Eastern Bank

Eastern Bank Corporation
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September 2, 2014

Robert deV. Frierson, Secretary
Board of Governors of the
Federal Reserve System
20th Street & Constitution Avenue NW
Washington, DC 20551

RE: EGRPRA, Docket No. OP-1491

Robert E. Feldman, Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

RE: EGRPRA

Dear Mr. Frierson and Mr. Feldman:

I submit this comment letter in response to the federal banking agencies' invitation under the Economic Growth and Regulatory Paperwork Reduction Act of 1996 ("EGRPRA"). I write as Chairman and Chief Executive Officer of Eastern Bank Corporation, Inc., a state-chartered mutual bank holding company, and its wholly-owned, insured state bank subsidiary, Eastern Bank, both of Boston, Massachusetts. I write also in my capacity as Chairman of the Massachusetts Bankers Association.

Eastern Bank

Founded in 1818, Eastern Bank was chartered under the laws of the Commonwealth of Massachusetts as a mutual savings bank. In October of 1989, the Bank reorganized into a mutual holding company, Eastern Bank Corporation, which then became the sole shareholder of Eastern Bank, a Massachusetts chartered stock savings bank. In 2004, upon its withdrawal from the Massachusetts Depositors Insurance Fund, Eastern Bank converted to a trust company under applicable provisions of Massachusetts law, pursuant to which it continues to have all of the rights and obligations of the savings bank from which it converted.

Eastern Bank Corporation is now the largest and oldest mutual banking entity in the country. Eastern Bank has $8.8 billion in assets and more than 90 branches serving communities from the Merrimack Valley to Cape Cod in eastern Massachusetts and offers banking, investments and insurance services and products to its retail and commercial customers. Eastern Bank, which includes Eastern Bank Wealth Management and Eastern Insurance Group, is a recognized leader in corporate social responsibility and is the No. 1 SBA lender in Massachusetts for the last five years and for the last four years in all of New England. Eastern Bank ranked "Highest Customer Satisfaction in Retail Banking in the New England Region" for the J. D. Power Retail Satisfaction Study.

Massachusetts Bankers Association

The Massachusetts Bankers Association represents approximately 180 commercial, savings and co-operative banks and savings and loan institutions in Massachusetts and elsewhere in New England.

Background

Section 2222 of the Economic Growth and Regulatory Paperwork

Reduction Act of 1996 (EGRPRA)[1] requires that regulations prescribed by the Federal Financial Institutions Examination Council, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the Board of Governors of the Federal Reserve System be reviewed by the agencies at least once every 10 years.

The purpose of the required review is to identify outdated, unnecessary, or unduly burdensome regulations and consider how to reduce regulatory burden on insured depository institutions while, at the same time, ensuring their safety and soundness and the safety and soundness of the financial system.

The first phase of the second EGRPRA review is now underway, and the banking agencies have invited all interested financial institutions and other interested parties to participate. The review provides an opportunity for community banks and the public to consider and comment on the agency regulations, individually and as a whole.

The regulations under review during the current phase (deadline for comment, September 2) include regulations of the FDIC, the Federal Reserve Board, and the Office of the Comptroller of the Currency governing applications for required regulatory approvals of bank and bank holding company mergers, acquisitions and holding company formations. These are the rules governing applications and notices under the Bank Holding Company Act, the Bank Merger Act, the Change in Bank Control Act, and the corporate transactional provisions of the National Bank Act and Home Owners Loan Act.

The suggestions in this comment letter concern primarily regulations of the Federal Reserve Board and the FDIC governing the formation of non-stock mutual bank holding companies by FDIC-insured, state-chartered mutual banks.[2] The pertinent regulations of the Federal

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[1] Public Law 104-208 (1996), codified at 12 U.S.C. 3311.

[2] By "non-stock" mutual holding company, I mean a mutual holding company that retains direct or indirect ownership of the entire common equity interest of its original subsidiary bank and has not directly or indirectly issued or sold any

Reserve Board are contained in Subpart B of Regulation Y, 12 CFR Part 225, Subpart B, "Acquisition of Bank Securities or Assets." The regulations of the FDIC are codified as 12 CFR Part 303, Subpart I, "Mutual-to-Stock Conversions," and 12 CFR Section 333.4, "Conversions from mutual to stock form." The Federal Reserve Board regulations and the FDIC regulations are both subject to comment in the current phase of EGRPRA review.

