

DEPARTMENT OF THE TREASURY**Office of Thrift Supervision****12 CFR Parts 563b, 574, and 575**

[No. 2002-11]

RIN 1550-AB24

Mutual Savings Associations, Mutual Holding Company Reorganizations, and Conversions From Mutual to Stock Form**AGENCY:** Office of Thrift Supervision, Treasury.**ACTION:** Notice of proposed rulemaking.

SUMMARY: The Office of Thrift Supervision (OTS) proposes to amend its regulations on the mutual-to-stock conversion process and portions of its regulations on mutual holding company reorganizations. This document is a re-proposal (Re-proposal) of the Notice of Proposed Rulemaking (First Proposal) published July 12, 2000. OTS extensively modified the First Proposal as a result of the public comments it received and seeks public comment on those revisions. As part of a wholesale review of treatment of mutual institutions, OTS separately has modified its examination and supervisory policies to address many of the concerns mutual institutions have raised with OTS over the years.

This Re-proposal includes modifications to the provisions addressing business plans. In addition, it addresses certain matters involving conversions from the mutual to the stock form, by, among other things, adding demand account holders to the definition of savings account holders, allowing accelerated vesting in management benefit plans for changes of control, adding rules to establish charitable organizations, and clarifying the policy on the amount of proceeds allowed to be retained at the holding company level. We are also requesting comment regarding certain additional proposed changes to the OTS Mutual Holding Company Regulations.

DATES: Written comments must be received on or before May 9, 2002.

ADDRESSES: *Mail:* Send comments to Regulation Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention Docket No. 2002-11.

Delivery: Hand deliver comments to the Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention Regulation Comments, Chief Counsel's Office, Docket No. 2002-11.

Facsimiles: Send facsimile transmissions to FAX Number (202) 906-6518, Attention Docket No. 2002-11.

E-Mail: Send e-mails to regs.comment@ots.treas.gov, Attention Docket No. 2002-11, and include your name and telephone number.

Public Inspection: Comments and the related index will also be posted on the OTS Internet Site at <http://www.ots.treas.gov>. In addition, interested persons may inspect comments at the Public Reference Room, 1700 G Street, NW., by appointment. To make an appointment for access, call (202) 906-5922, send an e-mail to public.info@ots.treas.gov, or send a facsimile transmission to (202) 906-7755. (Prior notice identifying the materials you will be requesting will assist us in serving you.) Appointments will be scheduled on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the next business day following the date a request is received.

FOR FURTHER INFORMATION CONTACT:

David A. Permut, Senior Attorney, (202) 906-7505; Gary Jeffers, Senior Attorney, (202) 906-6457, Business Transactions Division, Chief Counsel's Office; or Mary Jo Johnson, Project Manager, (202) 906-5739, Supervision Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:**I. Background**

Pursuant to its broad authority to regulate mutual savings associations, authorize mutual holding company (MHC) reorganizations, and regulate mutual-to-stock conversions of savings associations under the Home Owners' Loan Act (HOLA),¹ on July 12, 2000, OTS published an Interim Final Rule (Interim Rule), revising OTS repurchase restrictions applicable to recently converted institutions, changing OTS policy on waivers of dividends by MHCs and making certain technical changes to the regulations as a result of the passage of the Gramm-Leach-Bliley Act of 1999 (GLB Act).² On the same day, OTS published a Notice of Proposed Rulemaking, proposing changes to OTS rules governing stock conversions and MHCs.³

OTS undertook these actions based on numerous discussions with the management of mutual institutions, its experience with the conversion process, and developments in the marketplace regarding MHC reorganizations and

mutual-to-stock conversions. OTS also reviewed its policies, practices, and regulations to assess whether additions or revisions were necessary.

To respond completely to all the suggestions for change, OTS developed a comprehensive regulatory strategy governing mutual institutions, MHC reorganizations, and the mutual-to-stock conversion process. This comprehensive strategy includes: (1) New policy and examination guidance; (2) these re-proposed regulations for the mutual-to-stock conversion process and MHC minority stock offerings; and (3) revisions to the application forms used for the mutual-to-stock conversion process.

Since the First Proposal was published over 18 months ago, OTS has issued guidance covering several areas of concern to commenters. To enable the public to consider the interaction between that guidance and the changes OTS is making to the First Proposal, OTS is publishing this Re-proposal to seek further comment.

II. Policy Guidance

In the First Proposal, OTS indicated it would issue policy guidance in certain areas regarding mutual associations in connection with the changes to the MHC and conversion regulations. OTS has developed new examination guidance to address many of the concerns mutual associations raised, within the context of safe and sound operations. OTS has also enhanced its off-site monitoring systems to provide examiners with comparative peer groups of similarly situated mutual associations.

Accordingly, OTS has separately issued the following new or revised guidance:

- Regulatory Bulletin 27b on Compensation. This revised bulletin clarifies that mutual associations are subject to and governed by the same prudential standards as stock associations. OTS intends this guidance to enhance the ability of mutual associations to provide competitive compensation plans to attract and retain qualified management and staff.

- Thrift Activities Handbook Section 110, Capital Stock and Ownership. This revised handbook section includes a new section on mutual associations that differentiates them from stock associations, particularly by discussing member rights and ownership differences.

- Thrift Activities Handbook Section 430, Operations Analysis. This revised handbook section includes: a new section on the importance of capital for mutual associations; information on

¹ 12 U.S.C. 1464(a), (i) and (p) and 1467a(o).

² 65 FR 43088.

³ 65 FR 43092.

Return On Assets (ROA) for all savings associations; a new section on evaluation of earnings in different structures (mutual associations, stock associations, subchapter S corporations, Internet operations); and information on the new mutual-only ratios in the Uniform Thrift Performance Report (UTPR) and how examiners can appropriately compare mutual and stock associations so that peer groups are more appropriate.

The revised examination procedures will improve supervision of mutual associations. They will be targeted more directly to the quality of operations, risk management, capital needs and formation, and internal controls, enabling examiners to gauge the overall financial condition of mutual associations more effectively. OTS is changing its off-site monitoring systems to allow examiners to conduct financial analyses for mutual institutions by comparing them with mutual institutions instead of stock institutions.

In addition, for mutual associations seeking to augment their capital base, OTS is exploring the feasibility and utility of various capital-raising alternatives, such as the use of subordinated debt instruments, mutual capital certificates, non-withdrawable accounts, trust preferred securities, and other financing transactions.

III. Summary of Comments

OTS received 46 comment letters on the First Proposal and the Interim Rule. Three were requests to extend the comment period.⁴ Five individuals, ten law firms, 14 thrifts, 15 trade groups, and the Federal Deposit Insurance Corporation (FDIC) submitted comments. OTS participated in meetings on the regulations sponsored by America's Community Bankers on September 12 (attended by 24 attorneys), September 28 (conference telephone call with representatives from 45 mutual institutions, two outside counsel, representatives of the FDIC and the Board of Governors of the Federal Reserve System (Federal Reserve)), and November 3 (with representatives of the FDIC and the Federal Reserve). OTS also held focus group meetings with executives from mutual savings associations in Washington on January 8, 2001, and in Boston on February 26, 2001, to listen to the views of mutual institutions on specific questions raised in the preamble to the proposed regulation. Issues raised by commenters

are discussed in the item-by-item summary below.

IV. Item-by-Item Summary

A. General

The greatest number of comments on the First Proposal and the most substantial concerns expressed by the commenters involved the business plan, Regional Office non-objection to the business plan, and the pre-filing meeting requirements. While the Re-proposal requires pre-filing meetings, in response to the comments, OTS has revised when pre-filing meetings must be held and has eliminated the requirement to obtain OTS non-objection to conversion business plans before filing. Similarly, OTS has revised the business plan standards to be addressed by converting associations and considered in OTS review in response to the comments.

B. Pre-filing Meeting

Under the First Proposal, OTS would have required each association contemplating a conversion to meet with the appropriate Regional Office, in a pre-filing meeting, to discuss the proposed business plan. The board of directors, or a committee of the board including outside directors, were encouraged to attend the meeting. The association would then have submitted the proposed business plan at least 30 days prior to submitting its conversion application, and would have needed to receive the non-objection of the Regional Director to the business plan before submitting either an application to convert to stock form or a notice to reorganize to MHC form if the reorganization included a stock issuance.

A number of commenters opposed the pre-filing meeting in its entirety, although two commenters, both regulators, supported such meetings. One commenter suggested that depositors, consumer advocates, or other interested parties be invited to the pre-filing meeting. Several commenters opposed both the pre-filing meeting and the pre-approval of the business plan as intrusive and a source of unnecessary delay and expense. A number of commenters thought OTS was requiring the whole board to attend the pre-filing meeting at the Regional Office with all of the costs of attending such a meeting falling on the association.

It has been OTS' normal practice to discuss a savings association's conversion plans with the board of directors. Therefore, a pre-filing meeting does not result in any additional burden. In response to the concerns

expressed by the commenters about the expense of the meeting, OTS notes that, if the board desires, OTS will send a representative from the Regional Office to the association to meet with the board of directors. To ensure that such a meeting occurs early in the process, however, OTS expects to meet with the board of directors at least ten days prior to the passage of a Plan of Conversion or Plan of Reorganization. At that time, OTS would expect the board of directors to have prepared a short, written strategic plan for OTS to review and discuss with the board at the meeting. OTS reiterates that the purpose of this meeting is not to substitute the agency's judgment for that of the directors. OTS merely proposes to require the board to articulate its plans for the association and the implications of those plans before any process actually begins and before the institution spends significant funds.

C. Prior OTS Non-Objection to Business Plan

The First Proposal provided that applicants could not submit a conversion application until the converting association had submitted, and OTS had advised the association that it had not objected to, the association's business plan. Many commenters objected to this requirement, asserting that the requirement added delay and expense to the conversion process, was unduly burdensome, or gave the Regional Director the ability to prevent a conversion if the Regional Director disagreed with the business plan.

Although OTS does not believe the prior non-objection requirement would be as burdensome in practice as anticipated by certain commenters, the Re-proposal does not require OTS non-objection to the business plan prior to an association filing a conversion application. Under the Re-proposal, business plans must be filed at the time a conversion application is submitted, or the application will be rejected as materially deficient. As a practical matter, however, OTS strongly encourages submission of business plans before the application filing to help ensure timely approval of the conversion application.

D. Business Plan Standards

The First Proposal provided that a converting association's business plan must, among other things: (i) Clearly and completely describe projected operations, including the deployment of conversion proceeds; (ii) demonstrate that the plan of conversion will substantially serve to meet credit and

⁴ On October 10, 2000, OTS extended the comment period on the two regulations from October 10, 2000 to November 9, 2000. 65 FR 60123.

lending needs in the proposed market area; (iii) demonstrate a reasonable need for new capital to support projected operations and activities; (iv) describe the association's experience with prior growth, expansion, or other activities similar to those proposed in the business plan; (v) describe the risks associated with the plan; (vi) demonstrate adequate expertise and staffing to manage growth prudently; and (vii) demonstrate that the association will achieve a reasonable return on equity. The First Proposal also provided that the association could not project stock repurchases, returns of capital, or extraordinary dividends in the business plan.

All commenters who discussed the business plan opposed the proposed business plan requirements. Four commenters supported the concept of business plan guidance in the regulations but were opposed to the specific guidance OTS provided. The various commenters asserted: (i) The creation of a business plan is management's responsibility, and OTS should not second-guess management, further, a limited number of commenters questioned OTS's authority to impose business plan standards; (ii) business plans based on Return On Equity (ROE) are inappropriate and would not work for most associations, and the proposed ROE criterion would have caused 85 percent of conversions prior to 2000 to be disapproved; (iii) it is inappropriate for OTS to determine how much capital must be invested in what type of community development activities; (iv) the business plan standards were seriously flawed, unattainable, arbitrary, unrealistic, or protectionist; (v) the business plan created a "needs" test for conversions; (vi) the First Proposal would chill management decision making; (vii) the First Proposal would create a moratorium on conversions; (viii) the First Proposal would cause unnecessary delays or would be unduly burdensome; (ix) the business plan requirements would penalize associations in slow growth areas, would not work for small thrifts, would prejudice capital raising, or ignore investor needs; (x) the business plan disallows use of stock repurchases as a legitimate business management tool, which is inconsistent with the Interim Rule eliminating restrictions on repurchases during the second and third years after conversion; (xi) the First Proposal penalizes management for lack of experience; and (xii) the First Proposal lacks flexibility.

Neither the First Proposal nor the Re-proposal were intended to create a "needs" test or a moratorium on

conversions, and in OTS' view, the regulations do not establish such a test or impose a moratorium. As to the comments regarding OTS' conversion authority in general, OTS has for decades had significant regulations governing all aspects of the conversion process, and the HOLA explicitly provides that "conversions shall be subject to such regulations as the Director shall prescribe."⁵

OTS, as the safety and soundness regulator of savings associations, believes the specific requirements are appropriate to ensure that an association contemplating such a significant transaction, with considerable ramifications regarding capital, management, and business operations, has considered the consequences of the transaction in its business plan.

Accordingly, the Re-proposal continues to include a business plan requirement, and sets forth the factors OTS will consider in evaluating business plans.⁶

Several of the comments demonstrate that commenters believed the various factors in the First Proposal were separate standards that had to be satisfied for approval of a conversion. The Re-proposal clarifies that OTS will weigh all of the factors together, and no single factor will determine whether a business plan is acceptable. For example, lack of management experience with past growth will not be as significant if the business plan demonstrates realistic deployment of the conversion proceeds for new growth, such as enhancing ways to meet increased credit and lending needs in the market.

OTS recognizes that commenters were concerned about reliance on ROE as a test to determine whether to approve a business plan. OTS reiterates that in evaluating ROE as a factor in the business plan, ROE in the first years after conversion will not be given as much weight as the association's ROE near the end of the three-year business plan period, when the association has had time to deploy most, if not all of the conversion proceeds.

As for stock repurchases, today's Re-proposal permits stock repurchases to be included in the business plan. A business plan that contemplates stock repurchases as the primary use of new capital, however, will not be regarded favorably. OTS recognizes that some stock repurchases may occur, although the Re-proposal continues to limit stock repurchases in the first year following

conversion. OTS will view a return of capital to shareholders (such as a special dividend) in the first year following conversion to be a material deviation from the business plan that requires the prior written approval of the Regional Director.

E. MHCs and Mutuality

In the preamble to the First Proposal, OTS asked a series of questions about what OTS could do to enhance the attractiveness of the MHC charter. OTS also specifically stated that it encouraged savings associations that were considering conversion to stock form to first carefully consider the choice of an MHC charter as an interim step. In addition, OTS specifically proposed certain changes to the MHC regulations to permit the issuance of additional stock benefit plans, easier voting requirements, and a number of other innovations that OTS thought would enhance the attractiveness of the MHC option. Taken together, these steps appeared to many commenters as expressing an agency bias for the MHC form. Many commenters expressed their disagreement with this perceived agency bias, believed OTS was putting a moratorium on stock conversions, or argued OTS was impinging on the freedom of savings associations to choose their form of charter.

OTS suggestions on enhancing the MHC charter were intended to expand the options available to a mutual association, not to give preference to one form of charter over another.

The MHC is an alternative for mutual associations that are contemplating conversion to stock form. The MHC structure retains the benefits and essential nature of the mutual charter, while providing greater access to capital markets. In addition, in section 401(b) of the GLB Act,⁷ Congress expanded the investment and activities authority of MHCs to include the activities of financial holding companies. OTS amended the MHC regulations to reflect those changes.⁸ OTS is re-proposing significant enhancements to the MHC form to make it a long-term alternative to full conversion.

OTS also continues to encourage mutual associations seeking new capital to seriously consider the MHC form of reorganization with a limited stock issuance, rather than a full conversion. This is a particularly useful alternative for mutual associations that have no immediate plans for deployment of substantial amounts of new capital.

