

Thacher Proffitt

Thacher Proffitt & Wood
11 West 42nd Street
New York, New York 10036
212.789.1200

Fax: 212.789.3500
www.tpwlaw.com

Kelli Appertong
Oliver J. Armas
Robert C. Azarow
Charles Douglas Bethall
Tizila K. Bonner
W. Edward Bright
Robert F. Brodegaard
Diana G. Browne
Jean E. Burke
Albert J. Cardinal
V. Gerard Corrado
A. James Cotine
Mason L. Crocker
Kathryn Craze
Charles A. Ditzgen
Gerald J. Ferguson
Jonathan D. Forstot
Joseph Philip Forte
Elen M. Goodwin

Christopher F. Graham
Joseph G. Grasso
Joel B. Harris
Michael E. Helmer
Richard M. Horowitz
Thomas J. Intume
John J. Kim
Jeffrey H. Koppole
Stephen S. Kudenholdt
Thomas M. Leslie
Andrea N. Mandell
Robert E. McCarthy
Douglas J. McClintock
Michael C. McGrath
Allen D. Moraland
Jeffrey J. Murphy
Joseph S. Nicotra
Leonard T. Nutra*
Stephen F. J. Ornstuh*

Kevin J. Pankett
Laurie G. L. Rall
Richard A. Schaberg
James R. Shorter, Jr.
Robert Sidorisky
Donald F. Simone
Mark I. Sokolow
Jeffrey Stern
Francis X. Sulger
Thomas N. Talley
Paul D. Tvoetstrand
Walker G. Van Dam, Jr.
Stephen T. Whelan
Mitchell G. Williams
Ormer S. J. Williams
John M. Woods
**Not admitted in New York*

9

May 9, 2002

Manager
Dissemination Branch
Information Management and Services Division
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552

Attention: Docket No. 2002-11

Re: Proposed Amendments to Conversion Regulations

Ladies and Gentlemen:

We are writing on behalf of our client, Hudson City Savings Bank ("Hudson City"), which is a New Jersey chartered stock savings bank, Hudson City Bancorp, Inc., which is the intermediate stock holding company for Hudson City, and Hudson City, MHC, which is the mutual holding company for Hudson City. On April 9, 2002 the Office of Thrift Supervision ("OTS") published a notice of proposed rulemaking governing mutual savings associations, mutual holding company reorganizations and conversions from mutual to stock form ("Re-proposal"), which is a re-proposal of the notice of proposed rulemaking on the same subject published by the OTS on July 12, 2000 ("First Proposal"). In Section 6 of the Re-proposal, the OTS invites comment to the Re-proposal. Set forth in this letter are Hudson City's comments.

Hudson City's mutual holding company reorganization, completed in July 1999, was under the jurisdiction of the Federal Deposit Insurance Corporation (the "FDIC"). This transaction was analyzed by the FDIC for compliance with the OTS mutual holding company and conversion regulations except to the extent the FDIC had conflicting regulations. This analysis is mandated by

Manager
Dissemination Branch
May 9, 2002

Page 2.

Section 303.163 of the rules and regulations of the FDIC. Due to this requirement any change to the OTS conversion or mutual holding company regulations will have a direct and material impact on all state chartered, FDIC insured mutual savings banks or stock form savings bank subsidiaries of mutual holding companies, such as Hudson City. For this reason we believe Hudson City's comments should be afforded no less consideration than those of a federally chartered savings association.

1. General

In the First Proposal and the Re-proposal, the OTS notes that it encourages consideration of the mutual holding company ("MHC") alternative for mutual institutions that elect to convert to stock form. Hudson City fully supports an attempt by the OTS to promote the MHC form as a viable alternative to full conversion and believes that the MHC form should be a viable and competitive business entity. While much of the Re-proposal is a step forward in that regard, we believe that some aspects of the Re-proposal actually serve to put MHCs at a competitive disadvantage as compared with other forms of business entities. In addition, we feel that certain aspects of the Re-proposal make a second step conversion an unattractive option, which also serves to disadvantage MHCs.

Our comments address the following three specific issues where we feel the Re-proposal results in MHCs being put at a disadvantage: (1) limits on stock benefit plans; (2) limits on share repurchase plans upon a second step conversion; and (3) shareholder approval of stock benefit plans upon a second step conversion. Each of these three issues is addressed separately below. Our comments also address one aspect of the business planning process described in the Re-proposal.

2. Limits on stock benefit plans

In the Re-proposal, the OTS proposes to add a provision to Section 575.8(a) that states that it will not approve management benefit plans that in the aggregate (excluding ESOPs) award more than 25% of the number of shares ultimately issued in the public offering to minority shareholders. While meant to clarify, we feel that it is unclear how the proposed 25% restriction will be applied. First, it is unclear what management benefit plans will count toward the 25% limit. The proposed regulation excludes ESOPs from the 25% restriction, without further elaboration, while the preamble states that the 25% restriction does not include ESOP shares allocated to managers. There is no mention of whether the restriction applies to unallocated ESOP shares or ESOP shares allocated to non-management employees. Further, there is no guidance as to exactly what management benefit plans the restriction *does* apply to.

Furthermore, the preamble states that the 25% limit is calculated based on the number of shares ultimately issued in the public offering to minority shareholders, while the proposed regulation states that the calculation will be based on the outstanding common stock held by persons

other than the MHC parent. This inconsistency makes it unclear how the 25% limit should be calculated and whether, for instance, treasury shares or shares retired after a stock repurchase program should be included in determining whether the 25% limit has been reached.

