02-029
CHAPTER 132
Regulation #32
MUTUAL HOLDING COMPANIES

SUMMARY:

P.L. 257, enacted June 4, 1993, amended statutes relating to the formation of mutual holding companies. The amendments permit the subsidiary savings institution to issue a minority amount of stock to shareholders other than its parent mutual holding company and provide for minority representation on the subsidiary savings institution's board of directors. Although the statute initially authorizing the formation of a mutual holding company was enacted in 1985, the Bureau did not promulgate regulations nor have there been any mutual holding companies formed in Maine. This regulation is being promulgated to establish rules for the formation of mutual holding companies and for the issuance of minority stock by subsidiary stock institutions. It closely follows rules, issued by the Office of Thrift Supervision ("OTS"), which became effective in September, 1993, and were amended effective May, 1994.

I. AUTHORITY

- Title 9-B MRSA Section 111 declares that it is a policy of the state to supervise financial institutions in a manner to assure their strength, stability, and efficiency and encourage development and expansion of financial services advantageous to the public welfare.
- Title 9-B MRSA Section 416 gives the Superintendent the authority to allow, by regulation, a financial institution to engage in any activity which has been authorized under federal law for financial institutions chartered or otherwise subject to the jurisdiction of the federal government.
- Title 9-B MRSA Section 1055 gives the Superintendent authority to adopt rules to ensure that the reorganization of a mutual financial institution is conducted in a fair and equitable manner.

II. PURPOSE

The purpose of this regulation is to provide the regulatory framework to permit a mutual financial institution to reorganize into a subsidiary savings institution at least 51% of the stock of which is wholly owned by the mutual holding company. After the reorganization, voting rights of the account holders of the mutual financial institution are transferred to voting rights in the mutual holding company. The reorganization is a two-step process: first, an interim subsidiary savings institution is chartered and, second, the mutual financial institution

transfers substantially all its assets and liabilities to the subsidiary savings institution.

III. DEFINITIONS

For purposes of this regulation, the following terms have the following meanings:

A. "Account holder" means any person holding a deposit account in a mutual savings bank and any member of a mutual savings and loan association.

B. "Acquiree institution" means any mutual financial institution, other than a subsidiary savings institution, that is acquired by a mutual holding company as part of, and concurrently with, a mutual holding company reorganization.

C. "Eligibility record date" means the record date for determining eligible account holders, which shall be at least one year prior to the vote on the plan of reorganization by the board of directors of the reorganizing institution and any acquiree institution.

D. "Eligible account holder" means any person holding a qualifying deposit in the reorganizing institution and any acquiree institution on the eligibility record date.

E. "Insider" means any officer or director of a reorganizing institution, acquiree institution or mutual holding company or any affiliate of such institution or company, and any person acting in concert with any such officer or director.

F. "Member" has the same meaning as set forth in 9-B MRSA 325.2(A).

G. "Mutual financial institution" has the same meaning as set forth in 9-B MRSA 131(27).

H. "Person" has the same meaning as set forth in 9-B MRSA 131(30).

I. "Qualifying deposit" means the aggregate of one or more deposit accounts in the reorganizing institution and any acquiree institution with an aggregate balance of $50 or more at the close of business on the eligibility record date.

J. "Reorganizing institution" means a mutual financial institution that proposes to reorganize to become a mutual holding company pursuant to this regulation.

K. "Stock" means common stock, or any other type of equity security, including (without limitation) warrants, options and rights to acquire common stock, or other securities that are convertible into common stock.

L. "Subsidiary savings institution" has the same meaning as set forth in 9-B MRSA 1052(3).

M. "Voting account holder" means any account holder who is eligible to vote pursuant to 9-B MRSA 325.2(C) and 344.3.

IV. GENERAL PROVISIONS OF THE REGULATION

A mutual financial institution may reorganize to become a subsidiary savings institution and to form simultaneously a mutual holding company, or join in a mutual holding company reorganization as an acquiree institution. The subsidiary savings institution (the reorganized mutual financial institution) may have minority stockholders, but the mutual holding company must own at least 51% of the voting stock of the subsidiary savings institution. The reorganization is subject to the provisions of 9-B MRSA Sections 1053 and 344 and the following general conditions:

A. APPROVALS

1. The reorganization plan must be approved by at least a majority of the reorganizing institution's and any acquiree institution's board of directors (9-B MRSA 1053.2);
2. The reorganization plan, including the chartering of the interim subsidiary savings institution, must be approved by the Superintendent (9-B MRSA 344(2) and 312(4)); and
3. A majority of the voting account holders of the reorganizing institution and any acquiree institution must approve the reorganization plan (9-B MRSA 1053.2).

