

OTS
WASHINGTON, DC
REPORT ON SECURITIES FILINGS FOR 2001



December 2001

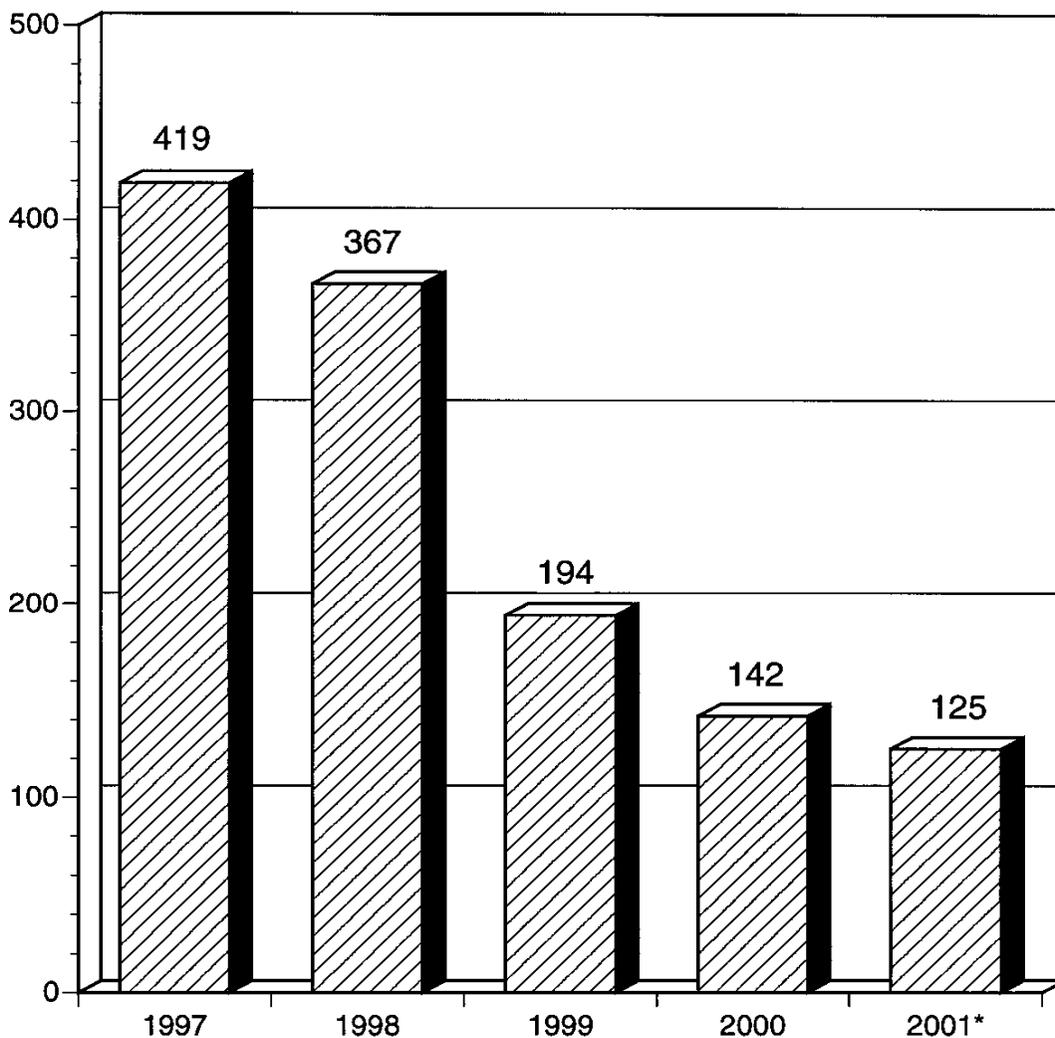
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OFFICE OF THRIFT SUPERVISION
REPORT ON SECURITIES FILINGS FOR 2001

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1934 Act Filings** Numbers Received by Fiscal Year

