

(b) *Required provisions.* Each employment contract shall provide that:

(1) The association's board of directors may terminate the officer or employee's employment at any time, but any termination by the association's board of directors other than termination for cause, shall not prejudice the officer or employee's right to compensation or other benefits under the contract. The officer or employee shall have no right to receive compensation or other benefits for any period after termination for cause. Termination for cause shall include termination because of the officer or employee's personal dishonesty, incompetence, willful misconduct, breach of fiduciary duty involving personal profit, intentional failure to perform stated duties, willful violation of any law, rule, or regulation (other than traffic violations or similar offenses) or final cease-and-desist order, or material breach of any provision of the contract.

(2) If the officer or employee is suspended and/or temporarily prohibited from participating in the conduct of the association's affairs by a notice served under section 8 (e)(3) or (g)(1) of Federal Deposit Insurance Act (12 U.S.C. 1818 (e)(3) and (g)(1)) the association's obligations under the contract shall be suspended as of the date of service unless stayed by appropriate proceedings. If the charges in the notice are dismissed, the association may in its discretion (i) pay the officer or employee all or part of the compensation withheld while its contract obligations were suspended, and (ii) reinstate (in whole or in part) any of its obligations which were suspended.

(3) If the officer or employee is removed and/or permanently prohibited from participating in the conduct of the association's affairs by an order issued under section 8 (e)(4) or (g)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1818 (e)(4) or (g)(1)), all obligations of the association under the contract shall terminate as of the effective date of the order, but vested rights of the contracting parties shall not be affected.

(4) If the savings association is in default (as defined in section 3(x)(1) of the Federal Deposit Insurance Act), all obligations under the contract shall

terminate as of the date of default, but this paragraph (b)(4) shall not affect any vested rights of the contracting parties: *Provided*, that this paragraph (b)(4) need not be included in an employment contract if prior written approval is secured from the Director or his or her designee.

(5) All obligations under the contract shall be terminated, except to the extent determined that continuation of the contract is necessary of the continued operation of the association

(i) By the Director or his or her designee, at the time the Federal Deposit Insurance Corporation or Resolution Trust Corporation enters into an agreement to provide assistance to or on behalf of the association under the authority contained in 13(c) of the Federal Deposit Insurance Act; or

(ii) By the Director or his or her designee, at the time the Director or his or her designee approves a supervisory merger to resolve problems related to operation of the association or when the association is determined by the Director to be in an unsafe or unsound condition.

Any rights of the parties that have already vested, however, shall not be affected by such action.

**§ 563.41 Loans and other transactions with affiliates and subsidiaries.**

(a) *Restrictions on transactions with affiliates and subsidiaries.* A savings association and its subsidiaries may engage in a covered transaction with an affiliate only if the transaction is permissible under section 23A of the Federal Reserve Act, 12 U.S.C. 371c, and the additional restrictions set forth in this section, as follows:

(1) A savings association and its subsidiaries may engage in a covered transaction with an affiliate only if:

(i) In the case of any affiliate, the aggregate amount of covered transactions of the savings association and its subsidiaries shall not exceed 10 per centum of the capital stock and surplus of the savings association; and

(ii) In the case of all affiliates, the aggregate amount of covered transactions of the savings association and its subsidiaries shall not exceed 20 per centum of the capital stock and surplus of the savings association;

(2) For purposes of paragraph (a)(1) of this section, any transaction by a savings association or its subsidiaries with any person shall be deemed to be a transaction with an affiliate to the extent that proceeds of the transaction are used for the benefit of, or transferred to, that affiliate;

(3) No loan or extension of credit may be made by a savings association or its subsidiaries to any affiliate unless such affiliate is engaged solely in activities described in section 10(c)(2)(F)(i) of the Home Owners' Loan Act, 12 U.S.C. 1467a(c)(2)(F)(i), as defined in 12 CFR 584.2-2;

