

transaction under paragraph (b)(1) of this section. Such notification must be submitted to the OTS at least 30 days prior to the effective date of the transaction, but not later than the date on which an application relating to the proposed transaction is filed with the primary regulator of the resulting institution; the Office may, upon request or on its own initiative, shorten the 30-day prior notification requirement. Notifications under this paragraph must demonstrate compliance with applicable stockholder or accountholder approval requirements. Where the savings association submitting the notification maintains a liquidation account established pursuant to part 563b of this chapter, the notification must state that the resulting institution will assume such liquidation account.

The notification may be in the form of either a letter describing the material features of the transaction or a copy of a filing made with another Federal or state regulatory agency seeking approval from that agency for the transaction under the Bank Merger Act or other applicable statute. If the action contemplated by the notification is not completed within one year after the Office's receipt of the notification, a new notification must be submitted to the Office.

(2) *Other transfer transactions*—(i) *Expedited treatment*. A notice in conformity with § 516.25(a) of this chapter may be submitted to OTS under § 516.40 of this chapter for any transaction under paragraph (c) of this section, provided all constituent savings associations meet the conditions for expedited treatment under § 516.5 of this chapter. Notices submitted under this paragraph must be deemed approved automatically by OTS 30 days after receipt, unless OTS advises the applicant in writing prior to the expiration of such period that the proposed transaction may not be consummated without OTS's approval of an application under paragraphs (h)(2)(ii) or (h)(2)(iii) of this section.

(ii) *Standard treatment*. An application in conformity with § 516.25(b) of this chapter and paragraph (d) of this section must be submitted to OTS under § 516.40 by each savings association participating in a transaction

under paragraph (b)(2) or (c) of this section, where any constituent savings association does not meet the conditions for expedited treatment under § 516.5 of this chapter, except as provided in paragraph (h)(2)(iii) of this section. Applications under this paragraph must be processed in accordance with the procedures in part 516, subparts A and E of this chapter.

(iii) *Standard treatment for transactions under section 5(d)(3) of the Federal Deposit Insurance Act*. An application in conformity with § 516.25(b) of this chapter and paragraph (d) of this section must be submitted to OTS under § 516.40 by each savings association which will survive any transaction under both section 5(d)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1815(d)(3)) and paragraph (c) of this section, where any constituent savings association does not meet the conditions for expedited treatment under § 516.5 of this chapter. Applications under this paragraph must be processed in accordance with the procedures in part 516, subparts A and E of this chapter, provided that the period for review may be extended only if OTS determines that the applicant has failed to furnish all requested information or that the information submitted is substantially inaccurate, in which case the review period may be extended for up to 30 days.

[54 FR 49552, Nov. 30, 1989, as amended at 55 FR 13514, Apr. 11, 1990; 57 FR 14344, Apr. 20, 1992; 59 FR 44624, Aug. 30, 1994; 59 FR 66159, Dec. 23, 1994; 62 FR 64146, Dec. 4, 1997; 66 FR 13007, Mar. 2, 2001; 69 FR 68250, Nov. 24, 2004]

§ 563.27 Advertising.

No savings association shall use advertising (which includes print or broadcast media, displays or signs, stationery, and all other promotional materials), or make any representation which is inaccurate in any particular or which in any way misrepresents its services, contracts, investments, or financial condition.

[54 FR 49552, Nov. 30, 1989, as amended at 58 FR 4313, Jan. 14, 1993]

§ 563.33 Directors, officers, and employees.

(a) *Directors*—(1) *Requirements*. The composition of the board of directors of

a savings association must be in accordance with the following requirements:

(i) A majority of the directors must not be salaried officers or employees of the savings association or of any subsidiary or (except in the case of a savings association having 80% or more of any class of voting shares owned by a holding company) any holding company affiliate thereof.

(ii) Not more than two of the directors may be members of the same immediate family.

(iii) Not more than one director may be an attorney with a particular law firm.

(2) *Prospective application.* In the case of an association whose board of directors does not conform with any requirement set forth in paragraph (a)(1) of this section as of October 5, 1983, this paragraph (a) shall not prohibit the uninterrupted service, including re-election and re-appointment, of any person serving on the board of directors at that date.

(b) [Reserved]

[54 FR 49552, Nov. 30, 1989, as amended at 58 FR 4313, Jan. 14, 1993]

§ 563.36 Tying restriction exception.

(a) *Safe harbor for combined-balance discounts.* A savings and loan holding company or any savings association or any affiliate of either may vary the consideration for any product or package of products based on a customer's maintaining a combined minimum balance in certain products specified by the company varying the consideration (eligible products), if:

(1) That company (if it is a savings association) or a savings association affiliate of that company (if it is not a savings association) offers deposits, and all such deposits are eligible products; and

(2) Balances in deposits count at least as much as non-deposit products toward the minimum balance.

(b) *Limitations on exception.* This exception shall terminate upon a finding by the OTS that the arrangement is resulting in anti-competitive practices. The eligibility of a savings and loan holding company or savings association or affiliate of either to operate under this exception shall terminate

upon a finding by the OTS that its exercise of this authority is resulting in anti-competitive practices.

[61 FR 60184, Nov. 27, 1996]

§ 563.39 Employment contracts.

(a) *General.* A savings association may enter into an employment contract with its officers and other employees only in accordance with the requirements of this section. All employment contracts shall be in writing and shall be approved specifically by an association's board of directors. An association shall not enter into an employment contract with any of its officers or other employees if such contract would constitute an unsafe or unsound practice. The making of such an employment contract would be an unsafe or unsound practice if such contract could lead to material financial loss or damage to the association or could interfere materially with the exercise by the members of its board of directors of their duty or discretion provided by law, charter, bylaw or regulation as to the employment or termination of employment of an officer or employee of the association. This may occur, depending upon the circumstances of the case, where an employment contract provides for an excessive term.

(b) *Required provisions.* Each employment contract shall provide that:

(1) The association's board of directors may terminate the officer or employee's employment at any time, but any termination by the association's board of directors other than termination for cause, shall not prejudice the officer or employee's right to compensation or other benefits under the contract. The officer or employee shall have no right to receive compensation or other benefits for any period after termination for cause. Termination for cause shall include termination because of the officer or employee's personal dishonesty, incompetence, willful misconduct, breach of fiduciary duty involving personal profit, intentional failure to perform stated duties, willful violation of any law, rule, or regulation (other than traffic violations or similar offenses) or final cease-and-desist order, or material breach of any provision of the contract.