

procuring any list of stockholders for purposes of selling or offering for sale such list.

(d) Notwithstanding any provision of this section or common law, no stockholder or group of stockholders shall have the right to obtain, inspect or copy any portion of any books or records of a Federal stock association containing:

- (1) A list of depositors in or borrowers from such association;
- (2) Their addresses;
- (3) Individual deposit or loan balances or records; or
- (4) Any data from which such information could be reasonably constructed.

[54 FR 49523, Nov. 30, 1989, as amended at 61 FR 64020, Dec. 3, 1996]

§ 552.12 [Reserved]

§ 552.13 Combinations involving Federal stock associations.

(a) *Scope and authority.* Federal stock associations may enter into combinations only in accordance with the provisions of this section, sections 5(d) and 18(c) of the Federal Deposit Insurance Act, sections 5(d)(3)(A) and 10(s) of the Home Owners' Loan Act, and § 563.22 of this chapter.

(b) *Definitions.* The following definitions apply to §§ 552.13 and 552.14 of this part:

(1) *Combination.* A merger or consolidation with another depository institution, or an acquisition of all or substantially all of the assets or assumption of all or substantially all of the liabilities of a depository institution by another depository institution. *Combine* means to be a constituent institution in a combination.

(2) *Consolidation.* Fusion of two or more depository institutions into a newly-created depository institution.

(3) *Constituent institution.* Resulting, disappearing, acquiring, or transferring depository institution in a combination.

(4) *Depository institution* means any commercial bank (including a private bank), a savings bank, a trust company, a savings and loan association, a building and loan association, a homestead association, a cooperative bank, an industrial bank or a credit union,

chartered in the United States and having its principal office located in the United States.

(5) *Disappearing institution.* A depository institution whose corporate existence does not continue after a combination.

(6) *Merger.* Uniting two or more depository institutions by the transfer of all property rights and franchises to the resulting depository institution, which retains its corporate identity.

(7) *Mutual savings association.* Any savings association organized in a form not requiring non-withdrawable stock under Federal or State law.

(8) *Resulting institution.* The depository institution whose corporate existence continues after a combination.

(9) *Savings association* has the same meaning as defined in § 561.43 of this chapter.

(10) *State.* Includes the District of Columbia, Commonwealth of Puerto Rico, and States, territories, and possessions of the United States.

(11) *Stock association.* Any savings association organized in a form requiring non-withdrawable stock.

(c) *Forms of combination.* A Federal stock association may combine with any depository institution, provided that:

(1) The combination is in compliance with, and receives all approvals required under, any applicable statutes and regulations;

(2) Any resulting Federal savings association meets the requirements for Federal Home Loan Bank membership and insurance of accounts;

(3) In the case of a combination with a bank that is a member of the Bank Insurance Fund, any resulting Federal savings association conforms to the requirements of sections 5(c) and 10(m) of the Home Owners' Loan Act under the standards set forth in section 5(c)(5) of the Home Owners' Loan Act, and in the case of a combination with any other depository institution, any resulting Federal savings association conforms within the time prescribed by the OTS to the requirements of section 5(c) of the Home Owners' Loan Act; and

(4) If any constituent savings association is a mutual savings association, the resulting institution shall be mutually held, unless:

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(i) The transaction involves a supervisory merger;

(ii) The transaction is approved under part 563b of this chapter;

(iii) The transaction involves an interim Federal stock association or an interim State stock savings association; or

(iv) The transaction involves a transfer in the context of a mutual holding company reorganization under section 10(o) of the Home Owners' Loan Act.

(d) *Combinations.* Prior written notification to, notice to, or prior written approval of, the Office pursuant to § 563.22 of this chapter is required for every combination. In the case of applications and notices pursuant to § 563.22 (a) or (c), the Office shall apply the criteria set out in § 563.22 of this chapter and shall impose any conditions it deems necessary or appropriate to ensure compliance with those criteria and the requirements of this chapter.

(e) *Approval of the board of directors.* Before filing a notice or application for any combination involving a Federal stock association, the combination shall be approved:

(1) By a two-thirds vote of the entire board of each constituent Federal savings association; and

(2) As required by other applicable Federal or state law, for other constituent institutions.

