

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF THE TREASURY

### Office of Thrift Supervision

**12 CFR Parts 543, 544, 545, 552, 556, 563, and 575**

[No. 96-49]

RIN 1550-AA87

### Corporate Governance

**AGENCY:** Office of Thrift Supervision, Treasury.

**ACTION:** Notice of proposed rulemaking; request for comment.

**SUMMARY:** The Office of Thrift Supervision (OTS or Office) today is proposing amendments to its corporate governance regulations and policy statements to update, reorganize and substantially streamline them. This proposal follows a detailed review of each pertinent regulation and policy statement in the Code of Federal Regulations (CFR) to determine whether it is necessary, imposes the least possible burden consistent with safety and soundness and is written in a clear and straightforward manner. Today's proposal is being made pursuant to the Regulatory Reinvention Initiative of the Vice President's National Performance Review and section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994.

**DATES:** Comments must be received on or before August 26, 1996.

**ADDRESSES:** Send comments to Manager, Dissemination Branch, Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, D.C. 20552, Attention Docket No. 96-49. These submissions may be hand-delivered to 1700 G Street, NW., from 9:00 A.M. to 5:00 P.M. on business days; they may be sent by facsimile transmission to FAX Number (202) 906-7755. Comments will be available for inspection at 1700 G Street, NW., from 9:00 P.M. until 4:00 P.M. on business days.

**FOR FURTHER INFORMATION CONTACT:** David Permut, Counsel (Banking and

Finance), Business Transactions Division, (202) 906-7505; or Mary Jo Johnson, Project Manager, Supervision Policy (202) 906-5739; or Valerie J. Lithotomos, Counsel (Banking and Finance), Regulations and Legislation Division, (202) 906-6439, Chief Counsel's Office, 1700 G Street NW., Washington, D.C. 20552.

### SUPPLEMENTARY INFORMATION:

#### Table of Contents

- I. Background of the Proposal
- II. Objectives
  - A. Reduce Compliance Costs by Removing Unnecessary Regulations
  - B. Provide Maximum Corporate Governance Flexibility for Savings Associations
  - C. Provide Clear Regulatory Guidance for Frequently Recurring Questions
  - D. Move the Charter and Model Bylaws Into Application Processing Regulatory Handbook
- III. Historical Overview of Current Corporate Governance Regulations
- IV. Section-by-Section Analysis of the Proposal
- V. Proposed Disposition of Corporate Governance Regulations
- VI. Request for Comment
- VII. Executive Order 12866
- VIII. Regulatory Flexibility Act Analysis
- IX. Unfunded Mandates Act of 1995
- X. Paperwork Reduction Act

#### I. Background of the Proposal

In a comprehensive review of the agency's regulations in the spring of 1995, OTS identified numerous obsolete or redundant regulations that could quickly be repealed. On December 27, 1995, OTS published a final rule in the Federal Register repealing eight percent of its regulations.<sup>1</sup> As part of its review, OTS also identified several key areas in its regulations for a more intensive, systematic regulatory burden review. Certain areas—lending and investment authority, corporate governance, subsidiaries and equity investments, and conflicts of interest, corporate opportunity and hazard insurance—were chosen for intensive review because they are vital to the thrift industry, had not been developed on an interagency basis,<sup>2</sup> and had not been substantially reviewed or amended in recent years.

<sup>1</sup> 60 FR 66866 (December 27, 1995).

<sup>2</sup> Interagency regulations are being reviewed through the Federal Financial Institutions Examination Counsel.

Earlier this year, OTS proposed a comprehensive streamlining of its lending and investment regulations.<sup>3</sup> Proposals regarding subsidiaries and equity investments and conflicts of interest, corporate opportunity and hazard insurance will be issued in the near future.

Today's proposal presents the results of the review of the charter and bylaw regulations (corporate governance). If adopted in final form, today's proposal will reduce the number of charter and bylaw regulations and policy statements from 33 to 24, a reduction of 27 percent. In addition, deletion of the charter and model bylaws from the CFR will remove 13.5 pages of CFR text. This information will be moved to the Application Processing Regulatory Handbook (Handbook).

This proposal was developed in consultation with those who use the regulations on a daily basis: OTS regional staff and representatives of the thrift industry. OTS sought specific comments from the thrift industry through a focus group composed of representatives of seven savings associations and an industry trade association.

#### II. Objectives

The overarching goal of OTS' reinvention initiative is to reduce regulatory burden on savings associations to the greatest extent possible consistent with statutory requirements and safety and soundness. In the context of corporate governance, we believe maximum burden reduction can be achieved by pursuing four specific objectives.

##### *A. Reduce Compliance Costs by Removing Unnecessary Regulations*

The first objective of the OTS proposal is to remove unnecessary, duplicative or outdated regulations affecting the corporate governance of Federal thrift institutions. As described in more detail in the Background section below, the corporate governance regulations have not been thoroughly updated for many years. By eliminating unnecessary regulations, OTS hopes to reduce regulatory compliance costs.

Examples of regulations, or subsections thereof, proposed to be removed are § 544.2(b)(4) (Mutual capital certificates), § 544.3 (Adoption of

<sup>3</sup> 61 FR 1162 (January 17, 1996).

a new Federal charter by a Federal savings association), § 544.5(b)(17) (Emergency preparedness), § 544.8 (Old and new charters), § 544.9 (Charter B associations), § 552.1 (Definitions), § 552.2 (Corporate titles), § 552.2–5 (Conversion from Federal mutual to Federal stock), § 552.4(b)(3) (Charter amendments), § 552.6–2(a) (Requirement that the President shall be a director and CEO), and § 552.8 (Savings deposits). All of the above regulations, or portions thereof, are being removed because they are redundant, outdated or unnecessary.

Several other sections will have changes made to certain sentences or phrases within the section, such as the removal of the need for preliminary OTS approval of proposed charter amendments in §§ 544.1, Section 9; 552.3, Section 8; and 575.9, Section 8; and elimination of the need for certification by management of the legality of proposed charter and bylaw amendments in §§ 544.2(a)(2)(i), 544.5(c), 552.4(a)(2)(i), and 552.5(b)(1).

#### *B. Provide Maximum Corporate Governance Flexibility for Savings Associations*

OTS is committed to ensuring that Federal savings associations operate under state-of-the-art corporate governance procedures. Wherever possible, consistent with safety and soundness and fairness to shareholders and members, we are seeking to move toward greater flexibility. Specific amendments proposed to provide greater flexibility include:

- Amending §§ 544.5(b)(1) and 552.6(a) to provide more flexibility for the site of shareholder meetings.
- Modifying §§ 544.5(b)(5) and 552.6(f)(1) to allow proxies to be gathered telephonically or electronically.

- Expanding the list of preapproved charter amendments in §§ 544.2 and 552.4 to enable institutions to adopt supermajority voting provisions, to eliminate cumulative voting, and, for mutuals to increase the maximum permissible number of votes per member to up to 1000.

- Replacing the current requirement in §§ 544.2, 544.5(c)(2), 552.4 and 552.5(b) that institutions give OTS advance notice of their intent to adopt preapproved charter and bylaws amendments with an after-the-fact notice.

- Authorize associations to hold their annual shareholders meeting 150 days after the close of their fiscal year, instead of the current 120 days (§§ 544.5(b)(1) and 552.6(a)).

- Revising § 544.5(b)(16) to recognize the “sitting” board of directors rather than the “authorized” board of directors when determining voting requirements in certain instances.

- Exempt wholly-owned stock associations from various requirements such as staggered terms for members of their boards of directors (§ 552.6–1(b)), notice of shareholder meetings (§ 552.6(b)), and compilation of shareholder voting lists (§ 552.6(d)).

- Permit shareholder actions to be taken by unanimous written consent in lieu of a formal shareholders meeting (§ 552.6(h)).

OTS is continuing to review the laws of various states, and the corporate governance approaches followed by the other federal agencies that charter depository institutions, for additional innovative corporate governance ideas. We welcome further suggestions from commenters.

In particular, OTS requests comment on whether there are aspects of the corporate governance structure applicable to national banks that would be beneficial for Federal thrifts. The corporate governance regulations applicable to Federal thrifts tend to be more detailed than those applicable to national banks. To fill in the details, national banks are permitted to elect to follow the corporate governance laws of the state where the bank's home office is located, the laws of the state where the bank's holding company is chartered, Delaware law, or the Model Business Corporation Act. The body of law that a national bank elects to follow applies only to the extent not inconsistent with the corporate governance provisions of the National Bank Act and implementing regulations.

Federal savings associations may benefit from the detail provided in OTS's corporate governance regulations. Absence of detail in the area of corporate governance can lead to confusion, delay, and potential shareholder litigation. Accordingly, OTS's objective has been to provide savings associations with a comprehensive set of clear, modern, and flexible corporate governance rules. Institutions may apply on a case-by-case basis for permission to adopt non-standard charter and bylaw provisions.

Nevertheless, savings associations may benefit from the additional option of following state law in lieu of OTS corporate governance regulations—except for those regulations that OTS designated as vital to safety and soundness or other fundamental policy objectives. OTS requests comment on whether this type of state law election would offer benefits to savings

associations and, if so, a description of those benefits.

#### *C. Provide Clear Regulatory Guidance for Frequently Recurring Questions*

A third objective is to clarify certain issues that frequently arise regarding the corporate governance regulations. This will reduce the number of instances when institutions incur delay or expense seeking clarification of ambiguous or incomplete regulatory language. Accordingly, OTS proposes to amend:

- Section 544.5(b)(3) and (4) to indicate what rules govern adjourned shareholder meetings;
- Sections 544.5(b)(10) and 552.6–1(f) to add a cross reference to a definition indicating what constitutes “cause” for removal of a director;
- Section 544.5(b)(6) to extend privacy rights for confidential portions of an institution's books and records, now provided for Federal stock institutions at § 552.11(d), to Federal mutual associations;
- Section 544.5(b)(13) to give guidance on the procedures governing when an institution substitutes a new director nominee for a nominee that dies or becomes incapacitated; and
- Section 552.6(d) to give guidance on how stock held in the name of fiduciaries should be reflected on voting lists.

#### *D. Move the Charters and Model Bylaws Into Application Processing Regulation Handbook*

OTS is proposing to move the charters for Federal stock and mutual savings associations, found at §§ 544.1, 552.3 and 575.9, to the Handbook. We are also proposing to move the model bylaws, found in appendices to Parts 544 and 552, to the Handbook. The Office of the Comptroller of the Currency (OCC) and the National Credit Union Administration (NCUA) follow a similar practice.

Placing the savings association charters and bylaws in the Handbook may offer two advantages. First, by eliminating nonessential items from the regulations, the regulations may become easier to use. Second, OTS would have more flexibility to update and modernize the charters and bylaws from time to time, because notice and comment rulemaking would not be required to effect changes. We recognize, however, that making changes without notice and comment rulemaking could also be viewed as a disadvantage. Moreover, placing the charters and bylaws in the Handbook may make them less accessible.

Accordingly, we request specific comment on this proposed change.