B. REORGANIZATION PLAN

Each reorganization plan shall contain a complete description of all significant terms of the proposed reorganization and shall incorporate and include any Stock Issuance Plan. Further, the reorganization plan shall:

1. Include proposed amended by-laws of the reorganizing institution and any acquiree institution and by-laws of the parent mutual holding company;
2. Provide that, upon consummation of the reorganization, substantially all of the assets and liabilities, including all deposit accounts, of the reorganizing institution must be transferred to the subsidiary savings institution;
3. Provide that each depositor in the reorganizing institution and any acquiree institution immediately prior to the reorganization shall, upon consummation of the reorganization, receive without payment an identical deposit account in the subsidiary savings institution;
4. Provide that all assets, rights, obligations and liabilities of the reorganizing institution that are not expressly retained by the mutual holding company shall be transferred to the resulting subsidiary savings institution;

5. Include a Business Plan of the subsidiary savings institution for the three year period following the reorganization. The plan shall include a detailed discussion of how the capital acquired in the reorganization will be utilized and how the capital will help meet the credit and lending needs of the communities served by the reorganized institution. Any proposed stock repurchases shall also be addressed. Further, the business plan shall include a discussion of intended changes in scope or method of operations and financial projections, including pro forma balance sheets, income statements and key assumptions;
6. Include a detailed discussion of any changes in compensation, including employment contracts, of insiders. Insider compensation, individually and in the aggregate, must be reasonable and fair;
7. Provide that the Plan may be amended by the board of directors, with the written consent of the Superintendent, prior to the solicitation of proxies from the voting account holders to vote on the Plan or at any later time;
8. Provide that the Plan may be terminated by the board of directors of the reorganizing institution and any acquiree institution, with the written consent of the Superintendent, at any time prior to the meeting at which the voting account holders of the reorganizing institution vote on the Plan or at any later time;
9. Provide that the Plan shall be terminated if not completed within a specified time period, not to exceed 24 months from the date on which the voting account holders approve the Plan; and
10. Provide a summary of the expenses to be incurred.

C. STOCK ISSUANCE

No subsidiary savings institution may issue stock at any time to persons other than its mutual holding company parent without the prior written permission of the Superintendent. In addition, each stock offering must be carried out in accordance with the provisions of the Revised Maine Securities Act, 32 MRSA 10101 et seq . The Superintendent shall approve any proposed issuance that meets all of the following criteria:

1. The proposed issuance contains all the provisions required in **Section IV.D**;
2. The proposed issuance is consistent with the terms of the financial institution's charter, including the type and amount of stock that may be issued;
3. The proposed issuance provides the financial institution, its mutual holding company parent and any other subsidiaries of the mutual holding company parent with sufficient capital and would not be inequitable or detrimental to the subsidiary savings institution, its mutual holding company parent, members of the mutual holding company or the interests of depositors of the subsidiary savings institution;

4. The proposed price or price range and any terms or conditions of the stock to be issued are reasonable;
5. The subsidiary savings institution furnishes all information required by the Superintendent; and
6. The proposed issuance complies with all other applicable laws and regulations.

