Department of the Treasury
Office of Thrift Supervision

Transmittal

June 6, 1997 Number: 174

In response to requests from several of the 34 mutual holding companies it supervises, the Office of Thrift Supervision (OTS) has proposed allowing them to set up a modified corporate structure with a new subsidiary that could sell stock and later buy it back without adverse tax consequences.

As outlined in the attached notice of proposed rulemaking, the subsidiary would be a holding company, sandwiched between the mutual holding company and its savings association in a three-level corporate structure. This intermediary or subsidiary holding company would hold all of the stock of the savings association. The subsidiary could sell up to 49.9 percent of its stock to the public. But the controlling interest in the subsidiary holding company would reside with the parent mutual holding company.

The advantage of this arrangement lies in tax savings when a subsidiary holding company buys back stock it has sold to the public. Such a buyback would not trigger tax obligations related to bad debt reserve recapture as now occurs if the thrift itself sells and then repurchases stock.

All such subsidiary holding companies would be federally chartered by OTS. The proposed federal charter and bylaw requirements for the subsidiary holding company are modeled after the charter and bylaw requirements for federal stock savings associations.

The proposal would limit the investment powers of the subsidiary holding company to those of the parent mutual holding company. The new entity also would have to follow the same rules on issuing stock that apply to a savings association, including the requirement that a new issue of stock must first be offered to the depositors of the savings association before being offered to the general public. All stock issues would have to receive prior approval from OTS.

The notice of proposed rulemaking was published in the June 5, 1997, edition of the Federal Register, Vol. 62, No. 108, pp. 30778-30784. Written comments must be received on or before August 4, 1997, and should be addressed to: Manager, Dissemination Branch, Records Management and Information Policy Division, Office of Thrift Supervision, 1700 G Street, N.W., Washington, DC 20552. Comments may be faxed to 202/906-7755 or e-mailed to: public.info@ots.treas.gov.

For further information contact:

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Nicolas P. Retsinas
Director
Office of Thrift Supervision

Attachment

Proposed Rules

Federal Register
Vol. 62, No. 108
Thursday, June 5, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 575

[97–51]

RIN 1550–AB00

Mutual Holding Companies

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Thrift Supervision (OTS) is proposing to amend its mutual holding company regulations to permit mutual holding companies (MHCs) to establish a subsidiary stock holding company that would hold all of the stock of a savings association subsidiary. This Notice of Proposed Rulemaking (NPR) follows a review of the comments received in response to an advance notice of proposed rulemaking. The OTS proposes to permit the establishment of intermediate stock holding companies (SHCs) that will be subject to restrictions that are substantially similar to those currently applicable to MHCs.

DATES: Comments must be received on or before August 4, 1997.

ADDRESSES: Send comments to Manager, Dissemination Branch, Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention Docket No. 97–51. These submissions may be hand-delivered to 1700 G Street, NW., from 9:00 a.m. to 5:00 p.m. on business days; they may be sent by facsimile transmission to FAX Number (202) 906–7755 or by e-mail: public info@ots.treas.gov. Those commenting by e-mail should include their name and phone number. Comments will be available for inspection at 1700 G Street, NW., from 9:00 a.m. until 4:00 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: James H. Underwood, Special Counsel (202/906–7354), Dwight C. Smith, Deputy Chief Counsel (202/906–6990), Business Transactions Division, Chief Counsel's Office; Gary Masters, Financial Analyst (202/906–6729) Corporate Activities Division; Office of Thrift Supervision, 1700 G Street, NW., Washington, D.C. 20552.

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I. Background of the Proposal

In response to inquiries from MHCs and mutual savings associations concerning the formation of a second-tier stock holding company to hold the stock of a MHC's savings association subsidiary, the OTS issued an Advance Notice of Proposed Rulemaking (ANPR)[1] soliciting comment on issues raised by the existence of SHCs. Under current 12 CFR part 575, a mutual savings association may reorganize into a MHC structure in which the MHC owns at least a majority of the stock of a subsidiary savings association. Depositors of the mutual savings association continue to maintain a depositor-creditor relationship with the stock savings association subsidiary, while retaining their other indicia of ownership, *e. g.*, voting and liquidation rights, with the MHC. Under this structure, the balance of the shares (up to 49.9%) of the stock savings association subsidiary may be sold to the public in one or more offerings when the MHC is formed or later.

