

From: Chris Johnson [CJohnson@cuna.coop]  
Sent: Monday, September 18, 2006 5:53 PM  
To: Comments, Regs  
Cc: Mary Dunn; Eric Richard  
Subject: No. 2006-29

FILED BY ELECTRONIC MAIL--5:51 P.M. SEPT. 18, 2006, ON BEHALF OF CREDIT  
UNION NATIONAL ASSOCIATION

September 18, 2006

Regulation Comments

Chief Counsel's Office

Office of Thrift Supervision

1700 G Street, NW

Washington, DC 20552

Re: No. 2006-29

RIN 1550-AC07

To Whom It May Concern:

The Credit Union National Association (CUNA) appreciates the opportunity to comment on the proposed rule from the Office of Thrift Supervision (OTS) that is intended to clarify and simplify certain aspects of the application of stock plan benefit provisions of the OTS mutual-to-stock conversion regulations, codified at 12 CFR part 563b (conversion regulations), and the OTS regulations codified at 12 CFR part 575 to which mutual holding companies (MHCs) are subject (MHC regulations). These clarifications are not intended to change existing OTS policies regarding stock benefit plans. CUNA represents approximately 90 percent of our nation's 8,800 state and federal credit unions, which serve nearly 87 million members.

Support for Principles of Transparent, Fair Governance

CUNA commends efforts of the OTS to promulgate regulations that promote transparent, fair governance of supervised financial institutions and

financial institution charter conversion processes founded upon the furnishing of timely and accurate information to institution members or stockholders. To the extent that regulations supportive of these objectives are implemented on a consistent basis for all of our regulated financial institutions, public confidence—indeed, the confidence of the global financial community—in the safety and soundness of our nation’s financial institutions and in their commitment to serving community and stakeholder interests is enhanced.

CUNA’s own policies on supervised institution governance and conversion processes are based upon these fundamental principles:

--Governing board decisions, including those relating to charter conversions and ancillary organizational matters, must primarily be based upon objective evaluation of the interests of the institution’s members or shareholders and the institution’s ability to meet the vital financial needs of the communities that it serves.

--Members or stockholders must be provided with plain-language disclosures during all phases of the charter conversion process that provide them with a substantial basis to make informed decisions about conversion. Disclosures, to be effective, must be provided on a timely basis and contain information that is accurate, comprehensive, and balanced in content.

We believe that the proposed amendments to the conversion regulations and the MHC regulations are generally consistent with these principles. CUNA therefore supports the proposed regulations, with the exceptions noted below relating to two significant policy questions. In addition, we proffer some revisions in the proposed revisions to enhance their clarity, pursuant to the plain language mandate of the Gramm-Leach Bliley Act.

#### Policy Matters

Although the proposed regulations generally seem based upon considerations of fairness to members, in the case of two revisions they appear to be otherwise. In addition, while the OTS’s notice and request for comment in large measure provides sufficient background information and explanations for the proposed revisions, in the case of these two revisions minimal background and explanatory information left CUNA—and perhaps other reviewers--without a substantial basis for commenting on them in depth.

Both of these proposed revisions, discussed below, appear significantly to alter the control over the conversion process and the opportunity to benefit financially from a conversion away from members and toward insiders. CUNA opposes these revisions for that reason. We would suggest that the OTS, in another notice, provide relevant information concerning the policy rationales for the revisions, and request additional comments on the revisions, as a means of fostering vigorous discussion of their merits.

The first such revision is the proposed addition of new paragraph (c) to Section 587.8 of the MHC regulations. The OTS proposes two changes to the minority vote requirement relating to approval of any Option Plan or MRP. First, OTS proposes to revise the provision to require a vote of the minority shareholders only during the first year after a Minority Stock Issuance that was conducted in accordance with the mutual-to-stock conversion subscription priorities. Second, OTS proposes to revise the provision to require approval (during the first year after a Minority Stock Issuance) by a majority of the minority shares voting on the issue of adoption of the plan, rather than a majority of the outstanding minority shares.

The OTS proposes these changes because it considers the current minority shareholder requirements to be "unduly restrictive." 71 FR 41179, at 41182 (2006). No explanation of how the current requirements have been "unduly restrictive" in their application has been offered. Moreover, no information is provided concerning how the OTS now views the policy considerations upon which the current requirements were based. Providing reviewers with the opportunity to consider such information would be consistent with best rulemaking practices.

The second revision is the proposal to eliminate Section 575.7(b)(3) of the MHC regulations, which requires that stock offering materials disclose the amount of any discount on minority stock, and how the amount of the discount was determined. The OTS states its view that the current regulation is unnecessary because "general securities offering disclosure requirements, which require disclosure of material information, are sufficient to address the issue of disclosure of the amount and reasons for any discount on minority stock." *Id.* at 41181. This view is offered without any elaboration, including why the OTS did not consider the generally-applicable securities disclosure requirements to provide a basis for sufficient disclosure when the current regulation was promulgated. In addition, the OTS has in other contexts--such as accounting--supported uniformity in disclosures. See 12 CFR part 563C (2006). It would be useful for reviewers to understand more fully the reasons for the OTS's apparent change in policy concerning the adequacy of the stock-issuance disclosures, and

to be afforded an opportunity to comment based upon that background information.

#### Plain Language-Related Revisions

Proposed Section 563b.500 of the conversion regulations, as it would be revised, sets forth the conditions that must be met for stock benefit plans to be established after a mutual-to-stock conversion has occurred. One of the proposed conditions, which would be denominated as paragraph (a)(4), would state as follows:

"No individual receives more than 25 percent of the shares under your ESOP, MRP, or Option Plan."

In the context of the entire Section 563b.500, the language of this paragraph seems ambiguous. The condition could be construed to limit an individual to receiving 25 percent or less of the shares of each type of stock benefit plan, considered separately. Alternatively, it might be construed as applying to 25 percent of all of the shares issued under an ESOP, an MRP, and/or an Option Plan, considered in the aggregate. Minor revisions to this condition will make its purpose wholly free from doubt.

The meaning of another condition, to be denominated as paragraph (a)(5), also does not seem to be immediately transparent:

"Your directors who are not your officers do not receive more than five percent of the shares of your MRP or Option Plan individually, or 30 percent of any such plan in the aggregate."

CUNA interprets the condition set forth as paragraph (a)(5) to mean:

"Each of your directors who is not an officer does not receive more than 5 percent of the shares of either your MRP or your Option Plan, or all of your directors who are not officers do not collectively receive more than 30 percent of the shares of either your MRP or your Option Plan."

If the above language correctly states the purpose of the condition, CUNA suggests that the OTS adopt it or language of similar import in the revised conversion regulation.

If CUNA can provide any additional input on either of the proposed sets of regulations, or if you have any questions concerning our comments, please do not hesitate to contact me at (202) 508-6736.

Sincerely,

Mary Mitchell Dunn

Senior Vice-President and Deputy General Counsel