### III. Historical Overview of Current Corporate Governance Regulations

Before 1982, the corporate governance of Federal savings associations was primarily concerned with Federal mutual savings and loan associations, the only type of corporate charter available from the chartering authority, the Federal Home Loan Bank Board (FHLBB), predecessor to OTS. The Home Owners' Loan Act (HOLA)<sup>4</sup> only permitted the chartering of Federal mutual savings and loan associations.<sup>5</sup>

In 1982, Congress enacted the Garn-St Germain Depository Institutions Act (DIA),<sup>6</sup> which broadened the types of charters and organizational options available to Federal savings associations. The DIA authorized the creation of new Federally chartered stock institutions, either as Federal savings banks or Federal savings and loan associations, and permitted state-chartered savings banks to convert to a Federal charter without requiring them to surrender their FDIC insurance in favor of FSLIC insurance of accounts.

In response to the DIA, the FHLBB amended its corporate governance regulations (1983 Rulemaking)<sup>7</sup> to create a single Federal mutual charter and a single Federal stock charter. The same basic charter was available both to savings banks and to savings and loan associations, with minor differences. Before the 1983 Rulemaking, Federally-chartered thrifts had operated under a plethora of charters, including Charter S, Charter T, Charter B, Charter B (Revised), Charter N, Charter N (Revised), Charter L and Charter K (Revised). Some Federal associations continue to operate under those charters. It is important to note that today's proposed rulemaking does not require any institution to change its current charter. After adoption of a final regulation, institutions may retain their existing charters or amend their charters to conform to the new provisions.

In 1985, the FHLBB concluded that with the new structural options available to Federal savings associations, a number of important matters regarding the corporate governance of those associations were either not adequately addressed, not covered in codified form or were distributed in a piecemeal fashion throughout the regulations. The FHLBB

conducted an extensive review of the Model Business Corporation Act, the corporate codes of Delaware, California, New York and Florida, then presented a proposal for updating the corporate governance regulations. Because the proposal was extensive, it was broken into four parts,<sup>8</sup> published over a two year period, with comments sought on all sections before a final regulation was to be promulgated. Only one section, however, the proposal on revisions to Receiverships and Conservatorships, was enacted in final form before the priorities of the FHLBB and external circumstances changed. The savings and loan crisis had begun and the extensive revisions to corporate governance were set aside for future consideration.

In 1989, the FHLBB's regulatory and chartering authority was assumed by the newly established OTS. A number of the corporate governance issues were ultimately addressed in the form of legal opinions or approved amendments to charters and bylaws. These changes, however, were confined to considerably more narrow subject areas than the FHLBB proposal envisioned.

Thus, today's proposal, if adopted in final form, will be the first major update of the corporate governance regulations in over a decade.

### IV. Section-by-Section Analysis of the Proposal

#### A. Part 544—Charter and Bylaws

##### *Section 544.1 Federal Mutual Charter*

This section contains the required charter for Federal mutual associations. As indicated above, OTS proposes to move this charter (as well as the charter for stock associations and the model bylaws for both) from the regulations to the Handbook. Thus, OTS proposes to amend § 544.1 to reference the Handbook. OTS also proposes to update the charter.

So that the reader can understand what is being proposed, we have set forth the changes proposed for the charter in the regulatory text, and discuss them below.<sup>9</sup>

Section 1. Corporate Title. Section 1 establishes the corporate title of the Federal association. The words "hereby chartered" will be removed as unnecessary verbiage.

Section 6. Members. This section identifies the association's members and describes their rights. OTS proposes to streamline this section by moving the

third and fourth sentences to introductory instructions in the Handbook or, if the charter is retained in § 544.1, to the introductory paragraph of the regulation. These two sentences instruct institutions that wish to adopt the charter, but are currently operating under old charters conferring membership rights on borrowers, to grandfather the membership rights of their existing borrowers.

The sixth sentence of section 6, dealing with proxies, will be removed because it already appears in the bylaws. The seventh and eighth sentences, dealing with quorums, will be moved to the bylaws because matters regarding member meetings are more fully addressed there.

Section 7. Directors. This section provides that a Federal mutual association may have from 5 to 15 directors. To further streamline the charter, bracketed references to "trustees" will be removed, and a single sentence will be added to the introductory instructions indicating that institutions may substitute the term "trustee" for the term "director" where appropriate. Similar changes will be made throughout the charter and the model bylaws for mutual associations.

The third and fifth sentences (providing that directors shall be members of the association and requiring staggered terms for directors) will be moved to the bylaw section dealing with directors. The fourth sentence (regarding vacancies on the board) will be moved to the bylaw section on resignations, removals and (newly added) vacancies. The last sentence, in brackets, will also be moved to the bylaw section on directors. This sentence authorizes state savings banks that convert to Federal mutual associations to grandfather their existing provisions for electing directors for a limited period of time. OTS believes each of these matters is more appropriately addressed in the bylaws, where related issues are already addressed. Presenting related requirements in a single place should make the charter and bylaws more user friendly.

Section 9. Amendment of charter. Section 9 describes the procedures for amending the association's charter. References to §§ 544.2 or 544.3 will be removed as unnecessary verbiage. Section 9 will also be revised to reflect the fact that "preapproved" charter amendments (§ 544.2) will now be truly preapproved. Institutions will no longer be required to submit these amendments to OTS for "preliminary" approval. (See discussion of § 544.2 below.)

<sup>4</sup> 12 U.S.C. 1461–1470.

<sup>5</sup> Section 5(a) of the HOLA, 12 U.S.C. 1464(a), contains the statutory authority for the OTS to issue charters for Federal thrift institutions.

<sup>6</sup> Pub. L. 97–320, 96 Stat. 1469, October 15, 1982.

<sup>7</sup> 48 FR 44174 (September 28, 1983).

<sup>8</sup> Part I–50 FR 38832 (September 13, 1985); Part II–50 FR 52482 (December 24, 1985); and Part III and IV–52 FR 25870 (July 9, 1987).

<sup>9</sup> For drafting purposes, the changes to the charter have been designated as Alternative Two in the regulatory text.

Finally, the signature blocks of the charter will be modified to include a date to clarify when a charter is effective.

#### *Section 544.2 Charter Amendments*

Paragraphs (a) and (b) describe the filing requirements for amending Federal mutual charters. OTS is proposing to remove, from paragraphs (a)(2)(i) and (ii), the requirement that institutions certify that amendments they propose are permissible under all applicable laws. This certification is unnecessary because the legality of a proposed amendment is reviewed by OTS staff as part of the application process and its deletion will also reduce regulatory burden. In addition, paragraph (b) will be revised to indicate that preapproved charter amendments will no longer require advance submissions to OTS. Instead, preapproved amendments will be deemed approved when adopted by the institution and must simply be filed with OTS within 30 days after adoption.

A new preapproved charter amendment will be added to § 544.2 that authorizes Federal mutual associations to amend their charters to raise the cap on the maximum number of votes any member can cast up to 1,000. Mutual charters generally authorize depositors to cast one vote for every \$100 of deposits, subject to a cap that has historically tracked the limit on deposit insurance. Thus, 1,000 votes is the standard cap under the current mutual charter (§ 544.1). However, many institutions operate under charters adopted before the cap was raised to 1,000. Making the 1,000 cap a preapproved amendment will enable institutions to update their cap without filing an application and paying an application fee. This is the most frequently requested amendment for Federal mutual associations.

OTS also proposes to remove from § 544.2 an obsolete preapproved amendment authorizing institutions to issue Mutual Capital Certificates (MCCs). Institutions generally no longer issue MCCs.<sup>10</sup> Elimination of outdated matter such as this should make the regulations less confusing and easier to use.

Paragraph 544.2(c) details the procedures an institution must follow when it wants OTS to reissue its charter

to reflect amendments to the charter. The wording of this section will be conformed to the wording of the corresponding stock charter section at § 552.4(d). No substantive change will result. Paragraph (c) is also being amended to remove the delegation of authority to the Chief Counsel to execute reissued charters. This change is being proposed as part of a continuing effort to remove delegations from the regulations. Delegated authority to execute reissued charters will be preserved via an internal OTS document.

#### *Section 544.3 Adoption of a New Federal Charter by a Federal Savings Association*

This section details the procedures that a Federal mutual savings and loan association would use to amend its charter to read in the form of a Federal mutual savings bank, or vice versa. This section has become obsolete. Today, the charters for both types of institution are identical, except for a possible difference in corporate title. A simple corporate title change can be used to redesignate an institution as a "savings bank" or "savings and loan association." Thus, § 544.3 is being repealed. Corresponding changes will be made to §§ 543.1(b) and 543.14.

#### *Section 544.5 Federal Mutual Savings Association Bylaws*

This section describes the requirements for the bylaws of a Federal mutual association. A nonsubstantive change will be made to paragraph (a) to conform its language regarding procedures for bylaw amendments to similar language that appears later in § 544.5(b)(16).

Paragraph (b)(1) contains the annual meeting requirements for Federal mutual associations. This paragraph will be amended to allow meetings not only at the main office, but also at any other convenient place the board of directors may designate, and to permit the association to hold its annual meeting within 150 days of the end of the association's fiscal year. The current requirement is 120 days. Both changes will provide additional flexibility for Federal mutual associations.

Paragraph (b)(2) addresses special meetings of members. It provides, *inter alia*, that the holders of ten percent or more of a mutual association's voting capital may call a special meeting. Institutions frequently ask for clarification of the meaning of "voting capital," since the term is no longer defined by the HOLA. OTS proposes to clarify that voting capital means all

FDIC-insured deposits held by a savings association.

Paragraphs (b) (3) and (4), which discuss notice requirements for meetings of members and the fixing of the record date for determining what members are entitled to vote, respectively, will be amended to indicate the circumstances under which adjournment of a meeting of members will require the issuance of new notices and the fixing of a new record date. These are also frequently asked questions.

OTS is also proposing a new paragraph (b)(5), to be titled "Member Quorum."<sup>11</sup> This paragraph will contain certain quorum provisions currently found in the charter (as discussed above), as well as clarification of what items of business may be considered at a meeting held after adjournment. The agency believes that quorum issues are more appropriately addressed in the bylaws, where other rules governing member meetings already appear.

Current paragraph (b)(5), on voting by proxy, will become (b)(6) and will be amended to permit proxies to be given telephonically or electronically as long as the holder uses a procedure for verifying the identity of the member.<sup>12</sup> Telephonic and electronic proxies enable institutions to gather proxies and conduct corporate business more rapidly and have become an accepted part of corporate democracy. In addition, in response to frequent questions, OTS proposes to describe voting procedures applicable to joint accounts and accounts held by fiduciaries on behalf of others.

Current paragraph (b)(6), which references § 545.131 regarding communication with other members, will become (b)(7). In addition, the paragraph will be amended to reflect the relocation of § 545.131 to Part 544, and will extend the privacy rights now guaranteed to depositors of Federal stock institutions (§ 552.11(d)) to the depositors of Federal mutual institutions. The privacy rights of the members of mutual institutions will not prevent the internal use of member information by those institutions.

