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(c) *Alternate report*. When you act as an investment adviser to an investment company registered under the Investment Company Act of 1940, an officer or employee that is an ''access person'' may fulfill his or her reporting requirements under this section by filing with you the ''access person'' personal securities trading report required by SEC Rule 17j–1(d), 17 CFR 270.17j–1(d).

PART 152—FEDERAL STOCK ASSOCIATIONS—INCORPORATION, ORGANIZATION, AND CONVERSION

Sec.

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AUTHORITY: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 5412(b)(2)(B).

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§ 152.1 Procedure for organization of Federal stock association.

(a) *Application for permission to organize*. Applications for permission to organize a Federal stock association are subject to this section and to § 143.3 of this chapter. Recommendations by employees of the OCC regarding applications for permission to organize are privileged, confidential, and subject to Part 4, subpart C of this chapter. The processing of an application under this section shall be subject to the following procedures:

(1) *Publication*. (i) The applicant shall publish a public notice of the application to organize in accordance with the procedures specified in subpart B of part 116 of this chapter.

(ii) Promptly after publication of the public notice, the applicant shall transmit copies of the public notice and publisher's affidavit of publication to the appropriate OCC licensing office in the same manner as the original filing.

(iii) Any person may inspect the application and all related communications at the offices specified in 12 CFR 4.14(c) during regular business hours, unless such information is exempt from public disclosure.

(2) *Notification to interested parties*. The OCC shall give notice of the application to the state official who supervises savings associations in the state in which the new association is to be located.

(3) *Submission of comments*. Commenters may submit comments on the application in accordance with the procedures specified in subpart C of part 116 of this chapter.

(4) *Meetings*. The OCC may arrange a meeting in accordance with the procedures in subpart D of part 116 of this chapter.

(b) *Conditions of approval*. The OCC will decide all applications for permission to organize a Federal stock association.

(1) Factors that will be considered on all applications for permission to organize a Federal stock association are:

(i) Whether the applicants are persons of good character and responsibility;

(ii) Whether a necessity exists for such association in the community to be served;

(iii) Whether there is a reasonable probability of the association's usefulness and success;

(iv) Whether the association can be established without undue injury to properly conducted existing local thrift and home financing institutions; and

(v) Whether the association will perform a role of providing credit for

housing consistent with safe and sound operation of a Federal savings association.

(2) [Reserved]

(3) Approvals of applications will be conditioned on the following:

(i) Receipt by the OCC of written confirmation from the Federal Deposit Insurance Corporation that the accounts of the association will be insured by the Federal Deposit Insurance Corporation;

(ii) The sale of a minimum amount of fully-paid capital stock of the association prior to commencing business;

(iii) The submission of a statement that:

(A) The applicants have incurred no expense in organization which is chargeable to the association, and that no such expense will be incurred, and

(B) No funds will be accepted for deposit by the association until organization has been completed;

(iv) Compliance with all applicable laws, rules, and regulations; and

(v) The satisfaction of any other requirement or condition the OCC may impose.

(c) *Issuance of charter*. Upon approval of an application, the OCC shall issue to the association a charter for a Federal stock savings association or for a Federal stock savings bank, as requested by the applicants, which shall be in the form provided in this part. Issuance of the charter shall be subject to the condition subsequent that the organization of the association is completed pursuant to this section.

(d) *Interim board of directors and officers*. Upon approval of the application and the issuance of the charter, the applicants shall constitute the interim board of directors of the association until the board of directors of the association are elected by its stockholders at the organizational meeting required by paragraph (g) of this section, and the interim officers of the association shall be those persons set forth in the application for permission to organize.

(e) *Sale of capital stock*. Upon the issuance of the charter, the association shall proceed to offer and sell its capital stock pursuant to the requirements of part 197 of this chapter.

(f) *Bank membership and insurance of accounts*. Promptly upon the issuance of the charter, a Federal stock association must qualify as a member of the appropriate Federal Home Loan Bank and meet all requirements necessary to obtain insurance of accounts by the Federal Deposit Insurance Corporation.

(g) *Organizational meeting*. Promptly upon the completion of the sale of its capital stock, the association shall provide notice, pursuant to § 152.6(b), of a meeting of its stockholders to elect a board of directors. Immediately following such election, the directors shall meet to elect the officers of the association and to undertake any other action necessary under the charter or bylaws to complete corporate organization.

(h) *Completion of organization*. Organization of a Federal stock association shall be deemed complete for the purposes of this part when:

(1) The association has obtained Federal Home Loan Bank membership and insurance of its accounts from the Federal Deposit Insurance Corporation;

(2) It has completed the sale of and received full payment for its capital stock;

(3) It has complied with all requirements of part 197 of this chapter;

(4) It has held its organizational meeting for the election of directors and all directors have been elected;

(5) Its officers have been elected and bonded; and

(6) It has met the requirements and conditions imposed by the OCC in connection with approval of the application.

(i) *Failure of completion*. If organization of a Federal stock association is not completed within six months after approval of the application, or unless extended for an additional period for good cause shown, the charter shall become null and void and all subscriptions to capital stock shall be returned.

§ 152.2 Procedures for organization of interim Federal stock association.

(a) Applications for permission to organize an interim Federal savings association are not subject to subparts B, C and D of part 116 of this chapter or § 152.1(b)(3) of this part.

(b) Approval of an application for permission to organize an interim Federal stock association shall be conditioned upon approval by the OCC of an application to merge the interim Federal stock association, or upon approval by the OCC of another transaction which the interim was chartered to facilitate. Applications for permission to organize an interim Federal stock association shall be submitted in the same manner as the related filing(s). In evaluating the application, the OCC will consider the purpose for which the association will be organized, the form of any proposed transactions involving the association, the effect of the transactions on existing associations involved in the transactions, and the factors specified in § 152.1(b)(1) to the extent relevant.

(c) If a merger or other transaction facilitated by the existence of the interim Federal stock association has not been approved within six months of the approval of the application for permission to organize, unless extended for good cause shown, the charter shall be void and all subscriptions for capital stock shall be returned.

§ 152.3 Charters for Federal stock associations.

The charter of a Federal stock association shall be in the following form, except that an association that has converted from the mutual form pursuant to part 192 of this chapter shall include in its charter a section establishing a liquidation account as required by § 192.3(c)(13) of this chapter. A charter for a Federal stock savings bank shall substitute the term ''savings bank'' for ''association.'' Charters may also include any preapproved optional provision contained in § 152.4 of this part.

Federal Stock Charter

Section 1. Corporate title. The full corporate title of the association is ____.

Section 2. Office. The home office shall be located in ____ [city, state].

Section 3. Duration. The duration of the association is perpetual.

Section 4. Purpose and powers. The purpose of the association is to pursue any or all of the lawful objectives of a Federal savings association chartered under section 5 of the Home Owners' Loan Act and to exercise all of the express, implied, and incidental powers conferred thereby and by all acts amendatory thereof and supplemental thereto, subject to the Constitution and laws of the United States as they are now in effect, or as they may hereafter be amended, and subject to all lawful and applicable rules, regulations, and orders of the Office of the Comptroller of the Currency (''OCC'').

