

**WAC 208-514-020 Introduction.** This chapter implements the authority of the director of the department of financial institutions (the "director") under chapters 32.08, 32.34, and 34.05 RCW to enact regulations concerning the organization and operation of mutual holding companies. It addresses only those features of the organization and operation of mutual holding companies and their subsidiary stock savings banks that are not governed by Title 32 RCW. Among the provisions that must be considered are:

- (1) Chapter 32.32 RCW for the chartering of a mutual savings bank and the conversion of a mutual savings bank to a stock savings bank;
- (2) Title 32 RCW generally for the operations of any such savings bank; and
- (3) Chapter 32.34 RCW for any merger or acquisition of assets involving a mutual holding company or banking subsidiary of a mutual holding company.

In addition, the director has determined that formation of a business trust is not the sole and exclusive method by which a state savings bank may form a mutual holding company ("MHC").

Under RCW 32.34.050, a state savings bank is allowed to form a business trust that, in turn, is authorized to become a MHC. However, based on the statutory authority granted to the director under that statute as well as chapters 32.08 and 34.05 RCW, the director has determined that utilization of a business trust is not the exclusive procedure for creation of MHCs.

By enacting RCW 32.08.142, the legislature evidenced a clear intent that state-chartered savings banks not be placed at a competitive disadvantage to federally chartered savings banks. While the state Constitution prohibits automatic incorporation into state law of federal laws enacted after adoption of RCW 32.08.142, that restriction does not invalidate the legislative intent that state institutions not be placed at an undue competitive disadvantage with federal savings banks.

Conditioning MHC formation on the utilization of a business trust to act as the MHC is potentially disadvantageous to state savings banks in view of:

- (a) The absence of state statutory and regulatory guidance concerning the governance and authority of trusts when acting as holding companies;
- (b) The uncertainty of regulations of such trusts as MHCs; and
- (c) The potential federal tax uncertainties that would arise by utilizing a trust in connection with a tax free reorganization into a mutual holding company.

In addition, business trusts are permitted by statute (chapter 23.90 RCW) to exercise the general powers of domestic corporations, including the power to merge into a domestic corporation. As a result, the director has determined that the scope of chapter 32.34 RCW and the incidental powers clause of RCW 32.08.140 make it convenient or useful in connection with a savings bank's performance of its specifically enumerated powers to accomplish a MHC reorganization, to utilize either a corporation formed under the laws of the state of Washington or a business trust.

[Statutory Authority: RCW 30.04.030 and 43.320.040. WSR 00-17-141, amended and recodified as § 208-514-020, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 32.34.040 - [32.34].050 and chapters 32.08 and 34.05 RCW. WSR 93-13-142, § 50-14-020, filed 6/23/93, effec-

tive 7/24/93. Statutory Authority: RCW 32.34.040 - [32.34.]050. WSR 92-06-041, § 50-14-020, filed 2/28/92, effective 3/30/92.]