⁵ 12 U.S.C. 1464(i)(1).

⁶ OTS notes that there is no requirement to submit a business plan for an MHC reorganization without a stock issuance.

⁷ Pub. L. 106-102, 113 Stat. 1338 (1999).

⁸ 65 FR 43088, Jul. 12, 2000.

F. Mutual Capital Questions

OTS asked a number of questions in the preamble to the First Proposal regarding capital for mutual associations. OTS observed that mutual associations could currently raise additional capital in a number of ways that did not involve conversion to stock form. These methods included mutual capital certificates, subordinated debt, trust preferred securities, or the formation of real estate investment trusts (REITs). OTS asked if there were other methods of raising capital and why the methods mentioned were not widely used. While no written comments were received on this issue, attendees at the two focus group meetings indicated these methods of raising additional capital were generally considered too expensive for a mutual association to undertake, particularly for smaller associations. OTS is exploring, among other approaches, the possibility of mutual associations participating with other mutual associations in larger capital offerings to reduce the costs.

The preamble to the First Proposal requested comment on whether OTS should issue guidance regarding capital distributions by mutual associations. A number of commenters addressed this issue, all suggesting OTS not issue guidance in this area because they felt this should be a business decision of the association. OTS generally agrees and, therefore, OTS does not propose to issue guidance on capital distributions by mutual associations as part of this proposal.⁹

G. Stock Repurchases

In the Interim Rule, OTS revised its regulations to eliminate restrictions on stock repurchases by converted savings associations after the first year following conversion. The rule change was made in part to bring OTS policy closer to that of the FDIC on this subject. Several commenters expressed appreciation that the rules of the two agencies would now be similar. Almost all the other commenters on this issue supported OTS changes, although one commenter suggested repurchase limitations should be eliminated completely. A number of the commenters suggested that there should be no restrictions on repurchases for associations completing second step stock conversions, because those companies had been public for some period of time prior to full conversion to stock form.

The Re-proposal is consistent with the Interim Rule. See §§ 563b.510 and

563b.515. OTS is also re-proposing corresponding amendments to the MHC regulations at § 575.11(c). In response to the comment that associations that engage in second step stock conversions should receive different treatment, OTS believes that fully converted companies should receive the same treatment whether they reach that status in one step or two. In addition, OTS believes it is in the best interest of applicants to have similar treatment of stock repurchases among the agencies regulating the conversion process.

As a matter of policy, OTS has taken the position that stock repurchases for management benefit plans that have been ratified by shareholders in the first year following conversion do not count toward the repurchase limitations in § 563b.3(g). The Re-proposal, at new § 563b.510, clarifies this point. However, OTS would still require prior notification of any repurchases in the first year following conversion, even if they are not subject to OTS approval under the repurchase limitations. One commenter inquired whether a stock repurchase more than one year after conversion would require Regional Director approval as a material deviation from the business plan. OTS believes that it may constitute a material deviation, depending on what the business plan disclosed. However, current MHC regulations permit purchases of stock in the open market for tax-qualified or non-tax-qualified employee stock benefit plans to be excluded from the repurchase limitations.¹⁰ The Re-proposal will extend this exclusion from the repurchase limitations to fully converted companies. OTS notes that the FDIC permits purchases for employee stock benefit plans to be excluded from the repurchase limitations for fully converted companies.

H. Dividend Waivers

The Interim Rule revised OTS policy on dividend waivers for MHCs. Prior OTS policy had adjusted exchange ratios for excessive dividends in conversions of MHCs to stock form. No adjustment is now required, and § 575.11(d)(3) was amended to reflect this change in OTS policy. Most commenters supported this change in OTS policy although two opposed the change because of the potential conflict of interest for directors and officers making the decision to waive or not waive dividends. The Re-proposal is unchanged from the Interim Rule. OTS believes there is always a potential

conflict of interest for directors and officers who make financial decisions where they may personally benefit. OTS may take enforcement action if it discovers wrongdoing. OTS notes that the waiver of dividends results in more capital at the savings association, enhancing the safety and soundness of the savings association.

I. Charitable Organizations

The First Proposal included provisions regarding the establishment of a charitable organization in connection with a mutual-to-stock conversion. The provisions included discussing the purpose of the charitable organization, voting foundation shares in the same ratio as all other shares voted on proposals considered by shareholders, reserving board seats for an independent director and a director from the association, and dealing with conflicts of interest. The Re-proposal also specifies the conditions for approval including examination by OTS at foundation expense, submission of annual reports, and compliance with all laws necessary to maintain the foundation's tax-exempt status.

All commenters on this aspect of the First Proposal were in favor of the proposed regulations, although one commenter thought OTS should require a separate vote of the minority shareholders to establish a foundation in second step conversions. OTS already requires a separate minority shareholder vote in such transactions and has included that requirement in the Re-proposal. One commenter asserted that 10–25% of the proceeds from every mutual-to-stock conversion should be required to be placed in a charitable organization. OTS does not believe it is a regulatory function to determine the amount of proceeds that must be placed in a charitable organization. In response to the comments, OTS has included the charitable organization provisions in the Re-proposal, and proposes several technical amendments suggested by one commenter to clarify that annual reports and the percentage of contributed proceeds must comply with the Internal Revenue Code (IRC). Upon effectiveness of a final regulation, waivers from certain provisions in the current conversion regulations now routinely requested in a conversion with a charitable foundation would no longer be necessary.

OTS takes this opportunity to state that in situations where a foundation becomes a holder of more than 10% of an institution's common stock, *e.g.*, if the institution repurchases stock, causing the foundation's ownership percentage to increase, OTS will

⁹ Any capital distribution by mutual associations remains subject to the capital distribution regulations at 12 CFR part 563, subpart E.

¹⁰ See 12 CFR 575.11(c)(1)(iv).

consider waivers of the Control Regulations, 12 CFR part 574 and the concerted action presumptions in those regulations.

J. Policy on Acquisitions

Current OTS regulation § 563b.3(i)(3) provides that no person or company may acquire more than 10 percent of any class of equity security of a recently converted association for three years following conversion without OTS approval. OTS enacted this rule principally to provide a reasonable period of time for a recently converted association to deploy its new capital prudently according to the plan described in the offering documents, to acclimate to operating as a public company, and to do both without the distraction of considering takeover proposals. (See approval standards at current § 563b.3(i)(5) or proposed § 563b.525(d).)

In the First Proposal, OTS noted that it intended to closely review applications under the existing standards to make sure all criteria are fully met before approving acquisitions within the first three years following conversion.

A number of commenters suggested that the OTS statement that it intended to implement its current regulation was inappropriate, that these decisions were the responsibility of the board of directors, not the regulator, and that a three-year restriction on acquisitions was too inflexible. Three commenters thought OTS should implement a five-year restriction on acquisitions. After considering the comments, for the reasons stated above, OTS is re-proposing the regulation as originally proposed.

K. Demand Account Holders

In the First Proposal, OTS proposed to allow demand account holders to be considered eligible account holders for purposes of determining subscription rights in a conversion. Many applicants incorrectly believe that demand account holders are already eligible account holders. Others have requested OTS waivers to allow demand account holders to be included in the subscription. OTS routinely granted the waivers. In order to end the confusion regarding this issue, OTS proposed revising the regulations to include demand account holders in the subscription priorities. None of the commenters objected to this provision. OTS has included the original proposal in this Re-proposal.

L. Management Stock Benefit Plans

In the First Proposal, OTS proposed changing the regulations to allow for accelerated vesting for management stock benefit plans in the event of a change of control. Currently, the regulations only allow acceleration for death or disability. Most commenters in this area agreed with this change, although three suggested OTS add retirement at least one year following conversion as another reason for allowing acceleration.

The Re-proposal is unchanged from the First Proposal. OTS believes that it is appropriate that the bases for acceleration, such as death, disability, or change of control of the savings association, not be within the individual's control. Therefore, the Re-proposal does not provide for accelerated vesting based on retirement.

One commenter suggested that because the National Association of Securities Dealers Automated Quotation system (NASDAQ) requires a vote for certain stock benefit plans, OTS did not need to duplicate that requirement.¹¹ OTS notes, however, that not all converting associations and MHCs engaging in stock issuances are listed on the NASDAQ. Smaller associations, in particular, cannot meet NASDAQ listing requirements. Therefore, OTS believes it is appropriate to continue to include voting requirements in OTS regulations. Several commenters suggested that OTS should follow NASDAQ voting requirements (a majority of those voting at a legally called meeting) to approve benefit plans. OTS believes, however, that a majority of shareholders (not merely a majority of those voting) must ratify stock benefit plans because issuance of stock to such plans dilutes their ownership interests. OTS notes that while NASD Rule § 4350 requires shareholder ratification of certain stock benefit plans, OTS currently requires shareholder ratification of plans adopted only within the first year following conversion. The First Proposal revised the section on management benefit plans to clarify that an association must present to shareholders for ratification any material amendments to previously approved management recognition plans, stock option plans, or other benefit plans that occur more than one year after conversion and that are inconsistent with the regulation. One

¹¹ See NASD Manual & Notices to Members, § 4350(i), *Qualitative Listing Requirements for Nasdaq National Market and Nasdaq SmallCap Market Issues Except for Limited Partnerships traded on the Nasdaq National Market, Shareholder Approval* (2001).

commenter objected to this proposed revision as overly intrusive. However, OTS believes the regulation is an appropriate measure of regulatory oversight and is re-proposing it as proposed.

To reduce burden, the First Proposal had proposed a possible check-off box on stock order forms to vote for or against stock benefit plans, when purchasing stock in MHC stock issuances. One of the commenters pointed out that a check-off box would violate NASD rules requiring NASD notification for stock benefit plans.¹² Accordingly, the Re-proposal does not include that feature of the First Proposal.

While most commenters supported expansion of option plan opportunities for MHCs, several commenters were opposed to any options for management based on conflicts of interest or a view that benefit plans were a way for management to enrich itself. One commenter suggested management benefit plans should be limited to 2% of the stock issued. In response to those comments, OTS is adding a clarification to the Re-proposal that OTS will not approve management benefit plans that in the aggregate award more than 25% of the number of shares ultimately issued in the public offering to minority shareholders. The 25% restriction does not include ESOP shares allocated to managers. OTS believes management benefit plans that are reasonable, present no safety or soundness concerns, and are ratified by the shareholders, are not objectionable. Most companies use such plans to attract qualified executives and to reward management for performing well. Therefore, OTS is re-proposing most of the proposed changes except as noted above. One commenter asked if treasury stock could be used to fund benefit plans. OTS allows treasury stock to be used for this purpose.

OTS received no comments on the First Proposal's revisions to the regulations to clarify that OTS will allow dividend equivalent rights, dividend adjustment rights, or other similar provisions that permit cash payments, adjustment of the number of shares, or exercise price of options as a result of stock dividends or splits, in management recognition plans, stock option plans, or other stock benefit plans. OTS is including these revisions in the Re-proposal. OTS does not believe these types of provisions, which are common in option plans, unduly

¹² See NASD Manual & Notices to Members, § 4310(c)(17), *Qualification Requirements for Domestic and Canadian Securities* (2001).

benefit recipients, as long as these provisions do not violate OTS vesting requirements or pricing requirements for options. *See* proposed § 563b.500.

OTS also proposes to add a provision that clarifies a supervisory policy requiring exercise or forfeiture of stock benefits in certain circumstances, such as if an association becomes critically undercapitalized. *See* proposed § 563b.500.

M. Holding Company Proceeds

The First Proposal stated that at least 50% of the gross proceeds in a mutual-to-stock conversion must be infused into the converting savings association, and more must be infused if OTS concludes, for supervisory reasons, that a larger capital infusion is necessary. The First Proposal inadvertently referenced 50% of gross proceeds, instead of net proceeds. The Re-proposal clarifies that 50% of the net proceeds must be infused into the savings association. One commenter suggested that all the proceeds should go to the savings association. Several others suggested OTS should maintain more flexibility and make a determination on an acceptable amount of proceeds retained by the holding company, based upon what the business plan proposed. OTS has determined that the 50% limitation works well, but will examine every conversion on a case-by-case basis to determine if the limitation is appropriate in that case.

N. Mutual Holding Company Revisions

1. General

The Interim Rule revised the MHC regulations in accordance with the GLB Act and revised OTS treatment of MHC dividend waivers. The First Proposal included changes to the MHC regulations conforming to changes made to the conversion regulations. In the First Proposal, OTS also proposed to increase the size of stock benefit plans that associations (or mid-tier holding companies) under the MHC format could enact. Most commenters were in favor of this idea although two opposed any benefit plans for management. OTS is re-proposing the changes as proposed, with certain technical revisions, and with the additional 25% limitation discussed earlier. One commenter asked OTS to clarify that the proposed rules, if finalized, would apply to existing MHCs. In response to that comment, OTS takes this opportunity to indicate that the Re-proposal, if finalized, will be applicable to future stock issuances by existing associations or mid-tier holding companies in the MHC format. OTS will

also permit the use of repurchased shares to attain the new limits.

In the First Proposal, OTS also proposed allowing the adoption of additional stock option plans without the need to issue stock to all categories of subscribers. The Re-proposal retains this provision. OTS notes that adoption of additional plans still requires filing an application with OTS, registering additional stock where appropriate, and shareholder ratification of additional plans. Among the factors OTS will consider when reviewing additional plans are the purpose for creating the additional plans, management ratings, or supervisory problems at the converted savings association. As noted earlier, commenters were in favor of a check-off approval for benefit plans, but OTS is not re-proposing this item because of the NASD rule restrictions.

Three commenters urged OTS to change its policy on the chartering of savings association subsidiaries of MHCs, or holding companies inserted in between MHCs and their savings association subsidiaries (Mid-tiers). Currently Mid-tiers must be chartered by OTS. The commenters argued that regular holding companies are state-chartered, so Mid-tiers should also be state-chartered. OTS notes, however, that Mid-tiers are MHCs, and MHCs, by statute, must be federally chartered.¹³ One commenter asked if OTS would allow Mid-tiers to adopt limited liability bylaws. Although such institutions are federally chartered, OTS has allowed the adoption of limited liability bylaws on a case-by-case basis for other federal associations and, therefore, would consider this for Mid-tiers.

OTS also asked for comments on the possibility of not requiring a vote of the members for a simple reorganization to MHC form, without a stock issuance. Nine commenters favored such a change and three opposed it. OTS believes such a change may be beneficial to associations considering a charter change to MHC form, but believes a statutory change is necessary to accomplish this objective. OTS will consider seeking statutory changes in this area.

One commenter asked if OTS would consider an abbreviated application for MHC reorganizations without a stock issuance. OTS already allows abbreviated applications for such reorganizations. These applications, however, are subject to the Bank Merger Act, which contains statutory time frames.

¹³ *See* 12 U.S.C. 1467a(o)(7).

2. Acquisitions of Mutual Holding Company Structures

Recently, companies in several MHC structures have entered into transactions, or have received offers to enter into transactions, in which an unrelated mutual savings association, mutual savings bank, or MHC would acquire the target MHC, mid-tier holding company, and subsidiary association. In these transactions, the mid-tier association's minority shareholders have been offered cash, and the majority mutual interest would become part of the acquiring mutual entity. Some of these transactions have been friendly, and others have been hostile acquisition proposals. In the context of these transactions, MHCs and their subsidiary entities have asked: (i) whether mid-tier holding companies (or, if there is no mid-tier holding company, the subsidiary savings association) may adopt the pre-approved charter provisions set forth at 12 CFR 552.4(b)(8), such as the charter provision prohibiting acquisitions of, and offers to acquire, more than ten percent of any class of equity security of the entity for five years; and (ii) whether OTS applies 12 CFR 563b.3(i)(3) to savings association subsidiaries or mid-tier holding companies that have issued stock within the previous three years.

