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It's Time for Bank Holding Companies to Review Shareholder Agreements

Insight

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Many Bank Holding Companies (BHCs) have shareholder/stockholder agreements that limit voting rights, buy-sell, transfer of shares and other restrictive provisions. The creation and implementation of these agreements occurred frequently when BHCs could elect to be taxed as a subchapter S corporation (S-Corp) in 1998. Many privately held BHCs that are C corporations may also have such agreements. Moreover, a bank not owned by a BHC may also have such agreements. An agreement involving the stock of a banking organization cannot be perpetual under the requirements of Regulation Y (Section 225.2(d)(1)). In order for an agreement not to be considered a BHC, it must terminate within 25 years.

Since many BHCs had agreements entered into in 1998 or shortly thereafter, these agreements now need to be reviewed to determine when they terminate by their terms. If the agreements are near termination, you should consider your options, as the Federal Reserve Board's position is that these agreements must terminate and cannot be extended; however, a new agreement could be considered and entered into.

For BHCs or banks with an agreement that does not expressly terminate 25 years after its effective date, it's important to discuss your options and regulatory requirements with legal counsel. Contact a member of our Banking & Financial Services team for more information on options and regulatory requirements for new or existing agreements.

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