Office of Thrift Supervision
Department of the Treasury

1700 G Street, N.W., Washington, DC 20552 • (202) 906-6000

December 10, 1996

Notice

Attached is the following item:

Transmittal 164

Corporate Governance

Final rule updating, simplifying and reducing rules on the corporate governance of federal thrift institutions.

Press Relations • William Fulwider, Director • (202) 906-6677

Department of the Treasury
Office of Thrift Supervision

Transmittal

December 10, 1996 Number: 164

The rules under which federal savings associations are organized and conduct business are updated and streamlined in the attached final rule, effective Jan. 1, 1997.

In the first revision of the corporate governance rules since 1983, OTS reduced the number of charter and bylaw rules and policy statements on corporate governance from 33 to 21, a 36 percent reduction.

One action alone — moving the model bylaws from regulations to the Application Processing Regulatory Handbook — results in 10 pages being cut from the Code of Federal Regulations (CFR). The move reflects OTS' determination that the model bylaws serve as guidance, not binding norms.

However, at the request of commenters, the standard federal mutual and stock thrift charters will remain in OTS regulations instead of being moved to the handbook, as OTS proposed on June 25, 1996. Otherwise, the final regulation is similar to the June proposal.

The standard charters were updated and unnecessary language was removed. Instead of filing an application and paying a fee, institutions may now simply notify OTS after adopting charter and bylaws amendments that have been preapproved by the agency. A preapproved charter amendment was added enabling mutuals with old charters to raise the cap on the number of votes any one depositor may cast to 1,000. This is the charter amendment institutions have most frequently asked OTS to approve in the past.

Some corporate governance rules were eliminated because they were outdated or unnecessary, such as the requirement that the president of an institution also be a director and CEO.

Other sections were rewritten to clarify meaning or to give institutions more flexibility. For example, federal stock savings associations now have the option of following certain corporate governance laws of their home state, their holding company's home state, Delaware General Corporation Law, or the Model Business Corporation Act, for matters on which OTS regulations are silent. Federal mutual savings associations have a similar option where state corporate governance laws have been enacted for mutual institutions.

The rule removes restrictions on the location of shareholder meetings and authorizes the gathering of proxies over the telephone or electronically. Other provisions exempt wholly owned stock associations from certain requirements designed to protect minority shareholders, such as providing notice of shareholders meetings and compiling shareholder voting lists.

In addition, all stock institutions are permitted to take actions based on unanimous written consent of shareholders in lieu of a vote at a formal shareholders meeting.

The changes do not require any institution to change its current charter. Those institutions that wish to update their charters and bylaws to reflect the new provisions need only obtain director and shareholder approvals and then file an after-the-fact notice with OTS. The final rule was published in the December 3, 1996, edition of the *Federal Register*, Vol. 61, No. 233, pp. 64007–64021.

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Attachment

Rules and Regulations

Federal Register
Vol. 61, No. 233
Tuesday, December 3, 1996

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

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

[No. 96–112]

RIN 1550–AA87

Corporate Governance

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (OTS or Office) is today issuing a final rule amending its corporate governance regulations and policy statements to update, reorganize and substantially streamline them.

This final rule follows a detailed review of each pertinent regulation and policy statement in the Code of Federal Regulations (CFR) to determine whether it is necessary, imposes the least possible burden consistent with safety and soundness, and is written in a clear and straightforward manner. Today's final rule is issued pursuant to the Regulatory Reinvention Initiative of the Vice President's National Performance Review (Reinvention Initiative) and section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRIA) which requires OTS and the other Federal banking agencies to review, streamline, and modify regulations and policies to improve efficiency, reduce unnecessary costs, and remove inconsistent, outmoded, and duplicative requirements.

EFFECTIVE DATE: January 1, 1997.

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I. Background

In a comprehensive review of its regulations, beginning in the spring of 1995, pursuant to the Vice President's Reinvention Initiative and section 303 of CDRIA,[1] OTS identified numerous obsolete or redundant regulations that could quickly be repealed. On December 27, 1995, OTS published a final rule in the **Federal Register** repealing eight percent of its regulations.[2] As part of its review, OTS also identified several key areas in its regulations for a more intensive, systematic regulatory burden review. Certain areas—lending and investment authority, corporate governance, subsidiaries and equity investments, and conflicts of interest, corporate opportunity and hazard insurance—were chosen for intensive review because they are vital to the thrift industry, had not been developed on an interagency basis,[3] and had not been substantially reviewed or amended in recent years.

Earlier this year, OTS proposed a comprehensive streamlining of its lending and investment regulations[4] and, subsequently, OTS published a final lending and investment rule on September 30, 1996.[5] Proposals regarding subsidiaries and equity investments[6] and conflicts of interest, corporate opportunity and hazard insurance[7] were also issued this summer. The final rule regarding conflicts of interest, corporate opportunity and hazard insurance was published in the **Federal Register** on November 27, 1996. The final rule regarding subsidiaries and equity investments is imminent.

On June 25, 1996, OTS also issued a notice of proposed rulemaking to streamline its charter and bylaw regulations (corporate governance).[8] The proposal resulted from an intensive review by OTS staff. OTS also sought industry input regarding staff's initial recommendations through an industry focus group meeting among representatives of seven savings associations and an industry trade association.

Today's final rule is quite similar to the proposal. It reduces the number of charter and bylaw regulations and policy statements from 33 to 21, a reduction of 36 percent. In addition, deletion of the model bylaws from the CFR will remove 10 pages of CFR text. This information will be moved to the Application Processing Regulatory Handbook (Handbook) as guidance. The Handbook is sent to all OTS regulated institutions and is available to the public. The model bylaws will also be available through PUBLIFAX at (202) 906–5660 and from fee service providers on CD Rom.

The general tenor of the changes being made today can be summarized in three points. First, we are removing a number of duplicative or outdated corporate governance regulations. By clearing out the deadwood, OTS hopes to reduce compliance costs. Second, we are updating the regulations to reflect modern trends toward greater flexibility in corporate governance. Third, we are adding clarifying language to various regulations to respond to frequently recurring corporate governance questions asked by institutions. Taken together, these changes should significantly reduce regulatory burden. This final rule is the first major update of the corporate governance regulations in over a decade.[9]

[1] 12 U.S.C. 4803(a)(1).

[2] 60 FR 66866 (December 27, 1995).

[3] Interagency regulations are being reviewed through the Federal Financial Institutions Examination Counsel.

[4] 61 FR 1162 (January 17, 1996).

[5] 61 FR 50951 (September 30, 1996).

[6] 61 FR 29976 (June 13, 1996).

[7] 61 FR 30190 (June 14, 1996).

[8] 61 FR 32713 (June 25, 1996).

[9] For an extensive discussion of the history of the current and previous corporate governance regulations, see the discussion in the proposal. 61 FR 32713, 32715 (June 25, 1996).

II. Summary of Comments and Description of the Final Rule

A. General Discussion of the Comments

The public comment period on the June 25 proposal closed on August 26, 1996. Seven commenters responded. Three savings associations, one savings and loan holding company on behalf of its affiliated savings associations, one financial institutions trade group, one law firm, and one private citizen submitted comments. The comments were generally favorable. Specific comments addressing various sections are discussed, where appropriate, in the section-by-section analysis below.

B. Section-by-Section Analysis

1. Existing Corporate Governance Sections

a. Part 544—Charter and Bylaws

Section 544.1 Federal Mutual Charter

This section contains the required charter for Federal mutual associations. In its proposed rulemaking, OTS solicited comment on alternative proposals. One option was to move the mutual charter (as well as the charter for stock associations and the model bylaws for both) from the regulations to the Handbook. The other option was to retain the charters (and model bylaws) in the regulations, but update them.

