Office of Thrift Supervision **March 29, 1998**
Department of the Treasury

Transmittal
TR–193

Federal Register, Vol.63, No.59, pp. 14844-14848 **Number: TR–193**

In the attached notice of proposed rulemaking, the Office of Thrift Supervision (OTS) has proposed modifying the types of situations in which it must be notified prior to the appointment of a director or the employment of a senior executive officer at thrift institutions.

While the change was required to conform to changes in the law, OTS saw the revisions as an opportunity to rewrite its regulation in plain English and eliminate unnecessary regulatory burden.

By law, certain savings associations and savings and loan holding companies must notify OTS before adding any individual to the board of directors or hiring any person as a senior executive officer. OTS then has 30 days in which to issue a notice disapproving the selection. OTS may give itself an additional 60 days in which to issue a notice of disapproval. If OTS does not disapprove within the time frame, the appointment or employment automatically may proceed.

The main change would eliminate two situations in which an association now must file a notice: (1) when the savings association has been chartered less than two years, and (2) when the savings association or savings and loan holding company has undergone a change of control within the past two years.

Under the proposed rule, a notice is required under three situations: (1) when a savings association or its holding company is in a troubled condition, (2) when a savings association fails to meet minimum capital requirements, and (3) when OTS reviews a capital restoration plan and determines that prior notice is required. The same provisions are in the current rule for situations 1 and 2. Situation 3 is a new provision in the proposed rule.

Those changes were mandated by the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA). In addition to changes required by law, OTS is proposing minor changes, such as revising the definitions of "director" and "senior executive officer." The proposed rule also notes that filings are required when an existing senior executive officer changes responsibilities.

The proposed rule would simplify regulations by eliminating specific notice content requirements and instead simply require information called for in current interagency forms and the Change in Bank Control Act. OTS could waive the prior notice requirement if delay due to filing the notice would pose a threat to the safety or soundness of the institution, would not be in the public interest, or if other extraordinary circumstances exist.

OTS coordinated with other federal banking agencies in drafting the proposal to conform generally to rules adopted by the Comptroller of the Currency and the Federal Reserve Board and proposed by the Federal Deposit Insurance Corporation.

The notice of proposed rulemaking was published in the March 27, 1998, edition of the Federal Register, Vol. 63, No. 59, pp. 14844-14847. Written comments must be received on or before May 26, 1998, and should be addressed to: Manager, Dissemination Branch, Records Management and Information Policy Division, Office of Thrift Supervision, 1700 G Street, N.W., Washington, DC 20552. Comments may be mailed or hand-delivered, faxed to 202/906-7755 or e-mailed to: public.info@ots.treas.gov. All commenters should include their name and telephone number.

For further information contact:
Frances C. Augello 202/906-6151
Senior Counsel, Business Transactions Division, Chief Counsel's Office

Scott Ciardi 202/906-6960
Financial Analyst

Mary Jo Johnson 202/906-5739
Project Manager, Supervision Policy

Attachments

— Ellen Seidman
Director
Office of Thrift Supervision

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 563f and 574

[No. 98–28]

RIN 1550–AB10

Agency Disapproval of Directors and Senior Executive Officers of Savings Associations and Savings and Loan Holding Companies

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Thrift Supervision (OTS) proposes to amend its regulations implementing section 32 of the Federal Deposit Insurance Act (FDIA). This statute requires certain savings associations and savings and loan holding companies to provide prior notice of the appointment or employment of directors and senior executive officers. The proposed changes eliminate unnecessary regulatory burden, implement changes enacted in the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA), and more closely conform OTS regulations to those of the other banking agencies as required under section 303 of the Community Development and Regulatory Improvement Act of 1994 (CDRIA).

DATES: Comments must be received on or before May 26, 1998.

ADDRESSES: Send comments to Manager, Dissemination Branch, Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, D.C. 20552, Attention Docket No. 98–28. These submissions may be hand-delivered to 1700 G Street, NW., from 9:00 a.m. to 5:00 p.m. on business days; sent by facsimile transmission to FAX number (202) 906–7755; or sent by e-mail: public.info@ots.treas.gov. Those commenting by e-mail should include their name and telephone number. Comments will be available for inspection at 1700 G Street, NW., from 9:00 a.m. until 4:00 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Frances C. Augello, Senior Counsel, Business Transactions Division, Chief Counsel's Office (202) 906–6151; Scott Ciardi, Financial Analyst, Corporate Activities Division, (202) 906–6960; or Mary Jo Johnson, Project Manager, Supervision Policy (202) 906–5739, Office of Thrift Supervision, 1700 G Street, NW., Washington D.C. 20552.

