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Regulation Comments
Office of the Chief Counsel
Office of Thrift Supervision
1700 G Street, N.W.
Washington, D.C. 20552

Attn: Docket No. 2002-11

Dear Sir/Madam:

Reference is made to the recent reproposal of amendments to the regulations governing mutual savings associations, mutual holding company reorganizations and conversions from mutual-to-stock form. This firm, having been one of the pioneers in the mutual-to-stock conversion process, has been involved in hundreds of mutual-to-stock conversions since their regulation began in 1974. Through this involvement, we have seen a number of revisions of the conversion regulations, in an attempt by the agency to prevent abuses and keep up with the times. We believe the reproposal is a much better effort to update the regulations than the proposal made by the agency published on July 12, 2000 ("First Proposal"). We believe, however, that this proposal can be further improved in three specific areas.

First, we again propose that the agency disregard the Return on Equity test in considering whether or not an institution should convert. As has been indicated time and time again, the use of stock as a vehicle for acquisitions, compensation plans and other noncapital benefits has to be factored into a decision by the board of directors to convert to the stock form of organization. Many selling financial institutions and other types of businesses do not want to take cash in connection with an acquisition. They would rather have stock. Only an institution in stock form can fulfill this requirement. In addition, because of various tax advantages and opportunities for deferral of income, many qualified persons, in choosing employment, would rather work for a company that has stock-based, as well as cash compensation plans. While this is not true in every case, it is a benefit that should not be precluded if the board of directors of a mutual bank believes it is in the bank's best interest to have stock-based compensation plans available. We would also suggest that you again review the comments received on the First Proposal; particularly the comments made by RP Finanical. RP Financial undertook a study of return on equity generated by institutions that converted within the 10 year period prior to the publication of the First Proposal. That study revealed that 10% or fewer of the institutions that undertook a mutual-to-stock conversion could meet a reasonable rate of return test (as measured by ROE) within the first three years following conversion. We believe the agency is getting itself into a situation whereby most applicants for a mutual-to-stock conversion will not qualify under the test established by the regulation and therefore the agency will have to choose either to give the test little or no weight or to deny the application for conversion. Such a test would also automatically be biased against high net worth mutual institutions. This takes the decision of whether or not to convert out of the hands of the board of directors, where it ultimately belongs. Furthermore, in the agency's preamble to the reproposal it is made clear that it is not the agency's intent to establish a "needs test" as part of the conversion process. It is time to simply give up this part of the proposal and let the board of directors do its job.

Second, we believe the issue of merger conversions should be revisited. Merger conversions were successfully done for many years, without controversy, by institutions regulated by the Office of Thrift Supervision and its predecessor, the Federal Home Loan Bank Board. In the 1990's commercial banks began acquiring state chartered savings banks, whose conversion was not regulated by any federal agency under plans of merger conversion that were abusive in nature, to say the least. As a result of these merger conversions, the FDIC was granted authority by the Congress to regulate the conversion process for state chartered savings banks not otherwise regulated by the OTS. In its crackdown on these abusive practices, the FDIC, in effect, put a moratorium on merger conversions and the OTS followed suit. In the announcement of the moratorium, both agencies said they needed time to study the process and that, in any event, merger conversions involving mutual institutions of over $25 million in assets would not be favored. This moratorium has turned into an absolute ban on the merger conversion process for other than tiny mutual institutions. The OTS and the FDIC seem to be fixated on the size of the mutual institution rather than on the process itself. It is not logical or appropriate that a depositor in a $25 million asset mutual institution can be part of a merger conversion whereas a depositor in a larger institution cannot. This is especially illogical when you consider that there are mutual institutions with assets over $25 million that are not well capitalized, are losing money and would be the subject of a favorable resolution should they merge with a stock institution. We believe that the time to lift the moratorium and focus on the process is now. Merger conversions of mutual institutions have been and can be undertaken with reasonable discounts on stock purchase prices for depositors of the mutual institution, along with a close review of stock benefits and other compensation plans by the agency. The process has worked properly in the past. There is no reason to believe the process cannot be extended to all mutual institutions and certainly, at the least, to mutual institutions that are not well capitalized or otherwise have supervisory issues (*i.e.* no earnings, CAMEL 3 rating or below, etc.). At a time when the deposit insurance funds have been required to make big payouts on losses at both failed banks and thrifts, it is no time to dwell on what may have existed in an unregulated environment that is now more than adequately regulated.

In conclusion, we propose that merger conversions be permitted with adequate and reasonable safeguards to protect the process and that the asset limitation be eliminated.

Third, we believe that it would be appropriate to clarify that if a converting institution was a former credit union, then in selecting an eligibility record date, the board of directors of the thrift can consider, and may adopt, a date prior to the time that the credit union became a thrift. In other words, former credit union members could be eligible account holders. This has been the practice in a number of mutual-to-stock conversions undertaken by both federally chartered and state chartered savings banks that were converted credit unions. To permit former credit union members, most of whom remain with the thrift institution, to become eligible account holders and get priority subscription rights, protects the interests of long term depositors and presents no safety and soundness or fairness concerns. To do otherwise, would prevent institutions from converting to the stock form of organization, even though they need capital, for a period of greater than one year after they become a federal thrift. This has not been the rule followed by the FDIC and we believe would not be imposed by the OCC should a credit union convert to a commercial bank under a mutual holding company or fully converted stock structure, and should not be the rule followed by the OTS. Any credit union that converts to a federally chartered thrift institution should possess the same rights and benefits of any other federally chartered thrift institution in its ability to raise capital and convert to the stock form of organization.

We appreciate your consideration.

Very truly yours,

Silver, Freedman & Taff, L.L.P.

By: Robert L. Freedman / pb

Robert L. Freedman
Senior Partner

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