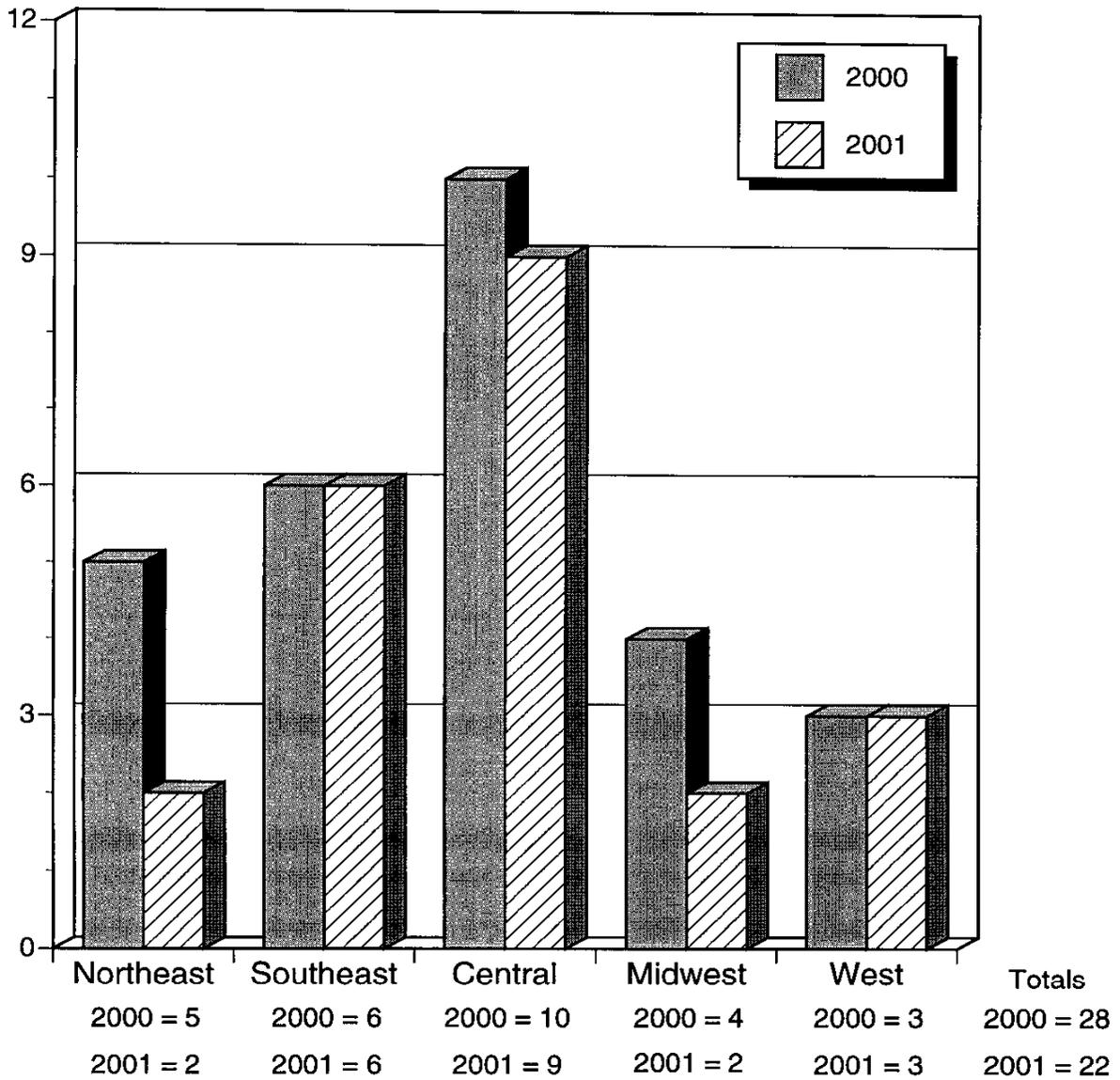


Source: Office of Thrift Supervision
Securities Filings Section

* Estimated

** For Example Forms 10-K, 10-Q, 8-K 10, 15, etc.

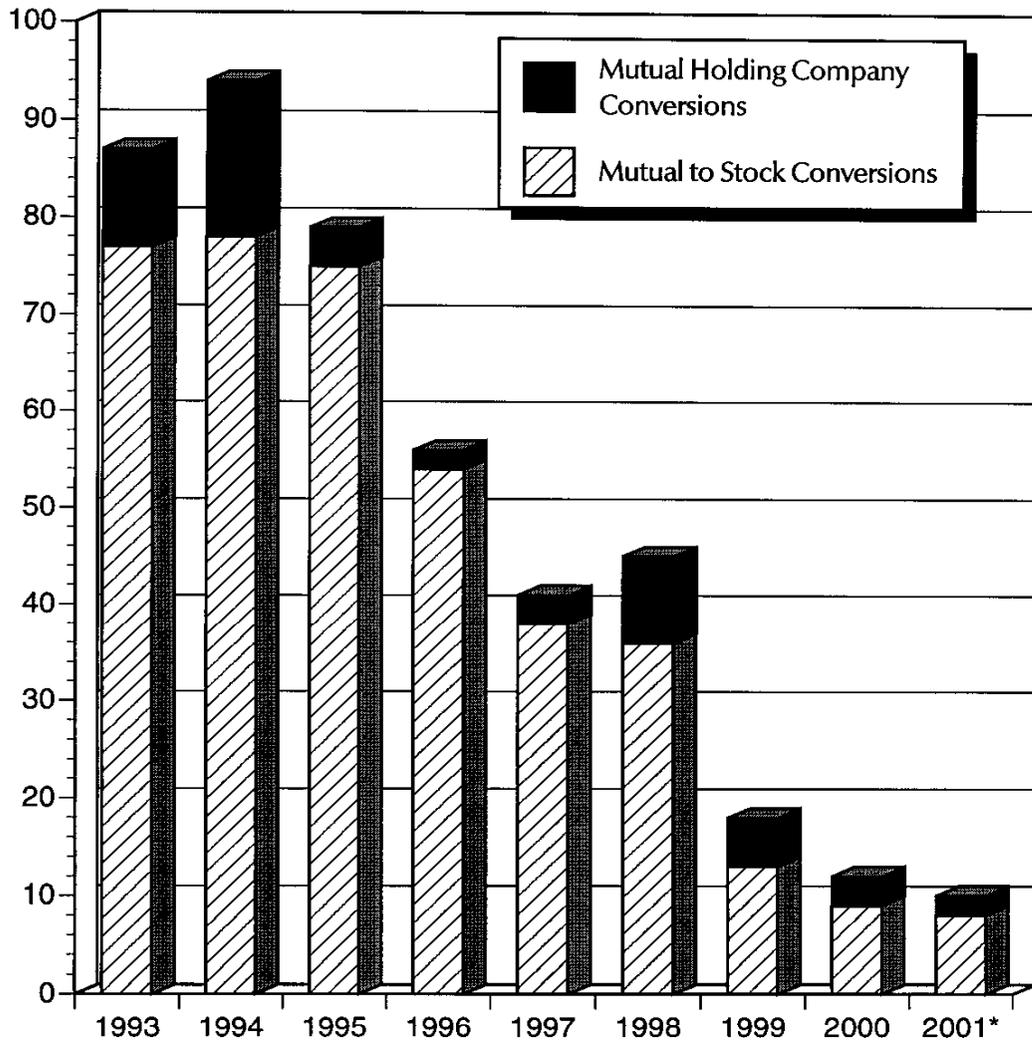
Number of OTS '34 Act Stock Thrift Institutions



Source: Office of Thrift Supervision
 Securities Filings Section
 12/31/2001

Mutual to Stock Conversions

Numbers Approved by Year



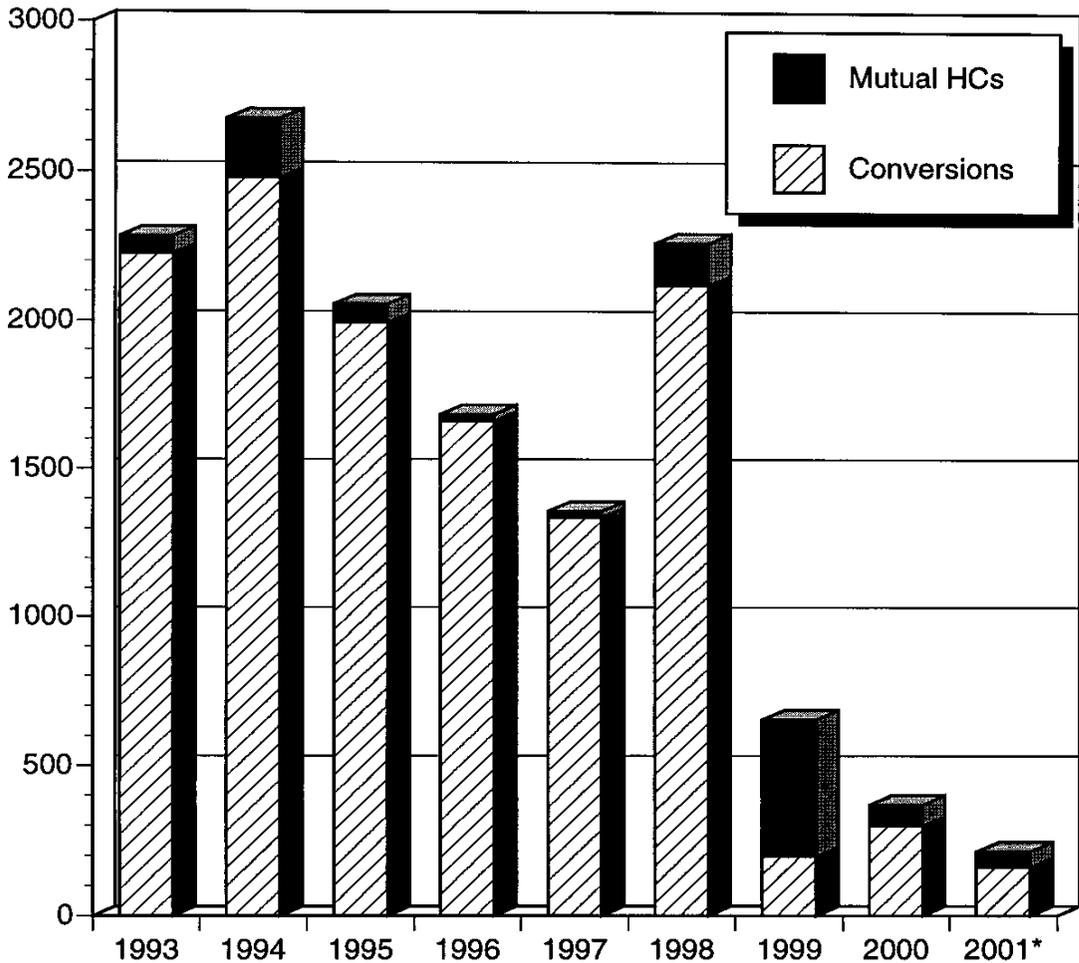
Mutual HCs	10	16	4	2	3	9	5	3	2
Conversions	77	78	75	54	38	36	13	9	8

Source: Office of Thrift Supervision
Business Transaction Division, David Permut

* Approved through 12/31/2001

Dollars Raised by Conversions

Dollars in Millions



Mutual HCs	59.2	197	63	22	21	142	456	70	52
Conversions	2225	2480	1994	1660	1337	2120	197	299	161

