

# Proposed Rules

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

## DEPARTMENT OF THE TREASURY

### Office of Thrift Supervision

#### 12 CFR Parts 563b and 575

[No. 2006-29]

RIN 1550-AC07

#### Stock Benefit Plans in Mutual-to-Stock Conversions and Mutual Holding Company Structures

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Office of Thrift Supervision (OTS) is proposing to clarify its regulations regarding stock benefit plans established after mutual-to-stock conversions or in mutual holding company structures. In addition, OTS proposes to reduce the voting requirements for the adoption of stock benefit plans in mutual holding company structures and to make several other minor changes to the regulations governing mutual-to-stock conversions and minority stock issuances.

**DATES:** Comments must be received on or before September 18, 2006.

**ADDRESSES:** You may submit comments, identified by No. 2006-29, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *E-mail:* [regs.comments@ots.treas.gov](mailto:regs.comments@ots.treas.gov). Please include No. 2006-29 in the subject line of the message, and include your name and telephone number in the message.

- *Fax:* (202) 906-6518.
- *Mail:* Regulation Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: No. 2006-29.

- *Hand Delivery/Courier:* Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention: Regulation Comments, Chief Counsel's Office, Attention: No. 2006-29.

*Instructions:* All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to the OTS Internet site at: <http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1>, including any personal information provided.

*Docket:* For access to the docket to read background documents or comments received go to <http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1>. In addition, you may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment for access, call (202) 906-5922, send an e-mail to [public.info@ots.treas.gov](mailto:public.info@ots.treas.gov), or send a facsimile transmission to (202) 906-7755. (Prior notice identifying the materials you will be requesting will assist us in serving you.) We schedule appointments on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the next business day following the date we receive a request.

**FOR FURTHER INFORMATION CONTACT:** Donald W. Dwyer, (202) 906-6414, Director, Applications, Examinations and Supervision—Operations; Aaron B. Kahn, (202) 906-6263, Assistant Chief Counsel, Business Transactions Division or David A. Permut, (202) 906-7505, Senior Attorney, Business Transactions Division, Office of Chief Counsel, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

**SUPPLEMENTARY INFORMATION:** Savings associations that propose to convert to stock form are subject to the OTS mutual-to-stock conversion regulations, 12 CFR part 563b (Conversion Regulations). Mutual holding companies (MHCs) are subject to OTS regulations at 12 CFR part 575 (MHC Regulations). Subsidiary mutual holding companies (Subsidiary MHCs) and savings associations (collectively, Subsidiary Companies) in MHC structures that propose to issue common stock in a minority stock issuance (Minority Stock Issuance)<sup>1</sup> are subject to both the

<sup>1</sup> In a Minority Stock Issuance, the Subsidiary Company issues stock to entities other than the parent MHC. The parent MHC must hold more than 50 percent of the common stock of the Subsidiary

Conversion Regulations and the MHC Regulations, including the provisions therein pertaining to stock benefit plans.<sup>2</sup>

OTS last changed the provisions of the Conversion Regulations addressing stock benefit plans in mutual-to-stock conversions or MHC structures in 2002 (2002 amendments).<sup>3</sup> The 2002 amendments revised the MHC Regulations to, among other things, permit the amount of stock includable in stock benefit plans established in MHC structures to be set as if 49.0 percent of the stock was issued to minority shareholders, and added a requirement that certain plans not exceed 25 percent of the stock actually offered in the Minority Stock Issuance. The 25 percent limitation was intended to ensure that insiders did not receive a disproportionate share of small Minority Stock Issuances.

OTS believes that confusion exists regarding the application of the stock benefit plan provisions in the Conversion Regulations and the MHC Regulations. OTS therefore proposes to clarify its regulations on stock benefit plans currently found at 12 CFR 563b.500 and 575.8. These clarifications are not intended to change existing OTS policies regarding stock benefit plans. In addition, OTS proposes to reduce regulatory burden by adjusting the voting requirements for the adoption of stock benefit plans in MHC structures. Also, OTS proposes to allow lower maximum purchase limitations in mutual-to-stock conversion offerings (Conversion Offerings) and in Minority Stock Issuances.

