§ 552.13 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 §563.22 of this part.

(b) Definitions. The following definitions apply to §§552.13 and 552.14 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.


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

9. Savings association has the same meaning as defined in §561.43 of this chapter.


(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 OTS 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 563b 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 Office pursuant to §563.22 of this chapter is required for every combination. In the case of applications and notices pursuant to §563.22 (a) or (c), the Office shall apply the criteria set out in §563.22 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
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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 Office pursuant to § 563.22(a) or (c);  
(ii) In the case of a transaction requiring a notification pursuant to § 563.22(b), notification has been provided to the OTS; or  
(iii) In the case of a transaction requiring a notice pursuant to § 563.22(c), the notice has been filed, and the appropriate period of time has passed or the OTS 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.  

(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 § 552.4 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 the 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 §574.7(a)(2) of this chapter. In those cases, an affirmative vote of 50 percent
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§ 552.14 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 Federal stock association combining in accordance with §552.13 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 made pursuant to §552.13(h)(2) of this part. “Qualified consideration”