D. CONTENTS OF STOCK ISSUANCE PLANS

Each Stock Issuance Plan shall contain a complete description of all significant terms of the proposed stock issuance and shall attach a copy of each proposed stock certificate form, any proposed stock order form and any agreement or other document defining the rights of the stockholders. Each Stock Issuance Plan shall:

1. Provide that the aggregate outstanding voting stock owned or controlled by persons other than the financial institution's mutual holding company parent at the close of the proposed issuance shall be 49% or less of the financial institution's total outstanding voting stock. This provision may be omitted if the proposed issuance will be conducted by a financial institution that was in stock form when acquired by its mutual holding company parent, provided the financial institution is not a subsidiary savings institution or an acquiree institution;
2. Provide that the stock shall be sold at a total price equal to the estimated pro forma market value of such stock based upon an independent valuation as provided in **Section IV.G**;
3. Provide for the priority of stock distribution in accordance with **Section IV.E**;
4. Provide that aggregate ownership by employee benefit plans and insiders shall not exceed the limits established in **Section IV.F**;
5. Provide that the sale price of the shares of stock to be sold in the issuance shall be a uniform price determined in accordance with **Section IV.G**;
6. Provide that stock purchased by insiders in the proposed issuance shall not be sold for a period of at least one year following the date of purchase, except in the case of death of the insider;
7. Provide that the subsidiary savings institution will not sell any of the stock to be issued to any person whose purchase would be financed by funds loaned, directly or indirectly, to the person by the subsidiary savings institution or any of its affiliates;
8. Provide that, if proposed as part of a reorganization plan, the stock issuance plan may be amended or terminated in the same manner as the reorganization plan under **Sections IV.B**(7 and 8); and

9. Provide that the expenses incurred in connection with the issuance shall be reasonable and specified in the stock issuance plan.

E. STOCK OFFERING PRIORITY

The Stock Issuance Plan for a public offering must include the following priority of offering:

1. First, each eligible account holder shall receive, without payment, nontransferable subscription rights to purchase stock. In the event of an oversubscription, shares shall be allocated among subscribing eligible account holders of the reorganizing institution and any acquiree institution based on their respective qualifying deposits; however, the subscription rights of insiders based on their increased deposits in the one year period preceding the eligibility record date shall be subordinated to all other subscriptions;
2. Second, any one or more tax-qualified employee stock benefit plan may purchase in the aggregate 10% of the total voting stock held by persons other than the parent mutual holding company. These rights shall be subordinated to all rights received by eligible account holders;
3. Third, each voting account holder of the reorganizing institution and any acquiree institution who is not an eligible account holder shall receive, without payment, nontransferable subscription rights to purchase stock, on an equitable basis provided for in the Plan of Reorganization. These rights shall be subordinated to all rights received by eligible account holders and tax-qualified employee stock benefit plans; and
4. Fourth, any shares not purchased under **Subsections (1), (2), or (3)** above shall be sold either in a public offering through an underwriter or directly by the reorganizing institution in a direct community offering in a manner that will achieve the widest distribution of the stock (preference shall be given to natural persons residing in the communities in which the reorganizing institution operates), subject to the applicant demonstrating to the Superintendent the feasibility of the method of sale. These rights shall be subordinated to all rights received by eligible account holders, tax-qualified employee stock benefit plans and voting account holders.

F. STOCK DISTRIBUTION

As a percentage of total outstanding voting stock held by persons other than the institution's mutual holding company parent at the close of the proposed issuance, the aggregate amount of voting stock acquired in any proposed issuance plus all prior issuances of the subsidiary savings institution, acquired by the persons cited below shall not exceed:

1. 10%, for any person or group of persons acting in concert;
2. 10%, for any one or more tax-qualified employee stock benefit plan of the subsidiary savings institution and its parent mutual holding company;

3. 10%, for all non-tax-qualified employee stock benefit plans of the subsidiary savings institution and its parent mutual holding company;
4. 4%, for all management or employee stock benefit plans of the subsidiary savings institution and its parent mutual holding company; and
5. 25%, for all non-tax-qualified employee stock benefit plans and all insiders of the subsidiary savings institution and its parent mutual holding company.
6. Shares held by one or more tax-qualified employee stock benefit plans and attributed to a person shall not be aggregated with shares purchased directly by or otherwise attributed to that person in determining compliance with the above limitations. Additionally, stock acquired in the secondary market is excluded from the above distribution limits.