#### I. Stock Benefit Plans

OTS has permitted the establishment of three types of stock benefit plans in connection with mutual-to-stock conversions and Minority Stock Issuances. These stock benefit plans include: (i) Employee Stock Ownership Plans and similar plans (ESOPs), which must be tax-qualified;<sup>4</sup> (ii) Stock Option

MHC after the Minority Stock Issuance. See 12 U.S.C. 1467a(o)(8)(B) and 12 CFR 575.7(a)(5).

<sup>2</sup> The MHC Regulations currently include four separate provisions stating that the Conversion Regulations apply in the context of stock issuances by subsidiaries of MHCs. See, 12 CFR 575.7(a), 575.7(b)(1), 575.7(d)(6)(ii), and 575.7(e)(2006).

<sup>3</sup> See 67 FR 52010, at 52014 (August 9, 2002).

<sup>4</sup> These plans include 401(k) plans and plans defined at 12 CFR 563b.25 as tax-qualified

Plans (Option Plans), which are typically non-tax-qualified; and (iii) Management Recognition Plans (MRPs) (sometimes referred to as Retention and Recognition Plans), which are also typically non-tax-qualified.

Section 563b.500 of the Conversion Regulations sets forth certain limitations for stock benefit plans during the year following a Conversion Offering. For example, ESOPs and MRPs are generally limited to holding, in the aggregate, no more than ten percent of the number of shares issued in a mutual-to-stock conversion (§ 563b.500(a)(4)). However, if the converting institution has at least ten percent tangible capital following the completion of the conversion, then ESOPs and MRPs are permitted to hold up to an aggregate of 12 percent of the number of shares issued in the conversion (§ 563b.500(a)(4)). In addition, the Conversion Regulations (§ 563b.500(a)(3)) restrict MRPs to three percent of the number of shares issued in the conversion. If the institution has at least ten percent tangible capital following the completion of the conversion, however, MRPs may encompass four percent of the number of shares issued in the conversion. It has been OTS's experience that most converting associations implement an eight percent ESOP and a four percent MRP when they have at least ten percent tangible capital after the conversion.

In addition, converting associations may offer a separate Option Plan of up to ten percent of the number of shares issued in the conversion (§ 563b.500(a)(2)).

In MHC structures, Subsidiary Companies offer less than 50 percent of their stock to the public. This arrangement creates smaller stock benefit plans for companies in the MHC form. In order to make the MHC form of organization more reasonable, OTS expanded the permissible size of stock benefit plans in the 2002 amendments.<sup>5</sup> Prior to the 2002 amendments, the maximum size of plans was set in relation to the percentage of stock actually offered in the Minority Stock Issuance. For example, if the Subsidiary Company issued only 30 percent of its stock in the Minority Stock Issuance, it would have been restricted to an Option Plan encompassing three percent of total shares outstanding (ten percent of 30 percent) and a combined ESOP and MRP encompassing an aggregate of three

employee stock benefit plans. Because the only types of tax-qualified plans established in mutual-to-stock conversions in the recent past have been ESOPs, OTS proposes to define the tax-qualified plans as ESOPs, in order to simplify the regulations.

<sup>5</sup> 67 FR 52010, at 52014.

percent of the total shares outstanding (or 3.6 percent, if the association's tangible capital exceeded ten percent). In the 2002 amendment, OTS set the maximum size for stock benefit plans as if the Minority Stock Issuance had been 49.0 percent of the Subsidiary Company's stock, regardless of the actual percentage of shares issued in the Minority Stock Issuance.<sup>6</sup>

The 2002 amendment also added an overall limitation, to prevent issuing an excessive amount of stock to management, particularly in small offerings. That restriction limited the aggregate amount of stock issued to all Option Plans and MRPs (but excluding ESOPs) in connection with any Minority Stock Issuance and all prior Minority Stock Issuances, to 25 percent of the outstanding stock of the association held by persons other than the parent MHC.<sup>7</sup> OTS has discovered that some persons incorrectly believed that the 25 percent limit was the only limit on the aggregate size of all Option Plans and MRPs, rather than one of several distinct limitations.

OTS believes that some confusion exists as to how the various limitations in the Conversion and MHC Regulations interact with each other. Therefore, OTS proposes to clarify several of the existing regulations at sections 563b.500, 575.7, and 575.8 to eliminate any confusion.

