Department of the Treasury
Office of Thrift Supervision

Transmittal

August 24, 1993 **Number: 87**

Attached is a final rule that implements the mutual holding company provisions of Section 10(o) of the Home Owners' Loan Act. The rule establishes the procedures for obtaining regulatory approval for the formation of mutual holding companies and for the issuance of minority stock by the savings association subsidiaries of mutual holding companies and ensures that mutual holding companies and their savings association subsidiaries are operated in a safe and sound manner.

The rule is published in the *Federal Register*, Vol. 58, No. 159, pp. 44105-44125.

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Attachment

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 506, 516, and 575

[93-37]

RIN 1550-AA03

Mutual Holding Companies

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (the OTS) is adopting a regulation that implements the mutual holding company provisions of the Savings and Loan Holding Company Act. In general, the regulation establishes the procedures for obtaining regulatory approval for the formation of mutual holding companies and for the issuance of minority stock of savings association subsidiaries of mutual holding companies and ensures that mutual holding companies and their savings association subsidiaries are operated in a safe and sound manner.

EFFECTIVE DATE: September 20, 1993.

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SUPPLEMENTARY INFORMATION:

I. Introduction

The Competitive Equality Banking Act of 1987 (CEBA), Public Law No. 100-86, 101 Stat. 552, 557-579 (1987), amended the Savings and Loan Holding Company Act, then codified at 12 U.S.C. 1730a, to add a new subsection (s), providing for the establishment of mutual savings and loan holding companies. In the Fall of 1988, the former Federal Home Loan Bank Board (FHLBB) published an advance notice of proposed rulemaking soliciting comments regarding how the mutual holding company provisions of CEBA should be implemented. 53 FR 41343 (Oct. 21, 1988). A public hearing on mutual holding companies was held in December 1988. 53 FR 44436 (Nov. 3, 1988).

The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), Public Law No. 101-73, 103 Stat. 183 (1989), transferred the CEBA mutual holding company provisions to a new statutory location, section 10(o) of the Home Owners' Loan Act (HOLA), 12 U.S.C. 1467a(o), and added various new provisions intended to fill in some of the gaps left by CEBA. See, *e.g.*, 12 U.S.C. 1467a (o) (4), (o)(7)-(o)(9). FIRREA also transferred jurisdiction for promulgating regulations implementing the mutual holding company statutory provisions from the FHLBB to the OTS.

In January 1991, the OTS published for comment a proposed rule, 56 FR 1126 (January 11, 1991), to implement section 10(o) of the HOLA. The proposal allowed savings associations to pursue the perceived advantages offered by the mutual holding company structure, subject to safeguards against unsafe and unsound practices and insider abuse. The proposal also used mutual-to-stock conversion regulatory standards.

procedures and forms with which the industry is already familiar.

Upon consideration of all the comments received during the public comment period, the OTS is adopting the proposal as a final rule substantially as proposed, with some modifications, described below. These modifications are based upon both the comments received and upon the OTS's experiences in reviewing mutual holding company transactions filed with OTS during the development of the mutual holding company regulations. The OTS is adopting this regulation in order to implement section 10(o) of the HOLA and also to clarify and provide guidance on a variety of issues that have arisen in the application of section 10(o).

II. Summary of Comments

The OTS received a total of 21 comment letters on the proposed rule. Those who submitted comments included five law firms (one firm submitted two comment letters), five thrift industry trade associations, six savings associations, three state thrift regulatory authorities, and an association representing the views of state regulators.

The issues identified by commenters on the proposed rule may be separated into four major groups: (1) Authority over the reorganization, chartering and regulation of mutual holding companies; (2) procedural and other requirements to be followed by mutual associations proposing to reorganize into, or be acquired by, mutual holding companies; (3) transactions designed to raise capital, particularly the issuance of minority stock, pledges of the stock of the thrift subsidiary, and subsequent conversions to stock form by mutual holding companies; and (4) restrictions on the operations of mutual holding companies.

As a general matter, most commenters approved of the approach taken in the proposed rule to the regulation of mutual holding companies. However, a number of commenters recommended revisions of specific provisions of the rule. The OTS has carefully considered all of the comments received during the public comment period. For the reasons summarized below, the OTS has revised the proposal based upon the comments received and has made other changes to clarify the requirements of the final rule.

The following is a discussion of the issues raised by the commenters and a summary of the OTS's responses to these issues.

A. Reorganization, Chartering and Regulation of Mutual Holding Companies

A number of commenters, primarily state thrift regulatory authorities, objected to the OTS's position that section 10(o) and its implementing regulations preempt state law that authorizes state-chartered thrifts to create and operate mutual holding companies under standards different from those contained in section 10(o) of the HOLA. Under the proposed rule, a mutual savings association would be authorized to reorganize to become a mutual holding company, or be acquired by a mutual holding company, only upon satisfaction of certain conditions set forth in the rule. The preamble to the proposed rule indicated that the purpose of this requirement was that the OTS rules on mutual holding companies be the exclusive means by which a savings association may reorganize into a mutual holding company. The preamble concluded that mutual holding company reorganizations by federally insured, state-chartered savings associations will not require regulatory action or approval at the state level, unless any "resulting" or "acquiree" associations, as those terms are defined in the rule, will be state-chartered, in which case a new charter will need to be obtained at the state level.[1]

Most commenters on this issue argued that the proposed regulation should not preempt otherwise applicable state law and that neither the language of section 10(o) nor Congressional intent support preemption. Several commenters based their objections on the proposal's perceived interference with the "dual banking system" under which the states and the federal government share chartering and regulatory authority, also contending that Congress' intent was merely to authorize mutual holding companies generally and not to preempt state law. Similarly, commenters criticized the proposal for limiting state participation in mutual holding company reorganizations to the chartering of a savings association subsidiary of a mutual holding company.

Upon careful review of the comments, the OTS continues to be of the view that Congress intended section 10(o) to expressly preempt state law with regard to the creation and regulation of mutual holding companies. This view, which is now expressly reflected in the final rule, is fully supported by the plain language and legislative history of section 10(o).

[1] See 56 FR at 1137.

Section 10(o)(7) of the HOLA provides that "[a] mutual holding company *shall* be chartered by the Director [of the OTS] and shall be subject to such regulations as the Director may prescribe." (emphasis added) This provision clearly states that Congress intended the OTS to have exclusive authority over the chartering, reorganization and regulation of mutual holding companies and that, therefore, state law purporting to authorize state-chartered mutual holding companies be preempted.

Further, the legislative history of section 10(o) supports federal preemption. The mutual holding company provisions of the HOLA, as originally enacted in CEBA, did not address who would charter and regulate mutual holding companies and consequently generated some uncertainty as to the mutual holding company regulatory structure.[2] This uncertainty was addressed in FIRREA, which added the language of section 10(o)(7) quoted above. The explanatory statement that accompanied the amendments when they were offered at a House Banking Committee mark-up of the FIRREA legislation stated that the amendments "would provide a clear regulatory framework for MHCs, and unquestionable regulatory authority to the [OTS] by providing that MHCs will be chartered by the [Director of the OTS] and subject to [OTS] regulation."

Federal preemption also occurs where the statutory scheme enacted by Congress has "occupied the field" or is indicative of a "dominant federal interest."[3] Congress, by setting forth a detailed statutory scheme addressing virtually all material aspects of the establishment and corporate life of a mutual holding company, has "occupied" the mutual holding company "field" and has left no room for state mutual holding company law. For example, section 10(o) sets forth the procedures for mutual holding company reorganizations (sections 10(o) (1–3)); identifies the persons having ownership rights in a mutual holding company (section 10(o)(4)); specifies permissible activities (section 10(o)(5)); describes methods of raising capital (section 10(o)(8)); designates the chartering and regulatory agency for mutual holding companies (section 10(o)(7)); and establishes procedures to be followed upon the default of a mutual holding

[2] The October 1988 advance notice of proposed rulemaking, discussed above, expressly sought comment on whether the CEBA mutual holding company provisions preempted state mutual holding company law.

[3] *Hillsborough County* v. *Automated Medical Laboratories, Inc.*, 471 U.S. 707, 721; *Hines* v. *Davidowitz*, 312 U.S. 52, 66 (1941).

company or its subsidiary (section 10(o)(9)).

In contrast, the provisions of section 10 of the HOLA applicable to all savings and loan holding companies (including mutual holding companies), while detailed in their treatment of the permissible activities of those companies, do not resemble the comprehensive and detailed legislative treatment of mutual holding companies contained in section 10(o). Moreover, the mutual bank holding company provisions of the Bank Holding Company Act, 12 U.S.C. 1842(g), which are generally available to state-chartered savings banks, similarly lack the detail set forth in section 10(o).

Finally, mutual holding company reorganizations constitute a category of conversion from the mutual to the stock form of organization, and, as a general matter, the federal law governing conversions by a savings association from the mutual to the stock form of organization, specifically sections 5 (i) and (p) of the HOLA, 12 U.S.C. 1464 (i) and (p), and the OTS regulations at 12 CFR part 563b, preempt state law in the area. Under section 5(i), "[n]o savings association may convert from the mutual to the stock form * * * except in accordance with the regulations of the Director [of the OTS]." Pursuant to this authority, the OTS has issued regulations that "exclusively govern" all conversions to the stock form. 12 CFR 563b.1(a). The reorganization of a mutual savings association into a mutual holding company involves a type of conversion since the reorganization results in a stockform subsidiary of the mutual holding company. Moreover, as provided in the final rule, the savings association subsidiary of a mutual holding company may issue stock to persons other than its parent company.

Despite the foregoing conclusion that section 10(o) of the HOLA preempts state law with respect to mutual holding companies, the OTS would not object if Congress undertook to provide for a state mutual holding company alternative, provided that the authority of the OTS to ensure the safe and sound operation of all types of holding companies, and their savings association subsidiaries, is not diminished.[4]

[4] This preemptive authority extends only to the chartering, reorganization and regulation of mutual holding companies and not to other traditional areas of state authority, such as state income taxation.

B. Procedural Requirements

1. Form of Mutual Holding Company Reorganization

Some commenters suggested that the final rule clarify that, in addition to the purchase-and-assumption form of reorganization suggested by section 10(o)(1) of the HOLA, mutual holding company reorganizations also may be structured in the following manner: (i) A mutual savings association charters a stock savings association subsidiary, which itself charters a stock savings association subsidiary as a second-tier subsidiary of the mutual association; (ii) the mutual association merges with and into the second-tier stock association, with the stock association surviving; and (iii) the first-tier stock association amends its charter to read in the form of a mutual holding company. Although the final rule does not specifically address this or other alternative steps to establishing a mutual holding company, the OTS believes that the suggested merger structure is consistent with the requirements of section 10(o)(1), provided the standards set forth in section 10(o) and the final rule are otherwise met. Other alternatives will be evaluated similarly and may also be found acceptable.

2. Eligibility of State-Chartered Savings Banks Under Section 10(o)

Some commenters urged that the OTS consider whether other federally insured depository institutions that are not savings associations, such as state-chartered mutual savings banks, may be allowed to reorganize into a mutual holding company. The final rule does not specifically address this issue. However, the OTS notes that under section 10(l) of the HOLA, 12 U.S.C. 1467a(l), state-chartered savings banks or cooperative banks not currently subject to regulation by the OTS may elect to be treated as savings associations for the purposes of section 10 of the HOLA, thus making the provisions of section 10(o) available to such institutions that make a section 10(l) election to "savings association" status.[5]

3. Related Agreements

A number of commenters objected to the requirement in the proposal that mutual holding companies execute regulatory capital maintenance, dividend limitation or some other form of agreement with the OTS as a condition of OTS approval of a mutual holding company reorganization. As discussed below, the OTS no longer generally requires such agreements as a matter of policy; accordingly, the requirement has been deleted from the final regulation.

[5] Regulation by OTS of an institution that makes a section 10(l) election generally is limited to regulation of its savings and loan holding company under section 10 of the HOLA, and verification that the holding company's subsidiary institution meets the Qualified Thrift Lender Test.

4. Capitalization of Mutual Holding Companies

One commenter recommended that a reorganizing association be permitted to upstream funds to the mutual holding company in amounts that exceed the proposed rule's requirement that initial capitalizations of a mutual holding company be limited to amounts permitted under OTS regulations or policies limiting capital distributions by savings associations. The OTS capital distributions regulation sets forth OTS policy on the appropriate amounts that a savings association may distribute consistent with safe and sound operations. Accordingly, the final rule makes no change to the mutual holding company capitalization limits set forth in the proposed rule.

5. Business Plans

Certain commenters objected to the requirement under the proposed rule that the failure of a reorganizing association to submit a business plan in connection with its notice of mutual holding company reorganization would give rise to a rebuttable presumption that the safety and soundness and financial resources requirements for OTS approval of a mutual holding company reorganization were not met. The commenters asserted that business plans are not required in connection with standard mutual-to-stock conversions. One suggested that business plans only be required if an association plans a material deviation from its traditional activities.

The OTS's regulations regarding the formation of savings and loan holding companies in connection with conversions to the stock form generally require that a business plan be submitted. See 12 CFR 574.6(a)(2) and 574.7(g)(2). The OTS sees no reason to deviate from these requirements in the mutual holding company context. A mutual holding company reorganization constitutes a significant change in the structure of a savings association. Thus, the requirement that a business plan be submitted in connection with a reorganization into a mutual holding company has been retained in the final regulation.

6. Membership Rights

One commenter asserted that there is no compelling reason to prohibit a mutual holding company from granting membership rights to depositors in all of its savings association subsidiaries, including those that were in stock form immediately prior to being acquired by the mutual holding company. Under the proposed rule, depositors and borrowers of such stock associations received no membership rights unless the stock association merged with a resulting or acquiree association or with an association that was in the mutual form when acquired by the mutual holding company.