Source: Office of Thrift Supervision
Business Transactions Division, David Permut
(*Through 12/31/2001)

OTS
Common Reporting Comments
(Accounting)

Forms 10-K

1. Disclose in the Management's Discussion and Analysis, any known trends, events or uncertainties that will have or that are reasonably likely to have a material effect on the registrant's liquidity, capital resources or results of operations. If the registrant is aware of any current recommendations by the regulatory authorities which, if they were to be implemented, would have such an effect, appropriate disclosure should be included in the Management's Discussion and Analysis. Reference should be made to any Supervisory Agreement entered into with the OTS. Explain how the agreement affects the institution's overall operations and its impact on earnings. (Item 303 of Regulation S-K)
2. The institution discloses a number of lines of businesses or subsidiaries involved in various lines of businesses. However, we did not notice segment reporting in the filing. Please provide the segment reporting disclosures required pursuant to SFAS #131, Disclosures about Segment of an Enterprise and Related Information, or, management should explain why it believes why such disclosure are not required.
3. The institution's regulatory capital disclosures in Note XX do not fully comply with the requirements in Chapter 2 of the AICPA, Audit and Accounting Guide for banks and savings institutions (guide). The current guide requires the regulatory disclosures to be made in the primary financial statements and to be covered by the independent accountant's report.

The following disclosures are required:

- a. A description of the regulatory capital requirement for prompt corrective action under FDICIA, in addition to those disclosures indicated for capital adequacy under FIRREA.
- b. The actual or possible material effects of noncompliance with the requirements.
- c. The actual amounts and ratios, and required amounts and ratios, for each of the various measures of regulatory capital for prompt corrective disclosures included for capital adequacy under FDICIA (Tier 1, Tier 1 risk-based, and total risk-based), in addition to those quantitative disclosures included for capital adequacy under FIRREA (tangible, core or leverage, and risk-based).

- d. Factors that may significantly affect regulatory capital compliance.
 - e. The prompt corrective action category in which the institution was classified as of its most recent notification.
 - f. Whether management believes any conditions or events since notification have changed the institution's category.
 - g. A reconciliation of GAAP capital to the major categories of regulatory capital for each period a balance sheet is required. The reconciliation of GAAP capital to regulatory capital in Note XX should begin with GAAP equity as disclosed in the statements of financial condition followed by adjustments to arrive at tangible capital and core capital followed by adjustments to arrive at total risk-based capital. The difference between tangible capital and risk-based capital should be disclosed. A tabular presentation is the preferred method of disclosure for the reconciliation.
- 4. Disclose management's policy for determining which assets are held to maturity, available for sale, and/or held for trading. Material transfers between categories should be explained. (SFAS #115)
 - 5. Recently adopted accounting pronouncements such as Statements of Financial Accounting Standards ("SFAS") # 140-144 should be discussed. Discussions regarding the adoption of accounting pronouncements should address any potential impact directly on the financial statements or on the reporting requirements of adopting the new pronouncements.
 - 6. Separately report the amounts of mortgage-backed securities from loans receivable on the statements of financial condition. The staff interprets this comment as applicable for other presentations throughout the filings, e.g., the yields earned/rates paid table, the rate/volume variance, and the statements of operations.
 - 7. Separately disclose cash flows from purchases and sales of loans, mortgages-backed securities and investments in the statements of cash flows. Disclose loans, investments and mortgage-backed securities as separate line items therein. (SFAS No. 104, paragraph 21)
 - 8. Expand the MD&A to include a discussion of the change in the provision for loan losses. The discussion should specifically explain what event or events caused the change. Material fourth quarter changes should also be explained. The provision should be determined in accordance with the requirements set forth in SFAS #5 and SFAS #114 as amended by SFAS #118.
 - 9. Disclose cash receipts and cash payments from loans originated or purchased specifically for resale under operating activities in the statements of cash flows. The staff also interprets this comment as applicable to mortgage-backed securities or investments held-for-sale. (SFAS #102, paragraph 9)

10. Remove the distinction or expand the discussion to explain the impact on regulatory capital of accounting policies for allowance for loan losses that make reference to specific and general loan loss allowances. Record increases to the allowances for loans losses (or real estate acquired) when losses are both **probable** and **estimable** (not when significant and permanent, or in keeping with regulatory trends). (SFAS No. 5, paragraph 8, and SFAS No. 114)
11. Page XX of the AR-Note (3) Loans Receivable discloses charge-offs net of recoveries. Loan recoveries should be disclosed separately. (REG 563c.102 I. 8(k))
12. Disclose the allocation of the loan loss allowance by major loan categories (i.e., real estate - mortgage, real estate - construction, installment loans to individuals, commercial, financial and agricultural; or lease financing) as required by the Securities and Exchange Commission (SEC) Industry Guide 3, Item IV.B. Supplement the table with a discussion of the larger delinquent loans. Provide a similar analysis of charge-offs and recoveries in the allowance for loan losses using the same loan categories. (SEC Industry Guide 3)
13. Expand the non-performing assets section to discuss significant problem loans and other non-performing assets. Discuss the nature of the loan or project, the activities of management to bring the loan current, provide for its sale, or otherwise resolve the non-performing project, the original loan value, the current appraised value, the current loss allowance, and any anticipated future loss. (Staff requirement)
14. Page XX of the AR - Management's Discussion and Analysis. Provisions for Loan Losses states that "Management believes the allowance for **possible** loan losses of \$XXX at June 30, XXXX is adequate. " Allowance for loan losses should be based on whether a loss is both **probable** and reasonable estimable. Eliminate all references to **possible, potential, anticipated** and **future** loan losses.
15. Discuss market risk, both quantitative and qualitative in the MD&A. Small business registrants are encouraged, but not required, to include the market risk disclosures. (SEC Regulation S-X, 4-08(a))
16. Add a footnote to the presentation of average balances, interest, and average yields to explain how non-accruing loans have been treated for purposes of the analysis required by paragraph B of Item I of Industry Guide 3.
17. Expand the consolidated statements of financial condition to include a line item for commitments and contingencies including a reference to the applicable Note or Notes to the consolidated financial statements.

Forms 10-Q

1. Clearly mark financial statements as unaudited on the face of the statement. (AICPA Professional Standards AU 504.14)

2. Include a statement that any unaudited interim financial statements being furnished reflect all adjustments normal and recurring in nature which are, in the opinion of management, necessary to providing a fair statement of the results for the interim periods being presented. Describe, in appropriate detail, the nature and amount of any adjustments not of a normal recurring nature. (SEC Regulation S-X, Section 210.10-01(b)(8))
3. Discuss market risk, both qualitative and quantitative. (SEC Regulation S-X, 4-08(b))
4. Explain how the institution's quarterly loan loss provision is determined and, if applicable, why the amount has remained the same over successive quarters. Specifically address the provisions of SFAS #5 and SFAS #114.
5. Provide detailed discussion in the MD&A for significant increases or decreases in assets or liabilities and significant increases and decreases in unrealized gains and losses. (Regulation S-K, Item 303)

Conversions, Mutual Holding Companies and Merger Proxies

1. Disclose the total dollar amount of loans serviced for the benefit of others at the end of each period an income statement is required. (Regulation 563c.102 I. 8(i))
2. Indicate that deposits in excess of \$100,000 are not federally insured. (Staff requirement)
3. Expand the discussions to cover all of the material factors leading up to the decision to materially increase the provision for loan losses. Discuss specific factors in addressing this comment rather than general references to the economy and increases in the loan portfolio.