<sup>6</sup> Where a Subsidiary Company sets the size of a stock benefit plan as if it engaged in a 49 percent Minority Stock Issuance, a plan of the same type established in any second-step mutual-to-stock conversion of the relevant MHC must be based on not more than 51 percent of the resulting publicly held association's or holding company's issued and outstanding stock, following the consummation of the second-step conversion. See 12 CFR 563b.500(a). The stock issued and outstanding upon consummation of the second-step conversion includes both the stock issued in accordance with the mutual-to-stock conversion priorities for the second-step conversion and the shares issued in exchange for the shares held by the Subsidiary Company's minority stockholders.

If the Subsidiary Company sets the size of the stock benefit plan based on a percentage less than 49 percent (such as the actual percentage issued in the Minority Stock Issuance), then the same principle applies. For example, if a Subsidiary Company established plans based on an actual 40 percent Minority Stock Issuance, then the plans established in connection with the second-step conversion must be based on not more than 60 percent of the shares to be issued in the second-step conversion. This is the case regardless of whether, after the Minority Stock Issuance, the Subsidiary Company repurchased shares of its stock (and therefore more than 60 percent of the shares that will be issued and outstanding upon consummation of the second-step conversion would be issued in accordance with the mutual-to-stock conversion priorities).

<sup>7</sup> For example, the overall limitation for a 28 percent Minority Stock Issuance would be no more than seven percent for the Option Plan and MRP (25 percent of 28 percent equals seven percent) for the proposed issuance, plus all prior issuances.

In addition, as discussed in more detail below, OTS believes that it is appropriate to adjust the shareholder vote requirements for the adoption of benefit plans in MHC structures.

#### *A. Proposed Rule Changes at § 563b.500 Regarding Stock Benefit Plans*

OTS proposes to clarify 12 CFR 563b.500 by referring to the specific type of plan addressed (that is, an ESOP, Option Plan, or MRP), rather than referring to plans in terms of their tax-qualified or non-tax-qualified nature. OTS proposes to revise § 563b.500(a)(1) to clarify that a shareholder vote is not required to establish an ESOP. OTS also proposes to move the provision addressing votes on Option Plans and MRPs in the context of MHCs from § 563b.500(a)(7) to the MHC Regulations, because it is more appropriate to locate provisions dealing exclusively with MHC structures in the MHC Regulations.

#### *B. Proposed Rule Changes at § 575.7 Regarding Minority Stock Issuances*

Section 575.7 sets forth the general requirements for Minority Stock Issuances by Subsidiary Companies. Section 575.7 provides, in four separate places, that some or all of the requirements of the Conversion Regulations are applicable to Minority Stock Issuances. OTS proposes to streamline the MHC Regulations by removing two of those references.

OTS proposes to retain the general provision at § 575.7(e), which would be redesignated as § 575.7(d), stating that the procedural and substantive requirements of the Conversion Regulations apply to Minority Stock Issuances unless clearly inapplicable. However, OTS proposes to add language to this section similar to the language in current § 575.7(b)(1) clarifying that OTS makes the determination whether a section is clearly inapplicable. OTS also proposes to relocate certain language from § 575.7(b)(1) to proposed § 575.7(d). The language in question states that for purposes of the provision the term "conversion" as it appears in the Conversion Regulations, refers to the Minority Stock Issuance, and the term "converted or converting savings association" as it appears in the Conversion Regulations, refers to the Subsidiary Company making the Minority Stock Issuance.

In light of these proposed changes, OTS proposes to eliminate the cross-references at §§ 575.7(a)<sup>8</sup> and

<sup>8</sup> Eliminating the cross-reference in § 575.7(a) does not remove the requirement that MHCs must file business plans in connection with Minority

575.7(b)(1). OTS proposes to keep the reference at § 575.7(d)(6)(ii), however, because the cross-reference permits an applicant to engage in a Minority Stock Issuance that does not meet the mutual-to-stock conversion priorities if the applicant demonstrates that a non-conforming issuance is appropriate.

OTS proposes to revise and relocate § 575.7(b)(2). This section provides that, unless OTS determines otherwise, the limitations on the minimum and maximum amounts of the estimated price range required by 12 CFR 563b.330 do not apply. OTS has applied the limitations in 12 CFR 563b.330 in all Minority Stock Issuances, except in cases where the issuance involved only stock benefit plans or an acquisition. Accordingly, OTS proposes to revise this section to state that § 563b.330 will apply to Minority Stock Issuances, unless OTS determines otherwise, and to recodify this provision, as modified, at § 575.7(a)(9).

