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September 11, 2006

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

RE: Stock Benefit Plans in Mutual-to-Stock Conversions and
Mutual Holding Company Structures
OTS No. 2006-29; RIN 1550-AC07; 71 Fed. Reg. 41179 (July 20, 2006).

Dear Sir or Madam:

The American Bankers Association ("ABA") appreciates the opportunity to comment on the Office of Thrift Supervision's ("OTS's") proposed rule that clarifies the rules governing the conversion of a mutual savings institution into the stock form or mutual holding company structure ("MHC"). ABA, on behalf of the more than two million men and women who work in the nation's banks, brings together all categories of banking institutions to best represent the interests of this rapidly changing industry. Its membership – which includes community, regional and money center banks and holding companies, as well as savings associations, trust companies and savings banks – makes ABA the largest banking trade association in the country.

The Proposal:

The OTS proposal codifies and simplifies the rules relating to stock benefit plans in mutual-to-stock conversions and reorganizations into MHC form. The rule's genesis is found in the routinely granted waivers that have typically accompanied many of the conversions or reorganizations. Rather than continue to require waiver requests that are as a matter of course granted, the OTS seeks to incorporate these waivers into the rule. In addition, the OTS has taken the opportunity to simplify the organization of the stock benefit portions of the rules to eliminate inconsistencies and overlaps between the two sets of regulations. In addition to seeking greater clarity, the OTS's amendments strive to reflect its policy of "achiev[ing] as widespread a distribution of stock as possible."¹ After consultation with practitioners and savings institutions alike, ABA has found general support for the amendments and supports their prompt adoption.

¹ 71 Fed.Reg. 41179, 41182 (July 20, 2006).

Specific Questions Posed:

OTS asks whether the proposal achieves the stated purpose of enhancing clarity and eliminates existing ambiguities in the rules without creating any new confusion. In addition, the OTS asks whether the proposal creates any new regulatory burdens and whether the plain language format achieves the agency's goal of clear and understandable regulation. Each issue will be addressed in turn.

Does the Proposal Achieve Its State Purposes?

Yes, the rules as proposed to be amended more clearly state the requirements for Employee Stock Option Plans ("ESOPs"), management recognition plans ("MRPs") and stock options. Their calculation, use of stock acquired in the secondary market (and helps clarify when stock repurchases may occur), and individual and aggregate limitations are stated in a more straightforward manner without the need to consult agency practice or "lore." This helps the board of directors, shareholders, management, and the professionals who file the required documentation on their behalf with the agency. Everyone can read the rules and understand the limitations.

Does the Proposal Reduce Regulatory Burden?

Yes, in several ways. First, the timing and requirements for shareholder votes are simplified by the clarifications. Second, many of the standard waivers will no longer need to be separately requested. Third, greater clarity makes the effort to comply less time-consuming.

Other Comments:

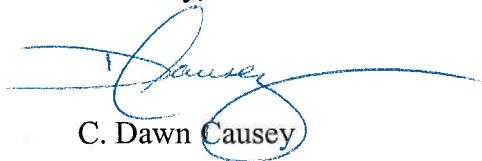
The proposal generally cleans up and updates the stock benefit section of the rules. ABA suggests that OTS consider clarifying §563b.500(a)(12) [as proposed to be amended or §563b.500(a)(13) as currently listed in the Code of Federal Regulations] to state that executive officers or directors must exercise or forfeit their options in situations of the association's capital need. Two of the three listed situations are related to capital need – critically undercapitalized or issuance of a capital directive. The third trigger is stated as "subject to OTS enforcement action" without any qualification. That means that an association may be subject to a cease and desist order on a noncapital issue (RESPA, BSA, TILA) and the exercise or forfeit provision is triggered. We encourage OTS to clarify and limit the expansive reference.

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Conclusion:

ABA appreciates the opportunity to comment on the proposed rules and expresses its general support for the goals and specifics of the amendments. Clarity helps everyone, including regulators. We encourage OTS to continue to streamline its regulations, while at the same time, retaining sufficient detail to communicate the requirements for each type of activity or transaction. We also encourage the OTS to eliminate overly expansive language that may have unintended consequences. If there are any questions on the issues raised by this letter, please do not hesitate to contact the undersigned at (202) 663-5434.

Sincerely,



C. Dawn Causey