The purposes of the regulatory post-conversion acquisition restriction at 12 CFR 563b.3(i)(3) and the charter provisions in 12 CFR 552.4(a)(8) are to provide recently converted associations a period of time in which to deploy conversion proceeds into productive assets, to permit management to focus on the task of investing conversion proceeds and managing their institution, and to protect against acquisition efforts that may have the potential to disrupt operations in the critical time period after conversion.¹⁴ In addition, the charter provisions are designed to allow converted associations more discretion in managing their affairs.¹⁵

Recently completed or proposed transactions have demonstrated that takeover pressures now exist in the context of MHC structures. Minority stockholders have sought to pressure MHC structures to be acquired by mutual institutions or other MHC structures. In light of recent takeover attempts, and particularly in light of the hostile situations that have developed, OTS has determined to allow the post-

¹⁴ *See, e.g.,* Federal Home Loan Bank Board (FHLBB) Resolution No. 85-80 (Jan. 31, 1985), Resolution No. 84-400 (Aug. 2, 1984), Resolution No. 84-90 (Feb. 23, 1984), and Resolution No. 76-848 (Nov. 10, 1976).

¹⁵ FHLBB Resolution No. 84-90 (Aug. 2, 1984).

conversion anti-takeover restrictions in the charter of a mid-tier stock holding company. These restrictions would be consistent with the purposes of those provisions generally and give a newly converted MHC time to deploy its new capital and adjust to managing its institution in the MHC environment.¹⁶

Accordingly, OTS is allowing mid-tier holding companies to include the provisions set forth at 12 CFR 552.4(b)(8) in their charters. In addition, OTS proposes to apply § 563b.3(i)(3) to mid-tier holding companies and subsidiary stock institutions that complete initial stock offerings under § 575.7. OTS requests comment on whether it should apply § 563b.3(i)(3) in the context of Mid-tiers and MHC savings association subsidiaries.

3. "Second Step Conversions" of MHCs

Section 575.12 of the MHC regulations generally governs the conversion of MHCs to stock form (frequently called "second step conversions"). In all such transactions to date, OTS staff has required that the majority of the minority shares of the Mid-tier or savings association subsidiary, as the case may be, vote in favor of the second step conversion, in addition to votes otherwise required. OTS staff has imposed this requirement because the minority shareholders received different treatment in the second step conversion than the majority interest. The minority shareholders received stock in an amount to be determined under an "exchange ratio", while the majority interest (the mutual depositors) received rights to subscribe to the remaining shares to be issued in the transaction, at the offering price. OTS staff concluded that the requirement was appropriate in order to help ensure the fairness of the transaction. OTS proposes to include this requirement, which has been applicable to every second step conversion to date, in the MHC regulations, at 12 CFR 575.12(a)(3).

O. Supervisory Conversions

To conform the language in OTS regulations more closely to sec. 5(o) of the HOLA, the statute governing supervisory conversions, OTS proposed certain changes to the regulatory language regarding Voluntary Supervisory Conversions. The revised language can be found at §§ 563b.625 and 563b.630 of the Re-proposal.

P. Merger Conversions

One commenter requested OTS to address whether there is any change in OTS policy on merger conversions. OTS policy on merger conversions was articulated in the preamble to the OTS conversion regulation of 1994, 59 FR 61247, 61254, Nov. 30, 1994. In that regulation, OTS stated that it would limit merger conversions to cases involving financially weak institutions. In addition, OTS indicated it would consider allowing merger conversions where a converting institution could demonstrate by clear and convincing evidence that a standard conversion would not be economically feasible, based on the ratio of expenses to gross proceeds, because of the asset size of the institution.¹⁷

In the last eight years OTS has approved only one merger conversion. That approval was based on the criteria articulated in the 1994 regulation. OTS reiterates the guidelines it established in the 1994 regulation and wishes to clarify that institutions proposing merger conversions should not propose plans where management of the disappearing institution would receive anything more than they could if they had undertaken a standard conversion. In addition, institutions contemplating a merger conversion must demonstrate a merger conversion is the only viable alternative, and document what other proposed solutions the company pursued, that the proposed distribution of assets is fair to all parties, and that the institution used independent counsel to represent the interests of the institution.

Q. Plain Language

The First Proposal converted OTS rules on mutual-to-stock conversions into a plain language format. All six commenters who addressed this change commented favorably. One commenter asked if OTS intended to make the same changes to the MHC regulations. OTS intends to make similar changes to the MHC regulations in a future project.

R. Miscellaneous Revisions

In addition to the revisions described above, the First Proposal proposed a number of miscellaneous revisions to filing and other requirements. OTS received no comments on these revisions and is re-proposing them as originally proposed. The miscellaneous changes will:

- Revise the definition section of the regulation to include only those definitions that are not defined elsewhere in OTS regulations, or to move specific definitions to the appropriate section of the regulation. See proposed § 563b.25.

- Reduce the number of copies of applications that a savings association must file with OTS from ten to seven. See proposed § 563b.155.

- Revise the filing requirements to coordinate the place of filing and number of copies filed, for the application for conversion and any amendments to the application for conversion. See proposed §§ 563b.115, 563b.155, 563b.180, and 563b.185.

- Codify the current informal standard requiring a legal opinion indicating that any marketing materials comply with all applicable securities laws. See proposed § 563b.150.

- Delete the requirement for a legal opinion regarding insured accounts. See proposed § 563b.100, Exhibit 3(d).

One commenter also asked for clarification on whether community offerings must occur in conversions. If all the stock is sold in the subscription phase of a conversion, a community offering is unnecessary. Another commenter asked if transfer restrictions applied in second step stock conversions. Transfer restrictions apply to newly purchased stock in second step stock conversions, but not to exchange shares presuming the appropriate transfer restriction time frames have already expired.

S. Forms

The First Proposal contained revisions to all of the forms currently in the conversion regulations, and drafted a new form that facilitates the conversion process (Form OF for the Order Form). In drafting these forms, OTS moved a number of requirements currently in the regulations to the related forms. OTS received one comment on the forms with some minor technical suggestions for revisions. OTS concurs with some of the technical revisions and has revised the forms accordingly. The forms will continue to be available through OTS Washington and Regional Offices and will be accessible on OTS's website.

V. Disposition of Existing Rules

¹⁶ The MHC regulations provide that the procedural and substantive requirements of 12 CFR 563b.3 through 563b.8 apply to all MHC stock issuances under § 575.7 unless clearly inapplicable.

In the past, OTS staff has informally advised certain acquirors that it has not considered § 563b.3(i)(3) to be clearly applicable in the MHC context.

¹⁷ See 59 FR 61247, at 61255. OTS gave an example of institutions with assets of less than \$25 million as more likely to be able to establish a justification for doing a merger conversion.

Original provision	Re-proposed provision	Comment
12 CFR 563b.1	12 CFR 563b.5	Nonsubstantive revision, moved.
12 CFR 563b.2(a)	12 CFR 563b.25	Substantive revisions, deletions, and moved.
12 CFR 563b.2(b) .....	.....	Deleted.
12 CFR 563b.3(a)	12 CFR 563b.5(a)	Nonsubstantive revision, moved.
12 CFR 563b.3(b)	12 CFR 563b.200(a)	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(1)	12 CFR 563b.330(a)	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(2)	12 CFR 563b.355(a)	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(2)(i)–(ii)	12 CFR 563b.375(a), (d)	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(3)	12 CFR 563b.360	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(4)	12 CFR 563b.335(b), (c)	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(4)(i)	12 CFR 563b.320(c)	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(4)(ii)	12 CFR 563b.375(c)	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(4)(iii)	12 CFR 563b.375(b)	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(4)(iv)	12 CFR 563b.375(d)	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(5)	12 CFR 563b.320(d), 365	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(6)	12 CFR 563b.320(e), 335(b), (d)	Nonsubstantive revision, deletions, and moved.
12 CFR 563b.3(c)(6)(i)	12 CFR 563b.385(a), (c), 380(a)	Substantive revision, deletions, and moved.
12 CFR 563b.3(c)(6)(ii)–(iii)	12 CFR 563b.395	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(6)(iv)	12 CFR 563b.390(b)	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(7)	12 CFR 563b.385(a), (c)	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(8)	12 CFR 563b.370	Nonsubstantive revision, deletions, and moved.
12 CFR 563b.3(c)(9)	12 CFR 563b.505(d)	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(10)	12 CFR 563b.330(a), 335(b)	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(11)	12 CFR 563b.420(a)	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(12)	12 CFR 563b.445(a)	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(13)	12 CFR 563b.430(d), 445(b), 465, 485	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(14)	12 CFR 563b.25	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(15)	12 CFR 563b.440, 445(c)	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(16)	12 CFR 563b.140, 425	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(17)	12 CFR 563b.505(a)	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(18)	12 CFR 563b.505(b)–(c)	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(19)	12 CFR 563b.530(a)–(c)	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(20)	12 CFR 563b.150(b)	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(21)	12 CFR 563b.130	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(22)	12 CFR 563b.345(b)	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(23)	12 CFR 563b.320(a)–(d), 380(a)–(c)	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(24)	12 CFR 563b.520(a)–(b)	Nonsubstantive revision, moved.
12 CFR 563b.3(d)(1)–(7) .....	.....	Deleted.
12 CFR 563b.3(d)(8)	12 CFR 563b.385(a)	Nonsubstantive revision, moved.
12 CFR 563b.3(d)(9)	12 CFR 563b.385(b)	Nonsubstantive revision, moved.
12 CFR 563b.3(d)(10)–(11) .....	.....	Deleted.
12 CFR 563b.3(d)(12)	12 CFR 563b.390(a)	Nonsubstantive revision, moved.
12 CFR 563b.3(d)(13) .....	.....	Deleted.
12 CFR 563b.3(e)(1)	12 CFR 563b.25	Nonsubstantive revision, moved.
12 CFR 563b.3(e)(2) .....	.....	Deleted.
12 CFR 563b.3(f)(1)	12 CFR 563b.445(b), 450, 455, 480	Nonsubstantive revision, moved.
12 CFR 563b.3(f)(2)	12 CFR 563b.445(b), 450	Nonsubstantive revision, moved.
12 CFR 563b.3(f)(3)	12 CFR 563b.470(e), 475	Revision with partial deletion, moved.
12 CFR 563b.3(f)(4)	12 CFR 563b.460	Nonsubstantive revision, moved.
12 CFR 563b.3(f)(5)	12 CFR 563b.470(a)–(d)	Nonsubstantive revision, moved
12 CFR 563b.3(g)(1)	12 CFR 563b.510	Revision with deletion, moved.
12 CFR 563b.3(g)(2)	12 CFR 563b.510, 520(a)	Nonsubstantive revision, moved.
12 CFR 563b.3(g)(3)	12 CFR 563b.510, 515	Substantive revision with deletion, moved.
12 CFR 563b.3(g)(4)	12 CFR 563b.500	Substantive revision, moved.
12 CFR 563b.3(h)	12 CFR 563b.340(a)	Nonsubstantive revision, moved.
12 CFR 563b.3(i)(1)–(2)	12 CFR 563b.340(b)(1)	Nonsubstantive revision, moved.
12 CFR 563b.3(i)(3)(i)	12 CFR 563b.525	Nonsubstantive revision, moved.
12 CFR 563b.3(i)(3)(ii)	12 CFR 563b.420(b)	Nonsubstantive revision, moved.
12 CFR 563b.3(i)(3)(iii)	12 CFR 563b.525(b)	Nonsubstantive revision, moved.
12 CFR 563b.3(i)(4)(i) .....	.....	Deleted.
12 CFR 563b.3(i)(4)(ii)–(iv)	12 CFR 563b.525(c)(1)–(3)	Nonsubstantive revision, moved.
12 CFR 563b.3(i)(4)(v)	12 CFR 563b.525(c)(4)	Nonsubstantive revision, moved.
12 CFR 563b.3(i)(4)(vi)–(5)	12 CFR 563b.525(d)(1)–(2)	Nonsubstantive revision, moved.
12 CFR 563b.3(i)(6)	12 CFR 563b.430(a), (b)	Nonsubstantive revision, moved.
12 CFR 563b.3(i)(7)(i)–(ii)	12 CFR 563b.25, 525(b)	Nonsubstantive revision, moved.
12 CFR 563b.3(i)(7)(iii)–(iv) .....	.....	Deleted.
12 CFR 563b.3(j)	12 CFR 563b.5(a)	Nonsubstantive revision, moved.
12 CFR 563b.4(a)(1)	12 CFR 563b.120	Nonsubstantive revision, moved.
12 CFR 563b.4(a)(2) .....	.....	Deleted.
12 CFR 563b.4(a)(3)	12 CFR 563b.125	Nonsubstantive revision, moved.
12 CFR 563b.4(a)(3)(i)–(ii), (4)(i)–(xviii)	12 CFR 563b.135(a), (b)	Nonsubstantive revision, moved.
12 CFR 563b.4(a)(4)(xix) .....	.....	Deleted.