OTS proposes to eliminate 12 CFR 575.7(b)(3), which requires stock offering materials to disclose the amount of any discount on minority stock, and how the amount of the discount was determined. The general securities offering disclosure requirements, which require disclosure of material information, are sufficient to address the issue of disclosure of the amount and reasons for any discount on minority stock.

### *C. Proposed Rule Changes at § 575.8 Regarding Stock Benefit Plans*

Section 575.8 contains the current limitations for stock benefit plans in MHC structures. OTS proposes to clarify the § 575.8 provisions pertaining to stock benefit plans in several respects. First, as with § 563b.500, OTS proposes to replace the references to tax-qualified and non-tax-qualified benefit plans in § 575.8(a) with references to a specific type of plan (that is, the ESOP, Option Plan, or MRP). Second, OTS proposes to include language in § 575.8 stating that the quantitative limitations regarding the size of ESOPs, Option Plans, and MRPs set forth in § 575.8 supersede the related quantitative limits in proposed sections 563b.500(a)(2) through 563b.500(a)(4). This change should reduce regulatory burden by eliminating the need for Subsidiary Companies to consider both the MHC Regulations and the Conversion Regulations to determine the permissible size of certain stock benefit plans. Third, in order to

Stock Issuances. Under proposed § 575.7(d), all procedural and substantive requirements in the Conversion Regulations apply to Minority Stock Issuances, unless clearly inapplicable.

provide clarity and to reduce existing regulatory burdens, OTS proposes to amend § 575.8 to state that the restrictions set forth in proposed sections 563b.500(a)(4) through 563b.500(a)(14) apply in the context of a Minority Stock Issuance for only one year after the Subsidiary Company engages in a Minority Stock Issuance that is conducted in accordance with the purchase priorities set forth in the Conversion Regulations. Each such Minority Stock Issuance would start a new one-year period.

In order to further clarify the MHC Regulations and to eliminate certain unintended inconsistencies between the Conversion Regulations and the MHC Regulations, OTS is making three additional changes. First, the Conversion Regulations (at current § 563b.500(a)(3) and proposed § 563b.500(a)(3)(ii)) include a separate limitation regarding the size of MRPs. Notwithstanding the lack of a specific provision in the MHC Regulations addressing MRPs, OTS has consistently applied such a requirement in the context of Minority Stock Issuances, by applying the plan limits in the Conversion Regulations to Minority Stock Issuances.<sup>9</sup> Therefore, OTS proposes to include a corresponding limitation on the size of MRPs in § 575.8.

Second, the Conversion Regulations (at current § 563b.500(a)(4), and proposed § 563b.500(a)(3)(i)) include a limitation on the combined size of the ESOP and MRP. The current MHC Regulations do not include an aggregate limitation on ESOPs and MRPs. However, OTS has consistently applied such a restriction to Minority Stock Issuances, based on the cross-reference to the Conversion Regulations. In order to conform the MHC Regulations to the Conversion Regulations, OTS proposes to revise the MHC Regulations to explicitly include an aggregate limitation on ESOPs and MRPs. In addition to aggregate limitations on ESOPs and MRPs, OTS proposes to retain the existing aggregate limitation on the size of the Option Plans and MRPs set forth at § 575.8(a)(9) of the MHC Regulations.

Third, the Conversion Regulations impose a higher limitation on the size of MRPs and a higher aggregate limitation on the size of ESOPs and MRPs if the association in question has

<sup>9</sup> Because OTS proposes to simplify the MHC Regulations to provide that institutions proposing Minority Stock Issuances would need to look only at § 575.8 to determine the permissible size of their stock benefit plans, repeating this restriction, and the restrictions described below, in the MHC Regulations is necessary.

tangible capital exceeding ten percent. Again, OTS consistently has applied this provision of the Conversion Regulations to Minority Stock Issuances. The MHC Regulations do not include a corresponding provision, and OTS proposes to amend the MHC Regulations to eliminate this disparity.

