

Office of Thrift Supervision, Treasury

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are insured by the FDIC, subject to its rules and regulations.

§ 550.620 May I receive compensation for acting in exempt fiduciary capacities?

You may receive reasonable compensation.

PART 551—RECORDKEEPING AND CONFIRMATION REQUIREMENTS FOR SECURITIES TRANSACTIONS

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§ 551.10 What does this part do?

This part establishes recordkeeping and confirmation requirements that apply when a savings association

(“you”) effects certain securities transactions for customers.

§ 551.20 Must I comply with this part?

(a) *General.* Except as provided under paragraph (b) of this section, you must comply with this part when:

(1) You effect a securities transaction for a customer.

(2) You effect a transaction in government securities.

(3) You effect a transaction in municipal securities and are not registered as a municipal securities dealer with the SEC.

(4) You effect a securities transaction as fiduciary. If you are a Federal savings association, you also must comply with 12 CFR part 550 when you effect such a transaction. If you are a State savings association, you must comply with applicable law when you effect such a transaction.

(b) *Exceptions*—(1) *Small number of transactions.* You are not required to comply with § 551.50(b) through (d) (recordkeeping) and § 551.140(a) through (c) (policies and procedures), if you effected an average of fewer than 500 securities transactions per year for customers over the three prior calendar years. You may exclude transactions in government securities when you calculate this average.

(2) *Government securities.* If you effect fewer than 500 government securities brokerage transactions per year, you are not required to comply with § 551.50 (recordkeeping) for those transactions. This exception does not apply to government securities dealer transactions. See 17 CFR 404.4(a).

(3) *Municipal securities.* If you are registered with the SEC as a “municipal securities dealer,” as defined in 15 U.S.C. 78c(a)(30) (see 15 U.S.C. 78o-4), you are not required to comply with this part when you conduct municipal securities transactions.

(4) *Foreign branches.* You are not required to comply with this part when you conduct a transaction at your foreign branch.

(5) *Transactions by registered broker-dealers.* You are not required to comply with this part for securities transactions effected by a registered broker-dealer, if the registered broker-dealer directly provides the customer with a

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confirmation. These transactions include a transaction effected by your employee who also acts as an employee of a registered broker-dealer (“dual employee”).

§ 551.30 What requirements apply to all transactions?

You must effect all transactions, including transactions excepted under § 551.20, in a safe and sound manner. You must maintain effective systems of records and controls regarding your customers’ securities transactions. These systems must clearly and accurately reflect all appropriate information and provide an adequate basis for an audit.

§ 551.40 What definitions apply to this part?

Asset-backed security means a security that is primarily serviced by the cash flows of a discrete pool of receivables or other financial assets, either fixed or revolving, that by their terms convert into cash within a finite time period. *Asset-backed security* includes any rights or other assets designed to ensure the servicing or timely distribution of proceeds to the security holders.

Common or collective investment fund means any fund established under 12 CFR 550.260(b) or 12 CFR 9.18.

Completion of the transaction means:

(1) If the customer purchases a security through or from you, except as provided in paragraph (2) of this definition, the time the customer pays you any part of the purchase price. If payment is made by a bookkeeping entry, the time you make the bookkeeping entry for any part of the purchase price.

(2) If the customer purchases a security through or from you and pays for the security before you request payment or notify the customer that payment is due, the time you deliver the security to or into the account of the customer.

(3) If the customer sells a security through or to you, except as provided in paragraph (4) of this definition, the time the customer delivers the security to you. If you have custody of the security at the time of sale, the time you

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transfer the security from the customer’s account.

(4) If the customer sells a security through or to you and delivers the security to you before you request delivery or notify the customer that delivery is due, the time you pay the customer or pay into the customer’s account.

Customer means a person or account, including an agency, trust, estate, guardianship, or other fiduciary account for which you effect a securities transaction. *Customer* does not include a broker or dealer, or you when you: act as a broker or dealer; act as a fiduciary with investment discretion over an account; are a trustee that acts as the shareholder of record for the purchase or sale of securities; or are the issuer of securities that are the subject of the transaction.

