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

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

Re: Comments on Proposed Rulemaking: *Stock Benefit Plans in Mutual-to-Stock Conversions and Mutual Holding Company Structures* (OTS Docket No. 2006-29 and RIN 1550-AC07)

Dear Sir or Madam:

I am writing on behalf of myself and our firm, PL Capital LLC, to comment on certain portions of the above referenced notice of proposed rulemaking (the "Proposed Rule"). In particular, we are opposed to the section of the Proposed Rule which eliminates minority shareholder approval of stock option and Management Recognition plans adopted one year or more after a minority stock issuance. The Proposed Rule requires an affirmative vote of minority shareholders (i.e. the shareholders other than the Mutual Holding Company, or "MHC") only during the first year after a minority stock issuance. After one year, minority shareholders' votes will be meaningless, since by regulation the MHC will always hold the majority of the outstanding stock, giving MHC board members the ability to unilaterally approve stock benefit plans for themselves and other insiders.

Allowing MHC Boards and Managers to Propose and Approve Their Own Stock Benefit Plans is an Unacceptable Conflict of Interest; MHC Insiders Should be Disqualified From Voting Since They Are Interested Parties

In prior rulings, the OTS rightly recognized the conflict of interest inherent in giving MHC directors the power to propose and approve stock benefit plans that they benefit from, and took steps to mitigate it. The Proposed Rule should also recognize this unacceptable conflict of interest by retaining minority shareholder approval of stock benefit plans, regardless of the time frame.

Allowing MHC insiders to control the vote for stock benefit plans is clearly different than allowing the MHC to control the vote in other corporate matters (e.g. election of directors). For director elections and other corporate matters, the fact is that the MHC does control the majority of the outstanding shares, and therefore the vote (although we still believe that depositors should have more clearly defined and accessible nomination and voting rights for mutuals and MHCs, but that is not the subject here). The approval of stock benefit plans is different, due to the inherent conflict of interest, which should disqualify the MHC vote.

Minority Shareholders Will Never Again Have a Meaningful Vote on Stock Benefit Plans Since MHCs Will Simply Wait One Year to Present Stock Benefit Plans (to Themselves) for Approval

The proposal narrows the window for meaningful minority shareholder participation in the approval of stock benefit plans to the first six to twelve months after a minority stock issuance, since existing Office of Thrift Supervision ("OTS") regulations already require converted thrifts to wait at least six months before holding a shareholder meeting to approve such plans. As a practical matter, if the Proposed Rule is adopted, minority shareholders in MHCs will never again have a meaningful vote for stock benefit plans, since MHC managers and boards will simply wait one year or more to present the plans (to themselves) for "approval."

The Proposed Rule's Selection of 12 Months is Arbitrary and Illogical

The Proposed Rule does not explain, and we fail to see, the logic of requiring minority shareholder approval for a limited, seemingly arbitrary period of 6-12 months. If it is appropriate to have minority shareholder approval, then it should be required regardless of when the stock benefit plan is presented for approval.

The OTS Proposed Rule Fails to Recognize Who Did, and Did Not, Provide the Capital to the Company

If the Proposed Rule is adopted, minority shareholders will not have a meaningful role in any aspect of the corporate governance of the company they own. This is a perverse situation, because the minority shareholders provide the majority of the capital, unlike the MHC managers and board members, the so-called majority shareholders, who contribute very little to the capital structure. Minority shareholders acquire and pay for their shares. The MHC majority does not. The basic premise of "majority" rules in a corporation flows from the assumption that the majority shareholders acquired their majority ownership stake in the same manner as the minority shareholders (e.g. through open market purchases, or in a capital raise) and that every share thus has an equal vote. Acquire and own more shares, control more votes. The present MHC majority voting block is analogous to having corporate insiders grant themselves free stock until they control 50.1% of the vote, then declaring they control the company. Mathematically they would have the votes, but it would not be fair.

