

DEPARTMENT OF THE TREASURY**Office of Thrift Supervision****12 CFR Parts 544 and 552**

[No. 2000-93]

RIN 1550-AB39

Federal Savings Association Bylaws; Integrity of Directors**AGENCY:** Office of Thrift Supervision, Treasury.**ACTION:** Notice of proposed rulemaking.

SUMMARY: The Office of Thrift Supervision (OTS) is proposing to change its regulations concerning corporate governance to create a class of preapproved optional bylaw provisions that federally chartered savings associations may adopt. The proposal decreases regulatory burden on federal savings associations by permitting them to adopt certain bylaws expeditiously without prior OTS review. In addition, OTS is proposing the first preapproved optional bylaw. If adopted by a savings association, the bylaw would preclude persons who, among other things, are under indictment for or have been convicted of certain crimes, or are subject to a cease and desist order entered by any of the banking agencies, from being members of the association's board of directors. The proposed preapproved bylaw is intended to permit federal savings associations to better protect their business from the adverse effects that are likely to result when the reputation of its board members does not elicit the public's trust.

DATES: Your comments must be received by January 2, 2001.

ADDRESSES:

Mail: Send comments to Manager, Dissemination Branch, Information Management and Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention Docket No. 2000-93.

Delivery: Hand deliver comments to the Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention Docket No. 2000-93.

Facsimiles: Send facsimile transmissions to FAX Number (202) 906-7755, Attention Docket No. 2000-93; or (202) 906-6956 (if comments are over 25 pages).

E-Mail: Send e-mails to "public.info@ots.treas.gov", Attention Docket No. 2000-93, and include your name and telephone number.

Public Inspection: Interested persons may inspect comments at the Public

Reference Room, 1700 G St. NW., from 10 a.m. until 4 p.m. on Tuesdays and Thursdays or obtain comments and/or an index of comments by facsimile by telephoning the Public Reference Room at (202) 906-5900 from 9 a.m. until 5 on business days. Comments and the related index will also be posted on the OTS Internet Site at "www.ots.treas.gov".

FOR FURTHER INFORMATION CONTACT: Aaron B. Kahn, Special Counsel (202) 906-6263, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:**I. Proposed Regulation**

OTS requires federal savings associations to operate under bylaws that meet certain regulatory requirements and has drafted a set of "model" bylaws that would satisfy those requirements. The text of this set of model bylaws for federal savings associations is located in the Application Processing Handbook (Handbook). Federal savings associations may adopt this set of model bylaws without prior notice to OTS, provided that they notify OTS within 30 days after their adoption.

The current proposal is intended to reduce regulatory burden on federal savings associations that wish to address other topics by providing additional preapproved "optional" bylaws that federal savings associations may adopt with a post-adoption notice to OTS. Federal savings associations are not required to adopt the optional bylaws. The amendment simply reduces the regulatory burden on federal savings associations desiring to adopt the specific provisions.

II. Proposed Bylaw

In addition to seeking comment on the proposal to include preapproved optional bylaws in the Handbook, OTS also requests comment on the first proposed preapproved bylaw. This bylaw would provide standards for the integrity of directors of federal savings associations.

It is important that the directors of savings associations be persons of good character and integrity. They oversee management and they have the ultimate responsibility for the operations of the savings association. In addition, directors of savings associations are expected to assist their institutions in attracting and retaining business. Their reputations in the community or communities served by the savings association reflect on the institution and affect their ability to help the institution

attract and retain business. People must be able to trust the institution that holds their money. Moreover, people may be wary of contracting with an institution that they do not trust. Thus, a director who has an exemplary reputation may be a valuable asset to the association. Conversely, a director whose reputation is tainted, for example because a court has found he or she personally profited from a breach of his or her fiduciary duties, may injure an institution just by being a member of the board.

This proposed bylaw would permit federal savings associations to assure themselves that those persons subject to adverse actions concerning their fiduciary integrity or compliance with financial regulatory laws do not become board members. The proposed optional bylaw does not bar anyone from the industry. Rather, the proposed rule and optional bylaw would merely permit an individual federal savings association to set qualifications for board membership for that institution. Federal savings associations that adopt the preapproved bylaw amendment would not have to provide prior notice to OTS, but would have to file notice of the adoption of the bylaw within 30 days after adopting the bylaw.¹

Congress has repeatedly expressed concerns about the character and integrity of the people who control savings associations. When it created the federal savings and loan regulatory system, Congress directed the federal regulatory agency to give primary consideration to the best practices then existing in the savings and loan industry. *See* 12 U.S.C. 1464(a), 48 Stat. 128, 132 (1933). One such practice was that directors of savings associations should be persons of good judgment and character who have the respect and confidence of the community served by their respective institution. *See* Joseph H. Sundheim, *Law of Building and Loan Associations*, § 71 (3d ed. 1933).

In 1966 Congress specifically addressed the integrity issue. At that time Congress gave the banking agencies authority to remove officers and directors of a savings association and prohibit them from affiliating with the institution in the future if the officer or director had engaged in certain conduct.² Congress subsequently

¹ Federal savings associations that wish to adopt a bylaw addressing director qualifications that does not conform to the preapproved bylaw amendment would continue to be required to obtain prior approval from OTS.

