

association, only upon satisfaction of the following conditions:

(a) A Reorganization Plan is approved by a majority of the board of directors of the reorganizing association and any acquiree association;

(b) A Reorganization Notice is filed with the OTS and either:

(1) The OTS has given written notice of its intent not to disapprove the proposed reorganization; or

(2) Sixty days have passed since OTS received the Reorganization Notice and deemed it complete under § 516.210 or § 516.220 of this chapter, and OTS has not:

(i) Given written notice that the proposed reorganization is disapproved; or

(ii) Extended for an additional 30 days the period during which disapproval may be issued;

(c) The Reorganization Plan is submitted to the members of the reorganizing association and any acquiree association pursuant to a proxy statement cleared in advance by the OTS and such Reorganization Plan is approved by a majority of the total votes of the members of each association eligible to be cast at a meeting held at the call of each association's directors in accordance with the procedures prescribed by each association's charter and bylaws; and

(d) All necessary regulatory approvals have been obtained and all conditions specified in § 575.9(c)(5) of this part or otherwise imposed by the OTS in connection with the issuance of a notice of intent not to disapprove under § 575.3(b)(1) of this part or by the OTS in connection with the granting of the approvals specified in this paragraph have been satisfied.

[58 FR 44114, Aug. 19, 1993, as amended at 66 FR 13009, Mar. 2, 2001]

§ 575.4 Grounds for disapproval of reorganizations.

(a) *Basic standards.* The OTS may disapprove a proposed mutual holding company reorganization pursuant to § 575.3(b) of this part if:

(1) Disapproval is necessary to prevent unsafe or unsound practices;

(2) The financial or managerial resources of the reorganizing association or any acquiree association warrant disapproval;

(3) The proposed capitalization of the mutual holding company fails to meet the requirements of paragraph (b) of this section;

(4) A stock issuance is proposed in connection with the reorganization pursuant to § 575.7 of this part that fails to meet the standards established by that section;

(5) The reorganizing association or any acquiree association fails to furnish the information required to be included in the Reorganization Notice or any other information requested by the OTS in connection with the proposed reorganization; or

(6) The proposed reorganization would violate any provision of law, including (without limitation) § 575.3 (a) and (c) of this part (regarding board of directors and membership approval) or § 575.5(a) of this part (regarding continuity of membership rights).

(b) *Capitalization.* (1) The OTS shall disapprove a proposal by a reorganizing association or any acquiree association to capitalize a mutual holding company in an amount in excess of a nominal amount if immediately following the reorganization, the resulting association or the acquiree association would fail to be "adequately capitalized" as defined under 12 CFR part 565.

(2) Proposals by reorganizing associations and acquiree associations to capitalize mutual holding companies shall also comply with any applicable statutes, and with regulations or written policies of the OTS governing capital distributions by savings associations in effect at the time of the reorganization. (Issuance by the OTS of a notice of intent not to disapprove a mutual holding company reorganization pursuant to § 575.3(b) of this part, or failure by the OTS to disapprove such a reorganization within the time prescribed in § 575.3(b) of this part, shall also be deemed to constitute OTS approval under any regulation or written policy of the OTS governing capital distributions by savings associations, if such approval is required, of the capitalization proposal set forth in the Reorganization Notice, subject to any conditions imposed by § 575.4(d)(2) of this part.)

(c) *Presumptive disqualifiers*—(1) *Managerial resources.* The factors specified in

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§ 574.7 (g)(1)(i)-(g)(1)(vi) of this chapter shall give rise to a rebuttable presumption that the managerial resources test of paragraph (a)(2) of this section is not met. For this purpose, each place the term *acquiror* appears in § 574.7 (g)(1)(i)-(g)(1)(vi) of this chapter, it shall be read to mean the reorganizing association or any acquiree association, and the reference in § 574.7(g)(1)(v) of this chapter to filings under this part shall be deemed to include filings under either part 574 of this chapter or this part.

(2) *Safety and soundness and financial resources.* Failure by a reorganizing association and any acquiree association to submit a business plan in connection with a Reorganization Notice, or submission of a business plan that projects activities that are inconsistent with the credit and lending needs of your proposed market area or that fails to demonstrate that the capital of the mutual holding company will be deployed in a safe and sound manner, shall give rise to a rebuttable presumption that the safety and soundness and financial resources tests of paragraphs (a)(1) and (a)(2) of this section are not met.

(d) *Failure of the OTS to act on a Reorganization Notice within the prescribed time period.* A proposed reorganization that obtains regulatory clearance from the OTS due to the operation of § 575.3(b)(2) of this part may take place in the manner proposed, subject to the following conditions:

(1) The reorganization shall be consummated within one year of the date of the expiration of the OTS's review period under § 575.3(b)(2) of this part;

(2) The mutual holding company shall not be capitalized in an amount in excess of what is permissible under § 575.4(b) of this part;

(3) No request for regulatory waivers or forbearances shall be deemed granted;

(4) The following information shall be submitted within the specified time frames:

(i) On the business day prior to the date of the reorganization, the chief financial officers of the reorganizing association and any acquiree association shall certify to the OTS in writing that no material adverse events or material

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adverse changes have occurred with respect to the financial condition or operations of their respective associations since the date of the financial statements submitted with the Reorganization Notice;

(ii) No later than thirty days after the reorganization, the mutual holding company shall file with the OTS a certification by legal counsel stating the effective date of the reorganization, the exact number of shares of stock of the resulting association and any acquiree association acquired by the mutual holding company and by any other persons, and that the reorganization has been consummated in accordance with § 575.3 of this part and all other applicable laws and regulations and the Reorganization Notice;

(iii) No later than thirty days after the reorganization, the mutual holding company shall file with the OTS an opinion from its independent auditors certifying that the reorganization was consummated in accordance with generally accepted accounting principles; and

(iv) No later than thirty days after the reorganization, the mutual holding company shall file with the OTS a certification stating that the mutual holding company will not deviate materially, or cause its savings association subsidiaries to deviate materially, from the business plan submitted in connection with the Reorganization Notice, unless prior written approval from the Regional Director is obtained.

[58 FR 44114, Aug. 19, 1993, as amended at 67 FR 52035, Aug. 9, 2002]

§ 575.5 Membership rights.

(a) *Depositors and borrowers of resulting associations, acquiree associations, and associations in mutual form when acquired.* The charter of a mutual holding company must:

(1) Confer upon existing and future depositors of the resulting association the same membership rights in the mutual holding company as were conferred upon depositors by the charter of the reorganizing association as in effect immediately prior to the reorganization;

(2) Confer upon existing and future depositors of any acquiree association