(4) A savings association and its subsidiaries may not purchase or invest in the securities of any affiliate other than with respect to shares of a subsidiary which, for purposes of this paragraph (a)(4), shall include a bank and a savings association;

(5) A savings association and its subsidiaries may not purchase a low-quality asset from an affiliate unless the association or such subsidiary, pursuant to an independent credit evaluation, committed itself to purchase the asset prior to the time the asset was acquired by the affiliate; and

(6) Any covered transactions and any transactions exempt under paragraph (d) of this section and section 23A(d) of the Federal Reserve Act, 12 U.S.C. 371c(d), between a savings association or its subsidiaries and an affiliate shall be on terms and conditions that are consistent with safe and sound banking practices.

(b) *Definitions.* For the purpose of this section:

(1) The term *affiliate* with respect to a savings association means:

(i) Any company that controls the savings association and any other company that is controlled by the company that controls the savings association;

(ii) A bank or savings association subsidiary of the savings association;

(iii) Any company:

(A) That is controlled directly or indirectly, by a trust or otherwise, by or for the benefit of shareholders who beneficially or otherwise control, directly or indirectly, by trust or otherwise, the savings association or any company that controls the savings association; or

(B) In which a majority of its directors, partners or trustees constitute a majority of the persons holding any such office with the savings association or any company that controls the savings association;

(iv)(A) Any company, including a real estate investment trust, that is sponsored and advised on a contractual basis by the savings association or any subsidiary or affiliate of the savings association; or

(B) Any investment company with respect to which a savings association or any affiliate thereof is an investment adviser as defined in section 2(a)(20) of the Investment Company Act of 1940, 15 U.S.C. 80a-2(a)(2); and

(v) Any company: (A) That the Office or the Board of Governors of the Federal Reserve System determines by regulation or order to have a relationship with the savings association or any subsidiary or affiliate of the savings association such that covered transactions by the savings association or its subsidiary with that company may be affected by the relationship to the detriment of the savings association or its subsidiary; or

(B) That the Office determines presents a risk to the safety or soundness of the savings association, based on the nature of the activities conducted by the company, amount of transactions with the savings associations or its subsidiaries, financial condition of the company or its parent savings association, or other supervisory factors;

(2) The following shall not be considered to be an affiliate:

(i) Any company, other than a bank or savings association, that is a subsidiary of a savings association, unless a determination is made by the Board of Governors of the Federal Reserve System under section 23A(b)(1)(E) of the Federal Reserve Act, 12 U.S.C. 371c(b)(1)(E), or by the Office under §563.41(b)(1)(v), not to exclude the subsidiary company from the definition of affiliate and, provided that any company that would be an affiliate under paragraph (b)(1) of this section but for the fact that it is a subsidiary of a savings association, shall nonetheless be deemed to be an affiliate unless the Office determines to exclude such company from the definition of affiliate;

(ii) Any company engaged solely in holding the premises of the savings association;

(iii) Any company engaged solely in conducting a safe deposit business;

(iv) Any company engaged solely in holding obligations of the United States or its agencies or obligations fully guaranteed by the United States or its agencies as to principal and interest; and

(v) Any company where control results from the exercise of rights arising out of a bona fide debt previously contracted, but only for the period of time specifically authorized under applicable State or Federal law or regulation or, in the absence of a law or regulation, for a period of two years from the date of the exercise of those rights, subject, upon application, to authorization by the Office for good cause shown of extensions of time for not more than one year at a time, but extensions in the aggregate shall not exceed three years;

(3)(i) A company or shareholder shall be deemed to have control over another company if:

(A) The company or shareholder, directly or indirectly, or acting through one or more other persons owns, controls, or has power to vote 25 per centum or more of any class of voting securities of the other company;

(B) The company or shareholder would be deemed to control the company under § 574.4(a) of this chapter, or presumed to control the company under § 574.4(b) of this chapter, and in the latter case, control has not been rebutted; and