Debt security means any security, such as a bond, debenture, note, or any other similar instrument that evidences a liability of the issuer (including any security of this type that is convertible into stock or a similar security). *Debt security* also includes a fractional or participation interest in these debt securities. *Debt security* does not include securities issued by an investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1, *et seq.*

Government security means:

(1) A security that is a direct obligation of, or an obligation that is guaranteed as to principal and interest by, the United States;

(2) A security that is issued or guaranteed by a corporation in which the United States has a direct or indirect interest if the Secretary of the Treasury has designated the security for exemption as necessary or appropriate in the public interest or for the protection of investors;

(3) A security issued or guaranteed as to principal and interest by a corporation if a statute specifically designates, by name, the corporation’s securities as exempt securities within the meaning of the laws administered by the SEC; or

(4) Any put, call, straddle, option, or privilege on a government security described in this definition, other than a put, call, straddle, option, or privilege;

(i) That is traded on one or more national securities exchanges; or

(ii) For which quotations are disseminated through an automated quotation system operated by a registered securities association.

Investment discretion means the same as under 12 CFR 550.40(a).

Investment company plan means any plan under which:

(1) A customer purchases securities issued by an open-end investment company or unit investment trust registered under the Investment Company Act of 1940, making the payments directly to, or made payable to, the registered investment company, or the principal underwriter, custodian, trustee, or other designated agent of the registered investment company; or

(2) A customer sells securities issued by an open-end investment company or unit investment trust registered under the Investment Company Act of 1940 under:

(i) An individual retirement or individual pension plan qualified under the Internal Revenue Code; or

(ii) A contractual or systematic agreement under which the customer purchases at the applicable public offering price, or redeems at the applicable redemption price, securities in specified amounts (calculated in security units or dollars) at specified time intervals, and stating the commissions or charges (or the means of calculating them) that the customer will pay in connection with the purchase.

Municipal security means:

(1) A security that is a direct obligation of, or an obligation guaranteed as to principal or interest by, a State or any political subdivision, or any agency or instrumentality of a State or any political subdivision.

(2) A security that is a direct obligation of, or an obligation guaranteed as to principal or interest by, any municipal corporate instrumentality of one or more States; or

(3) A security that is an industrial development bond, the interest on which is excludable from gross income under section 103(a) of the Code (26 U.S.C. 103(a)).

Periodic plan means a written document that authorizes you to act as agent to purchase or sell for a cus-

tomor a specific security or securities (other than securities issued by an open end investment company or unit investment trust registered under the Investment Company Act of 1940). The written document must authorize you to purchase or sell in specific amounts (calculated in security units or dollars) or to the extent of dividends and funds available, at specific time intervals, and must set forth the commission or charges to be paid by the customer or the manner of calculating them.

SEC means the Securities and Exchange Commission.

Security means any note, stock, treasury stock, bond, debenture, certificate of interest or participation in any profit-sharing agreement or in any oil, gas, or other mineral royalty or lease, any collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, and any put, call, straddle, option, or privilege on any security or group or index of securities (including any interest therein or based on the value thereof), or, in general, any instrument commonly known as a "security"; or any certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase, any of the foregoing. *Security* does not include currency; any note, draft, bill of exchange, or banker's acceptance which has a maturity at the time of issuance of less than nine months, exclusive of days of grace, or any renewal thereof, the maturity of which is likewise limited; a deposit or share account in a Federal or State chartered depository institution; a loan participation; a letter of credit or other form of bank indebtedness incurred in the ordinary course of business; units of a collective investment fund; interests in a variable amount (master) note of a borrower of prime credit; U.S. Savings Bonds; or any other instrument OTS determines does not constitute a security for purposes of this part.

Sweep account means any prearranged, automatic transfer or sweep of funds above a certain dollar level from a deposit account to purchase a security or securities, or any prearranged, automatic redemption or

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sale of a security or securities when a deposit account drops below a certain level with the proceeds being transferred into a deposit account.

