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VIA E-MAIL AND HAND DELIVERY

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

Attention: Docket No. 2000-94

Dear Sir or Madam:

Silver, Freedman & Taff, L.L.P. is pleased to comment on the notice of proposed rulemaking issued by the Office of Thrift Supervision ("OTS") to revise its application processing guidelines and procedures. The firm represents financial institutions nationwide in mergers and acquisitions, mutual-to-stock conversions, charter conversions, mutual holding company formations, de novo charters and other financial transactions.

The stated purpose of the proposed rule is to "improve the clarity and efficiency of the OTS application processing procedures" by updating existing practices, providing more predictable procedures for applicants and providing greater flexibility to the OTS in processing applications.[1] The proposal consists of two major features: (1) a description and clarification of existing application requirements and OTS review procedures, and (2) new pre-application meeting requirements, including advance OTS review of a draft business plan.

The proposed rule provides useful clarifications of existing application practices and procedures. Reader-friendly charts are provided to assist applicants in determining, for example, whether a particular application qualifies for "expedited" or "standard" processing treatment. OTS

[1] 65 Fed. Reg. 66118 (November 2, 2000).

application-review timelines are clearly specified. What information to include in the application and how to file it are succinctly presented.

However, the provisions which would codify pre-filing meeting requirements are troubling. Contrary to the stated intent of the proposal, these requirements could prove to be disruptive and may substantially reduce the efficiency of the application process. These provisions should be eliminated.

The following are specific comments on the major provisions in the proposed rule.

Pre-filing Meeting

Certain types of applicants would be required to meet with the OTS at least 30 calendar days before filing an application. The covered applications involve (1) de novo federal savings associations, (2) conversions by commercial banks and credit unions to federal savings associations, (3) savings association acquisitions by insurance companies, investment companies, securities firms, commodity firms, or pension funds, (4) mutual-to-stock conversions, and (5) other undefined types of applications where the application process can be expedited.[2]

Pre-filing meetings with the OTS can be useful in expediting application processing under certain conditions. However, it would be a mistake to codify this requirement. There may be circumstances in which a pre-filing meeting would be unnecessary and unproductive. For example, an entity that received earlier approval to establish a de novo federal savings association and wishes to establish or acquire another association with the same operating characteristics should not be required to meet with the OTS in advance of filing an application. It is also unclear why a pre-filing meeting should apply to commercial bank and credit union conversions to federal savings associations. The Comptroller of the Currency ("OCC") requires only that an applicant desiring to convert a federal savings association to a national bank consult with the appropriate district office prior to filing if the applicant anticipates that its application will raise unusual or complex issues.[3] It is also worth noting that the Federal Deposit Insurance Corporation does not require a pre-filing meeting for any application, including mutual-to-stock conversions.

OTS decisions concerning appropriate pre-filing meetings should be made on a case-by-case basis. Codifying such a requirement would merely reduce the OTS' flexibility to choose the most efficient means to resolve issues that may arise during the application review process. Unnecessary pre-filing meetings could delay the process by resulting in a duplication of effort. In some cases, a

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[2] Id. at 66127.

[3] 12 CFR 5.24(d)(2)(i).

post-filing meeting may be a more useful vehicle to resolve issues that may not be readily anticipated in a pre-filing meeting. Pre-filing meetings are best reserved for complex or novel applications.

The Regional Offices should be given the discretion to decide whether a pre-filing meeting is worth the time and effort. For any application, the applicant should retain the option of seeking a pre-filing meeting with the OTS. The OTS should provide guidance to the industry, after receiving appropriate industry input, on how to make pre- and post-filing meetings more meaningful and efficient.

Timing and Scope of Meeting

Either by regulation or guidance, no fixed deadline for conducting a pre-filing meeting should be specified. This determination should be made by the appropriate Regional Office based on the nature of application, scheduling considerations, expected review time, and staff resources involved. Under certain circumstances, a 30-day lead time may not be feasible. It has been the experience of this firm that in many cases a 15-day lead time would suffice.

Under the proposal, the official filing date of an application would not commence until a pre-filing meeting is conducted, a business plan is submitted, appropriate copies of the application are filed with the OTS Regional Office and if necessary OTS headquarters, the applicable fee is paid, and publication requirements are met.[4]

Even appropriate pre-filing meetings should not cause unnecessary delays in the application process. The acceptance of a business plan in a pre-filing meeting should not be a precondition of an accepted application. This is of paramount concern with respect to another proposal of the OTS, which would require prior Regional Office approval of an overly-detailed business plan before a mutual-to-stock conversion application is accepted. This firm has previously conveyed our objections to this proposal.[5] The OTS has ample authority under its existing application regulations to evaluate and, if necessary, seek revisions to business plans.

The proper scope of a pre-filing meeting should be to review the proposed management and board of a federal savings association, its operating strategy, and its compliance with relevant laws and regulations. Applications that qualify for expedited processing treatment under existing OTS

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[4] 65 Fed. Reg. 66118, 66128 (November 2, 2000).

[5] See Silver, Freedman & Taff, L.L.P. letter to the Office of Thrift Supervision, Docket No. 2000-57, November 9, 2000.

requirements should also qualify for limited-scope pre-filing meetings. Financial projections and deployment of capital expectations should remain solely within the province of a filed application.

The proposed rule authorizes the OTS to extend the current 15-day period for reviewing new information requested from an applicant an additional 15 days.[6] The OTS would consider long-standing applications withdrawn two calendar years after the filing date if the applicant is not pursuing a final OTS determination for reasons within the applicant's control.[7]

It is essential that the OTS not only notify applicants in advance of an extension in the new-information review period, but also provide an explanation of why this extension is necessary. This would allow applicants to work with the OTS to resolve any remaining issues expeditiously. The two-year period for deeming long-standing applications withdrawn, after notifying the applicant, appears reasonable.

Confidentiality

The proposal permits an applicant to request in writing that portions of its application be kept confidential. The applicant must explain how it would be "substantially harmed" by public disclosure of this information. No portion of the application relating to meeting CRA objectives could be kept confidential. The OTS may, without notifying the applicant, comment on any confidential submissions in any public statement it may issue on its decision on an application.[8]

For competitive reasons, it is imperative that certain portions of an application be kept confidential. It is hoped that the OTS respects the business judgement of an applicant in this regard. The OTS should notify an applicant in advance of any public statement concerning the application to permit the applicant to make its case for excluding confidential information from the public statement. Moreover, any information deemed confidential during the application review process must remain confidential in any public statement by the OTS pursuant to a decision on an application.

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[6] 65 Fed. Reg. 66118, 66130 (November 2, 2000).

[7] Id. at 66131.

[8] Id. at 66127.

Consistent with OCC predisclosure notice requirements,[9] the OTS should provide an applicant with written notice of any final administrative decision to disclose confidential commercial information at least 10 business days prior to the date the OTS intends to disclose the information. This advance notice requirement should apply both during the application review process and after the OTS' decision on an application. The applicant should have the opportunity to object to the disclosure within 10 business days after receipt of the notice.

Finally, the OTS requests comment on whether to use other ratings systems, including the Uniform Rating System for Data Processing Operations and the Uniform Interagency Trust Rating System, in determining whether expedited or standard processing treatment should apply.[10]

Applicants currently must satisfy well-established criteria to qualify for expedited processing treatment, which are consistent among the Federal banking agencies. The Uniform Financial Institutions Rating System (UFIRS) has proven to be a sufficiently comprehensive measure of the overall soundness of an applicant. Any proposed changes to the expedited processing qualifications should be based on thorough interagency deliberations with appropriate comment from the public.

We appreciate your consideration of our comments.

Yours truly,

Silver, Freedman & Taff, L.L.P.

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[9] 12 CFR 4.16.

[10] 65 Fed. Reg. 66118, 66119 (November 2, 2000).