A review of the OTS records for the past five years demonstrates that this predominance for the MHC reorganization and minority stock offering over standard conversion is uniform throughout the industry. The standard stock conversion has subjected the converting mutuals to such significant threat of a change in control and undue pressure from professional investors, that thrift institutions desiring to remain independent generally prefer the MHC alternative.

However, the MHC current regulations which permit a stockholder to own up to 10% of the outstanding shares, as opposed to the minority shares, have placed MHC organizations in jeopardy from the "professional" investors.

Many of the financial institutions conducting an MHC minority stock offering are traditional community thrift institutions which selected the MHC minority stock offering as the preferable method to raise capital to provide an opportunity for the institution to expand operations and provide the employees, directors and community customers an opportunity to participate in the bank as an equity owner. The current OTS regulations, which require a majority of outstanding minority shares of the MHC organization to approve the stock benefit plans provide the means for outside, wealthy, institutional and professional investors to undermine the ability of directors, officers and employees who are responsible for the long-term

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success and operations of the bank to receive traditional stock benefits unless they succumb to their demands for stock repurchases and dividends (i.e., Penn Federal Savings Bank, Newark, New Jersey, Prudential Savings Bank, Philadelphia, Pennsylvania, Roma Bank, New Jersey).

The proposed amendment is required in order to permit the MHC structure to fulfill one of its primary purposes, to provide primarily mutually owned institutions the ability to operate and serve the community without undue interference from professional stockholders, along with the added unnecessary expense created thereby.

The clients of MS&F provide a clear example of the problems with the current OTS regulations. Kearny Federal Savings Bank and Roma Bank are two long-standing, well capitalized traditional community financial institutions. Both banks undertook an MHC Minority Stock Offering for only 30% of the outstanding shares, with the remaining 70% indirectly owned by the depositor-members through the MHC. A 30% MHC offering provided employees and long-term community depositors an investment alternative and approximately \$200 million and \$100 million, respectively, of new capital, which both institutions have used to expand operations. Under the current regulations a stockholder, without any regulatory approval, can own up to one-third of the outstanding public shares of Kearny and Roma. A "professional" stockholder who owns one-third of the outstanding public shares can easily work with other large professional and institutional stockholders to defeat the purposes of the reorganization by wasting the offering capital proceeds on needless litigation and efforts to preserve the integrity of the conversion process.

Accordingly, we recommend approval of the proposed amendment to permit a charter provision limiting ownership to 10% of the minority shares held by others than the MHC.

Please contact me if you have any questions regarding this matter.

Sincerely



Samuel J. Malizia

Enclosure

cc: Malizia Spidi & Fisch, Partners