SUPPLEMENTARY INFORMATION:

I. Background

Section 32 of FDIA [1] requires certain savings associations and savings and loan holding companies to notify the OTS at least 30 days before adding any individual to the board of directors or employing an individual as a senior executive officer. Section 2209 of the EGRPRA [2] amended section 32 of the FDIA by changing the circumstances under which a notice must be filed. Section 2209 also provided that the OTS may have as long as 90 days to issue a notice of disapproval of the proposed addition of a director or employment of a senior executive officer.

The OTS proposes to amend its regulations implementing section 32 of FDIA to reflect the EGRPRA amendments and to eliminate unnecessary burden. In accordance with section 303 of the CDRIA,[3] the OTS has coordinated with other federal banking agencies to streamline and clarify the regulations implementing section 32 of FDIA. The proposed OTS rule conforms generally to regulations that have been promulgated by the Office of the Comptroller of the Currency (OCC) and the Board of Governors of the Federal Reserve System (FRB), and proposed by the Federal Deposit Insurance Corporation (FDIC).[4]

The proposed rule is discussed in detail below. This proposal restates the provisions of the existing rule at § 574.9 with the revisions noted in the discussion. In addition, the OTS has rewritten the rule using plain language drafting techniques promoted by the Vice President's National Performance Review Initiative and new guidance in the **Federal Register** Document Drafting Handbook (January 1997 edition). The primary goal of plain language drafting is to make regulations easier to understand. Plain language drafting emphasizes the use of informative headings (often written as a question), non-technical language (including the use of "you") and sentences in the active voice.

The use of the plain language format has not altered the substance of the regulation. The OTS welcomes comments on the plain language format, and suggestions on how to improve it. The OTS is committed to converting more of its regulations to the plain language format to reduce regulatory burden.

II. Proposed Amendments

Proposed Section 574.10—What does this subpart do?

Proposed § 574.10 states that the new regulations implement section 32 of the FDIA.

Proposed Section 574.11—What definitions apply to this subpart?

Proposed § 574.11 sets forth the definitions that apply to the notice requirement under section 32. The proposed provision retains the substance of the existing definitions, except as noted below.

The proposed regulation revises the definition of "director" to clarify the circumstances under which an advisory director would not be considered a director. Those circumstances would be if the individual (1) is not elected by the shareholders; (2) is not authorized to vote on any matters before the board, *or any committee* of the board; (3) provides

[1] 12 U.S.C. 1831i.

[2] Pub.L. 104–208, 110 Stat. 3009 (Sept. 30, 1996).

[3] Pub. L. 103–325, 108 Stat. 2215 (Sept. 23, 1994).

[4] (OCC) 61 FR 60341 (November 27, 1996); (FRB) 62 FR 9290 (February 28, 1997); (FDIC) 61 FR 52809 (October 9, 1997).

only general policy advice to the board *or any committee* of the board; and (4) has not been identified by the OTS in writing as an individual who performs the functions of a director, or who exercises a significant influence over, or participates in, major policymaking decisions of the board.

The current definition of "senior executive officer" would also be clarified. The proposed rule states explicitly that the president of a savings association or savings and loan holding company is a senior executive officer.

Finally, the existing definitions of "complete notice" and "complete notice date" are eliminated as unnecessary.

Proposed Section 574.12—Who must give prior notice?

Proposed § 574.12(a) sets forth the circumstances under which notice is required, and implements certain changes made in EGRPRA.

Prior to EGRPRA, section 32 of the FDIA required a savings association or savings and loan holding company to file prior notice where: (1) the savings association was chartered less than two years, (2) the savings association or savings and loan holding company had undergone a change of control within the preceding two years, or (3) the savings association or savings and loan holding company was not in compliance with minimum capital requirements or was otherwise in a troubled condition.

Section 2209 of the EGRPRA eliminated the notice requirement for savings associations chartered for less than two years, and for savings associations and savings and loan holding companies that had undergone a change in control within the previous two years. Section 2209 also added a new provision requiring prior notice where an agency determines, in connection with its review of a capital restoration plan required under section 38 of the FDIA or otherwise, that prior notice is appropriate.

The proposed regulation makes those changes and also makes minor clarifications to existing filing requirements. For example, the proposed regulation clarifies that filings are required when an existing senior executive officer changes responsibilities.

