



August 27, 2007

**VIA EMAIL**

Regulation Comments, Chief Counsel's Office  
Office of Thrift Supervision  
1700 G Street, NW.,  
Washington, DC 20552  
Attention: OTS-2007-00112  
[www.regulations.gov](http://www.regulations.gov)

**RE: Proposed Rule on Optional Charter Provisions in Mutual Holding Company Structures, Docket ID: OTS-2007-0012.**

Dear Sirs and Madams:

The Wisconsin Bankers Association (WBA) is the largest financial institution trade association in Wisconsin, representing approximately 300 state and nationally chartered banks, savings and loans associations, and savings banks located in communities throughout the state. WBA appreciates the opportunity to comment on the proposed rule regarding an optional charter provision in Mutual Holding Company (MHC) structures.

The Office of Thrift Supervision (OTS) has issued a proposed rule to amend its MHC regulations to permit certain MHC subsidiaries to adopt an optional charter provision that would prohibit any person from acquiring, or offering to acquire, beneficial ownership of more than ten percent of the of the MHC subsidiary's minority stock; minority stock being stock held by persons other than the subsidiary's MHC. To assist OTS in promulgating such rules, WBA offers the following comments.

**Background**

Under the MHC regulations, a subsidiary MHC, or, where there is no subsidiary MHC, the former mutual savings association that reorganized into an MHC structure (collectively, Subsidiary Company), may sell less than 50 percent of its voting stock to parties other than a top-tier MHC. Under OTS's current regulations, a Subsidiary Company may adopt a charter provision that prohibits any person from acquiring, or offering to acquire, beneficial ownership of more than 10 percent of the Subsidiary Company's stock during the five years after a minority stock issuance. OTS states the purpose of the provision is to lessen the vulnerability of the entity to attempts to take unfair advantage of the results of the offering, to protect the integrity of the offering, and to ensure that the offering is completed in a manner that strengthens the issuer.

OTS stated it has been made aware of several situations in which minority stockholders have acquired positions in the minority stock of Subsidiary Companies, and have taken actions that appear intended to influence management to engage in stock repurchases or in a sale of the institution. Under current OTS regulations, circumstances may require a majority of the minority stock to approve a proposal. OTS is concerned that there are certain circumstances where minority stockholders may acquire a significant percentage of the minority stock without involving either OTS Acquisition of Control Regulations or charter provisions. This

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makes it possible for a minority stockholder to obtain a significant amount of influence, based upon the stockholder's ability to vote on the issues that must be presented separately to minority stockholders. Because of this concern, OTS has proposed to add a provision to the MHC Regulations, which could be adopted only by companies in the MHC structure, which would provide that no entity, or person or group acting in concert could acquire more than ten percent of the outstanding minority stock of a Subsidiary Company during the five years after a Minority Stock Issuance. OTS proposes that if a stockholder violates this charter provision, the stockholder would not be permitted to vote any stock the stockholder acquired in excess of the limit. In addition, OTS proposes that the charter provisions would not limit the stockholdings of the parent MHC, and would except stock held by the Subsidiary Company's Employee Stock Ownership Plan (ESOP) from this limitation.

### **Analysis**

WBA strongly agrees that a stockholder vote, whether it be a minority stockholder or otherwise, should be cast only after careful consideration and in an environment free of undue influence or of unfair advantage. WBA shares in the desire to protect the integrity of the offering, as well as to ensure that the offering is completed in a manner that strengthens the issuer. To that end, WBA believes the ten percent limit to be a reasonable restriction to help prevent activist minority shareholders from engaging in control over an MHC. WBA also supports the proposed exception for ESOPs because ESOP acquisitions do not present the same concerns that have resulted in OTS limiting post-conversion acquisitions of stock.

WBA suggests, however, that OTS revise its proposal regarding the five-year period following a minority stock issuance to permit an MHC board the opportunity to set a different time period. WBA argues that the board's wishes should prevail over the proposed five-year period if the board determines an alternate time period is necessary and appropriate. WBA suggests language similar to: "five years, unless otherwise modified by the board" be added to the proposal to provide MHC boards with greater flexibility.

### **Conclusion**

WBA supports the efforts of OTS to lessen the vulnerability of an MHC to attempts to take unfair advantage of the results of the offering, to protect the integrity of the offering, and to ensure that the offering is completed in a manner that strengthens the issuer. While WBA believes the proposal generally accomplishes that goal, we suggest flexibility be given to an MHC board if it determines an alternate post-conversion time period should be subject to the ten percent limit. Once again, WBA appreciates the opportunity to comment on the proposed rule.

Sincerely,



Kurt R. Bauer  
President/CEO