



RULE-MAKING ORDER
(RCW 34.05.360)

CR-103 (10/1/89)

- Permanent Rule
 Emergency Rule

Agency: Department of General Administration, Division of Banking

(1) Date of adoption: February 28, 1992

(2) Purpose: To provide guidelines for formation of mutual holding companies and define the powers of mutual holding companies.

(3) Citation of existing rules affected by this order:

Repealed:
Amended: N/A
Suspended:

(4) Authority for adoption:

Statute: RCW 32.34.040-050

Other Authority:

(5.1) PERMANENT RULE ONLY

Pursuant to notice filed as WSR 92-01-093 on 12-17-91 (date).

Describe any changes other than editing from proposed to adopted version: There were some technical drafting revisions made, but no substantive changes. A few sections were moved and/or incorporated; the last section "Construction" was added.

(5.2) EMERGENCY RULE ONLY

Pursuant to RCW 34.05.350 the agency for good cause finds:

- (a) That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
- (b) That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding:

(5.3) Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

- Yes No If yes, explain:

(6) Effective date of rule:

Permanent Rules

Emergency Rules

- 31 days after filing Immediately
 Other (specify) _____ * Later (specify) _____

*(If less than 31 days after filing, specific finding in 5.3 under RCW 34.05.380(3) is required)

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STATE OF WASHINGTON
FILED

FEB 28 1992

TIME 9:59 PM
WSR 92-06-041

NAME (TYPE OR PRINT)

John L. Bley

SIGNATURE

John L. Bley
Supervisor of Banking

DATE
2-28-92

NEW SECTION

WAC 50-14-020 INTRODUCTION. This chapter implements the supervisor of banking's (the "supervisor") authority under chapter 34.05 RCW to enact regulations to regulate the establishment and operations of mutual holding companies. It addresses only those features of the organization and operation of mutual holding companies that are not governed by existing provisions of Title 32 RCW. Among the provisions that must be considered are the following: Chapters 32.08 and 32.32 RCW for the chartering of a mutual savings bank and its conversion to a stock-form savings bank subsidiary of a mutual holding company; Title 32 RCW generally for the operations of any such savings bank; chapter 32.34 RCW for any merger or acquisition of assets involving a mutual holding company or banking subsidiary of a mutual holding company.

NEW SECTION

WAC 50-14-030 DEFINITIONS--REGULATIONS NOT EXCLUSIVE. The definitions contained in RCW 32.32.025 shall apply to any transaction under these rules unless the context requires otherwise and except as provided herein. The reorganization of a mutual savings bank into mutual holding company form (hereafter sometimes referred to as the "reorganization") and the conversion of a mutual holding company into a stock holding company (hereafter sometimes referred to as the "conversion") shall be governed by the rules prescribed in chapter 32.32 RCW, except to the extent such rules are inconsistent with the transaction and except as provided in these rules. Any savings bank or mutual holding company may apply to the supervisor, in connection with a transaction authorized by these rules, for such variations from the rules prescribed by chapter 32.32 RCW as are necessary and proper to effectuate the transaction.

NEW SECTION

WAC 50-14-040 AUTHORIZATION OF THE FORMATION OF MUTUAL HOLDING COMPANIES. (1) Notwithstanding any other provision of law, and in accordance with the general requirements of the supervisor set forth in WAC 50-14-050 through 50-14-150, a mutual savings bank may reorganize so as to cause its deposit-taking and one or more other activities to be conducted by a stock savings bank subsidiary of a mutual holding company, which subsidiary is formed for such purpose.

(2) Except to the extent that such provisions are inconsistent with these rules, the stock savings bank subsidiary of the mutual holding company shall be subject to the same provisions of Title 32 RCW as apply to other stock savings banks.

NEW SECTION

WAC 50-14-050 REQUIRED APPROVALS. (1) A reorganization of a mutual savings bank pursuant to these rules shall be approved by not less than two-thirds of the board of trustees of the mutual savings bank.