Current paragraph (b)(7), regarding the number of directors, will become (b)(8). In addition, the paragraph will be amended to clarify that the bylaws must specify the precise number of directors (rather than a range). This number is

<sup>10</sup> An institution could still choose to issue MCCs after § 544.2 is modified, provided the institution makes any necessary amendments to its charter and bylaws (which would no longer be preapproved) and follows the procedures specified at 12 CFR 563.74. Paragraph (d) of § 563.74 will be amended to reflect removal of the preapproved amendment for MCCs.

<sup>11</sup> All subsequent paragraphs will be renumbered accordingly. However, only those paragraphs being substantively changed are discussed below.

<sup>12</sup> One example of a verification procedure is for the institution receiving the proxy by facsimile to compare the signature on the proxy to a signature that the institution has on file.

chosen by the institution within the range specified in the charter and may be changed by the institution from time to time by amending its bylaws.

Paragraph (b)(8) will also contain three provisions being moved from section seven of the charter. One provision requires that directors be members of their association; a second provision requires that directors serve staggered terms; and a third provision permits state savings banks that convert to Federal mutual associations to grandfather their method of electing directors for a limited time.

Current paragraph (b)(9), which addresses the duties of officers, employees and agents and their indemnification, will become (b)(10). In addition, a sentence on the removal of officers will be added to answer a frequently asked question. The sentence will state: "Any officer may be removed by the board of directors with or without cause, but such removal, other than for cause, shall be without prejudice to the contractual rights, if any, of the person so removed."

Current paragraph (b)(10), on the resignation or removal of directors, will become (b)(11). A cross reference to the definition of "cause," which appears elsewhere in the regulations, will be added in response to a frequently asked question concerning the circumstances under which shareholders can remove directors for "cause". Paragraph (b)(11) will also be expanded to authorize boards of directors to fill vacancies under the current flexible rules that now apply to stock associations.

Current paragraph (b)(13), discussing procedures for nominating directors, will become (b)(14) and will be expanded to clarify the requirement that the names of nominees be posted at least 15 days before an election, under certain circumstances. New language will confirm that this requirement does not apply to a nominee substituted as a result of death or other incapacity of another nominee. From time to time, institutions have sought clarification on this issue.

Current paragraph (b)(16), which sets forth procedures for amending the bylaws, will become (b)(17) and will be amended to make it easier for a board that fails to meet its quorum requirement solely due to vacancies on the board to amend its bylaws. The new language will specify that, in the absence of a quorum due solely to vacancies, the affirmative vote of a majority of the sitting board may amend the bylaws.

Current paragraph (b)(17), on miscellaneous topics, will become (b)(18) and will be amended to remove

the reference to provisions regarding "emergency preparedness." Emergency preparedness provisions are no longer part of the model bylaws.

Paragraphs (c)(1) and (c)(2) discuss the filing procedures for bylaw amendments. OTS proposes to remove the requirement that applications for bylaw amendments contain certifications that the proposed amendments comport with all laws. As noted above when discussing charter amendments, the certification requirement is unnecessary because the legality of proposed amendments are reviewed by OTS staff as part of the application process and its deletion will also reduce regulatory burden. In addition, consistent with the proposal to move the model bylaws out of the regulations, paragraph (c)(1) will be revised to indicate that the model bylaws can be found in the Handbook available from OTS. The current appendix to part 544, which contains the model bylaws, will be removed.

Paragraph (c)(2) will also be revised to indicate that the model bylaws, if adopted verbatim, are approved when adopted and must simply be filed with OTS within 30 days after adoption. This change is proposed because OTS has determined that over 90 percent of the bylaws applications filed in recent years are for standard provisions that do not require agency review.

Paragraph (d), which addresses the effective date of all other bylaw amendments, will be amended to comport with a similar provision for Federal stock associations. The provision is intended to clarify the circumstances under which an amendment may be rejected by OTS, by cross referencing the current standards which appear in paragraph (c)(1).

#### *Section 544.8 References to Old and New Charters; Rules Applicable to Trustees of Federal Mutual Savings Banks*

OTS proposes to remove this section, which indicates that trustees will be treated as if they are directors for purposes of the regulations. The same point will be made in the introductory instructions to the charter and model bylaws. It does not need to be repeated here.

#### *Section 544.9 Obsolete Charter Provision for Charter B Associations.*

This section provides that institutions that still operate under the old Charter B are not bound by section 10 of that charter. Section 10 of Charter B purports to limit the authority of an institution to invest in consumer loans and corporate debt securities. OTS proposes to move

§ 544.9, which affects very few institutions, from the regulations into Handbook guidance.

#### *Section 544.8 Communication Between Members of a Federal Mutual Savings Association (Proposed)*

OTS proposes to move the rules governing communications between members of Federal mutual associations, which now appear in § 545.131, to part 544. This is where users of the regulations would most likely look for guidance on such matters. Accordingly, current § 545.131 will become new § 544.8.

#### *Appendix to Part 544*

As indicated above, OTS proposes to eliminate the appendix to part 544, which contains the model bylaws. Instead, these bylaws will be moved to the Handbook, with changes being made to conform the model bylaws to the amendments to the bylaws regulations described above.

#### *B. Part 552—Incorporation, Organization, and Conversion of Federal Stock Associations*

##### *Section 552.2 Corporate Title*

OTS proposes to remove this section, which merely reminds institutions that § 543.1 regarding corporate titles for Federal associations applies to Federal stock associations. There is no need for this provision. Current § 543.1, as currently written, clearly governs corporate titles for all Federal associations.

##### *Section 552.2-5 Conversion From Federal Mutual to Federal Stock Charter*

This section authorizes Federal mutual associations to convert to Federal stock associations and provides for issuance of a stock charter upon completion of the conversion. These matters are also covered, in greater detail, by OTS conversion regulations. OTS, therefore, proposes to remove this section.

##### *Section 552.3 Charters for Federal Stock Associations*

This section contains the required charter for Federal stock associations. For the reasons indicated above in the discussion of § 544.1, OTS proposes to move the stock charter out of the regulations and into the Handbook. Section 552.3 will thus be revised to reference the charter as it appears in the Handbook. OTS proposes to update the Federal stock charter with the following changes:

Section 2. Office. This section describes the location of the home office of the Federal stock association. The

word "in" will be deleted and replaced by the word "at." This is a purely technical amendment.

Section 5. Capital stock. Section 5 describes the rules governing the capital stock of a Federal stock association, including the types of stock it may issue, the consideration to be paid, and voting rights. Several changes are proposed. First, the charter will be amended to permit the issuance of "no par" stock. The decision whether stock should have a stated par value is a matter of internal corporate governance that raises no supervisory or safety and soundness issues.

Second, the final sentence of the first paragraph will be revised to reflect more current accounting terminology. The term "retained earnings" will be substituted for "surplus," and the phrase "common stock or paid-in capital accounts" will be substituted for "stated capital."

Third, the second paragraph will be revised to clarify that Federal stock associations may issue stock to officers, directors, and controlling persons in connection with its initial organization, without a shareholder vote.

Fourth, the second sentence of the third paragraph will be revised to clarify that a Federal stock charter may be amended to eliminate cumulative voting.

Section 7. Directors. This section specifies that the number of directors of a stock association shall be fixed in the bylaws and shall not be fewer than five nor more than fifteen. However, provision is made for the Director of OTS to approve a larger or smaller board of directors. OTS proposes a technical amendment to this section that will specify that approval of a larger or smaller board can be given either by the Director "or his or her delegate."

Section 8. Amendment of charter. Section 8 describes the procedure for amending an association's charter. This section is being revised to indicate that preapproved charter amendments will be effective once they have been approved by the association's board of directors and shareholders, without any need for "preliminary approval" or any other form of approval from OTS. (See discussion below of § 552.4.) In addition, OTS proposes to elaborate on the general rule that charter amendments require approval by only a majority of the votes eligible to be cast at a shareholders' meeting. Clarifying language will be added indicating that this general rule does not apply in those instances where an association's charter specifies that a supermajority vote is required. (See discussion of § 552.4 below.)

Finally, the signature blocks of the charter will be modified to include a date to clarify when a charter is effective.

#### *Section 552.4 Charter Amendments*

Paragraphs (a) and (b) set forth the filing requirements for amendments to Federal stock charters. In paragraph (a), OTS is proposing to make the same changes regarding certification requirements as discussed above in connection with the corresponding provisions for mutual associations (§ 544.2(a)). Thus, stock associations will no longer be required to certify that proposed amendments comport with all applicable laws.

Paragraph (b) sets forth a list of preapproved charter amendments. OTS proposes to add descriptive titles to each of the preapproved amendments. The titles will correspond to the titles to similar preapproved charter provisions for Federal mutual associations. Paragraph (b) will also be revised to indicate that preapproved charter amendments are approved when adopted and must simply be filed with OTS within 30 days after adoption.

Paragraph (b)(3), which contains a preapproved amendment for institutions that wish to change from a Federal stock savings and loan association charter to a Federal stock savings bank charter, will be removed for the same reasons described above with regard to § 544.3.<sup>13</sup>

Current paragraph (b)(4), which permits changes to the authorized number of shares and the par or stated value of such shares, will become (b)(3). Additional nonsubstantive changes will be made to clarify the language of this provision.

Current paragraph (b)(5), which permits institutions to modify section 5 of the charter so as to authorize the issuance of preferred stock, will become (b)(4) and will include the same changes to section 5 of the charter as were discussed above. In addition, the reference to the Resolution Trust Corporation will be deleted, because that agency no longer exists.

A new preapproved charter amendment will be added, as new paragraph (b)(6), to authorize institutions to prohibit cumulative voting for directors. The standard charter for Federal stock associations provides for cumulative voting for directors. Federal associations frequently apply to amend their charters to prohibit cumulative voting, and OTS routinely approves these applications.

Adding this provision to the list of preapproved amendments will save associations that wish to make this change the time and expense of an application.

Paragraph (c) states OTS policy on antitakeover provisions in charter amendments. OTS proposes to expand this provision to state the two basic standards OTS uses when reviewing proposed antitakeover amendments. First, the proposed amendment must be consistent with applicable statutes, regulations and OTS policies. Second, such amendments must be adopted by a percentage of the shareholder vote at least equal to the highest percentage that would be required to take any action under the antitakeover provision. These are not new standards; OTS already employs them when reviewing antitakeover amendments. Stating these standards in the regulations will enable institutions to present applications that conform to OTS requirements, thereby saving them time and expense.

#### *Section 552.5 Bylaws*

This section presents the requirements for the bylaws of a Federal stock association. A technical amendment will be made to paragraph (a) to confirm that shareholder votes to approve bylaw amendments must occur "at a legal meeting" of shareholders.

Paragraph (b) discusses the application and notice procedures applicable to bylaw amendments. This paragraph will be amended to remove the requirement that associations certify that bylaw amendments comport with applicable law. Revisions will also be made to indicate that the model bylaws, if adopted verbatim, are approved when adopted and must simply be filed with OTS within 30 days after adoption. Paragraph (b) will also indicate that the model bylaws are in the Handbook and are available from any Regional Office.