Current Federal Reserve Board and FDIC Rules and Procedures Place a Disproportionate and Unnecessary Burden on the Formation and Expansion of Non-stock Mutual Bank Holding Companies.

Current FDIC and Federal Reserve Board regulations, practices and procedures impose burdens on state-chartered mutual banks seeking to form holding companies that are not imposed on their stockholder-owned counterparts and that are unnecessary to protect bank safety and soundness or depositors interests or prevent breaches of fiduciary duty or violations of law.

Federal Reserve Board

The Federal Reserve Board's current applications processing practices effectively require every mutual bank proposal to form a mutual bank holding company ("MHC") and every proposal by an MHC to acquire an additional bank to be accepted initially for processing by the Board of Governors in Washington, DC.[3] The mutual applicant is then requested

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common stock or instrument convertible at the option of the holder into common stock of its subsidiary bank or any intermediate holding company to the public or to any other person. It is to be distinguished from a "stock" mutual holding company that has issued minority shares of the common equity ownership of its subsidiary bank or middle tier holding company to the public, to its officers, directors or employees, or to other third parties.

[3] Under the Federal Reserve Board's regulations, the Board will act on a bank holding company application accepted for Board processing within 60 days after the application is referred to the Board unless the Board notifies the applicant that the

by Board staff to enter into numerous detailed written commitments.[4] If the mutual applicant accepts the written commitments in the form presented by Board staff, and there are no other issues presented by the application, the application will be referred back to the applicable Federal Reserve Bank for processing and approval under delegated authority.

On the other hand, a request by a mutual applicant to modify any of the commitment language presented by Board staff may be deemed to present "significant legal, policy or supervisory issues" that will disqualify the application from being referred back to the appropriate regional Federal Reserve Bank for approval. While the wording of the required commitments is under discussion between the mutual applicant's representatives and the Board's staff, otherwise applicable internal Federal Reserve time limits on the processing of the application are effectively suspended.[5]

60-day period is being extended and states the reasons for the extension. In contrast, a bank holding company proposal that is accepted for Reserve Bank processing under delegated authority will normally be approved by the appropriate Reserve Bank within 30 calendar days after acceptance, unless the Reserve Bank upon notice to the applicant, refers the application to the Board for decision because action under delegated authority is not appropriate. 12 CFR §§ 225.15(d)(1) & (2).

[4] These commitments, which will be enforceable by the Federal Reserve Board under Section 8 of the Federal Deposit Insurance Act, 12 U.S.C. §1818, may address, among other things, future sales of ownership interests in the Bank or any middle tier holding company, purchase priorities in any future sale, transfer or issuance of shares, conformity of any future mutual-to-stock conversion plan to rules governing mutual-to-stock conversions of federal savings associations, repurchases of bank stock from the MHC, future proposals for the MHC to waive receipt of dividends paid by the bank or any middle tier holding company on outstanding minority shares, the ratio of securities of the holding company to be exchanged for outstanding minority shares of any middle tier holding company in any "second step" conversion of the MHC, restrictions on direct and indirect real estate investment activities, the limitation of any transfer of funds by the Bank to any "affiliate" as defined in Federal Reserve Act §23A, and the allocation to the holding company of the expense of the reorganization.

[5] Since the commitments actually made in connection with bank holding company formation approvals are often not published, and the possible future events they

While the detailed written commitments Board staff initially requests from non-stock mutual holding company applicants are basically standardized, the commitments actually made in connection with specific holding company proposals are usually not disclosed and can and do vary in subtle but important ways from one mutual holding company application to the next.[6] This variability in wording, the future and hypothetical nature of the events to which most of the commitments relate,[7] and the nondisclosure of the commitments actually made by specific applicants encourage protracted negotiations between mutual applicants and Board staff over the precise wording of the commitments required. These discussions can significantly increase the delay, uncertainty and expense involved in obtaining required Federal Reserve Board approvals of mutual holding company proposals.