Most commenters responded to this aspect of the proposal. Only one commenter generally supported moving the charters and bylaws to the Handbook. Four commenters expressed concern that moving the charters and model bylaws into the Handbook would remove the opportunity for notice and comment under the Administrative Procedure Act (APA) when changes are made to these documents. One commenter stated that weakening the APA requirements will jeopardize the mutual charter and enhance the possibility of hostile activity against mutuals by takeover interests. One commenter stated that if the OTS believes that reasons of safety and soundness warrant maintaining regulatory requirements over the forms of charters and bylaws, then those requirements should remain in the CFR. After considering these comments, OTS has decided to retain the charters in the CFR and to amend them, as proposed. As for the model bylaws, however, OTS is moving them to the Handbook because the model bylaws are intended to serve only as guidance to institutions. Critical bylaw issues are addressed in the regulations described below. These regulations, rather than the model bylaws, will serve as binding norms. Any institution which adopts the model bylaws will be deemed to comply with the regulations.

The changes to the mutual charter are as follows:

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

Section 2. Office. This section designates the location of the association's home office. The section is being revised to indicate that the street address of the home office need not be stated in the charter. It is sufficient to indicate the city and state where the home office is located.

Section 6. Members. This section identifies the association's members and describes their rights. OTS is streamlining this section by moving the third and fourth sentences to the introductory paragraph of the regulation. These two sentences instruct institutions that wish to adopt the charter, but are currently operating under old charters conferring membership rights on borrowers, to grandfather the membership rights of their existing borrowers.

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

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

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

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

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

Section 544.2 Charter amendments

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

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

control of mutual associations. For example, if an institution had no cap on votes, an investor with more than 10% of the deposits in the institution conceivably could exercise control over the institution without regulatory approval. OTS believes it is appropriate for the voting rights of mutuals to be distributed broadly across the membership base.

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

Paragraph 544.2(c) details the procedures an institution must follow when it wants OTS to reissue its charter to reflect amendments to the charter. The wording of this section is conformed to the wording of the corresponding stock charter section at § 552.4(d). No substantive change results. Paragraph (c) is also amended to remove the delegation of authority to the Chief Counsel to execute reissued charters. This change was proposed as part of a continuing effort to remove delegations from the regulations. Delegated authority to execute reissued charters will be preserved via an internal OTS document.

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

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

Section 544.5 Federal Mutual Savings Association Bylaws

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

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

Paragraph (b)(2) addresses special meetings of members. It provides, *inter alia*, that the holders of ten percent or more of a mutual association's voting capital may call a special meeting. Institutions frequently ask for clarification of the meaning of "voting capital," since the term is no longer defined by the Home Owners' Loan Act (HOLA). As proposed, OTS is clarifying that voting capital means all FDIC-insured deposits held by a savings association. In response to a comment, OTS has also added a phrase to indicate that voting capital will be determined as of the voting record date.

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

OTS also proposed a new paragraph (b)(5), to be titled "Member Quorum."[11] This paragraph, which is being added as proposed, contains certain quorum provisions previously found in the charter (as discussed above), as well as clarification of what items of business may be considered at a meeting held after adjournment. The agency believes that quorum issues are more appropriately addressed in the bylaws, where other rules governing member meetings already appear. The new paragraph also clarifies, in response to a comment, that the directors are elected by a plurality of votes in an election of directors.

Current paragraph (b)(5), on voting by proxy, is moved to (b)(6) and is amended to permit proxies to be given telephonically or electronically as long as the holder uses a procedure for verifying the identity of the member.[12] Telephonic and electronic proxies enable institutions to gather proxies and conduct corporate business more rapidly and have become an accepted part of corporate democracy. In addition, in response to frequent questions, OTS proposed to describe voting procedures applicable to joint accounts and accounts held by fiduciaries on behalf of others. These procedures will be included in the model bylaws being moved to the Handbook, rather than in the regulations. Moreover, the procedures will be slightly modified, in response to a comment, to clarify that Individual Retirement Accounts and Keogh accounts may be voted by an institution if no other instructions are received. In addition, the procedures governing joint voting of shares will be modified to parallel the provisions of the stock bylaws, also in response to a comment.

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

Current paragraph (b)(7), regarding the number of directors, becomes (b)(8). In addition, the paragraph is amended to clarify that the bylaws must specify the precise number of directors (rather than a range). This number is chosen by the institution within the range specified in the charter and may be changed by the institution from time to time by amending its bylaws. One commenter requested that the OTS allow a range of directors, as some state codes allow. OTS has determined, however, that specificity is needed in the bylaws to determine quorum requirements. Paragraph (b)(8) also contains three provisions being moved from section seven of the charter. One provision requires that directors be members of their association; a second provision, modified in response to a comment, allows, but does not require that directors serve staggered terms; and a third provision permits state savings banks that convert to Federal mutual

[10] An institution may still choose to issue MCCs, provided the institution makes any necessary amendments to its charter and bylaws (which are no longer preapproved) and follows the procedures specified at 12 CFR 563.74.

[11] All subsequent paragraphs will be renumbered accordingly. However, only those paragraphs being substantively changed are discussed herein.

[12] One example of a verification procedure is for the institution receiving the proxy by facsimile to compare the signature on the proxy to a signature that the institution has on file.

associations to grandfather their method of electing directors for a limited time.

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

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

Current paragraph (b)(12), discussing execution of instruments, is removed in its entirety. OTS has determined that this is not an item that it needs to regulate. For guidance purposes, however, current provisions in the model bylaws on the execution of instruments will remain.

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

Current paragraph (b)(15), discussing the corporate seal, is removed in its entirety. OTS has determined this is not an area it needs to regulate. Current provisions in the model bylaws remain, for guidance purposes.

Current paragraph (b)(16), which sets forth procedures for amending the bylaws, becomes (b)(15) and is amended to make it easier for a board that fails to meet its quorum requirement solely due to vacancies on the board to amend its bylaws. The new language specifies that, in the absence of a quorum due solely to vacancies, the affirmative vote of a majority of the sitting board may amend the bylaws.

Current paragraph (b)(17), on miscellaneous topics, becomes (b)(16) and is amended to remove the reference to provisions regarding "emergency preparedness." Emergency preparedness provisions will also no longer be part of the model bylaws.

Paragraphs (c)(1) and (c)(2) discuss the filing procedures for bylaw amendments. OTS proposed to remove the requirement that applications for bylaw amendments contain certifications that the proposed amendments comport with all laws. As noted above in the discussion on charter amendments, the certification requirement is unnecessary because the legality of proposed amendments are reviewed by OTS staff as part of the application process and its deletion will reduce regulatory burden. Accordingly, the certification requirement is dropped. In addition, paragraph (c)(1) is revised to indicate that the model bylaws can now be found in the Handbook, which is available from OTS. The current appendix to part 544, which contains the model bylaws, is removed. Subsection (c)(1)(ii) has been redesignated as (c)(1)(i)(B) and modified to indicate OTS considers proposed bylaw amendments regarding indemnification, conflicts of interest, and limitations on director or officer liability to raise significant issues of law or policy and, thus, require OTS review. A new subparagraph is added to explain the application process for amendments raising issues of law or policy.

Paragraph (c)(1)(iii) is revised to indicate that the model bylaws, if adopted verbatim, are effective when adopted and must simply be filed with OTS within 30 days after adoption. This change was proposed because OTS has determined that over 90 percent of the bylaws applications filed in recent years are for standard provisions that do not require agency review.