Furthermore, OTS believes that the presence of language addressing individual purchase limitations (and those involving individuals and their associates) in sections 575.8(a)(3) and (a)(4) is confusing. These provisions, to the extent they pertain to individuals and their associates, are unnecessary because the Conversion Regulations provide the necessary limitations.<sup>10</sup> In addition, the usefulness of such provisions in the MHC regulations is limited, because the limitations in §§ 575.8(a)(3) and (a)(4) do not include shares acquired in the secondary market. Accordingly, OTS proposes to eliminate the reference to purchases by individuals and their associates presently set forth in sections 575.8(a)(3) and (a)(4) from the MHC Regulations.

In addition, OTS is clarifying sections 575.8(a)(3) through (a)(9) to make it clear that the limitations on benefit plans will be set in relation to the stock or equity outstanding at the close of the most recent Minority Stock Issuance made in conjunction with the promulgation of a benefit plan. Also, in sections 575.8(a)(7), OTS is clarifying that, when a plan is adopted or modified more than one year after a Minority Stock Issuance, the limitations in sections 575.8(a)(3) through (a)(6) may be exceeded to the extent that: (i) Awards in excess of those limitations are made with stock purchased in the secondary market; and (ii) such purchases take place at least one year after the most recent Minority Stock Issuance that is made in substantial conformity with the purchase priorities set out in part 563b.

Similarly, in § 575.8(a)(8)(ii), OTS proposes to clarify that when a plan is adopted or modified more than one year after a Minority Stock Issuance, the limitations in § 575.8(a)(8)(i) may be exceeded to the extent that: (i) Awards in excess of those limitations are made with stock purchased in the secondary market; and (ii) such purchases take place at least one year after the most recent Minority Stock Issuance that is made in substantial conformity with the purchase priorities set out in part 563b.

In addition, in § 575.8(a)(9), OTS proposes to clarify that the limitation therein presents a separate limitation on

<sup>10</sup> See 12 CFR 563b.370 (2006).

Option Plans and MRPs that applies to each Minority Stock Issuance. However, that limitation does not require reductions in otherwise permissible awards under an existing plan when there is a subsequent Minority Stock Issuance where the excess results from intervening purchases by individuals in the secondary market.

As mentioned previously, OTS proposes to move the last sentence in current § 563b.500(a)(7), pertaining to mutual holding companies, to new § 575.8(c). This sentence currently requires that a majority of the outstanding minority shares approve any Option Plan and any MRP (in addition to the requirement that a majority of all shares approve any Option Plan and any MRP). Because OTS believes the current provisions are unduly restrictive, OTS proposes two changes to the minority vote requirement proposed at § 575.8(c). First, OTS proposes to revise the provision to require a vote of the minority shareholders only during the first year after a Minority Stock Issuance that was conducted in accordance with the mutual-to-stock conversion subscription priorities. Second, OTS proposes to revise the provision to require approval (during the first year after a Minority Stock Issuance) by a majority of the minority shares voting on the issue of adoption of the plan, rather than a majority of the outstanding minority shares.

## II. Maximum Purchase Limitation

OTS proposes to increase an institution's choices regarding maximum purchase limitations. Section 563b.385 addresses maximum purchase limitations for subscriptions in mutual-to-stock conversions. Currently, converting savings associations are permitted to set a maximum purchase limitation between one and five percent of the stock sold. OTS has received many requests to waive the purchase limitations. This is particularly appropriate in the case of larger offerings, where a one percent limit would constitute a very large investment. Because OTS's policy is to achieve as widespread a distribution of stock as possible (see § 563b.395), the request for a waiver to set a smaller maximum purchase limitation is often granted. OTS proposes to amend this section to permit smaller purchase limitations.

## III. Solicitation of Comments

### A. Solicitation of Comments on the Proposed Amendments

OTS is requesting comment on all aspects of the proposed regulation. Specifically OTS seeks comment on:

- (1) Does the proposed regulation accomplish its stated purposes?
- (2) Does the proposed regulation eliminate ambiguities regarding stock benefit plans in mutual-to-stock conversions?
- (3) Does the proposed regulation create any ambiguities that were not present in the current regulation?
- (4) Does the proposed regulation impose unnecessary regulatory burdens?

### B. Solicitation of Comments Regarding the Use of Plain Language

Section 722 of GLBA requires Federal banking agencies to use "plain language" in all proposed and final rules published after January 1, 2000. OTS invites comments on how to make this proposed rule easier to understand. For example:

- (1) Have we organized the material to suit your needs? If not, how could we better organize it?
- (2) Do we clearly state the requirements in the rule? If not, how could we state the rule more clearly?
- (3) Does the rule contain technical language or jargon that is not clear? If so, what language requires clarification?
- (4) Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand? If so, what changes to the format would make the rule easier to understand?