G. PRICING OF STOCK

Each application for approval of proposed stock issuance shall state and explain the proposed sales price (or price range if it is not possible to specify the exact price at the time). These materials shall:

1. Be prepared by persons independent of the applicant, experienced and expert in the area of corporate appraisal, and acceptable to the Superintendent. The applicant shall submit information demonstrating, to the satisfaction of the Superintendent, the independence and expertise of any person preparing the materials. A person does not lack independence merely because he will participate in effecting a sale of stock under the Plan or will receive a fee for services rendered in connection with the preparation of the appraisal. However, the Superintendent, upon receipt of a written request, may waive this independent appraisal requirement for subsequent stock offerings after taking into consideration such factors as, but not limited to, the number and percentage of shares to be issued, the number and percentage of shares traded, the spread between the bid and asked price, and the concentration of minority ownership.
2. Contain a summary of data sufficient to support the conclusions;
3. To the extent that the appraisal is based on a capitalization of the pro forma income of the reorganizing institution or the acquiree institution, indicate the basis for determination of the income to be derived from the proceeds of the stock sale and demonstrate the appropriateness of the earnings-multiple used, including all assumptions regarding future earnings growth. To the extent that the appraisal is based on a comparison of the capital stock of the applicant with outstanding capital stock of existing stock financial institutions, those stock financial institutions must be reasonably comparable to the reorganizing institution or the acquiree institution in terms of such factors as size, market area, competitive conditions, profit history and expected future earnings; and

4. To the extent the price or price range includes any discount due to the minority status of the stock to be offered, indicate the amount of the discount and how that discount was determined.

H. MEMBERSHIP RIGHTS

The charter or by-laws of a mutual holding company must:

1. Confer upon existing and future depositors and existing borrowers of the subsidiary savings institution and any acquiree institution the same rights in the mutual holding company as were conferred upon depositors and borrowers, respectively, by the charter or by-laws of the reorganizing institution and any acquired institution in effect immediately prior to the reorganization or acquisition. However, if the acquired institution is merged into another institution from which the mutual holding company draws members, the depositors of the acquired institution shall receive the same membership rights as the depositors of the institution into which the acquired institution is merged; to the extent that borrowers had membership rights immediately prior to the reorganization, those borrowers shall receive the same grandfathered membership rights as the borrowers of the institution into which the acquired institution is merged received at the time that institution became a subsidiary of a mutual holding company. No membership rights shall be conferred in connection with any borrowings made after the reorganization; and
2. Not confer any membership rights upon the depositors and borrowers of a stock financial institution, other than a subsidiary savings institution or an acquiree institution, unless such institution is merged into an institution from which the mutual holding company draws members, in which case the depositors of the stock financial institution shall receive the same membership rights as other depositors of the institution into which the stock financial institution is merged.

I. MISCELLANEOUS PROVISIONS

1. A mutual holding company may not pledge the stock of the subsidiary savings institution or any acquiree institution without the prior written approval of the Superintendent; and
2. No mutual holding company may waive its right to receive any dividend declared by a subsidiary without the prior written approval of the Superintendent. In reviewing a dividend waiver request, the Superintendent shall consider such factors as:
    a. The impact of a waiver on the safe and sound operation of the subsidiary savings association; and
    b. An express determination by the board of directors of the mutual holding company that the waiver of the dividend by the mutual holding company is consistent with the directors' fiduciary duties to the mutual members of such company.

J. CONVERSION OR LIQUIDATION OF MUTUAL HOLDING COMPANY

1. A mutual holding company may convert to a stock holding company in accordance with Title 9-B, Chapter 34 and Chapter 105. Any stock issued by a subsidiary savings institution to persons other than the parent mutual holding company may be exchanged for the stock issued by the mutual holding company in connection with the conversion of the mutual holding company to a stock holding company, provided that the Superintendent finds that the exchange is fair and reasonable; and
2. The provisions of Title 9-B, Chapter 36 shall apply to mutual holding companies in the same manner as if they were savings banks or savings and loan associations.

V. EFFECTIVE DATE July 18, 1994

BASIS STATEMENT

P.L. 257, enacted June 4, 1993, amended statutes relating to mutual holding companies. The amendments permit a subsidiary savings institution to issue a minority amount of stock to shareholders other than its parent mutual holding company and provide for minority representation on the subsidiary savings institution's board of directors. This regulation is being promulgated to establish rules for the formation of mutual holding companies and for the issuance of minority stock by subsidiary stock institutions.

