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Monday, August 21, 2006

BY FACSIMILE AND COURIER

Comments Section, Attention No. 2006-29
Chief Counsel
Office of Thrift Supervision
1700 G Street, N.W.
Washington, District of Columbia 20552

RE: Comments on Rule Regarding Stock Benefit Plans
in Stock Conversions to Mutual Holding
Companies OTS Docket 2006-29

Gentlemen:

This letter is submitted as a comment on the above referenced proposed rule which reverses the prior position of the Office of Thrift Supervision ("OTS") requiring a disinterested stockholder vote for the approval of compensation plans by mutual holding companies ("MHC"). This letter states the opinion of the writer and is not offered as a statement of facts.

Because of the well documented history of conflicts in voting by MHCs and the OTS's own published records with respect to voting by management teams at MHCs on benefit plans, I will not restate those considered and reasoned views here. I am in agreement with the findings and views previously set forth by the OTS and the current regulatory regime which assures a fair vote by disinterested stakeholders. See Section 10(o)(8)(B) of HOLA and P-2004-6, dated September 17, 2004. I seek only to state my opposition to the proposal to eliminate the current safeguards and to place in public view my understanding of the implications and possible motivations for the proposal.

At a time of heightened scrutiny of corporate governance and conflict laden transactions which the OTS has itself acknowledged is rife when managers of MHCs vote on their own benefit plans (the foundation of the existing rule), it is shocking to see the OTS considering a reversal of their well

(rather than domination by insiders through their voting of MHC majority shares). To permit a narrow minority of insiders to determine the terms of their own benefit plans through their voting of MHC shares (as if they were disinterested) is repugnant to all senses of corporate justice and fair play. The idea of abstaining from a vote on transactions where those making the vote have an interest is well established in virtually all corporate legal regimes. The notion of abstaining in such cases where the fiduciary obligation is heightened and more complex (as in the case of voting of MHC shares) seems obligatory as a mater of common sense.

The only explanation offered for the change relates to some idea that it may be warranted as an inducement for investors to better capitalize the industry. This argument is fallacious in two respects. First, a loosening of insider accountability will certainly not encourage broader and deeper markets for the stock of these institutions. Second, the presumption that the industry suffers from grave undercapitalization that warrants a compromise of fundamental rules of fair play is absurd. There is little question that the industry may now be better capitalized than ever in its history. The most innocent reading of this justification is that it is simply not informed by the realities of the modern industry.

With the lack of any credible explanation for the proposed reversal of precedent, we can only assume the change is an example of this regulator seeking to make its charter irresistible to the ever fewer institutions choosing between regulatory alternatives under which to conduct their business. In the face of declining budgets and layoffs, a management friendly charter might just attract one more intuition into the fold of OTS regulation and in so doing reduce the pressure on internal budgets. How could any self interested economic man choose another regulator when this one permits management to designate their own benefit plans un-encumbered by the oversight of outside shareholders.

We suspect the OTS may have underestimated the character of its own constituency. Rather than reversing an established protection against self dealing in existing regulations, it would be more far sighted to strengthen the charter in those areas that guard against conflict transactions so as to attract more noble and accountable management teams. In so doing, the agency could aspire to perpetuate its segment of the financial services industry by maintaining the moral high ground and fostering competition on the basis of traditional performance metrics. To induce institutions to the charter by the seduction of easy to obtain option plans encourages only the worst of actors. This competition reminds us of days past when competition was for lax rules on affiliate transactions, loan limits, lending to insiders, and powers. Competing in this way tends to end badly.

To reverse the safeguards already put in place and upon which stakeholders relied for 3 years would damage the precedential weight of all OTS regulations, work an irreparable harm on existing stakeholders, support arguments of an agency struggling to maintain its own staffing and budgets, and foster the sort of managerial self dealing that is the subject of public outcry. An industry which lacks the checks and balances of empowered shareholders and disinterested regulators exposes the insurance fund to the risks of bad actors.

You must reject the proposed change of precedence; and vote to not hold out the carrot of uncontested options and benefits to weak performers seeking to exploit their insider advantage to grab one more bite of the apple.

Very truly yours,

David Harvey