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May 9, 2002

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552

Re: Mutual Savings Associations Proposed Regulations (67 FR 17227)

Dear Sir or Madam:

CSBS is pleased to have the opportunity to comment on the Office of Thrift Supervision's ("OTS's") proposed amendments to its regulations on the mutual-to-stock conversion process and portions of its regulations on mutual holding company reorganizations (Proposal).¹ CSBS is the national organization of state officials responsible for chartering, regulating and supervising the nation's 6,868 state-chartered commercial and savings banks and 419 state-licensed branches and agencies of foreign banks.

Background

According to an OTS press release issued on July 11, 2000, the OTS is undertaking a comprehensive strategy governing mutual institutions, mutual holding company reorganizations and the mutual-to-stock conversion process. The strategy involves issuing new policy and examination guidance for mutuals, and revising application forms used for mutual holding company reorganizations and the conversion process. The OTS also issued proposed and interim final amendments (First Proposal) to its regulations on mutual holding companies and the mutual-to-stock conversion process as a part of this strategy.²

¹ 67 Fed. Reg. 17227-17255 (Apr. 9, 2002).

² 65 Fed. Reg. 43092-43128 (July 12, 2000).

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The OTS received several comments regarding the First Proposal, including concerns raised by CSBS in the attached comment letter of July 26, 2001 (July 26 Letter). The Proposal, therefore, is a reissued and modified version of the First Proposal.³

CSBS Position

CSBS is disappointed that the concerns we mentioned in response to the First Proposal are not adequately addressed in the Proposal. The OTS asserts that its comprehensive strategy, which includes the Proposal, is an attempt to preserve mutual institutions that may be pressured into abandoning their community banking, service oriented philosophy.⁴ CSBS endorses the OTS's strategy so long as it is coupled with an orientation that preserves and protects the interests of mutual institution depositors. However, it appears that many elements of the Proposal, such as the dividend waiver and management stock benefit plan provisions, reflect a significant policy shift from a depositor focus to a management, insider and minority shareholder focus. Recent high profile events in the business community at large demonstrate all too clearly the need for strong corporate governance guidance and controls to prevent insider abuse and minimize reputational risk. Moreover, without such controls, litigation risk becomes a more significant matter for depository institutions to consider. In short, we question whether the OTS's "comprehensive strategy" truly preserves the community and depositor-minded approach of mutual institutions and request that the OTS explain the impetus for its policy shift.

We therefore reiterate the concerns we raised in our July 26 Letter, with the following amplification.

Mid-tier Stock Holding Company Subsidiaries of Mutual Holding Companies

Currently, OTS regulations require holding companies inserted in between Mutual Holding Companies (MHCs) and their savings association subsidiaries (Mid-tiers) to be chartered by the OTS. In the Proposal, the OTS responded to our initial objection to this regulatory policy by asserting that federal law requires both MHCs and Mid-tiers to be federally chartered.⁵ CSBS disagrees with the OTS's statutory interpretation. While the Home Owners' Loan Act⁶ requires a MHC to be federally chartered, it does not specifically mandate that a Mid-tier stock holding company must have a federal charter. CSBS notes that the OTS's statutory interpretation would ultimately eviscerate the laws of over 30 states that authorize state-chartered holding companies. CSBS believes that such an extensive impact on state laws should not occur without a clear Congressional mandate. We urge the OTS to reconsider its policy and permit mid-tier stock holding company subsidiaries of MHCs to be state-chartered.

³ 67 Fed. Reg. 17228 (Apr. 9, 2002).

⁴ OTS Press Release (July 11, 2000).

⁵ 67 Fed. Reg. 17233 (Apr. 9, 2002).

⁶ 12 U.S.C. 1467a(o)(7).

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Conclusion

Based upon the preceding comments, we respectfully ask that the OTS reconsider and revise the Proposal in a manner that minimizes the potential for insider abuse and enhances the protections for mutual institution depositors. Thank you for this opportunity to comment. Please call on us if you have any questions or if we can provide additional assistance.

Best Personal Regards,



Neil Milner
President and CEO

Attachment