The proposed holding company structure would permit the MHC to form a SHC to hold the shares of the stock savings association subsidiary. The SHC, like the stock savings association subsidiary in the traditional model, would be required to issue at least a majority of its shares to the MHC and could issue up to 49.9% of its shares to the public. The SHC will be required to hold 100% of the shares of the savings association subsidiary.

The ANPR solicited comments on seven specific issues involving the formation of SHCs. The OTS received fifteen comments on the proposal from three MHCs, four savings associations, three trade associations, two law firms, two investment banking firms and an individual investor. All but one of the commenters generally supported the concept of SHCs. Most of the commenters also indicated their support for the SHC to have the full powers of a unitary savings and loan holding company. The comments are discussed in further detail in the description of the proposed revisions to 12 CFR Part 575 set forth below.

II. Notice of Proposed Rulemaking

A. Summary and Purpose

The OTS proposes to amend its MHC regulations to permit the formation of federally chartered SHCs. By permitting the formation and operation of SHCs, the MHC structure will be enhanced. For example, a MHC will be able to form a subsidiary that can engage in a stock repurchase program without adverse tax consequences. Currently, savings association subsidiaries of MHCs do not repurchase minority stock due to adverse tax consequences related to bad debt reserves recapture provisions. Moreover, SHCs will enhance the organizational flexibility of the MHC structure and enable MHCs to compete more effectively in the marketplace.

The proposed rule does not authorize SHCs to act as unitary savings and loan holding companies. As discussed below, the OTS believes that the proposed rule should follow the current statutory framework and not authorize unitary savings and loan holding company powers as part of the MHC structure. The proposed rule contemplates that the SHC will "stand in the shoes" of the parent MHC or, in certain instances, the subsidiary savings association. Thus, generally, the SHC should be subject to the same restrictions and limitations that are currently applicable to a MHC and its savings association subsidiary. The proposed rule also provides that the SHC structure may not be utilized as a means to evade or frustrate the purposes of 12 CFR part 575 or related provisions of 12 CFR part 563b which governs mutual to stock conversions by savings associations.

B. Stock Holding Company Powers

In the ANPR, the OTS solicited comments on whether the SHC should be limited to the activities of the parent MHC[2] or be treated as a unitary savings and loan holding company. Most of the commenters argued in favor of treating the SHC as a unitary savings and loan holding company. This would grant the SHC a broader range of powers and investment authority than are currently available to a MHC. Several of the commenters stated that they did not perceive any policy reasons, such as safety and soundness concerns, that support a different treatment for SHCs simply because they are controlled by a MHC.

After careful review of the comments and the statute, the OTS does not believe that it is appropriate to treat SHCs as unitary savings and loan holding companies under the mutual holding company statute. When Congress authorized MHCs as part of the Competitive Equality Banking Act of 1987 (CEBA), it clearly chose to limit the activities of MHCs to those permitted for multiple savings and loan holding companies and bank holding companies. Although the legislative history of CEBA does not indicate why Congress made this choice, it is reasonable to assume that Congress was aware of the unique nature of mutual institutions and their relationship with these newly authorized holding companies and wished to limit their activities to those more closely related to banking.[3]

As noted by one commenter who opposed unitary powers for SHCs, Congress is currently reviewing the issue of charter powers and permissible affiliations between insured financial institutions and commercial firms and several bills are pending before Congress that address these issues. While some commenters argued that a SHC should be treated as a unitary savings and loan holding company, the OTS believes that the proposed rule appropriately tracks the statute on this issue. Therefore, the proposed rule does not expand the powers of the SHC beyond those of a MHC.

The OTS notes, however, that a SHC, like the MHC parent, may utilize its authority under 12 U.S.C. 1467a(o)(5) and 12 CFR 575.10(a)(6) to acquire a controlling or non-controlling interest in corporations whose stock may be purchased by a federal savings association under 12 CFR part 559 or by a state savings association under the law of any state where a savings association subsidiary of the SHC has its home office. Although the permissible activities of these types of subsidiaries are more limited than those of a unitary savings and loan holding company, they are more extensive than those permitted to the parent MHC.

[1] 61 FR 56144 (November 13, 1996).

[2] *See* 12 U.S.C. 1467a(o)(5) and 12 CFR 575.11(a) for a description of MHC activities restrictions.

[3] Under 12 U.S.C. 1467a(o)(6), a MHC may acquire another holding company but such company must divest any assets and cease any activities not permissible for a MHC within the two year period following such acquisition.

