

System (Copies are available at the addresses specified in § 516.1 of this chapter);

(5) The savings association currently is not subject to a formal enforcement proceeding or order; and

(6) No person acquired control of the savings association during the preceding 12-month period in which a full-scope on-site examination would have been required but for this section.

(c) *Authority to conduct more frequent examinations.* This section does not limit the authority of the OTS to examine any savings association as frequently as the agency deems necessary.

[62 FR 6453, Feb. 12, 1997]

§ 563.173 Forward commitments.

(a) *Definitions*—(1) *Forward commitment.* The term “forward commitment” means an oral or written contract to buy securities 30 or more days after the contract date; such a commitment is a standby commitment if delivery is optional with the seller and a firm commitment if both buyer and seller are obligated to perform on the agreed date.

(2) *Securities.* The term “securities” means assets in which the savings association is authorized to invest (except financial futures or financial options contracts entered into pursuant to § 563.174 or § 563.175 of this part).

(3) *Commitment fee.* The term “commitment fee” means any consideration received directly or indirectly by a savings association for a forward commitment.

(b) *Authorized personnel.* The minutes of the board of directors of the savings association shall set out the names, duties, responsibilities, and current limits of authority of the savings association’s personnel authorized to engage in forward commitment transactions for the savings association; the brokerage firms through which authorized personnel may conduct forwards activity; and the dollar limit on transactions with each such firm.

(c) *Limitations*—(1) *General.* A savings association may make forward commitments to purchase securities, subject to the limits in paragraph (c)(2) of this section, if that activity is conducted in a safe and sound manner. An example of an unsafe and unsound

practice which may preclude further investment under this section is an inability to fund commitments when due. No savings association may sell a forward commitment or security under agreement to purchase another forward commitment or security at a price other than actual market value.

(2) *Percent of assets.* A savings association’s outstanding forward commitments to purchase securities plus short put options entered into pursuant to § 563.175 of this part may not exceed an amount equal to 5 percent of its assets if total capital is 3 percent or less of assets, 10 percent of its assets if total capital is over 3 percent but less than 5 percent of assets, or 15 percent of its assets if total capital is 5 percent or more of assets.

(d) *Disposal before settlement.* All profit or loss related to disposal or modification of a forward commitment before settlement shall be recognized on the savings association’s books at the time of disposal or modification.

(e) *Recordkeeping requirements.* A savings association engaging in forward commitments shall establish and maintain the following:

(1) A current register of all outstanding forward commitments, including the type (firm or standby), commitment date, amount, rate, price to be paid at settlement, market price at date of commitment, settlement date, commitment fees received, date and manner of disposal, sales price and market value at disposal if disposition is made on or prior to settlement date other than through funding, and seller’s identity and confirmation; and

(2) Documentation of the savings association’s ability to fund all outstanding forward commitments when due.

[54 FR 49552, Nov. 30, 1989, as amended at 57 FR 33438, July 29, 1992; 57 FR 40091, Sept. 2, 1992]

§ 563.174 Futures transactions.

(a) *Definitions.* As used in this section, the definitions in paragraphs (a)(1) through (a)(6) apply unless the context otherwise requires.

(1) The term *forward commitment* means a written commitment to make, purchase or issue mortgage loans or mortgage related securities at a price

and on or before a date specified in the commitment.

(2) The term *financial futures transaction* means the purchase or sale of a financial futures contract.

(3) The term *long position* means the purchase of a financial futures contract to take delivery of a financial instrument.

(4) The term *mortgage-related securities* means securities based on and backed by mortgages, including mortgage-backed securities guaranteed by the Government National Mortgage Association (GNMAs), Mortgage Participation Certificates of the Federal Home Loan Mortgage Corporation, Mortgage Pass-through Certificates of the Federal National Mortgage Association, and similar obligations issued by the savings association or in which the savings association is authorized to invest.

(5) The term *offset* means to cancel an obligation to make or take delivery of securities under a financial instrument under a financial futures contract. A futures contract to purchase a financial instrument is offset by a futures contract to sell a financial instrument of the same type for the same delivery month. A futures contract to sell a financial instrument is offset by a futures contract to purchase a financial instrument of the same type for the same delivery month.

(6) The term *short position* means the holding of a financial futures contract to make delivery of a financial instrument.

(b) *Permitted transactions.* To the extent that it has legal power to do so, a savings association may engage in interest-rate futures transactions to reduce its net interest-rate risk exposure as provided in this paragraph (b). For purposes of this section, net interest-rate risk exposure is the volatility in a savings association's earnings or the market value of its portfolio equity that can arise from the mismatching of the effective maturities of assets, liabilities, and off-balance sheet contracts. A savings association may enter into short positions that are appropriate for reducing its net interest-rate risk exposure. A savings association may enter into long positions, other than those that offset short positions,

only under the conditions in paragraphs (b)(1) and (b)(2) of this section.