OTS proposes to add a new paragraph (d) confirming that the authority of a Federal stock association to engage in any transaction is determined by the association's charter and bylaws in effect at the time of the transaction. Subsequent amendments do not retroactively affect this determination. A similar regulatory provision is already in effect for Federal mutual associations (§ 544.6).

#### *Section 552.6 Shareholders*

This section contains certain corporate governance requirements regarding shareholder meetings. Paragraph (a), which contains rules regarding the time and place of shareholder meetings, will be amended in two respects. First, the requirement

<sup>13</sup> Subsequent paragraphs will be renumbered accordingly. However, only those paragraphs being substantively changed are discussed below.

that shareholders meetings be held in the state of an association's principal place of business is being removed. Instead, associations will be able to hold shareholder meetings at any convenient place the board of directors designates. Second, the time frame within which an association must hold its annual shareholders meeting will be extended from 120 to 150 days of the end of the association's fiscal year. These are the same changes being proposed for Federal mutual associations (§ 544.5(b)(1)).

Paragraph (b) states the notice requirements for shareholder meetings. This paragraph will be amended to waive the shareholder notice requirements for wholly-owned institutions.

Paragraph (d)(1), which addresses access to shareholder lists, will be revised to clarify that shareholder lists are available only to shareholders "of record" and their agents, and that the lists must contain the names of beneficial owners that are furnished to the association under the rules of the Securities and Exchange Commission. In addition, the paragraph will be amended to waive its application to wholly-owned institutions.

Paragraph (e), regarding shareholder quorum requirements, will be amended to confirm that, whenever a quorum is present, the affirmative vote of the majority of shares entitled to vote at a shareholders meeting shall constitute an act of the shareholders, absent a supermajority voting requirement.

Paragraph (f), which addresses proxies, will be amended in the same manner as the Federal mutual bylaws at § 544.5(b)(6) to allow proxies to be gathered electronically or telephonically. In addition, in response to frequent questions, paragraph (f) will be expanded to describe voting procedures applicable to stock held by fiduciaries on behalf of others and stock held jointly.

A new paragraph (h) will also be added confirming that, if an association's bylaws so provide, shareholder action may be taken by unanimous written consent in lieu of a shareholder meeting. At times, this may allow associations to obtain shareholder approval more rapidly and with less expense.

#### *Section 552.6-1 Board of Directors*

This section addresses corporate governance matters involving directors. Paragraph (a) will be amended to provide that Directors need not be stockholders unless the bylaws so require.

Paragraph (b) sets forth the number and term of directors. This paragraph will be amended to clarify that the bylaws of a Federal stock association must specify an exact number of positions on an association's board of directors, not simply a range. The number is selected by the institution within a range prescribed in the charter. OTS also proposes to amend paragraph (b) to exempt wholly-owned stock associations from the requirement that their directors be elected to staggered terms.

Paragraph (c), regarding regular meetings of the board, will be expanded to confirm that the board of directors has authority to determine the place, frequency, time, and notice procedures for its meetings. These matters need not be specified in the bylaws.

Paragraph (e), which covers director vacancies, will be amended to clarify that a director appointed to fill a vacancy may serve "only" until the next election of directors. This is not a substantive change. The word "only" is being added for emphasis and clarity.

Paragraph (f), concerning removal of directors, will be retitled "Resignation or removal of directors" to conform to the title for the same provision for Federal mutual associations. In addition, the paragraph will be amended to confirm, as is already the case, that shareholders may remove a director in the midst of his or her term "only" for cause. A cross reference to the existing regulatory definition of "cause" will also be added to answer a frequently asked question.

Paragraph (k), on age limitations for directors, will be revised to indicate that any age limitation provision must conform to applicable Federal law, rules, or regulations, such as the Age Discrimination in Employment Act.

#### *Section 552.6-2 Officers*

This section addresses corporate governance matters involving officers. Paragraph (a) will be amended to remove the requirement that the president always be a director and that either the president or the chair of the board of directors always be the chief executive officer.

In paragraph (b), which addresses removal of officers, the cross reference to OTS employment contract regulation will be updated.

Paragraph (c), on age limitations for officers, will be revised to indicate that any age limitation on service by officers must conform to applicable Federal law, rules, or regulations, such as the Age Discrimination in Employment Act.

#### *Section 552.8 Savings Deposits*

This section contains instructions to Federal stock associations regarding the types of savings deposits they may accept, preservation of those accounts when a former mutual association adopts a stock charter, rights of account holders in the event of liquidation, and forms of certificates to use for accounts. OTS proposes to remove this section from the regulations. The provisions of this section are either self evident or covered by other statutes and regulations and general contract law. Under the conversion regulations, all converting mutual institutions are required to notify their accountholders that all the rights they enjoyed as accountholders, except voting and ownership of the institution, carry over to the converting association.

#### *Section 552.11 Books and Records*

This section describes a Federal stock association's obligations with respect to books and records. Paragraph (b) will be amended to make clear that shareholders' inspection rights extend only to nonconfidential portions of an institution's books and records.

#### *Appendix to Part 552*

As indicated above, OTS proposes to move the model bylaws for Federal stock associations, which currently appear in the appendix to Part 552, into the Handbook. Changes will be made to conform the model bylaws to the amendments to the bylaws regulations described above. In addition, OTS proposes to modify the model bylaws to indicate that procedures other than Robert's Rules of Order may be used for shareholder meetings, as long as the board of directors adopts alternative written procedures.

#### *C. Part 575—Mutual Savings and Loan Holding Companies*

##### *Section 575.9 Charters and Bylaws for Mutual Holding Companies and Their Savings Association Subsidiaries*

This section describes the required charter and bylaws for Federal mutual holding companies. Paragraph (a)(1) contains the prescribed charter. This paragraph will be amended to indicate that the charter will appear in the Handbook and will be available from any Regional Office. In addition, the following changes will be made to the charter:

Section 1. Corporate Title. Section 1 contains the corporate title of the Federal mutual holding company. The words "hereby chartered" will be deleted as unnecessary verbiage.



Section 5. Members. This section identifies the mutual holding company's members and defines their rights. The sixth, seventh, and eighth sentences of this section, addressing proxies and quorums, will be removed because these matters either are covered or will be covered (once today's amendments are made) by the bylaw requirements applicable to mutual holding companies. As a result of this change, proxy and quorum issues will be addressed in a single place in the corporate documents of mutual holding companies.

Section 6. Directors. This section provides that a Federal mutual holding company may have from 5 to 15 directors. In addition to technical changes made to conform the wording of this section to the corresponding section of the charter for Federal mutual associations, OTS also proposes to remove the requirement that directors be members of the association and the requirement that the terms of directors be staggered.

Section 8. Amendment of charter. Section 8 describes the procedures for amending the mutual holding company's charter. These procedures will be streamlined to indicate that preapproved charter amendments are effective once approved by members of the mutual holding company. Other amendments will continue to require advance OTS approval.

Paragraph (a)(2) of § 575.9 provides that mutual holding companies may adopt the same preapproved charter amendments as are specified for mutual savings associations, subject to certain specified exclusions. Paragraph (a)(2) will be updated to conform to the changes being proposed for the list of preapproved charter amendments for mutual associations.

Paragraph (a)(4) specifies that Federal mutual holding companies shall be subject to the same rules regarding bylaws as apply to Federal mutual associations, with certain exceptions. This paragraph will be amended to indicate that the model bylaws may be found in the Handbook, available from OTS Regional Offices.

A technical amendment will be made to paragraph (a)(5), which requires mutual holding companies to make their charter and bylaws available to members. The cross reference to § 545.131 will be changed to reflect the proposed movement of this section to Part 544.

#### D. Miscellaneous Technical Changes

##### *Section 543.1(b) Title Change*

This section prescribes the rules for corporate titles for Federal savings associations. This section will be amended to delete cross references to sections being removed by this proposal.

#### *Section 543.14 Continuity of Existence*

This section, which confirms that the corporate existence of converting associations continues, notwithstanding the conversion, will be amended to delete a cross reference to a section being removed by this proposal.

#### *Section 556.1 Directors*

This section, which describes OTS policy on the number of directors necessary for a quorum and the directors' power to fill vacancies, will be removed because both subjects are thoroughly covered by the bylaws regulations.

#### *Section 556.17 Effect of Loan Participation on Status of Borrowing Members*

This section provides guidance regarding various issues that arise when determining the identity of the borrowing members of a Federal mutual savings association. For example, this section indicates that sale of a whole loan by a savings association to a third party terminates the borrower's membership rights in the association. OTS proposes to move this policy statement from the regulations into Handbook guidance.

#### V. Proposed Disposition of Corporate Governance Regulations

The following chart displays the changes being proposed for OTS's corporate governance regulations.

Original provision	Comment
§ 543.1(b) .....	Amended to delete references.
§ 543.14 .....	Amended to delete references.
§ 544.1 .....	Amended and moved to Handbook.
§ 544.1, Section 6 .....	Moved portion to § 544.5 for clarification.
§ 544.1, Section 7 .....	Moved portion to § 544.5 for clarification.
§ 544.1, Section 9 .....	Removed need for preliminary approval.
§ 544.2(a)(2) .....	Eliminated need for management certification.
§ 544.2(b) .....	Eliminated need for prior notice requirement.
§ 544.2(b)(4) .....	Removed existing paragraph and added new preapproved amendment.
§ 544.2(c) .....	Removed delegation.
§ 544.3 .....	Removed.
§ 544.5(a) .....	Revised for clarification.
§ 544.5(b) (1) and (2) .....	Amended for flexibility; changed annual meeting date.
§ 544.5(b) (3) and (4) .....	Adjournment provisions added.
§ 544.5(b) (5) through (17) .....	Redesignated (b) (6) to (18)
§ 544.5(b)(6) .....	Amended to add privacy rights.
§ 544.5(b)(10) .....	Amended to add guidance on vacancies.
§ 544.5(b)(13) .....	Amended to add guidance on nominee substitution.
§ 544.5(b)(16) .....	Revised for clarification.
§ 544.5(b)(17) .....	Removed.
§ 544.5(c) .....	Eliminated need for management certification.
§ 544.5(c)(1) .....	Eliminated need for prior notice requirement.
§ 544.5(d) .....	Reduced filing requirement.
§ 544.8 .....	Removed.
§ 544.9 .....	Removed.
Part 544 Appendix .....	Conformed to proposed changes and moved to Handbook.
§ 545.131 .....	Moved to Part 544.
§ 552.1 .....	Removed.
§ 552.2 .....	Removed.
§ 552.2-5 .....	Removed.
§ 552.3 .....	Amended and moved to Handbook.