(ii) Notwithstanding any other provision of this section, no company shall be deemed to own or control another company by virtue of its ownership or control of shares in a fiduciary capacity, except as provided in paragraph (b)(1)(iii) of this section;

(4) The term *subsidiary*, when used in connection with a savings association means a company that is controlled by that savings association within the meaning of part 574 of this chapter;

(5) The term *savings association* has the same meaning as that term is defined at § 583.21 of this chapter; and the term *bank* includes a state bank, na-

tional bank, banking association, or trust company;

(6) The term *company* means a corporation, partnership, business trust, association, or similar organization and, unless specifically excluded, the term “company” includes a “savings association” and a “bank”;

(7) The term *covered transaction* means with respect to an affiliate of a savings association:

(i) A loan or extension of credit to the affiliate;

(ii) A purchase of assets, including assets subject to an agreement to repurchase, from the affiliate, except purchases of real and personal property that may be specifically exempted by the Board of Governors of the Federal Reserve System by order or regulation;

(iii) The acceptance of securities issued by the affiliate as collateral security for a loan or extension of credit to any person or company; or

(iv) The issuance of a guarantee, acceptance, or letter of credit, including an endorsement or standby letter of credit, on behalf of an affiliate;

(8) The term *aggregate amount of covered transactions* means the amount of the covered transactions about to be engaged in added to the current amount of all outstanding covered transactions. For this purpose, the outstanding balance of any credits extended to an affiliate shall be added to the value of any asset acquired from the affiliate (or all affiliates), as reflected on the financial records of the savings association or its subsidiaries, subject to the following conditions:

(i) With respect to a loan or extension of credit made by the savings association or its subsidiaries, any principal amount that has been amortized may be deducted from the *aggregate amount of covered transactions*;

(ii) With respect to a purchase of assets by the savings association or its subsidiaries:

(A) Any amounts of depreciation that have been deducted from the cost of an asset for federal income tax purposes by the purchaser may be deducted from the *aggregate amount of covered transactions*; and

(B) Upon the sale of an asset that was previously purchased in a covered transaction, the *aggregate amount of*

*covered transactions* shall be reduced by an amount equal to the purchase price of the asset at the time of the covered transaction less depreciation subsequently taken and previously deducted from the *aggregate amount of covered transactions*;

(9) The term *securities* means stocks, bonds, debentures, notes, and other similar obligations;

(10) The term *low-quality asset* means an asset that falls in any one or more of the following categories:

(i) An asset classified as *substandard, doubtful, or loss* or treated as *other loans especially mentioned* in the most recent report of examination or inspection of an affiliate prepared by either a Federal or State supervisory agency;

(ii) An asset in a nonaccrual status;

(iii) An asset on which principal or interest payments are more than thirty days past due; or

(iv) An asset whose terms have been renegotiated or compromised due to the deteriorating financial condition of the obligor;

(11) The term *capital stock and surplus of the savings association* means "unimpaired capital and unimpaired surplus" as defined at §560.93(b)(11) of this chapter.

(c) *Collateral for certain transactions with affiliates.* (1) Each loan or extension of credit to, or guarantee, acceptance, or letter of credit issued on behalf of, an affiliate by a savings association or its subsidiary shall be secured at the time of the transaction by collateral having a market value equal to:

(i) 100 per centum of the amount of the loan or extension or credit, guarantee, acceptance, or letter of credit, if the collateral is composed of:

(A) Obligations of the United States or its agencies;

(B) Obligations fully guaranteed by the United States or its agencies as to principal and interest;

(C) Notes, drafts, bills of exchange or bankers' acceptances that are eligible for rediscount or purchase by a Federal Home Loan Bank or Federal Reserve Bank; or

(D) A segregated, earmarked deposit account with the savings associations;

(ii) 110 per centum of the amount of the loan or extension of credit, guaran-

tee, acceptance, or letter of credit if the collateral is composed of obligations of any State or political subdivision of any State;

(iii) 120 per centum of the amount of the loan or extension of credit, guarantee, acceptance, or letter of credit if the collateral is composed of other debt instruments, including receivables; or

(iv) 130 per centum of the amount of the loan or extension of credit, guarantee, acceptance, or letter of credit if the collateral is composed of stock, leases, or other real or personal property.