Subpart A—Recordkeeping Requirements

§ 551.50 What records must I maintain for securities transactions?

If you effect securities transactions for customers, you must maintain all of the following records for at least three years:

(a) *Chronological records.* You must maintain an itemized daily record of each purchase and sale of securities in chronological order, including:

- (1) The account or customer name for which you effected each transaction;
- (2) The name and amount of the securities;
- (3) The unit and aggregate purchase or sale price;
- (4) The trade date; and
- (5) The name or other designation of the registered broker-dealer or other person from whom you purchased the securities or to whom you sold the securities.

(b) *Account records.* You must maintain account records for each customer reflecting:

- (1) Purchases and sales of securities;
- (2) Receipts and deliveries of securities;
- (3) Receipts and disbursements of cash; and
- (4) Other debits and credits pertaining to transactions in securities.

(c) *Memorandum (order ticket).* You must make and keep current a memorandum (order ticket) of each order or any other instruction given or received for the purchase or sale of securities (whether executed or not), including:

- (1) The account or customer name for which you effected each transaction;
- (2) Whether the transaction was a market order, limit order, or subject to special instructions;
- (3) The time the trader received the order;
- (4) The time the trader placed the order with the registered broker-dealer, or if there was no registered broker-dealer, the time the trader executed or cancelled the order;

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(5) The price at which the trader executed the order;

(6) The name of the registered broker-dealer you used.

(d) *Record of registered broker-dealers.* You must maintain a record of all registered broker-dealers that you selected to effect securities transactions and the amount of commissions that you paid or allocated to each registered broker-dealer during each calendar year.

(e) *Notices.* You must maintain a copy of the written notice required under subpart B of this part.

§ 551.60 How must I maintain my records?

(a) You may maintain the records required under § 551.50 in any manner, form, or format that you deem appropriate. However, your records must clearly and accurately reflect the required information and provide an adequate basis for an audit of the information.

(b) You, or the person that maintains and preserves records on your behalf, must:

(1) Arrange and index the records in a way that permits easy location, access, and retrieval of a particular record;

(2) Separately store, for the time required for preservation of the original record, a duplicate copy of the record on any medium allowed by this section;

(3) Provide promptly any of the following that OTS examiners or your directors may request:

(i) A legible, true, and complete copy of the record in the medium and format in which it is stored;

(ii) A legible, true, and complete printout of the record; and

(iii) Means to access, view, and print the records.

(4) In the case of records on electronic storage media, you, or the person that maintains and preserves records for you, must establish procedures:

(i) To maintain, preserve, and reasonably safeguard the records from loss, alteration, or destruction;

(ii) To limit access to the records to properly authorized personnel, your directors, and OTS examiners; and

(iii) To reasonably ensure that any reproduction of a non-electronic original record on electronic storage media is complete, true, and legible when retrieved.

(c) You may contract with third party service providers to maintain the records.

Subpart B—Content and Timing of Notice

§ 551.70 What type of notice must I provide when I effect a securities transaction for a customer?

If you effect a securities transaction for a customer, you must give or send the customer the registered broker-dealer confirmation described at § 551.80, or the written notice described at § 551.90. For certain types of transactions, you may elect to provide the alternate notices described in § 551.100.

§ 551.80 How do I provide a registered broker-dealer confirmation?

(a) If you elect to satisfy § 551.70 by providing the customer with a registered broker-dealer confirmation, you must provide the confirmation by having the registered broker-dealer send the confirmation directly to the customer or by sending a copy of the registered broker-dealer's confirmation to the customer within one business day after you receive it.

(b) If you have received or will receive remuneration from any source, including the customer, in connection with the transaction, you must provide a statement of the source and amount of the remuneration in addition to the registered broker-dealer confirmation described in paragraph (a) of this section.

§ 551.90 How do I provide a written notice?

If you elect to satisfy § 551.70 by providing the customer a written notice, you must give or send the written notice at or before the completion of the securities transaction. You must include all of the following information in a written notice:

(a) Your name and the customer's name.

