Sample Clause A–4: We may disclose nonpublic personal information about you to the following types of third parties:

• Financial service providers, such as [*provide illustrative examples, such as "mortgage bankers, securities broker-dealers, and insurance agents*"];

• Non-financial companies, such as [*provide illustrative examples, such as "retailers, direct marketers, airlines, and publishers*"]; and

• Others, such as [*provide illustrative examples, such as "non-profit organizations;*"].

We may also disclose nonpublic personal information about you to nonaffiliated third parties as permitted by law.

A–5—SERVICE PROVIDER/JOINT MARKETING EXCEPTION

You may use one of these clauses, as applicable, to meet the requirements of § 573.6(a)(5) related to the exception for service providers and joint marketers in § 573.13. If you disclose nonpublic personal information under this exception, you must describe the categories of nonpublic personal information you disclose and the categories of third parties with whom you have contracted.

Sample Clause A–5, Alternative 1: We may disclose the following information to companies that perform marketing services on our behalf or to other financial institutions with whom we have joint marketing agreements:

• Information we receive from you on applications or other forms, such as [*provide illustrative examples, such as "your name, address, social security number, assets, and income*"];

• Information about your transactions with us, our affiliates, or others, such as [*provide illustrative examples, such as "your account balance, payment history, parties to transactions, and credit card usage*"]; and

• Information we receive from a consumer reporting agency, such as [*provide illustrative examples, such as "your creditworthiness and credit history*"].

Sample Clause A–5, Alternative 2: We may disclose all of the information we collect, as described [*describe location in the notice, such as "above" or "below*"] to companies that perform marketing services on our behalf or to other financial institutions with whom we have joint marketing agreements.

A–6—EXPLANATION OF OPT OUT RIGHT (INSTITUTIONS THAT DISCLOSE OUTSIDE OF THE EXCEPTIONS)

You may use this clause, as applicable, to meet the requirement of § 573.6(a)(6) to provide an explanation of the consumer's right to opt out of the disclosure of nonpublic personal information to nonaffiliated third parties, including the method(s) by which the consumer may exercise that right. You may use this clause if you disclose nonpublic personal information other than as permitted by the exceptions in §§ 573.13, 573.14, and 573.15.

Sample Clause A–6: If you prefer that we not disclose nonpublic personal information about you to nonaffiliated third parties, you may opt out of those disclosures, that is, you may direct us not to make those disclosures (other than disclosures permitted by law). If you wish to opt out of disclosures to nonaffiliated third parties, you may [*describe a reasonable means of opting out, such as "call the following toll-free number: (insert number)*"].

A–7—CONFIDENTIALITY AND SECURITY (ALL INSTITUTIONS)

You may use this clause, as applicable, to meet the requirement of § 573.6(a)(8) to describe your policies and practices with respect to protecting the confidentiality and security of nonpublic personal information.

Sample Clause A–7: We restrict access to nonpublic personal information about you to [*provide an appropriate description, such as "those employees who need to know that information to provide products or services to you*"]. We maintain physical, electronic, and procedural safeguards that comply with federal standards to guard your nonpublic personal information.

[65 FR 35226, June 1, 2000. Redesignated and amended at 74 FR 62945, 62955, Dec. 1, 2009]

EFFECTIVE DATE NOTE: At 74 FR 62955, Dec. 1, 2009, newly redesignated appendix B was removed, effective Jan. 1, 2012.

PART 574—ACQUISITION OF CONTROL OF SAVINGS ASSOCIATIONS

Sec.

AUTHORITY: 12 U.S.C. 1467a, 1817, 1831i.

SOURCE: 54 FR 49690, Nov. 30, 1989, unless otherwise noted.

§ 574.1 Scope of part.

The purpose of this part is to implement the provisions of the Change in Bank Control Act, 12 U.S.C.1817(j)

("Control Act"), and the Savings and Loan Holding Company Act, 12 U.S.C. 1467a ("Holding Company Act"), relating to acquisitions and changes in control of savings associations that are organized in stock form and savings and loan holding companies thereof.

[61 FR 60184, Nov. 27, 1996]

§ 574.2 Definitions.

As used in this part and in the forms under this part, the following definitions apply, unless the context otherwise requires:

(a) *Acquire* when used in connection with the acquisition of stock of a savings association means obtaining ownership, control, power to vote, or sole power of disposition of stock, directly or indirectly or through one or more transactions or subsidiaries, through purchase, assignment, transfer, exchange, succession, or other means, including:

(1) An increase in percentage ownership resulting from a redemption, repurchase, reverse stock split or a similar transaction involving other securities of the same class, and

(2) The acquisition of stock by a group of persons and/or companies acting in concert which shall be deemed to occur upon formation of such group: *Provided,* That an investment advisor shall not be deemed to acquire the voting stock of its advisee if the advisor:

(i) Votes the stock only upon instruction from the beneficial owner, and

(ii) Does not provide the beneficial owner with advice concerning the voting of such stock.

(b) *Acquiror* means a person or company.

(c) *Acting in concert* means: (1) Knowing participation in a joint activity or interdependent conscious parallel action towards a common goal whether or not pursuant to an express agreement, or

(2) A combination or pooling of voting or other interests in the securities of an issuer for a common purpose pursuant to any contract, understanding, relationship, agreement or other arrangement, whether written or otherwise.

(3) A person or company which acts in concert with another person or company ("other party") shall also be deemed to be acting in concert with any person or company who is also acting in concert with that other party, except that any tax-qualified employee stock benefit plan as defined in § 563b.25 of this chapter will not be deemed to be acting in concert with its trustee or a person who serves in a similar capacity solely for the purpose of determining whether stock held by the trustee and stock held by the plan will be aggregated.

(d) *Affiliate* means any person or company which controls, is controlled by or is under common control with a person, savings association or company.

(e) [Reserved]

(f) *Company* means any corporation, partnership, trust, association, joint venture, pool, syndicate, unincorporated organization, joint-stock company or similar organization, as defined in paragraph (r) of this section; but a company does not include:

(1) The Federal Deposit Insurance Corporation, the Resolution Trust Corporation, the Office of Thrift Supervision, or any Federal Home Loan Bank, or

(2) Any company the majority of shares of which is owned by:

(i) The United States or any State,

(ii) An officer of the United States or any State in his or her official capacity, or

(iii) An instrumentality of the United States or any State.

(g) *Controlling shareholder* means any person who directly or indirectly or acting in concert with one or more persons or companies, or together with members of his or her immediate family, owns, controls, or holds with power to vote 10 percent or more of the voting stock of a company or controls in any manner the election or appointment of a majority of the company's board of directors.

(h) *Director* means the Director of the Office of Thrift Supervision.

(i) [Reserved]

(j) *Immediate family* means a person's spouse, father, mother, children, brothers, sisters and grandchildren; the father, mother, brothers, and sisters of the person's spouse; and the spouse of the person's child, brother or sister.

(k) *Management official* means any president, chief executive officer, chief

operating officer, vice president, director, partner, or trustee, or any other person who performs or has a representative or nominee performing similar policymaking functions, including executive officers of principal business units or divisions or subsidiaries who perform policymaking functions, for a savings association or a company, whether or not incorporated.

(l) *Office* means the Office of Thrift Supervision.

(m) *Person* means an individual or a group of individuals acting in concert who do not constitute a "company" as defined in paragraph (f) of this section.

(n) *Repealed Control Act* means the Change in Savings and Loan Control Act, 12 U.S.C. 1730(q), as in effect immediately prior to its repeal by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

(o) [Reserved]

(p) *Savings Association* means a Federal savings and loan association or a Federal savings bank chartered under section 5 of the Home Owners' Loan Act, a building and loan, savings and loan or homestead association or a cooperative bank (other than a cooperative bank described in 12 U.S.C. 1813(a)(2)) the deposits of which are insured by the Federal Deposit Insurance Corporation, and any corporation (other than a bank) the deposits of which are insured by the Federal Deposit Insurance Corporation that the Office and the Federal Deposit Insurance Corporation jointly determine to be operating in substantially the same manner as a savings association, and shall include any savings bank or any cooperative bank which is deemed by the Office to be a savings association under 12 U.S.C. 1467a(1), and any savings and loan holding company as defined in paragraph (q) of this section.

(q) *Savings and loan holding company* means any company that directly or indirectly controls a savings association, but does not include:

(1) Any company by virtue of its ownership or control of voting stock of a savings association acquired in connection with the underwriting of securities if such stock is held only for such period of time (not exceeding 120 days unless extended by the Office) as will permit the sale thereof on a reasonable basis; and

(2) Any trust (other than a pension, profit-sharing, stockholders', voting, or business trust) which controls a savings association if such trust by its terms must terminate within 25 years or not later than 21 years and 10 months after the death of individuals living on the effective date of the trust, and:

(i) Was in existence and in control of a savings association on June 26, 1967, or

(ii) Is a testamentary trust; and

(3) A bank holding company that is registered under, and subject to, the Bank Holding Company Act of 1956, or any company directly or indirectly controlled by such company (other than a savings association).

(r) *Similar organization* for purposes of paragraph (f) of this section means a combination of parties with the potential for or practical likelihood of continuing rather than temporary existence, where the parties thereto have knowingly and voluntarily associated for a common purpose pursuant to identifiable and binding relationships which govern the parties with respect to either:

(1) The transferability and voting of any stock or other indicia of participation in another entity, or

(2) Achievement of a common or shared objective, such as to collectively manage or control another entity.