In contrast to the above procedure for non-stock mutual holding company formations, the Federal Reserve Board, by regulation, routinely waives prior approval requirements for stock banks seeking to form one-bank holding companies satisfying published regulatory conditions.[8] When not waived altogether, required BHC Act approvals for stock bank holding companies are routinely granted on the abbreviated 30-day time schedule for Reserve Bank approvals pursuant to delegated authority[9] and approvals of bank acquisitions by

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concern are entirely uncertain and hypothetical, the period of discussion of the proposed commitment language can be prolonged, adding significantly to the delay and expense of the mutual holding company formation.

[6] For example, depending on the precise wording of the commitments, there may be a significant difference between the agreed-upon regulatory clearance procedures applicable to a subsequent issuance of "common stock" or "common equity" of the bank or a middle tier holding company (which may affect depositors' liquidation rights) on the one hand, and an issuance of noncumulative perpetual or trust preferred stock of the subsidiary bank or middle tier holding company (which may not affect depositors' liquidation rights) on the other.

[7] See note 4, *supra*.

[8] See *Notice procedure for one-bank holding company formations*, 12 CFR §225.17.

[9] 12 CFR 225.15(d)(1). "This procedure . . . is not available for the formation of a bank holding company organized in mutual form." *Id.*, at 225.15(d)(2), n. 5.

established stock bank holding companies may be further expedited.[10] Approvals and waivers of approval requirements are granted on the basis of regulatory criteria that are set forth in the Board's Regulation Y.[11] The approval standards are public, have been the subject of notice and comment rulemaking, and do not vary from case to case. These approval conditions do not include the many detailed commitments regarding hypothetical future stock issuances that the Federal Reserve Board staff routinely requires from mutual bank holding company applicants.

Under the Federal Reserve Board's Regulation Y, an application is normally not required for a bank holding company to effect an internal corporate reorganization, *e.g.*, by transferring control of a subsidiary bank to a newly organized subsidiary holding company.[12] This exemption from prior Federal Reserve Board application and approval requirements is not available to mutual holding companies.[13]

FDIC

The FDIC also imposes special regulatory requirements and conditions on non-stock mutual bank holding company formations that it does not impose on holding company formation proposals by stockholder-owned banks.

A state-chartered mutual bank seeking to form a one-bank mutual holding company is required under Subpart I of Part 303 of the FDIC rules to submit a notice of "mutual-to-stock conversion" to the FDIC even if it does not propose to issue shares of stock to anyone other than the proposed MHC.[14] The required contents of the notice include "at

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[10] See *Expedited action for certain bank acquisitions by well-run bank holding companies,* 12 CFR 225.14.
[11] See notes 7, 8 & 9, *supra*; see also 12 CFR 225.13, *Factors considered in acting on bank acquisition proposals.*
[12] See 12 CFR 225.11(d)(3).
[13] 12 CFR 225.11(d)(3)(ii)(C).
[14] 12 CFR 303.161(a).

minimum" many items that are relevant only to a public stock offering, such as copies of the underwriting agreement, the appraisal, the offering circular, a business plan showing the intended use of the conversion proceeds and a description of the subscription priorities established in connection with a proposed stock offering.[15] Similarly, the specific factors the FDIC considers in deciding whether to permit or object to consummation of a mutual holding company formation proposal include many that have no relevance to a non-stock MHC reorganization.[16]
In addition to the requirement to file a notice of mutual-to-stock conversion, Section 337.4(c)(2) of the FDIC Regulations requires any mutual holding company formation proposal to be approved by

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[15] 12 CFR 303.161(c). The 60-day notice period does not commence until the notice received by the FDIC is deemed "substantially complete" and accepted by the FDIC. 12 CFR 303.161(e).