Section 5. Capital stock. The total number of shares of all classes of the capital stock that the association has the authority to issue is ____, all of which shall be common stock of par [or if no par is specified then shares shall have a stated] value of ____ per share. The shares may be issued from time to time as authorized by the board of directors without the approval of its shareholders, except as otherwise provided in this Section 5 or to the extent that such approval is required by governing law, rule, or regulation. The consideration for the issuance of the shares shall be paid in full before their issuance and shall not be less than the par [or stated] value. Neither promissory notes nor future services shall constitute payment or part payment for the issuance of shares of the association. The consideration for the shares shall be cash, tangible or intangible property (to the extent direct investment in such property would be permitted to the association), labor, or services actually performed for the association, or any combination of the foregoing. In the absence of actual fraud in the transaction, the value of such property, labor, or services, as determined by the board of directors of the association, shall be conclusive. Upon payment of such consideration, such shares shall be deemed to be fully paid and nonassessable. In the case of a stock dividend, that part of the retained earnings of the association that is transferred to common stock or paid-in capital accounts upon the issuance of shares as a stock dividend shall be deemed to be the consideration for their issuance.

Except for shares issued in the initial organization of the association or in connection with the conversion of the association from the mutual to stock form of capitalization, no shares of

capital stock (including shares issuable upon conversion, exchange, or exercise of other securities) shall be issued, directly or indirectly, to officers, directors, or controlling persons of the association other than as part of a general public offering or as qualifying shares to a director, unless the issuance or the plan under which they would be issued has been approved by a majority of the total votes eligible to be cast at a legal meeting.

The holders of the common stock shall exclusively possess all voting power. Each holder of shares of common stock shall be entitled to one vote for each share held by such holder, except as to the cumulation of votes for the election of directors, unless the charter provides that there shall be no such cumulative voting. Subject to any provision for a liquidation account, in the event of any liquidation, dissolution, or winding up of the association, the holders of the common stock shall be entitled, after payment or provision for payment of all debts and liabilities of the association, to receive the remaining assets of the association available for distribution, in cash or in kind. Each share of common stock shall have the same relative rights as and be identical in all respects with all the other shares of common stock.

Section 6. Preemptive rights. Holders of the capital stock of the association shall not be entitled to preemptive rights with respect to any shares of the association which may be issued.

Section 7. Directors. The association shall be under the direction of a board of directors. The authorized number of directors, as stated in the association's bylaws, shall not be fewer than five nor more than fifteen except when a greater or lesser number is approved by the OCC.

Section 8. Amendment of charter. Except as provided in Section 5, no amendment, addition, alteration, change or repeal of this charter shall be made, unless such is proposed by the board of directors of the association, approved by the shareholders by a majority of the votes eligible to be cast at a legal meeting, unless a higher vote is otherwise required, and approved or preapproved by the OCC.

Attest: _____

Secretary of the Association

By: _____

President or Chief Executive Officer of the Association

Attest: _____

Deputy Comptroller for Licensing

By: _____

Comptroller of the Currency

Effective Date: _____

§ 152.4 Charter amendments.

(a) *General.* In order to adopt a charter amendment, a Federal stock association must comply with the following requirements:

(1) *Board of directors approval.* The board of directors of the association must adopt a resolution proposing the charter amendment that states the text of such amendment.

(2) *Form of filing*—(i) *Application requirement.* If the proposed charter amendment would render more difficult or discourage a merger, tender offer, or proxy contest, the assumption of control by a holder of a block of the association's stock, the removal of incumbent management, or involve a significant issue of law or policy, the association shall file the proposed amendment and shall obtain the prior approval of the OCC; and

(ii) *Notice requirement.* If the proposed charter amendment does not involve a provision that would be covered by paragraph (a)(2)(i) of this section and such amendment is permissible under all applicable laws, rules or regulations, then the association shall submit the proposed amendments to the appropriate OCC licensing office, at least 30 days prior to the date the proposed charter amendment is to be mailed for consideration by the association's shareholders.

(b) *Approval.* Any charter amendment filed pursuant to paragraph (a)(2)(ii) of this section shall automatically be approved 30 days from the date of filing of such amendment, provided that the association follows the requirements of its charter in adopting such amendment, unless prior to the expiration of such 30-day period the OCC notifies the association that such amendment is rejected or that such amendment is deemed to be filed under the provisions of paragraph (a)(2)(i) of this section. In addition, the following charter amendments, including the adoption of the

Federal stock charter as set forth in § 152.3 of this part, shall be approved at the time of adoption, if adopted without change and filed with the OCC within 30 days after adoption, provided the association follows the requirements of its charter in adopting such amendments:

(1) *Title change.* A Federal stock association that has complied with § 143.1(b) of this chapter may amend its charter by substituting a new corporate title in section 1.

(2) *Home office.* A Federal savings association may amend its charter by substituting a new home office in section 2, if it has complied with applicable requirements of § 145.95 of this chapter.

(3) *Number of shares of stock and par value.* A Federal stock association may amend Section 5 of its charter to change the number of authorized shares of stock, the number of shares within each class of stock, and the par or stated value of such shares.

(4) *Capital stock.* A Federal stock association may amend its charter by revising Section 5 to read as follows:

Section 5. Capital stock. The total number of shares of all classes of capital stock that the association has the authority to issue is ____, of which ____ shall be common stock of par [or if no par value is specified the stated] value of ____ per share and of which [list the number of each class of preferred and the par or if no par value is specified the stated value per share of each such class]. The shares may be issued from time to time as authorized by the board of directors without further approval of shareholders, except as otherwise provided in this Section 5 or to the extent that such approval is required by governing law, rule, or regulation. The consideration for the issuance of the shares shall be paid in full before their issuance and shall not be less than the par [or stated] value. Neither promissory notes nor future services shall constitute payment or part payment for the issuance of shares of the association. The consideration for the shares shall be cash, tangible or intangible property (to the extent direct investment in such property would be permitted), labor, or services actually performed for the association, or any combination of the foregoing. In the absence of actual fraud in the transaction, the value of such property, labor, or services, as determined by the board of directors of the association, shall be conclusive. Upon payment of such consideration, such shares shall be deemed to be fully paid and nonassessable. In the case of a stock dividend, that part of the retained earnings of the association that is transferred to common stock or paid-in capital accounts upon the issuance of shares as a stock dividend shall be deemed to be the consideration for their issuance.

Except for shares issued in the initial organization of the association or in connection with the conversion of the association from the mutual to the stock form of capitalization, no shares of capital stock (including shares issuable upon conversion, exchange, or exercise of other securities) shall be issued, directly or indirectly, to officers, directors, or controlling persons of the association other than as part of a general public offering or as qualifying shares to a director, unless their issuance or the plan under which they would be issued has been approved by a majority of the total votes eligible to be cast at a legal meeting.

Nothing contained in this Section 5 (or in any supplementary sections hereto) shall entitle the holders of any class of a series of capital stock to vote as a separate class or series or to more than one vote per share, except as to the cumulation of votes for the election of directors, unless the charter otherwise provides that there shall be no such cumulative voting: *Provided,* That this restriction on voting separately by class or series shall not apply:

(i) To any provision which would authorize the holders of preferred stock, voting as a class or series, to elect some members of the board of directors, less than a majority thereof, in the event of default in the payment of dividends on any class or series of preferred stock;

(ii) To any provision that would require the holders of preferred stock, voting as a class or series, to approve the merger or consolidation of the association with another corporation or

the sale, lease, or conveyance (other than by mortgage or pledge) of properties or business in exchange for securities of a corporation other than the association if the preferred stock is exchanged for securities of such other corporation: *Provided,* That no provision may require such approval for transactions undertaken with the assistance or pursuant to the direction of the OCC or the Federal Deposit Insurance Corporation;

(iii) To any amendment which would adversely change the specific terms of any class or series of capital stock as set forth in this Section 5 (or in any supplementary sections hereto), including any amendment which would create or enlarge any class or series ranking prior thereto in rights and preferences. An amendment which increases the number of authorized shares of any class or series of capital stock, or substitutes the surviving association in a merger or consolidation for the association, shall not be considered to be such an adverse change.