A new paragraph (c)(3) is added to allow mutuals to adopt additional corporate governance procedures to the extent such procedures: (i) Are not inconsistent with the HOLA, applicable Federal statutes and regulations, OTS policies, or safety and soundness; and (ii) do not touch upon certain key areas, such as OTS policies and regulations on indemnification, conflict of interest, limitation of director or officer liability, or other matters of safety and soundness. Subject to these qualifications, this new provision allows Federal mutual associations to designate, *en bloc* or on a piecemeal basis, any of the corporate governance procedures from the laws of the state where the main office of the institution is located.[13] No preapproval is necessary if all provisions in question meet the applicable criteria; instead an institution must submit notice of the provisions it has chosen to the OTS Regional Office within 30 days of adoption. All commenters who addressed this issue were in favor of the more flexible corporate governance structure.

Paragraph (d), which addresses the effective date of all other bylaw amendments (*i.e.*, amendments that are not preapproved or do not meet the standards just described), is amended to comport with a similar provision for Federal stock associations. The change is intended to clarify the circumstances under which an amendment may be rejected by OTS, by cross referencing the standards that appear in paragraph (c)(1).

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

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

Section 544.9 Obsolete Charter Provision for Charter B Associations

This section provides that institutions that still operate under the old Charter B are not bound by section 10 of that charter. Section 10 of Charter B purports to limit the authority of an institution to invest in consumer loans and corporate debt securities. As proposed § 544.9, which affects very few institutions, is moved from the regulations into the Handbook. The authority of Charter B associations to invest in consumer loans and corporate debt securities is governed by current Federal statutory limits, not section 10 of their charter.

Section 544.8 Communication Between Members of a Federal Mutual Savings Association

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

[13] We note, however, that silence in a particular area in a state's law may not, for these purposes, be construed as authorizing adoption of procedures in that area. It should also be noted that when adopting provisions from any of the alternative sources, a mutual may adopt only provisions of state law specifically intended for mutual institutions and a stock institution may adopt only provisions intended for stock corporations.

matters. Accordingly, current § 545.131 becomes new § 544.8.

Appendix to Part 544

As indicated above, OTS proposed to eliminate the appendix to part 544, which contained the model bylaws. These bylaws are moved to the Handbook, with changes to be made to conform the model bylaws to the amendments to the bylaws regulations described above. The revised Handbook will be available from OTS in the near future, as well as through fee services on CD ROM. The revised model bylaws are already available through PUBLIFAX at (202) 906–5660.

b. Part 552—Incorporation, Organization, and Conversion of Federal Stock Associations

Section 552.2 Corporate Title

OTS proposed to remove this section, which merely reminds institutions that § 543.1 regarding corporate titles for Federal associations applies to Federal stock associations. Section 543.1, as currently written, clearly governs corporate titles for all Federal associations. Accordingly, § 552.2 is removed.

Section 552.2–5 Conversion from Federal Mutual to Federal Stock Charter

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

Section 552.3 Charters for Federal Stock Associations

This section contains the required charter for Federal stock associations. For the reasons stated above in the discussion of § 544.1, OTS has decided not to move the charter into the Handbook. OTS will make the following changes to the Federal stock charter, as proposed:

Section 2. Office. This section designates the location of the association's home office. The section is being revised to indicate that the street address of the home office need not be stated in the charter. It is sufficient to indicate the city and state where the home office is located.

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

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

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

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

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

Section 8. Amendment of charter. Section 8 describes the procedure for amending an association's charter. This section is revised to indicate that preapproved charter amendments become effective once they have been approved by the association's board of directors and shareholders, without any need for "preliminary approval" or any additional approval from OTS. (*See* discussion below of § 552.4.)

In addition, OTS proposed to clarify the general rule that charter amendments require approval by only a majority of the votes eligible to be cast at a shareholders' meeting. Language is added indicating that this general rule does not apply in those instances where an association's charter specifies that a supermajority vote is required. (*See* discussion of § 552.4 below.)

Finally, the signature blocks of the charter are modified to include a date to indicate when a charter is effective.

Section 552.4 Charter Amendments

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

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

Paragraph (b)(3), which contains a preapproved amendment for institutions that wish to change from a Federal stock savings and loan association charter to a Federal stock savings bank charter, is removed for the same reasons described above with regard to § 544.3.[14]

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

Current paragraph (b)(5), which permits institutions to modify section 5 of the charter so as to authorize the issuance of preferred stock, becomes (b)(4) and includes the same changes to section 5 of the charter as were discussed above for section 552.3. In addition, the reference to the Resolution Trust Corporation is deleted, because that agency no longer exists.

A new preapproved charter amendment is added, as new paragraph (b)(6), to authorize institutions to prohibit cumulative voting for directors. The standard charter for Federal stock associations provides for cumulative voting for directors. Federal associations frequently apply to amend their charters to prohibit cumulative voting, and OTS routinely approves these applications. Adding this provision to the list of preapproved amendments will save associations that wish to make this change the time and expense of filing an application.

Paragraph (c) states OTS policy on antitakeover provisions in charter amendments. OTS proposed to expand this provision to state the two basic standards OTS uses when reviewing proposed antitakeover amendments. First, the proposed amendment must be consistent with applicable statutes, regulations and OTS policies. Second, such amendments must be adopted by a percentage of the shareholder vote at

[14] Subsequent paragraphs will be renumbered accordingly. However, only those paragraphs being substantively changed are discussed below.

least equal to the highest percentage that would be required to take any action under the antitakeover provision. While several commenters objected to this clarification, OTS notes that these are not new standards; OTS already employs them when reviewing antitakeover amendments. Stating these standards in the regulations will enable institutions to present applications that conform to OTS requirements, thereby saving them time and expense. Accordingly, the proposed changes have been made.

Section 552.5 Bylaws

This section presents the requirements for the bylaws of a Federal stock association. A technical amendment is made to paragraph (a) to confirm that shareholder votes to approve bylaw amendments must occur "at a legal meeting" [15] of shareholders.

Paragraph (b) discusses the application and notice procedures applicable to bylaw amendments. This paragraph is amended to remove the requirement that associations certify that bylaw amendments comport with applicable law. Revisions are also made to indicate that the model bylaws, if adopted verbatim, are approved when adopted and must simply be filed with OTS within 30 days after adoption. Paragraph (b) also indicates that the model bylaws will be in the revised Handbook and made available by OTS. Subsection (b)(1)(iii) is also modified, in the same way the corresponding mutual subsection is modified, to indicate to those contemplating bylaw changes, that OTS considers amendments regarding indemnification, conflicts of interest, and limitations on director or officer liability to raise significant issues requiring OTS review. A new subparagraph is added to explain the application process for such issues of law or policy.

A new paragraph (b)(3) is added to allow the adoption of additional corporate governance procedures to the extent such procedures: (i) Are not inconsistent with the Home Owner's Loan Act, applicable Federal statutes and regulations, OTS policies, or safety and soundness concerns; and (ii) do not touch upon certain key areas, such as OTS policies and regulations on indemnification, conflict of interest, limitation of director or officer liability, or other matters of safety and soundness. Subject to these qualifications, this new provision allows Federal stock associations to designate, *en bloc* or on a piecemeal basis, any of the corporate governance procedures from: the laws of the state where the main office of the institution is located; the laws of the state where the institution's holding company, if any, is located; Delaware General Corporation Law; or the Model Business Corporation Act.[16] No preapproval is necessary if all provisions in question meet the applicable criteria; instead an institution must submit to the OTS Regional Office the provisions it has chosen within 30 days of adoption. All commenters who addressed this issue were generally in favor of the more flexible corporate governance structure.

