

Department of the Treasury
Office of Thrift Supervision
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Should a federal mutual holding company be permitted to establish an intermediate, state-chartered stock holding company that would hold all the stock of the thrift subsidiary?

That's the question being asked by the Office of Thrift Supervision (OTS), in the attached advance notice of proposed rulemaking. OTS will review comments received, and then decide whether to draft a regulation covering such a structure.

OTS decided to ask for public comment after receiving industry inquiries about a second-tier mutual holding company structure. Now, OTS wants input on whether the Home Owners Loan Act and implementing regulations can be interpreted to permit such a structure, and, if so, what restrictions should apply.

As envisioned, the multi-tier arrangement would add a state-chartered, intermediate stock holding company between the thrift and the mutual holding company. All the stock of the savings association

would be owned by the intermediate holding company. The intermediate could sell up to 49 percent of its stock to the public, with at least 51 percent held by the mutual holding company. The mutual holding company would be still be owned by the depositors of the subsidiary savings association.

Entities interested in forming such a structure have argued that the arrangement would minimize taxes in a stock repurchase program and facilitate acquisitions.

The advance notice of proposed rulemaking was published in the November 13, 1996, edition of the *Federal Register*, Vol. 61, No. 220, pp. 58144-58145. Written comments must be received on or before December 13, 1996, and should be addressed to: Manager, Dissemination Branch, Records Management and Information Policy Division, Office of Thrift Supervision, 1700 G Street, N.W., Washington, DC 20552.

For further information contact:
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Nicolas P. Retsinas
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Office of Thrift Supervision

Attachment

Proposed Rules

Federal Register

Vol. 61, No. 220

Wednesday, November 13, 1996

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 575

(No. 96-105)

RIN 1550-AB04

Mutual Savings and Loan Holding Companies

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Office of Thrift Supervision (OTS), is issuing this advance notice of proposed rulemaking to solicit comments on amending the regulations regarding Mutual Savings and Loan Holding Companies to permit the establishment of a mutual holding company ("MHC") structure that includes an intermediate stock holding company. The OTS will consider the comments received in determining whether to proceed with the development of a proposed rule to permit the formation of intermediate stock holding companies by MHCs. The OTS solicits comments on the specific questions set forth below and on all aspects of permitting MHCs to form intermediate holding companies.

DATES: Comments must be received on or before December 13, 1996.

ADDRESSES: Send comments to Manager, Dissemination Branch, Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, D.C. 20552, Attention Docket No. 96-105. These submissions may be hand-delivered to 1700 G Street, NW., from 9:00 A.M. to 5:00 P.M. on business days; they may be sent by facsimile transmission to FAX Number (202) 906-7755. Comments will be available for inspection at 1700 G Street, NW., from 9:00 A.M. until 4:00 P.M. on business days.

FOR FURTHER INFORMATION CONTACT: James H. Underwood, Special Counsel (202/906-7354), Dwight C. Smith,

Deputy Chief Counsel (202/906-6990), Business Transactions Division, Chief Counsel's Office; Gary Masters, Financial Analyst (202/906-6729), Corporate Activities Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION: The OTS has received several inquiries from MHCs and mutual savings associations contemplating conversion to stock and reorganization into MHC form concerning whether an MHC can form an intermediate state-chartered stock holding company to hold the stock of its insured savings association subsidiary. The MHC would hold at least a majority of the stock of the intermediate holding company. The intermediate holding company could issue a minority of its shares of stock to the public and would hold 100% of the stock of the insured savings association subsidiary. The intermediate holding company would be a state-chartered corporation, unlike the MHC, which has a federal charter.

Under current mutual holding company regulations (12 CFR part 575), a mutual savings association may reorganize into a MHC by forming a stock savings association which assumes the liabilities and assets of the mutual savings association and issues at least a majority of its stock to the MHC. Depositors of the mutual association continue to maintain a deposit-creditor relationship with the stock savings association subsidiary while retaining their other indicia of ownership, *eq.*, voting rights, liquidation rights, with the MHC. The stock savings association subsidiary may issue up to 49 percent of its shares to the public.

In a previous legal opinion, the OTS' staff declined to concur with a request to permit the formation of a multi-tier mutual holding company structure. Upon further consideration of this issue, the OTS has determined to solicit comments from the public on whether Section 10(o) of the Home Owners Loan Act and the regulations promulgated thereunder should be read to permit the formation of a multi-tier mutual holding company structure, and if so, what restrictions should apply to such a structure.

Entities interested in forming multi-tier MHCs have indicated that the primary purpose is to permit the intermediate stock holding company, which would issue shares to minority

stock holders, to engage in a stock repurchase program without the potential negative tax consequences that would ensue if such a program were engaged in by the insured savings association subsidiary. Under the current MHC regulations, 12 CFR 575.11(c), a savings association subsidiary is permitted to engage in a stock repurchase program subject to certain restrictions. It is the OTS' current view that the current repurchase restrictions at § 575.11(c) would apply to the intermediate holding company.

Entities seeking to form a multi-tier mutual holding company structure also have suggested other reasons for its creation: the presence of an intermediate stock holding company would facilitate acquisitions; and the intermediate holding company may have greater powers than the MHC.

Questions on Which Comment is Sought

The OTS is hereby requesting comment during a 30-day comment period on the following questions and issues:

(1) Assuming the mutual holding company statute and the OTS' implementing regulations can be read to permit the formation of an intermediate stock holding company, should that holding company be subject to the same activities limitations as a MHC or may it be treated as a unitary savings and loan holding company?

(2) The MHC regulations impose various restrictions and limitations on the MHC and the savings association subsidiary of the MHC. These limitations include restrictions on pledges of the subsidiary savings association's stock by a MHC, waiver of dividends, and limitations on indemnification and employment contracts. It is not clear that these restrictions would be directly applicable to the intermediate stock holding company. Should these restrictions be applicable to an intermediate stock holding company in the same manner in which they are applicable to the MHC? Commenters should discuss any reasons for not applying the restrictions and the consequences of such.

(3) Should the intermediate stock holding company be required to obtain the approval of the OTS prior to issuing any debt or equity security to any person other than its parent MHC? Should a subsidiary stock thrift be able to issue minority voting stock or other

classes of securities? If so, under what circumstances? How should any such stock be treated in a conversion of the MHC to stock form?

(4) The OTS is the sole chartering authority for MHCs that are subject to part 575. Since both the parent MHC and the savings association subsidiary of an intermediate holding company are chartered by the OTS as special limited purpose corporations, to what extent should the charter and bylaws (and any amendments) of the intermediate holding company be subject to review and approval by the OTS? Should the OTS require that provisions of the intermediate company's charter be consistent with the Federal MHC charter?

(5) The savings association subsidiary of a MHC is subject to various restrictions on stock issuances, including a requirement that all stock issuances generally be structured in a manner that is similar to a stock conversion offering under 12 CFR part 563b. Should these restrictions also be applicable to the intermediate holding company? If not, why not? Should all other provisions of 12 CFR part 575 governing minority stock issuances be applicable to minority stock issuances by intermediate holding companies? If not, why not?

(6) What are the consequences to the MHC of permitting the intermediate holding company to retain capital generated by the savings association subsidiary?

(7) Other than permitting stock repurchases and, perhaps, facilitating acquisitions and expanding the powers in the MHC structure, are there other reasons for creating a multi-tier structure? Commenters should identify any additional potential benefits of a multi-tier holding company structure and address any necessary regulatory changes that would facilitate the use of the multi-tier structure consistent with the MHC statute.

Dated: November 1, 1996.

By the Office of Thrift Supervision.

Nicolas P. Retsinas,

Director.

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