² *See* Financial Institutions Supervisory Act of 1966, Pub. L. 89-695, 80 Stat. 1028, 1030-32, 1039-40, 1049-50. Currently, section 8(e) of the Federal Deposit Insurance Act (FDIA), provides for the removal and prohibition of persons a banking

broadened the scope of the prohibition to prevent such persons from being affiliated with other insured depository institutions, including savings associations.³

The fact that Congress found certain conduct so egregious that it authorized the debarment of perpetrators from the industry does not demonstrate that it believed everyone else was qualified to sit on the boards of savings associations. For example, Congress' concerns regarding the management of savings associations is evident in: (i) The Change in Bank Control Act,⁴ which allows the applicable Federal banking agency to disapprove a proposed acquisition if, among other things, the competence, experience and integrity of any of the acquiror's proposed management personnel might jeopardize the financial stability of the institution or prejudice the interests of the depositors of the institution; and (ii) the holding company acquisition provisions of the Home Owners' Loan Act, which require OTS in reviewing managerial resources to consider the competence, experience and integrity of directors of an acquiror and the savings association involved.⁵

Congress again recognized the need to ensure integrity in the banking industry when it enacted the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA). In FIRREA, Congress required certain financial institutions to provide prior notice to their federal regulator of any new board members and authorized the regulator to disapprove such a board member if he or she lacked the requisite character or integrity to advance the interests of the depositors of the institution.⁶

agency finds to have committed certain acts involving personal dishonesty or willful or continuing disregard for the safety or soundness of an insured depository institution and has either received financial gain or other benefit, injured the institution or prejudiced the interests of its depositors. Similarly, section 19 of the FDIA prohibits persons who have been convicted of any criminal offense involving dishonesty or a breach of trust from controlling or participating in the conduct of the affairs of any insured depository institutions without the prior consent of the Federal Deposit Insurance Corporation. See also 12 U.S.C. 1818(g).

³ See 12 U.S.C. 1818(e).

⁴ 12 U.S.C. 1817(j)(7)(D).

⁵ 12 U.S.C. 1467a(e)(1)(B), (e)(2).

⁶ Section 914 of FIRREA (12 U.S.C. 1831i), provided that the banking agencies should disapprove a proposed director "if the competence, experience, character, or integrity of the [proposed director] indicates that it would not be in the best interests of the depositors of the depository institution or in the best interests of the public to permit the individual to be [so] employed. * * *". In 1996, Congress changed the categories of institutions subject to this requirement. See Section 2209 of the Economic Growth and Regulatory

OTS has also been concerned with the character of persons who would hold director positions in savings associations. Under OTS's regulations governing the chartering of federal savings associations, the background of the proposed directors of a new federal association must reflect a history of personal integrity.⁷

The proposed bylaw standards for determining integrity of prospective board members are derived in part from the existing standards in § 563.39(b)(1) for terminating savings association officers for cause. Because that provision deals with the integrity of officials who are supervised by the board of directors, the board members should be held to at least a comparable standard of integrity. The bylaw focuses particularly on actions against an individual predicated on serious dishonesty, breach of fiduciary duty or willful violation of financial regulatory law.

The wording of the proposed optional bylaw dealing with directors' integrity is as follows:

A person is not qualified to serve as a director if he or she: (1) Is under indictment for, or has ever been convicted of, a criminal offense involving dishonesty or breach of trust and the penalty for such offense could be imprisonment for more than one year, or (2) is a person against whom a banking agency has, within the past ten years, issued a cease and desist order for conduct involving dishonesty or breach of trust and that order is final and not subject to appeal, or (3) has been found either by a regulatory agency whose decision is final and not subject to appeal or by a court to have (i) breached a fiduciary duty involving personal profit or (ii) committed a willful violation of any law, rule or regulation governing banking, securities, commodities or insurance, or any final cease and desist order issued by a banking, securities, commodities or insurance regulatory agency.

OTS welcomes comment on those standards, and also requests comments on whether (and, if so, why) the bylaw should also prevent persons covered by the bylaw from nominating anyone for board membership.

III. Plain Language Statement

OTS invites your comments on how to make this proposed rule easier to understand. Do we clearly state the requirements in the rule? If not, how could the rule be more clearly stated?

IV. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, OTS certifies that this proposal will not have a

Paperwork Reduction Act, P.L. 104-208, 110 Stat. 3009-409.

⁷ See 12 CFR 543.3(d)(2) (2000).

significant impact on a substantial number of small entities. The proposal reduces regulatory burden on federal savings associations, including small federal savings associations, by permitting them to adopt certain bylaws without providing prior notice to OTS. The proposal does not require any savings association to modify its bylaws and all federal savings associations currently can request permission to adopt such bylaws, if they choose to do so. Accordingly, a regulatory flexibility analysis is not required.

