

the Control Act or the Repealed Control Act; or

(D) An application or notice under a state holding company or change in control statute;

(iii) The acquiror or affiliates of the acquiror were placed in receivership or conservatorship during the preceding 10 years, or any management official of the acquiror was a management official or director (other than an official or director serving at the request of the Office, the Federal Deposit Insurance Corporation, the Resolution Trust Corporation, or the former Federal Savings and Loan Insurance Corporation) or controlling shareholder of a company or savings association that was placed into receivership, conservatorship, or a management consignment program, or was liquidated during his or her tenure or control or within two years thereafter;

(iv) Felony conviction of the acquiror, an affiliate of the acquiror or a management official of the acquiror or an affiliate of the acquiror;

(v) Knowingly making any written or oral statement to the Office or any predecessor agency (or its delegate) in connection with an application, notice or other filing under this part that is false or misleading with respect to a material fact or omits to state a material fact with respect to information furnished or requested in connection with such an application, notice or other filing;

(vi) Acquisition and retention at the time of submission of an application or notice, of stock in the savings association by the acquiror in violation of § 574.3 or its predecessor sections.

(2) *Financial factors.* The following shall give rise to a rebuttable presumption that an acquiror may fail to satisfy the financial-resources and future-prospects tests of paragraph (c) of this section, or the financial condition test of paragraph (d)(3) of this section:

(i) Liability for amounts of debt which, in the opinion of the Office, create excessive risks of default and pressure on the savings association to be acquired; or

(ii) Failure to furnish a business plan or furnishing a business plan projecting

activities which are inconsistent with economical home financing.

[54 FR 49690, Nov. 30, 1989, as amended at 57 FR 14349, Apr. 20, 1992; 59 FR 28471, June 2, 1994; 59 FR 44627, Aug. 30, 1994; 60 FR 66720, Dec. 26, 1995]

§ 574.8 Qualified stock issuances by undercapitalized savings associations or holding companies.

(a) *Acquisitions by savings and loan holding companies.* No savings and loan holding company shall be deemed to control a savings association solely by reason of the purchase by such savings and loan holding company of shares issued by such savings association, or issued by any savings and loan holding company (other than a bank holding company) which controls such savings association, in connection with a qualified stock issuance if prior approval of such acquisition is granted by the Office under this § 574.8, unless the acquiring savings and loan holding company, directly or indirectly, or acting in concert with 1 or more other persons, or through 1 or more subsidiaries, owns, controls, or holds with power to vote, or holds proxies representing, more than 15 percent of the voting shares of such savings association or holding company.

(b) *Qualification.* For purposes of this section, any issuance of shares of stock shall be treated as a qualified stock issuance if the following conditions are met:

(1) The shares of stock are issued by—

(i) An undercapitalized savings association, which for purposes of this paragraph (b)(1)(i) shall mean any savings association—

(A) The assets of which exceed the liabilities of such association; and

(B) Which does not comply with one or more of the capital standards in effect under section 5(t) of the Home Owners' Loan Act; or

(ii) A savings and loan holding company which is not a bank holding company but which controls an undercapitalized savings association if, at the time of issuance, the savings and loan holding company is legally obligated to contribute the net proceeds from the issuance of such stock to the capital of an undercapitalized savings

association subsidiary of such holding company.

(2) All shares of stock issued consist of previously unissued stock or treasury shares.

(3) All shares of stock issued are purchased by a savings and loan holding company that is registered, as of the date of purchase, with the Office in accordance with the provisions of section 10(b) of the Home Owners' Loan Act and the Office's regulations promulgated thereunder.

(4) Subject to paragraph (c) of this section, the Office approves the purchase of the shares of stock by the acquiring savings and loan holding company.

(5) The entire consideration for the stock issued is paid in cash by the acquiring savings and loan holding company.

(6) At the time of the stock issuance, each savings association subsidiary of the acquiring savings and loan holding company (other than an association acquired in a transaction pursuant to section 13(c) or 13(k) of the Federal Deposit Insurance Act, or section 408(m) of the National Housing Act, as in effect immediately prior to enactment of the Financial Institutions Reform, Recovery and Enforcement Act of 1989) has capital (after deducting any subordinated debt, intangible assets, and deferred, unamortized gains or losses) of not less than 6½ percent of the total assets of such savings association.

(7) Immediately after the stock issuance, the acquiring savings and loan holding company holds not more than 15 percent of the outstanding voting stock of the issuing undercapitalized savings association or savings and loan holding company.

(8) Not more than one of the directors of the issuing association or company is an officer, director, employee, or other representative of the acquiring company or any of its affiliates.