In the OTS's view, when a stock association is acquired by a mutual holding company, it is neither legally required nor appropriate to grant stock association depositors ownership rights, i.e., membership, in the acquiring mutual holding company. Under section 10(o)(4) of the HOLA, membership in a mutual holding company flows from membership in the subsidiary associations of the mutual holding company that were in mutual form immediately prior to reorganizing into, or being acquired by, the mutual holding company. As a general matter, the depositors of a stock savings association have no equity or other interest in a stock association other than the ownership of their accounts; the equity owners of a stock association are its stockholders. Presumably, the mutual holding company provided appropriate compensation to the stockholders in connection with its acquisition of the stock association. Thus, the final rule remains unchanged in this respect.

7. Charter and Bylaws

Several commenters were unsure as to whether the provisions of the model mutual holding company charter contained in the proposed rule would be required for all mutual holding companies. As a general matter, the charter and bylaws of a mutual holding company should conform with the model charter and bylaws contained in the final rule. However, under section 10(o)(4)(A) of the HOLA, persons having ownership rights in a mutual savings association that proposes to reorganize into a mutual holding company must have identical ownership rights with respect to the mutual holding company.[6] Thus, the provisions of the charter and bylaws that set forth the ownership interests of a mutual holding company's members, primarily those affecting voting and distribution rights, should contain the analogous provisions in the charter and bylaws of any resulting or acquiree associations or any other association that was in mutual form when acquired by a mutual holding company in order to reflect these interests.

8. Subsequent Acquisitions of Mutual Thrifts

One commenter objected to the requirement that an acquisition of a mutual association by a mutual holding company be submitted to the acquiree mutual association's members for approval. The commenter noted that such a vote would not be required under applicable OTS regulations if the transaction involved the merger of mutual associations not in a mutual holding company structure. In the OTS's view, however, the effect upon a mutual association and its members of being acquired by a mutual holding company is no different from the effect of an initial reorganization by the association into a mutual holding company. Since section 10(o) of the HOLA and the final rule require member approval for such an initial reorganization, the OTS has imposed a similar requirement upon mutual associations that are acquired by mutual holding companies.[7] Accordingly, the requirement of the proposal has been retained in the final rule.

C. Capital Enhancement Transactions

The provisions of the proposed rule that addressed capital enhancement transactions received the largest volume of comments. Most of the commenters addressed issues arising in connection with the issuance of stock under this rule by the savings association subsidiaries of mutual holding companies.

1. Pricing of Stock

One commenter suggested that the requirement that the stock issued by a resulting or acquiree association be sold at an estimated price range within 15 percent above or 15 percent below the estimated pro forma value of the stock, adapted from the OTS mutual to stock conversion regulations, part 563b, would be unnecessary in the mutual holding company context. According to the commenter, since savings associations issuing stock under this rule have no need to sell a maximum amount of stock (unlike converting associations, which must sell all of the conversion stock offered), associations ought to have the flexibility to adjust the price or percentage of stock sold to meet market requirements. Consequently, the commenter suggested that the sole pricing requirement be that the stock must be sold at a fair price based upon an independent appraisal.

The OTS recognizes the arguments for allowing greater flexibility in stock issuances subject to this rule and, as discussed below, has decided to generally eliminate these estimated price range requirements.

2. Insider Purchase Limitations

Some commenters expressed a strong preference for higher insider purchase limits than those set forth in the proposal, arguing primarily for limits based upon the amount of an association's outstanding stock without regard to the amount held by persons other than the mutual holding company. According to the commenters, insiders would generally be more willing to invest in the stock issuances than the general public and would also be subject to increased incentives to maximize the issuer's performance, both of which would, in turn, increase interest in such investments by non-insiders. Commenters also noted that such limits would create greater compatibility with the conversion regulations and that other limitations in the proposal, such as the pricing requirements and limits on insider resales, made the purchase limits overly burdensome. Finally, the commenters recommended that limits on purchases by employee benefit plans be increased and that the issuing thrifts be allowed to reserve stock for issuance under employee stock benefit plans, as is allowed in connection with standard conversions.

The final rule maintains the insider acquisition limits as set forth in the proposal. The limits imposed by the regulation will aid in preventing insider overreaching by imposing a degree of market discipline on the pricing of the stock. Moreover, the presence of independent investors to whom management owes fiduciary duties may serve as a check on the actions of management following the issuance. As discussed in section III.D below, however, the OTS has revised the proposed rule to authorize issuing associations to reserve stock for distribution under employee benefit plans.

The proposal specifically requested comments as to whether the OTS should impose additional restrictions on stock

[6] The only exception to this rule is for mutual savings associations whose charters granted ownership rights to borrowers. See 12 CFR 575.5 and the discussion of its provisions in the preamble to the proposed rule, 56 FR at 1130.

[7] This issue was addressed in the preamble to the proposed rules. See 56 FR at 1127.

issuances, such as requiring all minority stock to be sold in community or public offerings or adopting more stringent limits, or outright prohibitions, on insider purchases. Virtually all of the commenters favored decreased, not increased, restrictions on insider acquisitions and opposed any requirement that stock issuances under the rule be made through a community or public offering. The final rule does not impose additional restrictions on insider acquisitions, and, as a general rule, stock issuances under the rule should be structured as, and provide a mutual holding company's members with the opportunity to purchase stock in a manner similar to a standard conversion under 12 CFR part 563b. However, as discussed in section III.D. below, a new standard is being provided for exceptions to this general approach.

3. Limits on Resales by Insiders

Some of the commenters opposed the three year restriction on insiders of a mutual holding company or a resulting or acquiree association from reselling stock purchased in a stock issuance under this rule for a period of three years following the date of purchase. These parties contend that the one-year holding period imposed upon insider acquisitions of conversion stock under the conversion regulations would be more appropriate. As discussed in section III.E below, the final rule shortens the resale restriction period to one year.

4. Time Limits

A few commenters suggested that the requirement that stock issuances must be completed within 45 days be increased to 90 days, similar to the aggregate time period allowed under the OTS conversion regulations. The final rule essentially conforms the time period for completion of a stock offering to those in the conversion regulations, requiring that stock issuances be terminated if not completed within 90 days of either the date of OTS approval of a stock issuance application or the date on which any offering circular used in connection with a public offering of securities is declared effective by the OTS.

5. Dividend Waivers

A few commenters urged relaxation of the prohibition on a mutual holding company waiving its right to receive a dividend from its savings association subsidiary unless (i) the OTS approves the waiver or (ii) no insider or employee stock plan holds any shares to which the waiver would apply. Other commenters recommended that the OTS should issue indefinite, "evergreen" approvals of dividend waivers. As discussed in section III.G. below, the final rule changes the "prior approval" requirement to a "prior notice" requirement, revises the standard set forth in the proposal for approval of dividend waivers, and requires a resolution of the board of directors of the mutual holding company authorizing dividend waivers and reflecting consideration of the directors' fiduciary duties to the mutual members of the mutual holding company to be filed with the dividend waiver notice.

6. The Redemption or Exchange of Minority Stock in Mutual Holding Company Conversions

A number of commenters supported the ability of a thrift subsidiary to redeem or exchange stock in a mutual holding company conversion to stock form. Under the proposed regulation, a mutual holding company would be permitted to convert to stock form in accordance with the OTS regulations on the conversion of mutual savings associations at part 563b. Comments were specifically requested as to whether, in the event of such a conversion, the thrift subsidiary of the mutual holding company should be permitted to redeem or exchange any outstanding minority stock issued by the subsidiary, and, if so, how this could be accomplished in a reasonable and fair manner. Commenters on this aspect of the proposal unanimously favored permitting an exchange or redemption, with most commenters assuming that the minority shares would be exchanged on a one-for-one basis or redeemed. According to the commenters, the ability to exchange or redeem minority stock in the event of a mutual holding company conversion will increase the value of the minority stock when issued and will enhance the probability of success of the subsequent conversion.

As discussed in more detail at section III.H. below, the final rule permits, but does not require, investors in the stock of a mutual holding company's subsidiary association issued under the rule to exchange stock for mutual holding company conversion stock provided that the basis for the exchange is "reasonable and fair."

The commenters differed as to how conversion transactions involving an exchange or redemption should be structured. Some commenters recommended that the subsidiary savings association's stock be exchanged for the holding company's stock. Others recommended that the mutual holding company and the subsidiary savings association be merged, with the conversion stock being distributed to minority shareholders and thrift depositors on a "proportional basis." The final rule does not mandate a particular form of conversion transaction; thus, a mutual holding company may structure its conversion transaction in the manner it deems most appropriate, subject to review and approval by the OTS. The mutual holding company would have the burden, however, of demonstrating that the transaction selected meets all applicable regulatory requirements, including the standards for the exchange or redemption of minority stock.

7. Pledges of Thrift Subsidiary Stock

Several comments were received concerning the proposed rules for mutual holding company stock pledges of thrift subsidiary stock. The proposed rule permitted mutual holding companies to pledge as security for a loan the stock of any resulting association, acquiree association, or thrift that was in the mutual form when acquired by the mutual holding company only if (i) the proceeds of such loan are infused into the association whose stock is pledged; (ii) the mutual holding company provides notice to the OTS within 10 days of such pledge; and (iii) the mutual holding company provides immediate notice to the OTS if a payment on such loan is not made.

Several commenters recommended that the proposed rule be revised to permit the use of loan proceeds for any lawful purpose so long as the thrift whose stock was pledged is fully capitalized. It was also suggested by one commenter that mutual holding companies be permitted to pledge the stock of more than one thrift subsidiary in exchange for one larger loan, the proceeds of which would be apportioned among the thrifts whose stock secures the loan. Finally, one commenter urged that prior OTS approval be required due to strong safety and soundness considerations.

The language of section 10(o)(8), which authorizes stock pledges, requires that the transaction increase the capital of the savings association subsidiary. Accordingly, the final regulation retains the requirement that the proceeds of any loan secured by the subsidiary's stock be infused into the savings association. As discussed below, however, the final rule would permit a mutual holding company that owns more than one savings association to obtain a loan secured by the stock of more than one of their subsidiary savings associations, provided the loan proceeds are

distributed among the associations in a manner proportionate to the relative values and amount of stock pledged of each association. With respect to prior OTS approval for stock pledges, the OTS believes that the regulatory restrictions on such loans are adequate to protect the safety and soundness of the subsidiary thrift; accordingly, the proposal has not been changed in this respect.

D. Operating Restrictions

1. Dispositions of Subsidiary Savings Associations

One commenter urged that the proposal's general prohibition on a mutual holding company disposing of any of the stock of a thrift from which the holding company draws members be eliminated and that the final rule authorize a mutual holding company to dispose of such a subsidiary subject to all applicable merger and conversion rules. As discussed below, the OTS has revised the rule to authorize such dispositions.

2. Restrictions on Stock Issuances to Insiders

One commenter objected to the provision prohibiting non-thrift mutual holding company subsidiaries from issuing stock to any of the company's insiders, associates of insiders, or employee benefit plans. The proposal specifically requested comment on whether, as an alternative, the rules regarding stock issuances by the savings association subsidiaries should be expanded to apply to stock issuances by all mutual holding company subsidiaries. The commenter urged that issuances of the stock of non-savings association mutual holding company subsidiaries receive the same treatment as issuances by savings association subsidiaries. As discussed below, the OTS has decided not to restrict the issuance of stock by a non-savings association subsidiary to the holding company's insiders.

3. Indemnification

Several commenters objected to the application to mutual holding companies of the indemnification standards for federally chartered thrifts at 12 CFR 545.121, stating that mutual holding company directors and officers should be eligible for indemnification under state law. Since mutual holding companies will be chartered by the OTS, the final regulation retains the indemnification standards set forth in the proposed regulation in order to maintain a uniform indemnification standard for entities chartered by the OTS and to prevent the possibility that associations will seek to form mutual holding companies to evade the § 545.121 standards.

4. Mutual Holding Company Reports

The proposed rule required that mutual holding company insiders submit to the OTS, in addition to the reports required for all savings and loan holding companies under part 584, reports containing the information on executive compensation and insider transactions required in Items 402 and 404 (a), (b), and (d) of the SEC's Regulation S-K, 17 CFR part 229. One commenter took no objection to this provision, while another recommended that the OTS require instead the information required to be submitted under the Federal Reserve Board's Regulation O. Another inquired as to whether this information would be publicly available, and, if so, would object to such status. As discussed below, the final rule eliminates the additional reporting requirements.

5. Proxies and Proxy Statement

Several commenters objected to certain provisions governing proxy solicitations. Their objections were directed at the requirements (i) that proxies be solicited at all, since such a requirement is not present in connection with mergers of mutual associations or conversions from federal to state charters and (ii) that, as required in the preamble to the proposed rule,[8] management compensation be disclosed in the proxy materials since the information would be "irrelevant" or "immaterial" where a mutual holding company reorganization involves only a change in the form of organization and the members of the reorganizing association would not be "at risk" investors.

With respect to the first issue, the final regulation continues to require that mutual associations contemplating a reorganization into or acquisition by a mutual holding company solicit proxies from their members since section 10(o) requires that management obtain the approval of a reorganizing association's members at a meeting called for that purpose.

Further, pursuant to its authority under § 575.13 of the final rule, the OTS intends, for the present, to continue to require that management compensation be disclosed in the proxy materials soliciting mutual accountholder votes for a mutual holding company transaction.[9] The OTS believes this type of disclosure, the purpose of which is to inform members as to whether the reorganizing association's management is over-compensated relative to its performance or is otherwise manipulating the association's compensation structure to the detriment of the association, is appropriate in proxies seeking approval for these types of transactions.