Nationally, the conversion process (converting from mutual to stock ownership), which includes the formation of a mutual holding company when minority stock is issued, has come under heavy regulatory and Congressional scrutiny and criticism. Subsequent to this proposed regulation being published, the OTS imposed stricter regulations, the substance of which the Federal Deposit Insurance Corporation ("FDIC") recently proposed to also adopt. The FDIC, however, also issued a notice for comment a "longer-term" approach that would redesign the entire conversion process.

The regulation, as initially proposed, closely followed the existing rules of the OTS covering mutual holding companies. Some, but not all, of the OTS's recent amendments have been incorporated into the final regulation. The Bureau recognizes that material changes to the conversion process, resulting from federal regulatory and/or legislative initiative, may occur. Nevertheless, because action is not expected to be imminent, the Bureau has decided to issue a regulation which is generally comparable to existing federal requirements. However, if changes are made to the federal regulations, the Bureau anticipates amending this regulation as appropriate to maintain consistency.

Notice of this proposed regulation was published on or about March 30, 1994 and comments were solicited through April 29, 1994. Comments were received from Verrill & Dana, on behalf of the Maine Association of Community Banks

("MACB"), and Bangor Savings Bank ("Bangor"). The specific comments of each are addressed below.

SUMMARY

MACB commented that a state-chartered mutual financial institution could form a federal mutual holding company under federal law and that, if a mutual holding company is formed under Maine law, the approval for parts of the transaction would be required from the Federal Reserve Board and the FDIC. MACB therefore suggested that these alternatives and requirements should be detailed in the regulation.

The Bureau of Banking rules set standards for state regulatory oversight; traditionally, such rules have not addressed alternative options or the requirements of the federal regulators. Accordingly, the Bureau has not incorporated MACB's suggestion.

Bangor stated that a mutual holding company could own 100% of the stock of the subsidiary savings institution (i.e., there are no minority shareholders) and that the proposed regulation appeared to be focused on the formation of a mutual holding company where minority stock is issued. Bangor suggested that there should be an expedited process, which would not include eligible account holder approval, if the mutual holding company would own 100% of the subsidiary savings institution.

The Bureau agrees that this regulation focuses on the situation where the mutual holding company does not own 100% of the stock of its subsidiary savings institution and the latter does have minority stockholders. The legislative history on the mutual holding company law (Chapter 105 of Title 9-B MRSA), originally passed in 1986, clearly intended that the depositors and borrowers of a mutual financial institution, as provided for in the institution's charter or by-laws, would have the right to vote on the establishment of a mutual holding company. Further, Bangor's example is analogous to the formation of a one-bank holding company by a stock financial institution (commonly known as a corporate reorganization); in such a transaction, the shareholders of the stock financial institution must vote on the reorganization. Last, Section 1053.2 and 1053.3 clearly require that account holder approval is required. Accordingly, no changes to the proposed regulation have been made.

As stated above, this regulation is primarily concerned with situations where the subsidiary savings institution issues minority stock. As a result, many of the provisions, such as ***Sections IV (C), (D), (E), (F) and (G)****, would not apply if the subsidiary savings institution does not issue minority stock.*

II. PURPOSE

MACB suggested that the first sentence be rewritten, by replacing "majority" with 51%, to follow the language of the statute.

The Bureau has rewritten the first sentence as suggested by MACB to be consistent with the definition provided in Chapter 105.

III. DEFINITIONS

MACB requested that the **Section III(B)** definition of "eligibility record date" be extended from a maximum of 180 days to one year in order to more closely parallel recent changes in the OTS' regulation.

The OTS, in its recent interim final rule, amended its rule to require that the eligibility record date be no less than one year prior to the board of director approval. The previous minimum period had been 90 days prior to the board approval. The longer period is consistent with the emphasis on providing long-term depositors a priority in purchasing stock. In order to provide consistency with both OTS and FDIC regulations, the Bureau has extended the minimum time period to one year; there is no maximum time period and a period longer than one year is encouraged. ***Section III(B)*** *of the proposed regulation (****Section III(C)*** *of the final regulation) has therefore been changed to require that the eligibility record date must be at least one year prior to the board of directors' vote on the plan of reorganization.*

MACB commented that the references to "members" and "eligible account holders" were often confusing and, at times, inconsistent with relevant statutes. MACB suggested that the application of the terms be reviewed and that the definition of "members" in **Section III(E)** be modified.