C. Regulatory Restrictions on Stock Pledges, Dividend Waivers, Indemnification and Employment Contracts

Under 12 CFR part 575, a MHC and its savings association subsidiary are subject to various restrictions on their activities and operations. In the ANPR, the OTS solicited comment on whether some or all of these restrictions should be applicable to the SHC. The comments on these issues are addressed below.

(1) Pledges of Subsidiary Savings Association Stock

Commenters were divided as to whether the SHC should be subject to the same restrictions as a MHC on pledges of stock of the savings association subsidiary. It is clear that 12 U.S.C. 1467a(o)(8), which authorizes stock pledges by MHCs, requires that the transaction increase the capital of the savings association subsidiary. Thus, the implementing regulation, § 575.11(b) requires that the proceeds of any loan secured by the savings association's stock be infused into the savings association.

The OTS believes that the reasons supporting the restrictions on a MHC are also applicable to a SHC. Application of this rule to the SHC is consistent with the statute and will ensure that any borrowing using the savings association subsidiary's stock or the SHC's stock as collateral will directly benefit the savings association. Some commenters argued that the SHC should be subject only to restrictions that are applicable to other savings and loan holding companies. The OTS does not find this argument persuasive. The intention of this proposal, as stated above, is to increase the flexibility of the MHC structure without diminishing the safeguards imposed by Congress in adopting the MHC statute.

(2) Dividend Waivers

Commenters also were divided as to whether dividend waiver restrictions should be imposed on the SHC. Commenters supporting the dividend waiver restriction generally acknowledged that the policy reasons supporting dividend waiver restrictions should apply to dividends declared by the SHC. Commenters opposed to the dividend waiver restrictions argued that the SHC should be treated like any other stock holding company. The OTS does not believe that there are sound policy reasons to differentiate between dividends paid to a MHC parent by a savings association subsidiary and a SHC subsidiary. Thus, the proposed rule requires that the MHC follow the procedures set forth at 12 CFR 575.11(d) with respect to waiving any dividends declared by the SHC. The intent of this section is to ensure that the waiver of dividends payable to the MHC is subject to regulatory review and is consistent with the directors' fiduciary duties to its mutual members.

The OTS intends to continue to review dividend waivers in connection with the mutual to stock conversion of a MHC pursuant to the "fair and reasonable" exchange standard set forth at 12 CFR 575.12(a)(2). The formation of a SHC by an existing MHC with minority stockholders will not generally result in different treatment of the minority stockholders under § 575.12(a)(2) in the event of a conversion of the MHC to stock form.

(3) Indemnification and Employment Contracts

Under 12 CFR 575.11(f)–(g), MHCs are subject to the same restrictions regarding indemnification and employment contracts as mutual savings associations.[4] With one exception, all of the commenters responding to this issue were opposed to the imposition of these restrictions on a SHC. The commenters assumed that a SHC, unlike the MHC, would not be chartered by the OTS and that the OTS should not preempt state law policies in these areas. The commenters also stated that state-chartered stock savings and loan holding companies are not subject to these restrictions and that SHCs should be treated similarly. As discussed below, the OTS is proposing that the SHC be federally chartered and thus subject to OTS policies.

The OTS concludes that there are valid reasons for imposing these restrictions on the SHC. As noted above, the SHC should not be utilized to evade requirements imposed on the MHC. The OTS has determined that because of the unique nature of the MHC structure, *i.e.*, the combining of mutual and stock interests in one corporate structure, it is appropriate to impose greater oversight on the MHC than is imposed on stock holding companies. Since the SHC is, in essence, "standing in the shoes" of the MHC, the proposed rule will require that the SHC be subject to the same restrictions.

D. SHC Charter and Bylaw Requirements

Most of the commenters opposed any requirement that a SHC's charter and bylaws (and amendments) be subject to OTS review and approval. The commenters assumed that the SHC would be a state-chartered corporation and would be able to utilize the corporate governance procedures that are available under state law. The OTS has determined to require that the SHC be federally chartered. This will help ensure consistent treatment for the various entities in the mutual holding company structure and eliminate any confusion about the treatment of the SHC under 12 U.S.C. 1467a(o)(9), which addresses insolvency and liquidation issues of MHCs, in the event of a default of the SHC. The OTS anticipates that in the event of the default by the MHC, the SHC or the savings association subsidiary, the OTS would have the right to file a petition seeking the appointment of a bankruptcy trustee for the purpose of liquidating the MHC and the SHC.