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

Section 552.6 Shareholders

This section contains certain corporate governance requirements regarding shareholder meetings. Paragraph (a), which contains rules regarding the time and place of shareholder meetings, is amended in two respects. First, the requirement that shareholder meetings be held in the state of an association's principal place of business is removed. Instead, associations may hold shareholder meetings at any convenient place the board of directors designates. Second, the time frame within which an association must hold its annual shareholders meeting is extended from 120 to 150 days of the end of the association's fiscal year. These are the same changes made for Federal mutual associations (§ 544.5(b)(1)).

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

Paragraph (d)(1), which addresses access to shareholder lists, is revised to clarify that shareholder lists are available only to shareholders "of record" and their agents. In addition, the paragraph is amended to waive its application to wholly-owned institutions.

Paragraph (e), regarding shareholder quorum requirements, is amended to confirm that, whenever a quorum is present, the affirmative vote of the majority of shares entitled to vote at shareholder meetings shall constitute an act of the shareholders, absent a supermajority voting requirement. The amended paragraph also clarifies, in response to a comment, that directors are elected by a plurality of votes in an election of directors.

Paragraph (f), which addresses proxies, is amended in the same manner as the Federal mutual bylaws at § 544.5(b)(6) to allow proxies to be gathered electronically or telephonically. Subparagraph (f)(3), which addresses cumulative voting, is removed, but remains in the model bylaws as guidance for any association that continues to use cumulative voting. In addition, OTS is not adding paragraph (f)(4) as proposed. Instead, the proposed language, which describes voting procedures applicable to stock held by fiduciaries on behalf of others and stock held jointly, will be included in the model bylaws in the Handbook, rather than in the regulations. The language will be modified as described in the corresponding section of the Federal mutual bylaws.

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

Section 552.6–1 Board of Directors

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

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

[15] A "legal meeting" means a duly constituted meeting of the institution.

[16] We note, however, that silence in a particular area in a state's law or in the Model Business Corporation Act may not, for these purposes, be construed as authorizing adoption of procedures in that area. It should also be noted that when adopting provisions from any of the alternative sources, a stock institution may adopt only provisions state law intended for stock institutions and a mutual institution may adopt only provisions intended for a mutual corporation.

has decided to allow any association to elect not to have a staggered board.

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

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

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

Paragraph (k), on age limitations for directors, is revised to indicate that any age limitation provision must conform to applicable Federal law, rules, or regulations. These rules would include laws such as the Age Discrimination in Employment Act and the Employee Retirement Income Security Act (ERISA).

Section 552.6–2 Officers

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

Paragraph (c), on age limitations for officers, is revised to indicate that any age limitation on service by officers must conform to applicable Federal law, rules, or regulations.

Section 552.8 Savings Deposits

This section contains instructions to Federal stock associations regarding the types of savings deposits they may accept, preservation of those accounts when a former mutual association adopts a stock charter, rights of account holders in the event of liquidation, and forms of certificates to use for accounts. OTS proposed to remove this section from the regulations. The provisions of this section are either self-evident or addressed by other statutes and regulations and general contract law. Under the conversion regulations, all converting mutual institutions are required to notify their accountholders that all the rights they enjoyed as accountholders, except voting and ownership of the institution, carry over to the converting association. Accordingly, § 522.8 is removed as proposed.

Section 552.11 Books and Records

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

Appendix to Part 552

As indicated above, OTS has moved the model bylaws for Federal stock associations, which currently appear in the appendix to Part 552, into the Handbook. Changes will be made to conform the model bylaws to the amendments to the bylaw regulations described above. In addition, OTS proposed to modify the model bylaws to indicate that procedures other than Robert's Rules of Order may be used for shareholder meetings, as long as the board of directors adopts alternative written procedures. This change will also be made. As indicated above, a revised Handbook will be available from OTS. The revised model bylaws are already available through PUBLIFAX at (202) 906–5660.

c. Part 575—Mutual Holding Companies

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

This section describes the required charter and bylaws for Federal mutual holding companies. Paragraph (a)(1) contains the prescribed charter. The following changes are made to the charter:

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

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

Section 6. Directors. This section provides that a Federal mutual holding company may have from 5 to 15 directors. In addition, OTS has made technical changes to conform the wording of this section to the corresponding section of the charter for Federal mutual associations.

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

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

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

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

d. Miscellaneous Technical Changes

Section 543.1(b) Title Change

This section prescribes the rules for corporate titles for Federal savings associations. This section is amended to delete cross references to sections being removed by this final rule.

Section 543.14 Continuity of Existence

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

Section 556.1 Directors

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

Section 556.17 Effect of Loan Participation on Status of Borrowing Members

This policy statement provides guidance regarding various issues that arise when determining the identity of the borrowing members of a Federal mutual savings association. For example, this section indicates that sale of a whole loan by a savings association to a third party terminates the borrower's membership rights in the association. As proposed, this policy statement is moved from the regulations into Handbook guidance. One commenter requested clarification on borrower membership if a loan is sold when the servicing rights are retained by the selling association. Retention of servicing rights, without more, will not cause the loan to be deemed to be owned by the selling association. Thus, such borrowers would not have voting or ownership rights in the selling association.

III. Disposition of Corporate Governance Regulations

The following chart gives an overview of the changes made to OTS's corporate governance regulations.

Original provision	Comment
§ 543.1(b)	Amended to delete references.
§ 543.14	Amended to delete references.
§ 544.1	Amended.
§ 544.1, Section 2	Revised for clarification
§ 544.1, Section 6	Moved portion to § 544.5 for clarification.
§ 544.1, Section 7	Moved portion to § 544.5 for clarification.
§ 544.1, Section 9	Removed need for preliminary approval.
§ 544.2(a)(2)	Eliminated need for management certification.
§ 544.2(b)	Eliminated need for prior notice requirement.
§ 544.2(b)(4)	Removed existing paragraph and added new preapproved amendment raising the cap to 1,000 votes.
§ 544.2(c)	Removed delegation.
§ 544.3	Removed.
§ 544.5(a)	Revised for clarification.
§ 544.5(b) (1) and (2)	Amended for flexibility; changed annual meeting date.
§ 544.5(b) (3) and (4)	Adjournment provisions added.
New § 544.5(b)(5)	Added new paragraph on member quorum and clarified.
§ 544.5(b) (5) through (11).	Redesignated (b) (6) to (12).
§ 544.5(b)(6)	Amended to add privacy rights.
§ 544.5(b)(7)	Amended for clarification.
§ 544.5(b)(9)	Amended.
§ 544.5(b)(10)	Amended to add guidance on vacancies.
§ 544.5(b)(12)	Removed.
§ 544.5(b)(13)	Amended to add guidance on nominee substitution.
§ 544.5(b)(15)	Removed.
§ 544.5(b)(16)	Revised for clarification.
§ 544.5(b)(17)	Amended to delete emergency preparedness.
§ 544.5(c)	Eliminated need for management certification.
§ 544.5(c)(1)(ii)	New paragraph added to explain application process.
§ 544.5(c)(1)(iii)	Eliminated need for prior notice requirement.
§ 544.5(c)(3)	New paragraph to provide alternative corporate governance procedures.
§ 544.5(d)	Reduced filing requirement.
§ 544.8	Removed.
§ 544.9	Removed.
Part 544 Appendix	Conformed to proposed changes and moved to Handbook.
§ 545.131	Moved to Part 544.
§ 552.1	Removed.
§ 552.2	Removed.
§ 552.2–5	Removed.
§ 552.3	Amended.
§ 552.3, Section 2	Revised for clarity.
§ 552.3, Section 8	Removed need for preliminary approval.
§ 552.4(a)(2)	Eliminated need for management certification.
§ 552.4(b)	Eliminated need for prior notice requirement.
§ 552.4(b)(3)	Removed.
§ 552.4(b) (4) through (6).	Redesignated (b) (3) to (5).
New § 552.4(b)(6)	Added new preapproved amendment.
§ 552.4(c)	Amended for clarification.
§ 552.5(b)	Eliminated need for management certification.
§ 552.5(b)(1)(ii)	New paragraph added to explain application process.
§ 552.5(b)(1)(iii)	Eliminated need for prior notice requirement.
§ 552.5(b)(3)	New paragraph to provide alternative corporate governance procedures.
§ 552.5(d)	Added new paragraph for clarification.
§ 552.6(a)	Amended for flexibility; changed annual meeting date.
§ 552.6(b)	Amended shareholder meeting requirements.
§ 552.6(d)	Amended for clarification.
§ 552.6(e)	Amended to add guidance on certain voting requirements.
§ 552.6(f)(1)	Amended for flexibility.
§ 552.6(f)(3)	Removed.
New § 552.6(h)	Added section on informal action.
§ 552.6–1(a)	Amended for flexibility.
§ 552.6–1(b)	Removed necessity for staggered board of directors. Also amended to specify number of directors.
§ 552.6–1(f)	Amended to clarify where "cause" is defined.
§ 552.6–1(k)	Amended to add guidance.
§ 552.6–2(a)	Amended to remove provision requiring president to be a director.
§ 552.8	Removed.
§ 552.11(b)	Amended for clarification.
Part 552 Appendix	Conformed to proposed changes and moved to Handbook.
§ 556.1	Removed.
§ 556.17	Moved to Handbook.
§ 575.9	Amended.
§ 575.9 Section 8	Removed need for preliminary approval.
§ 575.9 (a)(2) and (a)(4).	Amended.