In response to this comment, the Bureau revised its definition of "member" and "eligible account holder" and added three new definitions: "account holder," "qualifying deposit," and "voting account holder." These revised and expanded definitions are intended to clarify the rights of depositors and borrowers and maintain consistency with the relevant statutes.

MACB pointed out that the definition of "stock" as defined in **Section III(I)** of the original proposal exceeds the relevant statutory definition of "stock." The proposed definition included preferred stock which is not included in the Title 9-B MRSA 1053.4 description of stock.

The Bureau agrees that the proposed definition of "stock" exceeded the statutory definition and accordingly deleted all references to preferred stock in ***Section III(I)*** *of the proposed regulation (****Section III(K)*** *of the final regulation).*

IV. GENERAL PROVISIONS OF THE REGULATION

MACB commented that, in the **introductory paragraph of Section IV**, it was unclear which provisions of 9-B MRSA 344 are intended to apply to the reorganization process. MACB specifically inquired whether subsections (4), (5) and (6) of 9-B MRSA 344 applied.

Title 9-B MRSA 1053.3 states that the conversion of a mutual financial institution to a stock financial institution holding company shall be subject to the provisions of 9-B MRSA 344. The Bureau, therefore, concludes that all provisions, including subsections (4), (5) and (6), of 9-B MRSA 344, shall apply unless otherwise clearly exempted or inapplicable. Accordingly, no changes have been made to the ***introductory paragraph of Section IV*** *other than to add that the process is also subject to the provisions of 9-B MRSA 1053.*

MACB stated that the approvals of the reorganization plan by (1) two-thirds of the directors, as required by proposed **Section IV(A)(1)**, and (2) two-thirds of the eligible account holders, as required by proposed **Section IV (A)(3)**, are not consistent with 9-B MRSA 1053.2 which requires majority approval.

The Bureau, in drafting the proposed regulation, recognized that there was an apparent contradiction in the statutory language. Title 9-B MRSA 1053.2 does state that majority approval is required; 9-B MRSA 1053.3, however, states that the mutual holding company shall be established pursuant to 9-B MRSA 344, which requires two-thirds directorate and eligible account holder approval. In reviewing the legislative history of Chapter 105 the Bureau was unable to ascertain the basis for requiring only majority approval. However, in view of the fact that Chapter 105 when originally enacted in 1985 prohibited minority stock ownership and the additional specific language in Section 1053.3 (stating that two-thirds eligible account holder approval is necessary if the mutual holding company converts to a stock holding company), it is presumed that majority approval only was required because the transaction represented a mere internal restructuring and no stock would be issued to persons other than the mutual holding company. In retrospect, the 1993 amendments to Chapter 105 should have clarified the approval process when minority stock is issued. Concerns regarding insider abuse and a fair opportunity for long term depositors to participate in the reorganization process would suggest that approval by two-thirds of the directors and eligible account holders would be more appropriate than the majority approval. It was on this basis that the proposed regulation required the two-thirds approval. Nevertheless, the specific language of 9-B MRSA 1053.2 has priority and therefore ***Sections IV(A)(1) and (3)*** *have been changed to agree with the specific statutory language.*

MACB suggested that the discussion of the Business Plan, as required by **Section IV(B)(6),** be expanded to address how the new capital would be utilized and any proposed stock repurchase plans. The OTS interim final rule requires such a discussion as part of the business plan.

*The Bureau has incorporated these recommended changes into **Section IV(B)(6)** of the proposed regulation (**Section IV(B)(5)** of the final regulation).*

MACB commented that the compensation comparison between insiders of the reorganizing institution and those of other similarly publicly traded financial institutions, required by **Section IV(B)(7)**, may not be feasible and therefore should be eliminated.