Original provision	Comment
§ 552.3 Section 8 .....	Removed need for preliminary approval.
§ 552.4(a)(2) .....	Eliminated need for management certification.
§ 552.4(b) .....	Eliminated need for prior notice requirement.
§ 552.4(b)(3) .....	Removed.
§ 552.4(b) (4) through (6) .....	Redesignated (b) (3) to (5).
New § 552.4(b)(6) .....	Add new preapproved amendment.
§ 552.4(c) .....	Amended for clarification.
§ 552.5(b) .....	Eliminated need for management certification.
§ 552.5(b)(1)(ii) .....	Eliminated need for prior notice requirement.
§ 552.5(c) .....	Reduced filing requirement.
§ 552.6(a) .....	Amended for flexibility; changed annual meeting date.
§ 552.6(b) .....	Amended shareholder meeting requirements.
§ 552.6(d) .....	Amended to add guidance on voting lists.
§ 552.6(e) .....	Amended to add guidance on certain voting requirements.
§ 552.6(f)(1) .....	Amended for flexibility.
New § 552.6(f)(4) .....	Added section on shares held by others.
New § 552.6(h) .....	Added section on informal action.
§ 552.6–1(a) .....	Amended for flexibility.
§ 552.6–1(b) .....	Removed necessity for staggered board of directors if wholly owned. Also amended to specify number of directors.
§ 552.6–1(f) .....	Amended to clarify where “cause” is defined.
§ 552.6–1(k) .....	Amended to add guidance.
§ 552.6–2(a) .....	Amended to remove provision requiring president to be a director.
§ 552.8 .....	Removed.
Part 552 Appendix .....	Conformed to proposed changes and moved to Handbook.
§ 556.1 .....	Removed.
§ 556.17 .....	Moved to Handbook.
§ 563.74(d) .....	Amended to conform to earlier change.
§ 575.9 .....	Amended and moved to Handbook.
§ 575.9 Section 8 .....	Removed need for preliminary approval.

## VI. Request for Comment

OTS invites comment on all aspects of the proposal. Specific areas that OTS requests for comments are as follows:

- Whether to move the charters and model bylaws from the regulations to OTS’s Handbook.
- Whether OTS should exempt associations that are wholly-owned from the requirement that the board of directors be elected in staggered elections; also whether a staggered board of directors should be required if the association is not wholly owned.
- Whether OTS should adopt a practice similar to the OCC of permitting institutions to elect to adopt, *en bloc*, the corporate governance procedures authorized by any of the following: the laws of the state where the main office of the bank is located, the laws of the state where the bank’s holding company, if any, is located, Delaware General Corporation Law, or The Model Business Corporation Act. As indicated above, any such election would likely be subject to certain exclusions, as is the case for national banks, for Federal laws considered vital to safety and soundness or other important policy objectives. Commenters supporting the election option are asked to specify how the option would benefit savings associations.

## VII. Executive Order 12866

The Director of OTS has determined that this proposed rule does not constitute a “significant regulatory action” for the purposes of Executive Order 12866.

## VIII. Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, OTS certifies that this proposal will not have a significant economic impact on a substantial number of small entities. The proposal does not impose any additional burdens or requirements upon small entities and lowers several paperwork and other burdens on all savings associations.

## IX. Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. If a budgetary impact statement is required, Section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule.

As discussed in the preamble, this proposed rule reduces regulatory burden and updates, reorganizes and substantially streamlines corporate governance regulations and policy statements. OTS has determined that the proposed rule will not result in expenditures by state, local, or tribal governments or by the private sector of \$100 million or more. Accordingly, this rulemaking is not subject to section 202 of the Unfunded Mandates Act.

OTS has determined that the requirements of this proposed rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of more than \$100 million in any one year. Accordingly, a budgetary impact statement is not required under section 202 of the Unfunded Mandates Act of 1995.

## X. Paperwork Reduction Act

This proposed regulation changes the timing of the submission of a notice to OTS when an institution proposes to amend its charter or bylaws with OTS preapproved amendments. Currently, this notice is required before the institution adopts the amendment. Under the proposal, the institution will file the notice after adopting the preapproved amendment. The reporting burden for this notice remains unchanged.

Comments are invited on (i) whether the existing approved collections of

information (OMB Control Nos. 1550-0017 and 1550-0018) are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility, (ii) the accuracy of the estimate of the burden of the collection of information, (iii) ways to enhance the quality of the information collected, (iv) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

#### List of Subjects

#### 12 CFR Parts 543 and 544

Reporting and recordkeeping requirements, Savings associations.

#### 12 CFR Part 545

Accounting, Consumer protection, Credit, Electronic Funds transfers, Investments, Manufactured homes, Mortgages, Reporting and recordkeeping requirements, Savings associations.

#### 12 CFR Part 552

Reporting and recordkeeping requirements, Savings associations, Securities.

#### 12 CFR Part 556

Savings associations.

#### 12 CFR Part 563

Accounting, Advertising, Crime, Currency, Flood insurance, Investments, Mortgages, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

#### 12 CFR Part 575

Administrative practice and procedure, Capital, Holding companies, Reporting and recordkeeping requirements, Savings associations, Securities.

Accordingly, the Office of Thrift Supervision proposes to amend chapter V, title 12, Code of Federal Regulations, as set forth below.

### PART 543—INCORPORATION, ORGANIZATION, AND CONVERSION OF FEDERAL MUTUAL ASSOCIATIONS

1. The authority citation for part 543 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 2901 *et seq.*

#### § 543.1 [Amended]

2. Section 543.1 is amended in paragraph (b) by removing the phrase “, only pursuant to a charter change under § 544.3 or § 552.4 of this chapter”.

#### § 543.14 [Amended]

3. Section 543.14 is amended by removing the phrase “or under § 544.3 of this chapter”.

### PART 544—CHARTER AND BYLAWS

4. The authority citation for part 544 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 2901 *et seq.*

#### ALTERNATIVE ONE

5. Section 544.1 is revised to read as follows:

#### § 544.1 Federal mutual charter.

The Federal mutual charter may be found in the Application Processing Regulatory Handbook, available from any Regional Office of OTS. (See § 516.1(b) of this chapter.) Each Federal mutual association's charter, including any amendments thereto, constitutes conditions imposed in writing by the agency in connection with the granting of an application and a written agreement entered into with the agency within the meaning of 12 U.S.C. 1818(b).

#### ALTERNATIVE TWO

- 5a. Section 544.1 is amended by:
    - a. Revising the introductory text preceding the Federal Mutual Charter;
    - b. Removing in section 1 of the Federal Mutual Charter the phrase “hereby chartered”;
    - c. Transferring the third and fourth sentences of section 6 of the charter, appearing in brackets, to the end of the introductory text of § 544.1 and by removing the brackets;
    - d. Removing the last three sentences of section 6 of the charter;
    - e. Removing the third, fourth, and fifth sentences of the first paragraph, and all of the second paragraph of section 7 of the charter;
    - f. Removing the word “[Trustees]” in the heading and the words “[trustee]” and “[trustees]” where they appear in the text of section 7 of the charter; and
    - g. Revising section 9 of the charter.
- The revisions read as follows:

#### § 544.1 Federal mutual charter.

A Federal mutual savings association shall have a charter in the following form, which may include any of the additional provisions set forth in § 544.2, if such provisions are specifically requested. A charter for a Federal mutual savings bank shall substitute the term “savings bank” for “association.” The term “trustees” may be substituted for the term “directors.”

\* \* \* \* \*

Section 9. Amendment of charter.  
Adoption of any preapproved charter

amendment shall be effective after such preapproved amendment has been approved by the members at a legal meeting. Any other amendment, addition, change, or repeal of this charter must be approved by the Office prior to approval by the members at a legal meeting. Any amendment, addition, alteration, change, or repeal so acted upon and approved shall be effective upon filing with the Office in accordance with regulatory procedures.

Attest: \_\_\_\_\_  
Secretary of the Association

By: \_\_\_\_\_  
President or Chief Executive Officer of the Association

Attest: \_\_\_\_\_  
Secretary of the Office of Thrift Supervision

By: \_\_\_\_\_  
Director of the Office of Thrift Supervision  
Effective Date: \_\_\_\_\_

6. Section 544.2 is amended by:
  - a. Removing in paragraphs (a)(2)(i) and (a)(2)(ii), the phrase “along with a certification that the proposed” and by adding in lieu thereof the phrase, “provided such”;
  - b. Removing the phrase “filing with the OTS” in the third sentence of paragraph (b), and by adding in lieu thereof the phrase “adoption, if adopted without change and filed with OTS, within 30 days after adoption”;
  - c. Revising paragraph (b)(4); and
  - d. Removing the word “shall” in the second sentence of paragraph (c), and by adding in lieu thereof the phrase “should be filed in accordance with § 516.1(c) of this chapter and” and by removing the last sentence of paragraph (c).

The revisions read as follows:

#### § 544.2 Charter amendments.

\* \* \* \* \*

(b) \* \* \*

(4) *Maximum number of votes.* A Federal mutual savings association may amend its charter by substituting { } votes per member in section 6. [Fill in a number from 50 to 1000.]

\* \* \* \* \*

#### § 544.3 [Removed]

7. Section 544.3 is removed.
8. Section 544.5 is amended by:
  - a. Adding, between the words “majority” and “of” in the second sentence of paragraph (a), the phrase “of the votes cast by the members at a legal meeting or a majority”, and by adding two new sentences at the end of paragraph (a);
  - b. Removing the words “[trustee]” and “[trustees]” wherever they appear in paragraph (b);
  - c. Revising the second sentence of paragraph (b)(1);
  - d. Adding a sentence at the end of paragraph (b)(2);

- e. Adding a sentence at the end of paragraph (b)(3);
- f. Adding a sentence at the end of paragraph (b)(4);
- g. Redesignating paragraphs (b)(5) through (b)(17) as paragraphs (b)(6) through (b)(18), respectively;
- h. Adding a new paragraph (b)(5);
- i. Adding to newly designated paragraph (b)(6), a sentence between the first and second sentences, and three new sentences at the end;
- j. Revising newly designated paragraph (b)(7);
- k. Revising newly designated paragraph (b)(8);
- l. Adding after the word "treasurer" in newly designated paragraph (b)(10)(i), the words "or comptroller";
- m. Adding a sentence at the end of newly designated paragraph (b)(10)(ii);
- n. Revising newly designated paragraph (b)(11);
- o. Adding, between the words "secretary" and "and" in the second sentence of newly designated paragraph (b)(14), the phrase ", except in the case of a nominee substituted as a result of death or other incapacity,";
- p. Removing, in the first sentence of newly designated paragraph (b)(17), the phrase "pursuant to § 544.5 of the Office's regulations, as long as any such amendment", and by adding in lieu thereof the word "that", and by adding a sentence at the end of paragraph (b)(17);
- q. Removing, in newly designated paragraph (b)(18), the phrase "emergency preparedness,";
- r. Removing in paragraph (c)(1) introductory text, the phrase "along with a certification that the proposed", and by adding in lieu thereof the phrase ", provided such";
- s. Removing, in the concluding text of paragraph (c)(1), the phrase "shall be deemed to comply with the requirements of this section", and by adding in lieu thereof the phrase ", if adopted without change, and filed within 30 days after adoption, are effective upon adoption";
- t. Amending the heading of paragraph (c)(2) by removing the word "Notice", and by adding in lieu thereof the word "Filing", and by removing, in paragraph (c)(2), the phrase "together with a certification", and by adding in lieu thereof the word "provided"; and
- u. Removing, in the second sentence of paragraph (d), the phrase "raises a significant issue of law or policy", and by adding in lieu thereof the phrase "requires an application to be filed pursuant to paragraph (c)(1) of this section",.

