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May 9, 2002

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, N.W.
Washington, DC 20552
Attention: Docket No. 2002-11

Re: Mutual Savings Associations, Mutual Holding Company
Reorganizations, And Conversions From Mutual to Stock Form
67 FR 17228 (April 9, 2002)

Dear Madam or Sir:

America's Community Bankers ("ACB")¹ welcomes the opportunity to comment on the proposal issued by the Office of Thrift Supervision ("OTS") that would amend the agency's regulations governing mutual savings associations, mutual holding company reorganizations, and conversions from mutual to stock form.² This proposal is a re-proposal of a comprehensive proposed revision of the mutual to stock conversion and mutual holding company regulations.³

ACB Position

ACB supports the OTS is its efforts to update the agency's mutual to stock conversion regulations and the development of related supervisory guidance adopted by the OTS for mutual savings associations and mutual holding companies. The re-proposal incorporates a number of suggestions that ACB and other groups included in comment letters submitted in response to the original proposal. We encourage the agency to continue to work to ensure that examiners and policy makers understand the unique features of mutual institutions and mutual holding companies and have the appropriate tools with which to examine and supervise them.

ACB's membership includes the majority of savings institutions currently in mutual form, including both savings associations chartered and regulated by the OTS and state-chartered savings banks whose primary federal regulator is the FDIC. While we strongly support the

¹ ACB represents the nation's community banks of all charter types and sizes. ACB members, whose aggregate assets exceed \$1 trillion, pursue progressive, entrepreneurial and service-oriented strategies in providing financial services to benefit their customers and communities.

² 67 Fed. Reg. 17228 (Apr. 9, 2002).

³ 65 Fed. Reg. 43029 (July 12, 2000).

ongoing efforts of the OTS to revise and update the agency's regulations and supervisory policies applicable to mutual institutions and mutual holding companies, ACB has a policy of also supporting a rational conversion process. Whether an institution remains in mutual form is a matter for its board of directors, management, and ultimately its members. We do not believe that the OTS or any other regulatory agency should be in the position of making that kind of judgment unless there is a safety and soundness concern.

Background

This re-proposal represents the final piece in a comprehensive regulatory strategy governing mutual institutions, mutual holding company reorganizations and mutual-to-stock conversions. Specifically, the OTS has developed new analytical techniques, examination procedures, and industry guidance to address, within the context of safe and sound operations, many of the concerns mutual institutions have raised about their business form and to improve supervision of mutual institutions. The re-proposal governs conversions from mutual to stock form, including pre-conversion and application requirements, voluntary supervisory conversions, and mutual holding company formations in connection with mutual-to-stock conversions.

Distributions of Capital

Before discussing the specifics of the re-proposal, ACB would like to reiterate an issue that the OTS highlighted in the initial proposal and about which the agency has indicated that it would not issue guidance. The OTS asked whether it should develop regulations or guidance regarding special capital distributions by mutual institutions. ACB is strongly opposed to the issuance of any regulation or guidance on this type of distribution and we support the OTS's decision. Many institutions have the power to make such distributions, if management believes that such distributions would be in the best interests of the institution, and the agency also has ample supervisory authority to review such distributions when made by a mutual institution based on its capital position and other relevant factors. Mutual institutions develop these types of plans based on their community and financial conditions. We believe that the issuance of a regulation or guidance in this area might cause depositors, members of the community, or others to misapprehend that they have a right to receive such distributions and would create expectations about them. These issues have been settled by the courts and by agency action, however, there continue to be instances in which parties disrupt the operation of a mutual institution or second guess management decisions by demanding that distributions be made. We strongly support the OTS's decision.

Re-Proposal

The OTS has amended the initially proposed pre-application meeting requirements. ACB supports the amended pre-filing meeting requirements. We did not believe that extending the application process to include this review would be helpful to ensuring an efficient analysis. Rather than requiring that there be a pre-filing meeting prior to the filing of the business plan 30

days prior to filing the application for conversion, the re-proposal would require that the converting institution and the appropriate regional office meet at least ten days prior to the filing of the plan of conversion. If necessary, OTS staff will meet the board of the institution at the institution's offices. At this meeting, the board will be required to submit a brief written strategic plan for the conversion which will be the focus of the discussion. ACB believes that such a discussion may be useful, but we caution that the judgment of management and the board of the institution is an important factor in the decision to adopt a plan of conversion and that the OTS should not anticipate the strategic or business reasons that conversion is being considered.

Rather than imposing additional requirements, ACB encourages the OTS to use its existing authority when reviewing conversion applications to deny those proposals that lack comprehensive business plans that meet safety and soundness standards. Furthermore, the OTS should ensure that meaningful discussions occur during a pre-filing meeting between potential applicants and regional officers. The regional OTS office should serve as a resource for an institution that is considering filing a conversion application. Once an institution has made a deliberate and strategic decision to convert, however, we believe the regulatory application process should be as thorough, comprehensive and efficient as possible.