***Section IV(B)(7)** is designed to provide clear public disclosure regarding any increased insider compensation contemplated in conjunction with the reorganization and to ensure that such increase, if any, is reasonable and fair. The Bureau recognizes that the comparative clause may, in fact, be difficult to apply due to the lack of other similarly publicly traded financial institutions and therefore has deleted that clause from **Section IV(B)(7)** of the proposed regulation **(Section (IV(B)(6)** of the final regulation). This deletion, however, does not mean that the Bureau will not consider such information, to the extent that it is available, in reviewing the reasonableness and fairness of increases in insider compensation.*

MACB requested guidance regarding which specific provisions of the Revised Maine Securities Act are intended to apply, as required by **Section IV(C)**, to mutual holding company reorganizations.

*The legislation amending Chapter 105 to permit minority ownership of subsidiary savings institutions also amended the Revised Maine Securities Act, Title 32 MRSA 10502.1(C) by removing the general securities filing exemption for the sale of securities by a subsidiary savings institution. As a result, stock offerings by a subsidiary savings institution are subject to the registration requirements of 32 MRSA 10401. However, the Chapter 105 amendments also identified specific stock offerings (9-B MRSA 1053.4(A) and (B)) that are "exempt transactions" pursuant to 32 MRSA 10502.2. The Bureau, after consultation with the Maine Securities Division, believes that the applicability of the Revised Maine Securities Act is sufficiently clear and therefore no changes are being made to **Section IV(C).***

MACB recommended that the reference to "the interests of depositors of the subsidiary savings institution" in **Section IV(C)(3)** be deleted for two reasons. First, the OTS does not incorporate that standard and, second, it is difficult to evaluate the interests of depositors in a stock plan.

The Bureau acknowledges that the OTS does not incorporate the depositors' interests into its standards for evaluating stock issuances. However, 9-B MRSA 344.1 requires that a plan of conversion "shall insure that the interests of depositors and account holders ... are equitably provided for..." Because 9-B MRSA 1053.3 incorporates section 344, that standard by reference must also be applied. It is specifically stated in the regulation only to emphasize the

importance of providing depositors with a fair opportunity to participate in the reorganization and to ensure that their interests are adequately protected. For these reasons, no changes have been made to ***Section IV(C)(3)****.*

MACB questioned the approval process, required by **Section IV(C)(7)**, for members of the mutual holding company for the subsidiary savings institution to issue stock.

In reviewing this section, the Bureau finds that it is not necessary in light of the other requirements of ***Section IV(C)****. Accordingly,* ***Section IV(C)(7)*** *has been deleted.*

MACB suggested that the **Section IV(D)** requirements for additional stock offerings be streamlined, particularly the independent valuation requirement of **subsection 2**.

The Bureau acknowledges the burden of the independent valuation but also recognizes the importance of protecting the depositors' interests and minimizing insider abuse by ensuring that new shares are sold at fair value. It certainly is not the intent to make the cost of issuing additional stock so prohibitive that it effectively precludes the raising of additional capital. The Bureau agrees that, in some instances, an independent appraisal may not be necessary and that there should be some flexibility in requiring appraisals for subsequent (non-initial) stock offerings. Therefore, the Bureau has changed ***Section IV(G)(1)*** *(the section that specifically addresses the independent appraisal) to allow the Superintendent to waive the independent appraisal requirement.*

MACB questioned (1) whether the stock offering priorities set forth in **Section IV(E)** applied to each stock issuance and (2) the priority of tax-qualified employee stock benefit plans in **Section IV(E)(4)**. MACB also pointed out that the OTS had changed the offering priorities in its recently issued interim final rule.

The Bureau has changed ***Section IV(E)*** *to clarify that the stock offering priorities only apply to public offerings, which is consistent with the statutory language found in 9-B MRSA 1053.4. In addition, the stock offering priorities have been changed to remain consistent with those established in the OTS interim final rule: the former senior priority of a tax-qualified employee stock benefit plan has been subordinated to that of the eligible account holders who now have first priority. Accordingly,* ***Section IV(E)*** *has been renumbered to reflect, in descending order, the stock offering priority.*

MACB inquired if the stock distribution limits established in **Section IV(F)** (1) also apply to benefit plans of the mutual holding company, (2) are intended to limit after-market purchases, and (3) requested clarification on the rules of attribution referenced in **Section IV(F)(6)**.

