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August 27, 2007

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552
Attention: OTS-2007-0012
regs.comments@ots.treas.gov

Re: Optional Charter Provisions in Mutual Holding Company Structures; OTS
Docket No. 2007-0012; 72 Federal Register 35205 (June 27, 2007)

Ladies and Gentlemen:

The Office of Thrift Supervision (OTS) published a proposed rule amending its mutual holding company (MHC) regulations to allow certain MHC subsidiaries to adopt an optional charter provision prohibiting any person or entity from acquiring, or offering to acquire, beneficial ownership greater than 10 percent of the MHC subsidiary's minority stock (Proposed Rule). For purposes of the Proposed Rule, stockholdings of the parent MHC and those of the subsidiary's employee stock ownership plan (ESOP) are exempt from the 10 percent limitation.

The American Bankers Association (ABA) appreciates the opportunity to comment on this Proposed Rule on behalf of the more than two million men and women who work in the nation's financial services industry. ABA brings together all categories of banking institutions to best represent the interests of this rapidly changing industry. Its membership--which includes community, regional, and money center banks and holding companies, as well as mutual and savings associations, trust companies, savings banks, and bankers banks--makes ABA the largest banking trade association in the country.

Summary of Comments

ABA believes the Proposed Rule represents a good measure for limiting the scope of abusive practices, especially given OTS' recent decision to maintain the minority stockholder voting requirements on stock benefit plans in mutual-to-

stock conversions and in MHC structures.¹ However, ABA believes certain issues should be addressed before publication of the final rule.

- OTS should provide greater clarity regarding whether the five-year limitation period pertains: (a) to when the mutual institution or MHC structure may initially adopt the limitation; or (b) the duration of the provisions' applicability.
- OTS should allow greater flexibility on the five-year limitation period, retaining the five-year limitation period as the default but permitting individual boards to alter the five-year limitation period.

Discussion

ABA supports OTS in its efforts to ensure that MHCs and their subsidiaries are not subjected to abusive actions by those who have become minority shareholders in order to intimidate management into taking a course of action, or to extract value from the MHC, for the benefit of dissident parties and to the detriment of the MHC. These efforts are especially important to our members in light of the fact that OTS retained the requirement that a majority of the minority shareholders voting approve stock benefit plans in MHC structures.² ABA believes that the Proposed Rule is a good rule for MHC structures and their subsidiaries. Nevertheless, our members have requested that certain issues should be addressed in connection with adopting any final rule. ABA offers the following recommendations.

1. OTS should clarify what is meant by “five years immediately following a minority stock issuance.”

As presently written, the Proposed Rule could be interpreted to read that the optional charter limitation provision may be adopted at any time within five years after the minority stock issuance, but remain in effect until modified or removed by action of the board. An alternative reading of the Proposed Rule could indicate that the limitation provision must be enacted at the time of the minority stock issuance, and remain in effect for the ensuing five-year time period. Ambiguity in this regard could lead to potential confusion and uncertainty on the part of MHC structures, their subsidiaries, and shareholders. ABA suggests that OTS clarify this ambiguity in the final rule by resolving in favor of allowing the optional charter provision to be adopted at any time within five years after the minority stock issuance.

2. Provide boards with greater flexibility regarding the five-year limitation period.

Our members have expressed the desire that OTS provide individual boards of directors with greater authority to modify the length of the limitation period. While many feel that the five year limitation period represents an appropriate default time period, they request that OTS include a provision in the Final Rule that vests a board with the ability to adjust this period up or down to fit the specific needs of their MHC structure or subsidiary. Inclusion of such a provision would

¹ Stock Benefit Plans in Mutual-to-Stock Conversions and Mutual Holding Company Structures, 72 Fed. Reg. 35145 (June 27, 2007) (to be codified at 12 C.F.R. §§ 563b, 575).

² See id.

be consistent with OTS' stated goal of "lessening the vulnerability of [MHCs] to attempts to take unfair advantage of the results of the offering."³

Conclusion

ABA supports OTS in its efforts to ensure that MHCs and their subsidiaries are not subjected to abusive actions by those who have become minority shareholders in order to intimidate management into taking a course of action, or to extract value from the MHC, for the benefit of dissident parties and to the detriment of the MHC. These efforts are especially important to our members in light of the fact that OTS retained the requirement that a majority of the minority shareholders voting approve stock benefit plans in MHC structures.

Nevertheless, ABA requests that OTS clarify what is meant in the Proposed Rule by "five years immediately following minority stock issuance," as well as provide boards with greater flexibility regarding amending the five-year limitation period. If there are any questions about these comments, please do not hesitate to contact the undersigned at (202) 663-5056.

Sincerely,



Christopher M. Paridon
Counsel

³ Optional Charter Provisions in Mutual Holding Company Structures, 72 Fed. Reg. 35205, 35206 (June 27, 2007).