Proposed § 574.12(b) permits an individual seeking election to a board of directors to file a notice, if the individual has not been nominated by management. The current regulation includes a similar provision. See existing § 574.9(d)(l)(ii).

The current regulation includes a special rule for multi-tiered savings and loan holding companies. The special rule limits the circumstances under which filings are required with respect to changes in directors or senior executive officers of savings and loan holding companies. *See* existing § 574.9(d)(5). The OTS originally promulgated this special rule to reduce the number of unnecessary filings by multi-tiered savings and loan holding companies within two years of a change of control. Because EGRPRA eliminated the filing requirement relating to changes of control, the proposed regulation eliminates the special rule for multi-tiered savings and loan holding companies.

The proposed regulations require filings only from entities described in proposed § 574.12. For example, a savings and loan holding company is required to file if it is in troubled condition. A savings association is required to file if it is undercapitalized or in troubled condition or if OTS requires, as part of prompt corrective action, the filing of a notice.

Proposed Section 574.13—What procedures govern the filing of my notice?

The proposed regulation at § 574.13 sets forth the procedures governing the filing of notices. This proposed section retains the existing requirement that the notice must be filed in accordance with the procedures in 12 CFR 516.1.

Proposed Section 574.14—What information must I include in my notice?

The proposed regulation eliminates specific notice content requirements currently set forth at existing § 574.9(d)(2)(i)-(iii). Instead, the proposed rule requires that the notice contain the information required under paragraph 6(A) of the Change in Bank Control Act,[5] and information prescribed in appropriate interagency forms. Currently, these forms include the Interagency Notice of Change in Director or Senior Executive Officer,[6] and the Interagency Biographical and Financial Report (Notice Forms).[7]

In addition, the proposed regulation retains the current requirement that a proposed director or senior executive officer provide legible fingerprints. Fingerprints may be omitted, if the individual previously submitted fingerprints as part of a notice filed with the OTS under section 32 of the FDIA within the previous three years.

Finally, the proposed regulation requires the submission of such other information required by the OTS. The proposed regulation further states explicitly that the OTS may require or accept other information in lieu of the specific requirements of § 574.14.

The OTS proposes to eliminate the current regulatory provision requiring certain certifications. *See* existing § 574.9(d)(l)(ii). The cited OTS Notice Forms already require similar certifications. Moreover, the signature requirement on the Notice Forms adequately ensures the accuracy of the information provided in the form.[8]

Proposed Section 574.15—What procedures govern OTS review of my notice for completeness?

Proposed § 574.15 sets forth the procedures governing OTS review of the notice, and consolidates several provisions in the current regulations.[9] The revised regulation provides that the OTS will review the notice to determine if it is complete. If the notice is complete, the OTS will notify the filer in writing of the date that the OTS received the complete notice. If the OTS determines that the notice is incomplete, the OTS will notify the filer in writing why it is incomplete, and will request the filer to submit additional information within a specified time period.

If the OTS requests additional information, the filer must provide the information or request the OTS to suspend processing of the notice within the time period prescribed by the OTS. If the filer does not act within the specified period, the OTS may treat the notice as withdrawn or review the notice based on the provided information. In its review, the OTS may draw reasonable inferences from the filer's failure to provide the requested information.

The proposed regulation eliminates the current provision permitting the OTS to suspend processing for up to 60 days upon the request of the filer. *See* existing § 574.9(d)(4)(i). This provision is unnecessary in light of the EGRPRA amendments permitting OTS to extend the 30-day notice period for an additional 60 days. In any event, OTS may suspend processing at the filer's request for a specified period of time.

[5] 12 U.S.C. 1817(j)(6)(A).

[6] OTS Form 1624.

[7] OTS Form 1623.

[8] *See also* 12 CFR 563.180(b) which provides that no person filing or seeking approval of any application shall knowingly make any written or oral statement to the OTS that is false or misleading with respect to any material fact or omits to state any material fact concerning any matter within the jurisdiction of the OTS.

[9] *See* 12 CFR 574.9(d)(1), (d)(3), and (d)(4).

In addition, the proposal streamlines the regulation by eliminating the current provision which permits the OTS to suspend processing for 60 days if the OTS does not receive a report requested from another agency. *See* existing § 574.9(d)(4)(ii). This provision is no longer necessary because the statute now permits the agency to extend the review period up to an additional 60 days and the OTS may always request the filer to suspend the time periods voluntarily.

Proposed Section 574.16—What standards and procedures will govern OTS review of the substance of my notice?