(b) The capacity in which you acted (for example, as agent).

(c) The date and time of execution of the securities transaction (or a statement that you will furnish this information within a reasonable time after the customer's written request), and the identity, price, and number of shares or units (or principal amount in the case of debt securities) of the security the customer purchased or sold.

(d) The name of the person from whom you purchased or to whom you sold the security, or a statement that you will furnish this information within a reasonable time after the customer's written request.

(e) The amount of any remuneration that you have received or will receive from the customer in connection with the transaction unless the remuneration paid by the customer is determined under a written agreement, other than on a transaction basis.

(f) The source and amount of any other remuneration you have received or will receive in connection with the transaction. If, in the case of a purchase, you were not participating in a distribution, or in the case of a sale, were not participating in a tender offer, the written notice may state whether you have or will receive any other remuneration and state that you will furnish the source and amount of the other remuneration within a reasonable time after the customer's written request.

(g) That you are not a member of the Securities Investor Protection Corporation, if that is the case. This does not apply to a transaction in shares of a registered open-end investment company or unit investment trust if the customer sends funds or securities directly to, or receives funds or securities directly from, the registered open-end investment company or unit investment trust, its transfer agent, its custodian, or a designated broker or dealer who sends the customer either a confirmation or the written notice in this section.

(h) Additional disclosures. You must provide all of the additional disclosures described in the following chart for transactions involving certain debt securities:

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If you effect a transaction involving . . .	You must provide the following additional information in your written notice . . .
(1) A debt security subject to redemption before maturity.	A statement that the issuer may redeem the debt security in whole or in part before maturity, that the redemption could affect the represented yield, and that additional redemption information is available upon request.
(2) A debt security that you effected exclusively on the basis of a dollar price.	(i) The dollar price at which you effected the transaction; and (ii) The yield to maturity calculated from the dollar price. You do not have to disclose the yield to maturity if: (A) The issuer may extend the maturity date of the security with a variable interest rate; or (B) The security is an asset-backed security that represents an interest in, or is secured by, a pool of receivables or other financial assets that are subject continuously to prepayment.
(3) A debt security that you effected on basis of yield.	(i) The yield at which the transaction, including the percentage amount and its characterization (e.g., current yield, yield to maturity, or yield to call). If you effected the transaction at yield to call, you must indicate the type of call, the call date, and the call price; (ii) The dollar price calculated from that yield; and (iii) The yield to maturity and the represented yield, if you effected the transaction on a basis other than yield to maturity and the yield to maturity is lower than the represented yield. You are not required to disclose this information if: (A) The issuer may extend the maturity date of the security with a variable interest rate; or (B) The security is an asset-backed security that represents an interest in, or is secured by, a pool of receivables or other financial assets that are subject continuously to prepayment.
(4) A debt security that is an asset-backed security that represents an interest in, or is secured by, a pool of receivables or other financial assets that are subject continuously to prepayment.	(i) A statement that the actual yield of the asset-backed security may vary according to the rate at which the underlying receivables or other financial assets are prepaid; and (ii) A statement that you will furnish information concerning the factors that affect yield (including at a minimum estimated yield, weighted average life, and the prepayment assumptions underlying yield) upon the customer's written request.
(5) A debt security, other than a government security.	A statement that the security is unrated by a nationally recognized statistical rating organization, if that is the case.

scribed in the following chart for certain types of transactions.