IV. Administrative Procedure Act

This final rule results from the notice of proposed rulemaking OTS published on June 25, 1996. In addition to the regulatory language proposed in that notice, OTS is today deleting several bylaw regulations previously located in Part 544 and Part 552, as described

above. Pursuant to section 553(b) of the Administrative Procedure Act, OTS hereby finds that good cause exists not to publish the deletions for public notice and comment. The bylaw regulations deleted by this final rule are either unnecessary or are deleted as a result of moving the model bylaws into the Handbook. Also, deleting these regulations reduces regulatory burden. Thus, notice and opportunity to comment are unnecessary.

V. Paperwork Reduction Act of 1995

The reporting requirements contained in this final rule have been submitted to and approved by the Office of Management and Budget under OMB Control Nos. 1550–0017 and 1550–0018, in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (1550), Washington, DC 20503, with copies to OTS, 1700 G Street, NW., Washington, DC 20552.

Respondents are not required to respond to the foregoing collection of information unless it displays a currently valid OMB control number.

VI. Executive Order 12866

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

VII. Regulatory Flexibility Act Analysis

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

VIII. Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, Section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. As discussed in this preamble and the preamble of the proposal, this final rule reduces regulatory burden and updates, reorganizes and substantially streamlines corporate governance regulations and policy statements. OTS has determined that the final rule will not result in expenditures by state, local, or tribal governments or by the private sector of $100 million or more. Accordingly, a budgetary impact statement is not required under section 202 of the Unfunded Mandates Act of 1995.

IX. Effective Date

Two statutes affect the effective date of OTS regulations. Section 302 of CDRIA delays the effective date of regulations promulgated by the Federal banking agencies that impose additional reporting, disclosure, or new requirements to the first day of the first calendar quarter following publication of the final rule. CDRIA does not apply to this final rule because it imposes no new burden. It reduces regulatory burden in the corporate governance area and provides additional flexibility to both stock and mutual institutions. The second statute, the Administrative Procedure Act [17] (APA), generally requires a 30-day delay in effective date for final rules. The APA provides that an agency may waive this delay where a regulation relieves regulatory restrictions. Here, because this rule reduces regulatory burden, the OTS believes there is good cause to waive the normal 30-day delay of effective date. This will make the effective date of this final rule the first day of the first calendar quarter following publication of the final rule.

List of Subjects

12 CFR Parts 543 and 544

Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 545

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

12 CFR Part 552

Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 556

Savings associations.

12 CFR Part 575

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

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

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

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

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

§ 543.1 [Amended]

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

§ 543.14 [Amended]

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

PART 544—CHARTER AND BYLAWS

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

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

5. Section 544.1 is amended by revising the introductory text, and sections 1, 2, 6, 7 and 9 and the signature blocks at the end of the charter to read as follows:

§ 544.1 Federal mutual charter.

A Federal mutual savings association shall have a charter in the following form, which may include any of the additional provisions set forth in § 544.2 of this Part, if such provisions are specifically requested. A charter for a Federal mutual savings bank shall substitute the term "savings bank" for "association." The term "trustee" may be substituted for the term "director." Associations adopting this charter with existing borrower members must grandfather those borrower members who were members as of the date of issuance of the new charter by the Office. Such borrowers shall have one vote for the period of time such borrowings are in existence.

Federal Mutual Charter

Section 1. Corporate title. The full corporate title of the Federal savings association is _____.

Section 2. Office. The home office shall be located in _____ [city, state].

* * * * *

Section 6. Members. All holders of the association's savings, demand, or other authorized accounts are members of the association. In the consideration of all

[17] 5 U.S.C. 553(d).

questions requiring action by the members of the association, each holder of an account shall be permitted to cast one vote for each $100, or fraction thereof, of the withdrawal value of the member's account. No member, however, shall cast more than 1000 votes. All accounts shall be nonassessable.

Section 7. Directors. The association 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 persons, as fixed in the association's bylaws, except that the number of directors may be decreased to a number less than five or increased to a number greater than fifteen with the prior approval of the Director of the Office or his or her delegate.

* * * * *

Section 9. Amendment of charter. Adoption of any preapproved charter amendment shall be effective after such preapproved amendment has been approved by the members at a legal meeting. Any other amendment, addition, change, or repeal of this charter must be approved by the Office prior to approval by the members at a legal meeting, and shall be effective upon filing with the Office in accordance with regulatory procedures.

Attest: _____

Secretary of the Association

By: _____

President or Chief Executive Officer of the Association

Attest: _____

Secretary of the Office of Thrift Supervision

By: _____

Director of the Office of Thrift Supervision

Effective Date: _____

6. Section 544.2 is amended by revising paragraph (a)(2), the third sentence of the introductory text to paragraph (b), paragraph (b)(4), and paragraph (c) to read as follows:

§ 544.2 Charter amendments.

(a) * * *

(2) *Form of filing*—(i) *Application requirement.* If the proposed charter amendment would: render more difficult or discourage a merger, proxy contest, the assumption of control by a mutual account holder of the association, or the removal of incumbent management; or involve a significant issue of law or policy; then, the association shall file the proposed amendment and obtain the prior approval of the OTS.

(ii) *Notice requirement.* If the proposed charter amendment does not involve a provision that would be covered by paragraph (a)(2)(i) of this section and is permissible under all applicable laws, rules and regulations, then the association shall submit the proposed amendment to the OTS, at least 30 days prior to the effective date of the proposed charter amendment.

