Hungary
Jamaica
Kazakhstan
Kiribati
Kuwait
Kyrgyzstan
Malaysia
Malta
Mauritius
Moldova
Mongolia
Nigeria
Philippines
Poland [4]
Romania
Russian Federation
St. Kitts and Nevis
St. Lucia
St. Vincent/Grenadines
Seychelles
Sierra Leone
Singapore
Slovak Republic
Tajikistan
Tanzania
Tonga
Trinidad and Tobago
Tunisia
Turkmenistan
Tuvalu
Ukraine
United Kingdom [5]
U.S.S.R. [6]
Uzbekistan
Zambia
Zimbabwe
* * * * *

''S.A.R.'' Under paragraph 3(f)(2) of the March 25, 1997, U.S.-China Agreement on the Maintenance of the U.S. Consulate General in the Hong Kong Special Administrative Region, U.S. officials are required to notify Chinese officials of the arrest or detention of the bearers of Hong Kong passports in the same manner as is required for bearers of Chinese passports—i.e., immediately, and in any event, within four days of the arrest or detention.

[4] Consular communication is not mandatory for any Polish national who has been admitted for permanent residence in the United States. Such notification should only be provided upon request by a Polish national with permanent residency in the United States.

[5] United Kingdom includes England, Scotland, Wales, Northern Ireland and Islands and the British dependencies of Anguilla, British Virgin Islands, Bermuda, Montserrat, and the Turks and Caicos Islands. Their residents carry British passports.

[6] All U.S.S.R. successor states are covered by this agreement. They are: Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russian Federation, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan. Although the U.S.S.R. no longer exists, the U.S.S.R is listed here, because some nationals of its successor states may still be traveling on a U.S.S.R. passport. Mandatory consular notification applies to any national of such a state, including one traveling on a U.S.S.R. passport.

Dated: January 9, 2007.

Michael Chertoff,

Secretary.

[FR Doc. 07–137 Filed 1–11–07; 2:27pm]

BILLING CODE 4410–10–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 563

[No. 2007–02]

RIN 1550–AC06

Subordinated Debt Securities and Mandatorily Redeemable Preferred Stock

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: This final rule updates OTS regulations that require a savings association to obtain approval (or non-objection) before it may include subordinated debt securities or mandatorily redeemable preferred stock in supplementary (tier 2) capital. The final rule removes several unnecessary or outdated requirements and conforms certain provisions, such as maturity period requirements and purchaser restrictions, to the rules issued by the other federal banking agencies. The final rule also reconciles conflicting rules, adds appropriate statutory cross-references, and rewrites the rule in plain language.

DATES: This rule is effective April 1, 2007.

FOR FURTHER INFORMATION CONTACT: David W. Riley, Senior Analyst, (202) 906–6669; Capital Policy, Karen Osterloh, Special Counsel, (202) 906–6639, Regulations and Legislation Division, or Gary Jeffers, Senior Attorney, (202) 906–6457, Business Transactions Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Discussion

A savings association must obtain OTS approval (or non-objection) before it may include subordinated debt securities or mandatorily redeemable preferred stock in supplementary (tier 2) capital. OTS rules at 12 CFR 563.81 address application and notice procedures, requirements that securities must meet to be included in supplementary capital, conditions for OTS approval (or non-objection), and other requirements.

On July 3, 2006, OTS proposed to update 12 CFR 563.81 to delete unnecessary or outdated requirements and conform certain provisions, such as maturity period requirements and purchaser restrictions, to the rules issued by the other federal banking agencies. In addition, OTS proposed to reconcile 12 CFR 563.81 with conflicting OTS rules, add appropriate statutory cross-references, and rewrite the rule in plain language.[1]

OTS received comments from two trade associations in support of the proposed rule. Both commenters observed that the proposed rule is a much-needed update to the existing provisions. They noted that the proposed rule clarifies the existing requirements, is more consistent with the rules issued by other federal banking agencies, is less burdensome than the current rule, and provides greater flexibility to savings associations.

Commenters suggested only a few revisions to the proposed rule. These suggestions are discussed below. Unless otherwise noted, OTS has adopted the proposed rule without substantive change.