(2) (a) A mutual savings bank proposing a reorganization pursuant to these rules shall provide the supervisor with written notice of

such proposed reorganization. Such notice shall include a copy of the plan of reorganization approved by the board of trustees pursuant to subsection (1) of this section, the proposed incorporation and authorization certificates for the mutual holding company and/or the stock savings bank subsidiary, as appropriate, and shall also contain such other information as the supervisor shall require. The supervisor shall approve or disapprove the plan of reorganization within sixty days of the submission of such plan, together with such other information as the supervisor shall require.

(b) In determining whether to approve the plan of reorganization, the supervisor shall consider:

(i) Whether the formation of the mutual holding company would not be detrimental to the interests of the depositors of the mutual savings bank proposing to reorganize as provided in WAC 50-14-040;

(ii) Whether disapproval is necessary to prevent unsafe or unsound banking practices;

(iii) Whether the interest of the public will be served by the proposed reorganization;

(iv) Whether the financial or management resources of the mutual savings bank proposing to reorganize as provided in WAC 50-14-040 warrant disapproval of the proposed plan of reorganization; and

(v) Whether the mutual savings bank proposing to reorganize as provided in WAC 50-14-040 fails to furnish any information required under (a) of this subsection or furnishes information containing any statement which, at the time and in the circumstances under which it was made, was false or misleading with respect to any material fact or omits to state any material fact necessary to make the statements therein not false or misleading.

(c) When the supervisor shall have determined to approve or disapprove the plan of reorganization, the supervisor shall so advise the mutual savings bank in writing and shall endorse approval on the incorporation and authorization certificates and cause the same to be filed in such manner and in the respective offices provided in chapter 32.08 RCW. Upon the filing of the authorization certificate as provided in RCW 32.08.080, the existence of the mutual holding company and/or stock savings bank, as appropriate, shall commence. As used in this chapter, the term "authorization certificate" shall include an amended authorization certificate.

NEW SECTION

WAC 50-14-060 FORMATION OF A MUTUAL HOLDING COMPANY. (1) The plan of reorganization may authorize the formation of a mutual holding company by:

(a) (i) The organization by the mutual savings bank of a stock savings bank subsidiary and the transfer to such stock savings bank of the substantial part of its assets and liabilities, including all of its deposit liabilities, in accordance with the general provisions of these rules;

(ii) The organization by the mutual savings bank of a mutual holding company and the organization by such mutual holding company of a stock savings bank subsidiary which merges with the mutual savings bank; or

(iii) The reorganization of the mutual savings bank under any other method approved by the supervisor.

(b) For the purposes of (a) of this subsection, WAC 50-14-080 permits the stock savings bank to issue to persons other than the mutual holding company of which it is a subsidiary, an amount of common stock and securities convertible into common stock which in the aggregate does not exceed forty-nine percent of the issued and outstanding common stock of such stock savings bank. Issued and outstanding securities that are convertible into common stock shall be considered issued and outstanding common stock for the purposes of

computing the forty-nine percent limitations. This subsection shall not limit the authority of such stock savings bank to issue equity or debt securities other than common stock and securities convertible into common stock.

(2) In connection with the reorganization of a mutual savings bank as provided in WAC 50-14-040, the mutual holding company may retain or acquire assets of the mutual savings bank to the extent that such assets are not then required to be transferred to or retained by the stock savings bank in order to satisfy capital or reserve requirements of any applicable state or federal law or regulation.

(3) A stock savings bank at least fifty-one percent but less than one hundred percent of the outstanding common stock of which is owned by a mutual holding company shall have at least one director, but no more than two-fifths of its directors, who are "unaffiliated directors" who shall represent the interests of the minority shareholders. An "unaffiliated director" is a director who is not:

(a) An officer or employee of the stock savings bank (or any affiliate thereof); or

(b) An officer, trustee, or employee of the mutual holding company.