Original provision	Re-proposed provision	Comment
12 CFR 563b.4(a)(5)	12 CFR 563b.135(c)	Nonsubstantive revision, moved.
12 CFR 563b.4(b)(1)(i)	12 CFR 563b.180	Nonsubstantive revision, moved.
12 CFR 563b.4(b)(1)(ii)	12 CFR 563b.185	Nonsubstantive revision, moved.
12 CFR 563b.4(b)(2) .....	.....	Deleted.
12 CFR 563b.4(b)(3)	12 CFR 563b.180(b)	Nonsubstantive revision, moved.
12 CFR 563b.4(c)	12 CFR 563b.160	Nonsubstantive revision, moved.
12 CFR 563b.5(a)	12 CFR 563b.250	Nonsubstantive revision, moved.
12 CFR 563b.5(b)–(c)	12 CFR 563b.270(b)	Nonsubstantive revision, moved.
12 CFR 563b.5(d)(1)	12 CFR 563b.255	Nonsubstantive revision, moved.
12 CFR 563b.5(d)(2)	12 CFR 563b.260, 265	Nonsubstantive revision, moved.
12 CFR 563b.5(d)(3)	12 CFR 563b.255(h)	Nonsubstantive revision, moved.
12 CFR 563b.5(d)(4)	12 CFR 563b.260	Nonsubstantive revision, moved.
12 CFR 563b.5(e)(1)–(2)	12 CFR 563b.150, 155	Nonsubstantive revision, deletions, and moved.
12 CFR 563b.5(e)(3)	12 CFR 563b.275(d)	Nonsubstantive revision, moved.
12 CFR 563b.5(e)(4) .....	.....	Deleted.
12 CFR 563b.5(e)(5)	12 CFR 563b.150, 160(a)–(b)	Nonsubstantive revision, moved.
12 CFR 563b.5(e)(6)	12 CFR 563b.275(e)	Nonsubstantive revision, moved.
12 CFR 563b.5(e)(7)	12 CFR 563b.275(c)	Nonsubstantive revision, moved.
12 CFR 563b.5(f)	12 CFR 563b.280	Nonsubstantive revision, moved.
12 CFR 563b.5(g)(1)–(2)	12 CFR 563b.285(a)	Nonsubstantive revision, moved.
12 CFR 563b.5(g)(3)	12 CFR 563b.290	Substantive revision, moved.
12 CFR 563b.5(h)	12 CFR 563b.285(b)	Nonsubstantive revision, moved.
12 CFR 563b.6(a)	12 CFR 563b.225(a)	Nonsubstantive revision, moved.
12 CFR 563b.6(b)	12 CFR 563b.230	Nonsubstantive revision, moved.
12 CFR 563b.6(c)(1)	12 CFR 563b.235	Nonsubstantive revision, moved.
12 CFR 563b.6(c)(2) .....	.....	Deleted.
12 CFR 563b.6(d)	12 CFR 563b.225(d)	Nonsubstantive revision, moved.
12 CFR 563b.6(e)	12 CFR 563b.225(b)–(c)	Nonsubstantive revision, moved.
12 CFR 563b.7(a)(1)	12 CFR 563b.325(a)	Nonsubstantive revision, moved.
12 CFR 563b.7(a)(2)	12 CFR 563b.300(a)	Nonsubstantive revision, moved.
12 CFR 563b.7(a)(3)	12 CFR 563b.325(a)	Nonsubstantive revision, moved.
12 CFR 563b.7(a)(4) .....	.....	Deleted.
12 CFR 563b.7(b)	12 CFR 563b.300(e), 305	Nonsubstantive revision, moved.
12 CFR 563b.7(c)	12 CFR 563b.330	Nonsubstantive revision, moved.
12 CFR 563b.7(d)	12 CFR 563b.200(b)(8), 300(c)–(d), Form OC, Item 3.	Nonsubstantive revision, moved.
12 CFR 563b.7(e)	12 CFR 563b.335(c)	Nonsubstantive revision, moved.
12 CFR 563b.7(f)(1)–(2)	12 CFR 563b.200(b)	Nonsubstantive revision, deletion, and moved.
12 CFR 563b.7(f)(3) .....	.....	Deleted.
12 CFR 563b.7(g)(1)–(2)	12 CFR 563b.335(a), Form OF, Items (1), (2)	Nonsubstantial revisions, deletions, and moved.
12 CFR 563b.7(g)(3), (4), (5)	Form OF, Items (3), (4), (5)	Nonsubstantive revision, moved.
12 CFR 563b.7(h)	12 CFR 563b.345(a), 350(c)	Nonsubstantive revision, moved.
12 CFR 563b.7(i)	12 CFR 563b.400	Nonsubstantive revision, moved.
12 CFR 563b.7(j)	12 CFR 563b.350(a)	Nonsubstantive revision, moved.
12 CFR 563b.7(k)(1)–(2)	12 CFR 563b.405	Nonsubstantive revision, moved.
12 CFR 563b.7(k)(2)(i)–(ii)	12 CFR 563b.310(d)	Nonsubstantive revision, moved.
12 CFR 563b.7(k)(3) .....	.....	Deleted.
12 CFR 563b.7(k)(4)	12 CFR 563b.310(a)	Nonsubstantive revision, moved.
12 CFR 563b.7(k)(5)	12 CFR 563b.310(b)–(d)	Substantive revision, moved.
12 CFR 563b.8(a)	12 CFR 563b.155	Substantive revision, moved.
12 CFR 563b.8(b)(1)–(2)	12 CFR 563b.150	Nonsubstantive revision, moved.
12 CFR 563b.8(b)(3) .....	.....	Deleted.
12 CFR 563b.8(c)(1)–(2)(i)–(ii)	12 CFR 563b.240	Nonsubstantive revision, moved.
12 CFR 563b.8(c)(2)(iii)	12 CFR 563b.260	Substantive revision, moved.
12 CFR 563b.8(c)(3)	12 CFR 563b.300(a), (c)	Substantial revisions, deletions, and moved.
12 CFR 563b.8(d)(1)–(2)	12 CFR 563b.430	Nonsubstantive revision, moved.
12 CFR 563b.8(d)(3)	12 CFR 563b.435	Nonsubstantive revision, moved.
12 CFR 563b.8(e)	12 CFR 563b.115(a), 155, 180(b), Form AC, General Instruction B.	Nonsubstantial revisions, deletions, and moved.
12 CFR 563b.8(f) .....	.....	Deleted.
12 CFR 563b.8(g)	Form AC, General Instruction B	Nonsubstantive revision, moved.
12 CFR 563b.8(h) .....	.....	Deleted.
12 CFR 563b.8(i)–(l)	Form AC, General Instruction B	Nonsubstantive revision, moved.
12 CFR 563b.8(m) .....	.....	Deleted.
12 CFR 563b.8(n)	Form AC, General Instruction B	Nonsubstantive revision, moved.
12 CFR 563b.8(o) .....	.....	Deleted.
12 CFR 563b.8(p)	12 CFR 563b.150(a)(6), Form AC, General Instruction B.	Nonsubstantive revision, moved.
12 CFR 563b.8(q)	Form AC, General Instruction B	Nonsubstantive revision, moved.
12 CFR 563b.8(r)	Form AC, General Instruction B	Substantive revision, moved.
12 CFR 563b.8(s)	Form AC, General Instruction B	Nonsubstantive revision, moved.
12 CFR 563b.8(t)(1)	12 CFR 563b.100	Nonsubstantive revision, moved.

Original provision	Re-proposed provision	Comment
12 CFR 563b.8(t)(2) .....	.....	Deleted.
12 CFR 563b.8(u)	12 CFR 563b.205	Nonsubstantive revisions, deletions, and moved.
12 CFR 563b.8(v)	12 CFR 563b.530(d)	Nonsubstantive revision, moved.
12 CFR 563b.9	12 CFR 563b.10	Nonsubstantive revision, moved.
12 CFR 563b.10	12 CFR 563b.605(b)–(c)	Nonsubstantive revision, moved.
12 CFR 563b.11	12 CFR 563b.200(c)	Nonsubstantive revision, moved.
12 CFR 563b.20	12 CFR 563b.600	Nonsubstantive revision, moved.
12 CFR 563b.21(a)	12 CFR 563b.605	Nonsubstantive revision, moved.
12 CFR 563b.21(b)	12 CFR 563b.650, 610	Nonsubstantive revision, moved.
12 CFR 563b.22 .....	.....	Deleted.
12 CFR 563b.23(a)–(c)	12 CFR 563b.670, 675	Nonsubstantive revision, additions, and moved.
12 CFR 563b.23(d)	12 CFR 563b.690	Nonsubstantive revision, moved.
12 CFR 563b.24(a)–(b)(1), (3)	12 CFR 563b.625(a)(1)	Nonsubstantive revision, moved.
12 CFR 563b.24(b)(2) .....	.....	Deleted.
12 CFR 563b.24(c)	12 CFR 563b.625(b)	Substantive addition, moved.
12 CFR 563b.25	12 CFR 563b.630	Nonsubstantive revision, moved.
12 CFR 563b.26	12 CFR 563b.625(a)(2)	Nonsubstantive revision, moved.
12 CFR 563b.27(a)	12 CFR 563b.650	Nonsubstantive revision, moved.
12 CFR 563b.27(b)	12 CFR 563b.660(f)(1)	Nonsubstantive revision, moved.
12 CFR 563b.27(c)	12 CFR 563b.660(a)(2)	Nonsubstantive revision, moved.
12 CFR 563b.27(d)	12 CFR 563b.660(c)	Nonsubstantive revision, moved.
12 CFR 563b.27(e)	12 CFR 563b.660(g)(2)	Nonsubstantive revision, moved.
12 CFR 563b.27(f)–(g)	12 CFR 563b.660(e)	Nonsubstantive revision, moved.
12 CFR 563b.27(h)	12 CFR 563b.660(f)(2)	Nonsubstantive revision, moved.
12 CFR 563b.27(i)	12 CFR 563b.660(g)(1)	Nonsubstantive revision, moved.
12 CFR 563b.27(j)	12 CFR 563b.660(g)(3)	Nonsubstantive revision, moved.
12 CFR 563b.27(k)	12 CFR 563b.660(g)(4)	Nonsubstantive revision, moved.
12 CFR 563b.27(l)	12 CFR 563b.660(d)(3)	Nonsubstantive revision, moved.
12 CFR 563b.27(m)	12 CFR 563b.660(d)(2)	Nonsubstantive revision, moved.
12 CFR 563b.27(n)	12 CFR 563b.660(d)(1)	Nonsubstantive revision, moved.
12 CFR 563b.27(o)	12 CFR 563b.660(d)(4)	Nonsubstantive revision, moved.
12 CFR 563b.27(p)	12 CFR 563b.660(a)(3)	Nonsubstantive revision, moved.
12 CFR 563b.27(q)–(r)	12 CFR 563b.660(h)	Nonsubstantive revision, moved.
12 CFR 563b.27(s)	12 CFR 563b.660(g)(5)	Nonsubstantive revision, moved.
12 CFR 563b.28	12 CFR 563b.610	Nonsubstantive revision, moved.
12 CFR 563b.29(a)	12 CFR 563b.660	Nonsubstantive revision, moved.
12 CFR 563b.29(b) .....	.....	Deleted.
12 CFR 563b.29(d)(1)–(2)	12 CFR 563b.430	Nonsubstantive revision, moved.
12 CFR 563b.29(d)(3)	12 CFR 563b.435	Nonsubstantive revision, moved.
12 CFR 563b.30	12 CFR 563b.675	Nonsubstantive revision, moved.
12 CFR 563b.31	12 CFR 563b.680	Nonsubstantive revision, moved.
12 CFR 563b.32	12 CFR 563b.670(c)	Nonsubstantive revision, moved.
12 CFR 563b.33	12 CFR 563b.670(d)	Nonsubstantive revision, moved.
12 CFR 563b.100	Form AC—1680	Nonsubstantive revision, moved.
12 CFR 563b.101	Form PS—1681	Nonsubstantive revision, moved.
12 CFR 563b.102	Form OC—1682	Nonsubstantive revision, moved.
.....	12 CFR 563b.15, 20, 105, 110, 115, 165	New provisions.
.....	12 CFR 563b.295	New provision.
.....	12 CFR 563b.550–575	New provisions.
.....	Form OF—1683	New form.

VI. Request for Public Comment

OTS invites comment on all aspects of the Re-proposal. We encourage commenters to suggest modifications to approaches discussed above that could meet OTS's overall goal of improving the conversion process. Because this is a re-proposal, OTS believes the public comment period does not need to be as long as the First Proposal, therefore, OTS is publishing this Re-proposal with a 30-day comment period.

VII. Executive Order 12866

The Director of OTS determined that this Re-proposal does not constitute a

“significant regulatory action” for the purposes of Executive Order 12866.

VIII. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act of 1980 (RFA) requires federal agencies to either prepare an initial regulatory flexibility analysis (IRFA) with this Re-proposal or certify that the rule would not have a significant impact on a substantial number of small entities.¹⁸ OTS cannot at this time determine whether the rule would have a significant impact on a substantial number of small entities.

¹⁸ 5 U.S.C. 605(b).

Therefore, OTS includes the following IRFA.¹⁹

A description of the reasons why OTS is taking this action, and a statement of the objectives of, and legal basis for, the Re-proposal are in the supplementary material above.

1. Small Entities to Which the Re-proposal Would Apply

The Re-proposal applies to mutual savings associations that propose to convert to the stock form of ownership. Under OTS jurisdiction, there are currently approximately 399 mutual

¹⁹ 5 U.S.C. 603(a).

savings associations, 35 publicly traded MHCs, 2 non-publicly traded MHCs, and 27 MHCs with no stock issued. Of these institutions, approximately 239 have less than \$100 million in assets. Small depository institutions are generally defined, for RFA purposes, as those with assets under \$100 million.²⁰ In the past two years, OTS has processed 12 and 10 applications, respectively, to convert from mutual to stock or mutual holding company form. Based on this experience, OTS believes that the Re-proposal affects fewer than 15 savings associations annually.

2. Requirements of the Re-Proposal

The Re-proposal requires mutual savings associations wishing to convert to stock form to prepare a plan of conversion and other supporting forms and documents (such as a business plan and an independent appraisal) and submit the documents for OTS approval. The current mutual-to-stock conversion regulations require all of these documents or information.

The Re-proposal includes a new requirement that a savings association that intends to establish a charitable organization as part of its conversion must supply certain documents and information regarding the charitable organization. Under the current application processing policies, OTS often requires a savings association that intends to establish a charitable organization as part of its conversion to submit the same type of information that the Re-proposal would require. As a result, this new requirement should not have any additional impact on small savings associations.

The Re-proposal also adds demand account holders to the definition of savings account holders, allows accelerated vesting in management benefit plans for changes of control, and clarifies OTS policy regarding the amount of proceeds allowed at the holding company level. None of these provisions, however, should add to the reporting, recordkeeping, or compliance requirements for small entities.

Although it is not clear that the RFA requires a quantitative analysis of the impact of the re-proposed regulatory changes, OTS provides the following estimate. The Re-proposal's primary economic impact on small savings associations relates to the expense of preparing the application to convert. Savings associations wishing to convert must prepare the necessary documents and forms, including a plan of conversion, a business plan, and an appraisal. Preparation of these

documents may require legal or professional help. OTS's experience in the conversion process indicates that savings associations generally hire legal counsel, accountants, marketing agents, and professional appraisers to assist in completion of the necessary documents and forms. Savings associations converting under the current regulations spend approximately \$250,000 to one million dollars each to go through the process. We note that the new requirements will add only 10 hours of additional paperwork in preparation, and may save institutions that decide after preliminary business plan preparation and discussion not to convert significant time and expense. See discussion *infra* at Section IX. The new requirement for information supporting a proposed charitable contribution should not increase these costs appreciably.

3. Significant Alternatives

Section 603(c) of the RFA requires OTS to describe any significant alternatives to the Re-proposal that accomplish the stated objectives of the rule while minimizing any significant economic impact of the rule on small entities. Section 603(c) lists several examples of significant alternatives, including (1) establishing different compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarifying, consolidating, or simplifying compliance and reporting requirements for small entities; (3) using performance standards rather than design standards; and (4) exempting small entities from coverage of the rule or a part of the rule.

After consideration, OTS does not believe that any of these alternatives are feasible. As noted, more than half of the savings associations to which the Re-proposal could apply meet the RFA standard for "small depository institutions." In fact, the conversion process is aimed largely at small institutions that want to raise capital in the open market by converting to the stock form of ownership. Given that the conversion process is designed with small institutions in mind, modifying the requirements for such small institutions is not necessary. Moreover, given that a conversion cannot be measured for performance until it takes place, the use of performance standards rather than design standards is impractical.

To reduce regulatory burden consistent with the goals of this regulation, the Re-proposal specifically permits OTS to waive any requirement under the part where the waiver is equitable and not detrimental to the

savings association, the account holders, or the public interest. This process will provide substantial flexibility to OTS and the savings association to minimize any significant economic impact of a provision on a specific institution.

Nevertheless, OTS requests comments on the burdens associated with the Re-proposal that particularly affect small savings associations, and whether any modifications or exemptions from the rules for small savings associations would be appropriate.

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

X. Paperwork Reduction Act

The information collection requirements contained in the Re-proposal, 12 CFR part 563b, are virtually identical to those included in the July 2000 Proposed Rule on this subject. OTS has modified the forms in only minor ways, but the burden on respondents remains unchanged from those in the earlier rule, which the Office of Management and Budget (OMB) approved under control number 1550-0014. Respondents/recordkeepers are not required to respond to any collection of information unless it displays a currently valid OMB control number.

As part of its continuing effort to reduce paperwork and respondent burden, however, OTS invites the public to comment on the information collections contained in this rule, including the forms included in this publication as appendices.

OTS invites comment on all of the following issues:

- Whether the proposed information collection contained in this Re-proposal is necessary for the proper performance

²⁰ 13 CFR 121.201, Division H (1999).

of OTS's functions, including whether the information has practical utility.

- The accuracy of OTS's estimate of the burden of the proposed information collection.

- Ways to enhance the quality, utility, and clarity of the information to be collected.

- Ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

- Estimates of capital and start-up costs of operation, maintenance, and purchases of services to provide information.

Send comments on these information collections to Information Collection Comments, Attention: 1550-0014, by e-mail to

infocollection.comments@ots.treas.gov; by facsimile transmission to (202) 906-6518; or by mail to Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552. OTS will post comments and the related index on the OTS Internet Site at *www.ots.treas.gov*. In addition, interested persons may inspect comments at the Public Reference Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906-5922, send an e-mail to *publicinfo@ots.treas.gov*, or send a facsimile transmission to Public Information at (202) 906-7755.