Expand to cover the extent to which management expects the trend to continue.

Expand the discussion for all reported periods to explain variances in the provision for losses and its effect on the allowance for loan losses within the content of changes in the ratio of the allowance in non-performing loans. Explain specific events and circumstances which caused material changes in these ratios. (See Item 303 of Regulation S-X.)

4. Provide the disclosures required by paragraphs 17-20 of SFAS No. 115 with regard to off-balance sheet financial instruments (e.g., loan commitments, letters of credit, etc.). The staff also references the disclosure requirements of paragraph 47 of SFAS No. 105.

5. File an amendment to the Form OC, Form AC or Form MHC, as appropriate, in response to the comments. Clearly mark such amendments to disclose all changes from previous filings, including the changes made to the financial statements. A transmittal letter must accompany the amendment and clearly describe where the response to each of the staff's comments may be found in the marked amendments. Alternately, a copy of the staff's comments, with appropriate indication in the margin of that letter as to page and paragraph in the Form OC, Form AC or Form MHC, as appropriate, on which the response to the comment is reflected, may be provided in the transmittal letter. Also, provide any requested supplemental information. If the registrant believes that any comment is inapplicable, or if any comment is not dealt with in whole or in part, a full explanation or reasons for this position must be provided for the staff's consideration. (Do not ignore the staff's comments.)
6. Institutions guaranteeing the debt obligation of the ESOP or making annual contributions to cover the principal and interest of the ESOP debt obligation, as well as, institutions funding the common stock to be acquired by a management retention plan, should report the commitment of such funds by the institution as a reduction to the capital computations disclosed in the pro forma capital compliance table. (Staff requirement)
7. Provide the same level of cash flow disclosures on investment activities as presented in the annual financial statements. Disclose proceeds from sales of securities (both categories) separately from proceeds from maturities and redemption. For example, gain (loss) on securities held for investment and gain (loss) on securities available for sale should be separately disclosed.
8. The staff notes substantial unrealized losses in the investment portfolio at December 31, XXXX. Management's Discussion and Analysis should discuss such losses and the interest rate risks associated with the portfolio. In addition, the staff assumes that management has determined that such losses are temporary. Confirm our understanding.
9. Disclose in the footnotes to the capitalization and pro forma data tables the dilutive impact on existing stockholders' interest of issuing authorized but unissued common stock to the MRP subsequent to the initial stock offering for mutual holding company reorganization and conversions. (Staff requirement)
10. Disclose the pro forma unearned deferred compensation for management retention plans (MRPS) as a reduction to equity in the stockholders' equity section of the capitalization and pro forma tables for mutual holding company reorganizations and conversions. Common stock authorized and issued and additional paid-in capital should not reflect stock to be issued to the MRP subsequent to the initial stock offering. (Staff requirement)

11. Discuss the reason(s) for the significant increase in the Provision for Loan Losses and whether such increase represents a trend or uncertainty which is expected to continue.

Also, address the reason(s) for the significant strengthening of the Company's Allowance for Loan Losses as a percentage of total loans and as a percentage of non-performing loans in the Management's Discussion and Analysis.

12. Where the consolidated financial statements report material changes from period to period in one or more line items, the causes for the change should be described to the extent necessary to an understanding of the Company's business as a whole.

The Company need not recite the amount of change from the financial statements. Where the change is the result of several factors, the relative importance of each factor should of course be made clear, and quantified to the extent practicable. Those changes attributable directly to management's action should be distinguished from those factors outside the Company's control.

13. Revise the Management's Discussion and Analysis to explain how the financial statements reflect management's assessment of the business environment and its business plan. The changes should include analysis of the change in material income statement line items:
 - (a.) a discussion of loan demand for each period (by product and customer);
 - (b.) a discussion of the depositor base (effects of disintermediation, competitive rate conditions, rollover trends); and
 - (c.) a discussion of security selection strategy (geographic concentration, duration, credit risk, market risk, interest rate risk).
14. Provide an updated accountant's consent letter with each updated filing made with the OTS. The consent letter should give consent to use of the independent auditor's name in the "Expert" section of the filing.
15. Management should perform an analysis to determine if estimated earnings from the investment of net proceeds based on the arithmetic method prescribed by OTS regulations are materially different from the actual results expected by management based on actual yields management anticipates receiving on such net proceeds. If there is a material difference, the more conservative method must be used and the reasons for using the alternative method must be disclosed. (Staff requirement)
16. Provide a Recent Developments Section for each financial institution included in the application whose most recent financial statements are greater than 105 days old. (Staff requirement)

17. Provide the required recent comparative financial statements for each institution involved in the process. Financial statements should not be incorporated by reference. Report all required periods, including interim periods, in the comparative financial statements **side-by-side**. **The related notes must cover all periods presented, including comparative interim periods.** Financial data reported for the comparative periods in the notes to the financial statements and in the tables and schedules in the forepart of the filing must be consistent with the chronological order used for the financial statements and consistent throughout the filing. (Regulation 563b.101, Item 14)
18. The interest method should be used to amortize premiums and accrete discounts to income for loans, investments, mortgage-backed securities, loan origination/commitment fees, purchased mortgage servicing rights, and retained excess servicing. Methods that approximate the interest method are not acceptable.
19. The independent accountant(s) is required to read the relevant sections of the prospectus to make sure that her/his name is not being used in a way that indicate that her/his responsibility is greater than she/he intends and that, as an expert, there is no omission of a material fact that would make the filing misleading. (Regulations 563b.8(p) and 563b.101, Item 15)
20. The association is required to review the Management's Discussion and Analysis and add discussions, as appropriate, to fully explain the reasons for, and the impact of, each material change in the individually significant line items of the Statement of Financial Condition. The discussions must quantify and state relevant percentage relationships for such changes, discuss the reasons for, e.g., reacting to the general marketplace or attempting to redirect or to the focus of the operations of the association, and what actions management took, to accomplish the changes. Alternately, cross references are required to be provided to sections of the Form OC or Form 10-K where such discussions appear. The following are often omitted in error:
 - (a.) the increase/decrease in cash and cash equivalents
 - (b.) the increase/decrease in loans in total and changes in the individual categories of loans outstanding and any shifts in the concentrations of loans over the period presented;
 - (c.) the increase/decrease in mortgage-backed securities;
 - (d.) the impact of the sale of branches in terms of reduction of deposits and the impact on interest income;
 - (e.) the increase/decrease in Federal Home Loan Bank advances.
 - (f.) fluctuations in reverse repurchase agreements; and
 - (g.) significant changes in SFAS #107 Fair Value Disclosure

Similarly, the association must ensure that material activity reported in the statements of Cash Flows is discussed.

21. Allowance for Loan Losses. Describe the factors responsible for the credits to the provision for loan losses during each period presented. Relate the discussion to the level of non-performing loans, economic conditions and other credit quality considerations. The table on page XX, the financial statements and the related discussions should be revised to refer to the reduction in the loan loss allowance.
22. The staff notes that the registration statement presents the consolidated statements of income on page X and on page X-3. Revise to present only one complete set of financial statements. The registrant may want to consider presenting a condensed income statement as part of the MD&A discussions.
23. Expand the Management Discussion and Analysis to provide qualitative information about the institution's market risks, how those risks are managed and changes in either the risk exposures or how they are managed. Also provide quantitative information about market risk sensitive instruments. Staff also recommends similar disclosure for Small Business registrants. (SEC Regulation S-X, 4-08)
24. Revise and expand the discussion of "Other Loans of Concern" to disclose the nature (category) of these loans, the unpaid principal amount and the amount of any related loan loss allowance.
25. Expand and revise the first full paragraph on page XX to describe the nature and dollar amounts of all of the classified assets. The discussion should also indicate the dollar amount of these assets, if any, that are included in the table of non-performing assets on page XX.
26. Supplementally, for each period presented, please advise us as to the nature and dollar amounts of the significant components of (1) "Other operating income" and (2) "Other operating expense". Refer to OTS Regulation 563c.102, Items II.13 and 14. If any items of other operating income and expenses exceed 1% of the aggregate of total interest income and other income, such items should be disclosed separately on the face of the income statement. Alternatively, we will accept disclosure of such items in the notes to the financial statements.
27. Expand the disclosures in Note XX to disclose the useful life or range thereof for each major class of property and equipment.
28. Expand Note XX to provide the disclosures required by paragraph 5 (particularly *a* through *l*, and *i* through *m*) of FAS 132 for the Banks' defined benefit pension plan. We feel that the disclosures will provide useful information for investors and users of the financial statements.

