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## Memo

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Date: May 29, 2002  
To: Scott Albinson and David Permut, OTS  
From: Dawn Causey  
RE: Summary of Telephone Conference Call

On Tuesday, April 16, 2002, at the request of the ABA Mutuality Advisory Council, Scott Albinson and David Permut of the OTS participated in a telephone conference call with members of the Council. Attending for the Council were: Ron Wilbur, Merrimack County Savings Bank, Concord, New Hampshire; Greg Kries, Oswego County Savings Bank, Oswego, New York; Rich McGinnis, Home Federal Savings & Loan Association of Nebraska, Lexington, Nebraska; Bill Wilkinson, Middlesex Savings Bank, Natick, Massachusetts; and counsel to the Council, Richard A. Schaberg and V. Gerard Comizio, Thacher Proffitt & Wood, Washington, D.C.

A set of questions were forwarded in advance to assist the conversation.

Mr. Albinson began the discussion by describing the proposal in general. He stated that there were a number of similarities to the previous proposal and because of that, the OTS anticipated finalizing the rule promptly after the close of the comment period on May 9<sup>th</sup>. Chief among the differences were the changes to the business plan requirements. Rather than require the pre-approval of the proposed business plan in advance of filing an application, the proposal requires that the business plan address a number of issues and be submitted at the time of the application.

In substitution, the OTS proposes that a mutual seeking to convert to stock file a summary strategic plan for the conversion proceeds with the Regional OTS office to be used as the basis for discussion during the pre-filing meeting. Mr. Albinson clarified that the pre-application filing meeting may be with a portion of the board of the directors and did not require the attendance of the entire board. Mr. Albinson noted that in OTS's experience, a number of regulatory issues could have been avoided if there had been greater communication between the institution and the agency. The purpose of the pre-filing meeting is to anticipate regulatory concerns and address them at an early stage of the process.

Turning to the Management Recognition Plans ("MRPs"), Mr. Albinson explained that there was some confusion over the calculation in the first proposal and that the re-proposal sought to "cap" the amount of stock that may be allocated to an MRP.

While acknowledging the overall limit, Council members noted that the language of the re-proposal left some room to interpret the cap as allowing an even greater amount – i.e., applying the “cap” to each offering in a series of stock offerings (20%, 15%, 14%) could result in a higher amount than envisioned in the “cap.” Mr. Albinson stated that the intent of the “cap” was to create a true cap and not provide a means for a more liberal result. He agreed that the language was subject to such mis-interpretation and clarified that the OTS did not propose to liberalize its overall limits on MRP stock allocations.

Mr. Albinson also explained that the re-proposal corrected a number of regulatory issues for charitable foundations created at the time of conversion. It has been the agency’s practice to waive the provisions at the time of approval. The re-proposal codifies agency process and practice. The addition of demand deposits to savings accounts in the calculation and eligible vote is also current agency practice codified.

For mutual holding companies, the OTS proposes to continue its dividend waiver policy. Mr. Albinson noted that the agency had taken a number of approaches over the years, but had found little to cause supervisory concern except in the case of special dividends. For this reason, the agency will still require an annual application for a dividend waiver. For state-chartered mutual holding companies, state law may dictate the availability of a dividend waiver.

The issue of stock repurchases was also discussed. Mr. Albinson stated that the rule is clear that no stock repurchases would be allowed in the first year after conversion; however, some amount would be allowed in the second and third year. As the required business plans cover three years, it was noted by Council members that every business plan would need to include a provision for stock repurchases to provide flexibility in the later years. Otherwise, stock repurchases would be considered a material change and required an amended business plan.

The use of ESOPs was the next topic. Mr. Albinson and Mr. Permut explained the calculations used to determine ESOP shares. They noted that there were two schools of thought on the timing of ESOP purchases: at the time of conversion or in the after market. The OTS approach was to have the ESOP purchase at the time of conversion.

On the issue of no-stock MHCs, the group questioned whether OTS was open to an argument on the breadth of statutory interpretation. Both OTS representatives indicated that any suggestions would be considered during the agency’s deliberations.

One of the last areas discussed was the clarification that the (b)(3)(i) prohibitions on acquisitions applied to not only to converting mutuals, but also to mutual holding companies. While participants agreed that the provision would prevent certain types of actions and lawsuits, the group questioned how a “friendly” merger or deal could be accomplished during the prohibition period. Both Mr. Albinson and Mr. Permut encouraged comments on the issues and suggestions for standards that may be applied in such cases. Mr. Permut did clarify that the three-year prohibition would

run anew each time stock was offered if the mutual holding company offered stock in increments.

Mr. Albinson encouraged Council members to comment on the issues surrounding remutualizations. He stated that the agency had been monitoring how the market evolved in these transactions, but had not found cause to assert any supervisory caution yet.

Council Chairman Ron Wilbur thanked both Mr. Albinson and Mr. Permut for their time and willingness to answer questions about the re-proposal.