

§ 569.2

in the exercise of his or her voting rights in the affairs of a savings association. Such an authorization may take the form of failure to dissent or object.

(d) *Solicit; solicitation.* The terms *solicit* and *solicitation* refer to:

(1) Any request for a proxy whether or not accompanied by or included in a form of proxy;

(2) Any request to execute, not execute, or revoke a proxy; or

(3) The furnishing of a form of proxy or other communication to security holders under circumstances reasonably calculated to result in the procurement, withholding, or revocation of a proxy.

The terms do not apply, however, to the furnishing of a form of proxy to a security holder upon the request of such security holder or to the performance by any person of ministerial acts on behalf of a person soliciting a proxy.

§ 569.2 Form of proxies.

Every form of proxy shall conform to the following requirements:

(a) The proxy shall be revocable at will by the person giving it. The power to revoke may not be conditioned on any event or occurrence or be otherwise limited; except that, in the case of a proxy relating to capital stock if such proxy is coupled with an interest, states such fact on its face, and is valid under the laws of the State in which it is to be exercised, such proxy may be made irrevocable to the extent permitted by such State law.

(b) The proxy may not be part of any other document or instrument (such as an account card).

(c) The proxy shall be clearly labeled "Revocable Proxy" in boldface type (at least as large as 18 point).

§ 569.3 Holders of proxies.

No proxy of a mutual savings association with a term greater than eleven months or solicited at the expense of the association may designate as holder anyone other than the board of directors [trustees] as a whole, or a committee appointed by a majority of such board.

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§ 569.4 Proxy soliciting material.

No solicitation of a proxy shall be made by means of any statement, form of proxy, notice of meeting, or other communication, written or oral, which:

(a) Solicits any undated or postdated proxy;

(b) Solicits any proxy that provides that it shall be deemed to be dated as of any date subsequent to the date on which it is signed by the security holder; or

(c)(1) Contains any statement that is false or misleading with respect to any material fact, or

(2) Omits to state any material fact:

(i) Necessary in order to make the statements therein not false or misleading or

(ii) Necessary to correct any statement in any earlier communication with respect to the solicitation of a proxy for the same meeting or subject matter that has subsequently become false or misleading.

PART 570—SUBMISSION AND REVIEW OF SAFETY AND SOUNDNESS COMPLIANCE PLANS AND ISSUANCE OF ORDERS TO CORRECT SAFETY AND SOUNDNESS DEFICIENCIES

Sec.

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570.3 Filing of safety and soundness compliance plan.

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APPENDIX A TO PART 570—INTERAGENCY GUIDELINES ESTABLISHING STANDARDS FOR SAFETY AND SOUNDNESS

AUTHORITY: 12 U.S.C. 1831p-1.

SOURCE: 60 FR 35686, July 10, 1995, unless otherwise noted.

§ 570.1 Authority, purpose, scope and preservation of existing authority.

(a) *Authority.* This part and the Guidelines in Appendix A to this part are issued by the OTS pursuant to section 39 (section 39) of the Federal Deposit Insurance Act (FDI Act) (12

U.S.C. 1831p-1) as added by section 132 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) (Pub. L. 102-242, 105 Stat. 2236 (1991)), and as amended by section 956 of the Housing and Community Development Act of 1992 (Pub. L. 102-550, 106 Stat. 3895 (1992)), and as amended by section 318 of the Community Development Banking Act of 1994 (Pub. L. 103-325, 108 Stat. 2160 (1994)).

(b) *Purpose.* Section 39 of the FDI Act requires the OTS to establish safety and soundness standards. Pursuant to section 39, a savings association may be required to submit a compliance plan if it is not in compliance with a safety and soundness standard established by guideline under section 39 (a) or (b). An enforceable order under section 8 of the FDI Act may be issued if, after being notified that it is in violation of a safety and soundness standard prescribed under section 39, the savings association fails to submit an acceptable compliance plan or fails in any material respect to implement an accepted plan. This part establishes procedures for submission and review of safety and soundness compliance plans and for issuance and review of orders pursuant to section 39. Interagency Guidelines Establishing Standards for Safety and Soundness pursuant to section 39 of the FDI Act are set forth in Appendix A to this part.

(c) *Scope.* This part and the Interagency Guidelines Establishing Standards for Safety and Soundness in Appendix A to this part implement the provisions of section 39 of the FDI Act as they apply to savings associations.

(d) *Preservation of existing authority.* Neither section 39 of the FDI Act nor this part in any way limits the authority of the OTS under any other provision of law to take supervisory actions to address unsafe or unsound practices, violations of law, unsafe or unsound conditions, or other practices. Action under section 39 and this part may be taken independently of, in conjunction with, or in addition to any other enforcement action available to the OTS.

§ 570.2 Determination and notification of failure to meet safety and soundness standards and request for compliance plan.

(a) *Determination of failure to meet safety and soundness standard.* The OTS may, based upon an examination, inspection, or any other information that becomes available to the OTS, determine that a savings association has failed to satisfy the safety and soundness standards contained in the Interagency Guidelines Establishing Standards for Safety and Soundness as set forth in Appendix A to this part.

(b) *Request for compliance plan.* If the OTS determines that a savings association has failed to meet a safety and soundness standard pursuant to paragraph (a) of this section, the OTS may request by letter or through a report of examination, the submission of a compliance plan. The savings association shall be deemed to have notice of the request three days after mailing or delivery of the letter or report of examination by the OTS.

§ 570.3 Filing of safety and soundness compliance plan.

(a) *Schedule for filing compliance plan—(1) In general.* A savings association shall file a written safety and soundness compliance plan with the OTS within 30 days of receiving a request for a compliance plan pursuant to § 570.2(b), unless the OTS notifies the savings association in writing that the plan is to be filed within a different period.

(2) *Other plans.* If a savings association is obligated to file, or is currently operating under, a capital restoration plan submitted pursuant to section 38 of the FDI Act (12 U.S.C. 1831o), a cease-and-desist order entered into pursuant to section 8 of the FDI Act, a formal or informal agreement, or a response to a report of examination, it may, with the permission of the OTS, submit a compliance plan under this section as part of that plan, order, agreement, or response, subject to the deadline provided in paragraph (a)(1) of this section.

(b) *Contents of plan.* The compliance plan shall include a description of the