

you must not take advantage of corporate opportunities belonging to the savings association.

(b) A corporate opportunity belongs to a Federal savings association if:

(1) The opportunity is within the corporate powers of the savings association or a subsidiary of the savings association; and

(2) The opportunity is of present or potential practical advantage to the savings association, either directly or through its subsidiary.

(c) The OCC will not deem you to have taken advantage of a corporate opportunity belonging to the Federal savings association if a disinterested and independent majority of the savings association's board of directors, after receiving a full and fair presentation of the matter, rejected the opportunity as a matter of sound business judgment.

PART 165—PROMPT CORRECTIVE ACTION

Sec.

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165.10 [Reserved]

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§§ 165.1–165.7 [Reserved]

§ 165.8 Procedures for reclassifying a Federal savings association based on criteria other than capital.

(a) *Reclassification based on unsafe or unsound condition or practice*—(1) *Issuance of notice of proposed reclassification*—(i) *Grounds for reclassification.* (A) Pursuant to 12 CFR 6.4(d), the OCC may reclassify a well capitalized Federal savings association as adequately capitalized or subject an adequately capitalized or undercapitalized institution to the supervisory actions applicable to the next lower capital category if:

(1) The OCC determines that the savings association is in an unsafe or unsound condition; or

(2) The OCC deems the savings association to be engaged in an unsafe or unsound practice and not to have corrected the deficiency.

(B) Any action pursuant to this paragraph (a)(1)(i) shall hereinafter be referred to as “reclassification.”

(ii) *Prior notice to institution.* Prior to taking action pursuant to 12 CFR 6.4(d), the OCC shall issue and serve on the Federal savings association a written notice of the OCC's intention to reclassify the savings association.

(2) *Contents of notice.* A notice of intention to reclassify a Federal savings association based on unsafe or unsound condition shall include:

(i) A statement of the savings association's capital measures and capital levels and the category to which the savings association would be reclassified;

(ii) The reasons for reclassification of the savings association;

(iii) The date by which the savings association subject to the notice of reclassification may file with the OCC a written appeal of the proposed reclassification and a request for a hearing, which shall be at least 14 calendar days from the date of service of the notice unless the OCC determines that a shorter period is appropriate in light of the financial condition of the savings association or other relevant circumstances.

(3) *Response to notice of proposed reclassification.* A Federal savings association may file a written response to a notice of proposed reclassification within the time period set by the OCC. The response should include:

(i) An explanation of why the savings association is not in unsafe or unsound condition or otherwise should not be reclassified; and

(ii) Any other relevant information, mitigating circumstances, documentation, or other evidence in support of the position of the savings association or company regarding the reclassification.

(4) *Failure to file response.* Failure by a Federal savings association to file, within the specified time period, a written response with the OCC to a notice of proposed reclassification shall constitute a waiver of the opportunity

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to respond and shall constitute consent to the reclassification.

(5) *Request for hearing and presentation of oral testimony or witnesses.* The response may include a request for an informal hearing before the OCC or its designee under this section. If the Federal savings association desires to present oral testimony or witnesses at the hearing, the savings association shall include a request to do so with the request for an informal hearing. A request to present oral testimony or witnesses shall specify the names of the witnesses and the general nature of their expected testimony. Failure to request a hearing shall constitute a waiver of any right to a hearing, and failure to request the opportunity to present oral testimony or witnesses shall constitute a waiver of any right to present oral testimony or witnesses.

(6) *Order for informal hearing.* Upon receipt of a timely written request that includes a request for a hearing, the OCC shall issue an order directing an informal hearing to commence no later than 30 days after receipt of the request, unless the OCC allows further time at the request of the Federal savings association. The hearing shall be held in Washington, DC or at such other place as may be designated by the OCC, before a presiding officer(s) designated by the OCC to conduct the hearing.

(7) *Hearing procedures.* (i) The Federal savings association shall have the right to introduce relevant written materials and to present oral argument at the hearing. The savings association may introduce oral testimony and present witnesses only if expressly authorized by the OCC or the presiding officer(s). Neither the provisions of the Administrative Procedure Act (5 U.S.C. 554-557) governing adjudications required by statute to be determined on the record nor parts 19 or 109 of this chapter apply to an informal hearing under this section unless the OCC orders that such procedures shall apply.

(ii) The informal hearing shall be recorded and a transcript furnished to the savings association upon request and payment of the cost thereof. Witnesses need not be sworn, unless specifically requested by a party or the presiding officer(s). The presiding offi-

cer(s) may ask questions of any witness.

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

(8) *Recommendation of presiding officers.* Within 20 calendar days following the date the hearing and the record on the proceeding are closed, the presiding officer(s) shall make a recommendation to the OCC on the reclassification.

(9) *Time for decision.* Not later than 60 calendar days after the date the record is closed or the date of the response in a case where no hearing was requested, the OCC will decide whether to reclassify the Federal savings association and notify the savings association of the OCC's decision.

(b) *Request for rescission of reclassification.* Any Federal savings association that has been reclassified under this section, may, upon a change in circumstances, request in writing that the OCC reconsider the reclassification, and may propose that the reclassification be rescinded and that any directives issued in connection with the reclassification be modified, rescinded, or removed. Unless otherwise ordered by the OCC, the savings association shall remain subject to the reclassification and to any directives issued in connection with that reclassification while such request is pending before the OCC.

[76 FR 49065, Aug. 9, 2011, as amended at 78 FR 62281, Oct. 11, 2013]

§ 165.9 Order to dismiss a director or senior executive officer.

(a) *Service of notice.* When the OCC issues and serves a directive on a Federal savings association pursuant to subpart B of part 6 of this chapter requiring the savings association to dismiss any director or senior executive officer under section 38(f)(2)(F)(ii) of the FDI Act, the OCC shall also serve a copy of the directive, or the relevant portions of the directive where appropriate, upon the person to be dismissed.

(b) *Response to directive—(1) Request for reinstatement.* A director or senior executive officer who has been served