The OTS also believes that its authority to regulate the corporate governance aspects of the subsidiary holding company is clearer if the subsidiary holding company is federally chartered. The MHC statute clearly contemplates that the reorganized savings association will be a directly owned subsidiary of a federally chartered entity. Requiring that the subsidiary holding company be federally chartered ensures that the savings association remains a direct subsidiary of a federally chartered entity. Finally, requiring the subsidiary holding company to be federally chartered is consistent with the provision of the OTS regulations that preempts state law with regard to the creation of and regulation of MHCs.

The federal charter and bylaw requirements for the SHC are modeled after the charter and bylaw requirements for federal stock savings associations. The OTS believes that the recent amendments to the OTS charter and bylaw requirements provide greater corporate flexibility for federally chartered stock savings associations and will enable federally chartered SHCs to utilize many of the corporate law provisions available to state-chartered corporations. The OTS, however, will reserve the right to object to any provision of the SHC's charter or bylaws that is contrary to the requirements of 12 CFR part 575.

E. SHC Stock Issuances, Stock Repurchases, and Conversion of the MHC

The proposed rule will apply the current restrictions on the issuance of securities by a savings association subsidiary set forth at 12 CFR 575.7 and 575.8 to the SHC. Most of the commenters generally supported this concept. However, several commenters

[4] *See* 12 CFR 545.121 and 563.39, respectively.

suggested that the SHC be permitted to issue stock in some cases without complying with the requirement that priority subscription rights be issued to the mutual members. The OTS concludes that 575.7 and 575.8 should apply to securities issuances by the SHC. This is consistent with the fact that the SHC, and not the savings association subsidiary, will be issuing stock to minority stockholders. Thus, it follows that all current stock issuance restrictions should apply to the SHC.

The OTS does not agree that the SHC should be able to issue shares to the public without first offering them to the mutual members. Mutual members have first priority to subscription rights in a conversion. To permit a stock offering without first offering the shares to the mutual members would, in essence, permit a partial conversion of the mutual institution in a manner that conflicts with 12 CFR part 563b. One of the fundamental principles underlying the mutual holding company regulations is that the mutual members' rights, including their rights under part 563b, should not be diminished or eliminated merely because the mutual institution is reorganized into a MHC. For that reason, the OTS will not permit a SHC to issue stock to the public, whether by way of merger or otherwise, without affording the mutual members a priority subscription right to purchase the stock.

Although this results in the MHC structure having less flexibility than a stock holding company structure, this is consistent with the fact that a MHC structure is a hybrid corporate entity that is part mutual and part stock. This unique structure has both advantages and disadvantages and can create potential conflicts of interest that require more restrictions on the operation of MHCs.

The proposed rule will require that all stock [5] issuances by the SHC receive prior approval of the OTS. This restriction currently applies to a MHC's savings association subsidiary, and it is consistent to require that any stock issued by the SHC also be subject to this requirement.

The proposed rule will also require that if a SHC is established by a MHC, the SHC must hold 100% of the stock of the resulting savings association subsidiary. This will restrict the savings association subsidiary from issuing stock to persons other than the SHC. Permitting minority stockholders at the SHC level and the subsidiary savings association level will result in potential conflicts of interests and create difficult valuation problems if the MHC decides to convert to stock form.

A primary motivation for the establishment of a SHC is that it will permit the SHC, assuming it has issued stock to the public, to engage in stock repurchase programs without the adverse tax consequences that may occur if such repurchases are made directly by the savings association subsidiary. The proposed rule will permit SHCs to engage in stock repurchase programs provided that the SHC complies with the requirements of 12 CFR 575.11(c). One commenter inquired how the three-year period set forth in § 575.11(c) that limits stock repurchases would be applied in the case of a SHC formed after minority shares have been issued by a savings association subsidiary. Absent unusual circumstances, the OTS generally will permit the SHC to "tack" on or include the period that the shares initially issued by the savings association were outstanding. Thus, if minority shares have been outstanding for a period of two years at the time the SHC is formed, the SHC will be subject to the repurchase restriction for a one-year period.

In the event the MHC decides to convert to stock form, the proposed rule contemplates that the minority stockholders of the SHC would be able to exchange their shares for shares of the converted MHC in the same manner that minority stockholders of the savings association subsidiary currently do. The OTS will continue to use the "fair and reasonable" standard set forth at 12 CFR 575.12(a) in evaluating such exchange offers.