If the incorporation certificate or bylaws of the stock savings bank provide that the board of directors shall be divided into two or more classes, then to the extent possible, each class shall contain the same number of unaffiliated directors as each other class.

NEW SECTION

WAC 50-14-070 MUTUAL HOLDING COMPANY POWERS. (1) Upon the formation of a mutual holding company by a mutual savings bank:

(a) The mutual holding company shall possess all the rights, powers, and privileges, except deposit-taking powers, and shall be subject to all the limitations, not inconsistent with these rules, of a mutual savings bank under Title 32 RCW; and

(b) The mutual holding company shall be subject to the limitations imposed by the Bank Holding Company Act of 1956 (12 U.S.C. Section 1841, et seq.) or, in the case of a mutual holding company resulting from the reorganization of a savings bank which has elected either prior or subsequent to such reorganization to be treated as a savings association as that term is defined in 12 U.S.C. Section 1467a, such mutual holding company shall be subject to the limitations imposed by the savings and loan holding company provisions of the Home Owners' Loan Act (12 U.S.C. Section 1467a).

(2) Notwithstanding any inconsistent provisions of Title 32 RCW, subject to the express approval of, or additional rules promulgated by, the supervisor, a mutual holding company may:

(a) Merge with, acquire, or purchase the assets of a mutual holding company established pursuant to these rules or the savings and loan holding company provisions of the Home Owners' Loan Act (12 U.S.C. Section 1467a);

(b) Acquire or purchase the assets or stock of a stock savings bank, commercial bank, credit union, stock savings and loan association, stock federal savings bank, or stock federal savings and loan association;

(c) Acquire a mutual savings bank, a mutual savings and loan association, a federal mutual savings bank, or a federal mutual savings and loan association through the merger of such institution with a stock subsidiary of such mutual holding company;

(d) Engage in any other acquisition or combination specifically permitted by the supervisor.

NEW SECTION

WAC 50-14-080 SUBSEQUENT OFFERING. (1) Any public offering of shares by a subsidiary of a mutual holding company, subsequent to the reorganization but after which the mutual holding company would retain at least fifty-one percent of the issued and outstanding shares of the stock savings bank (a "subsequent offering") shall be governed by the rules prescribed in chapter 32.32 RCW, except to the extent such rules are inconsistent with the transaction and except as provided in these rules.

(2) Any subsequent offering shall be made pursuant to an offering circular which complies with the terms and conditions prescribed in chapter 32.32 RCW and has been approved by the supervisor, whether the offering consists of newly issued shares being offered by the stock savings bank or previously issued shares being sold by the mutual holding company.

(3) The procedures to be followed in conducting a subsequent offering may, with the approval of the supervisor, differ from those set out in chapter 32.32 RCW so long as eligible account holders' subscription rights are not abrogated. Such differences may include, but need not be limited to, the distribution of offering circulars only to those eligible account holders who have requested them and combining a subscription offering with a public offering.

NEW SECTION

WAC 50-14-090 SUBSCRIPTION RIGHTS. (1) Except for shares issued to a mutual holding company, and except for the shares referred to in WAC 50-14-100, all shares of stock issued in connection with a reorganization or conversion shall be subject to subscription rights granted to eligible account holders of the subsidiary savings bank(s). As used in these rules, "shares of stock issued in connection with the reorganization or conversion of a mutual savings bank" include shares issued upon the reorganization, shares sold in any subsequent offering (whether shares held by the mutual holding company or shares newly issued by the stock savings bank), or shares sold in connection with the conversion. Also included are any securities convertible into shares of the stock-form savings bank.

(2) An "eligible account holder" for the purposes of this section is any depositor of a savings bank who owned in such bank one or more accounts valued in the aggregate of fifty dollars or more on the pertinent record date. In the case of the reorganization, the record date shall be the date established by the board of trustees, which date shall be no less than ninety days prior to the date on which the plan of reorganization is adopted by the trustees; in the case of any subsequent offering, the record date shall be the date established by the board of directors of the stock-form savings bank issuing new shares or the board of trustees of the mutual holding company selling shares, as the case may be, which date shall be no less than ninety days prior to the date on which the shares are offered; in the case of the conversion, the record date shall be the date established by the mutual holding company's board of trustees, which date shall be no less than ninety days prior to the date on which the plan of conversion is adopted by the trustees.

