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BANK HOLDING COMPANY SHEDDING TRANSACTIONS

The authors note recent bank transactions eliminating BHCs, suggesting a trend. They then discuss fiduciary duty considerations, the declining role of traditional BHC advantages, and the benefits of eliminating the FRB and SEC as federal regulators. They address equity and debt offerings by a bank without a BHC and close with a high-level summary of corporate steps required to eliminate a BHC.

By V. Gerard Comizio and Nathan S. Brownback *

Bank holding companies ("BHCs") have been fixtures on the landscape of U.S. banking institutions for more than six decades. Why? Are they still the right choice for every banking institution? And if not, what should a financial institution do about it?

This article discusses the major issues to consider in evaluating the relative merits of undertaking a corporate internal reorganization involving the merger of a BHC into its bank subsidiary, thereby eliminating the BHC structure and all regulation, examination, and oversight by the Federal Reserve Board ("FRB"), as well as eliminating the Securities and Exchange Commission ("SEC") as federal securities regulator in favor of consolidated banking and securities regulation by the Office of the Comptroller of the Currency ("OCC"), if the bank is a national bank, or the Federal Deposit Insurance Corporation, if the bank is a state non-member bank.[1]

This article begins by discussing recent transactions in which banking organizations have eliminated their BHCs, as well as announcements by banking organizations that they intend to or have begun the process of eliminating their BHC structures. It then discusses the fiduciary duty considerations driving BHC elimination transactions at the level of banking organizations' boards. It demonstrates that the "traditional" advantages of BHCs have declined in importance or been eliminated, while regulatory disadvantages to employing a BHC in the structure of a banking organization have substantially increased through increasing levels of BHC regulation, oversight, examination, and supervision. It explains that the OCC has become an advocate for national banks to eliminate their BHC structures in order to reduce "regulatory redundancy." It provides some of the costs and benefits banking organizations should consider when evaluating

[1] A "non-member" bank is one that is not a member of the Federal Reserve System. By contrast, it should be noted that a state member bank, *i.e.*, a bank that is a member of the Federal

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Reserve System, would retain the FRB as its primary federal bank regulator regardless of whether it employs a BHC structure.

* *V. GERARD COMIZIO is a partner at Fried Frank and chair of the banking practice. NATHAN S. BROWNBACK is an associate at the same firm. Their e-mail addresses are v.gerard.comizio@friedfrank.com and nathan.brownback@friedfrank.com.*