(f) *Combination agreement.* All terms, conditions, agreements or understandings, or other provisions with respect to a combination involving a Federal savings association shall be set forth fully in a written combination agreement. The combination agreement shall state:

(1) That the combination shall not be effective unless and until:

(i) The combination receives any necessary approval from the Office pursuant to § 563.22 (a) or (c);

(ii) In the case of a transaction requiring a notification pursuant to § 563.22(b), notification has been provided to the OTS; or

(iii) In the case of a transaction requiring a notice pursuant to § 563.22(c), the notice has been filed, and the appropriate period of time has passed or the OTS has advised the parties that it will not disapprove the transaction;

(2) Which constituent institution is to be the resulting institution;

(3) The name of the resulting institution;

(4) The location of the home office and any other offices of the resulting institution;

(5) The terms and conditions of the combination and the method of effectuation;

(6) Any charter amendments, or the new charter in the combination;

(7) The basis upon which the savings accounts of the resulting institution shall be issued;

(8) If a Federal association is the resulting institution, the number, names, residence addresses, and terms of directors;

(9) The effect upon and assumption of any liquidation account of a disappearing institution by the resulting institution; and

(10) Such other provisions, agreements, or understandings as relate to the combination.

(g) [Reserved]

(h) *Approval by stockholders—(1) General rule.* Except as otherwise provided in this section, an affirmative vote of two-thirds of the outstanding voting stock of any constituent Federal savings association shall be required for approval of the combination agreement. If any class of shares is entitled to vote as a class pursuant to § 552.4 of this part, an affirmative vote of a majority of the shares of each voting class and two-thirds of the total voting shares shall be required. The required vote shall be taken at a meeting of the savings association.

(2) *General exception.* Stockholders of the resulting Federal stock association need not authorize a combination agreement if:

(i) It does not involve an interim Federal savings association or an interim state savings association;

(ii) The association's charter is not changed;

(iii) Each share of stock outstanding immediately prior to the effective date of the combination is to be an identical outstanding share or a treasury share of the resulting Federal stock association after such effective date; and

(iv) Either:

(A) No shares of voting stock of the resulting Federal stock association and no securities convertible into such stock are to be issued or delivered under the plan of combination, or

(B) The authorized unissued shares or the treasury shares of voting stock of the resulting Federal stock association to be issued or delivered under the plan of combination, plus those initially issuable upon conversion of any securities to be issued or delivered under such plan, do not exceed 15% of the total shares of voting stock of such association outstanding immediately prior to the effective date of the combination.

(3) *Exceptions for certain combinations involving an interim association.* Stockholders of a Federal stock association need not authorize by a two-thirds affirmative vote combinations involving an interim Federal savings association or interim state savings association when the resulting Federal stock association is acquired pursuant to § 574.7(a)(2) of this chapter. In those cases, an affirmative vote of 50 percent of the shares of the outstanding voting stock of the Federal stock association plus one affirmative vote shall be required. If any class of shares is entitled to vote as a class pursuant to § 552.4 of this part, an affirmative vote of 50 percent of the shares of each voting class plus one affirmative vote shall be required. The required votes shall be taken at a meeting of the association.

(i) *Disclosure.* The OTS may require, in connection with a combination under this section, such disclosure of information as the OTS deems necessary or desirable for the protection of investors in any of the constituent associations.

(j) *Articles of combination.* (1) Following stockholder approval of any combination in which a Federal savings association is the resulting institution, articles of combination shall be executed in duplicate by each constituent institution, by its chief executive officer or executive vice president and by its secretary or an assistant secretary, and verified by one of the officers of each institution signing such articles, and shall set forth:

(i) The plan of combination;

(ii) The number of shares outstanding in each depository institution; and

(iii) The number of shares in each depository institution voted for and against such plan.

(2) Both sets of articles of combination shall be filed with the Office. If the Office determines that such articles conform to the requirements of this section, the Office shall endorse the articles and return one set to the resulting institution.

(k) *Effective date.* No combination under this section shall be effective until receipt of any approvals required by the Office. The effective date of a combination in which the resulting institution is a Federal stock association shall be the date of consummation of the transaction or such other later date specified on the endorsement of the articles of combination by the Office. If a disappearing institution combining under this section is a Federal stock association, its charter shall be deemed to be cancelled as of the effective date of the combination and such charter must be surrendered to the Office as soon as practicable after the effective date.

(l) *Mergers and consolidations: transfer of assets and liabilities to the resulting institution.* Upon the effective date of a merger or consolidation under this section, if the resulting institution is a Federal savings association, all assets and property (real, personal and mixed, tangible and intangible, choses in action, rights, and credits) then owned by each constituent institution or which would inure to any of them, shall, immediately by operation of law and without any conveyance, transfer, or further action, become the property of the resulting Federal savings association. The resulting Federal savings association shall be deemed to be a continuation of the entity of each constituent institution, the rights and obligations of which shall succeed to such rights and obligations and the duties and liabilities connected therewith, subject to the Home Owners' Loan Act and other applicable statutes.

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