(b) * * * In addition, notwithstanding anything in paragraph (a) of this section to the contrary, the following charter amendments, including the adoption of the Federal mutual charter as set forth in § 544.1 of this part, shall be effective and deemed approved at the time of adoption, if adopted without change and filed with OTS, within 30 days after adoption, provided the association follows the requirements of its charter in adopting such amendments:

* * * * *

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

(c) *Reissuance of charter.* A Federal mutual savings association that has amended its charter may apply to have its charter, including the amendments, reissued by the Office. Such request for reissuance should be filed in accordance with § 516.1(c) of this chapter and, contain signatures required under § 544.1 of this part, together with such supporting documents as may be needed to demonstrate that the amendments were properly adopted.

§ 544.3 [Removed]

7. Section 544.3 is removed.

8. Section 544.5 is amended by:

a. Revising paragraph (a);

b. Removing the words "[trustee]" and "[trustees]" wherever they appear in paragraph (b);

c. Revising the second sentence of paragraph (b)(1);

d. Adding a separate new sentence at the end of each of paragraphs (b)(2), (b)(3) and (b)(4);

e. Removing paragraphs (b)(12) and (b)(15);

f. Redesignating paragraphs (b)(5) through (b)(11) as paragraphs (b)(6) through (b)(12), and paragraphs (b)(16) and (b)(17) as paragraphs (b)(15) and (b)(16), respectively;

g. Adding a new paragraph (b)(5);

h. Revising newly designated paragraphs (b)(6), (b)(7), (b)(8) and the second sentence of paragraph (b)(10)(i);

i. Adding a sentence at the end of newly designated paragraph (b)(10)(ii);

j. Revising newly designated paragraph (b)(11), the last sentence of paragraph (b)(13), and newly designated paragraphs (b)(15), and (b)(16);

k. Redesignating paragraphs (c)(1) introductory text, (c)(1)(i) through (c)(1)(iii), and (c)(1) concluding text as paragraphs (c)(1)(i) introductory text, (c)(1)(i)(A) through (c)(1)(i)(C) and (c)(1)(iii), respectively, adding a new paragraph (c)(1)(ii), revising newly designated paragraph (c)(1)(i) introductory text, revising newly designated paragraph (c)(1)(i)(B), and by revising newly designated paragraph (c)(1)(iii); and

l. Revising paragraph (c)(2), adding a new paragraph (c)(3), and revising the last sentence of paragraph (d).

The additions and revisions read as follows:

§ 544.5 Federal mutual savings association bylaws.

(a) *General.* A Federal mutual savings association shall operate under bylaws that contain provisions that comply with all requirements specified by the OTS in this section and that are not otherwise inconsistent with the provisions of this section, the association's charter, and all other applicable laws, rules, and regulations *provided that,* a bylaw provision inconsistent with the provisions of this section may be adopted with the approval of the OTS. Bylaws may be adopted, amended or repealed by a majority of the votes cast by the members at a legal meeting or a majority of the association's board of directors. The bylaws for a Federal mutual savings bank shall substitute the term "savings bank" for "association". The term "trustee" shall be substituted for the term "director".

(b) * * *

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

(2) * * * For purposes of this section, "voting capital" means FDIC-insured deposits as of the voting record date.

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

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

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

(6) *Voting by proxy.* Procedures shall be established for voting at any annual or special meeting of the members by proxy pursuant to the rules and regulations of the Office, including the placing of such proxies on file with the secretary of the association, for verification, prior to the convening of such meeting. Proxies may be given telephonically or electronically as long as the holder uses a procedure for verifying the identity of the member. All proxies with a term greater than eleven months or solicited at the expense of the association must run to the board of directors as a whole, or to a committee appointed by a majority of such board.

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

(i) A list of depositors in or borrowers from such association;

(ii) Their addresses;

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

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

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

* * * * *

(10) *Officers, employees, and agents.* (i) * * * The officers of the association shall consist of a president, one or more vice presidents, a secretary, and a treasurer or comptroller, each of whom shall be elected annually by the board of directors. * * *

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

* * * * *

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

* * * * *

(13) * * * However, if such provision is made for prior submission of nominations by a member, then the bylaws must provide for a nominating committee, which, except in the case of a nominee substituted as a result of death or other incapacity, must submit nominations to the secretary and have such nominations similarly posted at least 15 days prior to the date of the annual meeting.

* * * * *

(15) *Amendment.* Bylaws may include any provision for their amendment that would be consistent with applicable law, rules, and regulations and adequately addresses its subject and purpose.

(i) Amendments shall be effective:

(A) After approval by a majority vote of the authorized board, or by a majority of the vote cast by the members of the association at a legal meeting; and

(B) After receipt of any applicable regulatory approval.

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

(16) *Miscellaneous.* The bylaws may also address the subject of age limitations for directors or officers as long as they are consistent with applicable Federal law, rules or regulations, and any other subjects necessary or appropriate for effective operation of the association.

(c) *Form of filing*—(1) *Application requirement.* (i) Any bylaw amendment shall be submitted to the OTS if it would:

* * * * *

(B) Involve a significant issue of law or policy, including indemnification, conflicts of interest, and limitations on director or officer liability; or

* * * * *

(ii) Applications submitted under paragraph (c)(1)(i) of this section shall be subject to the applications processing procedures set forth at § 516.2 of this chapter.

(iii) For purposes of this paragraph (c), bylaw provisions that adopt the language of the model bylaws set forth in OTS's Application Processing Handbook, if adopted without change, and filed within 30 days after adoption, are effective upon adoption.

(2) *Filing requirement.* If the proposed bylaw amendment does not involve a provision that would be covered by paragraph (c)(1) or (c)(3) of this section, then the association shall submit the amendment to the OTS at least 30 days prior to the date the bylaw amendment is to be adopted by the association.

(3) *Corporate governance procedures.* A Federal mutual association may elect to follow the corporate governance procedures of the laws of the state where the main office of the institution is located, provided that such procedures may be elected only to the extent not inconsistent with applicable Federal statutes, regulations, and safety and soundness, and such procedures are not of the type described in paragraph (c)(1) of this section. If this election is selected, a Federal mutual association shall designate in its bylaws the provision or provisions from the body of law selected for its corporate governance procedures, and shall file a copy of such bylaws, which are effective upon adoption, within 30 days after adoption. The submission shall indicate, where not obvious, why the bylaw provisions meet the requirements stated in paragraph (c)(1) of this section.

(d) *Effectiveness.* * * * This automatic effective date does not apply if, prior to the expiration of such 30-day period, the OTS notifies the association that such amendment is rejected or that such amendment requires an application to be filed pursuant to paragraph (c)(1) of this section.

§§ 544.8–544.9 [Removed]

9. Sections 544.8 and 544.9 are removed.

Appendix to Part 544 [Removed]

10. The Appendix to Part 544 is removed.

PART 545—OPERATIONS

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

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

§ 545.131 [Redesignated as § 544.8]

12. Section 545.131 is redesignated as § 544.8.

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

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

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

§§ 552.1–552.2 [Removed]

14. Sections 552.1 and 552.2 are removed.

§ 552.2–5 [Removed]

15. Section 552.2–5 is removed.

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

a. revising Section 2;

b. revising, in Section 5, the first and last sentences in the first paragraph, the second paragraph, and the second sentence of the third paragraph;

c. revising Section 7;

d. revising Section 8;

e. revising the signature blocks at the end of the charter.

The revisions read as follows:

§ 552.3 Charters for Federal stock associations.

* * * * *

Federal Stock Charter

* * * * *

Section 2. Office. The home office shall be located in _____ [city, state].