A description of the different classes and series (if any) of the association's capital stock and a statement of the designations, and the relative rights, preferences, and limitations of the shares of each class of and series (if any) of capital stock are as follows:

A. *Common stock.* Except as provided in this Section 5 (or in any supplementary sections thereto) the holders of the common stock shall exclusively possess all voting power. Each holder of shares of the common stock shall be entitled to one vote for each share held by each holder, except as to the cumulation of votes for the election of directors, unless the charter otherwise provides that there shall be no such cumulative voting.

Whenever there shall have been paid, or declared and set aside for payment, to the holders of the outstanding shares of any class of stock having preference over the common stock as to the payment of dividends, the full amount of dividends and of sinking fund, retirement fund, or other retirement payments, if any, to which such holders are respectively entitled in preference to the common stock, then dividends may be paid on the common stock and on any class or series of stock entitled to participate therewith as to dividends out of any assets legally available for the payment of dividends.

In the event of any liquidation, dissolution, or winding up of the association, the holders of the common stock (and the holders of any class or series of stock entitled to participate with the common stock in the distribution of assets) shall be entitled to receive, in cash or in kind, the assets of the association available for distribution remaining after: (i) Payment or provision for payment of the association's debts and liabilities; (ii) distributions or provision for distributions in settlement of its liquidation account; and (iii) distributions or provision for distributions to holders of any class or series of stock having preference over the common stock in the liquidation, dissolution, or winding up of the association. Each share of common stock shall have the same relative rights as and be identical in all respects with all the other shares of common stock.

B. *Preferred stock.* The association may provide in supplementary sections to its charter for one or more classes of preferred stock, which shall be separately identified. The shares of any class may be divided into and issued in series, with each series separately designated so as to distinguish the shares thereof from the shares of all other series and classes. The terms of each series shall be set forth in a supplementary section to the charter. All shares of the same class shall be identical except as to the following relative rights and preferences, as to which there may be variations between different series:

(a) The distinctive serial designation and the number of shares constituting such series;

(b) The dividend rate or the amount of dividends to be paid on the shares of such series, whether dividends shall be cumulative and, if so, from which date(s), the payment date(s) for dividends, and the participating or other special rights, if any, with respect to dividends;

(c) The voting powers, full or limited, if any, of shares of such series;

(d) Whether the shares of such series shall be redeemable and, if so, the

price(s) at which, and the terms and conditions on which, such shares may be redeemed;

(e) The amount(s) payable upon the shares of such series in the event of voluntary or involuntary liquidation, dissolution, or winding up of the association;

(f) Whether the shares of such series shall be entitled to the benefit of a sinking or retirement fund to be applied to the purchase or redemption of such shares, and if so entitled, the amount of such fund and the manner of its application, including the price(s) at which such shares may be redeemed or purchased through the application of such fund;

(g) Whether the shares of such series shall be convertible into, or exchangeable for, shares of any other class or classes of stock of the association and, if so, the conversion price(s) or the rate(s) of exchange, and the adjustments thereof, if any, at which such conversion or exchange may be made, and any other terms and conditions of such conversion or exchange.

(h) The price or other consideration for which the shares of such series shall be issued; and

(i) Whether the shares of such series which are redeemed or converted shall have the status of authorized but unissued shares of serial preferred stock and whether such shares may be reissued as shares of the same or any other series of serial preferred stock.

Each share of each series of serial preferred stock shall have the same relative rights as and be identical in all respects with all the other shares of the same series.

The board of directors shall have authority to divide, by the adoption of supplementary charter sections, any authorized class of preferred stock into series, and, within the limitations set forth in this section and the remainder of this charter, fix and determine the relative rights and preferences of the shares of any series so established.

Prior to the issuance of any preferred shares of a series established by a supplementary charter section adopted by the board of directors, the association shall file with the OCC a dated copy of that supplementary section of this charter established and designating the series and fixing and determining the relative rights and preferences thereof.

(5) *Limitations on subsequent issuances.* A Federal stock association may amend its charter to require shareholder approval of the issuance or reservation of common stock or securities convertible into common stock under circumstances which would require shareholder approval under the rules of the New York or American Stock Exchange if the shares were then listed on the New York or American Stock Exchange.

(6) *Cumulative voting.* A Federal stock association may amend its charter by substituting the following sentence for the second sentence in the third paragraph of Section 5: ''Each holder of shares of common stock shall be entitled to one vote for each share held by such holder and there shall be no right to cumulate votes in an election of directors.''

(7) [Reserved]

(8) *Anti-takeover provisions following mutual to stock conversion.* Notwithstanding the law of the state in which the association is located, a Federal stock association may amend its charter by renumbering existing sections as appropriate and adding a new section 8 as follows:

Section 8. Certain Provisions Applicable for Five Years. Notwithstanding anything contained in the Association's charter or bylaws to the contrary, for a period of [specify number of years up to five] years from the date of completion of the conversion of the Association from mutual to stock form, the following provisions shall apply:

A. *Beneficial Ownership Limitation.* No person shall directly or indirectly offer to acquire or acquire the beneficial ownership of more than 10 percent of any class of an equity security of the association. This limitation shall not apply to a transaction in which the association forms a holding company without change in the respective beneficial ownership interests of its stockholders other than pursuant to the exercise of any dissenter and appraisal rights, the purchase of shares by underwriters in connection with a public offering, or the purchase of shares by a tax-qualified employee stock benefit plan which is exempt from the approval

requirements under § 174.3(c)(2)(i)(D) of the OCC's regulations.

In the event shares are acquired in violation of this section 8, all shares beneficially owned by any person in excess of 10% shall be considered ''excess shares'' and shall not be counted as shares entitled to vote and shall not be voted by any person or counted as voting shares in connection with any matters submitted to the stockholders for a vote.

For purposes of this section 8, the following definitions apply:

(1) The term ''person'' includes an individual, a group acting in concert, a corporation, a partnership, an association, a joint stock company, a trust, an unincorporated organization or similar company, a syndicate or any other group formed for the purpose of acquiring, holding or disposing of the equity securities of the association.

(2) The term ''offer'' includes every offer to buy or otherwise acquire, solicitation of an offer to sell, tender offer for, or request or invitation for tenders of, a security or interest in a security for value.

(3) The term ''acquire'' includes every type of acquisition, whether effected by purchase, exchange, operation of law or otherwise.

(4) The term ''acting in concert'' means (a) knowing participation in a joint activity or conscious parallel action towards a common goal whether or not pursuant to an express agreement, or (b) 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 arrangements, whether written or otherwise.

B. *Cumulative Voting Limitation.* Stockholders shall not be permitted to cumulate their votes for election of directors.

C. *Call for Special Meetings.* Special meetings of stockholders relating to changes in control of the association or amendments to its charter shall be called only upon direction of the board of directors.

(c) *Anti-takeover provisions.* The OCC may grant approval to a charter amendment not listed in paragraph (b) of this section regarding the acquisition by any person or persons of its equity securities provided that the association shall file as part of its application for approval an opinion, acceptable to the OCC, of counsel independent from the association that the proposed charter provision would be permitted to be adopted by a corporation chartered by the state in which the principal office of the association is located. Any such provision must be consistent with applicable statutes, regulations, and OCC policies. Further, any such provision that would have the effect of rendering more difficult a change in control of the association and would require for any corporate action (other than the removal of directors) the affirmative vote of a larger percentage of shareholders than is required by this part, shall not be effective unless adopted by a percentage of shareholder vote at least equal to the highest percentage that would be required to take any action under such provision.

