



August 30, 2006

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552

Re: Subordinated Debt Securities and Mandatorily Redeemable Preferred Stock
71 FR 37862 (July 3, 2006), Attention: No. 2006-24

Dear Sir or Madam:

America's Community Bankers ("ACB")¹ is pleased to comment on the Office of Thrift Supervision's ("OTS") proposed revisions to its rule at 12 CFR 563.81 governing the inclusion of subordinated debt securities or mandatorily redeemable preferred stock ("covered securities") in supplementary capital. The OTS's proposed revisions to section 563.81 would update, clarify, and conform certain provisions of the rule to provisions of the rules of the other federal banking agencies governing the use of covered securities as supplementary capital.

ACB Position

ACB supports OTS's proposed revisions to section 563.81 governing savings association issuances of covered securities as supplementary or Tier 2 capital. The revisions are a much-needed update to this important rule. The revisions provide clarity to the rule and greater flexibility to savings associations that wish to use covered securities as Tier 2 capital. The proposed revisions also conform certain provisions to the rules of the other bank regulatory agencies. In particular ACB supports: i) the revised application and notice provisions; ii) the elimination of the purchaser prohibitions giving savings associations a broader market than previously permitted for the public distribution of covered securities; and iii) the change in the minimum maturity requirement from seven years to a five year "original weighted average maturity," conforming the minimum maturity requirement to that of the other bank regulatory agencies. We would also urge the OTS to exempt subordinated debt issuances from the indenture requirement when covered securities are sold to accredited investors.

¹ America's Community Bankers is the national trade association committed to shaping the future of banking by being the innovative industry leader strengthening the competitive position of community banks. To learn more about ACB, visit www.AmericasCommunityBankers.com.

Background

ACB supports the revised application and notice procedures for issuing covered securities as Tier 2 capital. The revised section 563.81 would allow the savings association to file either an application or a notice before or after the savings association issues covered securities. The covered securities may not be used as supplementary capital until the OTS approves the application or does not object to the notice. ACB supports this revision because of the flexibility in permitting savings associations to file a notice rather than an application with the OTS. The savings association may include the covered securities as Tier 2 capital unless the OTS objects to the notice. However, we believe that the OTS should establish a 30-day time limit within which to object to a notice. This gives the savings association a safe harbor and certainty that the covered securities can be treated as Tier 2 capital without further action.

ACB supports the proposed revisions to section 563.81 that would delete the provisions in the existing rule that prohibit the sale of covered securities to certain purchasers. Eliminating the purchaser restrictions gives savings associations a broader market for covered securities and brings the rule in line with the other bank regulators that do not restrict the purchasers of covered securities. Under the existing rule, covered securities could not be sold to another savings association or to a corporate affiliate of such savings association. We agree that this restriction is not needed for covered securities to adequately serve as Tier 2 capital, and we support the deletion of this restriction.

The OTS also proposes to revise the indenture requirements of section 563.81. The proposal would update the monetary thresholds to conform with the changes to the Trust Indenture Act of 1939. This revision is consistent with the Securities Act of 1933 and the Trust Indenture Act of 1939. ACB supports this revision. The OTS also requests comments on whether section 563.81 should be further amended to provide a waiver of the indenture requirement when covered securities are sold to affiliated or unaffiliated accredited investors. Accredited investors are sophisticated investors that can protect their interests and do not require the protections that are necessary for other investors. ACB supports adding this exemption to the rule as it would reduce the burden on the savings association to unnecessarily provide an indenture.

Covered securities treated as Tier 2 capital may not be subject to mandatory prepayment except for certain stated events of default under the current rule. We support the OTS restatement of the current rules that limit mandatory prepayment to specific events of default. We believe that the OTS should not narrow this provision because it would unreasonably restrict the mandatory prepayment provisions for issuances of covered securities for savings associations. There is no evidence cited in the proposal that these events of default have created a problem for savings associations in the past. As additional protection, the proposed rule would continue to require OTS approval of any acceleration of payment of principal of a covered security of a savings association that fails to meet certain capital requirements.

Finally, ACB supports the reduction of the minimum maturity of covered securities from seven years to a minimum five-year original weighted maturity ("minimum weighted maturity"). This revision would conform the OTS rule to the maturity requirements of the other bank regulatory

agencies. The minimum weighted maturity gives institutions flexibility to reduce covered securities earlier than the required formula under the current rule and vary the dollar amount of debt that can be repaid in a particular year. The flexibility can help savings associations negotiate favorable terms with underwriters and enhance marketability of covered securities to the public.

Thank you for the opportunity to comment on this important rule that governs covered securities as Tier 2 capital. Should you have any questions, please contact Patty Milon at 202-857-3121 or at pmilon@acbankers.org or the undersigned at 202-857-3186 or at shaeger@acbankers.org.

Sincerely,

A handwritten signature in cursive script that reads "Sharon Haeger". The signature is written in black ink and is positioned below the word "Sincerely,".

Sharon A. Haeger
Regulatory Counsel