* * * * *

Section 5. Capital stock. The total number of shares of all classes of the capital stock that the association has the authority to issue is _____, all of which shall be common stock of par [or if no par is specified then shares shall have a stated] value of _____ per share. * * * In the case of a stock dividend, that part of the retained earnings of the association that is transferred to common stock or paid-in capital accounts upon the issuance of shares as a stock dividend shall be deemed to be the consideration for their issuance. *

Except for shares issued in the initial organization of the association or in connection with the conversion of the association from the mutual to stock form of capitalization, no shares of capital stock (including shares issuable upon conversion, exchange, or exercise of other securities) shall be issued, directly or indirectly, to officers, directors, or controlling persons of the association other than as part of a general public offering or as qualifying shares to a director, unless the issuance or the plan under which they would be issued has been approved by a majority of the total votes eligible to be cast at a legal meeting.

* * * Each holder of shares of common stock shall be entitled to one vote for each share held by such holder, except as to the cumulation of votes for the election of directors, unless the charter provides that there shall be no such cumulative voting. * * *

* * * * * *

Section 7. Directors. The association shall be under the direction of a board of directors. The authorized number of directors, as stated in the association's bylaws, shall not be fewer than five nor more than fifteen except when a greater or lesser number is approved by the Director of the Office, or his or her delegate.

Section 8. Amendment of charter. Except as provided in Section 5, no amendment, addition, alteration, change or repeal of this charter shall be made, unless such is proposed by the board of directors of the association, approved by the shareholders by a majority of the votes eligible to be cast at a legal meeting, unless a higher vote is otherwise required, and approved or preapproved by the Office.

Attest: _____

Secretary of the Association

By: _____

President or Chief Executive Officer of the Association

Attest: _____

Secretary of the Office of Thrift Supervision

By: _____

Director of the Office of Thrift Supervision

Effective Date: _____

17. Section 552.4 is amended by:

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

b. revising paragraph (a)(2);

c. revising the last sentence of the introductory text of paragraph (b);

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

e. removing paragraph (b)(3);

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

g. redesignating paragraph (b)(5) as paragraph (b)(4) and revising the introductory text;

h. revising the first and last sentences of the first paragraph in Section 5 of newly designated paragraph (b)(4);

i. revising the first sentence of the second paragraph in Section 5 of newly designated paragraph (b)(4);

j. revising the introductory text of the third paragraph in Section 5 of newly designated paragraph (b)(4);

k. amending newly designated paragraph (b)(4) by revising paragraph (ii) of the third paragraph in Section 5;

l. amending newly designated paragraph (b)(4) by revising the last sentence of paragraph A. of the fourth paragraph in Section 5;

m. redesignating paragraph (b)(6) as paragraph (b)(5) and revising it;

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

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

p. revising paragraph (c);

The additions and revisions read as follows:

§ 552.4 Charter amendments.

(a) * * *

(2) *Form of filing*—(i) *Application requirement.* If the proposed charter amendment would render more difficult or discourage a merger, tender offer, or proxy contest, the assumption of control by a holder of a block of the association's stock, the removal of incumbent management, or involve a significant issue of law or policy, the association shall file the proposed amendment and shall obtain the prior approval of the OTS; and

(ii) *Notice requirement.* If the proposed charter amendment does not involve a provision that would be covered by paragraph (a)(2)(i) of this section and such amendment is permissible under all applicable laws, rules or regulations, then the association shall submit the proposed amendments to the OTS, at least 30 days prior to the date the proposed charter amendment is to be mailed for consideration by the association's shareholders.

(b) * * * In addition, the following charter amendments, including the adoption of the Federal stock charter as set forth in § 552.3 of this part, shall be approved at the time of adoption, if adopted without change and filed with OTS within 30 days after adoption, provided the association follows the requirements of its charter in adopting such amendments:

(1) *Title change.* * * *

(2) *Home office.* * * *

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

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

Section 5. The total number of shares of all classes of capital stock that the association has the authority to issue is _____, of which _____ shall be common stock of par [or if no par value is specified the stated] value of _____ per share and of which [list the number of each class of preferred and the par or if no par value is specified the stated value per share of each such class]. * * * In the case of a stock dividend, that part of the retained earnings of the association that is transferred to common stock or paid-in capital accounts upon the issuance of shares

as a stock dividend shall be deemed to be the consideration for their issuance.

Except for shares issued in the initial organization of the association or in connection with the conversion of the association from the mutual to the stock form of capitalization, no shares of capital stock (including shares issuable upon conversion, exchange, or exercise of other securities) shall be issued, directly or indirectly, to officers, directors, or controlling persons of the association other than as part of a general public offering or as qualifying shares to a director, unless their issuance or the plan under which they would be issued has been approved by a majority of the total votes eligible to be cast at a legal meeting. * * *

Nothing contained in this section 5 (or in any supplementary sections hereto) shall entitle the holders of any class of a series of capital stock to vote as a separate class or series or to more than one vote per share, except as to the cumulation of votes for the election of directors, unless the charter otherwise provides that there shall be no such cumulative voting: *Provided*, That this restriction on voting separately by class or series shall not apply:

* * * * *

(ii) To any provision that would require the holders of preferred stock, voting as a class or series, to approve the merger or consolidation of the association with another corporation or the sale, lease, or conveyance (other than by mortgage or pledge) of properties or business in exchange for securities of a corporation other than the association if the preferred stock is exchanged for securities of such other corporation: *Provided*, That no provision may require such approval for transactions undertaken with the assistance or pursuant to the direction of the Office or the Federal Deposit Insurance Corporation;

* * * * *

A. *Common stock.* * * * Each holder of shares of the common stock shall be entitled to one vote for each share held by each holder, except as to the cumulation of votes for the election of directors, unless the charter otherwise provides that there shall be no such cumulative voting.

* * * * *

(5) *Limitations on subsequent issuances.* A Federal stock association may amend its charter to require shareholder approval of the issuance or reservation of common stock or securities convertible into common stock under circumstances which would require shareholder approval under the rules of the New York or American Stock Exchange if the shares were then listed on the New York or American Stock Exchange.

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

* * * * *

(8) *Anti-takeover provisions following mutual to stock conversion.* * * *

(c) *Anti-takeover provisions.* The Office may grant approval to a charter amendment not listed in paragraph (b) of this section regarding the acquisition by any person or persons of its equity securities provided that the association shall file as part of its application for approval an opinion, acceptable to the OTS, of counsel independent from the association that the proposed charter provision would be permitted to be adopted by a corporation chartered by the state in which the principal office of the association is located. Any such provision must be consistent with applicable statutes, regulations, and OTS policies. Further, any such provision that would have the effect of rendering more difficult a change in control of the association and would require for any corporate action (other than the removal of directors) the affirmative vote of a larger percentage of shareholders than is required by this Part, shall not be effective unless adopted by a percentage of shareholder vote at least equal to the highest percentage that would be required to take any action under such provision.

* * * * *

18. Section 552.5 is amended by:

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

b. redesignating paragraphs (b)(1) introductory text, (b)(1)(i), (b)(1)(ii), and (b)(1) concluding text as paragraphs (b)(1)(i) introductory text, (b)(1)(i)(A), (b)(1)(i)(B), and (b)(1)(iii), respectively, adding a new paragraph (b)(1)(ii), and by revising newly designated paragraphs (b)(1)(i) introductory text, (b)(1)(i)(B) and (b)(1)(iii);

c. revising paragraph (b)(2);

d. adding a new paragraph (b)(3); and

e. adding a new paragraph (d).

The additions and revisions read as follows:

§ 552.5 Bylaws.