(s) *Stock* means common or preferred stock, general or limited partnership shares or interests, or similar interests.

(t) *Uninsured institution* means any financial institution the deposits of which are not insured by the Federal Deposit Insurance Corporation.

(u)(1) *Voting stock* means common or preferred stock, general or limited partnership shares or interests, or similar interests if the shares or interests, by statute, charter or in any manner, entitle the holder:

(i) To vote for or to select directors, trustees, or partners (or persons exercising similar functions of the issuing savings association or company); or

(ii) To vote or to direct the conduct of the operations or other significant policies of the issuer:

(2) Notwithstanding anything in paragraph (u)(1) of this section, preferred stock, limited partnership shares or interests, or similar interests are not "voting stock" if:

(i) Voting rights associated with the stock, shares or interests are limited solely to the type customarily provided by statute with regard to matters that would significantly and adversely affect the rights or preference of the stock, security or other interest, such as the issuance of additional amounts or classes of senior securities, the modification of the terms of the stock, security or interest, the dissolution of the issuer, or the payment of dividends by the issuer when preferred dividends are in arrears;

(ii) The stock, shares or interests represent an essentially passive investment or financing device and do not otherwise provide the holder with control over the issuer; and

(iii) The stock, shares or interests do not at the time entitle the holder, by statute, charter, or otherwise, to select or to vote for the selection of directors, trustees, or partners (or persons exercising similar functions) of the issuer;

(3) Notwithstanding anything in paragraphs (u)(1) and (u)(2) of this section, "voting stock" shall be deemed to include stock and other securities that, upon transfer or otherwise, are convertible into voting stock or exercisable to acquire voting stock where the holder of the stock, convertible security or right to acquire voting stock has the preponderant economic risk in the underlying voting stock. Securities immediately convertible into voting stock at the option of the holder without payment of additional consideration shall be deemed to constitute the voting stock into which they are convertible; other convertible securities and rights to acquire voting stock shall not be deemed to vest the holder with the preponderant economic risk in the underlying voting stock if the holder has paid less than 50 percent of the consideration required to directly acquire the voting stock and has no other economic interest in the underlying voting stock. For purposes of calculating the percentage of voting stock held by a particular acquiror, stock or other securities convertible into voting stock or exercisable to acquire voting stock which are deemed voting stock under this paragraph (u)(3) shall be included in calculating the amount of voting stock held by the acquiror and the total amount of stock outstanding only to the extent of the voting stock obtainable by such acquiror by such conversion or exercise of rights.

[54 FR 49690, Nov. 30, 1989, as amended at 60 FR 66720, Dec. 26, 1995; 61 FR 60184, Nov. 27, 1996; 71 FR 19812, Apr. 18, 2006; 73 FR 19, Jan. 2, 2008]

§ 574.3 Acquisition of control of savings associations.

(a) *Acquisition by a company or certain persons.* Unless a transaction is exempt under paragraph (c) of this section, or exempt from prior approval under paragraph (d) of this section, no company or any director or officer of a savings and loan holding company, or any individual who owns, controls, or holds with power to vote (or holds proxies representing) more than 25 percent of the voting stock of a savings and loan holding company, shall acquire control, as defined in § 574.4 (a) and (b) of this part, of a savings association except upon receipt of the written approval of the Office.

(b) *Acquisition by a person.* Unless a transaction is exempt under paragraph (c) of this section, or exempt from prior notice under paragraph (d) of this section, no person (other than certain persons affiliated with a savings and loan holding company who are subject to paragraph (a) of this section), shall acquire control, as defined in § 574.4 (a) and (b) of this part, of a savings association until written notice has been provided to the Office and (1) the Office indicates in writing its intent not to disapprove the proposed acquisition or (2) 60 days (or such period of time as the Office may specify if the review period has been extended under § 574.6(c)(3) of this part) have passed since receipt of a notice deemed sufficient under § 574.6(c)(2). Notwithstanding the forgoing, acquisitions by persons by means of a merger with an interim association are not subject to

this part, but shall be subject to approval under § 563.22, and either § 552.13 or applicable state law.

(c) *Exempt transactions.* (1) The following transactions are exempt from the application requirements of paragraph (a) of this section:

(i) Control of a savings association acquired by devise under the terms of a will creating a trust which is excluded from the definition of savings and loan holding company under § 574.2(q) of this part;

(ii) Control of a savings association acquired in connection with a reorganization that involves solely the acquisition of control of that association by a newly formed company that is controlled by the same acquirors that controlled the savings association for the immediately preceding three years, and entails no other transactions, such as an assumption of the acquirors' debt by the newly formed company: Provided, that the acquirors have filed with the Office an H–(e)4 notification as provided in section 574.6 of this part and the OTS does not object to the acquisition within 30 days of the filing date;

(iii) Control of a savings association acquired by a bank holding company that is registered under and subject to, the Bank Holding Company Act of 1956, or any company controlled by such bank holding company;

(iv) Control of a savings association acquired solely as a result of (A) a pledge or hypothecation of stock to secure a loan contracted for in good faith or (B) the liquidation of a loan contracted for in good faith, in either case where such loan was made in the ordinary course of the business of the lender: *Provided, further,* That acquisition of control pursuant to such pledge, hypothecation or liquidation is reported to the Office within 30 days, and *Provided, further,* That the acquiror shall not retain such control for more than one year from the date on which such control was acquired; however, the Office may, upon application by an acquiror, extend such one-year period from year to year, for an additional period of time not exceeding three years, if the Office finds such extension is warranted and would not be detrimental to the public interest;

(v) Control of a savings association acquired through a percentage increase in stock ownership following a *pro rata* stock dividend or stock split, if the proportional interests of the recipients remain substantially the same;

(vi) Acquisition of additional stock after approval under § 574.7 of this part, or any predecessor provision, has been received: *Provided,* That such acquisition is consistent with any conditions imposed in connection with such approval and with the representations made by the acquiror in its application;

(vii) Acquisitions of up to twenty-five percent (25%) of a class of stock by a tax-qualified employee stock benefit plan as defined in § 563b.25; and

(viii) Acquisitions of up to 15 percent of the voting stock of any savings association by a savings and loan holding company (other than a bank holding company) in connection with a qualified stock issuance if such acquisition is approved by the Office pursuant to § 574.8(a).

(2) The following transactions are exempt from the notice requirements of paragraph (b) of this section:

(i) Transactions which are exempt pursuant to paragraphs (c)(1)(iii), (c)(1)(iv), (c)(1)(v), and (c)(1)(vi) of this section;

(ii) Transactions for which approval is required under paragraph (a) of this section;

(iii) Transactions for which approval is required under part 546 or § 552.13 and § 563.22 of this chapter;

(iv) Transactions for which a change of control notice must be submitted to the Board of Governors of the Federal Reserve System pursuant to the Change in Bank Control Act, 12 U.S.C. 1817(j);

(v) Acquisition of additional stock of a savings association by any person who:

(A) Has held power to vote 25 percent or more of any class of voting stock in such association continuously since March 9, 1979; or

(B) Has maintained control of the savings association continuously since acquiring control in compliance with the Control Act (or the Repealed Control Act) and the Office's regulations thereunder then in effect: *Provided,*

That such acquisition is consistent with any conditions imposed in connection with such acquisition of control and with the representations made by the acquiror in its notice; and

(vi) Acquisitions of stock of a *de novo* federal savings association in connection with the organization of such association: *Provided*, That the Office has considered the financial and managerial resources of the acquiror in granting the association its federal savings association charter; and additional acquisitions of stock of such association, and *further provided*, that the acquisitions are consistent with any conditions imposed in connection with the approval of the association's charter and with representations made by the acquiror in its application for a federal savings association charter, and that the Regional Director has no supervisory objection to the acquiror's additional acquisitions.

(3) An acquiror that would be considered to be in control of a savings association pursuant to §574.4 of this part on December 26, 1985, shall not be subject to this §574.3 unless the acquiror acquires additional stock of the savings association or obtains a control factor with respect to such association after December 26, 1985: *Provided*, That an acquiror shall not be deemed to have acquired control of a savings association on the basis of actions taken prior to December 26, 1985, or on the basis of actions taken after December 26, 1985, if such actions are pursuant to and consistent with a materially complete application under the Holding Company Act or notice under the Repealed Control Act filed prior to December 26, 1985, if such acquisition is made pursuant to an application approved under the Holding Company Act or a notice under the Repealed Control Act that was not disapproved.

(d) *Transactions exempt from prior approval or notice.* (1) Subject to the conditions set forth in paragraph (d)(2) of this section, the following transactions are exempt from prior approval and prior notice under §574.3: *Provided*, That the timing of the transaction was not within the control of the acquiror.

(i) Control of a savings association acquired through *bona fide* gift;

(ii) Control of a savings association acquired through liquidation of a loan contracted in good faith where the loan was not made in the ordinary course of business of the lender;

(iii) Control of a savings association acquired through a percentage increase in ownership following a stock split or redemption that was not *pro rata*;

(iv) Control determined pursuant to §574.4 (a) or (b) as a result of actions by third parties that are not within the control of the acquiror;

(v) Control of a savings association acquired through testate or intestate succession: *Provided*, That the acquiror transmits written notification of the acquisition to the Office within 60 days of the acquisition and provides such additional information as the Office may specifically request.