The Minority Shareholders Should Have the Right to Approve the Stock Benefit Plans Since They Have No Other Ways to Hold MHC Boards and Managements Accountable

The minority shareholders should have the primary say in how their capital is given away to insiders. This is particularly true in the case of MHCs since minority

shareholders and depositors have no say in who gets nominated or elected to the MHC Board, and therefore no say over any aspect of governing the company they own. The management and board of the MHC already have unfettered control over the corporate governance of the company (since the MHC board members both nominate themselves to the board and control the vote, as well as control by-law changes, etc.). If the Proposed Rule is adopted, insiders will be able to raid the corporate treasury as well, with no accountability to any outside shareholders. By adopting the Proposed Rule, the OTS will remove the only viable method by which minority shareholders can hold MHC managements and boards accountable.

The OTS Proposed Rule is Contrary to Corporate Governance Principles and Efforts of Other Legislative and Regulatory Bodies

The Proposed Rule is contrary to widely accepted principles of corporate governance, executive compensation, shareholders' rights and internal controls. It is also contrary to the efforts of other regulatory agencies and legislative bodies, which in recent years have attempted to rein in the potential for executive compensation abuses and enhance corporate governance practices.

The OTS Proposed Rule is Contrary to Previous OTS' Regulations and Views

This proposal also seems to be contrary to the OTS' own views, as expressed in previous regulations and guidelines. In prior years, the OTS and FDIC seemed primarily and rightly concerned about the potential for insider abuse and the inherent conflict of interest of having insiders approve their own stock benefit plans. Until this proposal, the OTS appeared to be concerned about preserving minority shareholders' rights, both as a matter of principle and as a tool to ensure MHC managements and boards were held accountable when it came to stock benefit plan approvals. We can only assume that the Proposed Rule is the result of pressure brought to bear by MHC insiders aggravated by the need to obtain minority shareholder approval before they can get access to the millions (often tens of millions) of dollars contained in these stock benefit plans.

This Rule Appears to Only Benefit Insiders—Why?

If this rule is adopted, the OTS is clearly favoring insiders over minority shareholders, with no apparent benefit to anyone other than insiders. Who else benefits from this rule? How does this proposal enhance the safety and soundness of individual thrifts and the industry? Does this proposal enhance corporate governance? In the Proposed Rule, the only benefit we could find were some minor references to reducing regulatory burden and the claim that the existing rule is "unduly restrictive." Why it is unduly restrictive is not explained. Having MHC managers obtain the approval of the majority of the minority shareholders, once, for stock benefit plans that transfer millions of dollars of shareholders' capital to insiders, is not "unduly restrictive" in our opinion.

Said Differently, What Detriment Will Come from Minority Shareholders' Having the Right to Approve Stock Benefit Plans?

In our opinion, the vast majority of stock benefit plans will be enacted on the same terms and in the same amounts, even if minority shareholder approval is required. In certain rare instances, insiders may have to modify the amounts and/or terms of the stock benefit plans in order to obtain minority shareholder approval. There will also be

some additional costs (effectively paid by shareholders, not the insiders) to pay for shareholder meetings and proxy solicitations. The additional costs can be minimized by combining regularly scheduled meetings with stock benefit plan approvals.

Depositors will not be harmed. Customers will not be harmed. Thrifts will still be able to attract and retain qualified managers since (even reduced) MRP and stock option plans are generous relative to normal salaried positions in the banking industry. Minority shareholders will not be harmed. The regulatory environment will not be harmed. Safety and soundness will be enhanced. The industry will likely be more attractive to investors, ensuring the availability of capital.

Insiders Will Have No Accountability to Minority Shareholders and Minimal Accountability to the OTS

MHC managements and boards will simply wait the required one year, then proceed to give themselves whatever stock benefit plans they desire, regardless of its impact on the company, the stock price or their fiduciary duty to shareholders. Without the need to propose benefit plans that will stand the test of minority shareholders scrutiny, MHC managements and boards will have little incentive or inducement to control themselves.