The re-proposal also amends the initial proposed business plan requirements. First, the re-proposal revised the business plan requirements to eliminate the prior OTS non-objection to a business plan. Applicants must file the business plan at the same time that the application for conversion is filed rather than filing it separately and waiting for the OTS to review it and indicate its non objection. Other changes to the business plan include clarifying that the agency would focus on return on equity at the end of the three-year business plan period. The re-proposal also permits intended stock repurchases to be included in the business plans. Each of these changes is an important clarification. In addition the preamble to the re-proposal addresses some of the concerns expressed by the commenters to the initial proposal. We believe that the OTS has addressed many of the concerns and urges the agency to work with the applicants to adopt reasonable business plans that meet safety and soundness standards.

The re-proposal reaffirms many of the changes proposed in the initial proposal. ACB supports these changes. We agree that revising the regulations to reflect OTS policy and practice is helpful to those institutions trying to make a decision about whether to convert.

Revision of Policy Regarding Acquisitions

The re-proposal reiterates the prohibition on any person or company acquiring more than 10 percent of any class of equity security of a converted institution for three years post conversion without OTS approval. If a person or group acquires more than 10 percent of a class of equity securities during the three-year period, they may not vote the shares in excess of the 10 percent. The purpose of this regulation is to allow savings associations a reasonable time to deploy the proceeds of the conversion and to become acclimated to being a public company. ACB believes that such a time period may be three to five years. Frequently, persons or companies will acquire

shares as part of a conversion and will quickly move to force management to sell the institution so that these shareholders can benefit from the transaction. In the preamble to the re-proposal, the OTS confirms that the position of the agency remains that acquisitions within the first three years post conversion are not always in the best interests of the institution. In fact, the agency states that it will take a very close look at applications submitted by persons or entities to make acquisitions within the three-year period.

ACB supports the enforcement of this provision. There are situations, including for safety and soundness purposes, when such an acquisition is in the best interests of the association, and we believe that the OTS review process will be able to determine those instances. However, if the converted association is following the business plan that it developed and had approved as part of the conversion process, and is operating in a safe and sound manner, prospective acquirers should be required to meet a very high standard to be granted an exception to the prohibition.

Mutual Holding Companies

ACB continues to support the mutual holding company changes issued as part of the interim rule including the dividend waiver provisions and the implementation of the application of the Gramm-Leach-Bliley Act provisions to mutual holding companies. The changes provide the tools for the formation of a mutual holding company to remain a long-term alternative to full conversion for those mutual associations wishing to raise capital.

For multiple-tier holding companies, we support the ability of the mid-tier company or the savings association to adopt the standard anti-takeover bylaw prohibiting acquisitions of more than 10 percent of any class of equity security for five years after formation.

In the past year, the OTS has approved transactions that indicate a willingness to consider alternative capital raising techniques for mutual holding companies that do not wish to raise capital by doing a second step conversion. We urge the OTS to be flexible in reviewing these transactions. We recommend that the OTS amend the mutual holding company regulations to specifically authorize the mid-tier subsidiaries or savings association subsidiaries of mutual holding companies to be able to offer their shares in exchange for shares of stock depository institutions. The mutual holding company would retain 51 percent of the stock. This could be done without an offering being made to existing stockholders, but the agency could require a fairness opinion indicating that the transaction is in the best interests of the depositors of the savings association subsidiary.

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Another recommendation that would specifically enhance the formation of multi-tiered mutual holding companies would be to permit the mid-tier entity to be organized under state law. When the OTS authorized the creation of the multi-tiered mutual holding companies, the agency required that the mid-tier be a federal entity. To the extent that the mid-tier entity is organized under state law, the company and its directors would have the protections and the benefits of a well-developed body of statutory and case law.

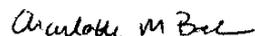
Finally in the context of a mutual holding company, we urge the OTS to consider the idea of permitting a mutual holding company to issue nonvoting stock that would have a claim on the economic interest but not voting or management control of the institution.

Supporting the Continued Viability of the Mutual Form

ACB fully supports all efforts toward the goal of making it more attractive for mutual institutions to stay in mutual form while providing them with the tools to remain competitive in today's rapidly evolving financial services marketplace. For example, we are in favor of the OTS allowing mutual institution affiliations; such potential arrangements represent a good opportunity for mutual institutions to enjoy certain economies of scale while still preserving their respective independence and community focus. We do not believe, however, that such efforts should be at the expense of other, equally viable forms of organization. ACB strongly believes that all depository institutions should retain the freedom to choose the form of organization that best meets their strategic and market objectives. Moreover, when considering capital raising strategies, mutual holding companies should not always be preferred over full mutual-to-stock conversions. Again, ACB strongly favors providing financial institutions with the widest menu of structural options.

ACB appreciates the opportunity to comment on this very important matter. If you have any questions, please contact the undersigned at (202) 857-3121.

Sincerely,



Charlotte M. Bahin
Director of Regulatory Affairs
Senior Regulatory Counsel