(2) The exemptions provided by paragraphs (d)(1)(i) through (d)(1)(iv) of this section are subject to the following conditions:

(i) The acquiror shall file an application, notice or rebuttal, as appropriate, with the Office within 90 days of acquisition of control;

(ii) The acquiror shall not take any action to direct the management or policies of the savings association or which are designed to effect a change in the business plan of the savings association other than voting on matters that may be presented to stockholders by management of the savings association until the Office has acted favorably upon the acquiror's application or notice, and the Office may require that the acquiror take such steps as the Office deems necessary to insure that control is not exercised; and

(iii) If the Office disapproves the acquiror's application or notice, the acquiror shall divest such portion of the stock held by the acquiror so as to cause the acquiror not to be determined to be in control of the savings association under §574.4 of this part, within one year or such shorter period of time and in the manner that the Office may order.

(e) *Prohibited acquisitions.* No acquisition shall be approved by the Office pursuant to §574.3(a) which would result in the formation by any company, through one or more subsidiaries or through one or more transactions, of a

multiple savings and loan holding company controlling savings associations in more than one state where the acquisition causes a savings association to become an affiliate of another savings association with which it was not previously affiliated unless:

(1) Such company, or a savings association subsidiary of such company, is authorized to acquire control of a savings association subsidiary, or to operate a home or branch office, in the additional state or states pursuant to section 13(k) of the Federal Deposit Insurance Act, 12 U.S.C. 1823(k) (or section 408(m) of the National Housing Act as in effect immediately prior to enactment of the Financial Institutions Reform, Recovery and Enforcement Act of 1989);

(2) Such company controls a savings association subsidiary which operated a home or branch office in the additional state or states as of March 5, 1987; or

(3) The statute laws of the state in which the savings association, control of which is to be acquired, is located are such that a savings association chartered by such state could be acquired by a savings association chartered by the state where the acquiring savings association or savings and loan holding company is located (or by a holding company that controls such a state chartered savings association), and such statute laws specifically authorize such an acquisition by language to that effect and not merely by implication.

[54 FR 49690, Nov. 30, 1989, as amended at 57 FR 14348, Apr. 20, 1992; 60 FR 66720, Dec. 26, 1995; 61 FR 60184, Nov. 27, 1996; 67 FR 52035, Aug. 9, 2002]

§ 574.4 Control.

(a) *Conclusive control.* (1) An acquiror shall be deemed to have acquired control of a savings association, other than a savings and loan holding company, if the acquiror directly or indirectly, through one or more subsidiaries or transactions or acting in concert with one or more persons or companies:

(i) Acquires more than 25 percent of any class of voting stock of the savings association;

(ii) Acquires irrevocable proxies representing more than 25 percent of any class of voting stock of the savings association;

(iii) Acquires any combination of voting stock and irrevocable proxies representing more than 25 percent of any class of voting stock of a savings association; or

(iv) Controls in any manner the election of a majority of the directors of the savings association.

(2) An acquiror shall be deemed to have acquired control of a company, including a savings and loan holding company, if the acquiror directly or indirectly, or through one or more subsidiaries or transactions or acting in concert with one or more persons or companies:

(i) Acquires more than 25 percent of any class of voting stock of the company;

(ii) Acquires irrevocable proxies representing more than 25 percent of any class of voting stock of the company;

(iii) Acquires any combination of voting stock and irrevocable proxies representing more than 25 percent of any class of voting stock of a savings association;

(iv) Controls in any manner the election of a majority of the directors or trustees of a company;

(v) Is a general partner of a company;

(vi) Has contributed more than 25 percent of the capital of the company; or

(vii) Is a trustee of a trust.

(3) A company shall be deemed to control a savings association if the Office finds, after notice and opportunity for hearing, that the company has the power directly or indirectly, to exercise a controlling influence over the management or policies of the savings association.

(4) A person shall be deemed to control a savings association if the Office determines that such person has the power to direct the management or policies of the savings association.

(b) *Rebuttable control determinations.* (1) Except as provided in § 574.8, an acquiror shall be determined, subject to rebuttal, to have acquired control of a savings association, if the acquiror directly or indirectly, or through one or more subsidiaries or transactions or

acting in concert with one or more persons or companies:

(i) Acquires more than 10 percent of any class of voting stock of the savings association and is subject to any control factor, as defined in paragraph (c) of this section;

(ii) Acquires more than 25 percent of any class of stock of the savings association and is subject to any control factor, as defined in paragraph (c) of this section.

(2) An acquiror shall be determined, subject to rebuttal, to have acquired control of a savings association, if the acquiror directly or indirectly, or through one or more subsidiaries or transactions or acting in concert with one or more persons or companies, holds any combination of voting stock and revocable and/or irrevocable proxies, representing more than 25 percent of any class of voting stock of a savings association, excluding such proxies held in connection with a solicitation by, or in opposition to, a solicitation on behalf of management of the savings association, but including a solicitation in connection with an election of directors, and such proxies would enable the acquiror to:

(i) Elect one-third or more of the savings association's board of directors, including nominees or representatives of the acquiror currently serving on such board;

(ii) Cause the savings association's stockholders to approve the acquisition or corporate reorganization of the savings association; or

(iii) Exert a continuing influence on a material aspect of the business operations of the savings association.

(c) *Control factors.* For purposes of paragraph (b)(1) of this section, the following constitute control factors. References to the acquiror include actions taken directly or indirectly, or through one or more subsidiaries or transactions or acting in concert with one or more persons or companies:

(1) The acquiror would be one of the two largest holders of any class of voting stock of the savings association.

(2) The acquiror would hold more than 25 percent of the total stockholders' equity of the savings association.

(3) The acquiror would hold more than 35 percent of the combined debt securities and stockholders' equity of the savings association.

(4) The acquiror is party to any agreement:

(i) Pursuant to which the acquiror possesses a material economic stake in the savings association resulting from a profit-sharing arrangement, use of common names, facilities or personnel, or the provision of essential services to the savings association; or

(ii) That enables the acquiror to influence a material aspect of the management or policies of the savings association, other than agreements to which the savings association is a party where the restrictions are customary under the circumstances and in the case of an acquisition agreement, which apply only during the period when the acquiror is seeking the Office's approval to acquire the savings association, the agreement prohibits transactions between the acquiror and the savings association and their respective affiliates without approval by the Regional Director during the pendency of the application process, and the agreement contains no material forfeiture provisions applicable to the savings association in the event the acquisition is not approved or not approved by a specified date.

(5) The acquiror would have the ability, other than through the holding of revocable proxies, to direct the votes of more than 25 percent of a class of the savings association's voting stock or to vote more than 25 percent of a class of the savings association's voting stock in the future upon the occurrence of a future event.

(6) The acquiror would have the power to direct the disposition of more than 25 percent of a class of the savings association's voting stock in a manner other than a widely dispersed or public offering.

(7) The acquiror and/or the acquiror's representatives or nominees would constitute more than one member of the savings association's board of directors.

(8) The acquiror or a nominee or management official of the acquiror would serve as the chairman of the

board of directors, chairman of the executive committee, chief executive officer, chief operating officer, chief financial officer or in any position with similar policymaking authority in the savings association.

(d) *Rebuttable presumptions of concerted action.* An acquiror will be presumed to be acting in concert with the following persons and companies:

(1) A company will be presumed to be acting in concert with a controlling shareholder, partner, trustee or management official of such company with respect to the acquisition of stock of a savings association, if

(i) Both the company and the person own stock in the savings association,

(ii) The company provides credit to the person to purchase the savings association's stock, or

(iii) The company pledges its assets or otherwise is instrumental in obtaining financing for the person to acquire stock of the savings association;

(2) A person will be presumed to be acting in concert with members of the person's immediate family;

(3) Persons will be presumed to be acting in concert with each other where

(i) Both own stock in a savings association and both are also management officials, controlling shareholders, partners, or trustees of another company, or

(ii) One person provides credit to another person or is instrumental in obtaining financing for another person to purchase stock of the savings association;

(4) A company controlling or controlled by another company and companies under common control will be presumed to be acting in concert;

(5) Persons or companies will be presumed to be acting in concert where they constitute a group under the beneficial ownership reporting rules under section 13 or the proxy rules under section 14 of the Securities Exchange Act of 1934, promulgated by the Securities and Exchange Commission.

(6) A person or company will be presumed to be acting in concert with any trust for which such person or company serves as trustee, except that a tax-qualified employee stock benefit plan as defined in § 563b.2(a)(39) shall not be presumed to be acting in concert with its trustee or person acting in a similar fiduciary capacity solely for the purposes of determining whether to combine the holdings of a plan and its trustee or fiduciary.

(7) Persons or companies will be presumed to be acting in concert with each other and with any other person or company with which they also are presumed to act in concert.

(e) *Procedures for rebuttal*—(1) *Rebuttal of control determination.* An acquiror attempting to rebut a determination of control that would arise under paragraph (b) of this section shall file a submission with the Office setting forth the facts and circumstances which support the acquiror's contention that no control relationship would exist if the acquiror acquires stock or obtains a control factor with respect to a savings association. The rebuttal must be filed and accepted in accordance with this section before the acquiror acquires such stock or control factor.

(i) An acquiror seeking to rebut the determination of control arising under paragraph (b)(1) of this section shall submit to the Office an executed agreement materially conforming to the agreement set forth at § 574.100 of this part. Unless agreed to by the Office in writing, no other agreement or filing shall be deemed to rebut the determination of control arising under paragraph (b)(1) of this section. If accepted by the Office, the acquiror shall furnish a copy of the executed agreement to the association to which the rebuttal pertains.