*The Bureau has clarified **Sections IV(F)(2), (3), (4) and (5)** to state that the distribution limits apply to the aggregate benefit plans of both the subsidiary savings institution and its parent mutual holding company. A sentence has been added to **Section IV(F)(6)** to clarify that secondary market purchases are not subject to the above limitations. The intent of the attribution rules is to exclude stock held by a stock benefit plan and attributed to a person from being added to other stock owned directly or otherwise controlled by that same person in calculating the number of shares held by that person subject to the distribution limits. Although control is not defined in the regulation, the Bureau will be guided by the definition of control found in 9-B MRSA 1011.4.*

MACB commented that it found it problematic to confer rights upon future depositors as provided for in **Section IV(H)(1)** and suggested that "future depositors" be deleted.

*The language in this Section is virtually identical to the language in the OTS regulations which grant membership rights to future depositors. The intent is to make it clear that membership rights are not restricted to current depositors of the subsidiary savings institution and that future depositors will have membership rights. Accordingly, **Section IV(H)(1)** was not changed.*

MACB commented that the establishment of a liquidation account, required by **Section IV(I)**, is not necessary or appropriate until such time as the mutual holding company converts to a stock holding company.

*The Bureau concurs that, because the depositors will continue to control the majority stock of the subsidiary savings institution, a liquidation account does not need to be established concurrent with the mutual holding company formation. Additionally, Title 9-B MRSA 1053.1(B) protects liquidation rights by transferring those rights to the mutual holding company. A liquidation account must be established if the mutual holding company subsequently converts to a stock holding company. Accordingly, **Section IV(I)** of the proposed regulation has been deleted and **Sections IV(J) and (K)** have been renumbered to **Sections IV(I) and (J)**, respectively; **Section IV(B)(5)** has also been deleted and all subsequent sections of **Section IV(B)** have been renumbered.*

MACB suggested that **Section IV(J)(1)** be revised to permit a mutual holding company to pledge the stock of a subsidiary savings institution without the prior approval of the Superintendent under certain conditions; MACB's proposal is consistent with the OTS regulations.

The Bureau recognizes that the approval requirement of this section is somewhat broader than that of the OTS regulation in that it requires the mutual holding company to obtain the prior approval of the Superintendent in any instance in which the mutual holding company pledges stock of a subsidiary savings institution. However, the Bureau believes this approach is consistent with maximizing account holders' protection. Further, the OTS exception (loan

proceeds must be infused into the subsidiary savings institution) is not considered to be substantive for the following reason. Typically, a financial institution raises additional capital for one of two reasons: (1) it is experiencing operating losses or (2) it's growth (internal or through acquisitions) is outpacing earnings. In either event, the Bureau should be fully advised on the institution's condition and plans. It is certainly not the intent of the Bureau to impede or prohibit a mutual holding company from pledging the stock of a subsidiary savings institution when such action is in the best interest of all parties, i.e., the depositors, the subsidiary savings institution and the mutual holding company. Accordingly, ***Section IV(J)(1)*** *(****Section IV(I)(1)*** *of the final regulation) has not been changed.*

MACB recommended that **Section IV(J)(2)** be changed to be consistent with the OTS regulations regarding a mutual holding company waiving its right to receive a dividend.

Historically, the Bureau has not formally adopted in its rules standards for approval or non-disapproval, believing that the decision-making criteria set forth in 9-B MRSA 253 establish the appropriate standards. Nevertheless, in response to MACB's comments, the Bureau has incorporated the substance of the OTS standards for non-disapproval of a dividend waiver. The Bureau, however, has not adopted the OTS's exclusion for approval if no insider of the mutual holding company holds stock to which the dividend would apply. First, the Bureau believes there will be minimal, if any, instances where this exclusion would apply. Second, even if there were a mutual holding company eligible for this exclusion, the Bureau believes it is appropriate to review the subsidiary savings institution's dividend practices. Last, the decision-making criteria of 9-B MRSA 253 and the Maine Administrative Procedure Act preclude the Superintendent from arbitrarily withholding his approval. The Bureau has incorporated into ***Section IV(J)(2)*** *(****Section IV(I)(2)*** *of the final regulation) the substance of the comments.*