## V. Regulatory Findings

### A. Paperwork Reduction Act

OTS has determined that this proposed rule does not involve a change to collections of information previously approved under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

### B. Executive Order 12866

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

### C. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601), the Director certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. The proposed rule would make certain changes that should reduce burdens on all savings associations, including small

institutions. First, the proposed rule addresses the confusion surrounding compliance with OTS regulations regarding stock benefit plans in connection with mutual-to-stock conversions and Minority Stock Issuances. These clarifications will reduce the burden of complying with the OTS regulations on stock benefit plans. Second, OTS has reduced the voting requirement to adopt stock benefit plans in MHC structures, which reduces burden on institutions establishing stock benefit plans. Finally, the proposed rule will reduce burden by broadening the purchase limitations, thereby promoting a wider distribution of stock in a Conversion Offering or Minority Stock Issuance. All of the proposed changes are minor and should not have a significant impact on small institutions. Accordingly, OTS has determined that a Regulatory Flexibility Analysis is not required.

### D. Unfunded Mandates Reform Act of 1995

OTS has determined that the proposed rule will not result in expenditures by state, local, or tribal governments or by the private sector of \$100 million or more and that a budgetary impact statement is not required under section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104-4 (Unfunded Mandates Act). The proposed rule would make certain changes that should reduce burdens on savings associations. First, the proposed rule clarifies OTS regulations regarding stock benefit plans in connection with mutual-to-stock conversions and Minority Stock Issuances, which should reduce the burden of complying with the OTS regulations on stock benefit plans. Second, OTS has reduced the voting requirement to adopt stock benefit plans in MHC structures, which reduces burden on institutions establishing stock benefit plans. Finally, the proposed rule will reduce burden by broadening the purchase limitations, to promote a wider distribution of stock in a Conversion Offering or Minority Stock Issuance. All of the proposed changes are minor and should not have a significant impact on small institutions. Accordingly, a budgetary impact statement is not required under section 202 of the Unfunded Mandates Act.

## List of Subjects

### 12 CFR Part 563b

Reporting and recordkeeping requirements, Savings associations, Securities.

## 12 CFR Part 575

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

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

**PART 563b—CONVERSIONS FROM MUTUAL TO STOCK FORM**

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

**Authority:** 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 2901; 15 U.S.C. 78c, 78l, 78m, 78n, 78w.

**§ 563b.385 [Amended]**

2. Amend § 563b.385(a) by removing the phrase “between one percent and” and adding the words “up to” in place thereof.

3. Revise § 563b.500 to read as follows:

**§ 563b.500. What management stock benefit plans may I implement?**

(a) During the 12 months after your conversion, you may implement a stock option plan (Option Plan), an employee stock ownership plan or other tax-qualified employee stock benefit plan (collectively, ESOP), and a management recognition plan (MRP), provided you meet all of the following requirements.

(1) You disclose the plans in your proxy statement and offering circular and indicate in your offering circular that there will be a separate shareholder vote on the Option Plan and the MRP at least six months after the conversion. No shareholder vote is required to implement the ESOP. Your ESOP must be tax-qualified.

(2) Your Option Plan does not encompass more than ten percent of the number of shares that you issued in the conversion.

(3)(i) Your ESOP and MRP do not encompass, in the aggregate, more than ten percent of the number of shares that you issued in the conversion. If you have tangible capital of ten percent or more following the conversion, OTS may permit your ESOP and MRP to encompass, in the aggregate, up to 12 percent of the number of shares issued in the conversion; and

(ii) Your MRP does not encompass more than three percent of the number of shares that you issued in the conversion. If you have tangible capital of ten percent or more after the conversion, OTS may permit your MRP to encompass up to four percent of the

number of shares that you issued in the conversion.

(4) No individual receives more than 25 percent of the shares under your ESOP, MRP, or Option Plan.

(5) Your directors who are not your officers do not receive more than five percent of the shares of your MRP or Option Plan individually, or 30 percent of any such plan in the aggregate.