(ii) An acquiror seeking to rebut the determination of control with respect to holding of proxies arising under paragraph (b)(2) of this section shall be subject to the requirements of paragraph (e)(1) of this section, except that in the case of a rebuttal of the presumption of control arising under paragraph (b)(2) of this section, the Office may require the acquiror to furnish information in response to a specific request for information and depending upon the particular facts and circumstances, to provide an executed rebuttal agreement materially conforming to the agreement set forth at

§ 574.100 of this part, with any modifications deemed necessary by the Office.

(2) *Presumptions of concerted action.* An acquiror attempting to rebut the presumption of concerted action arising under paragraph (d) of this section shall file a submission with the Office setting forth facts and circumstances which clearly and convincingly demonstrate the acquiror's contention that no action in concert exists. Such a statement must be accompanied by an affidavit, in form and content satisfactory to the Office, executed by each person or company presumed to be acting in concert, stating that such person or company does not and shall not, without having made necessary filings and obtained approval or clearance thereof under the Holding Company Act or the Control Act, as applicable, have any agreements or understandings, written or tacit, with respect to the exercise of control, directly or indirectly, over the management or policies of the savings association, including agreements relating to voting, acquisition or disposition of the savings association's stock. The affidavit shall also recite that the signatory is aware that the filing of a false affidavit may subject the person or company to criminal sanctions, would constitute a violation of the Office's regulations at 12 CFR 563.180(b), and would be considered a "presumptive disqualifier" under 12 CFR 574.7(g)(1)(v).

(3) *Determination.* A rebuttal filed pursuant to paragraph (e) of this section shall not be deemed sufficient unless it includes all the information, agreements, and affidavits required by the Office and this part, as well as any additional relevant information as the Office may require by written request to the acquiror. Within 20 calendar days after proper filing of a rebuttal submission, the Office will provide written notification of its determination to accept or reject the submission; request additional information in connection with the submission; or return the submission to the acquiror as materially deficient. Within 15 calendar days after proper filing of any additional information furnished in response to a specific request by the Office, the Office shall notify the acquiror in writing as to whether the rebuttal is thereby deemed to be sufficient. If the Office fails to notify an acquiror within such time, the rebuttal shall be deemed to be accepted. The Office may reject any rebuttal which is inconsistent with facts and circumstances known to it or where the rebuttal does not clearly and convincingly refute the rebuttable determination of control or presumption of action in concert, and may determine to reject a submission solely on such bases.

(f) *Safe harbor.* Notwithstanding any other provision of this section, where an acquiror has no intention to participate in or to seek to exercise control over a savings association's management or policies, the acquiror may seek to qualify for a safe harbor with respect to its ownership of stock of a savings association.

(1) In order to qualify for the safe harbor, an acquiror must submit a certification to the OTS that shall be signed by the acquiror or an authorized representative thereof and shall read as follows:

> The undersigned makes this submission pursuant to § 574.4(f) of the regulations of the Office of Thrift Supervision ("Office") with respect to [name of savings association] and hereby certifies to the Office the following:
>
> The undersigned is not in control of [name of savings association] under § 574.4(a);
>
> The undersigned is not subject to any control factor as enumerated in § 574.4(c) with respect to the [name of savings association];
>
> The undersigned will not solicit proxies relating to the voting stock of [name of savings association];
>
> Before any change in status occurs that would bring the undersigned within the scope of § 574.4 (a) or (b), the undersigned will file and obtain approval of a rebuttal, notice or application, as appropriate.
>
> The undersigned has not acquired stock of [name of savings association] for the purpose or effect of changing or influencing the control of [name of savings association] or in connection with or as a participant in any transaction having such purpose or effect.

(2) An acquiror claiming safe-harbor status may vote freely and dissent with respect to its own stock. Certifications provided for in this paragraph must be filed with OTS in accordance with §§ 516.30 and 516.40 of this chapter.

[54 FR 49690, Nov. 30, 1989, as amended at 57 FR 14349, Apr. 20, 1992; 60 FR 66720, Dec. 26, 1995; 66 FR 13009, Mar. 2, 2001]

§ 574.5 Certifications of ownership.

(a) *Acquisition of stock.* (1) Upon the acquisition of beneficial ownership that exceeds, in the aggregate, 10 percent of any class of stock of a savings association or additional stock above 10 percent of the stock of a savings association occurring after December 26, 1985, an acquiror shall file with the OTS a certification as described in this section.

(2) The certification filed pursuant to this section shall be signed by the acquiror or an authorized representative thereof and shall read as follows:

The undersigned is the beneficial owner of 10 percent or more of a class of stock of [name of savings association or holding company]. The undersigned is not in control of such association or company, as defined in 12 CFR 574.4(a), and is not subject to a rebuttable determination of control under § 574.4(b), and will take no action that would result in a determination of control or a rebuttable determination of control without first filing and obtaining approval of an application under the Savings and Loan Holding Company Act, 12 U.S.C. 1467a, or notice under the Change in Bank Control Act, 12 U.S.C. 1817(j), or filing and obtaining acceptance by the Office of Thrift Supervision of a rebuttal of the rebuttable determination of control.

(3) Notwithstanding anything contained in this paragraph (a), an acquiror is not required to file a certification if (i) the Office has approved the acquisition of the savings association or (ii) the acquiror has filed a materially complete application or notice pursuant to § 574.3 of this part.

(b) *Privacy.* All certifications filed under this § 574.5 shall be for the information of the Office in connection with its examination functions and shall be provided confidential treatment by the Office.

[54 FR 49690, Nov. 30, 1989, as amended at 57 FR 14349, Apr. 20, 1992; 59 FR 53571, Oct. 25, 1994]

§ 574.6 Procedural requirements.

(a) *Form of application or notice.* An application, notice, or informational filing required by § 574.3 of this part shall be filed on the Application/Information Filing H–(e) _____ form. (As specified in the form's instructions, the blank line following the H–(e) should be filled in by applicants with the appropriate "1", "1–S", "2", "3", or "4" depending on the type of application.) The specific application requirements for each type of filing are indicated on the form. An acquiror may request confidential treatment of portions of an application or notice only by complying with the requirements of paragraph (f) of this section. In the case of an application involving a merger (including a merger with an interim association) the Application/Information Filing H–(e) _____ form shall be used in lieu of an application that otherwise would be required for such merger under §§ 546.2, 552.13, and 563.22 of this chapter.

(1) *H–(e)1.* This application type shall be filed under § 574.3(a) of this part by a company, other than a savings and loan holding company, for approval to acquire direct or indirect control of one savings association.

(2) *H–(e)1–S.* This application type shall be filed under § 574.3(a) of this part by a savings association for approval to reorganize into a holding company structure, provided that the proposed transaction satisfies each of the conditions for automatic approval specified in § 574.7 (a)(2) and (a)(3) of this part.

(3) *H–(e)2.* (i) This application type shall be filed under § 574.3(a) of this part:

(A) By a savings and loan holding company for approval to acquire and hold separately one or more savings associations;

(B) By any other company for approval to acquire and hold separately more than one savings association;

(C) By a savings and loan holding company for approval of an acquisition of shares issued by a savings association in a qualified stock issuance pursuant to § 574.8 of this part; or

(D) By any director, officer, or any individual who owns, controls, or holds with power to vote (or holds proxies representing) more than 25 percent of the voting shares of a savings and loan holding company for approval of an acquisition of one or more savings associations.

(ii) The OTS may determine as a general matter or on a case-by-case basis not to require application information not relevant to transactions described

in paragraphs (a)(3)(i) (C) and (D) of this section.

(4) *H-(e)3.* This application shall be used for all applications filed under § 574.3(a) of this part:

(i) By a savings and loan holding company for approval of acquisitions by a merger, consolidation, or purchase of assets of a savings association or uninsured institution or a savings and loan holding company; or

(ii) By any company for approval of acquisitions by a merger, consolidation, or purchase of assets of two or more savings associations.

(5) *H-(e)4.* This information filing shall be used to claim that a reorganization is exempt from prior written approval of the OTS under § 574.3(c)(1)(ii) of this part.

(6) *Notice Form 1393, parts A and B.* This form shall be used for all notices filed under § 574.3(b) of this part regarding the acquisition of control of a savings association by any person or persons not constituting a company except as provided in paragraph (a)(3) of this section.

(b) *Filing requirements*—(1) *Applications, notices, and rebuttals.* (i) Complete copies including exhibits and all other pertinent documents of applications, notices, and rebuttal submissions shall be filed with the Region in which the savings association or associations involved in the transaction have their home office or offices. Unsigned copies shall be conformed. Each copy shall include a summary of the proposed transaction.

(ii) Any person or company may amend an application, notice or rebuttal submission, or file additional information, upon request of the OTS or, in the case of the party filing an application, notice, or rebuttal, upon such party's own initiative.

(2) *H–(e)4 Information filing.* Any information filing required to be made to claim that a reorganization is exempt from prior written approval of the OTS under § 574.3(c)(1)(ii) of this part shall be clearly labeled "H–(e)4 Information Filing".