List of Subjects

12 CFR Part 563b

Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 574

Administrative practice and procedure, Holding companies, Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 575

Administrative practice and procedure, Capital, Holding companies, Reporting and recordkeeping requirements, Savings associations, Securities.

Accordingly, the Office of Thrift Supervision proposes to amend 12 CFR chapter V, as set forth below:

1. Part 563b is revised to read as follows:

PART 563b—CONVERSIONS FROM MUTUAL TO STOCK FORM

Sec.

563b.5 What does this part do?

563b.10 May I form a holding company as part of my conversion?

563b.15 May I form a charitable organization as part of my conversion?

563b.20 May I acquire another insured stock depository institution as part of my conversion?

563b.25 What definitions apply to this part?

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563b.110 Who must review my business plan?

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Plan of Conversion

563b.125 Must my board of directors adopt a plan of conversion?

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563b.135 How do I notify my members that my board of directors approved a plan of conversion?

563b.140 May I amend my plan of conversion?

Filing Requirements

563b.150 What must I include in my application for conversion?

563b.155 How do I file my application for conversion?

563b.160 May I keep portions of my application for conversion confidential?

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Notice of Filing of Application and Comment Process

563b.180 How do I notify the public that I filed an application for conversion?

563b.185 How may a person comment on my application for conversion?

OTS Review of the Application for Conversion

563b.200 What actions may OTS take on my application?

563b.205 May a court review OTS's final action on my conversion?

Vote by Members

563b.225 Must I submit the plan of conversion to my members for approval?

563b.230 Who is eligible to vote?

563b.235 How must I notify my members of the meeting?

563b.240 What must I submit to OTS after the members' meeting?

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563b.280 Must I mail a member's proxy solicitation material?

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563b.330 How do I price my conversion shares?

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563b.350 Must I pay interest on payments for conversion shares?

563b.355 What subscription rights must I give to each eligible account holder and each supplemental eligible account holder?

563b.360 Are my officers, directors, and their associates eligible account holders?

563b.365 May other voting members purchase conversion shares in the conversion?

563b.370 Does OTS limit the aggregate purchases by officers, directors, and their associates?

563b.375 How do I allocate my conversion shares if my shares are oversubscribed?

563b.380 May my employee stock ownership plan purchase conversion shares?

563b.385 May I impose any purchase limitations?

563b.390 Must I provide a purchase preference to persons in my local community?

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563b.400 When must I complete the sale of my stock?

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Completion of the Conversion

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Contributions to Charitable Organizations

563b.550 May I donate conversion shares or conversion proceeds to a charitable organization?

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563b.565 What must the charitable organization include in its organizational documents?

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Voluntary Supervisory Conversion Application

563b.660 What must I include in my voluntary supervisory conversion application?

OTS Review of the Voluntary Supervisory Conversion Application

563b.670 Will OTS approve my voluntary supervisory conversion application?

563b.675 What conditions will OTS impose on an approval?

Offers and Sales of Stock

563b.680 How do I sell my shares?

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563b.690 Who may not acquire additional shares after the voluntary supervisory conversion?

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 2901; 15 U.S.C. 78c, 78l, 78m, 78n, 78w.

563b.5 What does this part do?

(a) *General.* This part governs how a savings association (“you”) may convert from the mutual to the stock form of ownership. Subpart A of this part governs standard mutual-to-stock conversions. Subpart B of this part governs voluntary supervisory mutual-to-stock conversions. This part supersedes all inconsistent charter and bylaw provisions of federal savings associations converting to stock form.

(b) *Prescribed forms.* You must use the forms prescribed under this part and provide such information as OTS may require under the forms by regulation or otherwise. The forms required under this part include: Form AC (Application for Conversion); Form PS (Proxy Statement); Form OC (Offering Circular); and Form OF (Order Form).

(c) *Waivers.* OTS may waive any requirement of this part or a provision in any prescribed form. To obtain a waiver, you must file a written request with OTS that:

(1) Specifies the requirement(s) or provision(s) you want OTS to waive;

(2) Demonstrates that the waiver is equitable, is not detrimental to you, your account holders or other savings associations, and is not contrary to the public interest; and

(3) Includes an opinion of counsel demonstrating that applicable law does not conflict with the requirement or provision.

§ 563b.10 May I form a holding company as part of my conversion?

You may convert to the stock form of ownership as part of a transaction where you organize a holding company to acquire all of your shares upon their issuance. In such a transaction, your holding company will offer rights to purchase its shares instead of your shares. All of the requirements of subpart A generally apply to the holding company as they apply to the savings association. Section 574.6 of this chapter contains OTS’s holding company application requirements.

§ 563b.15 May I form a charitable organization as part of my conversion?

When you convert to the stock form, you may form a charitable organization. Your contributions to the charitable organization are governed by the requirements of §§ 563b.550 through 563b.575.

§ 563b.20 May I acquire another insured stock depository institution as part of my conversion?

When you convert to stock form, you may acquire for cash or stock another insured depository institution that is already in the stock form of ownership.

§ 563b.25 What definitions apply to this part?

The following definitions apply to this part and the forms prescribed under this part:

Acting in concert has the same meaning as in § 574.2(c) of this chapter. The rebuttable presumptions of § 574.4(d) of this chapter, other than §§ 574.4(d)(1) and (d)(2) of this chapter, apply to the share purchase limitations at §§ 563b.355 through 563b.395.

Affiliate of, or a person *affiliated with*, a specified person, is a person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the specified person.

Associate of a person is:

(1) A corporation or organization (other than you or your majority-owned subsidiaries), if the person is a senior officer or partner, or beneficially owns, directly or indirectly, 10 percent or more of any class of equity securities of the corporation or organization.

(2) A trust or other estate, if the person has a substantial beneficial interest in the trust or estate or is a trustee or fiduciary of the trust or estate. For purposes of §§ 563b.370, 563b.380, 563b.385, 563b.390, 563b.395 and 563b.505, a person who has a substantial beneficial interest in your tax-qualified or non-tax-qualified employee stock benefit plan, or who is a trustee or a fiduciary of the plan, is not an associate of the plan. For the purposes of § 563b.370, your tax-qualified employee stock benefit plan is not an associate of a person.

(3) Any person who is related by blood or marriage to such person and:

(i) Who lives in the same home as the person; or

(ii) Who is your director or senior officer, or a director or senior officer of your holding company or your subsidiary.

Association members or *members* are persons who, under applicable law, are eligible to vote at the meeting on conversion.

Control (including *controlling*, *controlled by*, and *under common control with*) means the direct or indirect power to direct or exercise a controlling influence over the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise as described at 12 CFR part 574.

Eligibility record date is the date for determining eligible account holders. The eligibility record date must be at least one year before the date your board of directors adopts the plan of conversion.

Eligible account holders are any persons holding qualifying deposits on the eligibility record date.

IRS is the Internal Revenue Service.

Local community includes:

- (1) Every county, parish, or similar governmental subdivision in which you have a home or branch office;
- (2) Each county's, parish's, or subdivision's metropolitan statistical area;
- (3) All zip code areas in your Community Reinvestment Act assessment area; and
- (4) Any other area or category you set out in your plan of conversion, as approved by OTS.

Offer, offer to sell, or offer for sale is an attempt or offer to dispose of, or a solicitation of an offer to buy, a security or interest in a security for value. Preliminary negotiations or agreements with an underwriter, or among underwriters who are or will be in privity of contract with you, are not offers, offers to sell, or offers for sale.

Person is an individual, a corporation, a partnership, an association, a joint-stock company, a limited liability company, a trust, an unincorporated organization, or a government or political subdivision of a government.

Proxy soliciting material includes a proxy statement, form of proxy, or other written or oral communication regarding the conversion.

Purchase or buy includes every contract to acquire a security or interest in a security for value.

Qualifying deposit is the total balance in an account holder's savings accounts at the close of business on the eligibility or supplemental eligibility record date. Your plan of conversion may provide that only savings accounts with total deposit balances of \$50 or more will qualify.

Sale or sell includes every contract to dispose of a security or interest in a security for value. An exchange of securities in a merger or acquisition approved by OTS is not a sale.

Savings account is any withdrawable account as defined in § 561.42 of this chapter, including a demand account as defined in § 561.16 of this chapter.

Solicitation and solicit is a request for a proxy, whether or not accompanied by or included in a form of proxy; a request to execute, not execute, or revoke a proxy; or the furnishing of a form of proxy or other communication reasonably calculated to cause your members to procure, withhold, or revoke a proxy. Solicitation or solicit does not include providing a form of proxy at the unsolicited request of a member, the acts required to mail communications for members, or ministerial acts performed on behalf of a person soliciting a proxy.

Subscription offering is the offering of shares through nontransferable subscription rights to:

- (1) Eligible account holders under § 563b.355;
- (2) Tax-qualified employee stock ownership plans under § 563b.380;
- (3) Supplemental eligible account holders under § 563b.355; and
- (4) Other voting members under § 563b.365.

Supplemental eligibility record date is the date for determining supplemental eligible account holders. The supplemental eligibility record date is the last day of the calendar quarter before OTS approves your conversion and will only occur if OTS has not approved your conversion within 15 months after the eligibility record date.

Supplemental eligible account holders are any persons, except your officers, directors, and their associates, holding qualifying deposits on the supplemental eligibility record date.

Tax-qualified employee stock benefit plan is any defined benefit plan or defined contribution plan, such as an employee stock ownership plan, stock bonus plan, profit-sharing plan, or other plan, and a related trust, that is qualified under section 401 of the Internal Revenue Code (26 U.S.C. 401).

Underwriter is any person who purchases any securities from you with a view to distributing the securities, offers or sells securities for you in connection with the securities' distribution, or participates or has a direct or indirect participation in the direct or indirect underwriting of any such undertaking. Underwriter does not include a person whose interest is limited to a usual and customary distributor's or seller's commission from an underwriter or dealer.

Subpart A—Standard Conversions

Prior to Conversion

§ 563b.100 What must I do before a conversion?

(a) You must meet with OTS at least ten days before you pass your plan of conversion. At that meeting you must provide OTS with a written strategic plan that outlines the objectives of the proposed conversion and the intended use of the conversion proceeds.

(b) You should also consult with OTS before you file your application for conversion. OTS will discuss the information that you must include in the application for conversion, general issues that you may confront in the conversion process, and any other pertinent issues.

§ 563b.105 What information must I include in my business plan?

(a) Prior to filing an application for conversion, you must adopt a business plan reflecting your intended plans for deployment of the proposed conversion proceeds. Your business plan is required, under § 563b.150, to be included in your conversion application. At a minimum, your business plan must address:

(1) Your projected operations and activities for three years following the conversion. You must describe how you will deploy the conversion proceeds at the converted savings association (and holding company, if applicable), and include three years of projected financial statements. The business plan must provide that the converted savings association must retain at least 50 percent of the net conversion proceeds. OTS may require that a larger percentage of proceeds remain in the institution.

(2) Your plan for deploying conversion proceeds to meet credit and lending needs in your proposed market areas. OTS strongly discourages business plans that provide for a substantial investment in mortgage securities or other securities, except as an interim measure to facilitate orderly, prudent deployment of proceeds during the three years following the conversion, or as part of a properly managed leverage strategy.

(3) How the new capital will support projected operations and activities, and what opportunities are available to reasonably achieve your planned deployment of conversion proceeds in your proposed market areas.

(4) The risks associated with your plan for deployment of conversion proceeds, and the effect of this plan on management resources, staffing, and facilities.

(5) The expertise of your management and board of directors, or that you have planned for adequate staffing and controls to prudently manage the growth, expansion, new investment, and other operations and activities proposed in your business plan.

(6) How you will achieve a reasonable return on equity, commensurate with investment risk, investor expectations, and industry norms, by the final year of the business plan.

(b) You may not project returns of capital or extraordinary dividends in any part of the business plan. A newly converted company should not plan on stock repurchases in the first year of the business plan, except in extraordinary circumstances.

§ 563b.110 Who must review my business plan?

(a) Your chief executive officer and members of the board of directors must review, and at least two-thirds of your board must approve, the business plan.

(b) Your chief executive officer and at least two-thirds of the board must certify that the business plan accurately reflects the intended plans for deployment of conversion proceeds, and that any new initiatives reflected in the business plan are reasonably achievable. You must submit these certifications with your business plan, as part of your conversion application under § 563b.150.

§ 563b.115 How will OTS view my business plan?

(a) OTS will review your business plan to determine that it demonstrates prudent deployment of conversion proceeds, as part of its review of your conversion application. In making its determination, OTS will consider how you have addressed the requirements of § 563b.105 in the aggregate, and not as individual criteria.

(b) You must file your business plan with the Regional Office. OTS may request additional information, if necessary, to support its determination under paragraph (a) of this section. You must also file your business plan as a confidential exhibit to the Form AC.

(c) If OTS approves your application for conversion and you complete your conversion, you must operate within the parameters of your business plan. You must obtain the prior written approval of the Regional Director for any material deviations from your business plan.

§ 563b.120 May I discuss my plans to convert with others?

(a) You may discuss information about your conversion with individuals that you authorize to prepare documents for your conversion.

(b) Except as permitted under paragraph (a) of this section, you must keep all information about your conversion confidential until your board of directors adopts your plan of conversion.

(c) If you violate this section, OTS may require you to take remedial action. For example, OTS may require you to take any or all of the following actions:

(1) Publicly announce that you are considering a conversion;

(2) Set an eligibility record date acceptable to OTS;

(3) Limit the subscription rights of any person who violates or aids a violation of this section; or

(4) Take any other action to assure that your conversion is fair and equitable.

Plan of Conversion

§ 563b.125 Must my board of directors adopt a plan of conversion?

Prior to filing an application for conversion, your board of directors must adopt a plan of conversion that conforms to §§ 563b.320 through 563b.395 ("Offers and Sales of Stock"). Your board of directors must adopt the plan by at least a two-thirds vote. Your plan of conversion is required, under § 563b.150, to be included in your conversion application.

§ 563b.130 What must I include in my plan of conversion?

You must include the information included in §§ 563b.320 through 563b.395 ("Offers and Sales of Stock") in your plan of conversion. OTS may require you to delete or revise any provision in your plan of conversion if OTS determines the provision is inequitable; is detrimental to you, your account holders, or other savings associations; or is contrary to public interest.

§ 563b.135 How do I notify my members that my board of directors approved a plan of conversion?

(a) *Notice.* You must promptly notify your members that your board of directors adopted a plan of conversion and that a copy of the plan is available for the members' inspection in your home office and in your branch offices. You must mail a letter to each member or publish a notice in the local newspaper in every local community where you have an office. You may also issue a press release. OTS may require broader publication, if necessary, to ensure adequate notice to your members.

(b) *Contents of notice.* You may include any of the following statements and descriptions in your letter, notice, or press release.

(1) Your board of directors adopted a proposed plan to convert from a mutual to a stock savings institution.

(2) You will send your members a proxy statement with detailed information on the proposed conversion before you convene a members' meeting to vote on the conversion.

(3) Your members will have an opportunity to approve or disapprove the proposed conversion at a meeting. At least a majority of the eligible votes must approve the conversion.

(4) You will not vote existing proxies to approve or disapprove the conversion. You will solicit new proxies for voting on the proposed conversion.

(5) OTS, and in the case of a state-chartered savings association, the appropriate state regulator, must approve the conversion before the conversion will be effective. Your members will have an opportunity to file written comments, including objections and materials supporting the objections, with OTS.

(6) The IRS must issue a favorable tax ruling, or a tax expert must issue an appropriate tax opinion, on the tax consequences of your conversion before OTS will approve the conversion. The ruling or opinion must indicate the conversion will be a tax-free reorganization.

(7) OTS, and in the case of a state-chartered savings association, the appropriate state regulator, might not approve the conversion, and the IRS or a tax expert might not issue a favorable tax ruling or tax opinion.