The additions and revisions read as follows:

#### **§ 544.5 Federal mutual savings association bylaws.**

(a) \* \* \* The bylaws for a Federal mutual savings bank may substitute the term "savings bank" for "association." The term "trustees" may be substituted for the term "directors."

(b) \* \* \*

(1) \* \* \* Such meeting shall be held, as designated by its board of directors, at a location within the state that constitutes the principal place of business of the association, or at any other convenient place the board of directors may designate, and at a date and time within 150 days after the end of the association's fiscal year. \* \* \*

(2) \* \* \* For purposes of this section, "voting capital" means FDIC-insured deposits.

(3) \* \* \* When any meeting is adjourned for 30 days or more, notice of the adjournment and reconvening of the meeting shall be given as in the case of the original meeting.

(4) \* \* \* The same determination shall apply to any adjourned meeting.

(5) *Member quorum.* Any number of members present and voting, represented in person or by proxy, at a regular or special meeting of the members shall constitute a quorum. A majority of all votes cast at any meeting of the members shall determine any question. At any adjourned meeting any business may be transacted which might have been transacted at the meeting as originally called. Members present at a duly constituted meeting may continue to transact business until adjournment.

(6) \* \* \* Proxies may be given telephonically or electronically as long as the holder uses a procedure for verifying the identity of the member.

\* \* \* Accounts held by an administrator, executor, guardian, conservator or receiver may be voted in person or by proxy by such person. Accounts held by a trustee may be voted by such trustee either in person or by proxy, in accordance with the terms of the trust agreement, but no trustee shall be entitled to vote accounts without a transfer of such accounts into the trustee name. Joint accounts shall be entitled to no more than 1,000 votes, split as the joint owners may agree, in writing.

(7) *Communications between members.* Provisions relating to communications between members shall be consistent with § 544.8 of the Office's regulations. No member, however, shall have the right to inspect or copy any portion of any books or records of a Federal mutual savings association containing:

- (i) A list of depositors in or borrowers from such association;
- (ii) Their addresses;

(iii) Individual deposit or loan balances or records; or

(iv) Any data from which such information could be reasonably constructed.

(8) *Number of directors, membership.* The bylaws shall set forth a specific number of directors, not a range. The number of directors shall be not fewer than five nor more than fifteen, unless a higher or lower number has been authorized by the Director of the Office or his or her designee. Each director of the association shall be a member of the association. Directors shall be elected for periods of three years and until their successors are elected and qualified, but provision shall be made for the election of approximately one-third of the board each year. [State-chartered savings banks converting to Federal savings banks may include alternative provisions for the election and term of office of directors so long as such provisions are authorized by the Office, and provide for compliance with the standard provisions of this section no later than six years after the conversion to a Federal savings association.]

\* \* \* \* \*

(10) \* \* \*

(ii) \* \* \* Any officer may be removed by the board of directors with or without cause, but such removal, other than for cause, shall be without prejudice to the contractual rights, if any, of the person so removed.

\* \* \* \* \*

(11) *Vacancies, resignation or removal of directors.* Members of the association shall elect directors by ballot: Provided, that in the event of a vacancy on the board, the board of directors may, by their affirmative vote, fill such vacancy, even if the remaining directors constitute less than a quorum. A director elected to fill a vacancy shall be elected to serve only until the next election of directors by the members. The bylaws shall set out the procedure for the resignation of a director, which shall be by written notice or by any other procedure established in the bylaws. Directors may be removed only for cause as defined in § 563.39 of this chapter, by a vote of the holders of a majority of the shares then entitled to vote at an election of directors.

\* \* \* \* \*

(17) \* \* \* When an association fails to meet its quorum requirement, solely due to vacancies on the board, the bylaws may be amended by an affirmative vote of a majority of the sitting board.

\* \* \* \* \*

**§§ 544.8 and 544.9 [Removed]**

9. Sections 544.8 and 544.9 are removed.

**ALTERNATIVE ONE**

10. The Appendix to Part 544 is revised to read as follows:

**Appendix to Part 544—Model Bylaws for Mutual Savings Associations**

The Federal mutual bylaws may be found in the Application Processing Regulatory Handbook, available from any Regional Office of OTS (see § 516.1(b) of this chapter). Each Federal mutual association's bylaws, including any amendments thereto, constitutes conditions imposed in writing by the agency in connection with the granting of an application and a written agreement entered into with the agency within the meaning of 12 U.S.C. 1818(b).

**ALTERNATIVE TWO**

10a. The Appendix to Part 544 is amended by:

- a. Removing section 18;
- b. Removing the words "[trustee]", "[trustees]", and "[Trustees]" wherever they appear in the appendix;
- c. Adding introductory text between the heading of the appendix and Section 1;
- d. Amending the first sentence of Section 1 by removing the phrase "at (insert date and time within 120 days", and by adding in lieu thereof the phrase "or at any other convenient place the board of directors may designate, at (insert date and time within 150 days";
- e. Amending Section 2 by adding a sentence between the second and third sentences and by revising the last sentence;
- f. Amending Section 3 by removing paragraph (b) and the paragraph designation (a), by removing the word "annual" wherever it appears in Section 3, and by adding a sentence at the end of Section 3;
- g. Adding a sentence at the end of Section 4;
- h. Redesignating Sections 5 through 17 as Sections 6 through 18, respectively, and adding a new Section 5;
- i. Adding to newly designated Section 6, a sentence between the first and second sentences, and three new sentences at the end;
- j. Adding new text at the end of newly designated Section 7;
- k. Revising newly designated Section 8;
- l. Amending newly designated Section 10 by adding the phrase "or comptroller" in the first sentence of the first paragraph, between the word "treasurer" and the colon and at the end of the sentence, and by adding a sentence at the end of the first paragraph;

m. Amending newly designated Section 11 by revising the heading, adding two sentences at the beginning of the first paragraph following the heading, and adding the phrase "as defined in the regulations in § 563.39 of this chapter" after the word "cause" in the second paragraph;

n. Amending newly designated Section 14 by adding the phrase "except in the case of a nominee substituted as a result of death or other incapacity" at the end of the second and third sentences;

o. Amending newly designated Section 17 by adding a new sentence at the end of the section; and

p. Amending newly designated Section 18 by adding one sentence of introductory text preceding paragraph (a), and by removing the phrase "of at least \_\_\_\_\_ (must be in accordance with ERISA)" in paragraph (b).

The additions and revisions read as follows:

**Appendix to Part 544—Model Bylaws for Mutual Savings Associations**

The bylaws for a Federal mutual savings bank may substitute the term "savings bank" for "association." The term "trustees" may be substituted for the term "directors."

2. \* \* \* For purposes of this section, "capital" means FDIC-insured deposits. Annual and special meetings shall be conducted in accordance with the most current edition of Robert's Rules of Order or any other set of procedures agreed to by the board of directors.

3. \* \* \* When any meeting is adjourned for 30 days or more, notice of the adjournment shall be given as in the case of the original meeting.

4. \* \* \* The same determination shall apply to any adjourned meeting.

5. *Member quorum.* Any number of members present and voting, represented in person or by proxy, at a regular or special meeting of the members shall constitute a quorum. A majority of all votes cast at any meeting of the members shall determine any question. At any adjourned meeting any business may be transacted which might have been transacted at the meeting as originally called. Members present at a duly constituted meeting may continue to transact business until adjournment.

6. \* \* \* Proxies may be given telephonically or electronically as long as the holder uses a procedure for verifying the identity of the member. \* \* \* Accounts held by an administrator, executor, guardian, conservator or receiver may be voted in person or by proxy by such person. Accounts held by a trustee may be voted by such trustee either in person or by proxy, in accordance with the terms of the trust agreement, but no trustee shall be entitled to vote accounts without a transfer of such accounts into the trustee name. Joint accounts shall be entitled to no more than

1,000 votes, split as the joint owners may agree, in writing.

7. \* \* \* No member, however, shall have the right to inspect or copy any portion of any books or records of a Federal mutual savings association containing:

- (i) A list of depositors in or borrowers from such association;
- (ii) Their addresses;
- (iii) Individual deposit or loan balances or records; or
- (iv) Any data from which such information could be reasonably constructed.

8. *Number of directors, membership.* The number of directors shall be \_\_\_\_\_ [not fewer than five nor more than fifteen], except where authorized by the Director of the Office or his or her designee. Each director of the association shall be a member of the association. Directors shall be elected for periods of three years and until their successors are elected and qualified, but provision shall be made for the election of approximately one-third of the board each year. [State-chartered savings banks converting to Federal savings banks may include alternative provisions for the election and term of office of directors so long as such provisions are authorized by the Office, and provide for compliance with the standard provisions of this section no later than six years after the conversion to a Federal savings association.]

10. \* \* \* Any officer may be removed by the board of directors with or without cause, but such removal, other than for cause, shall be without prejudice to the contractual rights, if any, of the person so removed.

11. Vacancies, resignation, or removal of directors. Members of the association shall elect directors by ballot: Provided, that in the event of a vacancy on the board, the board of directors may, by their affirmative vote, fill such vacancy, even if the remaining directors constitute less than a quorum. A director elected to fill a vacancy shall be elected to serve only until the next election of directors by the members.

17. \* \* \* When an association fails to meet its quorum requirement, solely due to vacancies on the board, the bylaws may be amended by an affirmative vote of a majority of the sitting board.

18. *Age limitations.* [Bylaws on age limitations must comply with all Federal laws, such as the Age Discrimination in Employment Act and the Employee Retirement Income Security Act.] (a) \* \* \*

**PART 545—OPERATIONS**

11. The authority citation for part 545 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1828.

**§ 545.131 [Redesignated as § 544.8]**

12. Section 545.131 is redesignated as § 544.8.

## PART 552—INCORPORATION, ORGANIZATION, AND CONVERSION OF FEDERAL STOCK ASSOCIATIONS

13. The authority citation for part 552 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a.

### §§ 552.1 and 552.2 [Removed]

14. Sections 552.1 and 552.2 are removed.

### § 552.2–5 [Removed]

15. Section 552.2–5 is removed.

### ALTERNATIVE ONE

16. Section 552.3 is revised to read as follows:

#### § 552.3 Charters for Federal stock associations.

The Federal stock charter may be found in the Application Processing Regulatory Handbook, available from any Regional Office of OTS. (see § 516.1(b) of this chapter.) Each Federal stock association's charter, including any amendments thereto, constitutes conditions imposed in writing by the agency in connection with the granting of an application and a written agreement entered into with the agency within the meaning of 12 U.S.C. 1818(b).

