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May 9, 2002

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

RE: Docket No. 2002-11; Mutual Savings Associations, Mutual Holding Company Reorganizations, and Conversions from Mutual to Stock Form;
12 CFR Parts 563b, 574, and 575; 67 Fed. Reg. 17228; April 9, 2002.

Dear Sir or Madam:

The American Bankers Association ("ABA") appreciates the opportunity to comment on the Re-proposal of the Notice of Proposed Rulemaking concerning Mutual Savings Associations, Mutual Holding Company Reorganizations, and Conversions From Mutual to Stock Form ("Re-proposed Rule") issued by the Office of Thrift Supervision ("OTS") on April 8, 2002. The American Bankers Association brings together all categories of banking institutions, including mutually-chartered savings banks and savings associations, to best represent the interests of the rapidly changing industry. Its membership – which includes community, regional and money center banks and holding companies, as well as savings associations, trust companies and savings banks – makes ABA the largest banking trade association in the country.

ABA applauds the OTS's continued efforts to promote mutual savings banks and savings associations. Mutuals have a long and illustrious history of contributing to the well being of their communities and the customers they serve. While their number has diminished, the current mutuals demonstrate the continued viability of the charter form. The creativity evidenced by mutuals through their use of the mutual holding company charter illustrates

the resourcefulness and flexibility of the mutual charter to continue to evolve to meet the needs of their customers. It is not a staid charter; it is an active participant in the delivery of financial services.

ABA is an advocate for mutual savings institutions and actively works through its Mutuality Advisory Council ("Council") to further foster the mutual charter within the broad financial services industry that ABA represents. Our mutual members have chosen to maintain their mutual charter as the best competitive option for their market and their customers. ABA is pleased to present the Council's suggestions and opinions on the issues raised by the Re-proposed Rule.

The Re-proposed Rule

The Re-proposed Rule modifies the July 2000 Proposed and Interim Rules in a number of instances. Chief among them are the following:

1. Modification of Business Plan Requirements. The OTS has reconsidered its initial proposal that OTS Regional Offices issue "non-objection" letters on business plans accompanying conversion applications. Instead, the OTS proposes to require business plans to be submitted at the time of the application and to evaluate those plans based on a number of standards that will be taken as a group, rather than as individual requirements.

ABA supports this evolution of OTS views, but notes that on closer examination, many of the "standards" outlined for business plans are actually phrased in the language of requirements. They include:

a) Filing projected operations and activities results for three years deploying the proceeds of the conversion proceeds;
b) Detailing how the conversion proceeds will be used to meet credit and lending needs of the bank's proposed market areas with the notation that OTS "strongly discourages" business plans that provide for a substantial investment in mortgage securities to meet this requirement;
c) Describing how the new capital will support projected operations and activities and what opportunities are reasonably available, the risks of the projected activities and the demands on management resources, staffing and facilities;
d) Listing the expertise of the management and board to achieve the goals of the plan or whether additional expertise will be sought; and
e) Explaining how the bank will achieve "a reasonable return on equity."

None of these listed items are standards; they are requirements. Indeed, §563b.115(a) refers to them as "requirements." ABA suggests that the OTS enumerate the standards by which applicants' achievement of the listed requirements will be judged and whether the OTS expects achievement of substantially all of the requirements or a majority of the

requirements. The statement in §563b.115(a) that business plans will be reviewed for compliance with §563b.105 "in the aggregate" provides little guidance to the converting institution or its outside consultants. ABA also suggests the addition of an exception or waiver process whereby an institution could provide alternative information when a listed item was inapplicable or the supervisory insight gained was substantially outweighed by the costs of producing the information.

Further, because converting institutions will be held to projections of the business plan for three years, it would be useful to enumerate in supervisory guidance when a business plan should be amended or abandoned due to changes in the economy. Minor deviations should not require filing an amended business plan; however, institutions do not know how an examiner will judge variations. Some changes are obvious, an expected line of business doesn't materialize or a new opportunity presents itself. Other changes are more subtle. Guidance on the treatment of the more "hazy" variations would give greater certainty.