(d) *Reissuance of charter.* A Federal stock association that has amended its charter may apply to have its charter, including the amendments, reissued by the OCC. Such requests for reissuance should be filed with the appropriate OCC licensing office, and contain signatures required under § 152.3 of this part, together with such supporting documents as needed to demonstrate that the amendments were properly adopted.

§ 152.5 Bylaws.

(a) *General.* At its first organizational meeting, the board of directors of a Federal stock association shall adopt a set of bylaws for the administration and regulation of its affairs. Bylaws may be adopted, amended or repealed by either a majority of the votes cast by the shareholders at a legal meeting or a majority of the board of directors. The bylaws shall contain sufficient provisions to govern the association in accordance with the requirements of §§ 152.6, 152.7, 152.8, and 152.9 of this part and shall not contain any provision that is inconsistent with those sections or with applicable laws, rules, regulations or the association's charter, except that a bylaw provision inconsistent with §§ 152.6, 152.7, and 152.9, of

this part may be adopted with the approval of the OCC.

(b) *Form of Filing*—(1) *Application requirement*. (i) Any bylaw amendment shall be submitted to the OCC for approval if it would:

(A) Render more difficult or discourage a merger, tender offer, or proxy contest, the assumption of control by a holder of a large block of the association's stock, or the removal of incumbent management; or

(B) Be inconsistent with §§ 152.6, 152.7, 152.8, and 152.9 of this part, with applicable laws, rules, regulations or the association's charter or involve a significant issue of law or policy, including indemnification, conflicts of interest, and limitations on director or officer liability.

(ii) Applications submitted under paragraph (b)(1)(i) of this section are subject to standard treatment processing procedures at part 116, subparts A and E of this chapter.

(iii) Bylaw provisions that adopt the language of the OCC's model or optional bylaws, if adopted without change, and filed with the OCC within 30 days after adoption, are effective upon adoption.

(2) *Filing requirement*. If the proposed bylaw amendment does not involve a provision that would be covered by paragraph (b)(1) or (b)(3) of this section and is permissible under all applicable laws, rules, or regulations, then the association shall submit the amendment to the OCC at least 30 days prior to the date the bylaw amendment is to be adopted by the association.

(3) *Corporate governance procedures*. A Federal stock association may elect to follow the corporate governance procedures of: The laws of the state where the main office of the association is located; the laws of the state where the association's holding company, if any, is incorporated or chartered; Delaware General Corporation law; or The Model Business Corporation Act, provided that such procedures may be elected to the extent not inconsistent with applicable Federal statutes and regulations and safety and soundness, and such procedures are not of the type described in paragraph (b)(1) of this section. If this election is selected, a Federal stock association shall designate in its bylaws the provision or provisions from the body or bodies of law selected for its corporate governance procedures, and shall file a copy of such bylaws, which are effective upon adoption, within 30 days after adoption. The submission shall indicate, where not obvious, why the bylaw provisions meet the requirements stated in paragraph (b)(1) of this section.

(c) *Effectiveness*. Any bylaw amendment filed pursuant to paragraph (b)(2) of this section shall automatically be effective 30 days from the date of filing of such amendment, provided that the association follows the requirements of its charter and bylaws in adopting such amendment, unless prior to the expiration of such 30-day period the OCC notifies the association that such amendment is rejected or that such amendment requires an application to be filed pursuant to paragraph (b)(1) of this section.

(d) *Effect of subsequent charter or bylaw change*. Notwithstanding any subsequent change to its charter or bylaws, the authority of a Federal stock association to engage in any transaction shall be determined only by the association's charter or bylaws then in effect, unless otherwise provided by Federal law or regulation.

§ 152.6 Shareholders.

(a) *Shareholder meetings*. A meeting of the shareholders of the association for the election of directors and for the transaction of any other business of the association shall be held annually within 150 days after the end of the association's fiscal year. Unless otherwise provided in the association's charter, special meetings of the shareholders may be called by the board of directors or on the request of the holders of 10 percent or more of the shares entitled to vote at the meeting, or by such other persons as may be specified in the bylaws of the association. All annual and special meetings of shareholders shall be held at such place as the board of directors may determine in the state in which the association has its principal place of business, or at any other convenient place the board of directors may designate.

(b) *Notice of shareholder meetings*. Written notice stating the place, day,

and hour of the meeting and the purpose or purposes for which the meeting is called shall be delivered not fewer than 20 nor more than 50 days before the date of the meeting, either personally or by mail, by or at the direction of the chairman of the board, the president, the secretary, or the directors, or other persons calling the meeting, to each shareholder of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the mail, addressed to the shareholder at the address appearing on the stock transfer books or records of the association as of the record date prescribed in paragraph (c) of this section, with postage thereon prepaid. When any shareholders' meeting, either annual or special, is adjourned for 30 days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Notwithstanding anything in this section, however, a Federal stock association that is wholly owned shall not be subject to the shareholder notice requirement.

(c) *Fixing of record date.* For the purpose of determining shareholders entitled to notice of or to vote at any meeting of shareholders or any adjournment thereof, or shareholders entitled to receive payment of any dividend, or in order to make a determination of shareholders for any other proper purpose, the board of directors shall fix in advance a date as the record date for any such determination of shareholders. Such date in any case shall be not more than 60 days and, in case of a meeting of shareholders, not less than 10 days prior to the date on which the particular action, requiring such determination of shareholders, is to be taken. When a determination of shareholders entitled to vote at any meeting of shareholders has been made as provided in this section, such determination shall apply to any adjournment thereof.

(d) *Voting lists.* (1) At least 20 days before each meeting of the shareholders, the officer or agent having charge of the stock transfer books for the shares of the association shall make a complete list of the stockholders of record entitled to vote at such meeting, or any adjournments thereof, arranged in alphabetical order, with the address and the number of shares held by each. This list of shareholders shall be kept on file at the home office of the association and shall be subject to inspection by any shareholder of record or the stockholder's agent during the entire time of the meeting. The original stock transfer book shall constitute *prima facie* evidence of the stockholders entitled to examine such list or transfer books or to vote at any meeting of stockholders. Notwithstanding anything in this section, however, a Federal stock association that is wholly owned shall not be subject to the voting list requirements.

(2) In lieu of making the shareholders list available for inspection by any shareholders as provided in paragraph (d)(1) of this section, the board of directors may perform such acts as required by paragraphs (a) and (b) of Rule 14a–7 of the General Rules and Regulations under the Securities and Exchange Act of 1934 (17 CFR 240.14a–7) as may be duly requested in writing, with respect to any matter which may be properly considered at a meeting of shareholders, by any shareholder who is entitled to vote on such matter and who shall defray the reasonable expenses to be incurred by the association in performance of the act or acts required.

(e) *Shareholder quorum.* A majority of the outstanding shares of the association entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of shareholders. The shareholders present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough shareholders to leave less than a quorum. If a quorum is present, the affirmative vote of the majority of the shares represented at the meeting and entitled to vote on the subject matter shall be the act of the stockholders, unless the vote of a greater number of stockholders voting together or voting by classes is required by law or the charter. Directors, however, are elected by a plurality of the votes cast at an election of directors.