A. Processing and Review of Applications and Notices—Final § 563.81(b) and (d)

The proposed rule amended the existing rules governing OTS processing and review of applications and notices seeking approval of, or non-objection to, the inclusion of subordinated debt securities or mandatorily redeemable preferred stock in supplementary capital. These revisions deleted outdated rules that overlapped or duplicated 12 CFR part 516 (Application Processing Guidelines), and substituted appropriate cross-references to that part.

Commenters generally supported these revisions. One commenter, however, noted that proposed § 563.81(a) stated that a savings association may file its application or notice before or after it issues the covered securities, but may not include the covered securities in supplementary capital until OTS approves the application or does not object to the notice. This commenter urged OTS to establish a 30-day time limit on OTS's ability to object to a notice. The commenter argued that this change would provide a savings association with certainty that the covered securities that were the subject of a notice could be treated as tier 2 capital without further OTS action.

[1] 71 FR 37862 (July 3, 2006).

This issue is already addressed by proposed § 563.81(d)(1), which states that OTS will review all applications and notices under 12 CFR part 516, subpart E. Under part 516, subpart E, if a savings association has appropriately filed a notice with OTS under the expedited treatment, it is permitted to engage in the proposed activity 30 days after the filing date, unless OTS takes certain specified actions before the expiration of that time period. See 12 CFR 516.200 (2006). OTS has not included the requested clarification in the final rule.

B. Mandatory Prepayment of Principal—Final § 563.81(c)(3)

The proposed rule at § 563.81(c)(3) restated the current rules regarding mandatory prepayment of subordinated debt.[2] Specifically, the proposed rule stated that subordinated debt securities may not provide events of default or contain other provisions that could result in a mandatory prepayment of principal, other than events of default that:

- Relate to bankruptcy, insolvency, receivership, or similar events.
- Arise from the savings association's failure to make timely payment of interest or principal.
- Arise from its failure to comply with reasonable financial, operating, and maintenance covenants of a type that are customarily included in indentures for publicly offered debt securities.

The proposed rule also continued to state that any acceleration of payment of principal on a subordinated debt security by a savings association that fails to meet certain capital requirements is subject to OTS prior approval.

In the preamble to the proposed rule, OTS noted that all of the banking agencies allow for the mandatory prepayment or acceleration of principal upon events of default related to bankruptcy, insolvency, receivership, and similar events,[3] but there is no uniform approach with respect to prepayment or acceleration upon other events of default.[4] OTS sought public comment on whether it should make additional revisions to this section. OTS specifically asked commenters to address whether the other banking agency rules more appropriately address the events of default that may trigger mandatory prepayment or acceleration of principal.

One commenter addressed this subject. This commenter generally supported the proposed restatement of the current rule, which limits mandatory prepayment to specific events of default. The commenter urged OTS not to make additional revisions to this rule. The commenter noted that there is no evidence cited that these events of default have created a problem for savings associations in the past. In light of these comments, OTS has not included any further revisions to this provision.

C. Indenture Requirements—Final § 563.81(c)(4)

The current rules require a savings association to use an indenture for subordinated debt securities. Moreover, where the aggregate amount of subordinated debt securities that are publicly offered [5] exceeds certain thresholds in the Trust Indenture Act of 1939 (TIA),[6] the current rules require the indenture to provide for the appointment of a trustee other than the savings association or its affiliate, and for the collective enforcement of security holders' rights and remedies.[7] The proposed rule retained this provision, but updated the thresholds to reflect statutory changes to the TIA.

The preamble observed that the TIA requires indentures for most debt instruments, but does not require an indenture where the underlying securities are exempt from registration under the Securities Act of 1933 (Securities Act).[8] OTS indicated that it was considering exempting certain issuances from the indenture requirements and sought comment on this possible change. OTS noted, for example, that offerings made solely to accredited investors are exempt under the Securities Act.[9] OTS specifically asked whether it should exempt offerings to accredited investors that are holding companies of the issuer (or their subsidiaries) from the indenture requirement, and whether it should also exempt offerings to unaffiliated accredited investors. Both commenters urged OTS to adopt an accredited investor exemption.