(6) Your shareholders approve each of the Option Plan and the MRP by a majority of the total votes eligible to be cast at a duly called meeting before you establish or implement the plan. You may not hold this meeting until six months after your conversion.

(7) When you distribute proxies or related material to shareholders in connection with the vote on a plan, you state that the plan complies with OTS regulations and that OTS does not endorse or approve the plan in any way. You may not make any written or oral representations to the contrary.

(8) You do not grant stock options at less than the market price at the time of grant.

(9) You do not fund the Option Plan or the MRP at the time of the conversion.

(10) Your plan does not begin to vest earlier than one year after shareholders approve the plan, and does not vest at a rate exceeding 20 percent per year.

(11) Your plan permits accelerated vesting only for disability or death, or if you undergo a change of control.

(12) Your plan provides that your executive officers or directors must exercise or forfeit their options in the event the institution becomes critically undercapitalized (as defined in § 565.4 of this chapter), is subject to OTS enforcement action, or receives a capital directive under § 565.7 of this chapter.

(13) You file a copy of the proposed Option Plan or MRP with OTS and certify to OTS that the plan approved by the shareholders is the same plan that you filed with, and disclosed in, the proxy materials distributed to shareholders in connection with the vote on the plan.

(14) You file the plan and the certification with OTS within five calendar days after your shareholders approve the plan.

(b) You may provide dividend equivalent rights or dividend adjustment rights to allow for stock splits or other adjustments to your stock in your ESOP, MRP, and Option Plan.

(c) The restrictions in paragraph (a) do not apply to plans implemented more than 12 months after the conversion, provided that materials pertaining to any shareholder vote regarding such plans are not distributed within the 12

months after the conversion. If a plan adopted in conformity with paragraph (a) is amended more than 12 months following your conversion, your shareholders must ratify any material deviations to the requirements in paragraph (a) of this section.

**PART 575—MUTUAL HOLDING COMPANIES**

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

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

**§ 575.7 [Amended]**

5. Amend § 575.7(a) by removing the first sentence.

6. In § 575.7(b), redesignate paragraph (b)(2) as (a)(9) and remove the word “not” in that paragraph, remove the remaining text in paragraph (b), redesignate paragraphs (c), (d), and (e) as paragraphs (b), (c), and (d), and revise newly designated paragraph (d) to read as follows:

(d) *Procedural and substantive requirements.* The procedural and substantive requirements of 12 CFR part 563b shall apply to all mutual holding company stock issuances under this section, unless clearly inapplicable, as determined by OTS. For purposes of this paragraph (d), the term *conversion* as it appears in the provisions of part 563b of this chapter shall refer to the stock issuance, and the term *converted* or *converting savings association* shall refer to the savings association undertaking the stock issuance.

7. Revise paragraphs (a)(3) through (a)(9) of § 575.8 to read as follows:

**§ 575.8 Contents of stock issuance plans.**

(a) Mandatory provisions. \* \* \*

\* \* \* \* \*

(3) Provide that all employee stock ownership plans (ESOPs) must not encompass, in the aggregate, more than either 4.9 percent of the outstanding shares of the savings association's common stock or 4.9 percent of the savings association's stockholders' equity at the close the proposed issuance.

(4) Provide that all ESOPs and management recognition plans (MRPs) must not encompass, in the aggregate, more than either 4.9 percent of the outstanding shares of the savings association's common stock or 4.9 percent of the savings association's stockholders' equity at the close of the proposed issuance. However, if the savings association's tangible capital equals at least ten percent at the time of implementation of the plan, OTS may permit such ESOPs and MRPs to

encompass, in the aggregate, up to 5.88 percent of the outstanding common stock or stockholders' equity at the close of the proposed issuance.

(5) Provide that all MRPs must not encompass, in the aggregate, more than either 1.47 percent of the common stock of the savings association or 1.47 percent of the savings association's stockholders' equity at the close of the proposed issuance. However, if the savings association's tangible capital is at least ten percent at the time of implementation of the plan, OTS may permit MRPs to encompass, in the aggregate, up to 1.96 percent of the outstanding shares of the savings association's common stock or 1.96 percent of the savings association's stockholders' equity at the close of the proposed issuance.

(6) Provide that all stock option plans (Option Plans) must not encompass, in the aggregate, more than either 4.9 percent of the savings association's outstanding common stock at the close of the proposed issuance or 4.9 percent of the savings association's stockholders' equity at the close of the proposed issuance.

