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RE: Notice of Proposed Rulemaking on Optional Charter Provisions in Mutual Holding Company Structures, 72 Fed. Reg. 35205 (June 27, 2007), No. OTS-2007-0012

Dear Director Reich:

I represent Joseph Stilwell who has investment interests in entities subject to the above-referenced rule ("proposed rule").

I submitted a comment letter on August 24, 2007 regarding the proposed rule, however, I am writing to bring to your personal attention a significant flaw in the proposed rule – it directly undermines the majority of the minority voting rule for stock benefit plans which was codified in a final rule the same day the proposed rule was noticed. Indeed, as quoted below, the stated purpose for the proposed rule conflicts directly with explicit language contained in the notice of the final rule. Indeed, the only real effect of the proposed rule is to indirectly permit what the OTS said was impermissible just months ago – namely, more control by bank management over stockholder approval of its own equity compensation plans. With a focus on good governance and safety and soundness in mind, we note that there is no other corporate form in which that is permissible, and wonder why the OTS would want the federal charter to be the leader in bad practices.

The proposed rule would permit mid-tier holding companies to adopt charter provisions sterilizing votes above 10% of the *publicly traded shares*, a more restrictive standard than the current permissible standard of 10% of the *outstanding shares*. The stated purpose is to make it more difficult for public shareholders to oppose management stock benefit plans by limiting their ability to "influence" management to repurchase stock from the public or to consider the sale of the institution. 72 Fed. Reg. at 35206. But, this flatly contradicts the OTS's own statements accompanying the majority of the minority rule:

> Several commenters who supported the proposal asserted that activist shareholders often have used the minority vote requirement for stock benefit plans as leverage to influence management to take actions the activist shareholders sought on other matters. *Even if certain minority shareholders have used the minority vote requirement as a means of pursuing other interests, however, it does not mean that the purpose of the minority voting requirements is invalid.*

Rule Regarding "Stock Benefit Plans in Mutual-to-Stock Conversions and Mutual Holding Company Structures," 72 Fed. Reg. 35145, 35148 (June 27, 2007) (Emphasis supplied).

In our view the proposed rule directly undermines the OTS's decision to withdraw the earlier rule. We believe the OTS position is inconsistent and would appreciate a clarification.

Thank you for your consideration of our position.

Respectfully,

Spencer Schneider

The Honorable John Reich
Director
Office of Thrift Supervision
1700 G Street, NW
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By Federal Express