2. Prefiling Meetings. While maintaining the requirement for a meeting in advance of filing the application for conversion, the Re-proposed Rule recognizes that the expense of requiring an entire board of directors to travel to the Regional Office may be onerous. At the request of a board, the representatives of the Regional OTS Office will travel to the association to meet with the board of directors, but such meeting must occur at least ten days prior to the board's adoption of a plan of conversion or plan reorganization (mutual holding company). OTS representatives explained during a clarifying conversation (a summary of which has been provided for the public record) that a delegation or subgroup of the board may suffice to meet with the Regional OTS Office. ABA applauds the willingness of the agency to permit greater flexibility for compliance with the requirement and urges the OTS to include language in the regulation that expressly provides for this result. ABA agrees that the pre-filing meeting can be useful for anticipating regulatory concerns in order to address them at an early stage of the process.

Further, ABA supports focusing the substance of the discussion with the OTS representatives on the savings association's strategic plans going forward. Pre-filing meetings provide an opportunity to discuss and resolve issues prior to actually filing a conversion application with the OTS. Thus, an open dialogue between savings association and regulator should make the process simpler and smoother. ABA further appreciates that the OTS does not intend through this mandated meeting to "substitute the agency's judgment for that of the directors." However, it is unclear whether the strategic plan document to be reviewed at this meeting is, in essence, an early draft of the required business plan, or whether a truly strategic outline of expected business opportunities to be explored will be acceptable. If the Regional OTS Offices through implementation require a full business plan at the time of the pre-filing meeting, then there has been no evolution from the OTS's initial proposal to seek approval of the business plan in advance of the pre-filing meeting. Instructions to the Regional Offices need to be clear

so that regional differences do not evolve into differing requirements and standards. A strategic plan should not become the business plan emblazoned with a "Draft" stamp.

3. Stock Repurchases. OTS proposes to continue its exclusion from the stock repurchase limitations stock designated for management benefit plans approved by shareholders and purchases for tax-qualified or non-tax-qualified employee stock benefits plans offered by mutual holding companies. OTS will extend a similar exclusion from repurchase limitations to fully converted stock companies. However, if the stock repurchase, for other purposes deviates from the business plan, OTS will still require agency approval due to the "material" deviation. ABA supports the flexibility demonstrated by the Re-proposed Rule, but notes that the inclusion of a re-purchase option will become standard in all business plans in order to avoid the need for an agency waiver. The OTS may better achieve its goal through a repurchase reporting requirement rather than by mandating amendment of the business plan.

4. Dividend Waivers. OTS adjusted its rule on mutual holding company dividend waivers earlier and the Re-proposed Rule is consistent with the current policy. "OTS notes that the waiver of dividends results in more capital at the savings association, enhancing the safety and soundness of the savings association." ABA supports this provision and encourages its finalization.

5. Policy on Acquisitions. Currently, OTS limits the number of shares that may be acquired of a converted institution for three years. The Re-proposed Rule continues the position of the agency. For Mutual Holding Companies, the proposal would allow post-conversion anti-takeover restrictions in the charter of mid-tier stock holding companies under a mutual holding company. This would grant the mutual holding company structures "more discretion" in the management of their new structure and prevent minority shareholders from exerting pressure for acquisition in the first three years. ABA supports this provision in general, but encourages the OTS to evaluate whether "friendly" acquisitions may be permitted in cases where the combination seeks to strengthen the safety and soundness of the resulting institution. Not all mergers in the early years are inherently hostile, and the OTS should provide some flexibility in the application of its rule. In so doing, the OTS will continue to demonstrate its discretion and broad authority under long-standing policies to review transactions subject to this rule on a case-by-case basis.

6. Management Stock Benefit Plans. The Re-proposed Rule would allow acceleration of the vesting of benefits in the event of death, disability or change in control, but not in the case of retirement. The theory behind not including retirement is that retirement is an event within the control of the individual and the institution. ABA urges the OTS to reconsider this logic and include retirement in the list of events providing for acceleration of benefits. This would allow an institution to provide orderly management and director succession. If an institution is seeking to explore a new area of expertise, it may need certain well-represented expertise to consider retirement in order to make room for the

new venture and its management and board supervision. Requiring retirement-minded individuals to stay in place is not an efficient deployment of resources or expertise. Further, in light of the fact that under current policy, the OTS already permits the inclusion of vesting upon retirement provisions one year from the date of conversion, there seems to be no compelling, supervisory reason for not including "retirement" in the list of events accelerating vesting.