(c) *Sufficiency and waiver.* (1) Except as provided in § 574.6(c)(5), an application or notice filed pursuant to § 574.3 (a) or (b) shall not be deemed sufficient unless it includes all of the information required by the form prescribed by the Office and this part, including a complete description of the acquiror's proposed plan for acquisition of control whether pursuant to one or more transactions, and any additional relevant information as the Office may require by written request to the applicant. Unless an application or notice specifically indicates otherwise, the application or notice shall be considered to pertain to acquisition of 100 percent of a savings association's voting stock. Where an application or notice pertains to a lesser amount of stock, the Office may condition its approval or non-disapproval to apply only to such amount, in which case additional acquisitions may be made only by amendment to the acquiror's application or notice and the Office's approval or non-disapproval thereof. Failure by an applicant to respond completely to a written request by the Office for additional information within 30 calendar days of the date of such request may be deemed to constitute withdrawal of the application, notice, or rebuttal filing or may be treated as grounds for denial of an application, issuance of a notice of disapproval of a notice, or rejection of a rebuttal.

(2) The period for the Office's review of any proposed acquisition will commence upon receipt by the Office of a notice or application deemed sufficient under paragraph (c)(1) of this section. The Office shall notify an acquiror in writing within 30 calendar days after proper filing of an application or notice as to whether an application or notice—

(i) Is sufficient;

(ii) Is insufficient, and what additional information is requested in order to render the application or notice sufficient; or

(iii) Is materially deficient and will not be processed. The Office shall also notify an acquiror in writing within 15 calendar days after proper filing of any additional information furnished in response to a specific request by the Office as to whether the application or notice is thereby deemed to be sufficient. If the Office fails to so notify an acquiror within such time, the application or notice shall be deemed to be

sufficient as of the expiration of the applicable period.

(3) After additional information has been requested and supplied, the Office may request additional information only with respect to matters derived from or prompted by information already furnished, or information of a material nature that was not reasonably available from the acquiror, was concealed, or pertains to developments subsequent to the time of the Office's initial request for additional information. With regard to information of a material nature that was not reasonably available from the acquiror or was concealed at the time an application or notice was deemed to be sufficient or which pertains to developments subsequent to the time an application or notice was deemed to be sufficient, the Office, at its option, may request such additional information as it considers necessary, or may deem the application or notice not to be sufficient until such additional information is furnished and cause the review period to commence again in its entirety upon receipt of such additional information.

(i) The 60-day period for the Office's review of an application or notice deemed to be sufficient also may be extended by the Office for up to an additional 30 days.

(ii) The period for the Office's review of a notice may be further extended not to exceed two additional times for not more than 45 days each time if—

(A) The Office determines that any acquiring party has not furnished all the information required under this part;

(B) In the Office's judgment, any material information submitted is substantially inaccurate;

(C) The Office has been unable to complete an investigation of each acquiror because of any delay caused by, or the inadequate cooperation of, such acquiror; or

(D) The Office determines that additional time is needed to investigate and determine that no acquiring party has a record of failing to comply with the requirements of subchapter II of chapter 53 of title 31 of the United States Code.

(4) With respect to an H–(e)4 information filing, the Chief Counsel or his or her designee shall have 30 days after receipt of a filing deemed sufficient to disapprove the assertion that the company qualifies for the exemption provided in §574.3(c)(1)(ii). After the expiration of such 30-day period without response from the Chief Counsel, the filing shall be deemed to be approved.

(5) The Office may waive any requirements of this paragraph (c) determined to be unnecessary by the Office, upon its own initiative, upon the written request of an acquiring person, or in a supervisory case.

(d) *Public notice.* (1) The acquiror must publish a public notice of an application under §574.3(a) or §574.8 of this chapter or a notice under §574.3(b) of this chapter, in accordance with the procedures in subpart B of part 516 of this chapter. Promptly after publication, the acquiror must transmit copies of the public notice and the publisher's affidavit to OTS.

(2) The acquiror must provide a copy of the public notice to the savings association whose stock is sought to be acquired, and may provide a copy of the public notice to any other person who may have an interest in the application.

(3) OTS will notify the appropriate state supervisor and will notify persons whose requests for announcements, as described in 12 CFR part 563e, appendix B, have been received in time for the notification. OTS may also notify any other persons who may have an interest in the application or notice.

(e) *Submission of comments.* Commenters may submit comments on the application or notice in accordance with the procedures in subpart C of part 516 of this chapter.

(f) *Disclosure.* (1) Any application, notice, other filings, public comment, or portion thereof, made pursuant to this part for which confidential treatment is not requested in accordance with this paragraph (f), shall be immediately available to the public and not subject to the procedures set forth herein. Public disclosure shall be made of other portions of an application, notice, other filing or public comment in accordance with paragraph (f)(2) of this section, the provisions of the Freedom of Information Act (5 U.S.C. 552a) and

parts 503 and 505 of this chapter. Applicants and other submitters should provide confidential and non-confidential versions of their filings, as described in § 574.6(f) (2) and (3) in order to facilitate this process.

(2) Any person who submits any information or causes or permits any information to be submitted to the Office pursuant to this part may request that the Office afford confidential treatment under the Freedom of Information Act to such information for reasons of personal privacy or business confidentiality, which shall include such information that would be deemed to result in the commencement of a tender offer under § 240.14d–2 of title 17 of the Code of Federal Regulations, or for any other reason permitted by Federal law. Such request for confidentiality must be made and justified in accordance with paragraph (f)(5) of this section at the time of filing, and must, to the extent practicable, identify with specificity the information for which confidential treatment may be available and not merely indicate portions of documents or entire documents in which such information is contained. Failure to specifically identify information for which confidential treatment is requested, failure to specifically justify the bases upon which confidentiality is claimed in accordance with paragraph (f)(5) of this section, or overbroad and indiscriminate claims for confidential treatment, may be bases for denial of the request. In addition, the filing party should take all steps reasonably necessary to ensure, as nearly as practicable, that at the time the information is first received by the Office (i) it is supplied segregated from information for which confidential treatment is not being requested, (ii) it is appropriately marked as confidential, and (iii) it is accompanied by a written request for confidential treatment which identifies with specificity the information as to which confidential treatment is requested. Any such request must be substantiated in accordance with paragraph (f)(5) of this section.

(3) All documents which contain information for which a request for confidential treatment is made or the appropriate segregable portions thereof shall be marked by the person submitting the records with a prominent stamp, typed legend, or other suitable form of notice on each page or segregable portion of each page, stating "Confidential Treatment Requested by [name]." If such marking is impracticable under the circumstances, a cover sheet prominently marked "Confidential Treatment Requested by [name]" should be securely attached to each group of records submitted for which confidential treatment is requested. Each of the records transmitted in this manner should be individually marked with an identifying number and code so that they are separately identifiable.

(4) A determination as to the validity of any request for confidential treatment may be made when a request for disclosure of the information under the Freedom of Information Act is received, or at any time prior thereto. If the Office receives a request for the information under the Freedom of Information Act, OTS will advise the filing party before it discloses material for which confidential treatment has been requested.

(5) Substantiation of a request for confidential treatment shall consist of a statement setting forth, to the extent appropriate or necessary for the determination of the request for confidential treatment, the following information regarding the request:

(i) The reasons, concisely stated and referring to specific exemptive provisions of the Freedom of Information Act, why the information should be withheld from access under the Freedom of Information Act;

(ii) The applicability of any specific statutory or regulatory provisions which govern or may govern the treatment of the information;

(iii) The existence and applicability of any prior determination by the Office, other Federal agencies, or a court, concerning confidential treatment of the information;

(iv) The adverse consequences to a business enterprise, financial or otherwise, that would result from disclosure of confidential commercial or financial information, including any adverse effect on the business' competitive position;

(v) The measures taken by the business to protect the confidentiality of the commercial or financial information in question and of similar information, prior to, and after, its submission to the Office;

(vi) The ease or difficulty of a competitor's obtaining or compiling the commercial or financial information;

(vii) Whether commercial or financial information was voluntarily submitted to the Office, and, if so, whether and how disclosure of the information would tend to impede the availability of similar information to the Office;

(viii) The extent, if any, to which portions of the substantiation of the request for confidential treatment should be afforded confidential treatment;

(ix) The amount of time after the consummation of the proposed acquisition for which the information should remain confidential and a justification thereof;

(x) Such additional facts and such legal and other authorities as the requesting person may consider appropriate.

(6) Any person requesting access to an application, notice, other filing, or public comment made pursuant to this part for purposes of commenting on a pending submission may prominently label such request: "Request for Disclosure of Filing(s) Made Under part 574/Priority Treatment Requested."

(g) *Supervisory cases.* The provisions of paragraphs (d), (e) and (f) of this section may be waived by the Office in connection with a transaction approved by the Office for supervisory reasons.

(h) *Notification of State supervisor.* Upon receiving a notice relating to an acquisition of control of a state-chartered savings association, the Office shall forward a copy of the notice to the appropriate state savings and loan association supervisory agency, and shall allow 30 days within which the views and recommendations of such state supervisory agency may be submitted. The Office shall give due consideration to the views and recommendations of such state agency in determining whether to disapprove any proposed acquisition. Notwithstanding the provisions of this paragraph (h), if the Office determines that it must act immediately upon any notice of a proposed acquisition in order to prevent the default of the association involved in the proposed acquisition, the Office may dispense with the requirement of this paragraph (h) or, if a copy of the notice is forwarded to the state supervisory agency, the Office may request that the views and recommendations of such state supervisory agency be submitted immediately in any form or by any means acceptable to the Office.

