Remutualization of Three Tiered Mutual Holding Company

Summary Conclusion: The incoming letter asked whether a federal mutual holding company could reverse a previous mutual holding company reorganization, and presented two alternative means of accomplishing the transaction. OTS concluded that either method of reversing the reorganization would be permissible.

Date: April 28, 2003

Subjects: Home Owners' Loan Act/Savings Association Powers

P-2003-3

P-2003-3

Office of Thrift Supervision
Department of the Treasury
1700 G Street, N.W., Washington, DC 20552 • (202) 906-6000

April 28, 2003

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Re: Remutualization of Three Tiered Mutual Holding Company

Dear [ ]:

This is in response to your letters of February 4, 10, and 14, 2003, regarding the permissibility of the remutualization of a mutual holding company structure in which the top-tier federal mutual holding company holds all of the stock of a subsidiary holding company, which holds all of the stock of a federal stock savings bank. You request our opinion whether two alternative series of transactions would be acceptable to the Office of Thrift Supervision (OTS) to accomplish the remutualization. In addition, you request our opinion on what the voting requirement would be for the proposed transactions.

We have reviewed the methodologies you proposed to effectuate the transactions, and conclude that either scenario you present would be legally permissible. In the first alternative, the federal mutual holding company (MHC) exchanges its charter for an interim federal stock savings bank charter. The federal mid-tier mutual holding company (Mid-Tier) would then exchange its charter for a second interim federal stock savings bank charter. The second interim would merge into the federal stock savings bank with the federal stock savings bank the resulting institution. Then the first interim would merge into the federal stock savings bank, with the federal stock savings bank the resulting institution. Finally, the federal stock savings bank would exchange its charter for a federal mutual savings bank charter.

We have routinely opined in the context of "second step" stock conversions that conversions of mutual holding companies and subsidiary holding companies to interim federal savings banks and mergers of such entities into a federal savings bank are permissible. With respect to the ultimate conversion of the federal savings bank to a mutual charter, such transactions are contemplated by section 5(i) of the Home Owners' Loan Act (HOLA).[1] Section 5(i)(1) of the HOLA states that

[1] 12 U.S.C. § 1464(i).

> any savings association . . . may convert into a Federal savings association (and in so doing may change directly from the mutual form to the stock form, or from the stock form to the mutual form). Such conversion shall be shall be subject to such regulations as the Director [of OTS] shall prescribe."

In addition, section 5(i)(2)(A) of the HOLA states that "[n]o savings association may convert from the mutual to the stock form, or from the stock form to the mutual form, except in accordance with the regulations of the Director." In a legal opinion dated April 14, 1993, the Chief Counsel stated that section 5(i) of the HOLA "expressly authorizes savings associations to convert from . . . the stock form to the mutual form, subject to any regulations that the Director may prescribe."[2]

In the second alternative, the first two steps are the same as the first alternative, with the creation of two interims. In the third step, the second interim merges into the first interim with the first interim as the surviving institution. In the fourth step, the first interim merges with and into the federal stock savings bank and finally, the last step contemplates the same exchange of charters as described in the first alternative. We conclude that this series of transactions is permissible, for the same reasons we conclude the first alternative is permissible.

At this time, we cannot answer your final question, regarding whether a separate vote of the members of the MHC would be required for a remutualization transaction. In our view, the facts and circumstances of each case would determine the answer to that question. Among the factors that OTS might consider in making such a determination are the length of time since the reorganization, and disclosures made in connection with the reorganization regarding the possibility of reversing the reorganization.

We trust this answers your questions. If you have any other questions, please feel free to contact the undersigned at (202) 906-6372, or David Permut, Senior Attorney at (202) 906-7505.

Very truly yours,

John E. Bowman
Deputy Chief Counsel

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2 See Op. C.C. (Apr. 14, 1993). The opinion states that while OTS has not adopted specific stock-to-mutual conversion rules, various other OTS rules do govern the transaction, such as 12 C.F.R. § 544.1.