



MUTUAL HOLDING COMPANY OF WESTERN PENNSYLVANIA

3635 Brownsville Road • Pittsburgh, Pennsylvania 15227-3190 • Phone: (412) 884-7000 • Fax: (412) 884-7818

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October 3, 2000

Manager, Dissemination Branch
Information Management and Services Division
Office of Thrift Supervision
1700 G Street, N.W.
Washington, DC 20552

Attn: Docket 2000-57

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DISSEMINATION BRANCH
OFFICE OF THRIFT SUPERVISION

Dear Sir or Madam:

These comments are submitted by the Mutual Holding Company of Western Pennsylvania, Bethel Park, Pennsylvania ("MHCWP") in response to the notice of proposed rulemaking published by the Office of Thrift Supervision ("OTS") in the Federal Register on July 12, 2000 ("Proposed Rule"). The Proposed Rule would amend the OTS regulations regarding both mutual-to-stock conversions and mutual holding companies ("MHCs"). MHCWP, which was formed in June of 1995, is a mutual holding company that owns all of the issued and outstanding shares of Brentwood Savings Bank, Bethel Park, Pennsylvania. As of June 30, 2000, MHCWP had consolidated total assets of approximately \$217,000,000 and Tier 1 capital of approximately \$18,000,000.

Summary

These comments are limited to our recommendation that the OTS regulations governing the operations of MHCs ("MHC Regulations") be amended to specifically authorize intermediate stock holding companies ("SHCs") or savings association subsidiaries of MHCs to exchange their shares of voting stock for shares of voting stock of depository institutions or other companies in stock form, provided that prior to the transaction the MHC or its subsidiary obtain an opinion from a qualified, independent financial advisor, commonly referred to as a "fairness opinion," that the transaction is in the best interests of the depositors of the subsidiary depository institution from a financial point of view.

Discussion

The Proposed Rule reflects a clear intention on the part of the OTS to foster the use of MHCs. See, for example, the statement in the preamble to the Proposed Rule ("Preamble") that, "For mutuals that elect to convert to stock form, OTS encourages consideration of the mutual holding company (MHC) alternative." 65 Fed. Reg. 43093.

The OTS specifically requested in the Preamble public comments with respect to, "How can OTS make the MHC form more attractive?" 65 Fed. Reg. 43096. And, consistent with this

policy goal, the OTS asked, in particular, "What consideration may MHCs or Mid-tiers use to acquire other institutions, such as trust preferred securities, REITs, mutual capital certificates, and stock repurchases to issue stock for acquisitions? OTS has received a number of inquiries recently from MHCs about other currency to accomplish acquisitions." 65 Fed. Reg. 43097.

In response to these questions, in our view, one of the most significant actions the OTS could take to make the MHC form more attractive would be to amend the MHC Regulations expressly to authorize MHC subsidiaries to use their own shares to acquire depository institutions or other businesses in stock form and to specify any basic requirements that must be met to obtain OTS approval for such transactions.

In our experience, having operated as an MHC for over five years, the inability of MHCs to make stock acquisitions has been one of the most significant, if not the most significant, disadvantages of being an MHC. Without this authority, MHCs and their subsidiaries are able to acquire savings associations or other companies in stock form only through cash acquisitions and the ability of MHCs to generate significant cash or borrowings for such acquisitions is limited. Moreover, many shareholders of potential acquisition targets prefer to receive some or all of their consideration in the form of the acquiror's stock in order to avoid payment of substantial taxes in connection with the sales of the businesses. As a result, for example, we believe that a thrift institution in our local market that was recently sold in a partial stock transaction never contacted us because it thought we could not offer stock as part of the purchase price.

The preamble to the final rule adopted in 1998 that most recently amended the current MHC Regulations specifically addressed the OTS' prior interpretation that had prohibited MHC subsidiaries from issuing stock to complete mergers without first offering their stock to mutual associations on a priority basis. The preamble to the 1998 final rule concluded, after considering this issue, that:

"OTS generally will continue to require that mutual members be granted a first priority subscription interest for stock issued by savings associations and SHCs. OTS notes, however, that Section 575.7(d)(6) currently provides that OTS may permit a non-conforming stock issuance where the applicant demonstrates that it would be more beneficial to the issuing savings association. Under this provision, the OTS believes that properly structured merger transactions that do not grant priority subscription rights may qualify for approval and OTS is willing to consider and approve such transactions on a case-by-case basis."