Proposed § 574.16 sets forth the review standard for notices submitted under section 32 of the FDIA. The proposed review standard is unchanged, except that it eliminates the reference to the best interests of the savings and loan holding company. This change conforms the rule more closely to section 32 of FDIA. *See* existing § 574.9(d)(6).

Proposed Section 574.17—When may a proposed director or senior executive officer begin service?

Proposed § 574.17 sets forth the circumstances under which a proposed director or senior executive officer may begin service. The proposed regulation incorporates the current regulations at §§ 574.9(b)(2), (d)(7) and (d)(9). Consistent with the EGRPRA amendments, the OTS may extend the 30-day review period for an additional period not to exceed 60 days. The OTS expects to continue to process most section 32 notices within 30 days. In special circumstances, such as where the administrative record is incomplete, however, extensions may be necessary.

Proposed Section 574.18—When will the OTS waive the prior notice requirement?

Proposed § 574.18(a) addresses waiver of the prior notice requirement. The current regulation permits the OTS to waive the notice if the OTS "finds that waiver would be in the best interest of the savings association or the savings and loan holding company, would be in the public interest, or that other extraordinary circumstances justify waiving the prior notice requirement of this provision." *See* existing § 574.9(d)(8).

The proposed regulation revises the standard. The OTS may waive the prior notice requirement if it finds that delay in the individual's assumption of the position would threaten the safety or soundness of the savings association, or would not be in the public interest, or other extraordinary circumstances exist. The proposed regulation conforms more closely to section 32 of the FDIA, which states that the OTS may prescribe by regulation conditions under which prior notice may be waived in the event of extraordinary circumstances.

The proposed regulation includes the current requirement that if a waiver is granted, the notice must be filed within the time period specified in the waiver.

Proposed § 574.18(b) waives the prior notice requirement with respect to certain individuals elected to the board of directors. An individual will qualify for this waiver if he or she was not nominated by management and provides the required notice within seven calendar days after being elected. This provision is based on existing § 574.9(d)(8)(ii).

Finally, the proposed regulation, in conformity with the statute, provides that a waiver shall not affect the authority of the OTS to disapprove a notice within 30 days after a waiver is granted. For the individual who is serving pursuant to proposed § 574.18(b), the 30 day period would commence with the individual's election. The OTS notes that the waiver section of the statute does not specifically provide for any extension of this 30 day period.[10]

III. Disposition of Existing Regulations

The following chart gives an overview of the changes made to Part 574.

Revised provision	Former provision	Comments
§ 574.10		Added.
574.11	574.9(a)	Modified.
574.12	§ 574.9(b), (c)(3) and (d)(1)(ii)	Significantly modified.
	574.9(c)(1) and (2)	Deleted.
§ 574.13	§ 574.9(d)(1)	Modified.
§ 574.14	§ 574.9(d)(1) and (2)	Modified and added.
§ 574.15	§ 574.9(d)(3) and (4)	Significantly modified.
	§ 574.9(d)(5)	Deleted.
§ 574.16	§ 574.9(d)(6)	Modified.
§ 574.17	§ 574.9(b)(2), (d)(7) and (d)(9)	Significantly modified.
§ 574.18	§ 574.9(d)(8)	Modified.

IV. Executive Order 12866

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

V. Regulatory Flexibility Act

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

VI. Paperwork Reduction Act

There are no new information collection requirements contained in this proposal. The information collection requirements contained in this proposal are the same as those required in the form Interagency Notice of Change in Director and Senior Executive Officer,[11] which has been previously submitted to and approved by the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under OMB Control No. 1550–0047.

VII. Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in expenditures 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

[10] Compare 12 U.S.C. 1831i(a).

[11] OTS Form 1624.

an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OTS has determined that the proposed rule will not result in expenditures by state, local, and tribal governments, or by the private sector, of $100 million or more. Accordingly, this rulemaking is not subject to section 202 of the Unfunded Mandates Act.

List of Subjects

12 CFR Part 563f

Antitrust, Holding companies, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 574

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

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

PART 574—ACQUISITION OF CONTROL OF SAVINGS ASSOCIATIONS

1. The authority citation for part 574 continues to read as follows:

Authority: 12 U.S.C. 1467a, 1817, 1831i.

