

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 544

[No. 98-34]

RIN 1550-AB17

Charter and Bylaws;

One Member, One Vote

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Office of Thrift Supervision (OTS) proposes to amend its regulations on federal mutual savings association charters. **The** proposed amendment would expand the range of the number of votes a federal mutual savings association may allow a member to cast on issues requiring action by the members of the association from the current 50 to 1000 votes to one to 1000 votes per member. This proposal would add flexibility to the federal mutual charter. and would in particular allow a federal mutual savings association to adopt a charter providing for ‘one member, one vote.’.

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. 98-34. **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: Diana L. Garmus, Director, Corporate Activities Division (202/906-5683); 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 depository institutions that have expressed interest in converting to a federal mutual savings association charter¹ have asked to retain existing voting procedures following the conversion. The OTS has received, for example, inquiries from credit unions with membership voting rights of one vote per member, who have asked to retain their current voting requirements upon conversion. The OTS regulations currently allow a **state-**

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

chartered savings bank to retain certain member rights upon conversion to a federal mutual holding company under the OTS Mutual Holding Company regulations.’ Today’s proposal would provide similar flexibility for financial institutions, including federal credit unions, that wish to convert to the federal mutual charter.

Under the Home Owners’ Loan Act (**HOLA**),³ the OTS may charter federal thrifts to provide for the deposit of funds and the extension of credit for homes and other goods and **services**.⁴ 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. Federal savings associations may operate under a stock charter or mutual charter. Within each charter, the OTS permits variations.

Federal mutual savings associations have varying voting provisions, often based upon when they obtained their charters. The federal charter first introduced in 1933 specified that each member received one vote for every \$100 on deposit. subject to a maximum of 50 votes per member. This 50 vote limit corresponded to the maximum allowable deposit insurance for one account, \$5,000. When deposit insurance limits were raised to \$40,000 per account. the Federal Home Loan Bank Board (“**FHLBB**”), predecessor to the

² **See** 12 CFR 575.5(a) (1997), which describes existing and **future** depositor and borrower membership rights as the same rights that were conferred upon depositors and borrowers by the **reorganizing** association.

³ 12 U.S.C. 1461 **et seq.**

⁴ 12 U.S.C. 1464(a).

OTS, began to issue charters with a maximum of 400 votes per **member, again** to correspond to the insurance limits. When the statutory deposit insurance limits were increased to \$100,000 per account in 1980,⁵ the FHLBB again amended the federal mutual charter to allow for 1,000 votes per member?

II. Proposal

The purpose of today's proposed regulation is to allow greater flexibility in determining the number of votes per member. The amendment will permit mutual depository institutions that are converting to federal savings associations to retain the one vote per member provision in their current charters, and will permit converting institutions as well as existing federal mutual savings associations to adopt a one vote per member provision.

Currently, Section 6 of the OTS model federal mutual charter⁶ states that no member may cast more than 1,000 votes. Section 544.2, however, permits a federal mutual savings association to amend its charter and prescribe the maximum number of votes per member to a specific number between 50 and 1000.

The OTS is proposing to amend 12 CFR **544.2(b)(4)** to permit federally chartered mutual savings associations to set the number of votes per member within the range of 1 to 1,000, rather than the current range of 50 to 1,000. New federal mutual savings associations may include this provision in

⁵ Pub. L. 96-2147, March 31, 1980 (codified at 12 U.S.C. 1728).

⁶ See FHLBB Res. No. 83-528.48 FR 44174 (Sept. 28, 1983).

⁷ 12 CFR 544.1 (1997).

their initial federal thrift charter. Existing federal mutual associations may amend their charters under the prescribed regulatory procedures.*

Specifically, an institution would: (i) obtain a board of directors' resolution adopting the amendment, (ii) obtain a favorable vote by the members, and (iii) notify the OTS of the adoption at least 30 days prior to the effective date of the proposed amendment. Unless the OTS notifies the institution of its objection to the proposed amendment within that 30 days, the amendment is automatically approved.

III. Solicitation of Comments

The OTS is asking for comment on the proposal. Specifically, the OTS seeks comment on:

- Whether federal mutual savings associations would expect to encounter any corporate governance problems if they chose to reduce the maximum number of votes per member. For example, would the savings association encounter any difficulty in obtaining the necessary votes of members to take corporate actions?
- Whether existing federal mutual associations would **find** the added flexibility of an expanded voting requirement useful.
- Whether, and under what circumstances, a one vote per member limitation would either entrench or destabilize management.
- Whether by imposing such a limitation, federal associations with a higher

* 12 CFR 544.2(b) (1997).

minimum vote requirement that adopt a lower minimum vote requirement could risk legal actions by accountholders.

- Whether the proposed revision should be continued as a preapproved charter amendment, or whether savings associations that seek to adjust the number of votes per member should be required to submit an application to the OTS.

IV. Executive Order 12866

The Director of the OTS has determined that this proposed rule does not constitute a “significant regulatory action” for the purposes of Executive Order 12866.

V. Regulatory Flexibility Act Analysis

Pursuant to Section 605(b) of the Regulatory Flexibility Act, the OTS certifies that this proposal will not have a significant economic impact on a substantial number of small entities. Small entities utilizing the regulation may be able to retain their existing membership rights, which will simplify the process of converting to a federal charter and reduce regulatory burden.

VI. Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104-4 (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in expenditures by state, local, and tribal governments, in the aggregate, or by the private sector, or \$100 million or more in any one year.

If a budgetary impact statement is required, Section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OTS has determined that the proposed rule will not result in expenditures by state, local, or tribal governments or by the private sector of \$100 million or more. Accordingly, this rulemaking is not subject to Section 202 of the Unfunded Mandates Act.

List of Subjects in 12 CFR Part 544

Charters, Bylaws, Savings associations.

Accordingly, the Office of Thrift Supervision proposes to amend chapter V, title 12, Code of Federal Regulations, as set forth below.

PART 544 - CHARTER AND BYLAWS

1. The authority citation for part 544 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a. 2901 et seq.

2. Section 544.2 is amended by revising the last sentence of paragraph (b)(4)

to read as follows:

§ Charter amendments.

* * * * *

(b) * * *

(4) * * * (Fill in a number from 1 to 1000.)

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DATED: March 31, 1998

By the **Office** of Thrift Supervision.



Ellen Seidman
Director