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

(b) * * * (1) *Application requirement.* (i) Any bylaw amendment shall be submitted to the OTS for approval if it would:

* * * * *

(B) Be inconsistent with §§ 552.6, 552.6–1, 552.6–2, and 552.6–3 of this part, with applicable laws, rules, regulations or the association's charter or involve a significant issue of law or policy, including indemnification, conflicts of interest, and limitations on director or officer liability.

(ii) Applications submitted under paragraph (b)(1)(i) of this section shall be subject to the applications processing procedures set forth at § 516.2 of this chapter.

(iii) Bylaw provisions that adopt the language of the model bylaws set forth in the OTS's Application Processing Handbook, if adopted without change, and filed with OTS within 30 days after adoption, are effective upon adoption.

(2) *Filing requirement.* If the proposed bylaw amendment does not involve a provision that would be covered by paragraph (b)(1) or (b)(3) of this section and is permissible under all applicable laws, rules, or regulations, then the association shall submit the amendment to the OTS at least 30 days prior to the date the bylaw amendment is to be adopted by the association.

(3) *Corporate governance procedures.* A Federal stock association may elect to follow the corporate governance procedures of: The laws of the state where the main office of the association is located; the laws of the state where the association's holding company, if any, is incorporated or chartered; Delaware General Corporation law; or The Model Business Corporation Act, provided that such procedures may be elected to the extent not inconsistent with applicable Federal statutes and regulations and safety and soundness, and such procedures are not of the type described in paragraph (b)(1) of this section. If this election is selected, a Federal stock association shall designate in its bylaws the provision or provisions from the body or bodies of law selected for its corporate governance procedures, and shall file a copy of such bylaws, which are effective upon adoption, within 30 days after adoption. The submission shall indicate, where not obvious, why the bylaw provisions meet the requirements stated in paragraph (b)(1) of this section.

* * * * *

(d) *Effect of subsequent charter or bylaw change.* Notwithstanding any subsequent change to its charter or bylaws, the authority of a Federal stock association to engage in any transaction shall be determined only by the association's charter or bylaws then in effect, unless otherwise provided by Federal law or regulation.

19. Section 552.6 is amended by:

a. revising the first and last sentences in paragraph (a);

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

c. revising paragraph (d)(1);

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

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

f. removing paragraph (f)(3); and

g. adding paragraph (h).

The additions and revisions read as follows:

§ 552.6 Shareholders.

(a) *Shareholder meetings.* An annual meeting of the shareholders of the association for the election of directors and for the transaction of any other business of the association shall be held annually within 150 days after the end of the association's fiscal year. * * * All annual and special meetings of shareholders shall be held at such place as the board of directors may determine in the state in which the association has its principal place of business, or at any other convenient place the board of directors may designate.

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

* * * * *

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

* * * * *

(e) * * * If a quorum is present, the affirmative vote of the majority of the shares represented at the meeting and entitled to vote on the subject matter shall be the act of the stockholders, unless the vote of a greater number of stockholders voting together or voting by classes is required by law or the charter. Directors, however, are elected by a plurality of the votes cast at an election of directors.

(f) *Shareholder voting.*—(1) * * * Proxies may be given telephonically or electronically as long as the holder uses a procedure for verifying the identity of the shareholder. A proxy may designate as holder a corporation, partnership or company as defined in Part 574 of this chapter, or other person. * * *

* * * * *

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

20. Section 552.6–1 is amended by:

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

b. revising paragraph (b);

c. adding a sentence after the first sentence in paragraph (c);

d. revising the second sentence of paragraph (e);

e. revising the heading of paragraph (f) and paragraph (f)(1); and

f. revising paragraph (k).

The additions and revisions read as follows:

§ 552.6–1 Board of directors.

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

(b) *Number and term.* The bylaws shall set forth a specific number of directors, not a range. The number of directors shall be not fewer than five nor more than fifteen, unless a higher or lower number has been authorized by the Director of the Office or his or her delegate. Directors shall be elected for a term of one to three years and until their successors are elected and qualified. If a staggered board is chosen, the directors shall be divided into two or three classes as nearly equal in number as possible and one class shall be elected by ballot annually. In the case of a converting or newly chartered association where all directors shall be elected at the first election of directors, if a staggered board is chosen, the terms shall be staggered in length from one to three years.

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

* * * * *

(e) * * * A director elected to fill a vacancy shall be elected to serve only until the next election of directors by the shareholders. * * *

(f) *Removal or resignation of directors.* (1) At a meeting of shareholders called expressly for that purpose, any director may be removed only for cause, as defined in § 563.39 of this chapter, by a vote of the holders of a majority of the shares then entitled to vote at an election of directors. Associations may provide for procedures regarding resignations in the bylaws.

* * * * *

(k) *Age limitation on directors.* A Federal association may provide a bylaw on age limitation for directors. Bylaws on age limitations must comply with all Federal laws, rules and regulations.

21. Section 552.6–2 is amended by revising the first and fifth sentences of paragraph (a); by removing the third and fourth sentences of paragraph (a), and revising paragraph (c) to read as follows:

§ 552.6–2 Officers.

(a) *Positions.* The officers of the association shall be a president, one or more vice presidents, a secretary, and a treasurer or comptroller, each of whom shall be elected by the board of directors. * * * The offices of the secretary and treasurer or comptroller may be held by the same person and the vice president may also be either the secretary or the treasurer or comptroller. * * *

* * * * *

(c) *Age limitation on officers.* A Federal association may provide a bylaw on age limitation for officers. Bylaws on age limitations must comply with all Federal laws, rules, and regulations.

§ 552.8 [Removed]

22. Section 552.8 is removed.

§ 552.11 [Amended]

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

Appendix to Part 552 [Removed]

24. The Appendix to part 552 is removed.

PART 556—STATEMENTS OF POLICY

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

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

§§ 556.1 and 556.17 [Removed]

26. Sections 556.1 and 556.17 are removed.

PART 575—MUTUAL HOLDING COMPANIES

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

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

28. Section 575.9 is amended by:

a. revising Section 1 of the Charter in paragraph (a)(1);

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

c. revising Section 6 of the Charter in paragraph (a)(1);

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

e. revising the signature blocks at the end of the Charter in paragraph (a)(1);

f. revising paragraph (a)(2);

g. revising the last sentence of paragraph (a)(4); and

h. revising the last sentence of paragraph (a)(5).

The revisions read as follows:

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

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

Charter

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

* * * * *

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 decreased to a number less than five or increased to a number greater than fifteen with the prior approval of the Director of the Office or his or her delegate.

* * * * *

Section 8. Amendment. Adoption of any preapproved charter amendment shall be effective after such preapproved amendment has been approved by the members at a legal meeting. Any other amendment, addition, change, or repeal of this charter must be approved by the Office prior to approval by the members at a legal meeting and shall be effective upon filing with the Office in accordance with regulatory procedures.

Attest: _____

Secretary of the Association

By: _____

President or Chief Executive Officer of the Association

Attest: _____

Secretary of the Office of Thrift Supervision

By: _____

Director of the Office of Thrift Supervision

Effective Date: _____

(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) of this chapter shall not apply to mutual holding companies, and mutual holding companies changing their corporate title pursuant to § 544.2(b)(2) of this chapter shall be required to comply with § 575.9(a)(3) of this part as well as § 543.1(b) of this chapter.

* * * * *

(4) * * * The model bylaws for Federal mutual savings associations set forth in the OTS Applications Processing Handbook 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.

(5) * * * Mutual holding companies shall also be subject to the provisions of § 544.8 of this chapter.

* * * * *

Dated: November 20, 1996.

By the Office of Thrift Supervision.

Nicolas P. Retsinas,

Director.

[FR Doc. 96–30262 Filed 12–2–96; 8:45 am]

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