First, this disclosure is similar to that required in mutual-to-stock conversion proxy solicitation materials,[10] and mutual holding company reorganizations present disclosure issues substantially similar to those presented by such conversions. In addition, the compensation of management has even greater relevance with respect to mutual holding company reorganizations in that the members are being asked to approve a fundamental and significant corporate restructuring that may simultaneously perpetuate current management, regardless of its performance, and expose the members to dilution of their equity interest in the association through, for example, stock issuances, stock pledges, dividend waivers or new activities. The members would have no right to vote on these actions.

As a final matter, the OTS staff, to ensure that accountholders receive sufficient information to vote to approve or reject a mutual holding company reorganization, now requires that the proxy solicitation materials for mutual holding company reorganizations address in detail: (1) The reasons for the reorganization, including the relative advantages and disadvantages of undertaking the transaction proposed instead of a standard conversion; (2) whether management believes the reorganization is in the best interests of the association and its accountholders and the basis of that belief; (3) the fiduciary duties owed to accountholders by the association's officers and directors and why the reorganization is in accord with those duties and is otherwise equitable to the accountholders and the association; (4) any compensation agreements that will be entered into by management in connection with the reorganization; and (5) whether the mutual holding

[8] 56 FR at 1136–1137.

[9] The requirement that management compensation be disclosed in a reorganizing association's proxy solicitation materials is contained in OTS Form MHC-1, Notice of Mutual Holding Company Reorganization.

[10] See OTS Form PS, 12 CFR 563b.101, Item 5, and Securities And Exchange Commission Regulation S-K, Item 402, 17 CFR 229.402. The proxy solicitation materials should comply with the SEC's recently revised compensation disclosure requirements.

company intends to waive dividends, the implications to accountholders, and the reasons such waivers are consistent with the fiduciary duties of the directors of the mutual holding company. This disclosure is similar to that required for merger conversions and other more complex, conversion transactions.

In addition, under certain circumstances discussed below, savings associations proposing minority stock issuances that do not conform to the general rule, i.e., structured in a manner similar to a standard conversion under 12 CFR part 563b, including the standard conversion stock purchase priorities, also must provide additional disclosure to accountholders regarding a proposed reorganization.

6. Running Proxies

One commenter suggested that the final rule make clear that running proxies held by a reorganizing association should transfer to the mutual holding company consistent with the transfer of the ownership rights of members to the mutual holding company under § 575.5. The final rule has been revised to authorize specifically the transfer of running proxies from a reorganizing mutual association to the mutual holding company.

III. Changes to the Proposed Regulation

The final rule generally adopts the provisions of the proposed rule but reflects the following changes:

A. Definitions

To achieve greater consistency throughout its regulations, the OTS has revised the definitions section of the final rule, § 575.2, to reference other regulations, primarily 12 CFR parts 563b and 574, the definitions of certain terms that are neither defined in section 10(o) of the HOLA nor are unique to the final rule.

B. Review of Mutual Holding Company Reorganizations

As noted above, the requirement in the proposed rule that a mutual holding company execute any regulatory capital maintenance, dividend limitation or other required agreement as a condition of OTS approval of a mutual holding company reorganization has been deleted from the final rule. The OTS, as a policy matter, no longer requires such agreements in connection with stock-form savings and loan holding company reorganizations or applications and believes that there is nothing inherent in the nature of mutual holding companies that would necessitate such agreements as a matter of policy. The OTS notes, however, that while these agreements generally will not be required, the OTS retains broad authority to address safety and soundness concerns by imposing appropriate conditions of approval in mutual holding company applications.[11]

C. Contents of Reorganization Plans

The OTS has revised section 575.6(h) to permit the OTS to extend the period of time within which a mutual holding company reorganization may be completed. The OTS believes that the newness of the mutual holding company structure warrants a more flexible regulatory treatment.

D. Stock Issuances by Savings Association Subsidiaries

1. General

Under the proposed rule, any approval of a mutual holding company reorganization by the OTS would be deemed to constitute approval of any stock issuance proposed in connection with the reorganization. The OTS has revised § 575.7(a) of the final rule to clarify that such an approval of a mutual holding company reorganization would constitute approval of any stock issuance only if the issuance had been specifically applied for and unless otherwise specified by the OTS.

Further, to provide for greater conformity with the conversion regulations, the OTS has revised § 575.7(b) to incorporate by reference § 563b.7, which generally imposes restrictions on the pricing and sale of securities in conversion offerings. In the final rule, the provisions of § 563b.7 generally will be applicable to stock issuances by the thrift subsidiaries of mutual holding companies unless another provision of the final rule would apply or unless a specific provision of § 563b.7 is clearly inapplicable. The OTS has also added a new § 575.7(b)(2) that provides that the limitations on the minimum and maximum amounts of the estimated price range required by § 563b.7(c) shall not apply unless the OTS determines otherwise.[12] This provision is designed to provide savings associations greater flexibility in offering and selling stock under this rule while at the same time permitting the OTS to impose a more stringent pricing requirement in appropriate circumstances.[13]

Finally, § 575.7(d) has been revised to clarify OTS policy regarding the conduct of offerings of stock pursuant to the final rule by requiring that such offerings (1) afford the mutual holding company's members the opportunity to purchase stock in the offering and (2) comply with the requirements of the OTS regulation on securities offerings, 12 CFR part 563g and, to the extent applicable, 12 CFR 563b.102.

2. Public Offering Requirements

In the proposal, the OTS expressed its intention to closely scrutinize stock issuance proposals, the stock issuance process, and secondary market activity and indicated that if potential or actual abuses appeared it would promulgate additional safeguards. Since that time, the OTS has reviewed a number of minority stock issuance proposals, particularly offerings structured as "private placements" or where purchase priorities limit meaningful participation by the mutual holding company's members in the stock issuance process.

In the OTS's view, the potential for selective enrichment of insiders at the expense of accountholders is greater in connection with a minority stock issuance structured as a private placement or otherwise designed to result in a limited distribution of stock rather than as a widely distributed public offering, even though both such issuances would be subject to the same insider purchase limitations and stock pricing requirements. This potential stems from factors such as the limited distribution of stock in the private placement, management's ability to influence significantly the identity of the purchasers of the stock, incentives for potential undervaluation of conversion stock, and insiders' status as both purchasers of stock in the offering and the persons who control the

[11] See *Kaneb Services, Inc.* v. *Fed. Savings and Loan Ins. Corp.*, 650 F.2d 78, 83 (5th Cir. 1981).

[12] Section 563b.7(c) requires that any preliminary offering circular relating to a conversion stock offering set forth the "estimated price range." The maximum of the price range should normally be no more than 15 percent above the average of the minimum and maximum of the price range, and the minimum should be no more than 15 percent below such average.

[13] In particular, the OTS is of the view that a significant factor in decisions to purchase stock in minority stock issuances has been the ability of the issuing associations to pay high rates of dividends. This ability stems primarily from the authority of a mutual holding company to waive its right to receive dividends declared by its thrift subsidiary, thus permitting a larger amount of funds to be paid to the minority shareholders. As such, this higher dividend is more characteristic of fixed-income securities than of common stock. The OTS believes that the appraised value of the issuing association should reflect this ability to pay higher dividends; thus, the OTS generally believes that any stock issued under this rule for which the association proposes to pay dividends significantly higher than those generally offered for common stock should be valued as if it were a fixed-income security unless the association's parent mutual holding company specifically undertakes not to seek a waiver of dividends declared by the association for three years after the issuance.

activities of the thrift's mutual holding company parent.

In response to these concerns, the OTS has revised § 575.7(d) to require that stock issuances subject to the final rule generally must provide the members of the issuing association's mutual holding company parent with the opportunity to purchase stock in the issuance in a manner comparable to the procedures set forth in the OTS conversion regulations,[14] unless an alternative stock issuance structure would be more beneficial to the institution, under specified standards.

Minority stock issuances by the thrift subsidiaries of mutual holding companies present many of the same concerns as conversion stock offerings, and the purpose underlying the various procedural and transactional restrictions imposed upon both conversions and minority stock issuances is the same: to ensure that the process is fair to all concerned and not detrimental to the interests of the federal deposit insurance funds. Toward this end, the OTS has long required that stock issued in connection with a standard conversion be offered on a priority basis to the converting association's accountholders and otherwise be sold in a public offering and distributed as widely as possible. This wide distribution provides a mechanism for fair pricing, allows accountholders to participate in the conversion process, and limits the ability of any party to gain undue benefits by acquiring control of the converted institution.

In the mutual holding company context, the OTS has previously addressed these concerns by adopting regulatory standards and procedures, particularly regarding insider purchases and the pricing of the to-be-issued stock, similar to those of the conversion regulations. The OTS also requires insider benefit plans adopted in connection with minority stock issuances to undergo the same type of close scrutiny as in standard conversions and, as discussed in section II.D.5., requires the same level of disclosure for mutual holding company transactions as for merger conversions. By revising § 575.7(d) in the manner described, the OTS is establishing the mutual-to-stock conversion standards as the starting point for mutual holding company minority stock issuances.

The final rule provides two exceptions to this general standard, however. First, exceptions from the standard mutual to stock conversion standards will be permitted where the issuing association would qualify for a supervisory conversion. Second, exceptions may be granted on a case-by-case basis if the issuing association demonstrates that the non-conforming offering would be more beneficial to the association than a conforming offering considering, in the aggregate, the association's financial and managerial resources and future prospects, the effect of the issuance upon the association, the insurance risk to the federal deposit insurance fund, and the convenience and needs of the community to be served. The OTS recognizes that a public offering may not, in every case, be in the best interests of the association, the mutual holding company, the members of the mutual holding company, or the deposit insurance funds. For example, market conditions, regulatory requirements or other factors may cause a mutual association to enter into a relationship with another financial institution that can offer essential managerial and operational support and ready access to additional capital.

However, in these situations, the OTS believes it is important for converting associations to particularly highlight in the proxy materials to accountholders seeking approval of the mutual holding company reorganization the effect of such a transaction on the ability of accountholders to participate in the conversion. Thus, where the second basis for a non-conforming offering is relied upon, the final regulation requires savings associations to include in the proxy materials used to solicit accountholders' approval of the mutual holding company reorganization an additional one page disclosure statement that serves as a cover sheet and that clearly states (1) the consequences to accountholders of voting to approve a reorganization in which their subscription rights are prioritized differently and potentially eliminated; and (2) any intent by the mutual holding company to waive dividends, and the implications to accountholders.

E. Contents of Stock Issuance Plans

The final rule amends the provisions of the rule governing the contents of stock issuance plans required under § 575.7(a)(1) to provide greater consistency with the requirements of the conversion regulations. First, the final rule requires that all stock be sold at a uniform price. Second, the final rule decreases the period of time for which insiders must hold any stock acquired in any offering pursuant to this rule from three years to one year after the date of purchase.

Third, the final rule adds a requirement that all stock issuance plans permit the association to make scheduled discretionary contributions to a tax-qualified employee stock benefit plan, but only if such contributions do not cause the association to fail to meet any of its regulatory capital requirements. This provision is similar to that required by the conversion regulations for all plans of conversion.

Fourth, the final rule extends the period within which stock issuances must be completed to 90 days from the date of OTS approval of the stock issuance application, unless the issuance is subject to the offering circular requirements of 12 CFR part 563g. Under those circumstances, the issuance must be completed 90 days from the date on which the offering circular is declared effective. This change will permit greater consistency with the conversion regulations. The OTS notes, however, that the 90-day period does not supersede or otherwise affect the obligations of savings associations conducting public offerings to provide, in appropriate circumstances, potential investors with updated disclosure of financial or other information at a point earlier than the expiration of the 90-day period.

Also, a statement has been added to § 575.8(a) to make clear that each of the provisions required for all stock issuances also constitutes a regulatory requirement.

F. Acquisitions and Dispositions by Mutual Holding Companies

The final rule revises § 575.10 to specifically authorize a mutual holding company to dispose of any of its savings association subsidiaries, regardless of whether the association was a resulting association, an acquiree association, or any other association that was in mutual form when acquired by the mutual holding company. However, the mutual holding company must provide notice to the OTS of the proposed disposition at least 30 days in advance. Furthermore, the transaction in which the mutual holding company disposes of the association would be subject to OTS oversight. For example, if a resulting association, an acquiree association, or any other association that was in mutual form when acquired by the mutual holding company would be "spun-off" as a separate mutual holding company, the transaction must comply with the provisions of this rule. If, however, the association would be transferred to a stock-form depository institution, the transaction must comply with the OTS conversion regulations.

[14] See 12 CFR 563b.3 (c)(2)–(c)(7).

In addition, the final rule now permits mutual holding company insiders to purchase any mutual holding company subsidiary from the mutual holding company, provided that the OTS receives notice at least 30 days prior to consummation of the proposed transaction. The OTS emphasizes, in this regard, the duty of the mutual holding company's board of directors to prevent insider abuse and to ensure that any transaction between the mutual holding company and an insider is on arms'-length terms and is in the best interests of the holding company and its members.[15]

G. Operating Restrictions

1. Stock Pledges

Section 575.11(b) has been revised to permit a mutual holding company, as discussed above, to pledge the stock of more than one savings association subsidiary as collateral for a loan, provided that the stock pledged of each association is proportionate to the proceeds of the loan infused into each subsidiary association. In this context, § 575.11(b) reflects the section 10(o) requirement that the proceeds from a pledge of a subsidiary thrift's stock be used to improve that subsidiary's capital and would allow the mutual holding company to achieve economies of scale with regard to the larger loan.