[16] Section 303.163 of the FDIC Regulations provides: "The FDIC shall review the notice and other materials submitted by the institution proposing to convert from mutual to stock form, specifically considering the following factors:

(1) The proposed use of the proceeds from the sale of stock, as set forth in the business plan;
(2) The adequacy of the disclosure materials;
(3) The participation of depositors in approving the transaction;
(4) The form of proxy statement required for the vote of the depositors/members on the conversion;
(5) Any proposed increased compensation and other remuneration (including stock grants, stock option rights and other similar benefits) to be granted to officers and directors/trustees of the bank in connection with the conversion;
(6) The adequacy and independence of the appraisal of the value of the mutual savings bank for purposes of determining the price of the shares of stock to be sold;
(7) The process by which the bank's trustees approved the appraisal, the pricing of the stock, and the proposed compensation arrangements for insiders;
(8) The nature and apportionment of stock subscription rights; and
(9) The bank's plans to fulfill its commitment to serving the convenience and needs of its community."

majority vote of all of the bank's depositors (not just depositors attending the meeting), even if no stock is to be issued or sold to anyone other than the MHC in the transaction.[17] A bank can submit to the FDIC an application for waiver of this requirement when compliance would be "inconsistent or in conflict with applicable state law" or "for any other good cause shown."[18] Since it is practically impossible for an operating bank to persuade a majority of its depositors to vote in person or by proxy when their personal financial interests are not directly affected, this regulatory requirement is rarely if ever satisfied. Instead, it is waived in the case of non-stock MHC formations on the basis of an after-the-fact review by, and negotiations with the FDIC staff.[19] The terms and bases for waiver of the requirement in any specific case are not routinely made public by the applicant or the FDIC. Like mutual applicants' negotiations with Board staff over the precise wording of commitments required to obtain Federal Reserve Board approvals, discussions with FDIC staff of the terms and conditions of the FDIC's waiver of the majority-of-depositor approval requirement can be prolonged, and significantly increase the delay and expense of an insured state mutual bank's non-stock mutual holding company reorganization.[20]

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[17] In contrast, the FDIC defers to state law on the shareholder and other corporate approval votes necessary for a stockholder-owned bank to reorganize into a one bank holding company.

[18] 12 CFR 303.162(a). Under this provision, the FDIC routinely waives the majority-of-depositors approval requirement for a Massachusetts savings bank reorganization approved by a majority of the bank's independent corporators where at least 60% of the reorganizing bank's corporators are deemed "independent" by the FDIC.

[19] Occasionally, as was the case with Coastway Community Bank of Cranston, Rhode Island in the Fall of 2012, a depositors meeting and vote more than satisfying the requirements of applicable state law will be deemed insufficient by FDIC staff upon after-the-fact review and a second depositors' meeting and approval vote on the bank's non-stock mutual holding company formation will be required. Such exercises of staff discretion greatly increase the expense, uncertainty and delay of a state bank's non-stock mutual holding company reorganization.

[20] FDIC staff have requested mutual bank holding company applicants to enter into written agreements to toll the running of the FDIC's 60-day notice period for

The Burdensome Requirements Imposed on Non-stock Mutual Holding Company Proposals Serve No Sound Regulatory Purpose.

As a result of these special regulatory processing procedures, obtaining required regulatory approvals is almost always a much lengthier, uncertain and expensive project for a non-stock mutual holding company than for a stock bank holding company. Placing such a disproportionate burden on mutual bank holding companies is contrary to both the intent and the letter of Section 107 of the Competitive Equality Banking Act of 1987,[21] which directs that any mutual holding company "shall be regulated on the same terms and be subject to the same limitations as any other holding company which controls a savings bank."

The additional regulatory uncertainty, expense and delay imposed on the formation of a non-stock mutual holding company is not necessary to preserve the safety and soundness of the banks or holding companies concerned, to protect their depositors or to prevent violations of law or breaches of fiduciary duties by their officers, directors or trustees.

In these respects, a nonstock mutual holding company reorganization is no different from the holding company reorganization of a stockholder-owned bank. In either case, at the end of the transaction, the bank is wholly owned by the newly formed holding company, and the newly formed holding company is owned by the same interests that previously owned the bank directly.[22] In each case, standard BHC Act approval

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mutual-to-stock conversion proposals, 12 CFR §303.163(c), while the terms of their depositor approval waivers are being negotiated.

[21] 12 U.S.C. §1842(g)(2).