(7) A plan modified or adopted no earlier than one year after the close of the proposed issuance, or any subsequent issuance that is made in substantial conformity with the purchase priorities set forth in Part 563b, may exceed the percentage limitations contained in paragraphs 3 through 6 (plan expansion), subject to the following two requirements. First, all common stock awarded in connection with any plan expansion must be acquired for such awards in the secondary market. Second, such acquisitions must begin no earlier than when such plan expansion is permitted to be made.

(8)(i) Provide that the aggregate amount of common stock that may be encompassed under all Option Plans and MRPs, or acquired by all insiders of the association and associates of insiders of the association, must not exceed the following percentages of common stock or stockholders' equity of the savings association, held by persons other than the savings association's mutual holding company parent at the close of the proposed issuance:

Institution size	Officer and director purchases (percent)
\$50,000,000 or less .....	35
\$50,000,001–100,000,000 .....	34
\$100,000,001–150,000,000 .....	33
\$150,000,001–200,000,000 .....	32
\$200,000,001–250,000,000 .....	31

Institution size	Officer and director purchases (percent)
\$250,000,001–300,000,000 .....	30
\$300,000,001–350,000,000 .....	29
\$350,000,001–400,000,000 .....	28
\$400,000,001–450,000,000 .....	27
\$450,000,001–500,000,000 .....	26
Over \$500,000,000 .....	25

(ii) The percentage limitations contained in paragraph 8(i) may be exceeded provided that all stock acquired by insiders and associates of insiders or awarded under all MRPs and Option Plans in excess of those limitations is acquired in the secondary market. If acquired for such awards on the secondary market, such acquisitions must begin no earlier than one year after the close of the proposed issuance or any subsequent issuance that is made in substantial conformity with the purchase priorities set forth in part 563b.

(iii) In calculating the number of shares held by insiders and their associates under this provision, shares awarded but not delivered under an ESOP, MRP, or Option Plan that are attributable to such persons shall not be counted as being acquired by such persons.

(9) Provide that the amount of common stock that may be encompassed under all Option Plans and MRPs must not exceed, in the aggregate, 25 percent of the outstanding common stock held by persons other than the savings association's mutual holding company parent at the close of the proposed issuance.

8. Add a new paragraph (c) to § 575.8, to read as follows.

(c) *Applicability of provisions of § 563b.500(a) to minority stock issuances.* Notwithstanding § 575.7(d) of this part, §§ 563b.500(a)(2) and (3) do not apply to minority stock issuances, because the permissible sizes of ESOPs, MRPs, and Option Plans in minority stock issuances are subject to each of the requirements set forth at paragraphs (a)(3) through (a)(9) of this section. Sections 563b.500(a)(4) through (a)(14) apply for one year after the savings association engages in a minority stock issuance that is conducted in accordance with the purchase priorities set forth in part 563b. In addition to the shareholder vote requirement for Option Plans and MRPs set forth at § 563b.500(a)(6), any Option Plans and MRPs put to a shareholder vote during the year after a minority stock issuance that is conducted in accordance with the purchase priorities set forth in part 563b must be approved by a majority of

the votes cast by stockholders other than the mutual holding company.

Dated: July 11, 2006.

By the Office of Thrift Supervision.

**John M. Reich,**

*Director.*

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 33**

[Docket No. FAA–2006–25375; Notice No. 06–09]

**RIN 2120–A173**

**Airworthiness Standards; Engine Bird Ingestion**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA is proposing to amend the aircraft turbine engine type certification standards to reflect recent analysis of the threat flocking birds present to turbine engine aircraft. These proposed changes would also harmonize FAA, Joint Aviation Authority (JAA), and European Aviation Safety Agency (EASA) bird ingestion standards for aircraft turbine engines type certificated by the United States and the JAA/EASA countries, and simplify airworthiness approvals for import and export. These proposed changes are necessary to establish uniform international standards that provide an adequate level of safety for aircraft turbine engines with respect to the current large flocking bird threat.

**DATES:** Send your comments on or before September 18, 2006.

**ADDRESSES:** You may send comments [identified by Docket Number FAA–2006–25375] using any of the following methods:

- DOT Docket Web site: Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- Fax: 1–202–493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building,