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Common Reporting Comments (Legal)

1. **A bold-faced legend should be added stating that the securities being offered are not savings or deposit accounts and are not insured by the FDIC or any other government agency.**
2. **The offering circular should disclose the institution's intended use for the proceeds of the offering and compensation arrangements with management, including stock plans, for a one-year period following the offering.**
3. **The front cover page should disclose that there is no market for the Common Stock, there can be no assurance that a secondary market will develop for the Common Stock or, if a secondary market does develop, that it will provide holders of the Common stock with liquidity of investment.**
4. **The factors management may consider (in their relative order of importance) in determining to terminate the offering should be stated.**
5. **Discussion should be added to state the factors management will consider (in their relative order of importance) in deciding to reject any offer in the direct community or public offering.**
6. **Management's Discussion and Analysis should present separately captioned discussions of interest income and interest expense for each reported period. The association should ensure that the comparative discussions for the reported periods focus on all material factors affecting these results of operations plus other relevant discussions, such as the actions management took to cause or impact the results, the reasons for management's actions, and the market forces acting on the association.**
7. **Discuss the management's right to withdraw, cancel or modify the offer.**
8. **The undertakings required by Item 512 of Regulation S-K should be included in Part II of the Offering Circular.**
9. **The form of proxy should identify clearly and impartially each separate matter to be acted upon. See 17 C.F.R. Section 240.14a-4(a).**
10. **In view of the anti-takeover aspects of the SOP and Management Recognition Plan, highlight that the overall effect of this proposal will render more difficult the accomplishment of mergers or the assumption of control by a principal stockholder, and thus to make difficult the removal of current management.**

11. A separately captioned section should be included to discuss the potential for dilution of the book value per share of the Holding Company relative to the Savings Bank's book value. Discussion should be included of the potential dilution of the voting interests as a result of the offering and the issuance of warrants. A tabular presentation of the dilution should be included in the separately captioned section.
12. Supplementally discuss and confirm that the Association meets the eligibility requirements of a "small business issuer," as defined in Rule 12b-2 of the Securities Exchange Act of 1934 (the "Exchange Act") and Item 10(a) of Regulation S-B.

Proxy

13. The Summary Compensation Table should disclose the compensation for the named executive officer for each of the Association's last three completed fiscal years as required by Item 402 of Regulation S-K. In the event the association qualifies as a small business issuer, supplementally state that the association meets the criteria as defined in Regulation SB.
14. We note that there is no quoted market in the common stock, however, the disclosure should state the range of high and low bid information, if available, for the stock each full quarterly period within the two most recent fiscal years and any subsequent interim period for which financial statements are included as required by Item 201(a)(1)(iii) of Regulation S-K.
15. If the Bank reserves the right to adjourn the meeting in order to solicit additional proxies, it is the staff's view that adjournment for such purpose would constitute a substantive manner, and that the proxy would not confer discretionary authority under Rule 14a-4(c) to vote for adjournment in that context. Accordingly, in order to authorize a proxy holder to vote to adjourn the annual meeting in the event that sufficient votes are not obtained, the proxy card must include a separate proposal on this matter, and the proxy soliciting materials must include a discussion of the proposal pursuant to Item 21 of Schedule 14A of the Proxy Rules.
16. With respect to the holding company reorganization, the Company has included various provisions in its Certificate with anti-takeover and other effects, which vary significantly from the charter of ABC. We refer to the examination of monetary liabilities of directors, shareholder voting requirements for the Holding Company exceeding the requirements of Delaware law and provisions of the ABC articles and bylaws (such as the super-majority vote required for certain amendments to the Certificate of Incorporation and to any Bylaws), the "procedures for certain business combinations" described at pages 27-28 and the "Anti-greenmail " provision. As such, these are matters on which stockholders vote separately, to conform with Rule 14a-4 and Section II.H of SEC Release 34-31326. Revise the test of the Proxy Statement/Prospectus and the Proxy Card as appropriate to afford stockholders the opportunity to vote separately on each material matter effectively presented for their approval. You may mutually condition these "corporate governance" proposals and the proposal concerning the Plan, in order to ensure the entire package will either be adopted or rejected.

Conversion/Charitable Foundation

17. **The OTS regulations do not provide for the approval of the establishment of a private foundation. Accordingly, remove any and all statements in the proxy statement and/or the prospectus that indicate or imply that the OTS has “approved” the foundation. In addition, include a boldface statement in large type in the proxy statement and in the prospectus that indicates that the OTS has not approved or disapproved the establishment of the foundation.**

Disclose that the foundation will be required to make annual filings with the IRS to maintain its tax exempt status. Briefly describe the nature of the information included in such annual filings (such as a list of the grants and awards made during the year), whether the foundation is required to make such filings or other reports public and, if so, describe how copies of such filings and/or reports may be obtained from the foundation. In this regard provide the name, address, telephone number, and fax number of the person to contact.

In the proxy statement and prospectus provide a detailed discussion of the board of directors’ reasons for proposing the establishment of a private foundation rather than seeking to invest a similar amount of funds, under 12 C.F.R. section 545.74(d), in a community development subsidiary that would make investments that would serve primarily community, inner city or community development purposes and would qualify for CRA credit.

Conversion

18. **A statement to the effect that OTS approval does not constitute recommendation or endorsement of the plan by the OTS and that conversion stock is not insured should be highlighted in the section entitled “The Conversion.”**

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Hints to Speed Up the Conversion, Mutual Holding Company Conversion & Merger Review Process

1. Black line or highlight (eight manually or mechanically) each change in an amended filing. Include an updated and signed accountant's consent letter for each audit report included in the filing. Updated consent letters should specifically make reference to the amended filing and the use of the firm's name in the "Experts" section.
2. Provide the name, telephone number, and e-mail address for the executive officer(s) of the institution and for the independent accountant(s), or designated representative, with whom the comments are to be e-mailed and discussed.
3. Allow sufficient time for the staff to review and respond to review comments. Avoid filing updates on or close to the 135th day. Initial filings should be filed as early as possible during the review period but no later than 6 weeks before the 135th stale date. Comments on amendments are usually resolved within two days.
4. The regulation currently requires the filing of three copies of mutual holding company applications. File seven (7) copies to ensure a faster response time. Also send one courtesy copy to Roger Smith, Senior Securities Accountant and one to the primary attorney reviewing your application.
5. Bind and sequentially number all pages in all filings.
6. Include in the application the required financial statements and related financial data for both the acquirer and the acquiree in filings involving mergers. Incorporation by reference is not permitted.
7. Report financial tables and schedules in the forepart of the application in the same chronological order as that used for the financial statements.
8. Notify OTS if you decide not to go forward with a pending application or plan to update quarterly financial information. This will allow the staff to concentrate on active filings.
9. Review the latest report of examination.
10. Do not fail to make agreed-upon changes or furnish responses to request for supplemental information.
11. Prepare and submit a schedule that discloses the key dates for timely completion of the filing process including the date the registrant intends to go public.
12. Base all discussions in the financial statements and in the Management's Discussion and Analysis on generally accepted accounting principles. Any discussions of regulatory accounting principles should not overshadow the importance of generally accepted accounting principles.
13. If the filing is a dual filing with OTS and the Securities and Exchange Commission, (SEC), then provide OTS with a copy of the SEC comments and management's responses thereto.

