August 15, 2007

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

Via Regular Mail and Email: www.regulations.gov

Re: Comments on Proposed Rulemaking: *Optional Charter Provisions in Mutual Holding Company Structures* (OTS Docket No. 2007-012 and RIN 1550-AC15)

Dear Sir or Madam:

I am writing on behalf of myself and our investment firm, PL Capital, LLC, to comment on certain portions of the above referenced notice of proposed rulemaking (the "Proposed Rule"). We are opposed to the Proposed Rule, which would allow Mutual Holding Companies ("MHC's") to adopt a charter provision that prohibits any entity, person or group acting in concert from acquiring more than ten percent of the outstanding minority stock of a publicly traded mutual holding company for five years after a Minority Stock Issuance. The Proposed Rule would also allow MHC's to add a charter provision which "sterilizes" the "excess" shares (i.e. shares in excess of 10% of the minority shares held by one entity, person or group acting in concert would not be counted in any stockholder vote).

The Proposed Rule Will Restrict Investment Capital Available to MHCs and May Hurt Other Stockholders

One has to look no further than the current MHC conversion market and trading market to see that the last thing the OTS should want to do is erect barriers for large investors who are willing to purchase more than 10% of the minority shares outstanding. Most MHC's are illiquid investments already, and discriminating against larger investors who may be willing to provide liquidity in the stock is unwise. Smaller retail investors will be hurt by reduced liquidity in the syndicated conversion market and trading market. MHCs may be unable to raise capital in the amounts needed or wanted.

The OTS should consider the fact that many recent conversions had to go to a syndicated offering to reach the appraised values. These deals may have failed if larger investors were discriminated against by prohibiting the accumulation of positions greater than 10% of the minority shares. Most large investors will not participate in a syndicated

offering, or purchase a stock in the market, unless they can subsequently own enough shares to justify the time and expense of monitoring the position. They may simply withdraw from the MHC market rather than reduce their investment size to fit the proposed 10% restriction.

Even the largest MHCs, which have relatively small market capitalizations, will be negatively impacted by the Proposed Rule if the maximum any one investor can acquire is 10% of the publicly traded minority shares.

There are numerous examples of MHC's where an individual entity owns more than 10% of the minority shares outstanding. For example, our firm, PL Capital, a relatively small investment firm, owns more than 10% of the minority shares outstanding of five MHCs. While we are often labeled "activist" investors, the reality is most of our positions are passive investments, and our firm supports most companies that we invest in. Of the five MHCs in which we currently own more than 10% of the minority shares, we voted YES on all three of the MHC stock benefit plans presented to us. The other two MHCs have not yet presented their stock benefit plans for a vote.

While we typically vote YES on stock benefit plans and governance matters supported by managements, when we deem it appropriate and in our clients best interests, we will vote NO, and engage in a proxy campaign if needed. That is our fundamental right as shareholders. We also strongly believe that we have the right to vote every share we own. This Proposed Rule violates the fundamental shareholder right of "one share, one vote."

If this Proposed Rule passes, we will not provide as much capital to MHCs in the future, and I am sure other firms will also reduce or withdraw their commitment to MHC's as well.

<u>The Proposed Rule is Overkill—The Only Issue Here is Stock Benefit Plan Approval, Not Control of the Company As Implied by the Proposed Rule</u>

In the Proposed Rule, the OTS states that the intent of the proposal is to stop individual minority stockholders from taking actions that "appear intended to influence management to engage in stock repurchases or in a sale of the institution." While we assume the OTS was not intending to limit its comments to those two potential actions, let's address the two issues cited in the Proposed Rule. First, we disagree with the implication that stock repurchases are an inherently bad thing for MHCs to engage in, whether under pressure to do so or not. In fact, most MHCs file business plans that contemplate the use of stock repurchases, and in our experience, the OTS is supportive of stock repurchases in most circumstances. The OTS should be able to deal with purportedly improper stock repurchases (i.e. those implemented under duress from investors) through other regulatory powers, without unduly restricting capital flows into the industry and taking away fundamental shareholders' rights by adopting this Proposed Rule. We also do not understand how any minority stockholder in a MHC could force "the sale of the institution." There are already numerous charter and regulatory provisions to deal with changes in control, and the MHC controls the vote in that regard already. Adopting the Proposed Rule to avoid investors "forcing the sale of the Company" is a red herring.

Disenfranchising Stockholders by Allowing MHCs to Sterilize Excess Shares May Not Be Legal and is Not Consistent With Basic Corporate Governance and Equitable Treatment

I recall a conversation several years ago with an experienced bank regulatory attorney (who previously worked at the OTS) who stated that there is no strong legal justification for the existing OTS "vote sterilization" issue for fully converted thrifts, and that the OTS feared a legal challenge on that issue (on the theory that basic corporate law allows one vote for one share). While we do not presently intend to challenge the legality of the vote sterilization issue in court, we also understand the inherent unfairness of taking away shareholders right to vote each share they own.

The Real Issue at Stake is Management's Desire to Avoid the Shareholder Accountability and Market Discipline Encouraged by the OTS When it Adopted the Final Rule on Stock Benefit Plans

In our view, the real issue is that thrift managements object to the potential for a sophisticated investor to demand accountability and performance from MHC managements before voting YES on a stock benefit plan. A shareholder's demand for accountability and performance is exactly the type of market discipline that the OTS decided was appropriate when the OTS adopted the majority of minority voting standard in the Final Rule on stock benefit plans. This type of market discipline is appropriately encouraged by regulatory bodies, in order to keep corporations from behaving badly and rewarding themselves regardless of the company's performance. We advocate letting the natural and healthy tension between shareholders and managements work itself out in the marketplace, without the OTS taking management's side. There are no actions that a MHC could take (under purported duress from one shareholder), that the OTS does not have the power to stop or correct, even if the Proposed Rule does not become final.

The OTS Itself Acknowledged That Stock Benefit Plans Have Never Failed to Receive the Requisite Vote Under the Existing Standard

In comments accompanying the issuance of the Final Rule on voting for Stock Benefit Plans (June 27, 2007 Federal Register, page 35147), the OTS noted that "although the majority of the minority voting requirement has existed for over ten years, it is our understanding that a stock benefit plan put to a shareholder vote has never failed to receive the requisite vote." While we have no way of verifying that fact, it is our expectation that the overwhelming majority of stock benefit plans will continue to be adopted, without any action taken by the company, whether under duress from an individual shareholder or not. It makes no sense to us to adopt a rule to that potentially damages every MHC, by restricting access to capital, and MHC investors, by disenfranchising them, in order to address a very small percentage of purported problems. This is clearly a case of regulatory overkill.

If the OTS Insists on Adopting this Rule, It Should be Adopted Prospectively

As previously mentioned, our firm owns more than 10% of the outstanding minority shares in five MHCs. We acquired those positions in good faith reliance on the rules in place at the time of purchase. We explicitly factored into our investment decision the expectation of one vote for every share we own. We acquired our positions in good faith reliance on the disclosures contained in the offering circulars, none of which disclosed the potential that we could be restricted in owning or voting shares held in excess of 10% of the minority shares outstanding.

We appreciate the opportunity to comment on the Proposed Rule.

Sincerely,

Richard Lashley, Principal