The Re-proposed Rule further restricts the allocation of stock to benefit plans to 25% of the stock offered to minority shareholders; however, ESOP stock would not be included in this calculation. As noted in our summary of our clarifying discussion, the OTS intends that there be an overall limit that cannot be exceeded via sequential offerings. ABA suggests that the OTS clarify the language to achieve this result. Relatedly, the preamble language to the Re-Proposed Rule raises the question whether stock option plans are included or excluded from the overall "cap." ABA suggests that the regulatory language make the inclusion or exclusion explicit.

ABA notes that the Re-proposed Rule permits the use of repurchased or Treasury stock for employee benefit plans. ABA had suggested this in its comment letter on the July 2000 proposal and is pleased to see its incorporation in the Re-proposed Rule.

7. Charitable Foundation Requirements. If a charitable foundation will be established with a portion of the conversion proceeds, the OTS is requiring certain additional documents and forms that are often, if not always, required during application processing. This codifies existing practice and makes the process clearer. ABA supports inclusion of this subject in the rules.

8. Merger Conversions. The Re-Proposed Rule attempts to clarify the standards that would be applied to a merger conversion application and makes very clear the difficulty and rareness of these transactions. Recent events underlie the need to make the standards applied to merger conversion clear. Merger conversions should not require or result in treatment of the "target" mutual as a voluntary liquidation. Such an approach revives the discussions prompted by the FDIC's infamous "White Paper" and places those mutuals choosing to remain mutual under additional pressure to convert. Any distribution in this type of transaction must be carefully weighed for its precedent-setting effect. Further, the approach taken by the federal regulators should be consistent to discourage "forum shopping." ABA suggests that OTS may wish to add to the list of factors considered in the merger conversion process, all of the CAMELS rating categories rather than just the capital condition of the target mutual. Clarity and consistency in this area will save institutions the expense of exploring a potential transaction that is unlikely to be approved.

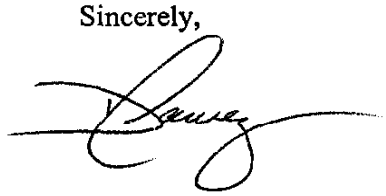
9. MHC Voting Requirements. In the July 2000 proposed rulemaking, the OTS raised the question whether reorganization into MHC or Mid-tier form requires a vote of the members noting that no such reorganization has ever failed. The Re-proposed Rule

suggests that the OTS has no flexibility in the statue to eliminate the voting requirement. ABA respectfully suggests that the OTS interpret its statute as permitting the use of "running proxies" in the case of MHC reorganizations that do not involved the issuance of stock. This lessens the burden of the requirement and complies with the statutory provisions of 12 USC 1467a(o)(2)(B) that such a plan be "submitted to and approved by a majority of such individuals at a meeting held at the call of the directors." ABA believes that the OTS does have the flexibility to interpret its statute in this manner to permit common sense to triumph.

10. Electronic Filing. As ABA noted in its previous comment letter, mutual conversion and reorganization applications are required to be filed by hand with a total of seven copies (the original and three conformed copies with OTS in Washington, D.C. and three conformed copies with the appropriate Regional Office). In this age of electronic commerce and digital signatures, it may be time for the OTS to consider incorporating the alternative of electronic filing for its forms and applications. While there are logistical issues, the perpetuation of a paper-based applications process is inconsistent with the direction of many government-wide initiatives including many by the U.S. Department of the Treasury. The rewrite of the conversion regulations is an opportune moment to further embrace the electronic age. ABA encourages OTS to permit electronic filing of these and other applications and forms. We note that there are current instances where the agency does permit, even require, electronic filing (i.e., Thrift Financial Report). This is one more area where the agency could expand this approach.

Thank you for this opportunity to share the views of ABA and in particular, its Mutuality Advisory Council. If you have any questions concerning the issues raised by this letter or wish to discuss further issues surrounding mutual institutions, do not hesitate to contact the undersigned at 202/663-5434.

Sincerely,



C. Dawn Causey