(8) Savings account holders will continue to hold accounts in the converted savings association with the same dollar amounts, rates of return, and general terms as existing deposits. FDIC will continue to insure the accounts.

(9) Your conversion will not affect borrowers' loans, including the amount, rate, maturity, security, and other contractual terms.

(10) Your business of accepting deposits and making loans will continue without interruption.

(11) Your current management and staff will continue to conduct current services for depositors and borrowers under current policies and in existing offices.

(12) You may continue to be a member of the Federal Home Loan Bank System.

(13) You may substantively amend your proposed plan of conversion before the members' meeting.

(14) You may terminate the proposed conversion.

(15) After OTS, and in the case of a state-chartered savings association, the

appropriate state regulator, approves the proposed conversion, you will send proxy materials providing additional information. After you send proxy materials, members may telephone or write to you with additional questions.

(16) The proposed record date for determining the eligible account holders who are entitled to receive subscription rights to purchase your shares.

(17) A brief description of the circumstances under which supplemental eligible account holders will receive subscription rights to purchase your shares.

(18) A brief description of how voting members may participate in the conversion.

(19) A brief description of how directors, officers, and employees will participate in the conversion.

(20) A brief description of the proposed plan of conversion.

(21) The par value (if any) and approximate number of shares you will issue and sell in the conversion.

(c) *Other requirements.* (1) You may not solicit proxies, provide financial statements, describe the benefits of conversion, or estimate the value of your shares upon conversion in the letter, notice, or press release.

(2) If you respond to inquiries about the conversion, you may address only the matters listed in paragraph (b) of this section.

§ 563b.140 May I amend my plan of conversion?

You may amend your plan of conversion before you solicit proxies. After you solicit proxies, you may amend your plan of conversion only if OTS concurs.

Filing Requirements

§ 563b.150 What must I include in my application for conversion?

(a) Your application for conversion must include all of the following information.

(1) Your plan of conversion.

(2) Pricing materials meeting the requirements of § 563b.200(b).

(3) Proxy soliciting materials under § 563b.270, including:

(i) A preliminary proxy statement with signed financial statements;

(ii) A form of proxy meeting the requirements of § 563b.255; and

(iii) Any additional proxy soliciting materials, including press releases, personal solicitation instructions, radio or television scripts that you plan to use or furnish to your members, and a legal opinion indicating that any marketing materials comply with all applicable securities laws.

(4) An offering circular described in § 563b.300.

(5) The documents and information required by Form AC. You may obtain Form AC from OTS Washington and Regional Offices (see § 516.40 of this chapter) and OTS's website (www.ots.treas.gov).

(6) Where indicated, written consents, signed and dated, of any accountant, attorney, investment banker, appraiser, or other professional who prepared, reviewed, passed upon, or certified any statement, report, or valuation for use. See Form AC, instruction B(7).

(7) Your business plan, submitted as a separately bound, confidential exhibit. See § 563b.160.

(8) Any additional information OTS requests.

(b) OTS will not accept for filing, and will return, any application for conversion that is improperly executed, materially deficient, substantially incomplete, or that provides for unreasonable conversion expenses.

§ 563b.155 How do I file my application for conversion?

You must file seven copies of your application for conversion on Form AC. You must file the original and three conformed copies with the Applications Filing Room in Washington, and three conformed copies with the appropriate Regional Office at the addresses in § 516.40 of this chapter.

§ 563b.160 May I keep portions of my application for conversion confidential?

(a) OTS makes all filings under this part available to the public, but may keep portions of your application for conversion confidential under paragraph (b) of this section.

(b) You may request OTS to keep portions of your application confidential. To do so, you must separately bind and clearly designate as "confidential" any portion of your application for conversion that you deem confidential. You must provide a written statement specifying the grounds supporting your request for confidentiality. OTS will not treat as confidential the portion of your application describing how you plan to meet your Community Reinvestment Act (CRA) objectives. The CRA portion of your application may not incorporate by reference information contained in the confidential portion of your application.

(c) OTS will determine whether confidential information must be made available to the public under 5 U.S.C. 552 and part 505 of this chapter. OTS will advise you before it makes information you designated as "confidential" available to the public.

§ 563b.165 How do I amend my application for conversion?

To amend your application for conversion, you must:

(a) File an amendment with an appropriate facing sheet;

(b) Number each amendment consecutively;

(c) Respond to all issues raised by OTS; and

(d) Demonstrate that the amendment conforms to all applicable regulations.

Notice of Filing of Application and Comment Process

§ 563b.180 How do I notify the public that I filed an application for conversion?

(a) You must publish a public notice of the application under the procedures in § 516.55 of this chapter, except that you must publish your notice within three days before or after you file your application for conversion. You must simultaneously prominently post the notice in your home office and all branch offices. Your notice must include the following information:

(1) You filed an application for conversion with OTS;

(2) You delivered copies of the application to OTS and to the Regional Office, including the addresses of the applicable OTS offices; and

(3) A statement that anyone may file written comments, including objections to the plan of conversion and materials supporting the objections, within 20 days. You must include instructions regarding how a person may file a comment.

(b) Promptly after publication, you must file four copies of any public notice and an affidavit of publication from each publisher. You must file the original and one copy with the Applications Filing Room in Washington, and two copies with the appropriate Regional Office at the addresses in § 516.40 of this chapter.

(c) If OTS does not accept your application for conversion under § 563b.200 and requires you to file a new application, you must publish and post a new notice and allow an additional 20 days for comment.

§ 563b.185 How may a person comment on my application for conversion?

Anyone may submit a written comment supporting or opposing your application for conversion with OTS. To do so, commenters must file within 20 days after you notify the public under § 563b.180. A commenter must file the original and one copy of any comments with the Applications Filing Room in Washington, and two copies with the appropriate Regional Office at the addresses in § 516.40 of this chapter.

OTS Review of the Application for Conversion

§ 563b.200 What actions may OTS take on my application?

(a) OTS may approve your application for conversion only if:

(1) Your conversion complies with this part;

(2) You will meet your regulatory capital requirements under part 567 of this chapter after the conversion; and

(3) Your conversion will not result in a taxable reorganization under the Internal Revenue Code of 1986, as amended.

(b) OTS will review the appraisal required by § 563b.150(a)(2) in determining whether to approve your application. OTS will review the appraisal under the following requirements.

(1) Independent persons experienced and expert in corporate appraisal, and acceptable to OTS, must prepare the appraisal report.

(2) An affiliate of the appraiser may serve as an underwriter or selling agent, if you ensure that the appraiser is separate from the underwriter or selling agent affiliate and the underwriter or selling agent affiliate does not make recommendations or affect the appraisal.

(3) The appraiser may not receive any fee in connection with the conversion other than for appraisal services.

(4) The appraisal report must include a complete and detailed description of the elements of the appraisal, a justification for the appraisal methodology, and sufficient support for the conclusions.

(5) If the appraisal is based on a capitalization of your pro forma income, it must indicate the basis for determining the income to be derived from the sale of shares, and demonstrate that the earnings multiple used is appropriate, including future earnings growth assumptions.

(6) If the appraisal is based on a comparison of your shares with outstanding shares of existing stock associations, the existing stock associations must be reasonably comparable in size, market area, competitive conditions, risk profile, profit history, and expected future earnings.

(7) OTS may decline to process the application for conversion and deem it materially deficient or substantially incomplete if the initial appraisal report is materially deficient or substantially incomplete.

(8) You may not represent or imply that OTS approved the appraisal.

(c) OTS will review your compliance record under part 563e of this chapter

and your business plan to determine how you will serve the convenience and needs of your communities after the conversion.

(1) Based on this review, OTS may approve your application, deny your application, or approve your application on the condition that you will improve your CRA performance or that you will address the particular credit or lending needs of the communities that you will serve.

(2) OTS may deny your application if your business plan does not demonstrate that your proposed use of conversion proceeds will help you to meet the credit and lending needs of the communities that you will serve.

(d) OTS may request that you amend your application if further explanation is necessary, material is missing, or material must be corrected.

(e) OTS will deny your application if the application does not meet the requirements of this subpart, unless OTS waives the requirement under § 563b.5(c).

§ 563b.205 May a court review OTS's final action on my conversion?

(a) Any person aggrieved by OTS's final action on your application for conversion may ask the court of appeals of the United States for the circuit in which the principal office or residence of such person is located, or the U.S. Court of Appeals for the District of Columbia Circuit, to review the action under 12 U.S.C. 1464(i)(2)(B).

(b) To obtain court review of the action, this statute requires the aggrieved person to file a written petition requesting that the court modify, terminate, or set aside the final OTS action. The aggrieved person must file the petition with the court within the later of 30 days after OTS publishes notice of OTS's final action in the **Federal Register** or 30 days after you mail the proxy statement to your members under § 563b.235.

Vote by Members

§ 563b.225 Must I submit the plan of conversion to my members for approval?

(a) After OTS approves your plan of conversion, you must submit your plan of conversion to your members for approval. You must obtain this approval at a special meeting, unless you are a state-chartered savings association and state law requires you to obtain approval at an annual meeting.

(b) Your members must approve your plan of conversion by a majority of the total outstanding votes, unless you are a state-chartered savings association and state law prescribes a higher percentage.

(c) Your members may vote in person or by proxy.

(d) You may notify eligible account holders or supplemental eligible account holders who are not voting members of your proposed conversion. You may include only the information in § 563b.135 in your notice.

§ 563b.230 Who is eligible to vote?

You determine members' eligibility to vote by setting a voting record date. You must set a voting record date that is not more than 60 days nor less than 20 days before your meeting, unless you are a state-chartered savings association and state law requires a different voting record date.

§ 563b.235 How must I notify my members of the meeting?

(a) You must notify your members of the meeting to consider your conversion by sending the members a proxy statement authorized by OTS.

(b) You must notify your members 20 to 45 days before your meeting, unless you are a state-chartered savings association and state law requires a different notice period.

(c) You must also notify each beneficial holder of an account held in a fiduciary capacity:

(1) If you are a federal association and the name of the beneficial holder is disclosed on your records; or

(2) If you are a state-chartered association and the beneficial holder possesses voting rights under state law.

§ 563b.240 What must I submit to OTS after the members' meeting?

Promptly after the members' meeting, you must file all of the following information with OTS:

(a) A certified copy of each adopted resolution on the conversion.

(b) The total votes eligible to be cast.

(c) The total votes represented in person or by proxy.

(d) The total votes cast in favor of and against each matter.

(e) The percentage of votes necessary to approve each matter.

(f) An opinion of counsel that you conducted the members' meeting in compliance with all applicable state or federal laws and regulations.

(g) Promptly after completion of the conversion, you must submit an opinion of counsel that you complied with all laws applicable to the conversion.

Proxy Solicitation

§ 563b.250 Who must comply with these proxy solicitation provisions?

(a) You must comply with these proxy solicitation provisions when you provide proxy solicitation material to

members for the meeting to vote on your plan of conversion.

(b) Your members must comply with these proxy solicitation provisions when they provide proxy solicitation materials to members for the meeting to vote on your conversion, except where:

- (1) The member solicits 50 people or fewer and does not solicit proxies on your behalf; or
- (2) The member solicits proxies through newspaper advertisements after your board adopts the plan of conversion. The newspaper advertisement may include only the following information:
 - (i) Your name;
 - (ii) The reason for the advertisement;
 - (iii) The proposal or proposals to be voted upon;
 - (iv) Where a member may obtain a copy of the proxy solicitation material; and
 - (v) A request for your members to vote at the meeting.

§ 563b.255 What must the form of proxy include?

The form of proxy must include all of the following:

- (a) A statement in bold face type stating whether management is soliciting the proxy.
- (b) Blank spaces where the member must date and sign the proxy.
- (c) Clear and impartial identification of each matter or group of related matters that members will vote upon. You must include any proposed charitable contribution as an item to be voted on separately.
- (d) The phrase "Revocable Proxy" in bold face type (at least 18 point).
- (e) A description of any charter or state law requirement that restricts or conditions votes by proxy.
- (f) An acknowledgment that the member received a proxy statement before he or she signed the form of proxy.
- (g) The date, time, and the place of the meeting, when available.
- (h) A way for the member to specify by ballot whether he or she approves or disapproves of each matter that members will vote upon.
- (i) A statement that management will vote the proxy in accordance with the member's specifications.
- (j) A statement in bold face type indicating how management will vote the proxy if the member does not specify a choice for a matter.

§ 563b.260 May I use previously executed proxies?

You may not use previously executed proxies for the plan of conversion vote. If members consider your plan of

conversion at an annual meeting, you may vote proxies obtained through other proxy solicitations only on matters not related to your plan of conversion.

§ 563b.265 How may I use proxies executed under this part?

You may vote a proxy obtained under this part on matters that are incidental to the conduct of the meeting. You may not vote a proxy obtained under this subpart at any meeting other than the meeting (or any adjournment of the meeting) to vote on your plan of conversion.

§ 563b.270 What must I include in my proxy statement?

(a) *Content requirements.* You must prepare your proxy statement in compliance with this part and Form PS. You may obtain Form PS from OTS Washington and Regional Offices (see § 516.40 of this chapter) and OTS's website (<http://www.ots.treas.gov>).

(b) *Other requirements.* (1) OTS will review your proxy solicitation material when it reviews the application for conversion and will authorize the use of proxy solicitation material.

(2) You must provide an authorized written proxy statement to your members before or at the same time you provide any other soliciting material. You must mail authorized proxy solicitation material to your members within ten days after OTS authorizes the solicitation.

§ 563b.275 How do I file revised proxy materials?

(a) You must file revised proxy materials as an amendment to your application for conversion. See § 563b.155 for where to file.

(b) To revise your proxy solicitation materials, you must file:

- (1) Seven copies of your revised proxy materials as required by Form PS;
- (2) Seven copies of your revised form of proxy, if applicable; and
- (3) Seven copies of any additional proxy solicitation material subject to § 563b.270.

(c) You must mark four of the seven required copies to clearly indicate changes from the prior filing.

(d) You must file seven definitive copies of all proxy solicitation material, in the form in which you furnish the material to your members. You must file no later than the date that you send or give the proxy solicitation material to your members. You must indicate the date that you will release the materials.

(e) Unless OTS requests you to do so, you do not have to file copies of replies to inquiries from your members or copies of communications that merely

request members to sign and return proxy forms.

§ 563b.280 Must I mail a member's proxy solicitation material?

(a) You must mail the member's authorized proxy solicitation material if:

- (1) Your board of directors adopted a plan of conversion;
- (2) A member requests in writing that you mail proxy solicitation material;
- (3) OTS has authorized the member's proxy solicitation; and
- (4) The member agrees to defray your reasonable expenses.

(b) As soon as practicable after you receive a request under paragraph (a) of this section, you must mail or otherwise furnish the following information to the member:

- (1) The approximate number of members that you solicited or will solicit, or the approximate number of members of any group of account holders that the member designates; and
- (2) The estimated cost of mailing the proxy solicitation material for the member.

(c) You must mail authorized proxy solicitation material to the designated members promptly after the member furnishes the materials, envelopes (or other containers), and postage (or payment for postage) to you.

(d) You are not responsible for the content of a member's proxy solicitation material.

(e) A member may furnish other members its own proxy solicitation material, authorized by OTS, subject to the rules in this section.

§ 563b.285 What solicitations are prohibited?

(a) *False or misleading statements.* (1) No one may use proxy solicitation material for the members' meeting if the material contains any statement which, considering the time and the circumstances of the statement:

- (i) Is false or misleading with respect to any material fact;
- (ii) Omits any material fact that is necessary to make the statements not false or misleading; or
- (iii) Omits any material fact that is necessary to correct a statement in an earlier communication that has become false or misleading.