V. Executive Order 12866

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

VI. Unfunded Mandates Reform Act of 1995

OTS has determined that this proposed rule will not result in expenditures by state, local and tribal governments, or by the private sector, of \$100 million or more in any one year. Therefore, OTS has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered. The proposal simply reduces regulatory burden on federal savings associations by permitting them to adopt certain bylaws without having to first request permission from OTS.

List of Subjects

12 CFR Part 544

Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 552

Reporting and recordkeeping requirements, Savings associations, Securities.

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

PART 544—CHARTER AND BYLAWS

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

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

2. Section 544.5 is amended by revising paragraph (c)(1)(iii) to read as follows:

§ 544.5 Federal mutual savings association bylaws.

* * * * *

(c) * * *

(1) * * *

(iii) For purposes of this paragraph (c), bylaw provisions that adopt the

language of the model or optional bylaws in OTS's Application Processing Handbook, if adopted without change, and filed with OTS within 30 days after adoption, are effective upon adoption.

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

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

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

4. Section 552.5 is amended by revising paragraph (b)(1)(iii) to read as follows:

§ 552.5 Bylaws.

* * * * *

(b) * * *

(1) * * *

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

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Dated: October 25, 2000.

By the Office of Thrift Supervision.

Ellen Seidman,

Director.

[FR Doc. 00-27841 Filed 11-1-00; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 516, 517, 543, 544, 545, 550, 552, 555, 559, 560, 562, 563, 563b, 563f, 565, 567, 574, 575, 584

[No. 2000-94]

RIN 1550-AB14

Application Processing

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: As part of its ongoing effort to review and streamline its regulations, the Office of Thrift Supervision (OTS) proposes to revise its application processing guidelines and procedures. The proposed changes would update the rules to reflect existing practices and procedures; provide more predictable procedures for applicants; and provide greater flexibility to OTS in processing applications. OTS has also applied "plain language" drafting techniques, which should make the application processing rules easier to understand.

DATES: Comments must be received on or before January 2, 2001.

ADDRESSES:

Mail: Send comments to Manager, Dissemination Branch, Information Management and Services Division, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552, Attention Docket No. 2000-94.

Delivery: Hand deliver comments to the Guard's Desk, East Lobby Entrance, 1700 G Street NW., from 9 a.m. to 4 p.m. on business days, Attention Docket No. 2000-94.

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FOR FURTHER INFORMATION CONTACT:

Lane Langford, Regulatory Analyst, Office of Examination and Supervision, (202) 906-7027; Celeste Anderson, Program Analyst, Compliance Policy & Specialty Examinations, (202) 906-7990; Robyn Dennis, Manager, (202) 906-5751 and Josephine Battle, Program Analyst Trainee, (202) 906-6870, Supervision Policy Division; John P. Harootunian, Senior Counsel for Special Transactions, Business Transactions Division, (202) 906-6415; and Koko Ives, Counsel (Banking and Finance) Regulations and Legislation Division, Office of Chief Counsel, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background

OTS application processing guidelines and procedures are found in 12 CFR part 516. In today's proposed rulemaking, OTS proposes to revise these rules to update the rules to reflect existing practices and procedures; to provide more predictable procedures for applicants; and to provide greater flexibility to OTS in processing

applications. OTS has also applied "plain language" drafting techniques.¹

The intent of today's proposed rulemaking is to improve the clarity and the efficiency of the OTS application processing procedures. These improvements will make the rules easier for applicants to understand. That is, applicants will know what to expect from OTS and what OTS expects from applicants in processing an application. The applicants should also benefit from a more expeditious review and processing of applications.

Most changes in today's proposed rulemaking clarify existing procedures. OTS has, for example, presented current information in user-friendly charts; explained how it computes time periods; and explained how an applicant may determine whether an application should be filed with the Region and Headquarters. OTS would also add a new proposed provision permitting an applicant to designate portions of an application as confidential to reflect current policy.

In addition, OTS proposes to remove some technical requirements from the existing regulations and incorporate this information into individual application forms. OTS is currently revising its forms and application-processing handbook to reflect these changes. This regulation will not be issued in its final form until those forms and handbooks are in place.

OTS proposes only a few substantive changes to the existing rules. These include new provisions: addressing pre-filing procedures for complex applications in order to expedite processing of these applications, permitting OTS to extend certain processing time frames, and allowing OTS to deem certain long-pending applications to have been withdrawn. OTS believes that these changes will provide greater efficiency and flexibility in the processing of applications. The section-by-section analysis below specifically discusses all of the proposed changes.

II. Section-by-Section Analysis

Today's proposal would replace existing §§ 516.1, 516.2, and 516.3 with two new subparts to part 516. Revised subpart A would prescribe pre-filing and filing procedures. New subpart E

¹In 1997, OTS added three new subparts to part 516. 62 FR 64138 (Dec. 4, 1997). These new subparts were also drafted using "plain language" drafting techniques. OTS is proposing to redraft the remainder of part 516 consistent with section 722 of Gramm-Leach-Bliley Act (the G-L-B Act or Act) which requires OTS to use "plain language" in all proposed and final rules published after January 1, 2000.