

Menzo D. Case
2171 Morris Drive
Seneca Falls NY 13148

August 30, 2006

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

Attention: No 2006-29

Re: Notice of Proposed Rule Making – Stock Benefit Plans in Mutual to Stock
Conversions and Mutual Holding Company Structures (12 CFR Parts 563b and
575)

Dear Sir or Madam:

I am writing to comment upon the above-referenced rules that apply to the various stock benefit plans implemented by a thrift institution which is in the Mutual Holding Company (“MHC”) form of organization (the “Proposed Regulations”).

The proposed regulation clarifies that stock benefit plans implemented more than one year after the minority stock issuance need the approval of a majority of the outstanding shares, including those of the MHC, which is governed by the owner depositors.

Certainly, bank management and directors would support the proposed regulation because in practice, the shares owned by the MHC are voted by the Board without obtaining any input from depositors. Under the common provisions of stock benefit plans, directors obtain 30% of the options and restricted stock awards and a single employee, usually the president, can receive up to 25% of the options and restricted stock awards. Of course, they are going to approve such lucrative plans! Most will follow the approval of the stock benefit plans with a plan to sell the MHC shares to the public so that additional stock incentive plans can be obtained and to accelerate the vesting of the two stock benefit plans with the subsequent sale of the Bank.

Shareholder activists, who are actively pursuing the sale of converted banks, would certainly oppose the proposed regulation. The activists would prefer that the rule be that stock benefit plans be approved by the minority shareholders for any MHC, regardless of when the plans are presented for shareholder approval. Often, these activists enter into agreements to approve the proposed stock benefit plans in exchange for stock buy backs at fixed amounts or for Board seats. They do this cloaked in their concern to improve corporate governance and improved shareholder communications. Their sole concern, as proven by “backroom” deals made and the number of acquisitions closed under their prevue, is their personal profit.

The rule of law is of great concern. Let's say that a majority of stock for a certain bank is owned by a few bank employees and that the shareholder activists hold a minority

holding. In this case, bank employees have contributed their own capital and have a vested interest in the organization's success. Now, the issue of stock incentive plans is raised, and the majority favors the plans. Could it be that the minority shareholders would someday be allowed to override the majority? By continuing to require minority shareholder approval of stock benefit plans, the OTS establishes a precedent that may be used to support the scenario just described.

Another concern is the erosion of mutual ownership rights. Today, the depositors must approve a subsequent sale of the MHC shares (the "second step"). If minority shareholders strengthen their position through eliminating the rights of the majority shareholders under the MHC format, will this someday migrate such that they can force the MHC into a second step transaction without regard to the depositors' rights?

In my opinion, allowing either group, bank management or the minority shareholders, to approve stock benefit plans is not satisfactory. Neither seems to be concerned with the communities being served by these institutions. The disappearance of community banks, with their roots in the communities served, has a terrible impact on the community. Community banks serve as a uniting force in their markets and often bank management plays a vital role in local economic efforts. When the community bank disappears, the community is stripped of that vital resource.

The approval process for MHC stock benefit plans should not ignore the rights of the depositors. Such stock benefit plans should be subject to the approval of the depositors and the minority shareholders. The MHC shares would be allocated for and against the proposal based on the depositor vote. Then, the minority shares would be tallied with the MHC shares to determine whether the stock benefit plans are approved. I understand that there would be additional costs involved for the Bank, but the recognition of the depositors' ownership rights under the mutual form should not be ignored.

Sincerely,



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