(2) Any such collateral that is subsequently retired or amortized shall be replaced by additional eligible collateral where needed to keep the percentage of the collateral value relative to the amount of the outstanding loan or extension of credit, guarantee, acceptance, or letter of credit equal to the minimum percentage required at the inception of the transaction.

(3) A low-quality asset shall not be acceptable as collateral for a loan or extension of credit to, or guarantee, acceptance, or letter of credit issued on behalf of, an affiliate.

(4) The securities issued by an affiliate of the savings association shall not be acceptable as collateral for a loan or extension of credit to, or guarantee, acceptance, or letter of credit issued on behalf of, that affiliate or any other affiliate of the savings association.

(5) The collateral requirements of this paragraph shall not be applicable to an acceptance that is already fully secured either by attached documents or by other property having an ascertainable market value that is involved in the transaction.

(d) *Exemptions.* The provisions of this section, except paragraph (a)(6) of this section, shall not be applicable to the following transactions by a savings association:

(1) Any transaction, subject to the prohibition contained in paragraph (a)(5) of this section with a savings association or a bank:

(i) That controls 80 per centum or more of the voting shares of the savings association;

(ii) In which the savings association controls 80 per centum or more of the voting shares; or

(iii) In which 80 per centum or more of the voting shares are controlled by the company that controls 80 per centum or more of the voting shares of the savings association;

(2) Making deposits in an affiliated bank, affiliated savings association or affiliated foreign bank in the ordinary course of correspondent business, subject to any restrictions that the Office or the Board of Governors of the Federal Reserve System may prescribe by regulation or order;

(3) Giving immediate credit to an affiliate for uncollected items received in the ordinary course of business;

(4) Subject to paragraph (a)(3) of this section, making a loan or extension of credit to, or issuing a guarantee, acceptance, or letter of credit on behalf of, an affiliate, if such loan, extension of credit, guarantee, acceptance, or letter of credit is fully secured by:

(i) Obligations of the United States or its agencies;

(ii) Obligations fully guaranteed by the United States or its agencies as to principal and interest; or

(iii) A segregated, earmarked deposit account with the savings association;

(5) Purchasing assets having a readily identifiable and publicly available market quotation and purchased at that market quotation or, subject to the prohibition contained in paragraph (a)(5) of this section, purchasing loans on a nonrecourse basis from affiliated banks or savings associations; and

(6) Purchasing from an affiliate a loan or extension of credit that was originated by the savings association and sold to the affiliate subject to a repurchase agreement or with recourse.

(e) *Recordkeeping and notice requirements.* (1) With respect to all transactions between a savings association and its subsidiaries and the association's affiliates or between a savings association and an unaffiliated party to the extent that the proceeds of the transaction are used for the benefit of, or transferred to, an affiliate, the association shall make and retain records that reflect those transactions in reasonable detail. The association's records shall, at a minimum:

(i) Identify the affiliate;

(ii) Indicate the dollar amount of the transaction and reflect that the amount is within the applicable quantitative limitations specified in this section or that the transaction is not subject to those limitations;

(iii) Indicate whether the transaction involves a low-quality asset as that term is defined in paragraph (b)(10) of this section;

(iv) Indicate the type and amount of any collateral involved in the transaction and that such collateral complies in all respects with the requirements of this section or that the transaction is not subject to those limitations;

(v) With respect to any transaction subject to § 563.42 of this part, demonstrate that the terms and circumstances of the transaction comply with the standards set forth therein;

(vi) Reflect that loans and extensions of credit made to affiliates comply with paragraph (a)(3) of this section; and

(vii) Be readily accessible for examination and other supervisory purposes.

