in accordance with the procedures pre-
scribed by each association’s charter
and bylaws; and

(d) All necessary regulatory approv-
als have been obtained and all condi-
tions specified in §575.9(c)(5) of this
part or otherwise imposed by the OTS
in connection with the issuance of a
notice of intent not to disapprove
under §575.3(b)(1) of this part or by the
OTS in connection with the granting of
the approvals specified in this para-
graph have been satisfied.


§ 575.4 Grounds for disapproval of re-
organizations.

(a) Basic standards. The OTS may dis-
approve a proposed mutual holding
company reorganization pursuant to
§575.3(b) of this part if:

(1) Disapproval is necessary to pre-
vent unsafe or unsound practices;

(2) The financial or managerial re-
sources of the reorganizing association
or any acquiree association warrant
disapproval;

(3) The proposed capitalization of the
mutual holding company fails to meet
the requirements of paragraph (b) of
this section;

(4) A stock issuance is proposed in
connection with the reorganization
pursuant to §575.7 of this part that fails
to meet the standards established by
that section;

(5) The reorganizing association or
any acquiree association fails to fur-
nish the information required to be in-
cluded in the Reorganization Notice or
any other information requested by the
OTS in connection with the proposed
reorganization; or

(6) The proposed reorganization
would violate any provision of law, in-
cluding (without limitation) §575.3 (a)
and (c) of this part (regarding board of
directors and membership approval) or
§575.5(a) of this part (regarding con-
tinuity of membership rights).

(b) Capitalization. (1) The OTS shall
disapprove a proposal by a reorganizing
association or any acquiree association
to capitalize a mutual holding com-
pany in an amount in excess of a nomi-
inal amount if immediately following
the reorganization, the resulting asso-
ciation or the acquiree association
would fail to be “adequately capital-
ized” as defined under 12 CFR part 565.

(2) Proposals by reorganizing associa-
tions and acquiree associations to cap-
titalize mutual holding companies shall
also comply with any applicable stat-
tutes, and with regulations or written
policies of the OTS governing capital
distributions by savings associations in
effect at the time of the reorganiza-
tion. (Issuance by the OTS of a notice
of intent not to disapprove a mutual
holding company reorganization pursu-
ant to §575.3(b) of this part, or failure
by the OTS to disapprove such a reor-
ganization within the time prescribed
in §575.3(b) of this part, shall also be
deemed to constitute OTS approval
under any regulation or written policy
of the OTS governing capital distribu-
tions by savings associations, if such
approval is required, of the capitaliza-
tion proposal set forth in the Reor-
ganization Notice, subject to any condi-
tions imposed by §575.4(d)(2) of this
part.)

(c) Presumptive disqualifiers—(1) Mana-
gerial resources. The factors specified in
§574.7 (g)(1)(i)–(g)(1)(vi) of this chapter
shall give rise to a rebuttable presump-
tion that the managerial resources test
of paragraph (a)(2) of this section is not
met. For this purpose, each place the
term acquiror appears in §574.7 (g)(1)(i)–
(g)(1)(vi) of this chapter, it shall be
read to mean the reorganizing associa-
tion or any acquiree association, and
the reference in §574.7(g)(1)(v) of this
chapter to filings under this part shall
be deemed to include filings under ei-
ther part 574 of this chapter or this
part.

(2) Safety and soundness and financial
resources. Failure by a reorganizing as-
sociation and any acquiree association
to submit a business plan in connection
with a Reorganization Notice, or sub-
mission of a business plan that projects
activities that are inconsistent with
the credit and lending needs of your
proposed market area or that fails to
demonstrate that the capital of the
mutual holding company will be de-
ployed in a safe and sound manner,
shall give rise to a rebuttable presump-
tion that the safety and soundness and
financial resources tests of paragraphs
(a)(1) and (a)(2) of this section are not
met.
§ 575.5 Failure of the OTS to act on a Reorganization Notice within the prescribed time period. A proposed reorganization that obtains regulatory clearance from the OTS due to the operation of § 575.3(b)(2) of this part may take place in the manner proposed, subject to the following conditions:

(1) The reorganization shall be consummated within one year of the date of the expiration of the OTS’s review period under § 575.3(b)(2) of this part;

(2) The mutual holding company shall not be capitalized in an amount in excess of what is permissible under § 575.4(b) of this part;

(3) No request for regulatory waivers or forbearances shall be deemed granted;

(4) The following information shall be submitted within the specified time frames:
   (i) On the business day prior to the date of the reorganization, the chief financial officers of the reorganizing association and any acquiree association shall certify to the OTS in writing that no material adverse events or material adverse changes have occurred with respect to the financial condition or operations of their respective associations since the date of the financial statements submitted with the Reorganization Notice;
   (ii) No later than thirty days after the reorganization, the mutual holding company shall file with the OTS a certification by legal counsel stating the effective date of the reorganization, the exact number of shares of stock of the resulting association and any acquiree association acquired by the mutual holding company and by any other persons, and that the reorganization has been consummated in accordance with § 575.3 of this part and all other applicable laws and regulations and the Reorganization Notice;
   (iii) No later than thirty days after the reorganization, the mutual holding company shall file with the OTS an opinion from its independent auditors certifying that the reorganization was consummated in accordance with generally accepted accounting principles; and
   (iv) No later than thirty days after the reorganization, the mutual holding company shall file with the OTS a certification stating that the mutual holding company will not deviate materially, or cause its savings association subsidiaries to deviate materially, from the business plan submitted in connection with the Reorganization Notice, unless prior written approval from the Regional Director is obtained.

[58 FR 44114, Aug. 19, 1993, as amended at 67 FR 52035, Aug. 9, 2002]

§ 575.5 Membership rights.

(a) Depositors and borrowers of resulting associations, acquiree associations, and associations in mutual form when acquired. The charter of a mutual holding company must:

(1) Confer upon existing and future depositors of the resulting association the same membership rights in the mutual holding company as were conferred upon depositors by the charter of the reorganizing association as in effect immediately prior to the reorganization;

(2) Confer upon existing and future depositors of any acquiree association or any association that is in the mutual form when acquired by the mutual holding company the same membership rights in the mutual holding company as were conferred upon depositors by the charter of the acquired association immediately prior to acquisition, provided that if the acquired association is merged into another association from which the mutual holding company draws members, the depositors of the acquired association shall receive the same membership rights as the depositors of the association into which the acquired association is merged;

(3) Confer upon the borrowers of the resulting association who are borrowers at the time of reorganization the same membership rights in the mutual holding company as were conferred upon them by the charter of the reorganizing association immediately prior to reorganization, but shall not confer any membership rights in connection with any borrowings made after the reorganization; and

(4) Confer upon the borrowers of any acquiree association or any association that is in the mutual form when acquired by the mutual holding company who are borrowers at the time of the acquisition the same membership rights as were conferred upon them by the charter of the acquired association immediately prior to acquisition.