the Federal Reserve System has promulgated pursuant to section 4(c) of the Bank Holding Company Act are permissible for savings and loan holding companies, or subsidiaries thereof that are neither savings associations nor service corporation subsidiaries of subsidiary savings associations: *Provided*, That no savings and loan holding company shall commence any activity described in this paragraph (a) without the prior approval of this Office pursuant to paragraph (b) of this section, unless—

(1) The holding company received a rating of satisfactory or above prior to January 1, 2008, or a composite rating of ''1'' or ''2'' thereafter, in its most recent examination, and is not in a troubled condition as defined in § 563.555, and the holding company does not propose to commence the activity by an acquisition (in whole or in part) of a going concern; or

(2) The activity is permissible under authority other than section 10(c)(2)(F)(i) of the HOLA without prior notice or approval. Where an activity is within the scope of both § 584.2–1 of this part and this section, the procedures of § 584.2–1 of this part shall govern.

(b) *Procedures for applications.* Applications to commence any activity prescribed under paragraph (a) of this section shall be filed with the OTS. OTS must act upon such application under the guidelines in part 516, subpart E of this chapter.

(c) *Factors considered in acting on applications.* In evaluating an application filed under paragraph (b) of this section, the OTS shall consider whether the performance by the applicant of the activity can reasonably be expected to produce benefits to the public (such as greater convenience, increased competition, or gains in efficiency) that outweigh possible adverse effects (such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound financial practices). This consideration includes an evaluation of the financial and managerial resources of the applicant, including its subsidiaries, and of any company to be acquired, and the effect of the proposed transaction on those resources.

[54 FR 49708, Nov. 30, 1989, as amended at 55 FR 13518, Apr. 11, 1990; 57 FR 14349, Apr. 20, 1992; 60 FR 66720, Dec. 26, 1995; 63 FR 71213, Dec. 24, 1998; 66 FR 13010, Mar. 2, 2001; 72 FR 72238, Dec. 20, 2007]

§ 584.4 Certain acquisitions by savings and loan holding companies.

(a) *Acquisitions by a savings and loan holding company of more than five percent of a non-subsidiary savings association or savings and loan holding company.* No savings and loan holding company, directly or indirectly, or through one or more subsidiaries or through one or more transactions, shall, without prior written OTS approval, acquire by purchase or otherwise, or retain, more than five percent of the voting stock or shares of a savings association not a subsidiary, or of a savings and loan holding company not a subsidiary. A savings and loan holding company seeking approval of an acquisition under this section must file an application under 12 CFR part 516, subpart A. Applications filed under this section are subject to the publication, public comment, and meeting provisions of 12 CFR part 516, subparts B, C, and D. OTS will review applications filed under this section under the review standards set forth for savings and loan holding company applications in section 10(e)(2) of the HOLA, § 574.7(c) of this chapter, and § 563e.29(a) of this chapter.

(b) *Certain acquisitions by multiple savings and loan holding companies.* No multiple savings and loan holding company (other than a savings and loan holding company described in § 584.2a(a)(1)(ii) of this part) may, directly or indirectly, or through one or more subsidiaries or through one or more transactions, acquire or retain more than five percent of the voting shares of any company that is not a subsidiary that is engaged in any business activity other than those specified in § 584.2(b) of this part.

(c)(1) *Exception for certain acquisitions of voting shares of savings associations and savings and loan holding companies.* Paragraphs (a) and (b) of this section

do not apply to voting shares of a savings association or of a savings and loan holding company—

(i) Held as a *bona fide* fiduciary (whether with or without the sole discretion to vote such shares);

(ii) Held temporarily pursuant to an underwriting commitment in the normal course of an underwriting business;

(iii) Held in an account solely for trading purposes or over which no control is held other than control of voting rights acquired in the normal course of a proxy solicitation;

(iv) Acquired in securing or collecting a debt previously contracted in good faith, for two years after the date of acquisition or for such additional time (not exceeding three years) as the Office may permit if, in the Office's judgment, such an extension would not be detrimental to the public interest;

(v) Acquired under section 13(k)(1)(A)(i) of the Federal Deposit Insurance Act (or section 408(m) of the National Housing Act as in effect immediately prior to the enactment of the Financial Institutions Reform, Recovery and Enforcement Act of 1989);

(vi) Held by any insurance companies as defined in section 2(a)(17) of the Investment Company Act of 1940: *Provided*, That all shares held by all insurance company affiliates of such savings association or savings and loan holding company may not, in the aggregate, exceed five percent of all outstanding shares or of the voting power of the savings association or savings and loan holding company, and such shares are not acquired or retained with a view to acquiring, exercising, or transferring control of the savings association or savings and loan holding company; and

(vii) Acquired pursuant to a qualified stock issuance if such a purchase is approved pursuant to §574.8 of this chapter.

(2) The aggregate amount of shares held under this paragraph (c) (other than pursuant to paragraphs (c)(1)(i) through (iv) and (c)(1)(vi) may not exceed 15 percent of all outstanding shares or the voting power of a savings association or savings and loan holding company.

(d) *Acquisitions of uninsured institutions.* No savings and loan holding company may, directly or indirectly, or through one or more subsidiaries or through one or more transactions, acquire control of an uninsured institution or retain, for more than one year after the date any savings association subsidiary becomes uninsured, control of such association.

[72 FR 72238, Dec. 20, 2007]

§ 584.9 Prohibited acts.

(a) *Control of mutual savings association.* No savings and loan holding company or any subsidiary thereof, or any director, officer, or employee of a savings and loan holding company or subsidiary thereof, or person owning, controlling, or holding with power to vote, or holding proxies representing, more than 25 percent of the voting shares of such holding company or subsidiary, may hold, solicit, or exercise any proxies in respect of any voting rights in a mutual savings association.

(b) *Management interlocks.* No director or officer of a savings and loan holding company, or any person owning, controlling, or holding with power to vote, or holding proxies representing more than 25 percent of the voting shares of such holding company may acquire control of any savings association not a subsidiary of such savings and loan holding company, unless such acquisition is approved by the Office pursuant to §574.3(a) of this chapter.

(c) *Convicted persons.* No individual who has been convicted of any criminal offense involving dishonesty or breach of trust may serve or act as a director, officer, or trustee of, or become a partner in, any savings and loan holding company, except with the prior written approval of the Office.

(d) *Applications for approval.* Applications for an approval under paragraph (c) of this section shall contain a full statement of the reasons in support thereof. Such applications shall be filed with the OTS.

[54 FR 49708, Nov. 30, 1989, as amended at 57 FR 14349, Apr. 20, 1992]