Under the Securities Act and the TIA, ''accredited investors'' include such entities as: Brokers or dealers registered under the Securities Exchange Act of 1934; insurance companies as defined in the Securities Act; investment companies registered under the Investment Company Act of 1940; certain employee benefit plans; directors, executive officers, or general partners of the issuer; natural persons with income or net worth in excess of specified limits; and certain trusts with assets in excess of specified limits.[10] These investors are considered to have sufficient financial and professional resources and sophistication to analyze the offering, make informed decisions, and defend and exercise their rights.

The final rule exempts issuances solely to accredited investors from the indenture requirement. This change will make the indenture requirement more consistent with the TIA, which recognizes the presumed sophistication of these types of investors. This position will also reduce the regulatory burden of the rules. To provide appropriate protection to non-accredited investors, the final rule requires a savings association to have an indenture in place before any debt securities, for which an exemption from the indenture requirement is claimed, are transferred to any non-accredited investor. If an issuer relies on this exemption from the indenture requirement, it must place a legend on the debt securities indicating that an indenture must be in place before the debt securities are transferred to any non-accredited investor.

II. Executive Order 12866

The Director of OTS has determined that this final rule does not constitute a ''significant regulatory action'' for purposes of Executive Order 12866.

III. Unfunded Mandates Reform Act of 1995

Today's final rule revises an existing rule to delete unnecessary, outdated, and conflicting requirements, to add appropriate statutory cross-references, and to rewrite the rule in plain language. Accordingly, OTS has determined that the final rule will not result in expenditures by state, local, or tribal governments or by the private sector of $100 million or more and that a budgetary impact statement is not required under section 202 of the Unfunded Mandates Reform Act of 1995.

IV. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601), the Director certifies that

[2] 12 CFR 563.81(b)(3)(2006).

[3] 12 CFR 250.166(b)(2)(FRB); and 12 CFR part 325, Appendix A, § I.A.2.(c)(2) and (d)(FDIC). *See* Comptroller's Licensing Manual, Subordinated Debt (November 2003), pp 15–16.

[4] 12 CFR 250.166 (FRB); 12 CFR part 325, Appendix A, § I.A.2.(d)(FDIC); and 12 CFR part 3, Appendix A, § 2(b)(4) and Comptroller's Licensing Manual, Subordinated Debt (November 2003)(OCC).

[5] Public offering includes sales in a nonpublic offering defined in 12 CFR 563g.4.

[6] 15 U.S.C. 77aaa *et seq*.

[7] 12 CFR 563.81(d)(4)(2006).

[8] 15 U.S.C. 77ddd.

[9] 15 U.S.C. 77d(6).

[10] 17 CFR 230.501(a). *See* 15 U.S.C. 77(a)(15).

this final rule will not have a significant economic impact on a substantial number of small entities. The final rule merely revises an existing rule to delete unnecessary, outdated, and conflicting requirements, to add appropriate statutory cross-references, and to rewrite the rule in plain language.

V. Paperwork Reduction Act of 1995

The information collection requirements in the existing OTS rules at 12 CFR 563.81 were previously approved under OMB control number 1550–00xx. The final continues to incorporate these requirements and does not make any substantive changes that affect the overall burden of compliance.

List of Subjects in 12 CFR Part 563

Accounting, Administrative practice and procedure, Advertising, Conflict of interest, Crime, Currency, Holding companies, Investments, Mortgages, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bond.

■ Accordingly, the Office of Thrift Supervision amends 12 CFR part 563 as set forth below:

PART 563—SAVINGS ASSOCIATIONS—OPERATIONS

■ 1. The authority citation for part 563 continues to read as follows:

Authority: 12 U.S.C. 375b, 1462, 1462a, 1463, 1464, 1467a, 1468, 1817, 1820, 1828, 1831o, 3806; 31 U.S.C. 5318; 42 U.S.C. 4106.

■ 2. Revise § 563.81 to read as follows:

§ 563.81 Inclusion of subordinated debt securities and mandatorily redeemable preferred stock as supplementary capital.