F. Miscellaneous

The proposed rule also makes a number of clarifying changes to 12 CFR Part 575 to ensure that the regulations will be consistent for a MHC with or without a SHC subsidiary.

III. Request for Comments

OTS invites comment on all aspects of the proposal as well as specific comments on the proposed changes.

IV. Paperwork Reduction Act of 1995

The OTS invites comments on:

(1) Whether the proposed collection of information contained in this notice of proposed rulemaking is necessary for the proper performance of the agency's functions, including whether the information has practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed information collection;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the information collection including the use of automated collection techniques or other forms of information technology.

(5) Estimates of capital and startup costs of operation, maintenance and purchases of services to provide information.

Respondents/recordkeepers are not required to respond to this collection of information unless it displays a currently valid OMB control number.

The reporting and recordkeeping requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on all aspects of this information collection should be sent to the Office of Management and Budget, Paperwork Reduction Project (1550), Washington, DC 20503 with copies to the OTS, 1700 G Street, NW., Washington, DC 20552.

The reporting/recordkeeping requirements contained in this notice of proposed rulemaking are found at 12 CFR part 575. The information is needed by the OTS in order to supervise savings associations and mutual holding companies and develop regulatory policy. The likely respondents/recordkeepers are OTS-regulated savings associations and mutual holding companies. The information collection currently approved under OMB Control No. 1550–0072 will be amended to include the burden under this regulation.

Estimated number of respondents/recordkeepers: 20.

Estimated average annual burden hours per recordkeeper/respondent: 343.70.

Estimated total annual reporting/recordkeeping burden: 6,874 hours.

Start-up costs to respondents/recordkeepers: None.

Records are to be maintained in accordance with normal and customary business practices as recommended by private counsel, accountants, etc., but no less than three years.

V. Executive Order 12866

The Director of OTS has determined that this proposed rule does not constitute a "significant regulatory action" for the purposes of Executive Order 12866.

[5] Stock is defined at 12 CFR 575.2 (n) to mean common or preferred stock, or any other type of equity security, including securities that are convertible into common or preferred stock.

VI. Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, OTS certifies that this proposed rule will not have a significant impact on a substantial number of small entities. The proposal will create additional organizational flexibility for all savings associations that create mutual holding company structures.

VII. Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates reform Act of 1995, Pub. L. 104–4 (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. OTS has determined that the proposed rule will not result in expenditures by state, local, or tribal governments or by the private sector of $100 million or more. Accordingly, this rulemaking is not subject to section 202 of the Unfunded Mandates Act.

List of Subjects in 12 CFR Part 575

Administrative practice and procedure, Capital, Holding companies, Reporting and recordkeeping requirements, Savings associations, Securities.

Accordingly, the Office of Thrift Supervision hereby proposes to amend chapter V, title 12, Code of Federal Regulations, as follows:

PART 575—MUTUAL HOLDING COMPANIES

1. The authority citation for part 575 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1828, 2901.

2. Section 575.2 is amended by revising paragraphs (h) and (o) and adding paragraph (q) to read as follows:

§ 575.2 Definitions.

* * * * *

(h) The term *mutual holding company* means a mutual holding company organized under this part, and unless otherwise indicated, a subsidiary holding company controlled by a mutual holding company, organized under this part.

* * * * *

(o) The term *Stock Issuance Plan* means a plan providing for the issuance of stock by:

(1) A savings association subsidiary of a mutual holding company; or

(2) A subsidiary holding company submitted pursuant to § 575.7 and containing the information required by § 575.8.

* * * * *

(q) The term *subsidiary holding company* means a federally chartered stock holding company, controlled by a mutual holding company, that owns the stock of a savings association whose depositors have membership rights in the parent mutual holding company.

3. Section 575.6 is amended by redesignating paragraphs (c) through (i) as paragraphs (d) through (j) and adding a new paragraph (c) to read as follows:

§ 575.6 Contents of Reorganization Plans.

* * * * *

(c) If the reorganizing association proposes to form a subsidiary holding company, provide for the organization of a subsidiary holding company and attach and incorporate the proposed charter and bylaws of such subsidiary holding company.

* * * * *

4. Section 575.10 is amended by:

a. Removing, in the introductory text of paragraph (a)(2), the phrase "the holding company", and by adding in lieu thereof the phrase "the parent mutual holding company";

b. Revising the first sentence of paragraph (a)(3);

c. Revising the first sentence of paragraph (a)(4);

d. Revising paragraph (a)(6)(i)(B); and

e. Revising the first sentence of paragraph (b)(1).