(i) *Additional procedures for acquisitions involving mergers.* Acquisitions of control involving mergers (including mergers with an interim association) shall also be subject to the procedures set forth in § 563.22 of this chapter to the extent applicable, except as provided in paragraph (a) of this section.

(j) *Additional procedures for acquisitions of recently converted savings associations.* Applications, notices and rebuttals involving acquisitions of the stock of a recently converted savings association under § 563b.3(i)(3) of this chapter shall also address the criteria for approval set forth at § 563b.3(i)(5) of this chapter.

[54 FR 49690, Nov. 30, 1989, as amended at 55 FR 13517, Apr. 11, 1990; 57 FR 14349, Apr. 20, 1992; 59 FR 28470, June 2, 1994; 60 FR 66720, Dec. 26, 1995; 61 FR 65179, Dec. 11, 1996; 66 FR 13009, Mar. 2, 2001; 69 FR 68250, Nov. 24, 2004]

§ 574.7 Determination by the OTS.

(a) *Acquisition by a company.* (1) The Office shall approve an application by any company other than a savings and loan holding company to acquire control of one savings association unless it determines that the criteria set forth in paragraph (c) of this section are not met. Acquisitions involving mergers with an interim association shall also be subject to §§ 546.2, 552.13, and 563.22 of this chapter.

(2) Subject to compliance with the requirements of §§ 546.2, 552.13 and 563.22, as applicable, an application filed pursuant to § 574.6(a)(2) by a savings association solely for the purpose of obtaining approval for the creation of a savings and loan holding company by such savings association, and related applications for permission to organize an interim federal association,

and for merger with such interim association, shall be deemed to be approved 45 calendar days after such applications are properly filed in accordance with the procedures set forth herein, unless, prior to such date:

(i) The Office has requested additional information of the applicant in writing;

(ii) Notified the applicant that the application is materially deficient and will not be processed; or

(iii) Denied the application prior to that time; provided that to be eligible for approval under this paragraph (a)(2):

(A) The holding company shall not be capitalized initially in an amount exceeding the amount the savings association is permitted to pay in dividends to its holding company as of the date of the reorganization pursuant to applicable regulations or, in the absence thereof, pursuant to the then current policy guidelines issued by the OTS;

(B) The creation of the savings and loan holding company by the association is the sole transaction contained in the application, and there are no other transactions requiring Office approval incident to the creation of the holding company (other than the creation of an interim association that will disappear upon consummation of the reorganization and the merger of the savings association with such interim association to effect the reorganization), and the holding company is not also seeking any regulatory waivers, regulatory forbearances, or resolution of legal or supervisory issues;

(C) The board of directors and executive officers of the holding company are composed of persons who, at the time of acquisition, are executive officers and directors of the association;

(D) The acquisition raises no significant issues of law or policy under then current Office policy;

(E) Prior to consummation of the reorganization transaction, the holding company shall enter into any dividend limitation, regulatory capital maintenance, or prenuptial agreement required by Office regulations, or in the absence thereof, required pursuant to policy guidelines issued by the OTS;

(F) The holding company shall furnish the following information in accordance with the specified time frames:

(*1*) On the business day prior to the date of consummation of the acquisition, the chief financial officers of the holding company and the savings association shall certify to the OTS in writing that no material adverse events or material adverse changes have occurred with respect to the financial condition or operations of the holding company or the savings association since the date of the financial statements submitted with the application;

(*2*) No later than thirty days from the date of consummation of the acquisition, the holding company shall file with the OTS a certification by legal counsel stating the effective date of the acquisition, the exact number of shares of stock of the savings association acquired by the holding company, and that the acquisition has been consummated in accordance with the provisions of all applicable laws and regulations and the application;

(*3*) No later than thirty days from the date of consummation of the acquisition, the holding company shall file with the OTS an opinion from its independent auditors certifying that the transaction was consummated in accordance with generally accepted accounting principles; and

(*4*) No later than thirty days from the date of consummation of the acquisition, the holding company shall file with the OTS a certification stating that the holding company will not cause the savings association to deviate materially from the business plan submitted in connection with the application, unless prior written approval from the OTS is obtained;

(G) In the event an interim association is utilized to facilitate the reorganization transaction, the resulting association shall, no later than 30 days from the date of consummation of the reorganization transaction, furnish a certification by legal counsel stating:

(*1*) The effective date of the merger involving the interim association and that the merger has been consummated in accordance with the Agreement and Plan of Reorganization or similar document pursuant to which the transaction was accomplished;

(*2*) The interim association has not opened for business;

(*3*) The merger was consummated within 120 calendar days of the date of approval: and

(*4*) After completion of the organization of the interim association, the board of directors of the interim association ratified the Agreement and Plan of Reorganization or similar document; and

(H) The proposed acquisition shall be consummated within 120 days after the application is automatically approved under this § 574.7(a)(2).

(3) To the extent that an association reorganizing into holding company form is subject to provisions relating to its mutual to stock conversion imposed by 12 CFR 563b.3(c)(9), (c)(17), (c)(18), (c)(19), (g)(1) or (i), such provisions shall be applicable to any holding company approved automatically pursuant to paragraph (a)(2) of this section.

(b) *Acquisition by a savings and loan holding company*. The Office shall not approve an acquisition by a savings and loan holding company to acquire control of a savings association, by any other company to acquire control of more than one savings association, by any director or officer of a savings and loan holding company, or any individual who owns, controls, or holds with power to vote (or holds proxies representing) more than 25 percent of the voting stock of a savings and loan holding company to acquire control of a savings association, or by a savings and loan holding company to acquire a qualified stock issuance by a savings association pursuant to § 574.8 of this part, except in accordance with paragraph (c) of this section. Before approving any such acquisition, except a transaction under section 13(k) of the Federal Deposit Insurance Act, the Office shall request from the Attorney General and consider any report rendered within 30 days of such request on the competitive factors involved. Acquisitions involving mergers (including mergers with an interim association) shall also be subject to §§ 546.2, 552.13, and 563.22 of this chapter.

(c) *Application criteria*. (1) The OTS may deny an application by a company or certain persons, described in paragraph (b) of this section, affiliated with a savings and loan holding company, to acquire control of a savings association, or by a savings and loan holding company to acquire a qualified stock issuance pursuant to § 574.8 of this part:

(i) If the OTS finds that the financial and managerial resources and future prospects of the acquiror and association involved would be detrimental to the association or the insurance risk of the Deposit Insurance Fund; or

(ii) If the acquiror fails or refuses to furnish information requested by the OTS.

(2) Consideration of the managerial resources of a company or savings association shall include consideration of the competence, experience, and integrity of the officers, directors, and controlling shareholders of the company or association. In connection with the applications filed pursuant to §§ 574.6 (a)(3) and 574.8 of this part, the OTS will also consider the convenience and needs of the community to be served. Moreover, the OTS shall not approve any proposed acquisition:

(i) Which would result in a monopoly, or which would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the savings and loan business in any part of the United States;

(ii) The effect of which on any section of the country may be substantially to lessen competition, or tend to create a monopoly, or which in any other manner would be in restraint of trade, unless the OTS finds that the anticompetitive effects of the proposed acquisition are clearly outweighed in the public interest by the probable effect of the acquisition in meeting the convenience and needs of the community to be served;

(iii) If the company fails to provide adequate assurances to the OTS that the company will make available to the OTS such information on the operations or activities of the company, and any affiliate of the company, as the OTS determines to be appropriate to determine and enforce compliance with the Home Owners' Loan Act; or

(iv) In the case of an application by a foreign bank, if the foreign bank is not subject to comprehensive supervision or regulation on a consolidated basis

by the appropriate authorities in the home country of the foreign bank. For purposes of this paragraph (c)(2)(iv), "comprehensive supervision or regulation on a consolidated basis by the appropriate authorities" shall be determined using the standards set forth at 12 CFR 211.24(c)(1)(ii).

(d) *Notice criteria.* In making its determination whether to disapprove a notice, the Office may disapprove any proposed acquisition, if the Office determines that:

(1) The proposed acquisition of control would result in a monopoly or would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the banking business in any part of the United States;

(2) The effect of the proposed acquisition of control in any section of the country may be substantially to lessen competition or to tend to create a monopoly or the proposed acquisition of control would in any other manner be in restraint of trade, and the anticompetitive effects of the proposed acquisition of control are not clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served;

(3) The financial condition of the acquiring person is such as might jeopardize the financial stability of the association or prejudice the interests of the depositors of the association;

(4) The competence, experience, or integrity of the acquiring person or any of the proposed management personnel indicates that it would not be in the interests of the depositors of the association, the Office, or the public to permit such person to control the association;

(5) The acquiring person fails or refuses to furnish information requested by the Office; or

(6) The Office determines that the proposed acquisition would have an adverse effect on the Deposit Insurance Fund.

(e) *Failure to disapprove a notice.* If, upon expiration of the 60-day review period of any notice deemed to be sufficient filed pursuant to §574.6(c), or extension thereof, the Office has failed to disapprove such notice, the proposed acquisition may take place: *Provided,* That it is consummated within one year and in accordance with the terms and representations in the notice and that there is no material change in circumstances prior to the acquisition.