NEW SECTION

WAC 50-14-100 STOCK OPTIONS AND STOCK GRANTS. Shares of stock issued in connection with the reorganization of a mutual savings bank

may be reserved to satisfy a stock option plan and issued pursuant to a restricted stock plan approved by the savings bank's stockholder(s). The aggregate number of shares so reserved and issued shall be reasonably proportionate to the number of shares, if any, held by persons other than the mutual holding company.

NEW SECTION

WAC 50-14-110 LIQUIDATION ACCOUNT. (1) The entire unconsolidated net worth of a mutual holding company shall constitute a liquidation account for the benefit of the depositors of its subsidiary savings bank(s). The liquidation account shall not be a fixed amount but may increase or decrease over time. The function of the liquidation account is to establish that upon the complete liquidation of the mutual holding company, the entire net worth of the mutual holding company will be distributed among those persons who are the depositors of its subsidiary savings bank(s) as of the date of the liquidation. The designation of the mutual holding company's net worth as a liquidation account shall not operate to restrict the use or application of the mutual holding company's net worth accounts.

(2) In the event of a complete liquidation of a mutual holding company, the entire net worth of the mutual holding company shall be distributed ratably among all the depositors of its subsidiary savings bank(s) as of the date of the liquidation.

(3) Upon the conversion of a mutual holding company, the net worth of the holding company shall no longer be designated a liquidation account. Instead, each subsidiary savings bank shall at that time establish a liquidation account, which liquidation accounts shall in the aggregate equal the mutual holding company's liquidation account as of its last periodic report of condition immediately preceding its conversion into a stock-form holding company. The liquidation account established by each subsidiary savings bank shall be in the same proportion to the mutual holding company's liquidation account that the total deposits of that subsidiary savings bank bears to the total deposits of all subsidiary savings banks of the mutual holding company. The liquidation account established by a subsidiary savings bank shall comply with the rules contained in RCW 32.32.185 through 32.32.205.

NEW SECTION

WAC 50-14-120 REORGANIZATION INTO MUTUAL HOLDING COMPANY FORM. (1) The mutual holding company may retain or acquire assets of the mutual savings bank only to the extent permitted by the supervisor.

(2) A stock savings bank established in connection with a reorganization shall reserve no authorized but unissued shares, except as necessary to satisfy a stock option plan or issue securities convertible into stock.

(3) A plan of reorganization shall contain the provisions referenced in RCW 32.32.035, except that it need not provide for the sale of any stock and the aggregate price of any stock sold shall bear the same proportion to total estimated pro forma market value of the subsidiary savings bank(s) determined by an independent appraisal that the shares sold bear to the total issued and outstanding shares of the savings bank(s).

NEW SECTION

WAC 50-14-130 CONVERSION OF MUTUAL HOLDING COMPANY INTO STOCK HOLDING COMPANY. (1) If approved by the supervisor, a mutual holding company may convert to a stock holding company in accordance with the provisions contained in these rules.

(2) If approved by the supervisor, the mutual holding company shall adopt a plan of conversion subject to and in accordance with the provisions of chapter 32.32 RCW.

(3) A plan of conversion must include a provision requiring the exchange of shares of the subsidiary savings bank(s) for shares of the resulting stock holding company in a proportion established by independent appraisals of the mutual holding company and the subsidiary savings bank(s).

(4) The limitation contained in RCW 32.32.075 shall continue until three years after conversion into a stock holding company.

NEW SECTION

WAC 50-14-140 CONSTRUCTION. Nothing contained in chapter 50-14 WAC shall be construed to prohibit the de novo chartering of a stock savings bank not intended to be in holding company form.