

same membership rights in the mutual holding company as were conferred upon them by the charter of the reorganizing association immediately prior to reorganization, but shall not confer any membership rights in connection with any borrowings made after the reorganization; and

(4) Confer upon the borrowers of any acquiree association or any association that is in the mutual form when acquired by the mutual holding company who are borrowers at the time of the acquisition the same membership rights in the mutual holding company as were conferred upon them by the charter of the acquired association immediately prior to acquisition, but shall not confer any membership rights in connection with any borrowings made after the acquisition, *provided that* if the acquired association is merged into another association from which the mutual holding company draws members, the borrowers of the acquired association shall instead receive the same grandfathered membership rights as the borrowers of the association into which the acquired association is merged received at the time that association became a subsidiary of the mutual holding company.

(b) *Depositors and borrowers of associations in the stock form when acquired.* A mutual holding company that acquires a savings association in the stock form, other than a resulting association or an acquiree association, shall not confer any membership rights upon the depositors and borrowers of such association, unless such association is merged into an association from which the mutual holding company draws members, in which case the depositors of the stock association shall receive the same membership rights as other depositors of the association into which the stock association is merged.

#### **§ 575.6 Contents of Reorganization Plans.**

Each Reorganization Plan shall contain a complete description of all significant terms of the proposed reorganization, shall attach and incorporate any Stock Issuance Plan proposed in connection with the Reorganization Plan, and shall:

(a) Provide for amendment of the charter and bylaws of the reorganizing association to read in the form of the charter and bylaws of a mutual holding company, and attach and incorporate such charter and bylaws;

(b) Provide for the organization of the resulting association, which shall be an interim federal or state savings association subsidiary of the reorganizing association, and attach and incorporate the proposed charter and bylaws of such association;

(c) Provide for amendment of the charter and bylaws of any acquiree association to read in the form of the charter and bylaws of a state or federal savings association in the stock form (as modified by § 575.9(b) of this part), and attach and incorporate such charter and bylaws;

(d) Provide that, upon consummation of the reorganization, substantially all of the assets and liabilities (including all savings accounts, demand accounts, tax and loan accounts, United States Treasury General Accounts, or United States Treasury Time Deposit Open Accounts, as defined in part 561 of this chapter) of the reorganizing association shall be transferred to the resulting association, which shall thereupon become an operating savings association subsidiary of the mutual holding company;

(e) Provide that all assets, rights, obligations, and liabilities of whatever nature of the reorganizing association that are not expressly retained by the mutual holding company shall be deemed transferred to the resulting association;

(f) Provide that each depositor in the reorganizing association or any acquiree association immediately prior to the reorganization shall upon consummation of the reorganization receive, without payment, an identical account in the resulting association or the acquiree association, as the case may be (Appropriate modifications should be made to this provision if savings associations are being merged as a part of the reorganization);

(g) Provide that the Reorganization Plan as adopted by the boards of directors of the reorganizing association and any acquiree association may be substantively amended by those boards

of directors as a result of comments from regulatory authorities or otherwise prior to the solicitation of proxies from the members of the reorganizing association and any acquiree association to vote on the Reorganization Plan and at any time thereafter with the concurrence of the OTS; and that the reorganization may be terminated by the board of directors of the reorganizing association or any acquiree association at any time prior to the meeting of the members of the association called to consider the Reorganization Plan and at any time thereafter with the concurrence of the OTS;

(h) Provide that the Reorganization Plan shall be terminated if not completed within a specified period of time (The time period shall not be more than 24 months from the date upon which the members of the reorganizing association or the date upon which the members of any acquiree association, whichever is earlier, approve the Reorganization Plan and may not be extended by the reorganizing or acquiree association); and

(i) Provide that the expenses incurred in connection with the reorganization shall be reasonable.

**§ 575.7 Issuances of stock by savings association subsidiaries of mutual holding companies.**

(a) *Approval requirements.* No savings association subsidiary of a mutual holding company (including any resulting association or acquiree association) may issue stock to persons other than its mutual holding company parent in connection with a mutual holding company reorganization, or at any time subsequent to the association's acquisition by the mutual holding company, unless the association obtains advance approval of each such issuance from the OTS. Issuance by the OTS of a notice of intent not to disapprove a mutual holding company reorganization pursuant to § 575.3(b) of this part, or failure by the OTS to disapprove such a reorganization within the time prescribed in § 575.3(b) of this part, shall be deemed to constitute approval of any stock issuance specifically applied for pursuant to this section in connection with the reorganization, unless otherwise specified by the OTS. The OTS

shall approve any proposed issuance that meets each of the criteria set forth below in paragraphs (a)(1)–(a)(7) of this section.

(1) The proposed issuance is to be made pursuant to a Stock Issuance Plan that contains all the provisions required by § 575.8 of this part.

(2) The Stock Issuance Plan is consistent with the terms of the association's charter (or any proposed amendments thereto), including terms governing the type and amount of stock that may be issued.

(3) The Stock Issuance Plan would provide the association, its mutual holding company parent, and any other savings association subsidiaries of the mutual holding company with fully sufficient capital and would not be inequitable or detrimental to the association or its mutual holding company parent or to members of the mutual holding company parent.

(4) The proposed price or price range of the stock to be issued is reasonable. (The OTS shall review the reasonableness of the proposed price or price range in accordance with paragraph (b) of this section.)

(5) The aggregate amount of outstanding common stock of the association owned or controlled by persons other than the association's mutual holding company parent at the close of the proposed issuance shall be less than 50% of the association's total outstanding common stock, unless the association was a stock association when acquired by the mutual holding company and is not a resulting association or an acquiree association, in which case the foregoing restriction shall not apply. Any amount of preferred stock may be issued by any savings association subsidiary of a mutual holding company to persons other than the association's mutual holding company, consistent with any other applicable laws and regulations.

(6) The association furnishes the information required by the OTS in connection with the proposed issuance.

(7) The proposed stock issuance would fail to meet the convenience and needs standard of § 563b.11 of this chapter.