

**BILLING CODE: 6720-01**

**DEPARTMENT OF THE TREASURY**

**Office of Thrift Supervision**

**12 CFR Parts 543, 544, 545, 552, 556, and 575**

**[No. 96-112]**

**RIN 1550-AA87**

**Corporate Governance**

**AGENCY:** Office of Thrift Supervision, Treasury.

**ACTION:** Final Rule.

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**SUMMARY:** The Office of Thrift Supervision (OTS or Office) is today issuing a final rule amending its corporate governance regulations and policy statements to update, reorganize and substantially streamline them.

This final rule follows a detailed review of each pertinent regulation and policy statement in the Code of Federal Regulations (CFR) to determine whether it is necessary, imposes the least possible burden consistent with safety and soundness, and is written in a clear and straightforward manner. Today's final rule is issued pursuant to the Regulatory Reinvention Initiative of the Vice President's National Performance Review (Reinvention Initiative) and section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRIA) which requires OTS and the other Federal banking agencies to review, streamline, and modify regulations and policies to improve efficiency, reduce unnecessary costs, and remove inconsistent, outmoded, and duplicative requirements.

**EFFECTIVE DATE:** January 1, 1997.

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**SUPPLEMENTARY INFORMATION:**

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### I. Background

In a comprehensive review of its regulations, beginning in the spring of 1995, pursuant to the Vice President's Reinvention Initiative and section 303 of CDRIA<sup>1</sup>, OTS identified numerous obsolete or redundant regulations that could quickly be repealed. On December 27, 1995, OTS published a final rule in the Federal Register repealing eight percent of its regulations.<sup>2</sup> As part of its review, OTS also identified several key areas in its regulations for a more intensive, systematic regulatory burden review. Certain areas -- lending and investment authority, corporate governance, subsidiaries and equity investments, and conflicts of interest, corporate opportunity and hazard insurance -- were chosen for intensive review because they are vital to the thrift industry, had not been developed on an interagency basis,<sup>3</sup> and had not been substantially reviewed or amended in recent years.

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<sup>1</sup> 12 U.S.C. 4803(a)(1).

<sup>2</sup> 60 FR 66866 (December 27, 1995).

<sup>3</sup> Interagency regulations are being reviewed through the Federal Financial Institutions Examination Counsel.

Earlier this year, OTS proposed a comprehensive streamlining of its lending and investment regulations<sup>4</sup> and, subsequently, OTS published a final lending and investment rule on September 30, 1996.<sup>5</sup> Proposals regarding subsidiaries and equity investments<sup>6</sup> and conflicts of interest, corporate opportunity and hazard insurance<sup>7</sup> were also issued this summer. The final rule regarding conflicts of interest, corporate opportunity and hazard insurance was published in the Federal Register on November XX, 1996.<sup>8</sup> The final rule regarding subsidiaries and equity investments is imminent.

On June 25, 1996, OTS also issued a notice of proposed rulemaking to streamline its charter and bylaw regulations (corporate governance).<sup>9</sup> The proposal resulted from an intensive review by OTS staff. OTS also sought industry input regarding staff's initial recommendations through an industry focus group meeting among representatives of seven savings associations and an industry trade association.

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<sup>4</sup> 61 FR 1162 (January 17, 1996).

<sup>5</sup> 61 FR 50951 (September 30, 1996).

<sup>6</sup> 61 FR 29976 (June 13, 1996).

<sup>7</sup> 61 FR 30190 (June 14, 1996).

<sup>8</sup> 61 FR XXXXX (November , 1996).

<sup>9</sup> 61 FR 32713 (June 25, 1996).

Today's final rule is quite similar to the proposal. It reduces the number of charter and bylaw regulations and policy statements from 33 to 21, a reduction of 36 percent. In addition, deletion of the model bylaws from the CFR will remove 10 pages of CFR text. This information will be moved to the Application Processing Regulatory Handbook (Handbook) as guidance. The Handbook is sent to all OTS regulated institutions and is available to the public. The model bylaws will also be available through PUBLIFAX at (202) 906-5660 and from fee service providers on CD Rom.

The general tenor of the changes being made today can be summarized in three points. First, we are removing a number of duplicative or outdated corporate governance regulations. By clearing out the deadwood, OTS hopes to reduce compliance costs. Second, we are updating the regulations to reflect modern trends toward greater flexibility in corporate governance. Third, we are adding clarifying language to various regulations to respond to frequently recurring corporate governance questions asked by institutions. Taken together, these changes should

significantly reduce regulatory burden. This final rule is the first major update of the corporate governance regulations in over a decade.<sup>10</sup>

## II. Summary of Comments and Description of the Final Rule

### A. General Discussion of the Comments

The public comment period on the June 25 proposal closed on August 26, 1996. Seven commenters responded. Three savings associations, one savings and loan holding company on behalf of its affiliated savings associations, one financial institutions trade group, one law firm, and one private citizen submitted comments. The comments were generally favorable. Specific comments addressing various sections are discussed, where appropriate, in the section-by-section analysis below.

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<sup>10</sup> For an extensive discussion of the history of the current and previous corporate governance regulations, see the discussion in the proposal. 61 FR 32713, 32715 (June 25, 1996).

**B. Section-by-Section Analysis**

**1. Existing Corporate Governance Sections**

**a. Part 544 - Charter And Bylaws**

**Section 544.1 Federal Mutual Charter.**

This section contains the required charter for Federal mutual associations. In its proposed rulemaking, OTS solicited comment on alternative proposals. One option was to move the mutual charter (as well as the charter for stock associations and the model bylaws for both) from the regulations to the Handbook. The other option was to retain the charters (and model bylaws) in the regulations, but update them.

Most commenters responded to this aspect of the proposal. Only one commenter generally supported moving the charters and bylaws to the Handbook. Four commenters expressed concern that moving the charters and model bylaws into the Handbook would remove the opportunity for notice and comment under the

Administrative Procedure Act (APA) when changes are made to these documents. One commenter stated that weakening the APA requirements will jeopardize the mutual charter and enhance the possibility of hostile activity against mutuals by takeover interests. One commenter stated that if the OTS believes that reasons of safety and soundness warrant maintaining regulatory requirements over the forms of charters and bylaws, then those requirements should remain in the CFR. After considering these comments, OTS has decided to retain the charters in the CFR and to amend them, as proposed. As for the model bylaws, however, OTS is moving them to the Handbook because the model bylaws are intended to serve only as guidance to institutions. Critical bylaw issues are addressed in the regulations described below. These regulations, rather than the model bylaws, will serve as binding norms. Any institution which adopts the model bylaws will be deemed to comply with the regulations.

The changes to the mutual charter are as follows:

**ATTACHMENT IS AVAILABLE UPON REQUEST**

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