

any right or opportunity to present oral testimony or witnesses.

(3) *Effective date.* Unless otherwise ordered by the OTS, the dismissal shall remain in effect while a request for reinstatement is pending.

(c) *Order for informal hearing.* Upon receipt of a timely written request from a Respondent for an informal hearing on the portion of a directive requiring a savings association to dismiss from office any director or senior executive officer, the OTS shall issue an order directing an informal hearing to commence no later than 30 days after receipt of the request, unless the Respondent requests a later date. The hearing shall be held in Washington, DC, or at such other place as may be designated by the OTS, before a presiding officer(s) designated by the OTS to conduct the hearing.

(d) *Hearing procedures.* (1) A Respondent may appear at the hearing personally or through counsel. A Respondent shall have the right to introduce relevant written materials and to present oral argument. A Respondent may introduce oral testimony and present witnesses only if expressly authorized by the OTS or the presiding officer(s). Neither the provisions of the Administrative Procedure Act governing adjudications required by statute to be determined on the record nor part 509 of this chapter apply to an informal hearing under this section unless the OTS orders that such procedures shall apply.

(2) The informal hearing shall be recorded and a transcript furnished to the Respondent upon request and payment of the cost thereof. Witnesses need not be sworn, unless specifically requested by a party or the presiding officer(s). The presiding officer(s) may ask questions of any witness.

(3) The presiding officer(s) may order that the hearing be continued for a reasonable period (normally five business days) following completion of oral testimony or argument to allow additional written submissions to the hearing record.

(e) *Standard for review.* A Respondent shall bear the burden of demonstrating that his or her continued employment by or service with the savings associa-

tion would materially strengthen the savings association's ability:

(1) To become adequately capitalized, to the extent that the directive was issued as a result of the savings association's capital level or failure to submit or implement a capital restoration plan; and

(2) To correct the unsafe or unsound condition or unsafe or unsound practice, to the extent that the directive was issued as a result of classification of the savings association based on supervisory criteria other than capital, pursuant to section 38(g) of the FDI Act.

(f) *Recommendation of presiding officers.* Within 20 calendar days following the date the hearing and the record on the proceeding are closed, the presiding officer(s) shall make a recommendation to the OTS concerning the Respondent's request for reinstatement with the savings association.

(g) *Time for decision.* Not later than 60 calendar days after the date the record is closed or the date of the response in a case where no hearing has been requested, the OTS shall grant or deny the request for reinstatement and notify the Respondent of the OTS's decision. If the OTS denies the request for reinstatement, the OTS shall set forth in the notification the reasons for the OTS's action.

[57 FR 44903, Sept. 29, 1992, as amended at 60 FR 66719, Dec. 26, 1995]

§ 565.10 Enforcement of directives.

(a) *Judicial remedies.* Whenever a savings association or company that controls a savings association fails to comply with a directive issued under section 38, the OTS may seek enforcement of the directive in the appropriate United States district court pursuant to section 8(i)(1) of the FDI Act.

(b) *Administrative remedies—(1) Failure to comply with directive.* Pursuant to section 8(i)(2)(A) of the FDI Act, the OTS may assess a civil money penalty against any savings association or company that controls a savings association that violates or otherwise fails to comply with any final directive issued under section 38 and against any institution-affiliated party who participates in such violation or non-compliance.

(2) *Failure to implement capital restoration plan.* The failure of a savings association to implement a capital restoration plan required under section 38, or this part, or the failure of a company having control of a savings association to fulfill a guarantee of a capital restoration plan made pursuant to section 38(e)(2) of the FDI Act shall subject the savings association or company to the assessment of civil money penalties pursuant to section 8(i)(2)(A) of the FDI Act.

(c) *Other enforcement action.* In addition to the actions described in paragraphs (a) and (b) of this section, the OTS may seek enforcement of the provisions of section 38 or this part through any other judicial or administrative proceeding authorized by law.

PART 567—CAPITAL

Sec.

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567.14–567.19 [Reserved]

AUTHORITY: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1828 (note).

SOURCE: 54 FR 49649, Nov. 30, 1989, unless otherwise noted.

§ 567.1 Definitions.

For purposes of this part:

Adjusted total assets. The term *adjusted total assets* means:

(1) A savings association's total assets as that term is defined in this section;

(2) Plus

(i) The prorated assets of any includable subsidiary in which the savings association has a minority ownership interest that is not consolidated under generally accepted accounting principles; and

(ii) The remaining goodwill (FSLIC Capital Contributions) resulting from prior regulatory accounting practices as provided in the definition of *qualifying supervisory goodwill* in this section;

(3) Minus

(i) Assets not included in the applicable capital standard except for those subject to paragraphs (3)(ii) and (3)(iii) of this definition;

(ii) Investments in any includable subsidiary in which a savings association has a minority interest;

(iii) Investments in any subsidiary subject to consolidation under paragraph (2)(i) of this definition; and

(iv) For purposes of determining core capital, qualifying supervisory goodwill.

Asset-backed commercial paper program. The term *asset-backed commercial paper program* (ABCP program) means a program that primarily issues commercial paper that has received a credit rating from an NRSRO and that is backed by assets or other exposures held in a bankruptcy-remote special purpose entity. The term *sponsor* of an ABCP program means a savings association that:

(1) Establishes an ABCP program;

(2) Approves the sellers permitted to participate in an ABCP program;

(3) Approves the asset pools to be purchased by an ABCP program; or

(4) Administers the ABCP program by monitoring the assets, arranging for debt placement, compiling monthly reports, or ensuring compliance with the program documents and with the program's credit and investment policy.

Cash items in the process of collection. The term *cash items in the process of collection* means checks or drafts in the process of collection that are drawn on another depository institution, including a central bank, and that are payable immediately upon presentation; U.S. Government checks that are drawn on the United States Treasury or any other U.S. Government or Government-sponsored agency and that are payable immediately upon presentation; broker's security drafts and commodity or bill-of-lading drafts payable immediately upon presentation; and unposted debits.