[22] In contrast to a mutual bank conversion involving the issuance of stock to insiders and/or the public, since a non-stock mutual holding company reorganization merely converts bank depositors' direct ownership interest into an indirect one, and gives no one else any direct or indirect ownership claim on the bank's capital surplus or the loyalty of the bank's directors and officers, it creates no inherent conflicts of interests on the part of the reorganizing bank's management or board of directors.

criteria[23] and statutory restrictions on insider and affiliate transactions[24] provide adequate assurance that the resulting bank and bank holding company will be well-capitalized and well-managed, will comply diligently with the Anti-Money Laundering and other applicable laws, will not pose a threat to the financial stability of the United States, and will adequately serve the convenience and needs of their local community. The federal banking agencies' conventional tools of bank holding company supervision and regulation[25] provide adequate assurance that the resulting holding company will serve as a source of financial and managerial strength to its subsidiary bank,[26] and that its officers and directors will not breach their fiduciary duties to depositors.

Existing federal and state statutes and regulations[27] provide the Federal Reserve Board adequate supervisory and enforcement tools to safeguard depositors' interests against the emergence of director or officer conflicts of interest or breaches of fiduciary duty if at some future time a non-stock mutual holding company seeks to issue minority shares or to fully convert to a stockholder-owned form of holding company. However, to provide additional assurance against that contingency, the Federal Reserve Board may choose to add to its Regulation Y a specific requirement of prior Federal Reserve Board approval of any sale or issuance of direct or indirect common equity interests in the subsidiary bank after the initial formation of a non-stock

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Consequently, extraordinary regulatory measures to protect depositors from such conflicts are both unnecessary and inappropriate in the non-stock mutual holding company context.

[23] See 12 U.S.C. §1842(c); 12 CFR 225.13.

[24] *E.g.,* Sections 23A and 23B of the Federal Reserve Act, 12 U.S.C. §§371c, 371c-1, made applicable to insured state banks by 12 U.S.C. §1828(j).

[25] *E.g.,* Section 8(b)(3) of the Federal Deposit Insurance Act, 12 U.S.C. §1818(b)(3) (cease and desist order)

[26] 12 CFR 225.4(a).

[27] See, e.g., Section 5 of the Bank Holding Company Act, 12 U.S.C. §1844, and Section 8 of the Federal Deposit Insurance Act, 12 U.S.C. §1818, among others.

mutual holding company.[28] Such a regulation, carefully drawn after notice and comment rule-making, would eliminate the need for applicants to negotiate numerous detailed commitments currently required in non-stock mutual holding company formations and would eliminate much of the uncertainty, delay and expense currently attending these transactions.

Standardizing the Conditions of Approval and Processing of Non-stock Mutual Bank Holding Company Proposals Will Reduce Unnecessary and Disproportionate Regulatory Burdens.

The disparate regulatory burden on the formation of non-stock mutual holding companies can be reduced by making the following modest changes in the Federal Reserve Board's and FDIC's application processing rules and procedures:

1. Standardize the regulatory approval conditions and procedures for nonstock mutual holding company reorganizations and acquisitions. Incorporate the standardized approval conditions and procedures in specific agency regulations to be adopted after normal notice and comment rulemaking.

2. Exempt non-stock mutual holding company formations from the majority-of-depositors approval requirement of Section 333.4 of the FDIC Regulations.

3. Provide for delegated, expedited, or waived Regional Office or Reserve Bank processing of "no-issue" applications for required regulatory approvals of non-stock mutual holding company formations and acquisitions on standard terms and conditions.

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[28] Compare 12 CFR 225.4 (relying on the Board's enforcement authority under Section 8(b) of the FDI Act, 12 U.S.C. §1818(b), to require prior notice of certain treasury stock purchases by bank holding companies).

4. Require Board of Governors or FDIC/Washington Office review and clearance of non-stock mutual holding company proposals only if they raise substantive issues under applicable statutory approval criteria or propose material deviations from standard approval terms and conditions.

Thank you very much for the opportunity to offer these comments and suggestions for reducing unnecessary regulatory burdens on the formation of non-stock mutual holding companies. If you have any questions or would like to discuss any aspect of these comments , please do not hesitate to contact me.

Very truly yours,

Richard E. Holbrook
Chairman & CEO