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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 § 574.3(c)(1)(vi) of the Office'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 Office 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 OTS, 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 OTS 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 Office. Such requests for reissuance should be filed with the Corporate Secretary at Washington Headquarters Office at the address listed in § 516.40(b) of this chapter, and contain signatures required under § 552.3 of this part, together with such supporting documents as needed to demonstrate that the amendments were properly adopted.

[54 FR 49523, Nov. 30, 1989, as amended at 55 FR 13513, Apr. 11, 1990; 57 FR 14343, Apr. 20, 1992; 59 FR 18476, Apr. 19, 1994; 61 FR 64018, Dec. 3, 1996; 62 FR 66262, Dec. 18, 1997; 66 FR 13006, Mar. 2, 2001; 69 FR 68249, Nov. 24, 2004]

§ 552.5 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 §§ 552.6, 552.6–1, 552.6–2, and 552.6–3 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 §§ 552.6, 552.6–1, 552.6–3, and 552.6–4 of this part may be adopted with the approval of the OTS.

(b) *Form of Filing*—(1) *Application requirement.* (i) Any bylaw amendment shall be submitted to the OTS 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 §§ 552.6, 552.6–1, 552.6–2, and 552.6–3 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 516, subparts A and E of this chapter.

(iii) Bylaw provisions that adopt the language of the model or optional bylaws in OTS's Application Processing Handbook, if adopted without change, and filed with OTS 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 OTS 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 OTS 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.

[57 FR 14343, Apr. 20, 1992, as amended at 60 FR 66718, Dec. 26, 1995; 61 FR 64019, Dec. 3, 1996; 66 FR 13006, Mar. 2, 2001; 66 FR 15020, Mar. 15, 2001]

§ 552.6 Shareholders.

(a) *Shareholder meetings.* An annual 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