If you effect a securities transaction . . .	Then you may elect to . . .
(a) For or with the account of a customer under a periodic plan, sweep account, or investment company plan.	Give or send to the customer within five business days after the end of each quarterly period a written statement disclosing: (1) Each purchase and redemption that you effected for or with, and each dividend or distribution that you credited to or reinvested for, the customer's account during the period; (2) The date of each transaction; (3) The identity, number, and price of any securities that the customer purchased or redeemed in each transaction; (4) The total number of shares of the securities in the customer's account; (5) Any remuneration that you received or will receive in connection with the transaction; and (6) That you will give or send the registered broker-dealer confirmation described in § 551.80 or the written notice described in § 551.90 within a reasonable time after the customer's written request.
(b) For or with the account of a customer in shares of an open-ended management company registered under the Investment Company Act of 1940 that holds itself out as a money market fund and attempts to maintain a stable net asset value per share.	Give or send to the customer the written statement described at paragraph (a) of this section on a monthly basis. You may not use the alternate notice, however, if you deduct sales loads upon the purchase or redemption of shares in the money market fund.
(c) For an account for which you do not exercise investment discretion, and for which you and the customer have agreed in writing to an arrangement concerning the time and content of the written notice.	Give or send to the customer a written notice at the agreed-upon time and with the agreed-upon content, and include a statement that you will furnish the registered broker-dealer confirmation described in § 551.80 or the written notice described in § 551.90 within a reasonable time after the customer's written request.
(d) For an account for which you exercise investment discretion other than in an agency capacity, excluding common or collective investment funds.	Give or send the registered broker-dealer confirmation described in § 551.80 or the written notice described in § 551.90 within a reasonable time after a written request by the person with the power to terminate the account or, if there is no such person, any person holding a vested beneficial interest in the account.

§ 551.100 What are the alternate notice requirements?

You may elect to satisfy § 551.70 by providing the alternate notices de-

If you effect a securities transaction . . .	Then you may elect to . . .
(e) For an account in which you exercise investment discretion in an agency capacity.	Give or send each customer a written itemized statement specifying the funds and securities in your custody or possession and all debits, credits, and transactions in the customer's account. You must provide this information to the customer not less than once every three months. You must give or send the registered broker-dealer confirmation described in § 551.80 or the written notice described in § 551.90 within a reasonable time after a customer's written request.
(f) For a common or collective investment fund.	(1) Give or send to a customer who invests in the fund a copy of the annual financial report of the fund, or (2) Notify the customer that a copy of the report is available and that you will furnish the report within a reasonable time after a written request by a person to whom a regular periodic accounting would ordinarily be rendered with respect to each participating account.

Subpart C—Settlement of Securities Transactions

§ 551.130 When must I settle a securities transaction?

(a) You may not effect or enter into a contract for the purchase or sale of a security that provides for payment of funds and delivery of securities later than the latest of:

(1) The third business day after the date of the contract. This deadline is no later than the fourth business day after the contract for contracts involving the sale for cash of securities that are priced after 4:30 p.m. Eastern Standard Time on the date the securities are priced and are sold by an issuer to an underwriter under a firm commitment underwritten offering registered under the Securities Act of 1933, 15 U.S.C. 77a, *et seq.*, or are sold by you to an initial purchaser participating in the offering;

(2) Such other time as the SEC specifies by rule (*see* SEC Rule 15c6-1, 17 CFR 240.15c6-1); or

(3) Such time as the parties expressly agree at the time of the transaction. The parties to a contract are deemed to have expressly agreed to an alternate date for payment of funds and delivery of securities at the time of the transaction for a contract for the sale for cash of securities under a firm commitment offering, if the managing underwriter and the issuer have agreed to the date for all securities sold under the offering and the parties to the contract have not expressly agreed to another date for payment of funds and delivery of securities at the time of the transaction.

(b) The deadlines in paragraph (a) of this section do not apply to the purchase or sale of limited partnership interests that are not listed on an exchange or for which quotations are not disseminated through an automated quotation system of a registered securities association.

§ 551.110 May I provide a notice electronically?

You may provide any written notice required under this subpart B electronically. If a customer has a facsimile machine, you may send the notice by facsimile transmission. You may use other electronic communications if:

- (a) The parties agree to use electronic instead of hard copy notices;
- (b) The parties are able to print or download the notice;
- (c) Your electronic communications system cannot automatically delete the electronic notice; and
- (d) Both parties are able to receive electronic messages.

§ 551.120 May I charge a fee for a notice?

You may not charge a fee for providing a notice required under this subpart B, except that you may charge a reasonable fee for the notices provided under §§ 551.100(a), (d), and (e).