2. Existing §§ 574.1 through 574.8 are designated as subpart A, and the subpart heading is added to read as follows:

Subpart A—Acquisition of Control

* * * * *

§ 574.9 [Removed and Reserved]

3. Section 574.9 is removed and reserved.

4. Subpart B, consisting of §§ 574.10 through 574.18, is added to read as follows:

Subpart B—Notice of Change of Director or Senior Executive Officer

Sec.
574.10 What does this subpart do?
574.11 What definitions apply to this subpart?
574.12 Who must give prior notice?
574.13 What procedures govern the filing of my notice?
574.14 What information must I include in my notice?
574.15 What procedures govern OTS review of my notice for completeness?
574.16 What standards and procedures will govern OTS review of the substance of my notice?
574.17 When may a proposed director or senior executive officer begin service?
574.18 When will the OTS waive the prior notice requirement?

Subpart B—Notice of Change of Director or Senior Executive Officer

§ 574.10 What does this subpart do?

This subpart implements 12 U.S.C. 1831i, which requires certain savings associations and savings and loan holding companies to notify the OTS before appointing or employing directors and senior executive officers.

§ 574.11 What definitions apply to this subpart?

The following definitions apply to this subpart:

Director means an individual who serves on the board of directors of a savings association or savings and loan holding company. This term does not include an advisory director who:

(1) Is not elected by the shareholders;

(2) Is not authorized to vote on any matters before the board of directors or any committee of the board of directors;

(3) Provides only general policy advice to the board of directors or any committee of the board of directors; and

(4) Has not been identified by the OTS in writing as an individual who performs the functions of a director, or who exercises significant influence over, or participates in, major policymaking decisions of the board of directors.

Senior executive officer means an individual who holds the title or performs the function of one or more of the following positions (without regard to title, salary, or compensation): president, chief executive officer, chief operating officer, chief financial officer, chief lending officer, or chief investment officer. *Senior executive officer* also includes any other person identified by the OTS in writing as an individual who exercises significant influence over, or participates in, major policymaking decisions, whether or not hired as an employee.

Troubled condition means:

(1) A savings association that has a composite rating of 4 or 5, as defined in § 516.3(c) of this chapter;

(2) A savings and loan holding company that has an unsatisfactory rating under the OTS's holding company rating system, or that is informed in writing by the OTS that it has an adverse effect on its subsidiary savings association;

(3) A savings association or savings and loan holding company that is subject to a capital directive, a cease-and-desist order, a consent order, a formal written agreement, or a prompt corrective action directive relating to the safety and soundness or financial viability of the savings association, unless otherwise informed in writing by the OTS; or

(4) A savings association or savings and loan holding company that is informed in writing by the OTS that it is in troubled condition based on information available to the OTS.

§ 574.12 Who must give prior notice?

(a) *Savings association or savings and loan holding company.* Except as provided under § 574.18, you must notify the OTS at least 30 days before adding or replacing any member of your board of directors, employing any person as a senior executive officer, or changing the responsibilities of any senior executive officer so that the person would assume a different senior executive position if:

(1) You are a savings association and at least one of the following circumstances apply:

(i) You do not comply with all minimum capital requirements under part 567 of this chapter;

(ii) You are in troubled condition; or

(iii) The OTS has notified you, in connection with its review of a capital restoration plan required under section 38 of the Federal Deposit Insurance Act or part 565 of this chapter or otherwise, that a notice is required under this subpart; or

(2) You are a savings and loan holding company and you are in troubled condition.

(b) *Notice by individual.* If you are an individual seeking election to the board of directors of a savings association or savings and loan holding company, and have not been nominated by management, you may provide the prior notice required under paragraph (a) of this section or you may follow the process under § 574.18.

§ 574.13 What procedures govern the filing of my notice?

The procedures found in § 516.1 of this chapter govern the filing of your notice under § 574.12.

§ 574.14 What information must I include in my notice?

(a) *Content requirements.* Your notice must include:

(1) The information required under 12 U.S.C. 1817(j)(6)(A), and the information prescribed in the Interagency Notice of Change in Director or Senior Executive Officer and the Interagency Biographical and Financial Report;

(2) Legible fingerprints of the proposed director or senior executive officer. You are not required to file fingerprints if, within three years prior to the date of submission of the notice, the proposed director or senior executive officer provided legible

fingerprints as part of a notice filed with the OTS under 12 U.S.C. 1831i; and

(3) Such other information required by the OTS.

(b) *Modification of content requirements.* The OTS may require or accept other information in place of the content requirements in paragraph (a) of this section.

§ 574.15 What procedures govern OTS review of my notice for completeness?

The OTS will first review your notice to determine whether it is complete.

(a) If your notice is complete, the OTS will notify you in writing of the date that the OTS received the complete notice.