(f) [Reserved]

(g) *Presumptive disqualifiers*—(1) *Integrity factors.* The following factors shall give rise to a rebuttable presumption that an acquiror may fail to satisfy the managerial resources and future prospects tests of paragraph (c) of this section or the integrity test of paragraph (d)(4) of this section:

(i) During the 10-year period immediately preceding filing of the application or notice, criminal, civil or administrative judgments, consents or orders, and any indictments, formal investigations, examinations, or civil or administrative proceedings (excluding routine or customary audits, inspections and investigations) that terminated in any agreements, undertakings, consents or orders, issued against, entered into by, or involving the acquiror or affiliates of the acquiror by any federal or state court, any department, agency, or commission of the U.S. Government, any state or municipality, any Federal Home Loan Bank, any self-regulatory trade or professional organization, or any foreign government or governmental entity, which involve:

(A) Fraud, moral turpitude, dishonesty, breach of trust or fiduciary duties, organized crime or racketeering;

(B) Violation of securities or commodities laws or regulations;

(C) Violation of depository institution laws or regulations;

(D) Violation of housing authority laws or regulations; or

(E) Violation of the rules, regulations, codes of conduct or ethics of a self-regulatory trade or professional organization;

(ii) Denial, or withdrawal after receipt of formal or informal notice of an intent to deny, by the acquiror or affiliates of the acquiror, of

(A) Any application relating to the organization of a financial institution,

(B) An application to acquire any financial institution or holding company thereof under the Holding Company

Act or the Bank Holding Company Act or otherwise,

(C) A notice relating to a change in control of any of the foregoing under the Control Act or the Repealed Control Act; or

(D) An application or notice under a state holding company or change in control statute;

(iii) The acquiror or affiliates of the acquiror were placed in receivership or conservatorship during the preceding 10 years, or any management official of the acquiror was a management official or director (other than an official or director serving at the request of the Office, the Federal Deposit Insurance Corporation, the Resolution Trust Corporation, or the former Federal Savings and Loan Insurance Corporation) or controlling shareholder of a company or savings association that was placed into receivership, conservatorship, or a management consignment program, or was liquidated during his or her tenure or control or within two years thereafter;

(iv) Felony conviction of the acquiror, an affiliate of the acquiror or a management official of the acquiror or an affiliate of the acquiror;

(v) Knowingly making any written or oral statement to the Office or any predecessor agency (or its delegate) in connection with an application, notice or other filing under this part that is false or misleading with respect to a material fact or omits to state a material fact with respect to information furnished or requested in connection with such an application, notice or other filing;

(vi) Acquisition and retention at the time of submission of an application or notice, of stock in the savings association by the acquiror in violation of § 574.3 or its predecessor sections.

(2) *Financial factors.* The following shall give rise to a rebuttable presumption that an acquiror may fail to satisfy the financial-resources and future-prospects tests of paragraph (c) of this section, or the financial condition test of paragraph (d)(3) of this section:

(i) Liability for amounts of debt which, in the opinion of the Office, create excessive risks of default and pressure on the savings association to be acquired; or

(ii) Failure to furnish a business plan or furnishing a business plan projecting activities which are inconsistent with economical home financing.

[54 FR 49690, Nov. 30, 1989, as amended at 57 FR 14349, Apr. 20, 1992; 59 FR 28471, June 2, 1994; 59 FR 44627, Aug. 30, 1994; 60 FR 66720, Dec. 26, 1995; 71 FR 19812, Apr. 18, 2006]

§ 574.8 Qualified stock issuances by undercapitalized savings associations or holding companies.

(a) *Acquisitions by savings and loan holding companies.* No savings and loan holding company shall be deemed to control a savings association solely by reason of the purchase by such savings and loan holding company of shares issued by such savings association, or issued by any savings and loan holding company (other than a bank holding company) which controls such savings association, in connection with a qualified stock issuance if prior approval of such acquisition is granted by the Office under this § 574.8, unless the acquiring savings and loan holding company, directly or indirectly, or acting in concert with 1 or more other persons, or through 1 or more subsidiaries, owns, controls, or holds with power to vote, or holds proxies representing, more than 15 percent of the voting shares of such savings association or holding company.

(b) *Qualification.* For purposes of this section, any issuance of shares of stock shall be treated as a qualified stock issuance if the following conditions are met:

(1) The shares of stock are issued by—

(i) An undercapitalized savings association, which for purposes of this paragraph (b)(1)(i) shall mean any savings association—

(A) The assets of which exceed the liabilities of such association; and

(B) Which does not comply with one or more of the capital standards in effect under section 5(t) of the Home Owners' Loan Act; or

(ii) A savings and loan holding company which is not a bank holding company but which controls an undercapitalized savings association if, at the time of issuance, the savings and loan holding company is legally obligated to contribute the net proceeds

from the issuance of such stock to the capital of an undercapitalized savings association subsidiary of such holding company.

(2) All shares of stock issued consist of previously unissued stock or treasury shares.

(3) All shares of stock issued are purchased by a savings and loan holding company that is registered, as of the date of purchase, with the Office in accordance with the provisions of section 10(b) of the Home Owners' Loan Act and the Office's regulations promulgated thereunder.

(4) Subject to paragraph (c) of this section, the Office approves the purchase of the shares of stock by the acquiring savings and loan holding company.

(5) The entire consideration for the stock issued is paid in cash by the acquiring savings and loan holding company.

(6) At the time of the stock issuance, each savings association subsidiary of the acquiring savings and loan holding company (other than an association acquired in a transaction pursuant to section 13(c) or 13(k) of the Federal Deposit Insurance Act, or section 408(m) of the National Housing Act, as in effect immediately prior to enactment of the Financial Institutions Reform, Recovery and Enforcement Act of 1989) has capital (after deducting any subordinated debt, intangible assets, and deferred, unamortized gains or losses) of not less than 6½ percent of the total assets of such savings association.

(7) Immediately after the stock issuance, the acquiring savings and loan holding company holds not more than 15 percent of the outstanding voting stock of the issuing undercapitalized savings association or savings and loan holding company.

(8) Not more than one of the directors of the issuing association or company is an officer, director, employee, or other representative of the acquiring company or any of its affiliates.

(9) Transactions between the savings association or savings and loan holding company that issues the shares pursuant to this section and the acquiring company and any of its affiliates shall be subject to the provisions of section 11 of the Home Owners' Loan Act and the Office's regulations promulgated thereunder.

(c) *Approval of acquisitions*—(1) *Criteria.* The Office, in deciding whether to approve or deny an application filed on the basis that it is a qualified stock issuance, shall apply the application criteria set forth in § 574.7(c) of this part, including the presumptive disqualifiers set forth in § 574.7(g) of this part.

(2) *Additional capital commitments not required.* The Office shall not disapprove any application for the purchase of stock in connection with a qualified stock issuance on the grounds that the acquiring savings and loan holding company has failed to undertake to make subsequent additional capital contributions to maintain the capital of the undercapitalized savings association at or above the minimum level required by the Office or any other Federal agency having jurisdiction.

(3) *Other conditions.* The Office shall impose such conditions on any approval of an application for the purchase of stock in connection with a qualified stock issuance as the Office determines to be appropriate, including—

(i) A requirement that any savings association subsidiary of the acquiring savings and loan holding company limit dividends paid to such holding company for such period of time as the Office may require; and

(ii) Such other conditions as the Office deems necessary or appropriate to prevent evasions of this section, including, but not limited to, requiring a rebuttal of control agreement in a form substantially similar to that appearing at § 574.100.

(4) *Application deemed approved if not disapproved within 90 days.* An application for approval of a purchase of stock in connection with a qualified stock issuance shall be deemed to have been approved by the Office if such application has not been disapproved by the Office before the end of the 90-day period beginning on the date such application has been deemed sufficient under this part.

(d) *No limitation on class of stock issued.* The shares of stock issued in

connection with a qualified stock issuance may be shares of any class.

(e) *Application form.* A savings and loan holding company making application to acquire a qualified stock issuance pursuant to this § 574.8, shall use Form H-(e)2, as provided in § 574.6(a)(3).

§ 574.100 Rebuttal of control agreement.

AGREEMENT

Rebuttal of Rebuttable Determination Of Control Under Part 574

I. WHEREAS

A. [ ] is the owner of [ ] shares (the "Shares") of the [ ] stock (the "Stock") of [name and address of association], which Shares represent [ ] percent of a class of "voting stock" of [ ] as defined under the Acquisition of Control Regulations ("Regulations") of the Office of Thrift Supervision ("Office"), 12 CFR part 574 ("Voting Stock");

B. [ ] is a "savings association" within the meaning of the Regulations;

C. [ ] seeks to acquire additional shares of stock of [ ] ("Additional Shares"), such that [ ]'s ownership thereof will exceed 10 percent of a class of Voting Stock but will not exceed 25 percent of a class of Voting Stock of [ ]; [and/or] [ ] seeks to [ ], which would constitute the acquisition of a "control factor" as defined in the Regulations ("Control Factor");

D. [ ] does not seek to acquire the [Additional Shares or Control Factor] for the purpose or effect of changing the control of [ ] or in connection with or as a participant in any transaction having such purpose or effect;

E. The Regulations require a company or a person who intends to hold 10 percent or more but not in excess of 25 percent of any class of Voting Stock of a savings association or holding company thereof and that also would possess any of the Control Factors specified in the Regulations, to file and obtain approval of an application ("Application") under the Savings and Loan Holding Company Act ("Holding Company Act"), 12 U.S.C. 1467a, or file and obtain clearance of a notice ("Notice") under the Change in Control Act ("Control Act"), 12 U.S.C. 1817(j), prior to acquiring such amount of stock and a Control Factor unless the rebuttable determination of control has been rebutted.

