# 02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

029 BUREAU OF BANKING

CHAPTER 132 MUTUAL HOLDING COMPANIES (REG. 32)

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 over-subscription, 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

APAO WORD VERSION CONVERSION (IF NEEDED) AND ACCESSIBILITY CHECK: July 17, 2025