14. Conversion applicants should submit their business plans to the Regional Director prior to the filing of the conversion application.
15. Submit a reputable appraisal. Appraisals which tend to “low-ball” will cause significant processing delays.
16. The OTS regulations require the OTS to review the application’s performance under the CRA, the contents of the business plan submitted in support of the application and other factors relating to the applicant’s performance in meeting the convenience and needs of the delineated community. Non-compliance with CRA guidelines may cause significant delays in the overall approval process. Contact your OTS Regional Office regarding management remuneration and proposed stock benefits plans prior to filing your application. Submit proposed remuneration plans and stock benefit plans (even if such plans are not intended to be implemented within the first year following conversion) as part of the application.
17. Provide a separate copy of your cover letter for each application or amended application. This will prevent distribution delays caused by making copies of cover letters.
18. Auditor materiality levels should be set at the level of each subsidiary thrift required to file a Thrift Financial Report; when the thrift or thrifts exist under a holding company structure in instances where separate audits are not issued for the subsidiary.
19. Filings made pursuant to the provisions of the Securities and Exchange Commission Regulation SB, should clearly present the Small Business Election on the front cover.

**Office of Thrift Supervision
Accounting Policy Division (APD)
General Procedures for Processing Conversion Securities Filings
December 2001**

Background

Thrift institutions file Conversion Securities Filings (Securities Filings) with the Office of Thrift Supervision (OTS) for conversions of mutual institutions to stock institutions, formation of mutual holding companies, and conversions/mergers. We are responsible for reviewing these Securities Filings for compliance with generally accepted accounting principles (GAAP), OTS Rules and Regulations, and the Securities Exchange Act Laws and Regulations. The primary focus of our accounting review is to ensure that financial statements, notes to the financial statements, and related disclosures and discussions in the Securities Filing comply with the aforementioned rules and regulations. Accounting comments are formulated, communicated to, and discussed with, the thrift institution's management (management) and its independent auditors.

To expedite, facilitate, and improve the Securities Filings process, we developed and implemented procedures to conduct pre-filing meetings and to provide written accounting comments. We continually review and revise these procedures to provide better service to OTS institutions, while also ensuring that the financial statements and related disclosures and discussions presented in the Securities Filings comply with GAAP, and applicable rules and regulations.

Pre-Filing Meeting Procedures

When we are advised or become aware that an OTS institution intends to file a Securities Filing for the conversion of a mutual institution to a stock institution, formation of a mutual holding company, or conversion/merger, we contact management or its representatives to arrange a pre-filing meeting. Management or its representatives may also contact us to initiate a pre-filing meeting. Pre-filing meetings are intended to: (1) establish communication with management and its representatives, (2) explain our process for reviewing Securities Filings, (3) discuss common reporting deficiencies, (4) obtain the telephone numbers and e-mail addresses of persons who are to receive the accounting comments, (5) provide management and its representatives with our phone numbers and e-mail addresses, (6) establish timelines for reviewing the Securities Filing and providing written accounting comments, and (7) e-mail OTS's current Report on Securities Filings.

Timeline Procedures

During the accounting review process (i.e., pre-filing meetings, and initial and subsequent reviews), we will, in consultation with institution management or its representatives, establish timelines for reviewing the Securities Filing, any amendments thereto, and providing written accounting comments. Our goal is to resolve the

accounting comments as expeditiously as possible and within management's timetable for obtaining APD's clearance of the Securities Filing. The timeliness and completeness of management's responses to our accounting comments is critical to resolving the accounting comments.

Preliminary Review Procedures

Upon receipt of a Securities Filing, we perform a preliminary review to determine if the Securities Filing is basically complete, and contains the required audited fiscal year end financial statements and unaudited interim financial statements. This review may also identify significant accounting or disclosure issues that need to be resolved before the Securities Filing can be formally reviewed. We communicate any such issues to management or its representatives as soon as possible. Depending on the nature of the deficiencies, we will either proceed with our initial review or advise management that the Securities Filing is deemed materially incomplete, and that the formal review process will not commence until the deficiencies have been resolved and a materially complete Securities Filing is filed with OTS.

Throughout the entire accounting review process, including pre-filing meetings, we consult with OTS's Chief Accountant and other appropriate OTS staff to discuss significant accounting issues, as well as any other related disclosure issues.

Initial and Second Review Procedures

After the preliminary review has been completed, an APD staff member is designated as the primary reviewer. The primary reviewer performs a comprehensive initial review of the Securities Filing. Upon completion of the initial review, another APD staff member performs a second review. The primary reviewer e-mails written comments to management and its designated representatives.

The comments include instructions for management to respond in writing to all of the accounting comments. Management or its representatives may contact us to obtain clarification as to any of the accounting comments. Since the financial statements and disclosures in the filing are management's responsibility, we expect management to assume responsibility for the preparation of responses to the accounting comments, and for any related conference calls.

When the Securities Filing is a dual Securities Filing with the Securities and Exchange Commission (SEC), management is also instructed to provide us with copies of any comments received from the SEC as well as copies of management's responses to the SEC's comments. OTS is generally the primary regulator of the thrift institution involved in the Securities Filing, has its own Rules and Regulations applicable to Securities Filings, and we perform our reviews of Securities Filings independent of any review by the SEC's staff. Consequently, the nature and extent of the accounting comments we issue may be different than those issued by the SEC's staff.

E-Mail Procedures for Accounting Comments

Although OTS cannot guarantee the security and integrity of the e-mail system, we contact management to obtain their verbal consent to e-mail our accounting comments. We also obtain the e-mail addresses, telephone numbers, and names of the individuals (CEO/CFO, independent auditors, and legal counsel) who are to receive the accounting comments. We send test e-mail messages to those individuals and require confirming e-mail messages to ensure that we have the correct e-mail addresses.

After the Securities Filing has been reviewed, we e-mail the accounting comments to management, including any others (i.e., independent auditors and outside legal counsel) designated by management. We also advise management and its designated representatives as to our availability during the entire process.

Procedures for Reviewing Management's Responses and Amendments

Upon receipt of management's responses to the accounting comments and any amendment to the Securities Filing, the primary reviewer reviews the responses and amendment to determine if management satisfactorily addressed all of the accounting comments. Based upon the degree of compliance with the accounting comments and revisions made to the Securities Filing, the primary reviewer will either prepare additional comments or prepare an OTS internal memo indicating that our accounting comments have been resolved. Upon completion by the primary reviewer, another member of our staff performs a second review. The primary reviewer e-mails any additional comments to management and its designated representatives. These additional comments also include the instructions discussed under the Initial and Second Review Procedures section.

Clearance Procedures

After all our accounting comments and any related issues have been satisfactorily resolved, the primary reviewer notifies OTS's Business Transactions Division that the accounting comments have been cleared.

Independent Audit Requirements

Thrift institutions that file 1934 Securities Act Filings with OTS are required to comply with applicable 1934 Securities Act rules, regulations and guidances issued by the Securities Exchange Commission (SEC) for public filers. Consequently, the SEC recently issued “Revision of the Commission’s Auditor Independence Requirements” (SEC Regulation 17 CFR Parts 210 and 240) also applies to public thrifts that file with OTS under the 1934 Securities Act rules.