For example, assume a MHC has some older board members or executives who want to retire before the OTS regulated minimum five year vesting on MRP stock is up. No problem, they can just wait one year to adopt a plan which adds normal retirement as a trigger to full vesting (thereby circumventing Part 563b.500 (a) (12) which only permits acceleration of vesting for death, disability or change in control). After one year, there will be no OTS or minority shareholder approval needed to implement this type of revision, regardless of whether minority shareholders find it objectionable, or it violates Part 563b.500.

In fact, under the proposed and existing rules, both minority shareholders and the OTS abdicate control over the approval of stock benefit plans to managements and boards of MHCs (and fully converted thrifts) since the limitations contained in Part 563b.500 (a)(1) to (a)(14) only apply to plans implemented within the first 12 months. After 12 months, managements and boards of MHCs (and fully converted thrifts) can effectively change the stock benefit plans to whatever amount and terms they want regardless of how objectionable they may be to minority shareholders, or contrary to reasonable standards of corporate governance and executive compensation. The proposed rule offers an almost meaningless limitation to this glaring "one year" loophole, namely that the limitations in Part 563b.500 "may be exceeded to the extent that the awards are made with stock purchased in the secondary market" and that the post one year plans "substantially conform to the purchase priorities of 563b."

Since management is spending someone else's money, to benefit themselves, does the OTS believe that requiring open market purchases to fund stock benefit plans is an effective control? As a close observer of thrifts, and an industry participant for 22 years (I am, or have been, a(n): portfolio manager specializing in banks/thrifts, board member of banks/thrifts, compensation and audit committee member, CPA auditing thrifts, investment advisor advising thrifts on M&A, participant in standard setting for thrifts, etc.) I can assure you that spending shareholders' capital to buy stock in the open market

so it can be given away without cost to insiders, is not an internal control or corporate governance tool. In fact, in those 22 years I have never once observed, or even heard of, a thrift that declined to propose a stock benefit plan because the insiders felt it was excessive or an inappropriate use of shareholders' capital. I have never seen, or heard of, a thrift that declined to buy stock for their own benefit plans in the open market because, for example, the price was too high or dilution to shareholders was too great. It never happens, and never will, if the Proposed Rule is adopted.

Since the Proposed Rule takes away the market mechanisms for holding MHC insiders accountable for their actions (e.g. minority shareholders cannot vote directors out of office or reject the stock benefit plans ), the reality is that MHC boards and managers will give themselves 100% of whatever maximum amounts the OTS allows. The OTS is naïve if they think thrift managers, who are no longer accountable to minority shareholders, will place the fiduciary interest of shareholders, or safety and soundness concerns, ahead of insiders' interests when it comes approving their own stock benefit plans or executing open market purchases to fund the plans.

The OTS Proposed Rule Will Result in Increased Costs

To add insult to injury, the Proposed Rule effectively ensures that minority shareholders will not only lose control over management stock benefit plans, they will effectively pay for the privilege. Since the stock price of most MHCs and fully converted thrifts rises after a conversion, stock purchased after one year in the open market is likely to be more expensive than stock simply issued in the conversion. The insiders don't care what the purchase price is, since they get the same percentage amount of free stock, regardless of the purchase price, since MRPs are based upon a percentage of stock issued, not a fixed dollar amount.

MHCs and Fully Converted Thrifts Are Different—MHC Boards Have No Accountability to Shareholders

We also think that the Proposed Rule should recognize the inherent difference between MHCs and fully converted thrifts. In a fully converted thrift, shareholders at least have the ultimate ability to remove directors via the election of directors, even if (under the OTS rules) they may not have any direct say in approving stock benefit plans (after one year). For fully converted thrifts, there is at least the potential for subsequent accountability if insiders unjustly enrich themselves or fail to justify the benefits they were granted. In the proposed MHC regulatory arrangement, shareholders will have neither the ability to approve the stock benefit plans nor the ability to oust directors whose actions they find objectionable, regardless of circumstances.