(f) *Shareholder voting*—(1) *Proxies.* Unless otherwise provided in the association's charter, at all meetings of shareholders, a shareholder may vote in person or by proxy executed in writing by the shareholder or by a duly authorized attorney in fact. Proxies may be given telephonically or electronically as long as the holder uses a procedure for verifying the identity of the shareholder. A proxy may designate as holder a corporation, partnership or company as defined in part 174 of this chapter, or other person. Proxies solicited on behalf of the management shall be voted as directed by the shareholder or, in the absence of such direction, as determined by a majority of the board of directors. No proxy shall be valid more than eleven months from the date of its execution except for a proxy coupled with an interest.

(2) *Shares controlled by association.* Neither treasury shares of its own stock held by the association nor shares held by another corporation, if a majority of the shares entitled to vote for the election of directors of such other corporation are held by the association, shall be voted at any meeting or counted in determining the total number of outstanding shares at any given time for purposes of any meeting.

(g) *Nominations and new business submitted by shareholders.* Nominations for directors and new business submitted by shareholders shall be voted upon at the annual meeting if such nominations or new business are submitted in writing and delivered to the secretary of the association at least five days prior to the date of the annual meeting. Ballots bearing the names of all the persons nominated shall be provided for use at the annual meeting.

(h) *Informal action by stockholders.* If the bylaws of the association so provide, any action required to be taken at a meeting of the stockholders, or any other action that may be taken at a meeting of the stockholders, may be taken without a meeting if consent in writing has been given by all the stockholders entitled to vote with respect to the subject matter.

§ 152.7 Board of directors.

(a) *General powers and duties.* The business and affairs of the association shall be under the direction of its board of directors. The board of directors shall annually elect a chairman of the board from among its members and shall designate the chairman of the board, when present, to preside at its meeting. Directors need not be stockholders unless the bylaws so require.

(b) *Number and term.* The bylaws shall set forth a specific number of directors, not a range. The number of directors shall be not fewer than five nor more than fifteen, unless a higher or lower number has been authorized by the OTS, prior to July 21, 2011 or the OCC. Directors shall be elected for a term of one to three years and until their successors are elected and qualified. If a staggered board is chosen, the directors shall be divided into two or three classes as nearly equal in number as possible and one class shall be elected by ballot annually. In the case of a converting or newly chartered association where all directors shall be elected at the first election of directors, if a staggered board is chosen, the terms shall be staggered in length from one to three years.

(c) *Regular meetings.* A regular meeting of the board of directors shall be held immediately after, and at the same place as, the annual meeting of shareholders. The board of directors shall determine the place, frequency, time and procedure for notice of regular meetings.

(d) *Quorum.* A majority of the number of directors shall constitute a quorum for the transaction of business at any meeting of the board of directors. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless a greater number is prescribed by regulation of the OCC.

(e) *Vacancies.* Any vacancy occurring in the board of directors may be filled by the affirmative vote of a majority of the remaining directors although less than a quorum of the board of directors. A director elected to fill a vacancy shall be elected to serve only until the next election of directors by the shareholders. Any directorship to be filled by reason of an increase in the number of directors may be filled by election by the board of directors for a

term of office continuing only until the next election of directors by the shareholders.

(f) *Removal or resignation of directors.* (1) At a meeting of shareholders called expressly for that purpose, any director may be removed only for cause, as defined in §163.39 of this chapter, by a vote of the holders of a majority of the shares then entitled to vote at an election of directors. Associations may provide for procedures regarding resignations in the bylaws.

(2) If less than the entire board is to be removed, no one of the directors may be removed if the votes cast against the removal would be sufficient to elect a director if then cumulatively voted at an election of the class of directors of which such director is a part.

(3) Whenever the holders of the shares of any class are entitled to elect one or more directors by the provisions of the charter or supplemental sections thereto, the provisions of this section shall apply, in respect to the removal of a director or directors so elected, to the vote of the holders of the outstanding shares of that class and not to the vote of the outstanding shares as a whole.

(g) *Executive and other committees.* The board of directors, by resolution adopted by a majority of the full board, may designate from among its members an executive committee and one or more other committees each of which, to the extent provided in the resolution or bylaws of the association, shall have and may exercise all of the authority of the board of directors, except no committee shall have the authority of the board of directors with reference to: the declaration of dividends; the amendment of the charter or bylaws of the association; recommending to the stockholders a plan of merger, consolidation, or conversion; the sale, lease, or other disposition of all, or substantially all, of the property and assets of the association otherwise than in the usual and regular course of its business; a voluntary dissolution of the association; a revocation of any of the foregoing; or the approval of a transaction in which any member of the executive committee, directly or indirectly, has any material beneficial interest. The designation of any committee and the delegation of authority thereto shall not operate to relieve the board of directors, or any director, of any responsibility imposed by law or regulation.

(h) *Notice of special meetings.* Written notice of at least 24 hours regarding any special meeting of the board of directors or of any committee designated thereby shall be given to each director in accordance with the bylaws, although such notice may be waived by the director. The attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any meeting need be specified in the notice or waiver of notice of such meeting. The bylaws may provide for telephonic participation at a meeting.

(i) *Action without a meeting.* Any action required or permitted to be taken by the board of directors at a meeting may be taken without a meeting if a consent in writing, setting forth the actions so taken, shall be signed by all of the directors.

(j) *Presumption of assent.* A director of the association who is present at a meeting of the board of directors at which action on any association matter is taken shall be presumed to have assented to the action taken unless his or her dissent or abstention shall be entered in the minutes of the meeting or unless a written dissent to such action shall be filed with the person acting as the secretary of the meeting before the adjournment thereof or shall be forwarded by registered mail to the secretary of the association within five days after the date on which a copy of the minutes of the meeting is received. Such right to dissent shall not apply to a director who voted in favor of such action.

(k) *Age limitation on directors.* A Federal association may provide a bylaw on age limitation for directors. Bylaws on age limitations must comply with all Federal laws, rules and regulations.

§ 152.8 Officers.

(a) *Positions*. The officers of the association shall be a president, one or more vice presidents, a secretary, and a treasurer or comptroller, each of whom shall be elected by the board of directors. The board of directors may also designate the chairman of the board as an officer. The offices of the secretary and treasurer or comptroller may be held by the same person and the vice president may also be either the secretary or the treasurer or comptroller. The board of directors may designate one or more vice presidents as executive vice president or senior vice president. The board of directors may also elect or authorize the appointment of such other officers as the business of the association may require. The officers shall have such authority and perform such duties as the board of directors may from time to time authorize or determine. In the absence of action by the board of directors, the officers shall have such powers and duties as generally pertain to their respective offices.

(b) *Removal*. Any officer may be removed by the board of directors whenever in its judgment the best interests of the association will be served thereby; but such removal, other than for cause, shall be without prejudice to the contractual rights, if any, of the person so removed. Employment contracts shall conform with § 163.39 of this chapter.

(c) *Age limitation on officers*. A Federal association may provide a bylaw on age limitation for officers. Bylaws on age limitations must comply with all Federal laws, rules, and regulations.

§ 152.9 Certificates for shares and their transfer.

(a) *Certificates for shares*. Certificates representing shares of capital stock of the association shall be in such form as shall be determined by the board of directors and approved by the OCC. The certificates shall be signed by the chief executive officer or by any other officer of the association authorized by the board of directors, attested by the secretary or an assistant secretary, and sealed with the corporate seal or a facsimile thereof. The signatures of such officers upon a certificate may be facsimiles if the certificate is manually signed on behalf of a transfer agent or a registrar other than the association itself or one of its employees. Each certificate for shares of capital stock shall be consecutively numbered or otherwise identified. The name and address of the person to whom the shares are issued, with the number of shares and date of issue, shall be entered on the stock transfer books of the association. All certificates surrendered to the association for transfer shall be cancelled and no new certificate shall be issued until the former certificate for a like number of shares shall have been surrendered and cancelled, except that in the case of a lost or destroyed certificate a new certificate may be issued upon such terms and indemnity to the association as the board of directors may prescribe.