(a) *Scope.* A savings association must comply with this section in order to include subordinated debt securities or mandatorily redeemable preferred stock (''covered securities'') in supplementary capital under 12 CFR 567.5(b). If a savings association does not include covered securities in supplementary capital, it is not required to comply with this section.

(b) *Application and notice procedures.* (1) A savings association must file an application or notice under 12 CFR part 516, subpart A seeking OTS approval of, or non-objection to, the inclusion of covered securities in supplementary capital. The savings association may file its application or notice before or after it issues covered securities, but may not include covered securities in supplementary capital until OTS approves the application or does not object to the notice.

(2) A savings association must also comply with the securities offering rules at 12 CFR part 563g by filing an offering circular for a proposed issuance of covered securities, unless the offering qualifies for an exemption under that part.

(c) *Securities requirements.* To be included in supplementary capital, covered securities must meet the following requirements:

(1) *Form.* (i) Each certificate evidencing a covered security must:

(A) Bear the following legend on its face, in bold type: ''This security is *not* a savings account or deposit and it is *not* insured by the United States or any agency or fund of the United States;''

(B) State that the security is subordinated on liquidation, as to principal, interest, and premium, to all claims against the savings association that have the same priority as savings accounts or a higher priority;

(C) State that the security is not secured by the savings association's assets or the assets of any affiliate of the savings association, as defined in 12 CFR 583.2;

(D) State that the security is not eligible collateral for a loan by the savings association;

(E) State the prohibition on the payment of dividends or interest at 12 U.S.C. 1828(b) and, in the case of subordinated debt securities, state the prohibition on the payment of principal and interest at 12 U.S.C. 1831o(h);

(F) For subordinated debt securities, state or refer to a document stating the terms under which the savings association may prepay the obligation; and

(G) State or refer to a document stating that the savings association must obtain OTS approval before the voluntarily prepayment of principal on subordinated debt securities, the acceleration of payment of principal on subordinated debt securities, or the voluntarily redemption of mandatorily redeemable preferred stock (other than scheduled redemptions), if the savings association is undercapitalized, significantly undercapitalized, or critically undercapitalized as described in § 565.4(b) of this chapter, fails to meet the regulatory capital requirements at 12 CFR part 567, or would fail to meet any of these standards following the payment.

(ii) A savings association must include such additional statements as OTS may prescribe for certificates, purchase agreements, indentures, and other related documents. OTS will prescribe the text of these additional statements in its Application Processing Handbook.

(2) *Maturity requirements.* Covered securities must have an original weighted average maturity or original weighted average period to required redemption of at least five years.

(3) *Mandatory prepayment.* Subordinated debt securities and related documents may not provide events of default or contain other provisions that could result in a mandatory prepayment of principal, other than events of default that:

(i) Arise from the savings association's failure to make timely payment of interest or principal;

(ii) Arise from its failure to comply with reasonable financial, operating, and maintenance covenants of a type that are customarily included in indentures for publicly offered debt securities; or

(iii) Relate to bankruptcy, insolvency, receivership, or similar events.

(4) *Indenture.* (i) Except as provided in paragraph (c)(4)(ii) of this section, a savings association must use an indenture for subordinated debt securities. If the aggregate amount of subordinated debt securities publicly offered (excluding sales in a non-public offering as defined in 12 CFR 563g.4) and sold in any consecutive 12-month or 36-month period exceeds $5,000,000 or $10,000,000 respectively (or such lesser amount that the Securities and Exchange Commission shall establish by rule or regulation under 15 U.S.C. 77ddd), the indenture must provide for the appointment of a trustee other than the savings association or an affiliate of the savings association (as defined at 12 CFR 583.2) and for collective enforcement of the security holders' rights and remedies.

(ii) A savings association is not required to use an indenture if the subordinated debt securities are sold only to accredited investors, as that term is defined in 15 U.S.C. 77d(6). A savings association must have an indenture that meets the requirements of paragraph (c)(4)(i) of this section in place before any debt securities for which an exemption from the indenture requirement is claimed, are transferred any non-accredited investor. If a savings association relies on this exemption from the indenture requirement, it must place a legend on the debt securities indicating that an indenture must be in place before the debt securities are transferred to any non-accredited investor.