2. Dividend Waivers

The OTS has revised the § 575.11(d) restrictions on dividend waivers by mutual holding companies to replace the requirement of prior OTS approval for dividend waivers with a prior notice requirement. In addition, the standard pursuant to which the OTS would evaluate a notice by a mutual holding company to waive its right to receive dividends has been revised so that the holding company must demonstrate that the waiver would not be detrimental to the safe and sound operation of the savings association. Section 575.11(d) also has been revised to require that any dividend waiver notice include a copy of a resolution, and any supporting materials, of the board of directors of the mutual holding company in form and substance satisfactory to the OTS, concluding that the mutual holding company's waiver of its dividends from the savings association is consistent with the directors' fiduciary duties to the members of the mutual holding company.

A previously approved mutual holding company with a pending or future dividend waiver application or notice will be required to meet the new safety and soundness standards discussed above, and will be required to provide to the Regional Office a copy of a resolution of the board of directors, and any supporting materials, reflecting the board's determination that the dividend waiver will be consistent with their fiduciary duties to the mutual members of the mutual holding company. The resolution and any supporting materials must be in form and substance satisfactory to the OTS.

3. Issuance of Non-Thrift Subsidiary Stock to Insiders

Section 575.11(e) of the final rule now provides that a non-savings association subsidiary of a mutual holding company may issue stock to insiders, associates of insiders, or non-tax-qualified employee stock benefit plans of the mutual holding company, provided that such persons or plans provide written notice to the OTS at least 30 days prior to the proposed stock issuance. The proposed rule prohibited such stock issuances under all circumstances due to concerns regarding insider abuse. Upon further review, however, the OTS has determined that the potential for abuse presented by stock issuances of this kind may be addressed through the prior notice process. Consequently, the final rule permits mutual holding company insiders to acquire the stock of non-savings association subsidiaries. As with other types of transactions between a mutual holding company, or its subsidiaries, and the holding company's insiders, the OTS expects that the mutual holding company's board of directors will ensure that the stock issuance is on arms'-length terms and is in the best interests of the mutual holding company and its members.

4. Mutual Holding Company Reports

Section 575.11(h) of the proposed rule, requiring reports on the compensation of and transactions with mutual holding company insiders, has been eliminated. The OTS decided that there was no compelling reason to impose reporting requirements upon mutual holding companies that are more detailed than those applicable to stock-form holding companies. Thus, under new section 575.11(h), formerly section 575.11(i) of the proposed rule, a mutual holding company would be subject only to the reporting requirements contained in the OTS regulations for all savings and loan holding companies, 12 CFR part 584.[16]

H. Conversion of Mutual Holding Companies

Section 575.12(a) has been revised to permit the exchange of any savings association stock issued pursuant to § 575.7 for the stock issued by a mutual holding company in connection with the holding company's conversion to the stock form provided that the holding company and the savings association demonstrate to the satisfaction of the OTS that the basis for the exchange is fair and reasonable to all interested parties.

The broad "reasonable and fair standard" for these exchanges will allow the OTS flexibility to assess these transactions on a case-by-case basis, balancing the benefits brought by the potential for minority shareholders to become shareholders of the resulting, stock-form holding company with any potential safety and soundness concerns. The OTS will closely scrutinize each exchange proposal and retains the authority to prohibit an exchange if the mutual holding company and its thrift subsidiary are unable to demonstrate that the exchange meets the "reasonable and fair" standard.

Finally, while the final regulation does not expressly prohibit the redemption of savings association stock in connection with a mutual holding company conversion, any redemption of minority-held stock must comply with applicable OTS policy and regulations on capital distributions.

I. Procedural Requirements

1. Applications Filing Requirements

To conform with the OTS Applications Restructuring Regulation,[17] the final rule consolidates the notice and application filing requirements contained in § 575.13 (b) and (c) of the proposed rule into new § 575.13(b). In addition, the final rule now requires that applications to issue stock pursuant to § 575.7(a) must be filed in accordance with the filing requirements for mutual-to-stock conversions at § 563b.8 of the conversion regulations. Applications under § 575.7(a) are similar in form and content to conversion applications, and the OTS has determined that these applications should be reviewed in a similar manner.

2. Appeals

The proposed rule included a specific section concerning the procedures for

[15] These transactions must also comply with any applicable restrictions on affiliated transactions.

[16] A mutual holding company will also be subject to any other report required by statute or regulation, such as the reports required under sections 22 (g) and (h) of the Federal Reserve Act, 12 U.S.C. 375a and 375b, respectively, and their implementing regulations.

[17] 57 FR 14329 (April 20, 1992).

appealing the disapproval of a notice or application under this part. In the final rule, the OTS has revised this section, § 575.13(i), to incorporate by reference the general provisions for judicial review of final agency action under section 10 of the HOLA, which is set forth in HOLA section 10(j), 12 U.S.C. 1467a(j).

3. Federal Preemption

As discussed above, the OTS is of the view that Congress intended section 10(o) to expressly preempt state law with regard to the creation and regulation of mutual holding companies. Accordingly, the final rule includes a new § 575.13(i) that states that the regulation preempts state law with regard to the creation and regulation of mutual holding companies.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, it is certified that this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a Regulatory Flexibility Act Analysis is not required.

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The OTS has determined that this rule does not constitute a "major rule" and, therefore, does not require the preparation of a regulatory impact analysis.

Paperwork Reduction Act

The final rule contains a number of collections of information that have been submitted to the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3504(h), and are approved under OMB control number 1550–0071.

Based upon the comments received in response to the proposal, the rule has been modified and now contains several additional information collections. These collections are found in 12 CFR 575.10(b)(1), 575.10(b)(4), 575.11 (d)–(e), and 575.12(a)(2). These collections have been submitted to and approved by OMB in accordance with the Paperwork Reduction Act under OMB control number 1550–0071.

Sec. No.	Total annual burden hrs.	Avg. annual hrs. per respondent	Est. No. of respondents	Est. ann. frequency of responses
575.10(b)(1)	8	4	2	1
575.10(b)(4)	4	4	1	1
575.11(d)	108	9	12	3
575.11(e)	4	4	1	1
575.12(a)(2)	24	12	2	1

Estimated total annual reporting burden is 148 hours.

List of Subjects

12 CFR Part 506

Reporting and recordkeeping requirements.

12 CFR Part 516

Applications, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 575

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

Accordingly, the Office hereby amends subchapters A and D, chapter V, title 12, Code of Federal Regulations, as set forth below:

SUBCHAPTER A—ORGANIZATION AND PROCEDURES

PART 506—INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT

1. The authority citation for part 506 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

2. Section 506.1 is amended by adding in numerical order one new entry to the table in paragraph (b) to read as follows:

§ 506.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) *Display.*

12 CFR part or section where identified and described	Current OMB control No.
* * * * *	
Part 575	1550–0071
* * * * *	

PART 516—APPLICATION PROCESSING GUIDELINES AND PROCEDURES

3. The authority citation for part 516 continues to read as follows:

Authority: 12 U.S.C. 552, 559; 12 U.S.C. 1462a, 1463, 1464, 1467a.

§ 516.2 [Amended]

4. Section 516.2(d)(1) is amended by adding "§ 575.3(b) or" prior to the words "part 574".

SUBCHAPTER D—REGULATIONS APPLICABLE TO ALL SAVINGS ASSOCIATIONS

5. A new part 575 is added to subchapter D to read as follows:

PART 575—MUTUAL SAVINGS AND LOAN HOLDING COMPANIES

Sec.

575.1 Scope.
575.2 Definitions.
575.3 Mutual holding company reorganizations.
575.4 Grounds for disapproval of reorganizations.
575.5 Membership rights.
575.6 Contents of Reorganization Plans.
575.7 Issuances of stock by savings association subsidiaries of mutual holding companies.
575.8 Contents of Stock Issuance Plans.
575.9 Charters and bylaws for mutual holding companies and their savings association subsidiaries.
575.10 Acquisition and disposition of savings associations, savings and loan holding companies, and other corporations by mutual holding companies.
575.11 Operating restrictions.
575.12 Conversion or liquidation of mutual holding companies.
575.13 Procedural requirements.

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

§ 575.1 Scope.

The purpose of this part is to implement the mutual holding company provisions of the Savings and Loan Holding Company Act, 12 U.S.C. 1467a(o).

§ 575.2 Definitions.

As used in this part, the following definitions apply, unless specified elsewhere in this part:

(a) The terms *associate* and *tax-qualified employee stock benefit plan* have the meanings set forth in 12 CFR 563b.2.

(b) The terms *acting in concert, affiliate, company, person,* and *savings association* have the meanings set forth in § 574.2 of this subchapter.

(c) The term *acquiree association* means any savings association, other than a resulting association, that:

(1) Is acquired by a mutual holding company as part of, and concurrently with, a mutual holding company reorganization; and

(2) Is in the mutual form immediately prior to such acquisition.

(d) The term *control* has the same meaning as specified in § 574.4 of this subchapter.

(e) The term *default* means any adjudication or other official determination of a court of competent jurisdiction or other public authority pursuant to which a conservator, receiver, or other legal custodian is appointed for a mutual holding company or savings association subsidiary of a mutual holding company.

(f) The term *insider* means any officer or director of a company or of any affiliate of such company, and any person acting in concert with any such officer or director.

(g) The term *member* means any depositor or borrower of a mutual savings association that is entitled, under the charter of the savings association, to vote on matters affecting the association, and any depositor or borrower of a savings association subsidiary of a mutual holding company that is entitled, under the charter of the mutual holding company, to vote on matters affecting the mutual holding company.

(h) The term *mutual holding company* means a mutual savings and loan holding company organized under this part.

(i) The term *parent* has the same meaning as the term *parent company* specified at § 583.15 of subchapter F of this chapter.

(j) The term *Reorganization Notice* means a notice of a proposed mutual holding company reorganization that is in the form and contains the information required by the OTS.

(k) The term *Reorganization Plan* means a plan to reorganize into the mutual holding company format containing the information required by § 575.6 of this part.

(l) The term *reorganizing association* means a mutual savings association that proposes to reorganize to become a mutual holding company pursuant to this part.

(m) The term *resulting association* means a savings association in the stock form that is organized as a subsidiary of a reorganizing association to receive the substantial part of the assets and liabilities (including all deposit accounts) of the reorganizing association upon consummation of the reorganization.

(n) The term *stock* means common or preferred stock, or any other type of equity security, including (without limitation) warrants or options to acquire common or preferred stock, or other securities that are convertible into common or preferred stock.

(o) The term *Stock Issuance Plan* means a plan providing for the issuance of stock by a savings association subsidiary of a mutual holding company submitted pursuant to § 575.7 of this part and containing the information required by § 575.8 of this part.

(p) The term *subsidiary* has the meaning specified at § 583.23 of subchapter F of this chapter.

§ 575.3 Mutual holding company reorganizations.

A mutual savings association may reorganize to become a mutual holding company, or join in a mutual holding company reorganization as an acquiree association, only upon satisfaction of the following conditions:

(a) A Reorganization Plan is approved by a majority of the board of directors of the reorganizing association and any acquiree association;

(b) A Reorganization Notice is filed with the OTS and either:

(1) The OTS has given written notice of its intent not to disapprove the proposed reorganization; or

(2) Sixty days have passed since the OTS received the Reorganization Notice and deemed it sufficient under § 516.2(c) of this chapter, and the OTS has not:

(i) Given written notice that the proposed reorganization is disapproved; or

(ii) Extended for an additional 30 days the period during which disapproval may be issued;

(c) The Reorganization Plan is submitted to the members of the reorganizing association and any acquiree association pursuant to a proxy statement cleared in advance by the OTS and such Reorganization Plan is approved by a majority of the total votes of the members of each association eligible to be cast at a meeting held at the call of each association's directors in accordance with the procedures prescribed by each association's charter and bylaws; and

(d) All necessary regulatory approvals have been obtained and all conditions specified in § 575.9(c)(5) of this part or otherwise imposed by the OTS in connection with the issuance of a notice of intent not to disapprove under § 575.3(b)(1) of this part or by the OTS in connection with the granting of the approvals specified in this paragraph have been satisfied.

§ 575.4 Grounds for disapproval of reorganizations.

(a) *Basic standards.* The OTS may disapprove a proposed mutual holding company reorganization pursuant to § 575.3(b) of this part if:

(1) Disapproval is necessary to prevent unsafe or unsound practices;

(2) The financial or managerial resources of the reorganizing association or any acquiree association warrant disapproval;

(3) The proposed capitalization of the mutual holding company fails to meet the requirements of paragraph (b) of this section;

(4) A stock issuance is proposed in connection with the reorganization pursuant to § 575.7 of this part that fails to meet the standards established by that section;

(5) The reorganizing association or any acquiree association fails to furnish the information required to be included in the Reorganization Notice or any other information requested by the OTS in connection with the proposed reorganization; or

(6) The proposed reorganization would violate any provision of law, including (without limitation) § 575.3 (a) and (c) of this part (regarding board of directors and membership approval) or § 575.5(a) of this part (regarding continuity of membership rights).

(b) *Capitalization.* (1) The OTS shall disapprove a proposal by a reorganizing association or any acquiree association to capitalize a mutual holding company in an amount in excess of a nominal amount if immediately following the reorganization, the resulting association or the acquiree association would fail to be "adequately capitalized" as defined under 12 CFR part 565.

(2) Proposals by reorganizing associations and acquiree associations to capitalize mutual holding companies shall also comply with any applicable statutes, and with regulations or written policies of the OTS governing capital distributions by savings associations in effect at the time of the reorganization. (Issuance by the OTS of a notice of

intent not to disapprove a mutual holding company reorganization pursuant to § 575.3(b) of this part, or failure by the OTS to disapprove such a reorganization within the time prescribed in § 575.3(b) of this part, shall also be deemed to constitute OTS approval under any regulation or written policy of the OTS governing capital distributions by savings associations, if such approval is required, of the capitalization proposal set forth in the Reorganization Notice, subject to any conditions imposed by § 575.4(d)(2) of this part.)