(b) *Transfer of shares*. Transfer of shares of capital stock of the association shall be made only on its stock transfer books. Authority for such transfer shall be given only by the holder of record or by a legal representative, who shall furnish proper evidence of such authority, or by an attorney authorized by a duly executed power of attorney and filed with the association. The transfer shall be made only on surrender for cancellation of the certificate for the shares. The person in whose name shares of capital stock stand on the books of the association shall be deemed by the association to be the owner for all purposes.

§ 152.10 Annual reports to stockholders.

A Federal stock association not wholly-owned by a holding company shall, within 130 days after the end of its fiscal year, mail to each of its stockholders entitled to vote at its annual meeting an annual report containing financial statements that satisfy the requirements of rule 14a–3 under the Securities Exchange Act of 1934. (17 CFR 240.14a–3). Concurrently with such mailing a certification of such mailing signed by the chairman of the board, the president or a vice president of the association, together with copies of the report, shall be transmitted by the association to the OCC.

§ 152.11 Books and records.

(a) Each Federal stock association shall keep correct and complete books and records of account; shall keep minutes of the proceedings of its stockholders, board of directors, and committees of directors; and shall keep at its home office or at the office of its transfer agent or registrar, a record of its stockholders, giving the names and addresses of all stockholders, and the number, class and series, if any, of the shares held by each.

(b)(1) Any stockholder or group of stockholders of a Federal stock association, holding of record the number of voting shares of such association specified below, upon making written demand stating a proper purpose, shall have the right to examine, in person or by agent or attorney, at any reasonable time or times, nonconfidential portions of its books and records of account, minutes and record of stockholders and to make extracts therefrom. Such right of examination is limited to a stockholder or group of stockholders holding of record:

(i) Voting shares having a cost of not less than $100,000 or constituting not less than one percent of the total outstanding voting shares, provided in either case such stockholder or group of stockholders have held of record such voting shares for a period of at least six months before making such written demand, or

(ii) Not less than five percent of the total outstanding voting shares.

(2) No stockholder or group of stockholders of a Federal stock association shall have any other right under this section or common law to examine its books and records of account, minutes and record of stockholders, except as provided in its bylaws with respect to inspection of a list of stockholders.

(c) The right to examination authorized by paragraph (b) of this section and the right to inspect the list of stockholders provided by a Federal stock association's bylaws may be denied to any stockholder or group of stockholders upon the refusal of any such stockholder or group of stockholders to furnish such association, its transfer agent or registrar an affidavit that such examination or inspection is not desired for any purpose which is in the interest of a business or object other than the business of the association, that such stockholder has not within the five years preceding the date of the affidavit sold or offered for sale, and does not now intend to sell or offer for sale, any list of stockholders of the association or of any other corporation, and that such stockholder has not within said five-year period aided or abetted any other person in procuring any list of stockholders for purposes of selling or offering for sale such list.

(d) Notwithstanding any provision of this section or common law, no stockholder or group of stockholders shall have the right to obtain, inspect or copy any portion of any books or records of a Federal stock association containing:

(1) A list of depositors in or borrowers from such association;

(2) Their addresses;

(3) Individual deposit or loan balances or records; or

(4) Any data from which such information could be reasonably constructed.

§ 152.12 [Reserved]

§ 152.13 Combinations involving Federal stock associations.

(a) *Scope and authority.* Federal stock associations may enter into combinations only in accordance with the provisions of this section, section 18(c) of the Federal Deposit Insurance Act, sections 5(d)(3)(A) and 10(s) of the Home Owners' Loan Act, and § 163.22 of this part.

(b) *Definitions.* The following definitions apply to §§ 152.13 and 152.14 of this part:

(1) *Combination.* A merger or consolidation with another depository institution, or an acquisition of all or substantially all of the assets or assumption of all or substantially all of the liabilities of a depository institution by another depository institution. *Combine* means to be a constituent institution in a combination.

(2) *Consolidation.* Fusion of two or more depository institutions into a newly-created depository institution.

(3) *Constituent institution.* Resulting, disappearing, acquiring, or transferring

depository institution in a combination.

(4) *Depository institution* means any commercial bank (including a private bank), a savings bank, a trust company, a savings and loan association, a building and loan association, a homestead association, a cooperative bank, an industrial bank or a credit union, chartered in the United States and having its principal office located in the United States.

(5) *Disappearing institution*. A depository institution whose corporate existence does not continue after a combination.

(6) *Merger*. Uniting two or more depository institutions by the transfer of all property rights and franchises to the resulting depository institution, which retains its corporate identity.

(7) *Mutual savings association*. Any savings association organized in a form not requiring non-withdrawable stock under Federal or state law.

(8) *Resulting institution*. The depository institution whose corporate existence continues after a combination.

(9) *Savings association* has the same meaning as defined in §161.43 of this chapter.

(10) *State*. Includes the District of Columbia, Commonwealth of Puerto Rico, and states, territories, and possessions of the United States.

(11) *Stock association*. Any savings association organized in a form requiring non-withdrawable stock.

(c) *Forms of combination*. A Federal stock association may combine with any depository institution, provided that:

(1) The combination is in compliance with, and receives all approvals required under, any applicable statutes and regulations;

(2) Any resulting Federal savings association meets the requirements for Federal Home Loan Bank membership and insurance of accounts;

(3) Any resulting Federal savings association conforms within the time prescribed by the OCC to the requirements of sections 5(c) and 10(m) of the Home Owners' Loan Act; and

(4) If any constituent savings association is a mutual savings association, the resulting institution shall be mutually held, unless:

(i) The transaction involves a supervisory merger;

(ii) The transaction is approved under part 192 of this chapter;

(iii) The transaction involves an interim Federal stock association or an interim state stock savings association; or

(iv) The transaction involves a transfer in the context of a mutual holding company reorganization under section 10(o) of the Home Owners' Loan Act.

(d) *Combinations*. Prior written notification to, notice to, or prior written approval of, the OCC pursuant to §163.22 of this chapter is required for every combination. In the case of applications and notices pursuant to §163.22 (a) or (c), the OCC shall apply the criteria set out in §163.22 of this chapter and shall impose any conditions it deems necessary or appropriate to ensure compliance with those criteria and the requirements of this chapter.

(e) *Approval of the board of directors*. Before filing a notice or application for any combination involving a Federal stock association, the combination shall be approved:

(1) By a two-thirds vote of the entire board of each constituent Federal savings association; and

(2) As required by other applicable Federal or state law, for other constituent institutions.

(f) *Combination agreement*. All terms, conditions, agreements or understandings, or other provisions with respect to a combination involving a Federal savings association shall be set forth fully in a written combination agreement. The combination agreement shall state:

(1) That the combination shall not be effective unless and until:

(i) The combination receives any necessary approval from the OCC pursuant to §163.22 (a) or (c);

(ii) In the case of a transaction requiring a notification pursuant to §163.22(b), notification has been provided to the OCC; or

(iii) In the case of a transaction requiring a notice pursuant to §163.22(c), the notice has been filed, and the appropriate period of time has passed or the OCC has advised the parties that it will not disapprove the transaction;

(2) Which constituent institution is to be the resulting institution;

(3) The name of the resulting institution;

(4) The location of the home office and any other offices of the resulting institution;

(5) The terms and conditions of the combination and the method of effectuation;

(6) Any charter amendments, or the new charter in the combination;

(7) The basis upon which the savings accounts of the resulting institution shall be issued;

(8) If a Federal association is the resulting institution, the number, names, residence addresses, and terms of directors;

(9) The effect upon and assumption of any liquidation account of a disappearing institution by the resulting institution; and

(10) Such other provisions, agreements, or understandings as relate to the combination.

