DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 544 and 552

[No. 2006–05]

RIN 1550–AC00

Federal Savings Association Bylaws; Integrity of Directors

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Thrift Supervision (OTS) is proposing to change its regulations concerning corporate governance to add a preapproved bylaw that federally chartered savings associations and mutual holding companies (collectively, federal savings associations) may adopt. The bylaw would preclude persons who, among other things, are under indictment for or have been convicted of certain crimes involving dishonesty or breach of trust, or have been subject to certain cease and desist orders entered by any of the banking agencies, from being members of the federal savings association's Board of Directors. The proposal would also permit federal savings associations to adopt bylaws that bar such persons from nominating individuals for membership on the federal savings association's Board of Directors. The proposal is intended to permit federal savings associations to protect their businesses from the adverse effects that are likely to result when the reputation of their board members is not conducive to maintaining the public's trust.

DATES: Your comments must be received by April 17, 2006.

ADDRESSES: You may submit comments, identified by No. 2006–05, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- E-mail: *regs.comments@ots.treas.gov*. Please include No. 2006–05 in the subject line of the message, and include your name and telephone number in the message.
- Fax: (202) 906–6518.
- Mail: Regulation Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: No. 2006–05.
- Hand Delivery/Courier: Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention: Regulation Comments, Chief Counsel's Office, Attention: No. 2006–05.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to the OTS Internet site at *http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1.* In addition, you may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment for access, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755. (Prior notice identifying the materials you will be requesting will assist us in serving you.) We schedule appointments on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the next business day following the date we receive a request.

FOR FURTHER INFORMATION CONTACT: Aaron B. Kahn, Assistant Chief Counsel, Business Transactions Division, (202) 906–6263; or Donald W. Dwyer, Director, Applications, Examinations and Supervision—Operations, (202) 906–6414, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. General

Congress has repeatedly emphasized the importance of ensuring that the people who control savings associations have the requisite character and integrity. When it created the federal savings and loan regulatory system, Congress directed the federal regulatory agency to adopt the best practices then existing in the savings and loan industry. One such practice was ensuring that directors of savings associations were persons of good judgment and character who had the respect and confidence of the community served by their respective institution. *See* Joseph H. Sundheim, *Law of Building and Loan Associations*, § 71 (3d ed. 1933).

In 1966, Congress also addressed the integrity of management of savings associations. At that time Congress gave the banking agencies authority to prevent individuals who had engaged in certain conduct from being affiliated with insured depository institutions, including savings associations.[1] In the 1966 legislation, Congress found certain conduct so egregious that it authorized the regulatory agencies to debar perpetrators from the industry, but Congress did not determine whether everyone else was qualified to sit on the boards of savings associations or whether individual savings associations could establish minimum requirements for service as a director that might prevent other persons from sitting on their respective boards of directors.

In addition, Congress' attention to the management of savings associations is evident in, among other acts: (i) The Change in Bank Control Act, which allows the applicable federal banking agency to disapprove a proposed acquisition if, among other things, the competence, experience, and integrity of any of the acquiror's proposed management personnel might jeopardize the financial stability of the institution or prejudice the interests of the

[1] *See* Financial Institutions Supervisory Act of 1966 (FISA), Pub. L. 89–695, 80 Stat. 1028, 1030–32, 1039–40, 1049–50. Among other things, FISA amended section 8 of the Federal Deposit Insurance Act (FDIA), 12 U.S.C. 1818, to provide for the removal and prohibition of persons a banking agency finds to have committed certain acts involving personal dishonesty or willful or continuing disregard for the safety or soundness of an insured depository institution and has either received financial gain, injured the institution or prejudiced the interests of its depositors. Similarly, section 19 of the FDIA, 12 U.S.C. 1829, prohibits persons who have been convicted of any criminal offense involving dishonesty or a breach of trust from controlling or participating in the conduct of the affairs of any insured depository institutions without the prior consent of the Federal Deposit Insurance Corporation.

directors of an acquiror and the savings associations involved in connection with agency review of managerial resources.[3]

Congress again recognized the need to ensure integrity in the banking industry when it enacted the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), Pub. L. 101–73, 103 Stat. 183. In FIRREA, Congress required certain financial institutions to provide prior notice to their federal regulator of any new board members and authorized the regulator to disapprove a board member if he or she lacked the requisite character or integrity to advance the interests of the depositors of the institution.[4]

On March 15, 2001, OTS published a rule amending its corporate governance rules for federally chartered savings associations to create a class of preapproved optional bylaw provisions that those savings associations could adopt without prior OTS review. 66 FR 15017. In addition, OTS promulgated a preapproved optional bylaw dealing with the qualifications of directors. The bylaw was intended to make it easier for federal savings associations to protect their businesses from the adverse effects that are likely to result when the reputation of its board members does not maintain the public's trust.