3. Limits on share repurchase plans upon a second step conversion

Section 563b.3(g)(3), as revised in the Interim Rule published simultaneously with the First Proposal, eliminates restrictions on stock repurchases by converted savings associations after the first year following conversion. Stock repurchases in the first year are still subject to OTS approval and such approval may only be given in "extraordinary" circumstances. Despite several comments received by the OTS to the Interim Rule expressing the view that an MHC that completes a second step conversion should not be subject to any additional OTS approval or oversight with respect to share repurchases, the Re-proposal remains consistent with the Interim Rule. Hudson City continues to believe that there should be no restrictions on repurchases for an MHC completing a second step conversion.

The belief of the OTS, expressed in the Re-proposal, that fully converted companies should receive the same treatment whether they reach that status in one step or two, fails to consider the reality that an MHC that has been repurchasing its shares for a period of time is in a different position than a newly converted institution or an MHC that has not issued stock. Public shareholders have an expectation of the institution's flexibility to respond to market conditions by managing capital, including engaging in stock repurchase programs, in order to enhance shareholder value. Management is experienced in analyzing market and economic conditions and should be permitted to decide to repurchase stock that it believes to be undervalued in the market to send a positive message of confidence in the institution's future. In addition, the market will expect the institution to continue to repurchase shares consistent with past practice when and if the board deems it advantageous. Any loss of flexibility in the institution's ability to manage its capital would be detrimental to the performance of its stock in the market as well as the ability of the institution to attract investors should it desire to engage in a second-step transaction. The timing of an institution's adoption of a stock repurchase program should thus be dictated by the necessities of the market, not by a waiting period imposed merely because it is also imposed on institutions in a substantially different position than those completing a second step conversion.

We suggest that the OTS add an exception to its rules limiting share repurchases in the first year following conversion (whether full conversion or a second step transaction) for MHCs that had previously issued stock, had a public float of its shares for at least one year and had, immediately prior to the second step transaction, at least 10% of its outstanding shares held by public shareholders.

4. Shareholder approval of stock benefit plans upon a second step conversion

Under Section 563b.500 of the Proposed Regulations, a converted savings association may implement a stock option plan or management or employee stock benefit plan within 12 months following conversion only with shareholder approval, which approval cannot be sought until six months after conversion. Pursuant to conditions generally set forth in the OTS approval letter of an MHC second step conversion, such regulation may become applicable to an MHC engaging in a second step conversion. The First Proposal had proposed a possible check-off box on stock order forms to vote for or against stock benefit plans at the time of purchase of stock in MHC stock issuances, but such feature was not included in the Re-proposal and no alternative method was suggested to reduce the burden of waiting six months after conversion to obtain stockholder approval.

Hudson City believes that an MHC engaging in a second step conversion should be permitted to seek shareholder approval of proposed stock benefit plans at the time of conversion from the then minority shareholders. If the minority shareholders approve such plan when the second step conversion is approved, options could be granted as of the effective time of the second-step conversion at the exchange price. Because of the fiduciary duty owed to existing shareholders of the savings association in determining the exchange price for additional shares, there is no opportunity for abuse as the directors and officers receiving the grants of restricted stock or options are being treated no better than the minority shareholders.

5. Pre-filing meetings regarding the business plan

The Re-proposal reiterates the OTS position that business plans are a critical part of the conversion process. Hudson City agrees with the OTS position that pre-filing meetings with management of the converting company are very useful and productive in terms of providing guidance on the issues the OTS would like to have addressed in the business plan. However, the requirements for a pre-filing meeting set forth in Section 563.100(a) are not clear. The preamble to the Re-proposal seems to require a pre-filing meeting with the Board of Directors whereas the restated regulations make no mention of who is required to attend the meeting. Hudson City believes that the benefits of a pre-filing meeting with the Board of Directors are illusory at best. The function of the Board of Directors in establishing the strategic direction of the institution is not altered by the conversion process. Further, we do not believe the OTS intends that the Board of Directors take on management's role in the business planning process. Since management prepares the business plan (with assistance from various advisors and consultants when necessary) at the Board's direction and for the Board's review, it would seem that management will benefit most from a pre-filing meeting. We request that the OTS clarify that only management of the institution is required to attend the pre-filing meeting set forth in Section 563.100(a) or, if after consideration of these issues the OTS continues to require a meeting with the Board, that the OTS provide additional guidance on the purposes and merits of such a meeting.

Manager
Dissemination Branch
May 9, 2002

Page 5.

We hope that the comments set forth herein are helpful in your efforts to further improve the regulations governing mutual savings associations, conversions and mutual holding company reorganizations. The executive officers of Hudson City and representatives of our firm would greatly appreciate the opportunity to discuss these comments in greater detail at your convenience. Please call Robert C. Azarow at (212) 912-7815 or Omer S.J. Williams at (212) 912-7432 if you have any questions regarding the foregoing or to arrange a conference with our client to discuss the foregoing.

Very truly yours,

THACHER PROFFITT & WOOD

By: 
Robert C. Azarow

cc: David A. Permut, Esq.
Counsel (Banking and Finance)
Office of Thrift Supervision

Mr. Ronald E. Hermance
Hudson City Savings Bank