The OTS May Send the Wrong Message to its Critics

Politically, the Proposed Rule may also be the wrong message to send at this time. As the OTS is well aware, there is increasing angst among many credit unions, the National Credit Union Administration and members of Congress over credit unions that flip their charters to the OTS, and then convert to stock status. One of the primary criticisms is that the OTS does not have regulatory mechanisms in place to stop insiders from unjustly enriching themselves. This proposal, if adopted, will only reinforce the view that the OTS places few controls over insiders and executive compensation. This

proposal will encourage the view that the OTS is an advocate for thrift insiders, rather than an effective regulator and supervisor.

The Likely Result if the Proposed Rule is Adopted

Before adopting this rule, we request that the OTS consider these simple questions and answers:

(1) If the Proposed Rule is adopted how many MHC boards will vote against the adoption of the maximum allowable stock benefit plans for themselves and their fellow insiders?

We believe the answer is obvious: NONE. Every stock benefit plan will be adopted in whatever terms and amounts insiders desire (capped only by a weak link to the requirements of Part 563(b).500).

(2) If the Proposed Rule is adopted how many MHC boards will subject their stock benefit plans to minority shareholder approval in months 6-12?

We believe the answer is also obvious: NONE. Every MHC will take advantage of the one year loophole created by this Proposed Rule, and minority shareholders will never again have any say in the approval of stock benefit plans, regardless of the plan amounts, terms, company performance or other circumstances.

(3) If the Proposed Rule is amended to require that only minority shareholders are permitted to have the deciding vote on stock benefit plans, regardless of the time frame, how many plans will be approved?

Despite the fears of MHC insiders, we believe the overwhelming majority of stock benefit plans will still be approved, as in the past, without changes. Most insiders will still get their benefits. Despite our firm's reputation as a shareholder activist, our firm routinely votes for most compensation plans presented to us, if they are customary and reasonable. If changes are needed before minority shareholders approve a plan, we are confident that the changes will make the benefit plan more reasonable and fair, the normal byproduct of market forces, negotiation and compromise. That is the nature of our markets and our entire economic system. It is not always pretty, but it works. It is necessary to have checks and balances, particularly when it comes to corporate governance and executive compensation.

This is an Issue on Which the OTS Should Consult Corporate Governance Experts

This issue is not directly related to banking, or safety and soundness. It is a corporate governance issue. Before deciding on this issue, we recommend that the OTS consult with one or more experts on corporate governance such as Institutional Shareholders Services (ISS), Proxy Monitor, Charles Elson (University of Delaware Center for Corporate Governance), Lucian Bebchuck (Harvard Law School), Nell Minnow (Corporate Library) or others. We would be strongly persuaded by an independent opinion by one or more of these experts.

Our Recommendation

The OTS should modify this Proposed Rule to require minority shareholder approval of stock benefit plans, regardless of the time frame.

Revert Back to Issuing the MRP Stock in the Conversion if the OTS is Intent on Stripping Minority Shareholders' Rights

If the OTS insists on implementing this rule, we recommend that the OTS drop the façade of minority shareholder participation and simply go back to the approach of allowing managements and boards to receive their MRP plans in the conversion. Under that approach, at least the depositors/future shareholders can approve the plan of conversion knowing the amount and cost of the MRP plan, the MRP will be fully disclosed in the offering circular and the cost/dilution from the MRP will be defined (and less dilutive than waiting a year and likely paying a higher price for open market purchases). Also, the purchase limitations and terms of the plans would be defined and understood before the conversion. Please note that we are only referring to MRP plans being issued in the conversion (if OTS refuses to amend the Proposed Rule to allow minority shareholder approval of benefit plans). Under all circumstances, we approve of the regulations requiring stock options to be granted, at market prices, after the conversion. Stock options should continue to be granted after the stock is trading, ensuring that grants are made at fair market prices.

Sincerely,

Richard Lashley

Richard Lashley
Principal