### ALTERNATIVE TWO

16a. Section 552.3 is amended in the Federal Stock Charter by:

a. Removing, in Section 2, the word "in", and by adding in lieu thereof the word "at";

b. Amending Section 5 by adding between the words "or" and "stated" appearing in brackets in the first sentence, the phrase "if no par is specified then shares shall have a", by revising the last sentence in the first paragraph;

c. Amending Section 5 by removing in the first sentence of the second paragraph the phrases "issuable in" and "common stock", and by adding in lieu thereof the phrases "issued in the initial organization of the association or" and "capital stock", respectively;

d. Amending Section 5 by adding the phrase " , unless the charter otherwise provides that there shall be no such cumulative voting" at the end of the second sentence in the third paragraph;

e. Amending Section 7 by adding the phrase " , or his or her delegate" at the end of the last sentence; and

f. Revising Section 8.

The revisions read as follows:

#### § 552.3 Charters for Federal stock associations.

\* \* \* \* \*

#### Federal Stock Charter

\* \* \* \* \*

Section 5. \* \* \* In the case of a stock dividend, that part of the retained earnings of the association that is transferred to common stock or paid-in capital accounts upon the issuance of shares as a stock dividend shall be deemed to be the consideration for their issuance.

\* \* \* \* \*

Section 8. *Amendment of charter.* Except as provided in Section 5, no amendment, addition, alteration, change or repeal of this charter shall be made, unless such is first proposed by the board of directors of the association, then approved by the Office, provided that preapproved charter amendments shall be effective after such preapproved amendment has been approved by the board of directors and by the shareholders at a legal meeting. Amendments shall be approved by the shareholders by a majority of the votes eligible to be cast at a legal meeting, unless a higher vote is otherwise required. Any amendment, addition, alteration, change, or repeal so acted upon shall be effective upon filing with the Office in accordance with regulatory procedures.

Attest: \_\_\_\_\_  
Secretary of the Association

By: \_\_\_\_\_  
President or Chief Executive Officer of the Association

Attest: \_\_\_\_\_  
Secretary of the Office of Thrift Supervision  
By: \_\_\_\_\_  
Director of the Office of Thrift Supervision  
Effective Date: \_\_\_\_\_

17. Section 552.4 is amended by:

a. Removing at the end of paragraph (a)(1) the semicolon and the word "and", and by adding in lieu thereof a period;

b. Removing in paragraph (a)(2)(i) the phrase "with a certification that the proposed" and in paragraph (a)(2)(ii) the phrase " , together with a certification that the", and by adding in both places the phrase " , provided such";

c. Removing the phrase "filing with the OTS" in the second sentence of paragraph (b) introductory text, and by adding in lieu thereof the phrase "adoption, if adopted without change and filed with OTS, within 30 days after adoption";

d. Adding headings to paragraphs (b)(1) and (b)(2);

e. Removing paragraph (b)(3);

f. Redesignating paragraph (b)(4) as paragraph (b)(3) and revising it;

g. Redesignating paragraph (b)(5) as paragraph (b)(4) and adding a paragraph heading, and revising the introductory text;

h. Amending newly redesignated paragraph (b)(4) in Section 5 by adding between the words "or" and "stated" appearing in brackets in the first sentence, the phrase "if no par value is

specified the", and by revising the last sentence in the first paragraph;

i. Amending paragraph (b)(4) in Section 5 by removing in the first sentence of the second paragraph the phrase "issuable in" and by adding in lieu thereof the phrase "issued in the initial organization of the association or";

j. Amending paragraph (b)(4) in Section 5 by adding the phrase " , unless the charter otherwise provides that there shall be no such cumulative voting" in the introductory text of the third paragraph between the words "directors:" and "Provided";

k. Amending paragraph (b)(4) in paragraph (ii) of the third paragraph of Section 5 by removing the phrase " , the Federal Deposit Insurance Corporation, or the Resolution Trust Corporation", and by adding in lieu thereof the phrase "or the Federal Deposit Insurance Corporation";

l. Amending paragraph (b)(4) in paragraph A. of the fourth paragraph by adding the phrase " , unless the charter otherwise provides that there shall be no such cumulative voting" at the end of the second sentence;

m. Redesignating paragraph (b)(6) as paragraph (b)(5), adding a heading, and removing the phrase "Amend the charter of a Federal stock association", and by adding in lieu thereof the phrase "A Federal stock association may amend its charter";

n. Adding a new paragraph (b)(6);

o. Adding a heading to paragraph (b)(8); and

p. Amending paragraph (c) by removing the word "preliminary" wherever it appears, and by adding a second sentence.

The additions and revisions read as follows:

#### § 552.4 Charter amendments.

\* \* \* \* \*

(b) \* \* \*

(1) *Title change.* \* \* \*

(2) *Home office.* \* \* \*

(3) *Number of shares of stock and par value.* A Federal stock association may amend Section 5 of its charter to change the number of authorized shares of stock, the number of shares within each class of stock, and the par or stated value of such shares.

(4) *Capital stock.* A Federal stock association may amend its charter by revising Section 5 to read as follows:

Section 5. \* \* \* In the case of a stock dividend, that part of the retained earnings of the association that is transferred to common stock or paid-in capital accounts upon the issuance of shares as a stock dividend shall be deemed to be the consideration for their issuance.

\* \* \* \* \*

(5) *Limitations on subsequent issuances.* \* \* \*

(6) *Cumulative voting.* A Federal stock association may amend its charter by substituting the following sentence for the second sentence in the third paragraph of Section 5: "Each holder of shares of common stock shall be entitled to one vote for each share held by such holder and there shall be no right to cumulate votes in an election of directors."

\* \* \* \* \*

(8) *Antitakeover provisions following conversion.* \* \* \*

(c) \* \* \* Any such provision must be consistent with applicable statutes, regulations, and OTS policies; and Provided Further, that any such provision having the effect of rendering more difficult a change in control of the association which requires for any corporate action (other than the removal of directors) the affirmative vote of a larger percentage of shareholders than is required by this part, shall not be effective unless adopted by a percentage of shareholder vote at least equal to the highest percentage that would be required to take any action under such provision.

\* \* \* \* \*

18. Section 552.5 is amended by:

a. Revising the second sentence of paragraph (a);

b. Removing, in paragraphs (b)(1) introductory text and (b)(2), the phrase "together with a certification", and by adding in lieu thereof the word "provided";

c. Removing, in the concluding text of paragraph (b)(1), the phrase "shall be deemed to comply with the requirements of this section", and by adding in lieu thereof the phrase", if adopted without change, and filed within 30 days after adoption, are effective upon adoption";

d. Amending the heading of paragraph (b)(2) by removing the word "Notice", and by adding in lieu thereof the word "Filing"; and

e. Adding paragraph (d).

The additions and revisions read as follows:

**§ 552.5 Bylaws.**

(a) \* \* \* Bylaws may be adopted, amended or repealed by either a majority of the votes cast by the shareholders at a legal meeting or a majority of the board of directors. \* \* \*

\* \* \* \* \*

(d) *Effect of subsequent charter or bylaw change.* Notwithstanding any subsequent change to its charter or bylaws, the authority of a Federal stock association to engage in any transaction

shall be determined only by the association's charter or bylaws then in effect, unless otherwise provided by Federal law or regulation.

19. Section 552.6 is amended by:

a. Removing in paragraph (a) the number "120", and by adding in lieu thereof the number "150", and by adding the phrase "or at any other convenient place the board of directors may designate" at the end of the paragraph;

b. Adding a sentence at the end of paragraph (b);

c. Revising paragraph (d)(1);

d. Adding a sentence at the end of paragraph (e);

e. Adding two sentences after the first sentence in paragraph (f)(1);

f. Adding paragraph (f)(4); and

g. Adding paragraph (h).

The additions and revisions read as follows:

**§ 552.6 Shareholders.**

\* \* \* \* \*

(b) \* \* \* Notwithstanding anything in this section, however, a Federal stock association that is wholly owned shall not be subject to the stockholder notice requirement.

\* \* \* \* \*

(d) *Voting lists.* (1) At least 20 days before each meeting of the shareholders, the officer or agent having charge of the stock transfer books for the shares of the association shall make a complete list of the stockholders of record entitled to vote at such meeting, or any adjournments thereof, including the names of beneficial owners furnished to the association pursuant to the rules of the Securities Exchange Commission, arranged in alphabetical order, with the address and the number of shares held by each. This list of shareholders shall be kept on file at the home office of the association and shall be subject to inspection by any stockholder of record or the stockholder's agent during the entire time of the meeting. The original stock transfer book shall constitute prima facie evidence of the shareholders entitled to examine such list or transfer books or to vote at any meeting of shareholders. Notwithstanding anything in this section, however, a Federal stock association that is wholly owned shall not be subject to the voting list requirements.

\* \* \* \* \*

(e) \* \* \* If a quorum is present, the affirmative vote of the majority of the shares represented at the meeting and entitled to vote on the subject matter shall be the act of the stockholders, unless the vote of a greater number of stockholders voting together or voting

by classes is required by law or the charter.

(f) *Shareholder voting* (1) \* \* \*

Proxies may be given telephonically or electronically as long as the holder uses a procedure for verifying the identity of the stockholder. Notwithstanding part 569 of this chapter, a proxy may designate as holder a corporation, partnership, company as defined in part 574 of this chapter, or other person.

\* \* \*

\* \* \* \* \*

(4) *Shares held by others.* Shares held by an administrator, executor, guardian, conservator or receiver may be voted in person or by proxy by such person. Stock standing in the name of a trustee may be voted by such trustee either in person or by proxy, but only in accordance with the terms of the trust agreement.

\* \* \* \* \*

(h) *Informal action by stockholders.* If the bylaws of the association so provide, any action required to be taken at a meeting of the stockholders, or any other action that may be taken at a meeting of the stockholders, may be taken without a meeting if consent in writing has been given by all the stockholders entitled to vote with respect to the subject matter.

20. Section 552.6-1 is amended by:

a. Adding a sentence at the end of paragraph (a);

b. Revising paragraph (b);

c. Adding a sentence at the end of paragraph (c);

d. Adding the word "only" in paragraph (e) between the words "serve" and "until" in the second sentence;

e. Revising the heading of paragraph (f), adding the word "only" between the words "removed" and "for" and the words "as defined in § 563.39 of this chapter," after the word "cause" in the first sentence of paragraph (f)(1), and adding a sentence at the end of paragraph (f)(1); and

f. Adding a sentence at the end of paragraph (k).

The additions and revisions read as follows:

**§ 552.6-1 Board of directors.**

(a) \* \* \* Directors need not be stockholders unless the bylaws so require.

(b) *Number and term.* The bylaws shall set forth a specific number of directors, not a range. The number of directors shall be not fewer than five nor more than fifteen, unless a higher or lower number has been authorized by the Director of the Office or his or her delegate. The directors shall be divided

into three classes as nearly equal in number as possible. The members of each class shall be elected for a term of three years and until their successors are elected and qualified. One class shall be elected by ballot annually, except in the case of a converting or newly chartered association where all directors shall be elected at the first election of directors for terms which shall be staggered in length from one to three years. Notwithstanding anything in this section, however, a Federal stock association that is wholly owned shall not be subject to the staggered board requirement.