Recently, a number of federal savings associations have requested permission to adopt bylaws similar to the preapproved bylaw but also containing additional restrictions. On March 17, 2005, OTS approved an application by a federal savings association to adopt a bylaw amendment containing additional restrictions (OTS Order No. 2005–13). Rather than continue to deal with each request individually, OTS has determined to reconsider the optional bylaw and determine if changes are warranted. Proceeding by rulemaking will afford an opportunity for those interested in submitting comments to do

[2] 12 U.S.C. 1817(j)(7)(D).

[3] 12 U.S.C. 1467a(e)(1)(B), (e)(2).

[4] Section 914 of FIRREA (12 U.S.C. 1831i) provides for a banking agency to disapprove a proposed director ''if the competence, experience, character, or integrity of the [proposed director] indicates that it would not be in the best interests of the depositors of the depository institution or in the best interests of the public to permit the individual to be [so] employed. * * *'' In 1996, Congress changed the categories of institutions subject to this requirement. *See* Section 2209 of the Economic Growth and Regulatory Paperwork Reduction Act, Pub. L. 104–208, 110 Stat. 3009–409.

dishonesty, breach of fiduciary duty, or willful violation of financial regulatory law. Under the proposed preapproved bylaw provisions, a person would not be qualified if the person: (i) Is under indictment for, or has been convicted of, a criminal offense involving dishonesty or breach of trust and the penalty for the offense could be imprisonment for more than one year; (ii) has been subject to a banking agency final cease and desist order for conduct involving dishonesty or breach of trust; or (iii) has been found, either by a regulatory agency whose decision is final and not subject to appeal or by a court, to have breached a fiduciary duty under circumstances involving personal profit; committed a willful violation of any law, rule, or regulation governing banking, securities, commodities, or insurance; or committed a willful violation of a final cease and desist order issued by a banking, securities, commodities, or insurance regulatory agency.

The preapproved optional bylaw that OTS adopted in 2001 differs from the terms of the preapproved optional bylaw provisions now being proposed by OTS in certain respects. First, while both bylaw provisions would disqualify someone who has been subject to a banking agency cease and desist order because the person was found to have engaged in conduct involving dishonesty or breach of trust and that order is final and not subject to appeal, the bylaws do not contain the same disqualification time periods. The existing preapproved optional bylaw provides for a ten-year period of disqualification. In the proposed optional bylaw provisions, the period of disqualification is indefinite. However, under the proposed preapproved bylaw provisions, OTS would consider any specific time period of disqualification chosen by an adopting institution or holding company to also be preapproved.

Second, the existing preapproved optional bylaw does not foreclose a disqualified person from nominating other persons to serve on the board. In contrast, the proposed optional bylaw provisions allow a bylaw to prohibit a person who is disqualified from serving as a director from nominating others to serve as directors. However, otherwise qualified persons who are nominated by

[5] If OTS adopts the current proposal, the preapproved optional bylaw adopted in 2001 will be deleted.

effective, the proposed optional bylaw provision allows an institution to preclude entities owned or controlled by an ineligible person from using their share ownership to nominate directors.

If OTS adopts the proposal, a federal savings association could adopt a bylaw containing either some or all of the preapproved bylaw provisions and could limit the period for the restrictions contained in the proposed bylaw to whatever period the institution deemed appropriate. However, federal savings associations that wish to adopt a bylaw containing additional director qualifications beyond those in the preapproved bylaw provisions would continue to be required to obtain prior approval from OTS.

The proposed regulation does not bar anyone from the industry. Rather, like the existing preapproved bylaw, it permits individual federal savings associations to voluntarily adopt bylaws that set qualifications for board membership only for their respective institutions. Federal savings associations that adopt the preapproved bylaw provisions or less restrictive provisions would not have to provide prior notice to OTS, but would have to file notice of the adoption of the bylaw within 30 days after adopting the bylaw.

OTS believes that the proposed regulation would enhance the ability of federal savings associations to assure themselves that persons who are subject to adverse actions concerning their fiduciary integrity or compliance with financial regulatory laws do not become board members or obtain board membership for their representatives. The proposed provisions, like the existing preapproved bylaw provisions, permit the setting of standards for the integrity of prospective board members and are derived in part from the existing standards contained in § 563.39(b)(1) for terminating savings association officers for cause. Because that provision deals with the integrity of officials who are supervised by the board of directors, it appears reasonable to hold the board members to at least a comparable standard of integrity.