The revisions read as follows:

§ 575.10 Acquisition and disposition of savings associations, savings and loan holding companies, and other corporations by mutual holding companies.

(a) * * *

(3) *Mutual holding companies.* A mutual holding company that is not a subsidiary holding company may acquire control of another mutual holding company, including a subsidiary holding company, by merging with or into such company, provided the necessary approvals are obtained from the OTS, including (without limitation) approval pursuant to part 574 of this chapter. * * *

(4) *Stock holding companies.* A mutual holding company may acquire control of a savings and loan holding company in the stock form that is not a subsidiary holding company, provided the necessary approvals are obtained from the OTS, including (without limitation) approval pursuant to part 574 of this chapter. * * *

* * * * *

(6) * * *

(i) * * *

(B) It is lawful for the stock of such corporation to be purchased by a federal savings association under Part 559 of this chapter or by a state savings association under the law of any state where any subsidiary savings association of the mutual holding company has its home office; and

* * * * *

(b) *Dispositions.* (1) A mutual holding company shall provide written notice to the OTS at least 30 days prior to the effective date of any direct or indirect transfer of any of the stock that it holds in a subsidiary holding company, a resulting association, an acquiree association, or any subsidiary savings association that was in the mutual form when acquired by the mutual holding company, including stock transferred in connection with a pledge pursuant to § 575.11(b) or any transfer of all or a substantial portion of the assets or liabilities of any such subsidiary holding company or association. * * *

* * * * *

5. Section 575.11 is amended by:

a. Revising paragraph (b)(1) introductory text, redesignating existing paragraph (b)(1)(ii) as paragraph (b)(1)(iii), and adding a new paragraph (b)(1)(ii);

b. Revising paragraph (b)(2);

c. Revising the introductory text of paragraph (c) and paragraphs (c)(1) and (c)(3); and

d. Revising paragraph (e).

The revisions read as follows:

§ 575.11 Operating restrictions.

* * * * *

(b) *Pledging stock.* (1) No mutual holding company may pledge the stock of its resulting association, an acquiree association, or any subsidiary savings association that was in the mutual form when acquired by the mutual holding company (or its parent mutual holding company), unless the proceeds of the loan secured by the pledge are infused into the association whose stock is pledged. No mutual holding company may pledge the stock of its subsidiary holding company unless the proceeds of the loan secured by the pledge are infused into any savings association subsidiary of the subsidiary holding company that is a resulting association, an acquiree association, or a subsidiary savings association that was in the mutual form when acquired by the subsidiary holding company (or its

parent mutual holding company). In the event the subsidiary holding company has more than one savings association subsidiary, the loan proceeds shall, unless otherwise approved by the OTS, be infused in equal amounts to each savings association subsidiary. Any amount of the stock of such association or subsidiary holding company may be pledged for these purposes. Nothing in this paragraph (b)(1) shall be deemed to prohibit:

* * * * *

(ii) The payment of dividends from a subsidiary holding company to its mutual holding company parent to the extent otherwise permissible; or

* * * * *

(2) Within ten days after its pledge of stock pursuant to paragraph (b)(1) of this section, a mutual holding company shall provide written notice to the OTS regarding the terms of the transaction (including the amount of principal and interest, repayment terms, maturity date, the nature and amount of collateral, and the terms governing seizure of the collateral) and shall include in such notice a certification that the proceeds of the loan have been transferred to the subsidiary savings association whose stock (or the stock of its parent subsidiary holding company) has been pledged.

* * * * *

(c) *Restrictions on stock repurchases.* No subsidiary savings association of a mutual holding company that has any stockholders other than the association's mutual holding company and no subsidiary holding company that has any stockholders other than its parent mutual holding company shall repurchase any share of stock within three years of its date of issuance, unless the repurchase: (1) Is part of a general repurchase made on a pro rata basis pursuant to an offer approved by the OTS and made to all stockholders of the association or subsidiary holding company (except that the parent mutual holding company may be excluded from the repurchase with the OTS' approval);

* * * * *

(3) Is purchased in the open market by a tax-qualified or non-tax-qualified employee stock benefit plan of the association or subsidiary holding company in an amount reasonable and appropriate to fund such plan.