F. Under the Regulations, [ ] would be determined to be in control, subject to rebuttal, of [ ] upon acquisition of the [Additional Shares or Control Factor];

G. [ ] has no intention to manage or control, directly or indirectly, [ ];

H. [ ] has filed on [ ], a written statement seeking to rebut the determination of control, attached hereto and incorporated by reference herein, (this submission referred to as the "Rebuttal");

I. In order to rebut the rebuttable determination of control, [ ] agrees to offer this Agreement as evidence that the acquisition of the [Additional Shares or Control Factor] as proposed would not constitute an acquisition of control under the Regulations.

II. The Office has determined, and hereby agrees, to act favorably on the Rebuttal, and in consideration of such a determination and agreement by the Office to act favorably on the Rebuttal, [ ] and any other existing, resulting or successor entities of [ ] agree with the Office that:

A. Unless [ ] shall have filed a Notice under the Control Act, or an Application under the Holding Company Act, as appropriate, and either shall have obtained approval of the Application or clearance of the Notice in accordance with the Regulations, [ ] will not, except as expressly permitted otherwise herein or pursuant to an amendment to this Rebuttal Agreement:

1. Seek or accept representation of more than one member of the board of directors of [insert name of association and any holding company thereof];

2. Have or seek to have any representative serve as the chairman of the board of directors, or chairman of an executive or similar committee of [insert name of association and any holding company thereof]'s board of directors or as president or chief executive officer of [insert name of association and any holding company thereof];

3. Engage in any intercompany transaction with [ ] or [ ]'s affiliates;

4. Propose a director in opposition to nominees proposed by the management of [insert name of association and any holding company thereof] for the board of directors of [insert name of association and any holding company thereof] other than as permitted in paragraph A–1;

5. Solicit proxies or participate in any solicitation of proxies with respect to any matter presented to the stockholders [ ] other than in support of, or in opposition to, a solicitation conducted on behalf of management of [ ];

6. Do any of the following, except as necessary solely in connection with [ ]'s performance of duties as a member of [ ]'s board of directors:

(a) Influence or attempt to influence in any respect the loan and credit decisions or policies of [ ], the pricing of services, any personnel decisions, the location of any offices, branching, the hours of operation or similar activities of [ ];

(b) Influence or attempt to influence the dividend policies and practices of [ ] or any decisions or policies of [ ] as to the offering or exchange of any securities;

(c) Seek to amend, or otherwise take action to change, the bylaws, articles of incorporation, or charter of [ ];

(d) Exercise, or attempt to exercise, directly or indirectly, control or a controlling influence over the management, policies or business operations of [ ]; or

(e) Seek or accept access to any non-public information concerning [ ].

B. [ ] is not a party to any agreement with [ ].

C. [ ] shall not assist, aid or abet any of [ ]'s affiliates or associates that are not parties to this Agreement to act, or act in concert with any person or company, in a manner which is inconsistent with the terms hereof or which constitutes an attempt to evade the requirements of this Agreement.

D. Any amendment to this Agreement shall only be proposed in connection with an amended rebuttal filed by [ ] with the Office for its determination;

E. Prior to acquisition of any shares of "Voting Stock" of [ ] as defined in the Regulations in excess of the Additional Shares, any required filing will be made by [ ] under the Control Act or the Holding Company Act and either approval of the acquisition under the Holding Company Act shall be obtained from the Office or any Notice filed under the Control Act shall be cleared in accordance with the Regulations;

F. At any time during which 10 percent or more of any class of Voting Stock of [ ] is owned or controlled by [ ], no action which is inconsistent with the provisions of this Agreement shall be taken by [ ] until [ ] files and either obtains from the Office a favorable determination with respect to either an amended rebuttal, approval of an Application under the Holding Company Act, or clearance of a Notice under the Control Act, in accordance with the Regulations;

G. Where any amended rebuttal filed by [ ] is denied or disapproved, [ ] shall take no action which is inconsistent with the terms of this Agreement, except after either (1) reducing the amount of shares of Voting Stock of [ ] owned or controlled by [ ] to an amount under 10 percent of a class of Voting Stock, or immediately ceasing any other actions that give rise to a conclusive or rebuttable determination of control under the Regulations; or (2) filing a Notice under the Control Act, or an Application under the Holding Company Act, as appropriate, and either obtaining approval of the Application or clearance of the Notice, in accordance with the Regulations;

H. Where any Application or Notice filed by [ ] is disapproved, [ ] shall take no action which is inconsistent with the terms of this Agreement, except after reducing the amount of shares of Voting Stock of [ ] owned or controlled by [ ] to an amount under 10 percent of any class of Voting Stock, or immediately ceasing any other actions that give rise to a conclusive or rebuttable determination of control under the Regulations;

I. Should circumstances beyond [ ]'s control result in [ ] being placed in a position to direct the management or policies of [ ], then [ ] shall either (1) promptly file an Application under the Holding Company Act or a Notice under the Control Act, as appropriate, and take no affirmative steps to enlarge that control pending either a final determination with respect to the Application or Notice, or (2) promptly reduce the amount of shares of [ ] Voting Stock owned or controlled by [ ] to an amount under 10 percent of any class of Voting Stock or immediately cease any actions that give rise to a conclusive or rebuttable determination of control under the Regulations;

J. By entering into this Agreement and by offering it for reliance in reaching a decision on the request to rebut the presumption of control under the Regulations, as long as 10 percent or more of any class of Voting Stock of [ ] is owned or controlled, directly or indirectly, by [ ], and [ ] possesses any Control Factor as defined in the Regulations, [ ] will submit to the jurisdiction of the Regulations, including (1) the filing of an amended rebuttal or Application or Notice for any proposed action which is prohibited by this Agreement, and (2) the provisions relating to a penalty for any person who willfully violates or with reckless disregard for the safety or soundness of a savings association participates in a violation of the [Holding Company Act or Control Act] and the Regulations thereunder, and any regulation or order issued by the Office.

K. Any violation of this Agreement shall be deemed to be a violation of the [Holding Company Act or Control Act] and the Regulations, and shall be subject to such remedies and procedures as are provided in the [Holding Company Act or Control Act] and the Regulations for a violation thereunder and in addition shall be subject to any such additional remedies and procedures as are provided under any other applicable statutes or regulations for a violation, willful or otherwise, of any agreement entered into with the Office.

III. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which counterparts collectively shall constitute one instrument representing the Agreement among the parties thereto. It shall not be necessary that any one counterpart be signed by all of the parties hereto as long as each of the parties has signed at least one counterpart.

IV. This Agreement shall be interpreted in a manner consistent with the provisions of the Rules and Regulations of the Office.

V. This Agreement shall terminate upon (i) the approval by the Office of [ ]'s Application under the Holding Company Act or clearance by the Office of [ ]'s Notice under the Control Act to acquire [ ], and consummation of the transaction as described in such Application or Notice, (ii) in the disposition by [ ] of a sufficient number of shares of [ ], or (iii) the taking of such other action that thereafter [ ] is not in control and would not be determined to be in control of [ ] under the Control Act, the Holding Company Act or the Regulations of the Office as in effect at that time.

VI. IN WITNESS THEREOF, the parties thereto have executed this Agreement by their duly authorized officer.

[Acquiror]
Office of Thrift Supervision.

Date:

By:

[54 FR 49690, Nov. 30, 1989, as amended at 63 FR 71213, Dec. 24, 1998]

PART 575—MUTUAL HOLDING COMPANIES

Sec.

AUTHORITY: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1828, 2901.

SOURCE: 58 FR 44114, Aug. 19, 1993, unless otherwise noted.

§ 575.1 Scope.

(a) *Purpose.* The purpose of this part is to implement the mutual holding company provisions of the Savings and Loan Holding Company Act, 12 U.S.C. 1467a(o).

(b) *General.* Except as the OTS may otherwise determine, the provisions of this part shall exclusively govern the reorganization of mutual savings associations and any related stock issuances, and no mutual savings association shall reorganize to a mutual holding company or issue minority stock without the prior written approval of the OTS. The OTS may grant a waiver in writing from any requirement of this part for good cause shown.

[58 FR 44114, Aug. 19, 1993, as amended at 59 FR 61262, Nov. 30, 1994]

§ 575.2 Definitions.

As used in this part, the following definitions apply, unless specified elsewhere in this part:

(a) The terms *associate* and *tax-qualified employee stock benefit plan* have the meanings set forth in § 563b.25 of this chapter.

(b) The terms *acting in concert*, *affiliate*, *company*, *person*, and *savings association* have the meanings set forth in § 574.2 of this chapter.

(c) The term *acquiree association* means any savings association, other than a resulting association, that:

(1) Is acquired by a mutual holding company as part of, and concurrently with, a mutual holding company reorganization; and

(2) Is in the mutual form immediately prior to such acquisition.

(d) The term *control* has the same meaning as specified in § 574.4 of this chapter.

(e) The term *default* means any adjudication or other official determination of a court of competent jurisdiction or other public authority pursuant to which a conservator, receiver, or other legal custodian is appointed for a mutual holding company or savings association subsidiary of a mutual holding company.

(f) The term *insider* means any officer or director of a company or of any affiliate of such company, and any person acting in concert with any such officer or director.

(g) The term *member* means any depositor or borrower of a mutual savings association that is entitled, under the charter of the savings association, to