



JAMES P. GHIGLIERI, JR.
Chairman

CYNTHIA BLANKENSHIP
Chairman-Elect

R. MICHAEL MENZIES
Vice Chairman

KEN F. PARSONS, SR.
Treasurer

WILLIAM C. ROSACKER
Secretary

TERRY J. JORDE
Immediate Past Chairman

CAMDEN R. FINE
President and CEO

August 27, 2007

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, D.C. 20552

Attention: OTS-2007-0012; Optional Charter Provisions in Mutual Holding Company Structures

Dear Sir or Madam:

The Independent Community Bankers of America (ICBA)¹ appreciates the opportunity to comment on the proposal by the Office of Thrift Supervision (OTS) to permit certain mutual holding company (MHC) subsidiaries to adopt an optional charter provision that would prohibit any person from acquiring, or offering to acquire, beneficial ownership of more than 10% of the MHC subsidiary's minority stock. ICBA supports the proposal.

Background

Under current OTS regulations, a subsidiary savings association or a subsidiary MHC (sometimes referred to as a "mid-tier MHC) in an MHC structure may adopt a charter provision that prohibits any person from acquiring or offering to acquire, beneficial ownership of more than 10% of the subsidiary company's total outstanding stock during the five years after a minority stock issuance. The purpose of this provision is to reduce the opportunity of any entity exploiting the offering, to protect the integrity of the

¹*The Independent Community Bankers of America represents 5,000 community banks of all sizes and charter types throughout the United States and is dedicated exclusively to representing the interests of the community banking industry and the communities and customers we serve. ICBA aggregates the power of its members to provide a voice for community banking interests in Washington, resources to enhance community bank education and marketability, and profitability options to help community banks compete in an ever-changing marketplace.*

With nearly 5,000 members, representing more than 18,000 locations nationwide and employing over 268,000 Americans, ICBA members hold more than \$908 billion in assets, \$726 billion in deposits, and more than \$619 billion in loans to consumers, small businesses and the agricultural community. For more information, visit ICBA's website at www.icba.org.

offering, and to ensure that the offering is completed in a manner that strengthens the issuer.

OTS is concerned that its current regulations would allow minority stockholders the opportunity to acquire a large stake in the minority stock of a subsidiary MHC or savings association and to leverage that influence particularly since many MHC stockholder proposals require approval of the minority stockholders. For example, if a subsidiary MHC issues 30% of its stock in a public offering, a minority stockholder could acquire a third of those shares without violating the current OTS charter provision and could obtain a significant amount of influence, based on the stockholder's ability to vote on issues that are required to be presented separately to minority stockholders. OTS is aware of situations in which minority stockholders have tried to persuade management to engage in stock repurchases or in a sale of the institution.

OTS is therefore proposing to add a provision to its MHC Regulations, which could be adopted only by companies in the MHC structure, that would provide that no entity, or person or group acting in concert could acquire more than 10% of the outstanding minority stock of a subsidiary MHC during the five years following a minority stock issuance. If a stockholder violated this charter provision, the stockholder would not be permitted to vote any stock the stockholder acquired in excess of the limit. This charter limit would not apply to the stockholdings of the parent MHC or to stock held by Employee Stock Ownership Plans (ESOPs).

ICBA's Position

ICBA supports the OTS optional charter proposal and believes that it would be in the best interests of mutual holding companies that have recently converted to have the option of including such a provision in their charter. ICBA agrees with the OTS that the current regulations which place the minority stockholder limit at 10% of all the shares of the MHC subsidiary instead of 10% of the MHC subsidiary's minority shares provide an opportunity for minority stockholders in a mutual offering to take unfair advantage of their position and make unreasonable demands on the recently converted mutual holding company.

As mentioned above, under current OTS regulations, a 10% minority stockholder of a MHC subsidiary where only 30% of the stock is publicly held can effectively block a proposal that requires the approval of the minority stockholders. Management might find it difficult, for instance, to adopt a stock benefit plan, since under current OTS regulations, stock benefit plans require the approval of a majority of the outstanding minority stock. This puts the minority stockholder in the position of having a significant amount of influence where it could make unreasonable demands on a recently converted mutual holding company such as demanding that the mutual holding company sell or repurchase its stock. The current regulations are also not consistent with other OTS restrictions that address post-offering acquisitions of mutual holding company stock.

Conclusion

ICBA supports the OTS proposal to amend its mutual holding company regulations to permit MHC subsidiaries to adopt an optional charter provision that would prohibit any person from acquiring, or offering to acquire, beneficial ownership of more than 10% of the MHC subsidiary's minority stock during the five years following a minority stock issuance. If you have any questions about our letter, please do not hesitate to contact me at 202-659-8111 or Chris.Cole@icba.org.

Sincerely,



Christopher Cole

Regulatory Counsel