* * * * *

(e) *Restrictions on issuance of stock to insiders.* A subsidiary of a mutual holding company that is not a savings association or subsidiary holding company may issue stock to any insider, associate of an insider or tax-qualified or non-tax-qualified employee stock benefit plan of the mutual holding company or any subsidiary of the mutual holding company, provided that such persons or plans provide written notice to the OTS at least 30 days prior to the stock issuance. Subsidiary savings associations and subsidiary holding companies may issue stock to such persons only in accordance with § 575.7.

* * * * *

6. Section 575.12 is amended by:

a. Revising paragraph (a)(2);

b. Revising paragraphs (b)(1)(ii) and (iii); and

c. Revising paragraph (b)(2).

The revisions read as follows:

§ 575.12 Conversion or liquidation of mutual holding companies.

(a) * * *

(2) *Exchange of savings association stock.* Any stock issued pursuant to § 575.7 by a subsidiary savings association or subsidiary holding company of a mutual holding company to persons other than the parent mutual holding company may be exchanged for the stock issued by the parent mutual holding company in connection with the conversion of the parent mutual holding company to stock form. The parent mutual holding company and the subsidiary holding company or savings association must demonstrate to the satisfaction of the OTS that the basis for the exchange is fair and reasonable.

* * * * *

(b) * * * (1) * * *

(ii) The default of the parent mutual holding company or its subsidiary holding company; or

(iii) Foreclosure on any pledge by the mutual holding company of subsidiary savings association or subsidiary holding company stock pursuant to § 575.11(b).

(2) Except as provided in paragraph (b)(3) of this section, the net proceeds of any liquidation of any mutual holding company shall be transferred to the members of the mutual holding company or the stock holders of the subsidiary holding company in accordance with the charter of the mutual holding company or subsidiary holding company.

* * * * *

7. Section 575.14 is added to read as follows:

§ 575.14 Subsidiary holding companies.

(a) *Subsidiary holding companies.* A mutual holding company may establish a subsidiary holding company as a direct subsidiary to hold 100% of the stock of its savings association subsidiary. The formation and operation of the subsidiary holding company may not be utilized as a means to evade or frustrate the purposes of this part 575 or part 563b of this chapter. The subsidiary holding company may be established either at the time of the initial mutual holding company reorganization or at a subsequent date, subject to the approval of the OTS.

(b) *Stock issuances.* For purposes of §§ 575.7 and 575.8, the subsidiary holding company shall be treated as a savings association issuing stock and shall be subject to the requirements of those sections. In the case of a stock issuance by a subsidiary holding company, the aggregate amount of outstanding common stock of the association owned or controlled by persons other than the subsidiary holding company's mutual holding company parent at the close of the proposed issuance shall be less than 50% of the subsidiary holding company's total outstanding common stock.

(c) *Charters and bylaws for subsidiary holding companies*—(1) *Charters.* The charter of a subsidiary holding company shall be in the form set forth in this paragraph (c)(1) and may include any of the additional provisions permitted pursuant to paragraph (c)(2) of this section. The form of the charter is as follows:

Federal MHC Subsidiary Holding Company Charter

Section 1. Corporate title. The full corporate title of the MHC subsidiary holding company is XXX.

Section 2. Domicile. The domicile of the MHC subsidiary holding company shall be in the city of _____, in the state of _____.

Section 3. Duration. The duration of the MHC subsidiary holding company is perpetual.

Section 4. Purpose and powers. The purpose of the MHC subsidiary holding company is to pursue any or all of the lawful objectives of a federal mutual holding company chartered under section 10(o) of the Home Owners' Loan Act, 12 U.S.C. 1467a(o), and to exercise all of the express, implied, and incidental powers conferred thereby and by all acts amendatory thereof and supplemental thereto, subject to the Constitution and laws of the United States as they are now in effect, or as they may hereafter be amended, and subject to all lawful and applicable rules, regulations, and orders of the Office of Thrift Supervision ("Office").