(2) No one may represent or imply that OTS determined that the proxy solicitation material is accurate, complete, not false or not misleading, or passed upon the merits of or approved any proposal.

(b) *Other prohibited solicitations.* No person may solicit:

- (1) An undated or post-dated proxy;
- (2) A proxy that states it will be dated after the date it is signed by a member;

(3) A proxy that is not revocable at will by the member; or

(4) A proxy that is part of another document or instrument.

§ 563b.290 What will OTS do if a solicitation violates these prohibitions?

(a) If a solicitation violates § 563b.285, OTS may require remedial measures, including:

(1) Correction of the violation by a retraction and a new solicitation;

(2) Rescheduling the members' meeting; or

(3) Any other actions necessary to ensure a fair vote.

(b) OTS may also bring an enforcement action against the violator.

§ 563b.295 Will OTS require me to resolicit proxies?

If you amend your application for conversion, OTS may require you to resolicit proxies for your members' meeting as a condition of approval of the amendment.

Offering Circular

§ 563b.300 What must happen before OTS declares my offering circular effective?

(a) You must prepare and file your offering circular with OTS in compliance with this part and Form OC and, where applicable, part 563g of this chapter. Section 563b.155 governs where to file your offering circular. You may obtain Form OC from OTS Washington and Regional Offices (see § 516.40 of this chapter) and OTS's website (<http://www.ots.treas.gov>).

(b) You must condition your stock offering upon the members' approval of your plan of conversion.

(c) OTS will review the Form OC and may comment on the included disclosures and financial statements.

(d) You must file seven copies of each revised offering circular, final offering circular, and any post-effective amendment to the final offering circular.

(e) OTS will not approve the adequacy or accuracy of the offering circular or the disclosures.

(f) After you satisfactorily address OTS's concerns, you must request OTS to declare your Form OC effective for a time period. The time period may not exceed the maximum time period for the completion of the sale of all of your shares under § 563b.400.

§ 563b.305 When may I distribute the offering circular?

(a) You may distribute a preliminary offering circular at the same time as or after you mail the proxy statement to your members.

(b) You may not distribute an offering circular until OTS declares it effective.

You must distribute the offering circular in accordance with this part.

(c) You must distribute your offering circular to persons listed in your plan of conversion within 10 days after OTS declares it effective.

§ 563b.310 When must I file a post-effective amendment to the offering circular?

(a) You must file a post-effective amendment to the offering circular with OTS when a material event or change of circumstance occurs.

(b) After OTS declares the post-effective amendment effective, you must immediately deliver the amendment to each person who subscribed for or ordered shares in the offering.

(c) Your post-effective amendment must indicate that each person may increase, decrease, or rescind their subscription or order.

(d) The post-effective offering period must remain open no less than 10 days nor more than 20 days, unless OTS approves a longer rescission period.

Offers and Sales of Stock

§ 563b.320 Who has priority to purchase my conversion shares?

You must offer to sell your shares in the following order:

(a) Eligible account holders.

(b) Tax-qualified employee stock ownership plans.

(c) Supplemental eligible account holders.

(d) Other voting members who have subscription rights.

(e) Your community, your community and the general public, or the general public.

§ 563b.325 When may I offer to sell my conversion shares?

(a) You may offer to sell your conversion shares after OTS approves your conversion, authorizes your proxy statement, and declares your offering circular effective.

(b) The offer may commence at the same time you start the proxy solicitation of your members.

§ 563b.330 How do I price my conversion shares?

(a) You must sell your conversion shares at a uniform price per share and at a total price that is equal to the estimated pro forma market value of your shares after you convert.

(b) The maximum price must be no more than 15 percent above the midpoint of the estimated price range in your offering circular.

(c) The minimum price must be no more than 15 percent below the midpoint of the estimated price range in your offering circular.

(d) If OTS permits, you may increase the maximum price of conversion shares sold. The maximum price, as adjusted, must be no more than 15 percent above the maximum price computed under paragraph (b) of this section.

(e) The maximum price must be between \$5 and \$50 per share.

(f) You must include the estimated price in any preliminary offering circular.

§ 563b.335 How do I sell my conversion shares?

(a) You must distribute order forms to all eligible account holders, supplemental eligible account holders, and other voting members to enable them to subscribe for the conversion shares they are permitted under the plan of conversion. You may either send the order forms with your offering circular or after you distribute your offering circular.

(b) You may sell your conversion shares in a community offering, a public offering, or both. You may begin the community offering, the public offering, or both at any time during the subscription offering or upon conclusion of the subscription offering.

(c) You may pay underwriting commissions (including underwriting discounts). OTS may object to the payment of unreasonable commissions. You may reimburse an underwriter for accountable expenses in a subscription offering if the public offering is limited. If no public offering occurs, you may pay an underwriter a consulting fee. OTS may object to the payment of unreasonable consulting fees.

(d) If you conduct the community offering, the public offering, or both at the same time as the subscription offering, you must fill all subscription orders first.

(e) You must prepare your order form in compliance with this part and Form OF. You may obtain Form OF from OTS Washington and Regional Offices (see § 516.40 of this chapter) and OTS's website (<http://www.ots.treas.gov>).

§ 563b.340 What sales practices are prohibited?

(a) In connection with offers, sales, or purchases of conversion shares under this part, you and your directors, officers, agents, or employees may not:

(1) Employ any device, scheme, or artifice to defraud;

(2) Obtain money or property by means of any untrue statement of a material fact or any omission of a material fact necessary to make the statements, in light of the circumstances under which they were made, not misleading; or

(3) Engage in any act, transaction, practice, or course of business that operates or would operate as a fraud or deceit upon a purchaser or seller.

(b) During your conversion, no person may:

(1) Transfer, or enter into any agreement or understanding to transfer, the legal or beneficial ownership of subscription rights for your conversion shares or the underlying securities to the account of another;

(2) Make any offer, or any announcement of an offer, to purchase any of your conversion shares from anyone but you; or

(3) Knowingly acquire more than the maximum purchase limitations established in your plan of conversion.

(c) The restrictions in paragraphs (b)(1) and (b)(2) of this section do not apply to offers for more than 10 percent of any class of conversion shares by:

(1) An underwriter or a selling group, acting on your behalf, that makes the offer with a view toward public resale; or

(2) One or more of your tax-qualified employee stock ownership plans so long as the plan or plans do not beneficially own more than 25 percent of any class of your equity securities in the aggregate.

(d) If any person is found to have violated the restrictions in paragraphs (b)(1) and (b)(2) of this section, they may face prosecution or other legal action.

§ 563b.345 How may a subscriber pay for my conversion shares?

(a) A subscriber may purchase conversion shares with cash, by a withdrawal from a savings account, or a withdrawal from a certificate of deposit. If a subscriber purchases shares by a withdrawal from a certificate of deposit, you may not assess a penalty for the withdrawal.

(b) You may not extend credit to any person to purchase your conversion shares.

§ 563b.350 Must I pay interest on payments for conversion shares?

(a) You must pay interest from the date you receive a payment for conversion shares until the date you complete or terminate the conversion. You must pay interest at no less than your passbook rate for amounts paid in cash, check, or money order.

(b) If a subscriber withdraws money from a savings account to purchase conversion shares, you must pay interest on the payment until you complete or terminate the conversion as if the withdrawn amount remained in the account.

(c) If a depositor fails to maintain the applicable minimum balance

requirement because he or she withdraws money from a certificate of deposit to purchase conversion shares, you may cancel the certificate and pay interest at no less than your passbook rate on any remaining balance.

§ 563b.355 What subscription rights must I give to each eligible account holder and each supplemental eligible account holder?

(a) You must give each eligible account holder subscription rights to purchase conversion shares in an amount equal to the greater of:

(1) The maximum purchase limitation established for the community offering or the public offering under § 563b.395;

(2) One-tenth of one percent of the total stock offering; or

(3) Fifteen times the following number: the total number of conversion shares that you will issue, multiplied by the following fraction. The numerator is the total qualifying deposit of the eligible account holder. The denominator is the total qualifying deposits of all eligible account holders. You must round down the product of this multiplied fraction to the next whole number.

(b) You must give subscription rights to purchase shares to each supplemental eligible account holder in the same amount as described in paragraph (a) of this section, except that you must compute the fraction described in paragraph (a)(3) of this section as follows: The numerator is the total qualifying deposit of the supplemental eligible account holder. The denominator is the total qualifying deposits of all supplemental eligible account holders.

§ 563b.360 Are my officers, directors, and their associates eligible account holders?

Your officers, directors, and their associates may be eligible account holders. However, if an officer, director, or his or her associate receives subscription rights based on increased deposits in the year before the eligibility record date, you must subordinate subscription rights for these deposits to subscription rights exercised by other eligible account holders.

§ 563b.365 May other voting members purchase conversion shares in the conversion?

(a) You must give rights to purchase your conversion shares in the conversion to voting members who are neither eligible account holders nor supplemental eligible account holders. You must allocate rights to each voting member that are equal to the greater of:

(1) The maximum purchase limitation established for the community offering

and the public offering under § 563b.395; or

(2) One-tenth of one percent of the total stock offering.

(b) You must subordinate the voting members' rights to the rights of eligible account holders, tax-qualified employee stock ownership plans, and supplemental eligible account holders.

§ 563b.370 Does OTS limit the aggregate purchases by officers, directors, and their associates?

(a) When you convert, your officers, directors, and their associates may not purchase, in the aggregate, more than the following percentage of your total stock offering:

Institution size	Officer and director purchases (percent)
\$50,000,000 or less	35
\$50,000,001—100,000,000	34
\$100,000,001—150,000,000 ..	33
\$150,000,001—200,000,000 ..	32
\$200,000,001—250,000,000 ..	31
\$250,000,001—300,000,000 ..	30
\$300,000,001—350,000,000 ..	29
\$350,000,001—400,000,000 ..	28
\$400,000,001—450,000,000	27
\$450,000,001—500,000,000 ..	26
Over \$500,000,000	25

(b) The purchase limitations in this section do not apply to shares held in tax-qualified employee stock benefit plans that are attributable to your officers, directors, and their associates.

§ 563b.375 How do I allocate my conversion shares if my shares are oversubscribed?

(a) If your conversion shares are oversubscribed by your eligible account holders, you must allocate shares among the eligible account holders so that each, to the extent possible, may purchase 100 shares.

(b) If your conversion shares are oversubscribed by your supplemental eligible account holders, you must allocate shares among the supplemental eligible account holders so that each, to the extent possible, may purchase 100 shares.

(c) If a person is an eligible account holder and a supplemental eligible account holder, you must include the eligible account holder's allocation in determining the number of conversion shares that you may allocate to the person as a supplemental eligible account holder.

(d) For conversion shares that you do not allocate under paragraphs (a) and (b) of this section, you must allocate the shares among the eligible or supplemental eligible account holders

equitably, based on the amounts of qualifying deposits. You must describe this method of allocation in your plan of conversion.

(e) If shares remain after you have allocated shares as provided in paragraphs (a) and (b) of this section, and if your voting members oversubscribe, you must allocate your conversion shares among those members equitably. You must describe the method of allocation in your plan of conversion.

§ 563b.380 May my employee stock ownership plan purchase conversion shares?

(a) Your tax-qualified employee stock ownership plan may purchase up to 10 percent of the total offering of your conversion shares.

(b) If OTS approves a revised stock valuation range as described in § 563b.330(e), and the final conversion stock valuation range exceeds the former maximum stock offering range, you may allocate conversion shares to your tax-qualified employee stock ownership plan, up to the 10 percent limit in paragraph (a) of this section.

(c) If your tax-qualified employee stock ownership plan chooses not to purchase stock in the offering, it may, with prior OTS approval and appropriate disclosure in your offering circular, purchase stock in the open market, or purchase authorized but unissued conversion shares.

(d) You may include stock contributed to a charitable organization in the conversion in the calculation of the total offering of conversion shares under paragraphs (a) and (b) of this section, unless OTS objects on supervisory grounds.

§ 563b.385 May I impose any purchase limitations?

(a) You may limit the number of shares that any person, group of associated persons, or persons otherwise acting in concert, may subscribe to between one percent and five percent of the total stock sold.

(b) If you set a limit of five percent under paragraph (a) of this section, you may modify that limit with OTS approval to provide that any person, group of associated persons, or persons otherwise acting in concert subscribing for five percent, may purchase between five and ten percent as long as the aggregate amount that the subscribers purchase does not exceed 10 percent of the total stock offering.

(c) You may require persons exercising subscription rights to purchase a minimum number of conversion shares. The minimum

number of shares must equal the lesser of the number of shares obtained by a \$500 subscription or 25 shares.

(d) In setting purchase limitations under this section, you may not aggregate conversion shares attributed to a person in your tax-qualified employee stock ownership plan with shares purchased directly by, or otherwise attributable to, that person.

§ 563b.390 Must I provide a purchase preference to persons in my local community?

(a) In your subscription offering, you may give a purchase preference to eligible account holders, supplemental eligible account holders, and voting members residing in your local community.

(b) In your community offering, you must give a purchase preference to natural persons residing in your local community.

§ 563b.395 What other conditions apply when I offer conversion shares in a community offering, a public offering, or both?

(a) You must offer and sell your stock to achieve a widespread distribution of the stock.

(b) If you offer shares in a community offering, a public offering, or both, you must first fill orders for your stock up to a maximum of two percent of the conversion stock on a basis that will promote a widespread distribution of stock. You must allocate any remaining shares on an equal number of shares per order basis until you fill all orders.

Completion of the Offering

§ 563b.400 When must I complete the sale of my stock?

You must complete all sales of your stock within 45 calendar days after the last day of the subscription period, unless the offering is extended under § 563b.405.

§ 563b.405 How do I extend the offering period?

(a) You must request, in writing, an extension of any offering period.

(b) OTS may grant extensions of time to sell your shares. OTS will not grant any single extension of more than 90 days.

(c) If OTS grants your request for an extension of time, you must provide a post-effective amendment to the offering circular under § 563b.310 to each person who subscribed for or ordered stock. Your amendment must indicate that OTS extended the offering period and that each person who subscribed for or ordered stock may increase, decrease, or rescind their subscription or order

within the time remaining in the extension period.

Completion of the Conversion

§ 563b.420 When must I complete my conversion?

(a) You must complete the conversion within 24 months of the date that your members approve the conversion. Once OTS approves the conversion, it will not permit extension of the completion date.

(b) Your conversion is complete on the date that you accept the offers for your stock.

§ 563b.425 Who may terminate the conversion?

(a) Your members may terminate the conversion by failing to approve the conversion at your members' meeting.

(b) You may terminate the conversion before your members' meeting.

(c) You may terminate the conversion after the members' meeting only if OTS concurs.

§ 563b.430 What happens to my old charter?

(a) If you are a federally chartered mutual savings association or savings bank, and you convert to a federally chartered stock savings association or savings bank, you must apply to OTS to amend your charter and bylaws consistent with part 552 of this chapter, as part of your application for conversion. You may only include OTS pre-approved anti-takeover provisions in your amended charter and bylaws. See 12 CFR 552.4(b)(8). OTS will state the effective date of your charter amendments in its approval of the conversion.

(b) If you are a federally chartered mutual savings association or savings bank and you convert to a state-chartered stock savings association under this part, you must surrender your federal charter to OTS for cancellation promptly after the state issues your charter. You must promptly file a copy of your new state stock charter with OTS.

(c) If you are a state-chartered mutual savings association or savings bank, and you convert to a federally chartered stock savings association or savings bank, you must apply to OTS for a new charter and bylaws consistent with part 552 of this chapter. You may only include OTS pre-approved anti-takeover provisions in your charter and bylaws. See 12 CFR 552.4(b)(8). OTS will state the effective date of your charter amendments with its approval of the conversion.

(d) Your new or amended charter must require you to establish and maintain a liquidation account for

eligible and supplemental eligible account holders under § 563b.450.