(g) [Reserved]

(h) *Approval by stockholders*—(1) *General rule*. Except as otherwise provided in this section, an affirmative vote of two-thirds of the outstanding voting stock of any constituent Federal savings association shall be required for approval of the combination agreement. If any class of shares is entitled to vote as a class pursuant to § 152.4 of this part, an affirmative vote of a majority of the shares of each voting class and two-thirds of the total voting shares shall be required. The required vote shall be taken at a meeting of the savings association.

(2) *General exception*. Stockholders of the resulting Federal stock association need not authorize a combination agreement if:

(i) It does not involve an interim Federal savings association or an interim state savings association;

(ii) The association's charter is not changed;

(iii) Each share of stock outstanding immediately prior to the effective date of the combination is to be an identical outstanding share or a treasury share of the resulting Federal stock association after such effective date; and

(iv) Either:

(A) No shares of voting stock of the resulting Federal stock association and no securities convertible into such stock are to be issued or delivered under the plan of combination, or

(B) The authorized unissued shares or the treasury shares of voting stock of the resulting Federal stock association to be issued or delivered under the plan of combination, plus those initially issuable upon conversion of any securities to be issued or delivered under such plan, do not exceed 15% of the total shares of voting stock of such association outstanding immediately prior to the effective date of the combination.

(3) *Exceptions for certain combinations involving an interim association*. Stockholders of a Federal stock association need not authorize by a two-thirds affirmative vote combinations involving an interim Federal savings association or interim state savings association when the resulting Federal stock association is acquired pursuant to regulations of the Board of Governors of the Federal Reserve System. In those cases, an affirmative vote of 50 percent of the shares of the outstanding voting stock of the Federal stock association plus one affirmative vote shall be required. If any class of shares is entitled to vote as a class pursuant to § 152.4 of this part, an affirmative vote of 50 percent of the shares of each voting class plus one affirmative vote shall be required. The required votes shall be taken at a meeting of the association.

(i) *Disclosure*. The OCC may require, in connection with a combination under this section, such disclosure of information as the OCC deems necessary or desirable for the protection of investors in any of the constituent associations.

(j) *Articles of combination*. (1) Following stockholder approval of any combination in which a Federal savings association is the resulting institution, articles of combination shall be executed in duplicate by each constituent institution, by its chief executive officer or executive vice president and by its secretary or an assistant secretary, and verified by one of the officers of each institution signing such articles, and shall set forth:

(i) The plan of combination;

(ii) The number of shares outstanding in each depository institution; and

(iii) The number of shares in each depository institution voted for and against such plan.

(2) Both sets of articles of combination shall be filed with the OCC. If the OCC determines that such articles conform to the requirements of this section, the OCC shall endorse the articles and return one set to the resulting institution.

(k) *Effective date.* No combination under this section shall be effective until receipt of any approvals required by the OCC. The effective date of a combination in which the resulting institution is a Federal stock association shall be the date of consummation of the transaction or such other later date specified on the endorsement of the articles of combination by the OCC. If a disappearing institution combining under this section is a Federal stock association, its charter shall be deemed to be cancelled as of the effective date of the combination and such charter must be surrendered to the OCC as soon as practicable after the effective date.

(l) *Mergers and consolidations: transfer of assets and liabilities to the resulting institution.* Upon the effective date of a merger or consolidation under this section, if the resulting institution is a Federal savings association, all assets and property (real, personal and mixed, tangible and intangible, choses in action, rights, and credits) then owned by each constituent institution or which would inure to any of them, shall, immediately by operation of law and without any conveyance, transfer, or further action, become the property of the resulting Federal savings association. The resulting Federal savings association shall be deemed to be a continuation of the entity of each constituent institution, the rights and obligations of which shall succeed to such rights and obligations and the duties and liabilities connected therewith, subject to the Home Owners' Loan Act and other applicable statutes.

§ 152.14 Dissenter and appraisal rights.

(a) *Right to demand payment of fair or appraised value.* Except as provided in paragraph (b) of this section, any stockholder of a stock association combining in accordance with § 152.13 of this part shall have the right to demand payment of the fair or appraised value of his stock: *Provided,* That such stockholder has not voted in favor of the combination and complies with the provisions of paragraph (c) of this section.

(b) *Exceptions.* No stockholder required to accept only qualified consideration for his or her stock shall have the right under this section to demand payment of the stock's fair or appraised value, if such stock was listed on a national securities exchange or quoted on the National Association of Securities Dealers' Automated Quotation System (''NASDAQ'') on the date of the meeting at which the combination was acted upon or stockholder action is not required for a combination made pursuant to § 152.13(h)(2) of this part. ''Qualified consideration'' means cash, shares of stock of any association or corporation which at the effective date of the combination will be listed on a national securities exchange or quoted on NASDAQ, or any combination of such shares of stock and cash.

(c) *Procedure*—(1) *Notice.* Each constituent Federal stock association shall notify all stockholders entitled to rights under this section, not less than twenty days prior to the meeting at which the combination agreement is to be submitted for stockholder approval, of the right to demand payment of appraised value of shares, and shall include in such notice a copy of this section. Such written notice shall be mailed to stockholders of record and may be part of management's proxy solicitation for such meeting.

(2) *Demand for appraisal and payment.* Each stockholder electing to make a demand under this section shall deliver to the Federal stock association, before voting on the combination, a writing identifying himself or herself and stating his or her intention thereby to demand appraisal of and payment for his or her shares. Such demand must be in addition to and separate from any proxy or vote against the combination by the stockholder.

(3) *Notification of effective date and written offer.* (i) Within ten days after the effective date of the combination, the resulting association shall:

(A) Give written notice by mail to stockholders of constituent Federal stock associations who have complied with the provisions of paragraph (c)(2) of this section and have not voted in favor of the combination, of the effective date of the combination;

(B) Make a written offer to each stockholder to pay for dissenting shares at a specified price deemed by the resulting association to be the fair value thereof; and

(C) Inform them that, within sixty days of such date, the respective requirements of paragraphs (c)(5) and (c)(6) of this section (set out in the notice) must be satisfied.

(ii) The notice and offer shall be accompanied by a balance sheet and statement of income of the association the shares of which the dissenting stockholder holds, for a fiscal year ending not more than sixteen months before the date of notice and offer, together with the latest available interim financial statements.

(4) *Acceptance of offer.* If within sixty days of the effective date of the combination the fair value is agreed upon between the resulting association and any stockholder who has complied with the provisions of paragraph (c)(2) of this section, payment therefore shall be made within ninety days of the effective date of the combination.

(5) *Petition to be filed if offer not accepted.* If within sixty days of the effective date of the combination the resulting association and any stockholder who has complied with the provisions of paragraph (c)(2) of this section do not agree as to the fair value, then any such stockholder may file a petition with the OCC, with a copy by registered or certified mail to the resulting association, demanding a determination of the fair market value of the stock of all such stockholders. A stockholder entitled to file a petition under this section who fails to file such petition within sixty days of the effective date of the combination shall be deemed to have accepted the terms offered under the combination.