Section 5. Capital stock. The total number of shares of all classes of the capital stock that the MHC subsidiary holding company has the authority to issue is _____, all of which shall be common stock of par [or if no par is specified then shares shall have a stated] value of _____ per share. The shares may be issued from time to time as authorized by the board of directors without the approval of its

shareholders, except as otherwise provided in this section 5 or to the extent that such approval is required by governing law, rule, or regulation. The consideration for the issuance of the shares shall be paid in full before their issuance and shall not be less than the par [or stated] value. Neither promissory notes nor future services shall constitute payment or part payment for the issuance of shares of the MHC subsidiary holding company. The consideration for the shares shall be cash, tangible or intangible property (to the extent direct investment in such property would be permitted to the MHC subsidiary holding company), labor, or services actually performed for the MHC subsidiary holding company, or any combination of the foregoing. In the absence of actual fraud in the transaction, the value of such property, labor, or services, as determined by the board of directors of the MHC subsidiary holding company, shall be conclusive. Upon payment of such consideration, such shares shall be deemed to be fully paid and nonassessable. In the case of a stock dividend, that part of the retained earnings of the MHC subsidiary holding company that is transferred to common stock or paid-in capital accounts upon the issuance of shares as a stock dividend shall be deemed to be the consideration for their issuance.

Except for shares issued in the initial organization of the MHC subsidiary holding company, no shares of capital stock (including shares issuable upon conversion, exchange, or exercise of other securities) shall be issued, directly or indirectly, to officers, directors, or controlling persons (except for shares issued to the parent mutual holding company) of the MHC subsidiary holding company other than as part of a general public offering or as qualifying shares to a director, unless the issuance or the plan under which they would be issued has been approved by a majority of the total votes eligible to be cast at a legal meeting.

The holders of the common stock shall exclusively possess all voting power. Each holder of shares of common stock shall be entitled to one vote for each share held by such holder, except as to the cumulation of votes for the election of directors, unless the charter provides that there shall be no such cumulative voting. Subject to any provision for a liquidation account, in the event of any liquidation, dissolution, or winding up of the MHC subsidiary holding company, the holders of the common stock shall be entitled, after payment or provision for payment of all debts and liabilities of the MHC subsidiary holding company, to receive the remaining assets of the MHC subsidiary holding company available for distribution, in cash or in kind. Each share of common stock shall have the same relative rights as and be identical in all respects with all the other shares of common stock.

Section 6. Preemptive rights. Holders of the capital stock of the MHC subsidiary holding company shall not be entitled to preemptive rights with respect to any shares of the MHC subsidiary holding company which may be issued.

Section 7. Directors. The MHC subsidiary holding company shall be under the direction of a board of directors. The authorized number of directors, as stated in the MHC subsidiary holding company's bylaws, shall not be fewer than five nor more than fifteen except when a greater or lesser number is approved by the Director of the Office, or his or her delegate.

Section 8. Amendment of charter. Except as provided in Section 5, no amendment, addition, alteration, change or repeal of this charter shall be made, unless such is proposed by the board of directors of the MHC subsidiary holding company, approved by the shareholders by a majority of the votes eligible to be cast at a legal meeting, unless a higher vote is otherwise required, and approved or preapproved by the Office

Attest: _____
Secretary of the Subsidiary Holding Company

By: _____
President or Chief Executive Officer of the Subsidiary Holding Company

Attest: _____
Secretary of the Office of Thrift Supervision

By: _____
Director of the Office of Thrift Supervision

Effective Date: _____

(2) *Charter amendments.* The rules and regulations set forth in § 552.4 of this chapter regarding charter amendments and reissuances of charters (including delegations and filing instructions) shall be applicable to subsidiary holding companies to the same extent as if the subsidiary holding companies were Federal stock savings associations, except that, with respect to the pre-approved charter amendments set forth in § 552.4 of this chapter, the reference to home office in § 552.4(b)(2) of this chapter shall be deemed to refer to the domicile of the subsidiary holding company and the requirements of § 545.95 of this chapter shall not apply to subsidiary holding companies.

(3) *Bylaws.* The rules and regulations set forth in § 552.5 of this chapter regarding bylaws (including their content, any amendments thereto, delegations, and filing instructions) shall be applicable to subsidiary holding companies to the same extent as if subsidiary holding companies were federal stock savings associations. The model bylaws for Federal stock savings associations set forth in the OTS Applications Processing Handbook shall also serve as the model bylaws for subsidiary holding companies, except that the term "association" each time it appears therein shall be replaced with the term "Subsidiary Holding Company."

(4) *Annual reports and books and records.* The rules and regulations set forth in §§ 552.10 and 552.11 of this chapter regarding annual reports to stockholders and maintaining books and records shall be applicable to subsidiary holding companies to the same extent as if subsidiary holding companies were federal stock savings associations.

Dated: May 16, 1997.

By the Office of Thrift Supervision.

Nicolas P. Retsinas,

Director.

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