63 Fed. Reg. 11364 (March 9, 1998).

Although the OTS indicated in this preamble excerpt a willingness to consider and approve on a case-by-case basis transactions in which an MHC subsidiary would issue its stock

to owners of the entity to be acquired without first offering its shares to its mutual members on a priority basis, we believe the general policy to the contrary articulated in this preamble excerpt has continued to be a very strong deterrent to MHCs entering into such stock acquisitions.¹

In our view there is no basis for the OTS to maintain any longer the general policy set out in the 1998 preamble that, "OTS generally will . . . require that mutual members be granted a first priority subscription interest for stock issued by" MHC subsidiaries, as long as the interests of the mutual members are not disadvantaged by the proposed transactions. Most significantly, there is no inherent reason why stock acquisitions by an MHC subsidiary will disadvantage the members of an MHC. Stock acquisitions proposed for MHC subsidiaries, if properly analyzed and researched by the acquirors, should increase the long-term value of the acquiring company on a pro forma basis. Therefore, an increase in the value of the acquiring company would increase the aggregate value of the shares of the MHC depository institution subsidiary that could be purchased by its existing depositors if the MHC ever converted to stock form.

The OTS concerns with respect to stock acquisitions by MHCs also should be assuaged significantly by the example two years ago of the largest MHC in the United States, but one that is not subject to regulation or supervision by the OTS, having acquired a stock savings bank for cash and stock. In 1998, People's Bank, Bridgeport, Connecticut, the Connecticut-chartered savings bank subsidiary of People's Mutual Holdings, which, at the time had total assets of approximately \$10 billion, acquired Norwich Financial Corp., a holding company which owned all of the shares of Norwich Savings Society, a Connecticut-chartered savings bank with over \$700 million of total assets. The purchase price was paid 50.1 percent in People's Bank stock and 49.9 percent in cash. After the transaction was consummated, People's Mutual Holdings still retained in excess of 50.1 percent of the outstanding shares of People's Bank. To the best of our knowledge, no objections based on the rights of the depositors of People's Bank were raised with respect to this transaction by either: the Board of Governors of the Federal Reserve System, which regulates People's Mutual Holdings as a bank holding company; the Federal Deposit Insurance Corporation, the primary federal regulator of People's Bank; the Connecticut Banking Department, which had jurisdiction over the two state-chartered banks, as well as People's Mutual Holdings; or by the depositors of People's.

For all of the foregoing reasons, we urge the OTS to amend the MHC regulations specifically to authorize SHCs or savings association subsidiaries of MHCs to be able to offer

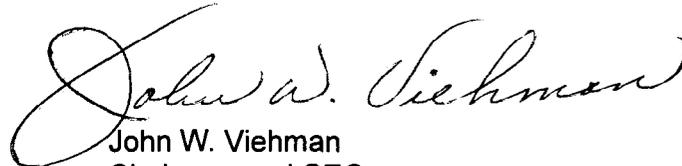
¹ We are encouraged by the recent OTS approvals of two transactions involving the issuance of stock by MHC subsidiaries in connection with acquisitions of stock depository institutions by, in one case, an MHC subsidiary, and, in another case, by a subsidiary of a company to be formed as an MHC. (See proposals and OTS orders concerning Bank Mutual Corporation acquisition of First Northern Capital Corp. and New Harris Financial Inc. acquisition of York Financial Corp.) However, we would note that both of these transactions also involve contemporaneous subscription offerings to depositors of the MHC subsidiaries and, we believe, consistent with both the recently articulated OTS policy to remove impediments to the use of MHCs and the analysis set forth in this comment letter, that stock acquisitions should be expressly authorized for MHCs, regardless of whether or not a subscription offering to the mutual's depositors is conducted contemporaneously by the MHC.

Manager, Dissemination Branch
October 3, 2000
Page 4

their shares in exchange for shares of depository institutions or other companies in stock form. In order to assure that stock acquisitions by MHC subsidiaries do, in fact, not diminish the value of the inchoate interests of existing depositors in the MHC depository institution subsidiaries, we would propose that the amendment to the MHC Regulations to authorize such stock acquisitions require that the acquiror obtain a fairness opinion from a qualified, independent financial advisor that the transaction is in the best interests of the depositors of the MHC subsidiary depository institution from a financial point of view.

Please call me (412) 409-9000, or our counsel, Ira Tannenbaum, at (202) 778-9350 if you would like to discuss any aspects of this comment letter.

Sincerely,



John W. Viehman
Chairman and CEO

cc: Ira L. Tannenbaum
Kirkpatrick & Lockhart