(c) *Presumptive disqualifiers*—(1) *Managerial resources.* The factors specified in § 574.7 (g)(1)(i)–(g)(1)(vi) of this subchapter shall give rise to a rebuttable presumption that the managerial resources test of paragraph (a)(2) of this section is not met. For this purpose, each place the term *acquiror* appears in § 574.7 (g)(1)(i)–(g)(1)(vi) of this subchapter, it shall be read to mean the reorganizing association or any acquiree association, and the reference in § 574.7(g)(1)(v) of this subchapter to filings under this part shall be deemed to include filings under either part 574 of this subchapter or this part.

(2) *Safety and soundness and financial resources.* Failure by a reorganizing association and any acquiree association to submit a business plan in connection with a Reorganization Notice, or submission of a business plan that projects activities that are inconsistent with economical home financing or that fails to demonstrate that the capital of the mutual holding company will be deployed in a safe and sound manner, shall give rise to a rebuttable presumption that the safety and soundness and financial resources tests of paragraphs (a)(1) and (a)(2) of this section are not met.

(d) *Failure of the OTS to act on a Reorganization Notice within the prescribed time period.* A proposed reorganization that obtains regulatory clearance from the OTS due to the operation of § 575.3(b)(2) of this part may take place in the manner proposed, subject to the following conditions:

(1) The reorganization shall be consummated within one year of the date of the expiration of the OTS's review period under § 575.3(b)(2) of this part;

(2) The mutual holding company shall not be capitalized in an amount in excess of what is permissible under § 575.4(b) of this part;

(3) No request for regulatory waivers or forbearances shall be deemed granted;

(4) The following information shall be submitted within the specified time frames:

(i) On the business day prior to the date of the reorganization, the chief financial officers of the reorganizing association and any acquiree association shall certify to the OTS in writing that no material adverse events or material adverse changes have occurred with respect to the financial condition or operations of their respective associations since the date of the financial statements submitted with the Reorganization Notice;

(ii) No later than thirty days after the reorganization, the mutual holding company shall file with the OTS a certification by legal counsel stating the effective date of the reorganization, the exact number of shares of stock of the resulting association and any acquiree association acquired by the mutual holding company and by any other persons, and that the reorganization has been consummated in accordance with § 575.3 of this part and all other applicable laws and regulations and the Reorganization Notice;

(iii) No later than thirty days after the reorganization, the mutual holding company shall file with the OTS an opinion from its independent auditors certifying that the reorganization was consummated in accordance with generally accepted accounting principles; and

(iv) No later than thirty days after the reorganization, the mutual holding company shall file with the OTS a certification stating that the mutual holding company will not deviate materially, or cause its savings association subsidiaries to deviate materially, from the business plan submitted in connection with the Reorganization Notice, unless prior written approval from the Regional Director is obtained.

§ 575.5 Membership rights.

(a) *Depositors and borrowers of resulting associations, acquiree associations, and associations in mutual form when acquired.* The charter of a mutual holding company must:

(1) Confer upon existing and future depositors of the resulting association the same membership rights in the mutual holding company as were conferred upon depositors by the charter of the reorganizing association as in effect immediately prior to the reorganization;

(2) Confer upon existing and future depositors of any acquiree association or any association that is in the mutual form when acquired by the mutual holding company the same membership rights in the mutual holding company as were conferred upon depositors by the charter of the acquired association immediately prior to acquisition, *provided that* if the acquired association is merged into another association from which the mutual holding company draws members, the depositors of the acquired association shall receive the same membership rights as the depositors of the association into which the acquired association is merged;

(3) Confer upon the borrowers of the resulting association who are borrowers at the time of reorganization the same membership rights in the mutual holding company as were conferred upon them by the charter of the reorganizing association immediately prior to reorganization, but shall not confer any membership rights in connection with any borrowings made after the reorganization; and

(4) Confer upon the borrowers of any acquiree association or any association that is in the mutual form when acquired by the mutual holding company who are borrowers at the time of the acquisition the same membership rights in the mutual holding company as were conferred upon them by the charter of the acquired association immediately prior to acquisition, but shall not confer any membership rights in connection with any borrowings made after the acquisition, *provided that* if the acquired association is merged into another association from which the mutual holding company draws members, the borrowers of the acquired association shall instead receive the same grandfathered membership rights as the borrowers of the association into which the acquired association is merged received at the time that association became a subsidiary of the mutual holding company.

(b) *Depositors and borrowers of associations in the stock form when acquired.* A mutual holding company that acquires a savings association in the stock form, other than a resulting association or an acquiree association, shall not confer any membership rights upon the depositors and borrowers of such association, unless such association is merged into an association from which the mutual holding company draws members, in which case the depositors of the stock association shall receive the same membership rights as other depositors of the association into which the stock association is merged.

§ 575.6 Contents of Reorganization Plans.

Each Reorganization Plan shall contain a complete description of all

significant terms of the proposed reorganization, shall attach and incorporate any Stock Issuance Plan proposed in connection with the Reorganization Plan, and shall:

(a) Provide for amendment of the charter and bylaws of the reorganizing association to read in the form of the charter and bylaws of a mutual holding company, and attach and incorporate such charter and bylaws;

(b) Provide for the organization of the resulting association, which shall be an interim federal or state savings association subsidiary of the reorganizing association, and attach and incorporate the proposed charter and bylaws of such association;

(c) Provide for amendment of the charter and bylaws of any acquiree association to read in the form of the charter and bylaws of a state or federal savings association in the stock form (as modified by § 575.9(b) of this part), and attach and incorporate such charter and bylaws;

(d) Provide that, upon consummation of the reorganization, substantially all of the assets and liabilities (including all savings accounts, demand accounts, tax and loan accounts, United States Treasury General Accounts, or United States Treasury Time Deposit Open Accounts, as defined in part 561 of this subchapter) of the reorganizing association shall be transferred to the resulting association, which shall thereupon become an operating savings association subsidiary of the mutual holding company;

(e) Provide that all assets, rights, obligations, and liabilities of whatever nature of the reorganizing association that are not expressly retained by the mutual holding company shall be deemed transferred to the resulting association;

(f) Provide that each depositor in the reorganizing association or any acquiree association immediately prior to the reorganization shall upon consummation of the reorganization receive, without payment, an identical account in the resulting association or the acquiree association, as the case may be (Appropriate modifications should be made to this provision if savings associations are being merged as a part of the reorganization);

(g) Provide that the Reorganization Plan as adopted by the boards of directors of the reorganizing association and any acquiree association may be substantively amended by those boards of directors as a result of comments from regulatory authorities or otherwise prior to the solicitation of proxies from the members of the reorganizing association and any acquiree association to vote on the Reorganization Plan and at any time thereafter with the concurrence of the OTS; and that the reorganization may be terminated by the board of directors of the reorganizing association or any acquiree association at any time prior to the meeting of the members of the association called to consider the Reorganization Plan and at any time thereafter with the concurrence of the OTS;

(h) Provide that the Reorganization Plan shall be terminated if not completed within a specified period of time (The time period shall not be more than 24 months from the date upon which the members of the reorganizing association or the date upon which the members of any acquiree association, whichever is earlier, approve the Reorganization Plan and may not be extended by the reorganizing or acquiree association); and

(i) Provide that the expenses incurred in connection with the reorganization shall be reasonable.

§ 575.7 Issuances of stock by savings association subsidiaries of mutual holding companies.

(a) *Approval requirements.* No savings association subsidiary of a mutual holding company (including any resulting association or acquiree association) may issue stock to persons other than its mutual holding company parent in connection with a mutual holding company reorganization, or at any time subsequent to the association's acquisition by the mutual holding company, unless the association obtains advance approval of each such issuance from the OTS. Issuance by the OTS of a notice of intent not to disapprove a mutual holding company reorganization pursuant to § 575.3(b) of this part, or failure by the OTS to disapprove such a reorganization within the time prescribed in § 575.3(b) of this part, shall be deemed to constitute approval of any stock issuance specifically applied for pursuant to this section in connection with the reorganization, unless otherwise specified by the OTS. The OTS shall approve any proposed issuance that meets each of the criteria set forth below in paragraphs (a)(1)–(a)(7) of this section.

(1) The proposed issuance is to be made pursuant to a Stock Issuance Plan that contains all the provisions required by § 575.8 of this part.

(2) The Stock Issuance Plan is consistent with the terms of the association's charter (or any proposed amendments thereto), including terms governing the type and amount of stock that may be issued.

(3) The Stock Issuance Plan would provide the association, its mutual holding company parent, and any other savings association subsidiaries of the mutual holding company with fully sufficient capital and would not be inequitable or detrimental to the association or its mutual holding company parent or to members of the mutual holding company parent.

(4) The proposed price or price range of the stock to be issued is reasonable. (The OTS shall review the reasonableness of the proposed price or price range in accordance with paragraph (b) of this section.)

(5) The aggregate amount of outstanding common stock of the association owned or controlled by persons other than the association's mutual holding company parent at the close of the proposed issuance shall be less than 50% of the association's total outstanding common stock, unless the association was a stock association when acquired by the mutual holding company and is not a resulting association or an acquiree association, in which case the foregoing restriction shall not apply. Any amount of preferred stock may be issued by any savings association subsidiary of a mutual holding company to persons other than the association's mutual holding company, consistent with any other applicable laws and regulations.

(6) The association furnishes the information required by the OTS in connection with the proposed issuance.

(7) The proposed issuance complies with all other applicable laws and regulations.

(b) *Pricing and sale of securities.* (1) All of the provisions of § 563b.7 of this subchapter shall apply to a stock issuance applied for pursuant to this section, unless otherwise provided for in this part or clearly inapplicable, as determined by the OTS. For purposes of this paragraph (b)(1), the term *conversion* as it appears in the provisions of § 563b.7 of this subchapter shall be deemed to refer to *the stock issuance*, and the term *converted* or *converting savings association* shall be deemed to refer to the savings association undertaking the stock issuance.

(2) Unless otherwise determined by the OTS, the limitations on the minimum and maximum amounts of the estimated price range required by § 563b.7(c) of this subchapter shall not apply.

(3) To the extent the pricing materials submitted pursuant to paragraph (b)(1) of this section include any discount due to the minority status of the stock to be offered, the materials must indicate the

amount of the discount and how that amount was determined.

(c) *Related approvals.* Approval by the OTS of any stock issuance pursuant to this section shall also be deemed to constitute:

(1) Approval under § 563.1 of this subchapter of the form of stock certificate proposed to be utilized in connection with the stock issuance, provided such form was included in the application materials filed pursuant to this section; and

(2) Preliminary approval under § 552.4 of this chapter and approval under § 563.1 of this subchapter of any charter or bylaw amendment required to authorize issuance of the stock, provided such amendment was proposed in the application materials filed pursuant to this section.

(d) *Offering restrictions.* (1) No representations may be made in any manner in connection with the offer or sale of any stock issued pursuant to this section that the price, price range or any other pricing information related to such stock issuance has been approved by the OTS or that the stock has been approved or disapproved by the OTS or that the OTS has endorsed the accuracy or adequacy of any securities offering documents disseminated in connection with such stock.

(2) Unless an extension is granted by the OTS, any stock issuance approved by the OTS pursuant to this section must be completed within 90 days of—

(i) The date of such approval; or

(ii) For stock issuances subject to the offering circular requirements of part 563g of this subchapter, the date on which the offering circular was declared effective by the OTS.

(3) In the offer, sale, or purchase of stock issued pursuant to this section, no person shall:

(i) Employ any device, scheme, or artifice to defraud;

(ii) Make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or

(iii) Engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon a purchaser or seller.

(4) Prior to the completion of a stock issuance pursuant to this section, no person shall transfer, or enter into any agreement or understanding to transfer, the legal or beneficial ownership of the stock to be issued to any other person.

(5) Prior to the completion of a stock issuance pursuant to this section, no person shall make any offer, or any announcement of any offer, to purchase any stock to be issued, or knowingly acquire any stock in the issuance, in excess of the maximum purchase limitations established in the Stock Issuance Plan.

(6) All stock issuances pursuant to this section must:

(i) Comply with 12 CFR part 563g and, to the extent applicable, 12 CFR 563b.102; and

(ii) Provide that the offering be structured in a manner similar to a standard conversion under 12 CFR part 563b, including the stock purchase priorities accorded members of the issuing association's mutual holding company, unless the association would qualify for a supervisory conversion if it were to undertake a conversion under 12 CFR part 563b; or demonstrates to the satisfaction of the OTS that a non-conforming issuance would be more beneficial to the association compared to a conforming offering, considering, in the aggregate, the effect of each on the association's financial and managerial resources and future prospects, the effect of the issuance upon the association, the insurance risk to the relevant Federal deposit insurance fund, and the convenience and needs of the community to be served.

§ 575.8 Contents of Stock Issuance Plans.