It is important that the directors of savings associations be persons of good character and integrity. They oversee management and have the ultimate responsibility for the operations of the savings association. In addition, directors of savings associations commonly assist their institutions in attracting and retaining business. Their

to be able to trust the institution that holds their money. Moreover, people may be wary of contracting with an institution that they do not trust. Thus, a director who has an exemplary reputation may be a valuable asset to the association. Conversely, a director whose reputation is tainted, for example because a court has found he or she personally profited from a breach of his or her fiduciary duties, may injure an institution simply by being a member of the board. The proposed regulation enhances the ability of federal savings associations to limit board membership to persons of good character and integrity.

In addition, OTS is concerned that an institution may suffer reputational risk if the representatives of a disreputable person are elected to the institution's board of directors. It is reasonable to assume that when such a person seeks to have others elected to a board of directors, that person has chosen nominees who he or she believes will pursue the same objectives as their sponsor. Thus, their election may well engender the same reaction from the public as would the election of their sponsor, the disreputable person. Given these concerns, OTS proposes to permit federal savings associations to prohibit disqualified persons from nominating others for positions on the board of directors.

Also, to prevent evasion of that prohibition, OTS proposes to permit federal savings associations to prohibit nominations from entities that are owned or controlled by disqualified persons. For example, under the proposed preapproved bylaw, a trust that holds shares could be prohibited from nominating someone to be a director if the trustee or principal beneficiary of the trust was disqualified under the preapproved bylaw.

However, persons should not be kept off boards of directors if they are not merely representatives of a disqualified person. Therefore, the proposed preapproved bylaw does not prohibit a person's service if that person is nominated by more than one shareholder and at least one of the nominating shareholders is someone who the proposed bylaw would not prohibit from serving as a director.

When OTS adopted the existing preapproved bylaw it noted that a trade association had commented that such bylaw should not be expanded to prevent ineligible persons from nominating... At that time, OTS stated that, ''[i]n the absence of any reasoned support for a broader provision, OTS will not expand the wording of the preapproved bylaw to encompass nominees of persons covered by the terms of the bylaw.'' 66 FR 15019 (Mar. 15, 2001). OTS agrees that the primary focus should be on the integrity of the individual directors. However, as discussed above, it appears to OTS that there is reasoned support for the broader provision. Moreover, OTS would not require institutions to adopt the nominee provision to obtain the benefit of having the bylaw preapproved. Thus, an institution that adopted a bylaw that was essentially the same as the proposed preapproved bylaw except that it did not include the nominee clause would still be able to make the bylaw effective by simply notifying OTS of the bylaw's adoption. In OTS's view, individual federal savings associations should, in the first instance, make the judgment as to the extent of reputational risk presented by permitting nominees of disqualified persons to serve on the institution's board of directors.

II. Request for Comments

A. Solicitation of Comments on the Proposed Amendments

OTS requests comment on all aspects of this proposal.

In particular, OTS is interested in comments addressing the proposal to permit federal savings associations to disqualify individuals who have been subject to certain cease and desist orders indefinitely rather than for a maximum of ten years. Is this change beneficial?

In addition, the proposed provision governing cease and desist orders is limited to orders issued by a banking agency. Should this provision be expanded to cover cease and desist orders issued by regulatory agencies with jurisdiction over other financial businesses? Should it cover regulatory agencies with jurisdiction over non-financial businesses?

OTS is also interested in receiving comments on the added provision barring disqualified persons from nominating individuals to serve on the board of directors. Is this provision desirable? Are OTS's concerns about reputational risks engendered by allowing disqualified persons to nominate others for the board of directors valid? Are there any disadvantages to permitting federal savings associations to bar such nominations? ... the reputation of the adopting federal savings association. Are OTS's concerns about the reputational risks posed by persons who have engaged in dishonest conduct valid? Is the proposed optional bylaw an effective comprehensive means of reducing risk to reputation? Are there other methods or means of addressing that risk that are less restrictive?

B. Solicitation of Comments Regarding the Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act requires federal banking agencies to use ''plain language'' in all proposed and final rules published after January 1, 2000. OTS invites comments on how to make this proposed rule easier to understand. For example:

(1) Have we organized the material to suit your needs? If not, how could the material be better organized?

(2) Do we clearly state the parameters of the preapproved bylaw in the rule? If not, how could the rule be more clearly stated?

(3) Does the rule contain technical language or jargon that is not clear? If so, what language requires clarification?

(4) Would a different format make the rule easier to understand? If so, what changes to the format would make the rule easier to understand?

III. Regulatory Findings

A. Paperwork Reduction Act

OTS has determined that this proposed rule does not involve any additional collection of information from that previously approved under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

B. Executive Order 12866

The Director of OTS has determined that this proposed rule does not constitute a ''significant regulatory action'' for purposes of Executive Order 12866. Because no savings association is required to take any action by this proposal and because any federal savings association could have requested permission to impose qualifications for membership on its Board of Directors comparable to those contained in the proposal, OTS has concluded that the proposal will not have significant effects on the thrift industry.

C. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, OTS certifies

including small federal savings associations, by permitting them to adopt certain bylaws without providing prior notice to OTS. The rule does not require any savings association to modify its bylaws and all federal savings associations currently can request permission to adopt such bylaws, if they choose to do so. Accordingly, a regulatory flexibility analysis is not required.

D. Unfunded Mandates Reform Act Of 1995

OTS has determined that this proposed rule will not result in expenditures by state, local and tribal governments, or by the private sector, of $100 million or more in any one year. Therefore, OTS has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered. The proposal simply gives federal savings associations the option to adopt a bylaw without having to first request permission from OTS.

List of Subjects

12 CFR Part 544

Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 552

Reporting and recordkeeping requirements, Savings associations. Securities.

Authority and Issuance

For the reasons set out in the preamble, parts 544 and 552 of Chapter V of title 12 of the Code of Federal Regulations are proposed to be amended as follows:

PART 544—FEDERAL MUTUAL SAVINGS ASSOCIATIONS—CHARTER AND BYLAWS

1. The authority citation for part 544 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 2901 *et seq.*

2. Amend § 544.5 by adding a new paragraph (c)(1)(iv) to read as follows:

§ 544.5 Federal mutual savings association bylaws.

* * * * *

(c) * * *

(1) * * *

(iv) For purposes of this paragraph (c), bylaw provisions that use the following language or provide less restrictive adoption:

A person is not qualified to serve as a director if he or she: 1—is under indictment for, or has ever been convicted of, a criminal offense involving dishonesty or breach of trust and the penalty for such offense could be imprisonment for more than one year; 2—is a person against whom a banking agency has issued a cease and desist order for conduct involving dishonesty or breach of trust and that order is final and not subject to appeal; or 3—has been found either by a regulatory agency whose decision is final and not subject to appeal or by a court to have breached a fiduciary duty involving personal profit or committed a willful violation of any law, rule or regulation governing banking, securities, commodities or insurance, or any final cease and desist order issued by a banking, securities, commodities or insurance regulatory agency.

A person who under this provision is not qualified to serve as a director, and any entity that is owned or controlled by such person, is not permitted to nominate anyone to serve as a director.

* * * * *

PART 552—FEDERAL STOCK ASSOCIATIONS—INCORPORATION, ORGANIZATION, AND CONVERSION

3. The authority citation for part 552 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a.

4. Amend § 552.5 by adding a new paragraph (b)(1)(iv) to read as follows:

§ 552.5 Bylaws.

* * * * *

(b) * * *

(1) * * *

(iv) For purposes of this paragraph (b), bylaw provisions that use the following language or provide less restrictive qualifications for directors or the ability to nominate directors than provided in the following language are effective upon adoption provided, such bylaws are filed with OTS within 30 days after adoption:

A person is not qualified to serve as a director if he or she: 1—is under indictment for, or has ever been convicted of, a criminal offense involving dishonesty or breach of trust and the penalty for such offense could be imprisonment for more than one year; 2—is a person against whom a banking agency has issued a cease and desist order for conduct involving dishonesty or breach of trust and that order is final and not subject to appeal; or 3—has been found either by a regulatory agency whose decision is final and not subject to appeal or by a court to have breached a fiduciary duty involving personal profit or committed a willful violation of any law, rule or regulation governing banking, securities, commodities or insurance, or any final cease and desist order issued by a banking, securities, commodities or insurance regulatory agency.

A person who under this provision is not qualified to serve as a director, and any entity that is owned or controlled by such person, is not permitted to nominate anyone to serve as a director.

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Dated: February 7, 2006.

By the Office of Thrift Supervision.

John M. Reich,

Director.

[FR Doc. E6–2003 Filed 2–13–06; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19220; Directorate Identifier 2004–CE–27–AD]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Models PC–12 and PC–12/45 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Pilatus Aircraft Ltd. (Pilatus) Models PC–12 and PC–12/45 airplanes equipped with certain crew seat bucket assemblies with and without a backrest recline system. This proposed AD would require you to replace the backrest tubes on these crew seat bucket assemblies at a specified time and adds a life limit for these backrest tubes. This proposed AD results from mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. We are issuing this proposed AD to prevent cracks in the backrest tubes of certain crew seat bucket assemblies, which could result in failure of the seat system. This failure could lead to the pilot and co-pilot's reduced ability to control the airplane. This failure could also affect the proper function of the seat restrain system in the case of an emergency landing.

DATES: We must receive comments on this proposed AD by March 16, 2006.

ADDRESSES: Use one of the following addresses to comment on this proposed AD: