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Via Facsimile to (202) 906-6518 and Email to regs.comments@ots.treas.gov

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

Re: Notice of Proposed Rule Making Regarding Stock Benefit Plans in Mutual-to-Stock Conversions and Mutual Holding Company Structures, 71 Fed. Reg. 41179 (July 20, 2006), No. 2006-29

Dear Sir or Madam:

As founder and sole shareholder of Arles Advisors Inc, I strongly oppose the Office of Thrift Supervision's ("OTS") proposed rule. Arles Advisors is the managing general partner of Arles Partners LP and Homestead Partners LP, two private investment partnerships primarily focused on long-term, value-oriented and passive investment opportunities in small-capitalized banks and thrifts. I am also a free-lance writer whose articles have been published in numerous magazines and newspapers, including The New York Times and The Washington Post.

An essential point that has not been thoroughly discussed in previous letters submitted to the OTS is that deposit holders have no substantive rights in mutual holding companies ("MHC"). In the vast majority of cases, directors obtain and hold their positions without meaningful deposit holder approval. Therefore, if this rule is approved, directors who obtain their positions without meaningful deposit holder input will be allowed to award themselves significant stock benefits without obtaining approval of any independent and vested stakeholders such as deposit holders, or public shareholders, or both. And these plans are quite significant. In the case of Investors Bancorp, Inc. (an MHC with headquarters in Short Hills, New Jersey that completed its initial public stock offering in October 2005) their stock benefit plans are valued at approximately $70 million.

In the event that the proposed rule is enacted, I predict that a court will reverse it since it contradicts the OTS "Conflict of Interest" rule, which prohibits directors from voting on matters in which they have an interest and requires that directors recuse themselves from "voting on the matter or transaction." (12 C.F.R. § 563.200(b)(3).) If directors allow their MHCs to vote in favor of stock benefit plans after one year, they will be voting on matters in which they have a material interest and in which they control the outcomes.

Furthermore, the proposed rule appears to condone actions that violate existing state corporate laws. State corporate laws prohibit directors from breaching their fiduciary duties by, among other things, voting on matters in which they have material personal stakes or interests. If the proposed rule is adopted and insiders attempt to vote themselves plans after the first year, they could be breaching their fiduciary duties and violating state corporate laws. Moreover, insiders who vote themselves plans without putting the matter to a public shareholder vote may not be able to claim protection of the business judgment rule under state laws, subjecting their actions to greater judicial scrutiny.

Nearly a decade ago, the OTS stated "fiduciary duties lie at the heart of safety and soundness." (61 Fed. Reg. 60173, 60175 (Nov. 27, 1996).) The OTS was chartered in order to regulate the safety and soundness of thrifts. The proposed rule gives insiders the ability to breach their fiduciary duties by adopting stock benefit plans for themselves, without allowing the deposit holders, or public shareholders, or both to decide. The OTS is shirking its Congressional mandate.

Many public shareholders have invested in companies held by MHCs in reliance upon the current rule that gives them the final say on adopting stock benefit plans. If the OTS adopts the rule and makes it retroactive to companies that have already converted, it would be highly prejudicial to existing investors.

I also urge you to note for the record that 12 of the comment letters from depository institutions supporting the proposed rule are templates written by three common authors: letters 5 (Union Building & Loan Savings Bank), 6 (Beneficial Savings Bank) and 8 (Hatboro Federal Savings)—all from mutual savings banks located in Pennsylvania—are identical; 11 (Chesapeake Bank of Maryland) and 12 (Gloucester County Federal Savings Bank) are identical; and 10 (Home Federal Savings and Loan), 13 (Sound Community Bank), 15 (Kaiser Federal Bank), 17 (Security Bank), 19 (Lusitania Savings Bank), 21 (Third Federal Savings & Loan) and 22 (Nutmeg Financial) are identical. When the OTS publishes the final rule and tallies the number of commenting proponents and opponents, it should not count these 12 letters separately. The letters were written by only three authors—likely, lawyers for common clients.

Sincerely,