(6) *Stock certificates to be noted.* Within sixty days of the effective date of the combination, each stockholder demanding appraisal and payment under this section shall submit to the transfer agent his certificates of stock for notation thereon that an appraisal and payment have been demanded with respect to such stock and that appraisal proceedings are pending. Any stockholder who fails to submit his or her stock certificates for such notation shall no longer be entitled to appraisal rights under this section and shall be deemed to have accepted the terms offered under the combination.

(7) *Withdrawal of demand.* Notwithstanding the foregoing, at any time within sixty days after the effective date of the combination, any stockholder shall have the right to withdraw his or her demand for appraisal and to accept the terms offered upon the combination.

(8) *Valuation and payment.* The Comptroller shall, as he or she may elect, either appoint one or more independent persons or direct appropriate staff of the OCC to appraise the shares to determine their fair market value, as of the effective date of the combination, exclusive of any element of value arising from the accomplishment or expectation of the combination. Appropriate staff of the OCC shall review and provide an opinion on appraisals prepared by independent persons as to the suitability of the appraisal methodology and the adequacy of the analysis and supportive data. The Comptroller after consideration of the appraisal report and the advice of the appropriate staff shall, if he or she concurs in the valuation of the shares, direct payment by the resulting association of the appraised fair market value of the shares, upon surrender of the certificates representing such stock. Payment shall be made, together with interest from the effective date of the combination, at a rate deemed equitable by the Comptroller.

(9) *Costs and expenses.* The costs and expenses of any proceeding under this section may be apportioned and assessed by the Comptroller as he or she may deem equitable against all or

some of the parties. In making this determination the Comptroller shall consider whether any party has acted arbitrarily, vexatiously, or not in good faith in respect to the rights provided by this section.

(10) *Voting and distribution.* Any stockholder who has demanded appraisal rights as provided in paragraph (c)(2) of this section shall thereafter neither be entitled to vote such stock for any purpose nor be entitled to the payment of dividends or other distributions on the stock (except dividends or other distribution payable to, or a vote to be taken by stockholders of record at a date which is on or prior to, the effective date of the combination): *Provided,* That if any stockholder becomes unentitled to appraisal and payment of appraised value with respect to such stock and accepts or is deemed to have accepted the terms offered upon the combination, such stockholder shall thereupon be entitled to vote and receive the distributions described above.

(11) *Status.* Shares of the resulting association into which shares of the stockholders demanding appraisal rights would have been converted or exchanged, had they assented to the combination, shall have the status of authorized and unissued shares of the resulting association.

§ 152.15 Supervisory combinations.

Notwithstanding the foregoing provisions of this part, the Comptroller may waive or deem inapplicable any provision of § 152.13 or § 152.14 of this part if he or she determines that grounds exist, or may imminently exist, for appointment of a conservator or receiver for an association under subsection 5(d) of the Home Owners' Loan Act.

§ 152.16 Effect of subsequent charter or bylaw change.

Notwithstanding any subsequent change to its charter or bylaws, the authority of a Federal stock association to engage in any transaction shall be determined only by the association's charter or bylaws then in effect.

§ 152.17 Federal stock association created in connection with an association in default or in danger of default.

Sections 152.1 and 152.2 of this part do not apply to a Federal stock association which is proposed by the Federal Deposit Insurance Corporation, or the Resolution Trust Corporation under section 5(p) of the Home Owner's Loan Act of 1933, section 11(c) of the Federal Deposit Insurance Act, or section 21A of the Federal Home Loan Bank Act, or is otherwise chartered by the OCC in connection with an association in default or in danger of default. Incorporation and organization of such associations are complete when and under such conditions as the OCC so determines.

§ 152.18 Conversion from stock form depository institution to Federal stock association.

(a) With the approval of the OCC, any stock depository institution that is, or is eligible to become, a member of a Federal Home Loan Bank, may convert to a Federal stock association, provided that the depository institution, at the time of the conversion, has deposits insured by the Federal Deposit Insurance Corporation, and provided further, that the depository institution, in accomplishing the conversion, complies with all applicable statutes and regulations, including, without limitation, section 5(d) of the Federal Deposit Insurance Act. The resulting Federal stock association must conform within the time prescribed by the OCC to the requirements of section 5(c) of the Home Owners' Loan Act. For purposes of this section, the term ''depository institution'' shall have the meaning set forth at 12 CFR 152.13(b). An application for conversion filed under this section is subject to the procedures for organization of a Federal stock organization at § 152.1.

(b) Any and all of the assets and other property (whether real, personal, mixed, tangible or intangible, including choses in action, rights, and credits) of the former stock form depository institution become assets and property of the Federal stock association when the conversion occurs. Similarly, any and all of the obligations

and debts of or claims against the former stock form depository institution become obligations and debts of and claims against the Federal stock association when the conversion occurs. In effect, the Federal stock association is the same as the former stock form depository institution with respect to any and all assets, property, claims and debts of or claims against the former stock form depository institution.

§ 152.19 Conversion to National banking association or state bank.

A Federal stock association may convert to a national banking association or a state bank after filing a notification or application, as appropriate, with the appropriate OCC licensing office in accordance with the applicable provisions of § 163.22(b) of this chapter.

PARTS 153–154 [RESERVED]

PART 155—ELECTRONIC OPERATIONS

Sec.
155.100 What does this part do?
155.200 How may I use or participate with others to use electronic means and facilities?
155.210 What precautions must I take?
155.300 Must I inform the OCC before I use electronic means or facilities?
155.310 How do I notify the OCC?

AUTHORITY: 12 U.S.C. 1462a, 1463, 1464, 5412(b)(2)(B).

SOURCE: 76 FR 49024, Aug. 9, 2011, unless otherwise noted.

§ 155.100 What does this part do?

This part describes how a Federal savings association may provide products and services through electronic means and facilities.

§ 155.200 How may I use or participate with others to use electronic means and facilities?

(a) *General.* A Federal savings association (''you'') may use, or participate with others to use, electronic means or facilities to perform any function, or provide any product or service, as part of an authorized activity. Electronic means or facilities include, but are not limited to, automated teller machines, automated loan machines, personal computers, the Internet, the World Wide Web, telephones, and other similar electronic devices.

(b) *Other.* To optimize the use of your resources, you may market and sell, or participate with others to market and sell, electronic capacities and by-products to third-parties, if you acquired or developed these capacities and by-products in good faith as part of providing financial services.

§ 155.210 What precautions must I take?

If you use electronic means and facilities under this subpart, your management must:

(a) Identify, assess, and mitigate potential risks and establish prudent internal controls; and

(b) Implement security measures designed to ensure secure operations. Such measures must be adequate to:

(1) Prevent unauthorized access to your records and your customers' records;

(2) Prevent financial fraud through the use of electronic means or facilities; and

(3) Comply with applicable security devices requirements of part 168 of this chapter.

§ 155.300 Must I inform the OCC before I use electronic means or facilities?

(a) *General.* You are not required to inform the OCC before you use electronic means or facilities, except as provided in paragraphs (b) and (c) of this section. However, you are encouraged to consult with the OCC before you engage in any activities using electronic means or facilities.

(b) *Activities requiring advance notice.* You must file a written notice as described in § 155.310 before you establish a transactional web site. A transactional web site is an Internet site that enables users to conduct financial transactions such as accessing an account, obtaining an account balance, transferring funds, processing bill payments, opening an account, applying for or obtaining a loan, or purchasing other authorized products or services.