(d) *OTS review.* (1) OTS will review notices and applications under 12 CFR part 516, subpart E.

(2) In reviewing notices and applications under this section, OTS will consider whether:

(i) The issuance of the covered securities is authorized under

applicable laws and regulations and is consistent with the savings association's charter and bylaws.

(ii) The savings association is at least adequately capitalized under § 565.4(b) of this chapter and meets the regulatory capital requirements at § 567.2 of this chapter.

(iii) The savings association is or will be able to service the covered securities.

(iv) The covered securities are consistent with the requirements of this section.

(v) The covered securities and related transactions sufficiently transfer risk from the Deposit Insurance Fund.

(vi) OTS has no objection to the issuance based on the savings association's overall policies, condition, and operations.

(3) OTS approval or non-objection is conditioned upon no material changes to the information disclosed in the application or notice submitted to OTS. OTS may impose such additional requirements or conditions as it may deem necessary to protect purchasers, the savings association, OTS, or the Deposit Insurance Fund.

(e) *Amendments.* If a savings association amends the covered securities or related documents following the completion of OTS review, it must obtain OTS approval or non-objection under this section before it may include the amended securities in supplementary capital.

(f) *Sale of covered securities.* The savings association must complete the sale of covered securities within one year after OTS approval or non-objection under this section. A savings association may request an extension of the offering period by filing a written request with OTS. The savings association must demonstrate good cause for the extension and file the request at least 30 days before the expiration of the offering period or any extension of the offering period.

(g) *Reports.* A savings association must file the following information with OTS within 30 days after the savings association completes the sale of covered securities includable as supplementary capital. If the savings association filed its application or notice following the completion of the sale, it must submit this information with its application or notice:

(1) A written report indicating the number of purchasers, the total dollar amount of securities sold, the net proceeds received by the savings association from the issuance, and the amount of covered securities, net of all expenses, to be included as supplementary capital;

(2) Three copies of an executed form of the securities and a copy of any related documents governing the issuance or administration of the securities; and

(3) A certification by the appropriate executive officer indicating that the savings association complied with all applicable laws and regulations in connection with the offering, issuance, and sale of the securities.

Dated: November 28, 2006.

By the Office of Thrift Supervision.

John M. Reich,

Director.

[FR Doc. E7–475 Filed 1–16–07; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–25670; Directorate Identifier 2006–NM–027–AD; Amendment 39–14868; AD 2006–26–10]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B2 and B4 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Airbus Model A300 B2 and B4 series airplanes. This AD requires revising the airplane flight manual (AFM) to include procedures for resetting the trim and pitch trim levers after each landing, determining which servomotor moves the pitch trim control wheel, and doing applicable other specified actions. This AD also provides for optional terminating actions for those requirements. This AD results from a report of a sudden nose-up movement after disengagement of the autopilot in cruise. We are issuing this AD to ensure that the flightcrew is aware of the procedures for resetting the trim and pitch trim levers after each landing and to prevent failure of the servomotors of the pitch trim systems during flight. Failure of the servomotors of the pitch trim systems could result in uncommanded nose-up movement of the control surface of the pitch trim systems after disengagement of the autopilot in cruise.

DATES: This AD becomes effective February 21, 2007.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of February 21, 2007.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC.

Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Thomas Stafford, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1622; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Examining the Docket

You may examine the airworthiness directive (AD) docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the street address stated in the **ADDRESSES** section.

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Airbus Model A300 B2 and B4 series airplanes. That NPRM was published in the **Federal Register** on August 23, 2006 (71 FR 49385). That NPRM proposed to require revising the airplane flight manual (AFM) to include procedures for resetting the trim and pitch trim levers after each landing, determining which servomotor moves the pitch trim control wheel, and doing applicable other specified actions. That NPRM also provided for optional terminating actions for those requirements.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments received.

Request To Include Procedures From the Temporary Revision

ASTAR Air Cargo (ASTAR) requests that paragraph (f) of the NPRM be revised to include the AFM procedures specified in French airworthiness directive F–2003–291 R1, issued July 6, 2005. ASTAR notes that paragraph (f) of