(a) *Mandatory provisions.* Each of the provisions mandatory for all stock issuance plans under this paragraph shall be deemed regulatory requirements. Each Stock Issuance Plan shall contain a complete description of all significant terms of the proposed stock issuance (including the information specified in § 563b.27(a) of this subchapter to the extent known), shall attach and incorporate the proposed form of stock certificate, the proposed stock order form, and any agreements or other documents defining the rights of the stockholders, and shall:

(1) Provide that the stock shall be sold at a total price equal to the estimated *pro forma* market value of such stock, based upon an independent valuation, as provided in § 575.7(b) of this part;

(2) Provide that the aggregate amount of outstanding common stock of the association owned or controlled by persons other than the association's mutual holding company parent at the close of the proposed issuance shall be less than fifty percent of the association's total outstanding common stock (This provision may be omitted if the proposed issuance will be conducted by an association that was in the stock form when acquired by its mutual holding company parent, provided the association is not a resulting association or an acquiree association);

(3) Provide that the aggregate amount of common stock acquired in the proposed issuance, plus all prior issuances of the association, by any non-tax-qualified employee stock benefit plan of the association or any insider of the association and his or her associates, exclusive of any stock acquired by said plan or insider and his or her associates in the secondary market, shall not exceed ten percent of the outstanding shares of common stock of the association held by persons other than the association's mutual holding company parent at the close of the proposed issuance. In calculating the number of shares held by any insider or associate under this provision or the provision in paragraph (a)(4) of this section, shares held by any tax-qualified or non-tax-qualified employee stock benefit plan of the association that are attributable to such person shall not be counted;

(4) Provide that the aggregate amount of stock, whether common or preferred, acquired in the proposed issuance, plus all prior issuances of the association, by any non-tax-qualified employee stock benefit plan of the association or any insider of the association and his or her associates, exclusive of any stock acquired by said plan or insider and his or her associates in the secondary market, shall not exceed ten percent of the stockholders' equity of the association held by persons other than the association's mutual holding company parent at the close of the proposed issuance;

(5) Provide that the aggregate amount of common stock acquired in the proposed issuance, plus all prior issuances of the association, by any one or more tax-qualified employee stock benefit plans of the association, exclusive of any stock acquired by such plans in the secondary market, shall not exceed ten percent of the outstanding shares of common stock of the association held by persons other than the association's mutual holding company parent at the close of the proposed issuance;

(6) Provide that the aggregate amount of stock, whether common or preferred, acquired in the proposed issuance, plus all prior issuances of the association, by any one or more tax-qualified employee stock benefit plans of the association, exclusive of any stock acquired by such plans in the secondary market, shall not exceed ten percent of the stockholders' equity of the association held by persons other than the association's mutual holding company parent at the close of the proposed issuance;

(7) Provide that the aggregate amount of common stock acquired in the proposed issuance, plus all prior issuances of the association, by all non-tax-qualified employee stock benefit plans of the association, insiders of the association, and associates of insiders of the association, exclusive of any stock acquired by said plans, insiders, and associates in the secondary market, shall not exceed thirty-five percent of the outstanding shares of common stock of the association held by persons other than the association's mutual holding company parent at the close of the proposed issuance if the association has less than $50 million in total assets prior to the issuance or twenty-five percent of such outstanding shares if the association has more than $500 million in total assets prior to the issuance. If the association has between $50 million and $500 million in total assets prior to the issuance, the maximum percentage shall be equal to thirty-five percent minus one percent multiplied by the quotient of total assets less $50 million divided by $45 million. (See example calculation set forth in § 563b.3(c)(8) of this subchapter.) In calculating the number of shares held by insiders and their associates under this provision or the provision in paragraph (a)(8) of this section, shares held by any tax-qualified or non-tax qualified employee stock benefit plan of the association that are attributable to such persons shall not be counted;

(8) Provide that the aggregate amount of stock, whether common or preferred, acquired in the proposed issuance, plus all prior issuances of the association, by all non-tax-qualified employee stock benefit plans of the association, insiders of the association, and associates of insiders of the association, exclusive of any stock acquired by said plans, insiders, and associates in the secondary market, shall not exceed thirty-five percent of the stockholders' equity of the association held by persons other than the association's mutual holding company parent at the close of the proposed issuance if the association has less than $50 million in total assets prior to the issuance or twenty-five percent of such stockholders' equity if the association has more than $500 million in total assets prior to the issuance. If the association has between $50 million and $500 million in total assets prior to the proposed issuance, the maximum percentage shall be equal to thirty-five percent minus one percent multiplied by the quotient of total assets less $50 million divided by $45 million. (See example calculation set forth in § 563b.3(c)(8) of this subchapter.);

(9) Provide that the issuance shall be conducted in compliance with 12 CFR part 563g and, to the extent applicable, 12 CFR 563b.102;

(10) Provide that the sales price of the shares of stock to be sold in the issuance shall be a uniform price determined in accordance with § 575.7 of this part;

(11) Provide that, if at the close of the stock issuance the association has more than thirty-five shareholders of any class of stock, the association shall promptly register that class of stock pursuant to the Securities Exchange Act of 1934, as amended (15 U.S.C. 78a–78jj), and undertake not to deregister such stock for a period of three years thereafter;

(12) Provide that, if at the close of the stock issuance the association has more than one hundred shareholders of any class of stock, the association shall use its best efforts to:

(i) Encourage and assist a market maker to establish and maintain a market for that class of stock; and

(ii) List that class of stock on a national or regional securities exchange or on the NASDAQ quotation system;

(13) Provide that, for a period of three years following the proposed issuance, no insider of the association or his or her associates shall purchase, without the prior written approval of the OTS, any stock of the association except from a broker dealer registered with the Securities and Exchange Commission, except that the foregoing restriction shall not apply to:

(i) Negotiated transactions involving more than one percent of the outstanding stock in the class of stock; or

(ii) Purchases of stock made by and held by any tax-qualified or non-tax-qualified employee stock benefit plan of the association even if such stock is attributable to insiders of the association or their associates;

(14) Provide that stock purchased by insiders of the association and their associates in the proposed issuance shall not be sold for a period of at least one year following the date of purchase, except in the case of death of the insider or associate;

(15) Provide that, in connection with stock subject to restriction on sale for a period of time:

(i) Each certificate for such stock shall bear a legend giving appropriate notice of such restriction;

(ii) Appropriate instructions shall be issued to the association's transfer agent with respect to applicable restrictions on transfer of such stock; and

(iii) Any shares issued as a stock dividend, stock split, or otherwise with respect to any such restricted stock shall be subject to the same restrictions as apply to the restricted stock;

(16) Provide that the association will not offer or sell any of the stock proposed to be issued to any person whose purchase would be financed by funds loaned, directly or indirectly, to the person by the association;

(17) Provide that, if necessary, the association's charter will be amended to authorize issuance of the stock and attach and incorporate by reference the text of any such amendment;

(18) Provide that the expenses incurred in connection with the issuance shall be reasonable;

(19) Provide that the Stock Issuance Plan, if proposed as part of a Reorganization Plan, may be amended or terminated in the same manner as the Reorganization Plan. Otherwise, the Stock Issuance Plan shall provide that it may be substantively amended by the board of directors of the issuing association as a result of comments from regulatory authorities or otherwise prior to approval of the Plan by the OTS, and at any time thereafter with the concurrence of the OTS; and that the Stock Issuance Plan may be terminated by the board of directors at any time prior to approval of the Plan by the OTS, and at any time thereafter with the concurrence of the OTS;

(20) Provide that, unless an extension is granted by the OTS, the Stock Issuance Plan shall be terminated if not completed within 90 days of:

(i) The date of such approval; or

(ii) For stock issuances subject to the offering circular requirements of part 563g of this subchapter, the date on which the offering circular was declared effective by the OTS; and

(21) Provide that the association may make scheduled discretionary contributions to a tax-qualified employee stock benefit plan provided such contributions do not cause the association to fail to meet any of its regulatory capital requirements.

(b) *Optional provisions.* A Stock Issuance Plan may:

(1) Provide that, in the event the proposed stock issuance is part of a Reorganization Plan, the stock offering may be commenced concurrently with or at any time after the mailing to the members of the reorganizing association and any acquiree association of any proxy statement(s) authorized for use by the OTS. The offering may be closed before the required membership vote(s), provided the offer and sale of the stock shall be conditioned upon the approval of the Reorganization Plan and Stock Issuance Plan by the members of the reorganizing association and any acquiree association;

(2) Provide that any insignificant residue of stock of the association not sold in the offering may be sold in such other manner as provided in the Stock Issuance Plan, with the OTS's approval;

(3) Provide that the association may issue and sell, in lieu of shares of its stock, units of securities consisting of stock and long-term warrants or other equity securities, in which event any reference in the provisions of this section and in § 575.7 of this part to stock shall apply to such units of equity securities unless the context otherwise requires; or

(4) Provide that the association may reserve shares representing up to ten percent of the proposed offering for issuance in connection with an employee stock benefit plan.

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

(a) *Charters and bylaws for mutual holding companies.*—(1) *Charters.* The charter of a mutual holding company shall be in the form set forth in this paragraph (a)(1) and may include any of the additional provisions permitted pursuant to paragraph (a)(2) of this section.

Charter

Section 1: Corporate title. The name of the mutual holding company hereby chartered is _____ (the "Mutual Company").

Section 2: Duration. The duration of the Mutual Company is perpetual.

Section 3: Purpose and powers. The purpose of the Mutual Company is to pursue any or all of the lawful objectives of a federal mutual savings and loan holding company chartered under section 10(o) of the Home Owners' Loan Act, 12 U.S.C. 1467a(o), and to exercise all of the express, implied, and incidental powers conferred thereby and all acts amendatory thereof and supplemental thereto, subject to the Constitution and the laws of the United States as they are now in effect, or as they may hereafter be amended, and subject to all lawful and applicable rules, regulations, and orders of the Office of Thrift Supervision ("OTS").

Section 4: Capital. The Mutual Company shall have no capital stock.

Section 5: Members. [The content of this section 5 shall be identical to the content of the parallel section in the charter of the reorganizing association, with the following exceptions: (A) Any provisions conferring membership rights upon borrowers of the reorganizing association shall be eliminated and replaced with provisions grandfathering those rights in accordance with 12 CFR 575.5; and (B) appropriate changes shall be made to indicate that membership rights in the mutual holding company derive from deposit accounts in and, to the extent of any grandfather provisions, borrowings from the resulting association. Set forth below is an example of how section 5 should appear in the charter of a mutual holding company formed by a reorganizing association whose charter conforms to the model charter prescribed for federal mutual savings associations for calendar year 1989. Additional changes to this section 5 may be required whenever a mutual holding company reorganization involves an acquiree association, or a mutual holding company makes a post-reorganization acquisition of a mutual savings association, so as to preserve the membership rights of the members of the acquired association consistent with 12 CFR 575.5.]

All holders of the savings, demand, or other authorized accounts of _____ [insert the name of the resulting association] (the "Association") are members of the Mutual Company. With respect to all questions requiring action by the members of the Mutual Company, each holder of an account in the Association shall be permitted to cast one vote for each $100, or fraction thereof, of the withdrawal value of the member's account. In addition, borrowers from the Association as of _____ [insert the date of the reorganization or any earlier date as of which new borrowings ceased to result in membership rights] shall be entitled to one vote for the period of time during which such borrowings are in existence. [The foregoing sentence should be included only if the charter of the reorganizing association confers voting rights on any borrowers.] No member, however, shall cast more than one thousand votes. Voting may be by proxy, subject to the rules and regulations of the OTS. 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, subject to the rules and regulations of the OTS. All accounts shall be nonassessable.

Section 6: Directors. The Mutual Company shall be under the direction of a board of directors. The authorized number of directors shall not be fewer than five nor more than fifteen, as fixed in the Mutual Company's bylaws, except that the number of directors may be increased to a number greater than fifteen with the prior approval of the OTS. Each director of the Mutual Company shall be a member of the Mutual Company. Members of the Mutual Company shall elect the directors, provided that, in the event of a vacancy on the board, the board of directors may fill such vacancy, if the members of the Mutual Company fail to do so, by electing a director to serve until the next annual meeting of members. Directors shall be elected for periods of three years and until their successors are elected and qualified, except that provision shall be made for the election of approximately one-third of the board each year.

Section 7: Capital, surplus, and distribution of earnings. [The content of this section 7 shall be identical to the content of the parallel section in the charter of the reorganizing association, except for changes made to indicate that distribution rights in the mutual holding company derive from deposit accounts in the resulting association, any changes required to provide that the Director of the OTS shall be the approving authority in instances where the charter requires regulatory approval of distributions, and any other changes necessary to accommodate the mutual holding company format. Set forth below is an example of how section 7 should appear in the charter of a mutual holding company formed by a reorganizing association whose charter conforms to the model charter prescribed for federal mutual savings associations for calendar year 1989. Additional changes to this section 7 may be required whenever a mutual holding company reorganization involves an acquiree association, or a mutual holding company makes a post-reorganization acquisition of a mutual savings association, so as to preserve the membership rights of the members of the acquired association consistent with 12 CFR 575.5.]

The Mutual Company shall distribute net earnings to account holders of the Association on such basis and in accordance with such terms and conditions as may from time to time be authorized by the Director of the OTS, provided that the Mutual Company may establish minimum account balance requirements for account holders to be eligible for distributions of earnings.

All holders of accounts of the Association shall be entitled to equal distribution of the assets of the Mutual Company, *pro rata* to the value of their accounts in the Association, in the event of voluntary or involuntary liquidation, dissolution, or winding up of the Mutual Company.

Section 8. Amendment. Adoption of any preapproved charter amendment pursuant to § 575.9(a)(2) of the OTS's rules and regulations shall be effective upon filing the amendment with the OTS in accordance with regulatory procedures, after such preapproved amendment has been submitted to and approved by the members at a legal meeting. Any other amendment, addition, change, or repeal of this charter must be submitted to and preliminarily approved by the OTS prior to submission to and 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 OTS in accordance with regulatory procedures.

By: _____

President and Chief Executive Officer of the Mutual Company

Attest: _____

Secretary of the Mutual Company

Office of Thrift Supervision

By: _____

[Title]

Attest: _____

Secretary of the Office of Thrift Supervision

Date: _____

(2) *Charter amendments.* The rules and regulations set forth in § 544.2 of this chapter regarding charter amendments and reissuances of charters (including delegations and filing instructions) shall be applicable to mutual holding companies to the same extent as if mutual holding companies

were federal mutual savings associations, except that, with respect to the pre-approved charter amendments set forth in § 544.2 of this chapter, § 544.2 (b)(1) and (b)(3) shall not apply to mutual holding companies, 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 mutual holding companies changing their corporate title pursuant to § 544.2 (b)(2) shall be required to comply with § 575.9(a)(3) of this part as well as § 543.1(b) of this chapter.