(2) Notwithstanding paragraphs (a) through (d) of this section, and except with respect to transactions of the type described in 12 CFR 250.250, the Office may require prior notification by a savings association and its subsidiaries of any and all transactions with any or all of the association's affiliates or subsidiaries under the following circumstances:

(i) A de novo savings association that commenced operations or an association or holding company thereof that has been the subject of an application or notice under part 574 of this chapter that was approved during the preceding two year period; or

(ii) A savings association that:

(A) Has a composite rating of 4 or 5, as defined in § 516.3(c) of this chapter;

(B) Is not meeting all of its regulatory capital requirements;

(C) Has entered into a consent to merge, a supervisory agreement or cease and desist order during the preceding two year period, or is subject to a formal enforcement proceeding; or

(D) The OTS determines is a problem association or in troubled condition.

(3) Upon receipt of written notice from the Office identifying one or more of the circumstances described in paragraph (e)(2) of this section and stating that the Office has determined that prior notification by a savings association will be required pursuant to this paragraph, the association shall provide, no later than 30 days prior to entering into any transaction for which prior notification has been required, written notice containing a full description of the proposed transaction. If no objections are raised by the Office during such 30 day period, the association or its subsidiaries may proceed with the proposed transaction.

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**§ 563.42 Additional standards applicable to transactions with affiliates and subsidiaries.**

(a) *General.* A savings association and its subsidiaries may engage in a transaction with an affiliate only if the transaction is permissible under section 23B of the Federal Reserve Act, 12 U.S.C. 371c-1, and the additional restrictions set forth in this section, as follows:

(1) *Standards.* A savings association and its subsidiaries may engage in any of the transactions described in paragraph (a)(2) of this section only:

(i) On terms and under circumstances, including credit standards, that are substantially the same, or at least as favorable to the association or its subsidiary, as those prevailing at the time for comparable transactions with or involving nonaffiliated companies; or

(ii) In the absence of comparable transactions, on terms and under circumstances, including credit standards, that in good faith would be offered to, or would apply to, non-affiliated companies;

(2) *Transactions covered.* Paragraph (a)(1) of this section applies to the following:

(i) Any covered transaction with an affiliate;

(ii) The sale of securities or other assets to an affiliate, including assets subject to an agreement to repurchase;

(iii) The payment of money or the furnishing of services to an affiliate under contract, lease, or otherwise;

(iv) Any transaction in which an affiliate acts as an agent or broker or receives a fee for its services to the savings association or to any other person;

(v) Any transaction or series of transactions with a third party:

(A) If an affiliate has a financial interest in the third party; or

(B) If an affiliate is a participant in the transaction or series of transactions;

(3) *Transactions that benefit an affiliate.* For the purpose of this section, any transaction by a savings association or its subsidiaries with any person shall be deemed to be a transaction with an affiliate if any of the proceeds of the transaction are used for the benefit of, or transferred to, that affiliate.

(b) *Prohibited transactions—(1) General.* A savings association and its subsidiaries:

(i) Shall not purchase as fiduciary any securities or other assets from any affiliate unless the purchase is permitted:

(A) Under the instrument creating the fiduciary relationship;

(B) By court order; or

(C) By law of the jurisdiction governing the fiduciary relationship; and

(ii) Whether acting as principal or fiduciary, shall not knowingly purchase or otherwise acquire, during the existence of any underwriting or selling syndicate, any security if a principal underwriter of that security is an affiliate of the association.

(2) *Exception.* Paragraph (b)(1)(ii) of this section shall not apply if the purchase or acquisition of securities has been approved, before the securities are initially offered for sale to the public, by a majority of the directors of the savings association who are not officers or employees of the association or any affiliate thereof.

(c) *Advertising restriction.* A savings association and its subsidiaries and any affiliate of a savings association shall not publish any advertisement or enter into any agreement stating or suggesting that the association shall in