(1) The futures position must be matched against a firm forward commitment to sell mortgages not yet originated or to issue mortgage-related securities to be based on mortgages not yet originated. For purposes of this paragraph (b), a firm forward commitment is a written commitment obligating the seller to make delivery, and the buyer to take delivery, of mortgage loans not yet originated or mortgage-related securities to be based on mortgages not yet originated, at a price and on or before a date specified in the commitment.

(2) The futures position may be entered into and maintained only to the extent that the savings association's firm forward commitments exceed 10 percent of long-term assets with fixed interest rates. For purposes of this section, long-term assets are those having remaining terms to maturity in excess of five years.

(c) *Authorized contracts.* A savings association may engage in interest-rate futures transactions using any interest-rate futures contracts designated by the Commodity Futures Trading Commission and based upon a financial instrument in which the savings association has authority to invest in or to issue.

(d) *Board of directors' authorization.* Prior to engaging in interest-rate futures transactions, a savings association's board of directors must authorize such activity. In authorizing futures trading, the board of directors shall consider any plan to engage in financial futures transactions, shall endorse specific written policies, and shall require the establishment of internal control procedures. Policy objectives must be specific enough to outline permissible contract strategies, taking into account price and yield correlations between assets and liabilities and the financial futures contracts with which they are matched; the relationship of the strategies to the savings association's operations; and how such strategies reduce the savings association's net interest-rate risk exposure. Internal control procedures shall include, at a minimum, periodic reports to management, segregation of

duties and internal review procedures. In addition, the minutes of the meeting of the board of directors shall set forth limits applicable to financial futures transactions, identify personnel authorized to engage in financial futures transactions, and set forth the duties, responsibilities and limits of authority of such personnel. The board of directors shall review the position limit, all outstanding contract positions, and the unrealized gains and losses on those positions and matched items at each regular meeting of the board.

(e) *Notification.* A savings association engaging in financial futures transactions shall notify the Regional Director of the region in which its principal office is located immediately following authorization of its board of directors to engage in financial futures transactions.

(f) *Records retention.* A savings association engaging in financial futures transactions shall maintain records of such transactions sufficient to document how the transactions reduce the net interest-rate risk exposure of the savings association in accordance with the requirements of paragraphs (f)(1) through (f)(3) of this section.

(1) *Contract register.* The savings association shall maintain a contract register adequate to identify and control all financial futures contracts and including, at a minimum, the type and amount of each contract, the maturity date of each contract, the cost of each contract, the dollar amount and description of the asset or the liability with which the futures contract is matched, and the date and manner in which a contract is closed out. Such register shall be prepared in a manner sufficient to indicate at any time the savings association's total outstanding long and short financial futures positions.

(2) *Other documentation.* The savings association shall maintain, as part of the documentation of its financial futures activity, a schedule that describes the hedge objective of the futures contracts (individually or in groups as appropriate) and the hedge results.

(3) *Period covered.* The records designated in this paragraph (f) shall be maintained for all futures transactions

closed-out during at least the preceding ten years.

[54 FR 49552, Nov. 30, 1989, as amended at 57 FR 40092, Sept. 2, 1992]

§ 563.175 Financial options transactions.

(a) *Definitions.* As used in this section, the definitions in paragraphs (a)(1) through (a)(13) apply unless the context otherwise requires.

(1) The term *call* means an option which gives the holder the right to purchase a financial instrument at a specified price on or before the expiration date of the contract.

(2) The term *deliverable instrument* means a financial instrument whose terms satisfy the requirements for fulfilling delivery obligations of an option.

(3) The term *effective exercise price* means the yield equivalent price of an instrument whose coupon rate differs from the standard instrument specified in the option.

(4) The term *financial options contract* means an agreement (other than an optional delivery forward commitment contract to purchase and sell mortgages or mortgage-backed securities when used as part of the mortgage loan origination process) to make or take delivery of a financial instrument upon demand by the holder of the contract at any time prior to the expiration date specified in the agreement, under terms and conditions established either by:

(i) A board of trade designated as a contract market for the trading of option contracts by the Commodity Futures Trading Commission (CFTC) or a national securities exchange registered with the Securities Exchange Commission (SEC); or

(ii) The saving association and a "permissible counterparty" as defined in paragraph (a)(13) of this section, that are counterparties in an over-the-counter option transaction (other than an over-the-counter commodity option transaction subject to the jurisdiction of the CFTC that is not otherwise authorized under the Commodity Exchange Act and the regulations thereunder).