(b) If your notice is not complete, the OTS will notify you in writing what additional information you need to submit, why we need the information, and when you must submit it. You must, within the specified time period, provide additional information or request that the OTS suspend processing of the notice. If you fail to act within the specified time period, the OTS may treat the notice as withdrawn or may review the application based on the information provided.

§ 574.16 What standards and procedures will govern OTS review of the substance of my notice?

The OTS will disapprove a notice if the OTS finds that the competence, experience, character, or integrity of the proposed director or senior executive officer indicates that it would not be in the best interests of the depositors of the savings association or of the public to permit the individual to be employed by, or associated with, the savings association or savings and loan holding company. If the OTS disapproves a notice, it will issue a written notice that explains why the OTS disapproved the notice. The OTS will send the notice to the savings association or savings and loan holding company and the individual.

§ 574.17 When may a proposed director or senior executive officer begin service?

(a) A proposed director or senior executive officer may begin service 30 days after the date the OTS receives all required information, unless:

(1) The OTS notifies you that it has disapproved the notice; or

(2) The OTS extends the 30-day period for an additional period not to exceed 60 days. If the OTS extends the 30-day period, it will notify you in writing that the period has been extended, and will state the reason for the extension. The proposed director or senior executive officer may begin service upon expiration of the extended period, unless the OTS notifies you that it has disapproved the notice during the extended period.

(b) Notwithstanding paragraph (a) of this section, a proposed director or senior executive officer may begin service after OTS notifies you, in writing, of its intention not to disapprove the notice.

§ 574.18 When will the OTS waive the prior notice requirement?

(a) *Waiver request.* (1) An individual may serve as a director or senior executive officer before filing a notice under this subpart if OTS issues a written finding that:

(i) Delay would threaten the safety or soundness of the savings association;

(ii) Delay would not be in the public interest; or

(iii) Other extraordinary circumstances exist that justify waiver of prior notice.

(2) If the OTS grants a waiver, you must file a notice under this subpart within the time period specified by the OTS.

(b) *Automatic waiver.* An individual may serve as a director before filing a notice under this subpart, if the individual was not nominated by management and the individual submits a notice under this subpart within seven days after election as a director.

(c) *Subsequent OTS action.* The OTS may disapprove a notice within 30 days after OTS issues a waiver under paragraph (a) of this section or within 30 days after the election of an individual who has filed a notice and is serving pursuant to an automatic waiver under paragraph (b) of this section.

5. Existing § 574.100 is designated as subpart C, and the subpart heading is added to read as follows:

Subpart C—Rebuttal of Control Agreement

* * * * *

PART 563f—MANAGEMENT OFFICIAL INTERLOCKS

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

Authority: 12 U.S.C. 3201–3208.

7. Section 563f.2 is amended by revising paragraph (l)(1)(iii) to read as follows:

§ 563f.2 Definitions.

* * * * *

(l) Management official. (1) * * *

(iii) A senior executive officer as that term is defined in § 574.11 of this chapter;

* * * * *

8. Section 563f.5 is amended by revising paragraphs (b)(2)(i) and (b)(2)(ii) to read as follows:

§ 563f.5 Regulatory Standards exemption.

* * * * *

(b) * * *

(2) * * *

(i) That official is approved by the OTS to serve as a director or senior executive officer of that institution pursuant to § 547.17 of this chapter; and

(ii) The institution had operated for less than two years, was not in compliance with minimum capital requirements, or otherwise was in a "troubled condition" as defined in § 574.11 of this chapter at the time the service under that section was approved.

* * * * *

9. Section 563f.6 is amended by revising paragraphs (b)(1) and (b)(2) to read as follows:

§ 563f.6 Management Consignment exemption.

* * * * *

(b) * * *

(1) A proposed management official is capable of strengthening the management of a depository institution described in paragraph (a)(3) of this section if that official is approved by the OTS to serve as a director or senior executive officer of that institution pursuant to § 574.17 of this chapter and the institution had operated for less than two years at the time the service under § 574.17 of this chapter was approved; and

(2) A proposed management official is capable of strengthening the management of a depository institution described in paragraph (a)(4) of this section if that official is approved by the OTS to serve as a director or senior executive officer of that institution pursuant to § 574.17 of this chapter and the institution was not in compliance with minimum capital requirements or otherwise was in a "troubled condition" as defined under § 574.11 of this chapter at the time service under § 574.11 of this chapter was approved.

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Dated: March 18, 1998.

By the Office of Thrift Supervision.

Ellen Seidman,

Director.

[FR Doc. 98–7883 Filed 3–26–98; 8:45 am]

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