(3) *Corporate title.* The corporate title of each mutual holding company shall include the term "mutual" or the abbreviation "M.H.C."

(4) *Bylaws.* The rules and regulations set forth in § 544.5 of this chapter regarding bylaws (including their content, any amendments thereto, delegations, and filing instructions) shall be applicable to mutual holding companies to the same extent as if mutual holding companies were federal mutual savings associations. The model bylaws for federal mutual savings associations set forth in the appendix to part 544 of this chapter shall also serve as the model bylaws for mutual holding companies, except that the term "association" each time it appears therein shall be replaced with the term "Mutual Company"; section 11(e) (extending leniency to borrowing members) and section 11(f) (rejection of applications for accounts or membership) shall be removed and the remaining paragraphs of section 11 redesignated accordingly; and modifications shall be made to section 18 (emergency preparedness) to eliminate provisions that have no application to an entity that does not serve as a financial depository institution.

(5) *Availability of charter and bylaws.* A mutual holding company shall make available to its members at all times in the offices of each subsidiary savings association from which the mutual holding company draws members a true copy of its charter and bylaws, including any amendments, and shall deliver such a copy to any member upon request. Mutual holding companies shall also be subject to the provisions of § 545.131 of this chapter.

(b) *Charters and bylaws of subsidiary savings associations of mutual holding companies.* Except as specified otherwise by the OTS in any notice of intent not to disapprove a mutual holding company reorganization or in any regulation or order, each subsidiary savings association of a mutual holding company shall be subject to the same rules and regulations regarding charters and bylaws as are applicable to stock savings associations that are chartered by the OTS, 12 CFR part 552, or by the appropriate state chartering authority, as the case may be, *provided* that the charter of each resulting association, each acquiree association, and each mutual savings association that is acquired by a mutual holding company shall contain the provision set forth below:

In any situation in which the priority of the accounts of the association is in controversy, all such accounts shall, to the extent of their withdrawable value, be debts of the association having at least as high a priority as the claims of general creditors of the association not having priority (other than any priority arising or resulting from consensual subordination) over other general creditors of the association.

(c) *Approval of charters and bylaws of mutual holding companies and their savings association subsidiaries in connection with Reorganization Plans*—(1) Issuance by the OTS of a notice of intent not to disapprove a reorganization pursuant to § 575.3(b) of this part, or failure by the OTS to disapprove such a reorganization within the time prescribed in § 575.3(b) of this part, shall be deemed to constitute:

(i) Approval pursuant to § 575.3(d) of this part and this section for the reorganizing association to amend its charter and bylaws in their entirety to read in the form of the mutual holding company charter and bylaws proposed in the Reorganization Notice (as modified by any conditions imposed by the OTS in its notice of intent not to disapprove or paragraph (c)(2) of this section and subject to paragraph (c)(5) of this section);

(ii) If the Reorganization Plan provides that the resulting association is to be federally chartered, approval pursuant to 12 U.S.C. 1464 (a) and (e) and §§ 552.2–1 and 552.2–2 of this chapter of the organization of the resulting association and the proposed charter and bylaws of such association (as modified by any conditions imposed by the OTS in its notice of intent not to disapprove or by paragraph (c)(2) of this section and subject to paragraph (c)(5) of this section); and

(iii) If the Reorganization Plan provides that the acquiree association is to be federally chartered, approval pursuant to § 552.4 of this chapter of the amendment of the existing charter of the acquiree association in its entirety to read in the form of the proposed charter and bylaws of such association (as modified by any conditions imposed by the OTS in its notice of intent not to disapprove or paragraph (c)(2) of this section and subject to paragraph (c)(5) of this section).

(2) In the event the charter and bylaws of a mutual holding company and of any federally-chartered resulting association or acquiree association are approved pursuant to paragraph (c)(1) of this section due to failure of the OTS to disapprove a Reorganization Notice within the time prescribed in § 575.3(b) of this part, such approval shall be subject to the condition that such charter(s) and bylaws shall conform in every particular to the model charter(s) and bylaws for mutual holding companies and/or federal stock savings associations, as the case may be, as set forth in the OTS's regulations.

(3) Promptly after approval of the amendment of the charter of a reorganizing association to read in the form of a mutual holding company charter pursuant to paragraph (c)(1) of this section, the OTS shall issue an executed copy of such charter to the reorganizing association. Such charter shall not become effective until consummation of the Reorganization Plan, at which point in time it shall replace and nullify the charter of the reorganizing association. The charter of the reorganizing association shall be surrendered to the OTS within five days after consummation of the Reorganization Plan. If the Reorganization Plan is terminated for any reason, the charter of the mutual holding company shall become immediately null and void and shall be returned to the OTS within five days.

(4) Promptly after approval of any federal charter for a resulting association pursuant to paragraph (c)(1) of this section or approval of the amendment of any federal charter of an acquiree association pursuant to paragraph (c)(1) of this section, the OTS shall issue an executed copy of such charter(s) to the reorganizing association and/or the acquiree association, as the case may be.

(i) Prior to consummation of the Reorganization Plan, the resulting association (whether chartered under federal or state law) shall constitute an interim savings association subsidiary of the reorganizing association and shall not accept any deposits or engage in any other business activities except for those activities necessary to consummate the Reorganization Plan. If the Reorganization Plan is terminated for any reason, the charter of the resulting association shall immediately become null and void and, if the resulting association is federally chartered, the charter shall be returned to the OTS within five days.

(ii) Any amended charter issued to an acquiree association (whether by the OTS or the appropriate state authority) shall not become effective until consummation of the Reorganization Plan, at which point in time it shall replace and nullify the prior charter of the acquiree association. The prior charter of any federally-chartered acquiree association shall be surrendered to the OTS within five days after consummation of the Reorganization Plan. If the Reorganization Plan is terminated for any reason, the amended charter of the acquiree association shall become immediately null and void and, if the acquiree association is federally chartered, the amended charter shall be returned to the OTS within five days.

(5) Approval of the amendment of the charter and bylaws of the reorganizing association to read in the form of the charter and bylaws of a mutual holding company and of any acquiree association to read in the form of a stock association and approval of the organization of any resulting association and of its charter and bylaws pursuant to paragraph (c)(1) of this section shall be subject to any conditions subsequent that the OTS may impose in connection therewith or with its notice of intent not to disapprove the reorganization.

§ 575.10 Acquisition and disposition of savings associations, savings and loan holding companies, and other corporations by mutual holding companies.

(a) *Acquisitions*—(1) *Stock savings associations.* A mutual holding company may acquire control of a savings association that is in the stock form, provided the necessary approvals are obtained from the OTS, including (without limitation) approval pursuant to part 574 of this subchapter and, if the acquisition involves a merger or transfer of assets or liabilities, approval pursuant to §§ 552.13, 563.22, and 571.5 and part 546 of this chapter, as appropriate.

(2) *Mutual savings associations.* A mutual holding company may acquire a savings association in the mutual form by merger of such association into any subsidiary savings association of such holding company from which the holding company draws members or into an interim savings association subsidiary of the mutual holding company, provided:

(i) The proposed acquisition is approved by a majority of the board of directors of the mutual association;

(ii) The proposed acquisition is submitted to the mutual association's members pursuant to a proxy statement authorized for use by the OTS and such acquisition is approved by a majority of the total votes of the association's members eligible to be cast at a meeting held at the call of the association's directors in accordance with the procedures prescribed by the association's charter and bylaws;

(iii) The necessary approvals are obtained from the OTS, including (without limitation) approval pursuant to part 574 of this subchapter and §§ 552.13, 563.22, and 571.5 and part 546 of this chapter, as appropriate, and any approvals required to form an interim association, to amend the charter and bylaws of the association being acquired, and/or to amend the charter and bylaws of the mutual holding company consistent with 575.6(a) of this part; and

(iv) The approval of the members of the mutual holding company is obtained, if the OTS advises the mutual holding company in writing that such approval will be required.

(3) *Mutual holding companies.* A mutual holding company may acquire control of another mutual holding company by merging with or into such company, provided the necessary approvals are obtained from the OTS, including (without limitation) approval pursuant to part 574 of this subchapter. The approval of the members of the mutual holding companies shall also be obtained if the OTS advises the mutual holding companies in writing that such approval will be required.

(4) *Stock holding companies.* A mutual holding company may acquire control of a savings and loan holding company in the stock form, provided the necessary approvals are obtained from the OTS, including (without limitation) approval pursuant to part 574 of this subchapter. The acquired holding company may be held as a subsidiary of the mutual holding company or merged into the mutual holding company.

(5) *Non-controlling acquisitions of savings association stock.* A mutual holding company may acquire non-controlling amounts of the stock of savings associations and savings and loan holding companies subject to the restrictions imposed by 12 U.S.C. 1467a(e) and (q) and §§ 574.8 and 584.4 of this chapter.

(6) *Other corporations.* A mutual holding company may acquire control of, and make non-controlling investments in the stock of, any corporation other than a savings association or savings and loan holding company only if:

(i) (A) Such corporation is engaged exclusively in activities that are permissible for mutual holding companies pursuant to § 575.11(a) of this part; or

(B) It is lawful for the stock of such corporation to be purchased by a federal savings association under § 545.74 of this chapter or by a state savings association under the law of any state where any subsidiary savings association of the mutual holding company has its home office; and

(ii) Such corporation is not controlled, directly or indirectly, by a savings association subsidiary of the mutual holding company.

(b) *Dispositions.*—(1) A mutual holding company shall provide written notice to the OTS at least 30 days prior to the effective date of any direct or indirect transfer of any of the stock that it holds in a resulting association, an acquiree association, or any subsidiary savings association that was in the mutual form when acquired by the mutual holding company, including stock transferred in connection with a pledge pursuant to § 575.11(b) of this part or any transfer of all or a substantial portion of the assets or liabilities of any such association. Any such disposition shall comply with the requirements of this part or with part 563b of this subchapter, as appropriate, and with any other applicable statute or regulation including, without limitation parts 546, 563 and 574 of this chapter.

(2) A mutual holding company may, subject to applicable laws and regulations, transfer any or all of the stock or cause or permit the transfer of any or all of the assets and liabilities of:

(i) Any subsidiary savings association that was in the stock form when acquired, provided such association is not a resulting association or an acquiree association;

(ii) Any subsidiary savings and loan holding company acquired pursuant to paragraph (a)(4) of this section; or

(iii) Any corporation other than a savings association or savings and loan holding company.

(3) A mutual holding company may, subject to applicable laws and regulations, transfer any stock acquired pursuant to paragraph (a)(5) of this section.

(4) No transfer authorized by this section may be made to any insider of the mutual holding company, any associate of an insider of the mutual holding company, or any tax-qualified or non-tax-qualified employee stock benefit plan of the mutual holding company unless the mutual holding company provides notice to the OTS at least 30 days prior to the effective date of the proposed transfer. This notice shall be in addition to any other application or notice required under

applicable laws or regulations, including, without limitation, this part and parts 563, 563b, 574 of this subchapter.

§ 575.11 Operating restrictions.

(a) *Activities restrictions.* A mutual holding company may engage in any business activity specified in 12 U.S.C. 1467a (c)(2)(A) or (c)(2)(C)–(c)(2)(G). In addition, the business activities of subsidiaries of mutual holding companies may include the activities specified in § 575.10(a)(6) of this part. A mutual holding company or its subsidiaries may engage in the foregoing activities only upon compliance with the procedures specified in §§ 584.2–1(c) or 584.2–2(b) of this chapter.

(b) *Pledging stock*—(1) No mutual holding company may pledge the stock of its resulting association, an acquiree association, or any subsidiary savings association that was in the mutual form when acquired by the mutual holding company unless the proceeds of the loan secured by the pledge are infused into the association whose stock is pledged. Any amount of the stock of such association may be pledged for this purpose. Nothing in this paragraph shall be deemed to prohibit:

(i) The payment of dividends from a subsidiary savings association to its mutual holding company parent to the extent otherwise permissible; or

(ii) A mutual holding company from pledging the stock of more than one savings association subsidiary provided that the stock pledged of each such subsidiary association is proportionate to the proceeds of the loan infused into each subsidiary association.

(2) Within ten days after any pledge of stock pursuant to paragraph (b)(1) of this section, a mutual holding company shall provide written notice to the OTS regarding the terms of the transaction (including the amount of principal and interest, repayment terms, maturity date, the nature and amount of collateral, and the terms governing seizure of the collateral) and shall include in such notice a certification that the proceeds of the loan have been transferred to the subsidiary savings association whose stock has been pledged.

(3) Any mutual holding company that fails to make any payment on a loan secured by the pledge of stock pursuant to paragraph (b)(1) of this section on or before the date on which such payment is due shall, on the first day after such payment is due, provide written notice of nonpayment to the Regional Director.

(c) *Restrictions on stock repurchases.* No subsidiary savings association of a mutual holding company that has any stockholders other than the association's mutual holding company shall repurchase any share of stock within three years of its date of issuance, unless the repurchase:

(1) Is part of a general repurchase made on a *pro rata* basis pursuant to an offer approved by the OTS and made to all stockholders of the association (except that the association's mutual holding company may be excluded from the repurchase with the OTS's approval);

(2) Is limited to the repurchase of qualifying shares of a director; or

(3) Is purchased in the open market by a tax-qualified or non-tax-qualified employee stock benefit plan of the association in an amount reasonable and appropriate to fund such plan.