(c) \* \* \* The board of directors shall determine the place, frequency, time and procedure for notice of such meetings.

\* \* \* \* \*

(f) *Removal or resignation of directors.*  
(1) \* \* \* Associations may provide for procedures regarding resignations in the bylaws.

\* \* \* \* \*

(k) \* \* \* [Bylaws on age limitations must comply with all Federal laws, such as the Age Discrimination in Employment Act and the Employee Retirement Income Security Act.]

21. Section 552.6-2 is amended by:

a. Adding in paragraph (a) the phrase "or comptroller" after the word "treasurer" in the first and fifth sentences, and by removing the third and fourth sentences; and

b. Adding a sentence at the end of paragraph (c).

The additions read as follows:

#### **§ 552.6-2 Officers.**

\* \* \* \* \*

(c) \* \* \* [Bylaws on age limitations must comply with all Federal laws, such as the Age Discrimination in Employment Act and the Employee Retirement Income Security Act.]

#### **§ 552.8 [Removed]**

22. Section 552.8 is removed.

#### **§ 552.11 [Amended]**

23. Section 552.11 is amended by adding the phrase "nonconfidential portions of" in paragraph (b) introductory text between the words "times," and "its" in the first sentence.

#### **ALTERNATIVE ONE**

24. The Appendix to part 552 is revised to read as follows:

#### **Appendix to Part 552—Model Bylaws for Stock Associations**

The Federal stock bylaws may be found in the Application Processing Regulatory Handbook, available from any Regional Office of OTS. (See § 516.1(b) of this chapter.) Each Federal stock association's bylaws,

including any amendments thereto, constitutes conditions imposed in writing by the agency in connection with the granting of an application and a written agreement entered into with the agency within the meaning of 12 U.S.C. 1818(b).

#### **ALTERNATIVE TWO**

24a. The Appendix to Part 552 is amended:

a. In Article II, Section 1, by removing the phrase "place in the State in which the principal place of business of the association is located", and by adding in lieu thereof the phrase "convenient place";

b. In Article II, Section 2, by removing the number "120" wherever it appears, and by adding in lieu thereof the number "150";

c. In Article II, Section 4, by adding at the end of the first sentence the phrase "or the board of directors adopts another procedure for the conduct of meetings";

d. In Article II, Section 5, by removing the number "10" in the first sentence, and by adding in lieu thereof the number "20";

e. In Article II, Section 7, by removing the word "shareholders" in the first sentence and adding the phrase "stockholders of record" in lieu thereof, adding at the end of the first sentence the phrase ", including the names of beneficial owners furnished pursuant to the rules of the Securities and Exchange Commission", removing in the second and third sentences the words "any shareholder" and adding in lieu thereof the phrase "any stockholders of record or the stockholder's agent", and removing in the fourth sentence the phrase "shareholders entitled" and adding in lieu thereof the phrase "stockholders of record entitled";

f. In Article II, Section 8, by adding a sentence at the end;

g. In Article II, Section 9, by adding a sentence after the first sentence;

h. In Article III, Section 3, by adding two sentences at the end;

i. In Article III, Section 11, by adding in the second sentence, the word "only" between the words "serve" and "until";

j. In Article III, Section 14, by adding in the first sentence, the word "only" between the words "removed" and "for" and the words "as defined in the regulations in § 563.39 of this chapter" after the word "cause";

k. In Article V, Section 1, by adding, in first, and fifth sentences, the phrase "or comptroller" after the word "treasurer" each place it appears, and removing the third and fourth sentences; and

l. In Article XI, by adding a sentence at the end.

The additions read as follows:

#### **Appendix to Part 552—Model Bylaws for Stock Associations**

\* \* \* \* \*

#### **Article II—Shareholders**

\* \* \* \* \*

*Section 8. Quorum.* \* \* \* If a quorum is present, the affirmative vote of the majority of the shares represented at the meeting and entitled to vote on the subject matter shall be the act of the stockholders, unless the vote of a greater number of stockholders voting together or voting by classes is required by law or the charter.

*Section 9. Proxies.* \* \* \* Proxies may be given telephonically or electronically as long as the holder uses a procedure for verifying the identity of the stockholder. \* \* \*

\* \* \* \* \*

#### **Article III—Board of Directors**

\* \* \* \* \*

#### **Section 3. Regular Meetings.** \* \* \*

Directors may participate in a meeting by means of a conference telephone or similar communications device through which all persons participating can hear each other at the same time. Participation by such means shall constitute presence in person for all purposes.

\* \* \* \* \*

#### **Article XI—Amendments**

\* \* \* When an association fails to meet its quorum requirement, solely due to vacancies on the board, then the affirmative vote of a majority of the sitting board will be required to amend the bylaws.

#### **PART 556—STATEMENTS OF POLICY**

25. The authority citation for part 556 continues to read as follows:

Authority: 5 U.S.C. 552, 559; 12 U.S.C. 1464, 1701j-3; 15 U.S.C. 1693-1693r.

#### **§§ 556.1, 556.17 [Removed]**

26. Sections 556.1 and 556.17 are removed.

#### **PART 563—OPERATIONS**

27. The authority citation for part 563 continues to read as follows:

Authority: 12 U.S.C. 375b, 1462, 1462a, 1463, 1464, 1467a, 1468, 1817, 1828, 3806; 42 U.S.C. 4106.

28. Section 563.74 is amended by revising paragraph (d) to read as follows:

#### **§ 563.74 Mutual capital certificates.**

\* \* \* \* \*

(d) *Charter amendment.* No application for approval of the issuance of mutual capital certificates pursuant to this section may be filed unless the mutual association amends its charter to authorize issuance, or as may otherwise be required by applicable law.

\* \* \* \* \*



## PART 575—MUTUAL SAVINGS AND LOAN HOLDING COMPANIES

29. The authority citation for part 575 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1828, 2901.

### ALTERNATIVE ONE

30. Section 575.9(a)(1) is revised to read as follows:

#### **§ 575.9 Charters and bylaws for mutual holding companies and their savings association subsidiaries.**

(a) \* \* \* (1) *Charter.* The Federal mutual holding company charter may be found in the Application Processing Regulatory Handbook, available from any Regional Office of OTS. (See § 516.1(b) of this chapter). Each Federal mutual holding company's charter, including any amendments thereto, constitutes conditions imposed in writing by the agency in connection with the granting of an application and a written agreement entered into with the agency within the meaning of 12 U.S.C. 1818(b).

\* \* \* \* \*

### ALTERNATIVE TWO

30a. Section 575.9 is amended by:

a. Removing, in Section 1 of the Charter in paragraph (a)(1), the phrase "hereby chartered";

b. Removing, in Section 5 of the Charter in paragraph (a)(1), the sixth, seventh, and eighth sentences in the last paragraph;

c. Removing, in Section 6 of the Charter in paragraph (a)(1), the word "OTS" in the second sentence, and by adding in lieu thereof the phrase "the Director of the Office or his or her delegate", and by removing the third, fourth and fifth sentences;

d. Revising Section 8 of the Charter in paragraph (a)(1);

e. Removing in paragraph (a)(2) the phrase "references to 'association' in the text of the mutual capital certificate charter provision in § 544.2(b)(4) shall be replaced with references to the 'Mutual Company,'" and

f. Removing the number "545.131" in paragraph (a)(5), and by adding in lieu thereof the number "544.8".

The revisions read as follows:

#### **§ 575.9 Charters and bylaws for mutual holding companies and their savings association subsidiaries.**

(a) Charters and bylaws for mutual holding companies—(1) *Charters.* \* \* \*

### CHARTER

\* \* \* \* \*

*Section 8. Amendment.* Adoption of any preapproved charter amendment shall be effective after such preapproved amendment

has been approved by the members at a legal meeting. Any other amendment, addition, change, or repeal of this charter must be approved by the Office prior to approval by the members at a legal meeting. Any amendment, addition, alteration, change, or repeal so acted upon and approved shall be effective upon filing with the Office in accordance with regulatory procedures.

Attest: \_\_\_\_\_

Secretary of the Association

By: \_\_\_\_\_

President or Chief Executive Officer of the Association

Attest: \_\_\_\_\_

Secretary of the Office of Thrift Supervision

By: \_\_\_\_\_

Director of the Office of Thrift Supervision

Effective Date: \_\_\_\_\_

\* \* \* \* \*

Dated: May 31, 1996.

By the Office of Thrift Supervision.

Jonathan L. Fiechter,

*Acting Director.*

[FR Doc. 96-14441 Filed 6-24-96; 8:45 am]

BILLING CODE 6720-01-P

## Internal Revenue Service

### 26 CFR Part 1

[FI-59-94]

RIN 1545-AT08

#### **Modifications of Bad Debts and Dealer Assignments of Notional Principal Contracts**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking by cross-reference to temporary regulations.

**SUMMARY:** In the Rules and Regulations section of this issue of the Federal Register, the IRS is issuing temporary regulations relating to the allowance of a deduction for a partially worthless debt when the terms of a debt instrument have been modified. The temporary regulations provide relief to certain taxpayers that are required to recognize gain as the result of modifying a debt instrument, when a portion of the gain is in part caused by a reduction of the debt's basis attributable to a bad debt deduction claimed in a prior taxable year. The temporary regulations provide guidance to taxpayers that modify the terms of a debt instrument after deducting an amount for partial worthlessness.

In the Rules and Regulations section of this issue of the Federal Register, the IRS is also issuing temporary regulations relating to certain assignments of notional principal contracts by dealers in those contracts.

The temporary regulations provide guidance to taxpayers relating to consequences of these assignments.

The text of those temporary regulations also serves as the text of these proposed regulations.

**DATES:** Written comments and requests for a public hearing must be received by September 23, 1996.

**ADDRESSES:** Send submissions to: CC:DOM:CORP:R (FI-59-94), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (FI-59-94), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C.

**FOR FURTHER INFORMATION CONTACT:** Craig R. Wojay, Office of Assistant Chief Counsel, Financial Institutions and Products, (202) 622-3920 (not a toll-free number) concerning the modifications of bad debts, and Thomas J. Kelly, Office of Assistant Chief Counsel, Financial Institutions and Products, (202) 622-3940 (not a toll-free number) concerning dealer assignments of notional principal contracts.

#### **SUPPLEMENTARY INFORMATION:**

##### Background

Temporary regulations in the Rules and Regulations section of this issue of the Federal Register amend the Income Tax Regulations (26 CFR part 1) relating to section 166. The temporary regulations contain rules relating to the requirement that a debt be charged off before a deduction on account of partial worthlessness is allowed. The rules apply to certain taxpayers who are required to recognize gain as the result of a significant modification of a debt instrument.

Temporary regulations in the Rules and Regulations section of this issue of the Federal Register amend the Income Tax Regulations (26 CFR part 1) relating to section 1001. The temporary regulations contain rules relating to certain assignments of notional principal contracts by dealers in those contracts.

The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations.

##### Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has