(9) Transactions between the savings association or savings and loan holding company that issues the shares pursuant to this section and the acquiring company and any of its affiliates shall be subject to the provisions of section 11 of the Home Owners' Loan Act and the Office's regulations promulgated thereunder.

(c) *Approval of acquisitions*—(1) *Criteria.* The Office, in deciding whether to approve or deny an application filed on the basis that it is a qualified stock issuance, shall apply the application criteria set forth in §574.7(c) of this part, including the presumptive disqualifiers set forth in §574.7(g) of this part.

(2) *Additional capital commitments not required.* The Office shall not disapprove any application for the purchase of stock in connection with a qualified stock issuance on the grounds that the acquiring savings and loan holding company has failed to undertake to make subsequent additional capital contributions to maintain the capital of the undercapitalized savings association at or above the minimum level required by the Office or any other Federal agency having jurisdiction.

(3) *Other conditions.* The Office shall impose such conditions on any approval of an application for the purchase of stock in connection with a qualified stock issuance as the Office determines to be appropriate, including—

(i) A requirement that any savings association subsidiary of the acquiring savings and loan holding company limit dividends paid to such holding company for such period of time as the Office may require; and

(ii) Such other conditions as the Office deems necessary or appropriate to prevent evasions of this section, including, but not limited to, requiring a rebuttal of control agreement in a form substantially similar to that appearing at §574.100.

(4) *Application deemed approved if not disapproved within 90 days.* An application for approval of a purchase of stock in connection with a qualified stock issuance shall be deemed to have been approved by the Office if such application has not been disapproved by the Office before the end of the 90-day period beginning on the date such application has been deemed sufficient under this part.

(d) *No limitation on class of stock issued.* The shares of stock issued in connection with a qualified stock issuance may be shares of any class.

(e) *Application form.* A savings and loan holding company making application to acquire a qualified stock issuance pursuant to this § 574.8, shall use Form H-(e)2, as provided in § 574.6(a)(3).

§ 574.9 Additions of directors and employment of senior executive officers of savings associations and savings and loan holding companies.

(a) *Definitions.* As used in this section and in the forms under this section, the following definitions apply, unless the context otherwise requires:

(1) *Director.* The term *director* means any individual who serves on the board of directors of a savings association or savings and loan holding company, except that such term does not include an advisory director who was not elected by the shareholders of the savings association or savings and loan holding company and is not authorized to vote on any matters before the board of directors, but provides only general policy advice to the board of directors. However, the term does include an advisory director who performs the same functions as a director or who exercises significant influence over, or participates in, major policy-making decisions of the board of directors of a savings association or savings and loan holding company.

(2) *Senior Executive Officer.* The term *senior executive officer* means the chief executive officer, chief operating officer, chief financial officer, chief lending officer, chief investment officer and any other individual identified by the OTS to a savings association or a savings and loan holding company who exercises significant influence over, or participates in, major policy decisions of a savings association or a savings and loan holding company without regard to title, salary, or compensation. The term also includes employees of entities retained by a savings association or savings and loan holding company to perform such functions in lieu of directly hiring the individuals, who are similarly identified by the OTS to the savings association or savings and loan holding company.

(3) *Complete Notice.* The term *complete notice* means a notice that provides all the information requested in paragraph

(d)(2) of this section, including legible fingerprints, complete explanations where material issues arise regarding the competence, experience, character, or integrity of proposed directors or senior executive officers, and any additional information that the OTS may request following a determination that the original submission of the notice was not complete.

(4) *Complete Notice Date.* The term *complete notice date* means the date on which the OTS has received a complete notice.

(5) *Troubled Condition.* The term *troubled condition* means:

(i) Any savings association that:

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

(B) Is subject to a capital directive, a cease and desist order, a consent order, a formal written agreement, or a prompt corrective action directive, relating to the safety and soundness or financial viability of the savings association, unless otherwise informed in writing by the OTS; or

(C) Is informed in writing by the OTS that it has been designated in *troubled condition* based on the current financial statements, report of examination, or limited scope review of the savings association; or

(ii) Any savings and loan holding company that:

(A) Is subject to a cease and desist order, a consent order, a prompt corrective action directive, or a formal written agreement, relating to the safety and soundness or financial viability of its savings association subsidiary, unless otherwise informed in writing by the OTS;

(B) Is informed in writing by the OTS that it has been designated as being in *troubled condition* based on the current financial statements, report of examination, limited scope review, periodic filings, or other filings of the holding company or its subsidiary savings association; or

(C) Is rated unsatisfactory or is informed in writing by the OTS that it otherwise has an adverse effect on its subsidiary savings association.

(b) *Prior Notice.* (1) A savings association or savings and loan holding company described in paragraph (c) of this