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DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 543

[No. 97-31]

RIN 1550-AB06

Incorporation, Organization, And Conversion of Federal Mutual Associations

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Proposed rule with request for comments.

SUMMARY: The Office of Thrift Supervision (OTS) proposes to amend its regulations governing conversions to federal mutual savings associations to permit the direct conversion of all types of mutual depository institutions into federal mutual savings associations.

DATES: Comments must be received on or before [insert date 60 days from date of publication in the Federal Register].

ADDRESSES: Send comments to Manager, Dissemination Branch, Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, D.C. 20552, Attention Docket No, 97-31. These submissions may be hand-delivered to 1700 G Street, NW., from 9:00 A.M. to 5:00 P.M. on business days; they may be sent by facsimile transmission to FAX Number (202)

906-7755; or they may be sent by e-mail: public.info@ots.treas.gov. Those commenting by e-mail should include their name and telephone number.

Comments will be available for inspection at 1700 G Street, NW., from 9:00 A.M. until 4:00 P.M. on business days.

FOR FURTHER INFORMATION CONTACT: Scott Ciardi, Senior Analyst, Corporate Activities Division (202/906-6960); David A. Permut, Counsel (Banking and Finance) (202/906-7505) or Kevin A. Corcoran, Assistant Chief Counsel for Business Transactions (202/906-6962), Business Transactions Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION:

I. Background

Various types of depository institutions have expressed interest in converting to a federal savings association charter.¹ The OTS has received, for example, inquiries from credit unions and commercial banks on the process of converting to a federal thrift charter. Depository institutions may determine that because their businesses focus on housing or consumer credit needs, these operations may be conducted most efficiently through a federal thrift charter. The Home Owners'

¹ Section 2(5) of the Home Owners' Loan Act defines "federal savings associations" to include federal savings associations and federal savings banks. Accordingly, references herein to federal savings associations include federal savings banks.

Loan Act (HOLA)² sets forth the purposes of a federal thrift charter as providing for the deposit of funds and for the extension of credit for homes and other goods and services.³

The OTS has long taken the position that depository institutions should be free to operate under whatever charter best suits their business needs, consistent with safety and soundness. To that end, the OTS has granted federal savings associations explicit authority to convert directly to a bank charter,⁴ and has promulgated regulations enabling stock depository institutions to convert directly to a federal stock savings association charter.⁵ The purpose of today's proposed regulation is to permit mutual depository institutions to convert directly to a savings association charter.

II. Current Law

Sections 5(i) and 5(o) of the HOLA provide for direct conversions of, respectively, state savings associations and state-chartered savings banks that are Bank Insurance Fund members to a federal charter.⁶ Separately, pursuant to Section 5(a) of the HOLA, the OTS has promulgated a regulation permitting the direct conversion to a federal stock savings association charter of any stock

² 12 U.S.C. 1461 et seq.

³ 12 U.S.C. 1464.

⁴ 12 CFR 552.2-7.

⁵ 12 CFR 552.2-6.

⁶ 12 U.S.C. 1464(i) and (o).

depository institution that is, or is eligible to become, a member of a Federal Home Loan Bank.⁷

Depository institutions in mutual or stock form also may convert to a federal association charter indirectly, by obtaining a new federal savings association charter, and causing the existing institution to combine with the new federal association in a merger or purchase and assumption transaction.⁸ This method, however, is more burdensome to the applicant because it involves several different regulatory approvals.

Section 5(a) is a broad grant of authority to the Director of the OTS, encompassing (among other things) approval of direct conversions of mutual depository institutions to a federal mutual charter. Section 5(a) authorizes the Director of the OTS, under such regulations as the Director may prescribe, to provide for the organization, examination, operation and regulation of federal savings associations. Section 5(a) of the HOLA gives the OTS plenary authority to provide for the organization and regulation of federal savings associations, consistent with the "best practices" of thrift institutions in the United States and for the purpose of encouraging such institutions to provide credit for housing safely and soundly.⁹

⁷ 12 CFR 552.2-6.

⁸ The authority for federal mutual and stock associations to engage in these types of transactions is set forth at 12 CFR 546.2 and 552.13, respectively.

⁹ 12 U.S.C. 1464(a).

In addition, recent revisions to HOLA provisions governing permissible investments (Section 5(c)), and to its definition of "qualified thrift investment" (Section 10(m)) reflect a congressional intent for federal savings associations and savings banks to have a significant role in many kinds of consumer finance, as well as in home mortgage lending.¹⁰ The OTS believes that non-thrift depository institutions that conclude that their operations in providing credit for housing and other consumer-related purposes make the federal savings association charter the optimal charter should be able to convert to that charter without encountering unnecessary regulatory burdens.

The OTS already has amended its regulations to facilitate the direct conversion of stock depository institutions to federal stock savings associations.¹¹ The OTS has now determined, pursuant to its Section 5(a) authority, to amend its regulations to facilitate direct conversions of mutual depository institutions to a federal mutual thrift charter.

III. Proposed Amendments

The proposed rule would revise 12 CFR 543.8 and 543.9 to permit any type of mutual depository institution to convert to a federal mutual savings association. The proposed rule would apply all existing regulatory requirements currently applicable to direct conversions by state mutual associations and savings banks to this expanded class of applicants and would

¹⁰ See Economic Growth and Regulatory Paperwork Reduction Act of 1996, Pub. L. No. 104-208, § 2303(a)-(e), (g), 110 Stat. 3009 (codified in portions of 12 U.S.C. 1464(b), (c), 1467a(m)).

¹¹ 12 CFR 552.2-6.

ATTACHMENT IS AVAILABLE UPON REQUEST

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