Subpart D—Securities Trading Policies and Procedures

§ 551.140 What policies and procedures must I maintain and follow for securities transactions?

If you effect securities transactions for customers, you must maintain and follow policies and procedures that meet all of the following requirements:

(a) Your policies and procedures must assign responsibility for the supervision of all officers or employees who:

(1) Transmit orders to, or place orders with, registered broker-dealers;

(2) Execute transactions in securities for customers; or

(3) Process orders for notice or settlement purposes, or perform other back office functions for securities transactions that you effect for customers. Policies and procedures for personnel described in this paragraph (a)(3) must provide supervision and reporting lines that are separate from supervision and reporting lines for personnel described in paragraphs (a)(1) and (2) of this section.

(b) Your policies and procedures must provide for the fair and equitable allocation of securities and prices to accounts when you receive orders for the same security at approximately the same time and you place the orders for execution either individually or in combination.

(c) Your policies and procedures must provide for securities transactions in which you act as agent for the buyer and seller (crossing of buy and sell orders) on a fair and equitable basis to the parties to the transaction, where permissible under applicable law.

(d) Your policies and procedures must require your officers and employees to file the personal securities trading reports described at § 551.150, if the officer or employee:

(1) Makes investment recommendations or decisions for the accounts of customers;

(2) Participates in the determination of these recommendations or decisions; or

(3) In connection with their duties, obtains information concerning which securities you intend to purchase, sell, or recommend for purchase or sale.

§ 551.150 How do my officers and employees file reports of personal securities trading transactions?

An officer or employee described in § 551.140(d) must report all personal transactions in securities made by or on behalf of the officer or employee if he or she has a beneficial interest in the security.

(a) *Contents and filing of report.* The officer or employee must file the report with you no later than 30 calendar days after the end of each calendar quarter. The report must include the following information:

(1) The date of each transaction, the title and number of shares, the interest rate and maturity date (if applicable), and the principal amount of each security involved.

(2) The nature of each transaction (i.e., purchase, sale, or other type of acquisition or disposition).

(3) The price at which each transaction was effected.

(4) The name of the broker, dealer, or other intermediary effecting the transaction.

(5) The date the officer or employee submitted the report.

(b) *Report not required for certain transactions.* Your officer or employee is not required to report a transaction if:

(1) He or she has no direct or indirect influence or control over the account for which the transaction was effected or over the securities held in that account;

(2) The transaction was in shares issued by an open-end investment company registered under the Investment Company Act of 1940;

(3) The transaction was in direct obligations of the government of the United States;

(4) The transaction was in bankers' acceptances, bank certificates of deposit, commercial paper or high quality short term debt instruments, including repurchase agreements; or

(5) The officer or employee had an aggregate amount of purchases and sales of \$10,000 or less during the calendar quarter.

(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).

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

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- 552.2-2 Procedures for organization of interim Federal stock association.
- 552.2-3 Federal stock association created in connection with an association in default or in danger of default.
- 552.2-6 Conversion from stock form depository institution to Federal stock association.
- 552.2-7 Conversion to National banking association or State bank.
- 552.3 Charters for Federal stock associations.
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- 552.6-3 Certificates for shares and their transfer.
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- 552.10 Annual reports to stockholders.
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- 552.13 Combinations involving Federal stock associations.
- 552.14 Dissenter and appraisal rights.
- 552.15 Supervisory combinations.
- 552.16 Effect of subsequent charter or bylaw change.

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§ 552.2-1 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 §543.3 of

this chapter. Recommendations by employees of the OTS regarding applications for permission to organize are privileged, confidential, and subject to §510.5 (b) and (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 516 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 OTS in the same manner as the original filing.

(iii) Any person may inspect the application and all related communications at the Regional Office during regular business hours, unless such information is exempt from public disclosure.

(2) *Notification to interested parties.* The OTS 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 516 of this chapter.

(4) *Meetings.* OTS may arrange a meeting in accordance with the procedures in subpart D of part 516 of this chapter.

(b) *Conditions of approval.* The OTS 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