The revised auditor independence requirements articulate four principles used to measure an auditor’s independence. An accountant is not deemed to be independent when the accountant:

- 1. has a mutual or conflicting interest with the audit client,**
- 2. audits his or her own firm’s work,**
- 3. functions as management or an employee of the audit client, or**
- 4. acts as an advocate for the audit client.**

To aid in the compliance with the revised SEC auditor independence requirements, institutions that file under the 1934 Securities Act rules with OTS should obtain a copy of the SEC’s final rule that documents all of the revisions. A copy may be obtained from the Securities Exchange Commission’s web site located at www.sec.gov/rules.final/33-7919.htm



Office of Thrift Supervision
Department of the Treasury

1700 G Street, N.W., Washington, DC 20552 • (202) 906-6000

April 18, 2001

[REDACTED]

Re: Request for Waiver of Certain Provisions of
the OTS Securities Offering Regulation

Dear Mr. [REDACTED]:

This letter responds to your letter dated April 13, 2001, in which you request, on behalf of [REDACTED] ("Association"), a wholly owned subsidiary of [REDACTED] ("Holding Company"), that the Office of Thrift Supervision ("OTS") waive certain provisions of its regulations related to the offering of securities by OTS regulated entities, 12 C.F.R. Part 563g ("Securities Offering regulations"). The Association requests that it be permitted to engage in a registered offering of nonconvertible subordinated debentures, subject to the same requirements that are applicable to issuances of such securities by national banks under regulations promulgated by the Office of the Comptroller of the Currency ("OCC") at 12 C.F.R. § 16.6 ("OCC section 16.6"), and compliance with the terms of an OTS letter dated November 25, 1996 ("November 1996 letter"), and certain limitations enumerated therein. For the reasons discussed below, the Association's request is granted.

Background

The Association proposes to engage in a [REDACTED] note program in which it, and a sister state-chartered savings bank, [REDACTED], would issue certain registered and unregistered debt to institutional investors¹ by use of a "continuous" or "delayed" ("shelf") offering. The debt instruments may consist of senior or subordinated global notes with maturities ranging from 7 days to 30 years or more from their respective issuance dates, using a specified interest rate among those described in the Master Offering Circular, and denominated in U.S. dollars or certain other specified foreign currencies.² The range of terms available under

¹ The institutional investors would qualify as "accredited investors" under Rule 501 of the Securities and Exchange Commission, 17 C.F.R. § 230.501 (2000).

² See Op.C.C. dated February 1, 2000.

the [REDACTED] note program is set out in the Master Offering Circular. The terms of issuance will be determined by the Association based on its financing needs and market conditions at the date of issuance and will be set out in a pricing supplement to the Master Offering Circular. The Association will use a Global Agency Agreement in lieu of an indenture to set out certain rights and to direct out the administration of the offering. Certain of the subordinated debt offered by the Association may be subject to registration pursuant to the Securities Offering regulations, therefore, these securities will be registered with the OTS. You have supplied the OTS staff with draft copies of the proposed Master Offering Circular and the Global Agency Agreement to assist the staff in the review of the Association's request. The Association applied to include a certain amount of the subordinated debt in its regulatory capital, which request was approved by the OTS West Regional Office on April 12, 2001.

Previously, the OTS, in a letter dated August 23, 1996, was requested to waive certain of its Securities Offering regulations, subject to the condition that the requesting savings bank adhere to specific OCC regulations addressing the manner of the offering and the type of security being offered, *i.e.*, OCC section 16.6. The requesting savings bank would remain subject to the antifraud provisions of applicable statutes and regulations. The OTS staff reviewed OCC section 16.6, compared and contrasted that regulation to the Securities Offering regulations, considered the reasons cited by the requesting savings bank for waiving the Securities Offering regulations, and concluded that, for the reasons stated and with certain limitations, the OTS would waive certain provisions of the Securities Offering regulations for the registration of the requesting savings bank's nonconvertible debt offering and permit the application of OCC section 16.6 to the offering. The OTS staff's review and conclusions were set forth in the November 1996 letter cited by the Association, but the November 1996 letter limited the application of the terms to the specific offering by the requesting savings bank. The Association requests that the OTS permit it to engage in an offering of debt securities, as briefly described above, in compliance with the terms of the November 1996 letter.

Discussion

As stated in the November 1996 letter, the Securities Offering regulations are intended to foster integrity, confidence, and discipline in the market for thrift securities.³ Further, the Securities Offering regulations are designed to accomplish these purposes through regulations requiring full disclosure of relevant, material information regarding the security and the issuer.⁴

The Securities Offering regulations⁵ permit the OTS to waive any requirement of the Securities Offering regulations if a particular provision is determined to be unnecessary by the

³ 50 Fed. Reg. 53284 (Dec. 31, 1985).

⁴ Id.

⁵ 12 C.F.R. § 563g.14 (2000).

OTS to a particular transaction. In addition, OTS regulations, at 12 C.F.R. § 500.30(a), include a general waiver provision, which states that the "Director may, for good cause and to the extent permitted by statute, waive the applicability of any provision of this chapter."

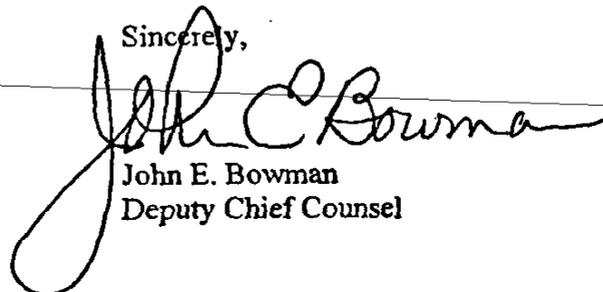
We have reviewed the terms of the proposed debt offering, the terms of the November 1996 letter, and the basis for our conclusions, and have concluded that there is an adequate basis for the OTS to waive provisions of the Securities Offering regulations identified by the Association, subject to the Association's compliance with the reasoning and terms of the November 1996 letter and, specifically, with requirements of OCC section 16.6 as if the Association were a national bank, except as described below. Accordingly, the OTS hereby waives 12 C.F.R. §§ 563g.2, 563g.5, 563g.6, 563g.7, 563g.12, and 563g.18, as they apply to the proposed offerings, subject to the following limitations:

1. The Association complies with the requirements of 12 C.F.R. § 16.6;
2. The OTS does not waive 12 C.F.R. §§ 563g.2(b),⁶ 563g.5(b), 563b.8(e)(4), and 563b.8(i); and
3. The OTS waives 12 C.F.R. § 563g.5 only to the extent that the OCC regulations do not impose analogous requirements on debt offerings that are subject to 12 C.F.R. § 16.6.

In reaching the foregoing conclusions, we have relied on the factual representations contained in the materials submitted to us by the Association. Our positions depend on the accuracy and completeness of those representations. Any material change in facts or circumstances could result in different conclusions from those expressed herein. Moreover, our conclusions represent our position on the waiver of the regulations implicated in this particular case. Accordingly, this letter may not be used as precedent by any other parties.

If you have any questions regarding the above matter, please contact Gary Jeffers, Senior Attorney, Business Transactions Division, at (202) 906-6457.

Sincerely,



John E. Bowman
Deputy Chief Counsel

⁶ This regulation sets forth safe harbor provisions that define what communications do not constitute offers for sales of securities. This section is substantially the same as 12 C.F.R. § 16.4(a)(1)-(3), to which offerings under section 16.6 are subject.