(d) *Restrictions on waiver of dividends.* No mutual holding company may waive its right to receive any dividend declared by a subsidiary unless either:

(1) No insider of the mutual holding company, associate of an insider, or tax-qualified or non-tax-qualified employee stock benefit plan of the mutual holding company holds any share of stock in the class of stock to which the waiver would apply; or

(2) The mutual holding company provides the OTS with written notice of its intent to waive its right to receive dividends 30 days prior to the proposed date of payment of the dividend, and the OTS does not object. The OTS shall not object to a notice of intent to waive dividends if:

(i) the waiver would not be detrimental to the safe and sound operation of the savings association; and

(ii) the board of directors of the mutual holding company expressly determines that waiver of the dividend by the mutual holding company is consistent with the directors' fiduciary duties to the mutual members of such company. A dividend waiver notice shall include a copy of the resolution of the board of directors of the mutual holding company, in form and substance satisfactory to the OTS, together with any supporting materials relied upon by the board, concluding that the proposed dividend waiver is consistent with the board's fiduciary duties to the mutual members of the mutual holding company.

(e) *Restrictions on issuance of stock to insiders.* A subsidiary of a mutual holding company that is not a savings association may issue stock to any insider, associate of an insider or tax-qualified or non-tax-qualified employee stock benefit plan of the mutual holding company or any subsidiary of the mutual holding company, *provided that* such persons or plans provide written notice to the OTS at least 30 days prior to the stock issuance. Subsidiary savings associations may issue stock to such persons only in accordance with § 575.7 of this part.

(f) *Restrictions on indemnification.* The provisions of § 545.121 of this chapter shall apply to mutual holding companies in the same manner as if they were federal savings associations.

(g) *Restrictions on employment contracts.* The provisions of §§ 563.39 and 571.5 of this subchapter and any policies of the OTS thereunder shall apply to mutual holding companies in the same manner as if they were savings associations.

(h) *Applicability of rules governing savings and loan holding companies.* Except as expressly provided in this part, mutual holding companies shall be subject to the provisions of 12 U.S.C. 1467a and 3201 *et seq.* and parts 563e, 574, 583, and 584 of this chapter.

§ 575.12 Conversion or liquidation of mutual holding companies.

(a) *Conversion*—(1) *Generally.* A mutual holding company may convert to the stock form in accordance with the rules and regulations set forth in part 563b of this chapter.

(2) *Exchange of savings association stock.* Any stock issued pursuant to § 575.7 of this part by a subsidiary savings association of a mutual holding company to persons other than the parent mutual holding company may be exchanged for the stock issued by the mutual holding company in connection with the conversion of the holding company to stock form provided that the holding company and the subsidiary savings association demonstrate to the satisfaction of the OTS that the basis for the exchange is fair and reasonable.

(b) *Involuntary liquidation*—(1) The OTS may file a petition with the federal bankruptcy courts requesting the liquidation of a mutual holding company pursuant to 12 U.S.C. 1467a(o)(9) and title 11, United States Code, upon the occurrence of any of the following events:

(i) The default of the resulting association, any acquiree association, or any subsidiary savings association of the mutual holding company that was in the mutual form when acquired by the mutual holding company;

(ii) The default of the mutual holding company; or

(iii) Foreclosure on any pledge by the mutual holding company of subsidiary savings association stock pursuant to § 575.11(b) of this part.

(2) Except as provided in paragraph (b)(3) of this section, the net proceeds of

any liquidation of any mutual holding company shall be transferred to the members of the mutual holding company in accordance with the charter of the mutual holding company.

(3) If the FDIC incurs a loss as a result of the default of any savings association subsidiary of a mutual holding company and that mutual holding company is liquidated pursuant to paragraph (b)(1) of this section, the FDIC shall succeed to the membership interests of the depositors of such savings association in the mutual holding company, to the extent of the FDIC's loss.

(c) *Voluntary liquidation.* The provisions of § 546.4 of this chapter shall apply to mutual holding companies in the same manner as if they were federal savings associations.

§ 575.13 Procedural requirements.

(a) *Proxies and proxy statements*—(1) *Solicitation of proxies.* The provisions of §§ 563b.5 and 563b.6 of this subchapter (exclusive of § 563b.6(c)(2)(iii), (d), and (e)) shall apply to all solicitations of proxies by any person in connection with any membership vote required under this part. All proxy materials utilized in connection with such solicitations shall be authorized for use by the OTS and shall be in the form and contain the information specified in § 563b.5(d) of this subchapter and Form PS, 12 CFR 563b.101, to the extent such information is relevant to the action that members are being asked to approve, with such additions, deletions, and other modifications as are necessary or appropriate under the disclosure standard set forth in § 563b.5(g) of this subchapter. Proxies and proxy statements shall be filed in accordance with § 563b.5(e) of this subchapter and shall be addressed to the Corporate and Securities Division, Chief Counsel's Office, Office of Thrift Supervision, at the address set forth in § 516.1(a) of this chapter. For purposes of this paragraph (a)(1), the term *conversion* as it appears in the provisions of part 563b of this subchapter cited above in this paragraph (a)(1) shall be deemed to refer to *the reorganization* or *the stock issuance*, as appropriate.

(2) *Additional proxy disclosure requirements.* In addition to all disclosure required by Form PS, all proxies requesting accountholder approval of a mutual holding company reorganization shall address in detail:

(i) The reasons for the reorganization, including the relative advantages and disadvantages of undertaking the transaction proposed instead of a standard conversion;

(ii) Whether management believes the reorganization is in the best interests of the association and its accountholders and the basis of that belief;

(iii) The fiduciary duties owed to accountholders by the association's officers and directors and why the reorganization is in accord with those duties and is otherwise equitable to the accountholders and the association;

(iv) Any compensation agreements that will be entered into by management in connection with the reorganization; and

(v) Whether the mutual holding company intends to waive dividends, the implications to accountholders, and the reasons such waivers are consistent with the fiduciary duties of the directors of the mutual holding company.

(3) *Nonconforming minority stock issuances.* Savings associations proposing non-conforming minority stock issuances pursuant to § 575.7(d)(6)(ii)(2) of this part must include in the proxy materials to accountholders seeking approval of a proposed reorganization an additional disclosure statement that serves as a cover sheet that clearly addresses:

(i) The consequences to accountholders of voting to approve a reorganization in which their subscription rights are prioritized differently and potentially eliminated; and

(ii) Any intent by the mutual holding company to waive dividends, and the implications to accountholders.

(4) *Use of "running" proxies.* Whenever a mutual savings association or mutual holding company is required by this part to obtain membership approval for a transaction, the association or company may make use of any proxy conferring general authority to vote on any and all matters at any meeting of members, provided that the member granting such proxy has been furnished a proxy statement regarding the transaction and the member does not grant a later-dated proxy to vote at the meeting at which the transaction will be considered or attend such meeting and vote in person. Subject to the limitations set forth in this paragraph, any proxy conferring on the board of directors or officers of a mutual savings association general authority to cast a members's votes on any and all matters presented to the members shall be deemed to cover the member's votes as a member of the mutual holding company and such authority shall be conferred on the board of directors or officers of a mutual holding company.

(b) *Applications pursuant this part.* Except as provided in paragraph (c) of this section, any application, notice or certification required to be filed with the OTS pursuant to this part shall be filed in accordance with § 516.1 of this chapter.

(c) *Reorganization Notices and stock issuance applications*—(1) *Contents.* Each Reorganization Notice submitted to the OTS pursuant to § 575.3(b) of this part and each application for approval of the issuance of stock submitted to the OTS pursuant to § 575.7(a) of this part shall be in the form and contain the information specified by the OTS.

(2) *Filing instructions.* Any Reorganization Notice submitted pursuant to § 575.3(b) of this part shall be filed in accordance with § 516.1 of this chapter. Any stock issuance application submitted pursuant to § 575.7(a) of this part shall be filed in accordance with § 563b.8 of this subchapter.

(3) *Public notice, agency reports, and related matters.* (i) Section 563.22 (d)(2), (d)(3), and (d)(4) of this subchapter shall apply to all mutual holding company reorganizations.

(ii) Public notice published pursuant to paragraph (c)(3)(i) of this section shall be published in a manner that is conspicuous to the average reader and shall be made substantially in the form indicated in this paragraph (c)(3)(ii). Such notice shall also be prominently posted in each office of the association for a period beginning on the date of the newspaper notice and ending on the date of the association's membership meeting.

Announcement of Filing of Notice of Mutual Savings and Loan Holding Company Reorganization

This is to inform the public that _____, located in _____, filed [intends to file] application materials with the Office of Thrift Supervision (the "OTS") on _____ [insert date] advising the OTS of its intent to reorganize into the mutual holding company format pursuant to 12 CFR part 575 ("Reorganization Notice").

This public notice will appear at approximately one-week intervals over a thirty [ten] day period beginning _____ [insert date] and ending _____ [insert date].

Anyone may submit written comments in favor of or against the proposed reorganization and in so doing may submit such information as he or she deems relevant. Such comments and information must be sent to the Regional Director at the following address: _____. Three additional copies of such comments and information must also be sent to the Applications Filing Room, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552. Such comments and information must be submitted within thirty [ten] calendar days of the date on which this public notice was first published, as

indicated in the preceding paragraph. Up to an additional ten calendar days may be granted by the Regional Director to submit such comments and information upon a showing of good cause if a written request is received by the Regional Director within the initial thirty [ten] day period specified above. Failure to submit written comments on a timely basis objecting to the Reorganization Notice may preclude the pursuit of any administrative or judicial remedies.

You may inspect the non-confidential portion of the Reorganization Notice and non-confidential portions of all comments and information filed by the public in response to the Reorganization Notice by contacting the Regional Director or the Information Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552. If you have any questions concerning these procedures, contact the Regional Director at (___) _____ or the Information Services Division at (202) 906-_____.

(iii) Promptly after publication, the association shall file copies of each notice and a publisher's affidavit of publication in the same manner as specified in paragraph (c)(2) of this section.

(iv) If any Reorganization Notice includes an acquiree association, the publication requirements of this paragraph (c)(3) shall be fulfilled both by the reorganizing association and by the acquiree association and the first paragraph of the form of notice set forth in paragraph (c)(3)(ii) of this section shall be replaced with the following paragraph:

This is to inform the public that _____, located in _____, and _____, located in _____, filed [intend to file] application materials with the Office of Thrift Supervision (the "OTS") on _____ [insert date] advising the OTS of their intent to join together to reorganize into the mutual holding company format pursuant to 12 CFR part 575 ("Reorganization Notice").

(v) Upon receipt of a Reorganization Notice, the OTS shall notify persons whose request for announcements under § 563e.6 of this subchapter have been received in time for such notification. The OTS may also notify any other persons who might have an interest in the proposed reorganization.

(vi) Disclosure of any part of a Reorganization Notice or any comments by the public thereon shall be made only in accordance with paragraph (f) of this section.

(4) *Public comment.* Comments by the public shall be submitted only as provided in this paragraph (c)(4) or as requested by the OTS. Within thirty (or, if an emergency exists within the meaning of § 563.22(d)(3) of this subchapter, ten) calendar days of the date of publication of the first notice required by paragraph (c)(3) (i) and (ii) of this section, or up to forty (or, if an emergency exists, twenty), calendar days after such date if within the initial period an extension is requested in writing for good cause shown, anyone may file comments in favor of or against a Reorganization Notice and in so doing may submit such information as he or she deems relevant. Comments received after the comment period, except as requested by the OTS, unverified accusations, or materials pertaining to a Reorganization Notice or public comment that the commenter is unwilling to have disclosed to the party making such submission shall not be part of the record and need not be considered by the OTS. Comments shall be filed in the manner and in the locations provided in paragraph (c)(3)(ii) of this section.

(d) *Amendments.* Any association or mutual holding company may amend any notice or application submitted pursuant to this part or file additional information with respect thereto upon request of the OTS or upon the association's or mutual holding company's own initiative.

(e) *Time-frames.* All Reorganization Notices and applications filed pursuant to this part shall be processed in accordance with § 516.2 of this chapter. Any related approvals requested in connection with Reorganization Notices or applications for approval of stock issuances (including, without limitation, requests for approval to transfer assets to resulting associations, to acquire acquiree associations, and to organize resulting associations or interim associations, and requests for approval of charters, bylaws, and stock forms) shall be processed pursuant to the procedures specified in this section in conjunction with the Reorganization Notice or stock issuance application to which they pertain, rather than pursuant to any inconsistent procedures specified elsewhere in this chapter. The approval standards for all such related applications, however, shall remain unchanged. The review by the OTS of proxy solicitation materials, including forms of proxy and proxy statements, and of any other materials used in connection with the issuance of stock under § 575.7 of this part shall not be subject to the applications processing time-frames set forth in § 516.2 of this chapter.

(f) *Disclosure.* The rules governing disclosure of any notice or application submitted pursuant to this part, or any public comment submitted pursuant to paragraph (c)(4) of this section, shall be the same as set forth in § 574.6(f) of this subchapter for notices, applications, and public comments filed under part 574 of this subchapter.

(g) *Supervisory cases.* The provisions of paragraphs (c)(3), (c)(4) and (f) of this section may be waived by the OTS in connection with transactions approved, or not disapproved, by the OTS for supervisory reasons.

(h) *Appeals.* Any party aggrieved by a final action by the OTS which approves or disapproves any application or notice pursuant to this part 575 may obtain review of such action only by complying with 12 U.S.C. 1467a(j).

(i) *Federal preemption.* This part 575 preempts state law with regard to the creation and regulation of mutual holding companies.

Dated: March 15, 1993.

By the Office of Thrift Supervision.

Jonathan L. Fiechter,

Acting Director.

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