Office of Thrift Supervision
Department of the Treasury

1700 G Street, N.W., Washington, D.C. 20552 • (202) 906-6000

November 25, 1996

[REDACTED]

Re: Request for Waiver of Certain
Provisions of the OTS Securities
Offering Regulation

Dear [REDACTED]:

This letter responds to your letter dated August 23, 1996, in which you request, on behalf of [REDACTED] ("Savings Bank"), a wholly owned subsidiary of [REDACTED] ("Holding Company"), that the Office of Thrift Supervision ("OTS") waive certain provisions of its Securities Offering Regulations, 12 C.F.R. Part 563g. The Savings Bank requests that it be permitted to engage in an offering of nonconvertible debentures, subject to the same requirements that are applicable to issuances of such securities by national banks under regulations promulgated by the Office of the Comptroller of the Currency ("OCC") at 12 C.F.R. § 16.6.

Background

The Savings Bank proposes to issue investment grade debt to institutional investors. The Savings Bank asserts that the applicable regulations governing registration of securities with the OTS impose regulatory burdens and financial costs in excess of those imposed under OCC regulations in connection with offerings of certain investment grade debt securities. The Savings Bank, therefore, requests that the OTS waive certain of its Securities Offering Regulations, subject to the condition that the Savings Bank adhere to specific OCC regulations addressing this type of security.¹ The Savings Bank would, of

¹ Section 16.6 of the OCC's Securities Offering Disclosure Rules provides that nonconvertible debt securities may be issued
(continued...)

course, remain subject to the antifraud provisions of applicable statutes and regulations.

Specifically, the Savings Bank requests that the OTS waive the requirements of 12 C.F.R. §§ 563g.2, 563g.5, 563g.6, 563g.7, 563g.12, and 563g.18. The Savings Bank asserts that the OTS should waive these provisions and apply the provisions of section 16.6 to qualifying offerings of investment grade debt for four reasons. As more fully explained in your August 23, 1996, letter, the Savings Bank argues that persons involved in the market for large denomination debt offerings are sophisticated persons, including investment bankers, accountants, financial analysts and institutional investors who are well aware of and familiar with the form and content of offering circulars. The OCC regulations require that the purchasers be accredited

¹(...continued)

under a simplified scheme of registration and that such sales will be deemed to be in compliance with the OCC requirements pertaining to the filing of registration statements (12 C.F.R. § 16.3), the form and content of registration statements (12 C.F.R. §§ 16.15(a) and (b)), and filing of current and periodic reports (12 C.F.R. § 16.20), if the following conditions are met:

1. The bank issuing the debt securities is a subsidiary of a bank holding company that has securities registered under the Exchange Act;
2. The debt is offered and sold only to accredited investors (as defined in SEC regulations);
3. The debt is sold in minimum denominations of \$250,000 and each note or debenture is legended to provide that it cannot be exchanged for notes or debentures of the bank in smaller denominations;
4. The debt is rated investment grade;
5. Prior to or simultaneously with the sale of the debt, each purchaser receives an offering document that contains a description of the terms of the debt, the use of proceeds, and method of distribution, and incorporates the bank's latest call report and the bank holding company's Forms 10-K, 10-Q, and 8-K filed under the Exchange Act; and
6. The offering documents and any amendments are filed with the OCC no later than the fifth business day after they are first used.

investors. Accredited investors generally have retained financial analysts, or possess the knowledge themselves, to analyze relevant financial information and make their own investment decisions. These persons generally are able to obtain the necessary information from issuers for making informed, rational investment decisions. Therefore, the Savings Banks argues, the requested waiver will not be detrimental to investors or the securities market for these securities.

Second, the Savings Bank argues that the OTS should establish a "level playing field" for banks and savings associations undertaking investment grade, large denomination debt offerings. The Savings Bank believes the OTS's present registration requirements are far more complex, costly and burdensome than the rules applicable to national banks for these debt offerings. The Savings Bank argues that the OTS should pursue policies that provide for regulatory parity and eliminate unnecessary regulatory burdens provided that the policies are consistent with the OTS's concerns for safe and sound operation of savings associations, protection of the securities markets, and protection of investors.

Third, the Savings Bank observes that disclosures by the Savings Bank made in connection with a public offering of its debt securities would be subject to the unsafe and unsound practice (antifraud) provisions of the OTS Securities Offering Regulations, 12 C.F.R. § 563g.10, as well as the general antifraud provisions of Federal and state securities laws. Accordingly, the Savings Bank will bear responsibility for determining that disclosure is adequate in the offering circular for the debt securities and would be liable for any material disclosure deficiencies.

Finally, that Savings Bank contends that, through incorporation by reference of the Holding Company's reports filed pursuant to the Securities Exchange Act of 1934 (the "Exchange Act"), accredited investors will have available to them comprehensive audited financial information regarding the Savings Bank, albeit on a consolidated basis with the Holding Company, in addition to issuer-specific financial information through the quarterly Thrift Financial Report ("TFR") filings. Investors will have available to them comprehensive financial and other information regarding the Savings Bank in a manner that has been readily accepted by the market over the years.

Discussion

The OTS's Securities Offering Regulations are intended to foster integrity, confidence, and discipline in the market for

thrift securities.² Further, the regulations are designed to accomplish these purposes through regulations requiring full disclosure of relevant, material information regarding the security and the issuer.³

The Securities Offering Regulations⁴ permit the OTS to waive any requirement of the Securities Offering Regulations if a particular requirement is determined to be unnecessary by the OTS. In addition, OTS regulations, at 12 C.F.R. § 500.30(a), include a general waiver provision, which states that the "Director may, for good cause and to the extent permitted by statute, waive the applicability of any provision of this chapter."

We have concluded that there is an adequate basis for the OTS to waive certain provisions of the OTS Securities Offering Regulations identified by the Savings Bank, subject to the Savings Bank's compliance with requirements analogous to those set forth at section 16.6, except as described below. Accordingly, the OTS hereby waives 12 C.F.R. §§ 563g.2, 563g.5, 563g.6, 563g.7, 563g.12, and 563g.18, as they apply to the proposed offerings, subject to the following limitations:

1. The Savings Bank complies with the requirements of 12 C.F.R. § 16.6;
2. The OTS does not waive 12 C.F.R. § 563g.2(b). This regulation sets forth safe harbor provisions that define what communications do not constitute offers for sales of securities. This section is substantially the same as 12 C.F.R. § 16.4(a)(1)-(3), to which offerings under 12 C.F.R. § 16.6 are subject;
3. The OTS does not waive 12 C.F.R. §§ 563g.5(b), 563b.8(e)(4), and 563b.8(i); and
4. The OTS waives 12 C.F.R. § 563g.5 only to the extent that the OCC regulations do not impose analogous requirements on debt offerings that are subject to 12 C.F.R. § 16.6.

In reaching the foregoing conclusions, we have relied on the factual representations contained in the materials submitted to us. Our positions depend on the accuracy and completeness of

² 50 Fed. Reg. 53284 (Dec. 31, 1985).

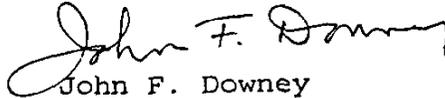
³ Id.

⁴ 12 C.F.R. § 563g.14 (1996).

those representations. Any material change in facts or circumstances could result in different conclusions from those expressed herein. Moreover, our conclusions represent our position on the waiver of only the regulations implicated in this particular case. Accordingly, this letter may not be used as precedent by any other parties.

If you have any questions regarding the above matter, please contact Gary Jeffers, Senior Attorney, Business Transactions Division, at (202) 906-6457.

Sincerely,



John F. Downey
Executive Director, Supervision

cc: Regional Director
Regional Counsel
Caseload Manager
West Regional Office

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OFFICE OF THRIFT SUPERVISION

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