§ 563b.435 What happens to my corporate existence after conversion?

Your corporate existence will continue following your conversion, unless you convert to a state-chartered stock savings association and state law prescribes otherwise.

§ 563b.440 What voting rights must I provide to stockholders after the conversion?

You must provide your stockholders with exclusive voting rights, except as provided in § 563b.445(c).

§ 563b.445 What must I provide my savings account holders?

(a) You must provide each savings account holder, without payment, a withdrawable savings account or accounts in the same amount and under the same terms and conditions as their accounts before your conversion.

(b) You must provide a liquidation account for each eligible and supplemental eligible account holder under § 563b.450.

(c) If you are a state-chartered savings association and state law requires you to provide voting rights to savings account holders or borrowers, your charter must:

- (1) Limit these voting rights to the minimum required by state law; and
- (2) Require you to solicit proxies from the savings account holders and borrowers in the same manner that you solicit proxies from your stockholders.

Liquidation Account

§ 563b.450 What is a liquidation account?

(a) A liquidation account represents the potential interest of eligible account holders and supplemental eligible account holders in your net worth at the time of conversion. You must maintain a sub-account to reflect the interest of each account holder.

(b) Before you may provide a liquidation distribution to common stockholders, you must give a liquidation distribution to those eligible account holders and supplemental eligible account holders who hold savings accounts from the time of conversion until liquidation.

(c) You may not record the liquidation account in your financial statements. You must disclose the liquidation account in the footnotes to your financial statements.

§ 563b.455 What is the initial balance of the liquidation account?

The initial balance of the liquidation account is your net worth in the statement of financial condition included in the final offering circular.

§ 563b.460 How do I determine the initial balances of liquidation sub-accounts?

(a)(1) You determine the initial sub-account balance for a savings account held by an eligible account holder by multiplying the initial balance of the liquidation account by the following fraction: The numerator is the qualifying deposit in the savings account expressed in dollars on the eligibility record date. The denominator is total qualifying deposits of all eligible account holders on that date.

(2) You determine the initial sub-account balance for a savings account held by a supplemental eligible account holder by multiplying the initial balance of the liquidation account by the following fraction: The numerator is the qualifying deposit in the savings account expressed in dollars on the supplemental eligibility record date. The denominator is total qualifying deposits of all supplemental eligible account holders on that date.

(3) If an account holder holds a savings account on the eligibility record date and a separate savings account on the supplemental eligibility record date, you must compute separate sub-accounts for the qualifying deposits in the savings account on each record date.

(b) You may not increase the initial sub-account balances. You must decrease the initial balance under § 563b.470 as depositors reduce or close their accounts.

§ 563b.465 Do account holders retain any voting rights based on their liquidation sub-accounts?

Eligible account holders or supplemental eligible account holders do not retain any voting rights based on their liquidation sub-accounts.

§ 563b.470 Must I adjust liquidation sub-accounts?

(a)(1) You must reduce the balance of an eligible account holder's or supplemental eligible account holder's sub-account if the deposit balance in the account holder's savings account at the close of business on any annual closing date, which for purposes of this section is your fiscal year end, after the relevant eligibility record dates is less than:

- (i) The deposit balance in the account holder's savings account at the close of business on any other annual closing date after the relevant eligibility record date; or
- (ii) The qualifying deposits in the account holder's savings account on the relevant eligibility record date.

(2) The reduction must be proportionate to the reduction in the deposit balance.

(b) If you reduce the balance of a liquidation sub-account, you may not

subsequently increase it if the deposit balance increases.

(c) You are not required to adjust the liquidation account and sub-account balances at each annual closing date if you maintain sufficient records to make the computations if a liquidation subsequently occurs.

(d) You must maintain the liquidation sub-account for each account holder as long as the account holder maintains an account with the same social security number.

(e) If there is a complete liquidation, you must provide each account holder with a liquidation distribution in the amount of the sub-account balance.

§ 563b.475 What is a liquidation?

(a) A liquidation is a sale of your assets and settlement of your liabilities with the intent to cease operations and close. Upon liquidation, you must return your charter to the governmental agency that issued it. The government agency must cancel your charter.

(b) A merger, consolidation, or similar combination or transaction with another depository institution, is not a liquidation. If you are involved in such a transaction, the surviving institution must assume the liquidation account.

§ 563b.480 Does the liquidation account affect my net worth?

The liquidation account does not affect your net worth.

§ 563b.485 What provision must I include in my new federal charter?

If you convert to federal stock form, you must include the following provision in your new charter: "Liquidation Account. Under OTS regulations, the association must establish and maintain a liquidation account for the benefit of its savings account holders as of _____. If the association undergoes a complete liquidation, it must comply with OTS regulations with respect to the amount and priorities on liquidation of each of the savings account holder's interests in the liquidation account. A savings account holder's interest in the liquidation account does not entitle the savings account holder to any voting rights."

Post-Conversion

§ 563b.500 May I implement a stock option plan or management or employee stock benefit plan?

(a) You may implement a stock option plan or management or employee stock benefit plan within 12 months after your conversion, if you meet all of the following requirements.

- (1) You disclose the plans in your proxy statement and offering circular

and indicate in the offering circular that there will be a separate vote on the plans at least six months after the conversion.

(2) You do not grant stock options under your stock option plan in excess of 10 percent of shares that you issued in the conversion.

(3) You do not permit your management stock benefit plans, in the aggregate, to hold more than three percent of the shares that you issued in the conversion. However, if you have tangible capital of 10 percent or more following the conversion, OTS may permit you to establish a management stock benefit plan that holds up to four percent of the shares that you issued in the conversion.

(4) You do not permit your tax-qualified employee stock benefit plan(s) and your management stock benefit plans, in the aggregate, to hold more than 10 percent of the shares that you issued in the conversion. However, if you have tangible capital of 10 percent or more following the conversion, OTS may permit your tax-qualified employee stock benefit plan(s) and your management stock benefit plans, in the aggregate, to hold up to 12 percent of the shares that you issued in the conversion.

(5) No individual receives more than 25 percent of the shares under any plan.

(6) Your directors who are not your employees do not receive more than five percent of the shares of any plan individually, or 30 percent of the shares of any plan in the aggregate.

(7) Your shareholders approve each plan by a majority of the total votes eligible to be cast at a duly called meeting before you establish or implement the plan. You may not hold this meeting until six months after your conversion. If you are a subsidiary of a mutual holding company, a majority of the total votes eligible to be cast (other than your parent mutual holding company) must approve each plan before you may establish or implement the plan.

(8) When you distribute proxies or related material to shareholders in connection with the vote on a plan, you state that the plan complies with OTS regulations and that OTS does not endorse or approve the plan in any way. You may not make any written or oral representation to the contrary.

(9) You do not grant stock options at less than the market price at the time of grant.

(10) You do not use stock issued at the time of conversion to fund management or employee stock benefit plans.

(11) Your plan does not begin to vest earlier than one year after your shareholders approve the plan, and does not vest at a rate exceeding 20 percent a year.

(12) Your plan permits accelerated vesting only for disability or death, or if you undergo a change of control.

(13) Your plan provides that your executive officers or directors must exercise or forfeit their options in the event the institution becomes critically undercapitalized (as defined in § 565.4 of this chapter), is subject to OTS enforcement action, or receives a capital directive under § 565.7.

(14) You file a copy of the approved stock option plan or management or employee stock benefit plan with OTS and certify to OTS in writing that the plan approved by the shareholders is the same plan that you filed with, and disclosed in, the proxy materials distributed to shareholders in connection with the vote on the plan.

(15) You file the plan and the certification with OTS within five calendar days after your shareholders approve the plan.

(b) You may provide dividend equivalent rights or dividend adjustment rights to allow for stock splits or other adjustments to your stock in stock option plans or management or employee stock benefit plans under this section.

(c) If the plan is adopted more than one year following your conversion, any material deviations to the requirements in paragraph (a) of this section must be ratified by your shareholders.

§ 563b.505 May my directors, officers, and their associates freely trade shares?

(a) Directors and officers who purchase conversion shares may not sell the shares for one year after the date of purchase, except that in the event of the death of the officer or director, the successor in interest may sell the shares.

(b) You must include notice of the restriction described in paragraph (a) of this section on each certificate of stock that a director or officer purchases during the conversion or receives in connection with a stock dividend, stock split, or otherwise with respect to such restricted shares.

(c) You must instruct your stock transfer agent about the transfer restrictions in this section.

(d) For three years after you convert, your officers, directors, and their associates may purchase your stock only from a broker or dealer registered with the Securities and Exchange Commission. However, your officers, directors, and their associates may engage in a negotiated transaction

involving more than one percent of your outstanding stock, and may purchase stock through any of your management or employee stock benefit plans.

§ 563b.510 May I repurchase shares after conversion?

(a) You may not repurchase your shares in the first year after the conversion except:

(1) In extraordinary circumstances, you may make open market repurchases of up to five percent of your outstanding stock in the first year after the conversion if you file a notice under § 563b.515(a) and OTS does not disapprove your repurchase. OTS will not approve such repurchases unless the repurchase meets the standards in § 563b.515(c), and the repurchase is consistent with paragraph (c) of this section.

(2) You may repurchase qualifying shares of a director or conduct an OTS approved repurchase pursuant to an offer made to all shareholders of your association.

(3) Repurchases to fund management recognition plans that have been ratified by shareholders do not count toward the repurchase limitations in this section. Repurchases in the first year to fund such plans require prior notification to OTS.

(4) Purchases to fund tax qualified employee stock benefit plans do not count toward the repurchase limitations in this section.

(b) After the first year, you may repurchase your shares, subject to all other applicable regulatory and supervisory restrictions and paragraph (c) of this section.

(c) All stock repurchases are subject to the following restrictions.

(1) You may not repurchase your shares if the repurchase will reduce your regulatory capital below the amount required for your liquidation account under § 563b.450. You must comply with the capital distribution requirements at part 563, subpart E of this chapter.

(2) The restrictions on share repurchases apply to a charitable organization under § 563b.550. You must aggregate purchases of shares by the charitable organization with your repurchases.

563b.515 What information must I provide to OTS before I repurchase my shares?

(a) To repurchase stock in the first year following conversion, other than repurchases under § 563b.510(a)(3) or (a)(4), you must file a written notice with the OTS. You must provide the following information:

(1) Your proposed repurchase program;

(2) The effect of the repurchases on your regulatory capital; and

(3) The purpose of the repurchases and, if applicable, an explanation of the extraordinary circumstances necessitating the repurchases.

(b) You must file your notice with your Regional Director, with a copy to the Applications Filing Room, at least ten days before you begin your repurchase program.

(c) You may not repurchase your shares if OTS objects to your repurchase program. OTS will not object to your repurchase program if:

(1) Your repurchase program will not adversely affect your financial condition;

(2) You submit sufficient information to evaluate your proposed repurchases;

(3) You demonstrate extraordinary circumstances and a compelling and valid business purpose for the share repurchases; and

(4) Your repurchase program would not be contrary to other applicable regulations.

§ 563b.520 May I declare or pay dividends after I convert?

You may declare or pay a dividend on your shares after you convert if:

(a) The dividend will not reduce your regulatory capital below the amount required for your liquidation account under § 563b.450;

(b) You comply with all capital requirements under part 567 of this chapter after you declare or pay dividends;

(c) You comply with the capital distribution requirements under part 563, subpart E of this chapter; and

(d) You do not return any capital to purchasers in the first year following conversion, and return capital to purchasers after the first year only if the return of capital is consistent with your business plan.

§ 563b.525 Who may acquire my shares after I convert?

(a) For three years after you convert, no person may, directly or indirectly, acquire or offer to acquire the beneficial ownership of more than ten percent of any class of your equity securities without OTS's prior written approval. If a person violates this prohibition, you may not permit the person to vote shares in excess of ten percent, and may not count the shares in excess of ten percent in any shareholder vote.

(b) A person acquires beneficial ownership of more than ten percent of a class of shares when he or she holds any combination of your stock or revocable or irrevocable proxies under circumstances that give rise to a

conclusive control determination or rebuttable control determination under §§ 574.4(a) and (b) of this chapter. OTS will presume that a person has acquired shares if the acquiror entered into a binding written agreement for the transfer of shares. For purposes of this section, an offer is made when it is communicated. An offer does not include non-binding expressions of understanding or letters of intent regarding the terms of a potential acquisition.

(c) Notwithstanding the restrictions in this section:

(1) Paragraphs (a) and (b) of this section do not apply to any offer with a view toward public resale made exclusively to you, to the underwriters, or to a selling group acting on your behalf.

(2) Unless OTS objects in writing, any person may offer or announce an offer to acquire up to one percent of any class of shares. In computing the one percent limit, the person must include all of his or her acquisitions of the same class of shares during the prior 12 months.

(3) A corporation whose ownership is, or will be, substantially the same as your ownership may acquire or offer to acquire more than ten percent of your common stock, if it makes the offer or acquisition more than one year after you convert.

(4) One or more of your tax-qualified employee stock benefit plans may acquire your shares, if the plan or plans do not beneficially own more than 25 percent of any class of your shares in the aggregate.

(5) An acquiror does not have to file a separate application to obtain OTS approval under paragraph (a) of this section, if the acquiror files an application under part 574 of this chapter that specifically addresses the criteria listed under paragraph (d) of this section and you do not oppose the proposed acquisition.

(d) OTS may deny an application under paragraph (a) of this section if the proposed acquisition:

(1) Is contrary to the purposes of this part;

(2) Is manipulative or deceptive;

(3) Subverts the fairness of the conversion;

(4) Is likely to injure you;

(5) Is inconsistent with your plan to meet the credit and lending needs of your proposed market area;

(6) Otherwise violates laws or regulations; or

(7) Does not prudently deploy your conversion proceeds.

§ 563b.530 What other requirements apply after I convert?

After you convert, you must:

(a) Promptly register your shares under the Securities Exchange Act of 1934 (15 U.S.C. 78a–78jj, as amended). You may not deregister the shares for three years.

(b) Encourage and assist a market maker to establish and to maintain a market for your shares. A market maker for a security is a dealer who:

(1) Regularly publishes bona fide competitive bid and offer quotations for the security in a recognized inter-dealer quotation system;

(2) Furnishes bona fide competitive bid and offer quotations for the security on request; or

(3) May effect transactions for the security in reasonable quantities at quoted prices with other brokers or dealers.

(c) Use your best efforts to list your shares on a national or regional securities exchange or on the National Association of Securities Dealers Automated Quotation system.

(d) File all post-conversion reports that OTS requires.

Contributions to Charitable Organizations

§ 563b.550 May I donate conversion shares or conversion proceeds to a charitable organization?

You may contribute some of your conversion shares or proceeds to a charitable organization if:

(a) Your plan of conversion provides for the proposed contribution;

(b) Your members approve the proposed contribution; and

(c) The IRS either has approved, or approves within two years after formation, the charitable organization as a tax-exempt charitable organization under the Internal Revenue Code.

§ 563b.555 How do my members approve a charitable contribution?

At the meeting to consider your conversion, your members must separately approve by at least a majority of the total eligible votes, a contribution of conversion shares or proceeds. If you are in mutual holding company form and adding a charitable contribution as part of a second step stock conversion, you must also have a majority of your minority shareholders approve the charitable contribution.

§ 563b.560 How much may I contribute to a charitable organization?

You may contribute a reasonable amount of conversion shares or proceeds to a charitable organization if your contribution will not exceed limits for charitable deductions under the Internal Revenue Code, and OTS does not object on supervisory grounds. If

you are a well capitalized savings association, OTS generally will not object if you contribute an aggregate amount of eight percent or less of the conversion shares or proceeds.

§ 563b.565 What must the charitable organization include in its organizational documents?

The charitable organization's charter and bylaws (or trust agreement), gift instrument, and operating plan must provide that:

(a) The charitable organization's primary purpose is to serve and make grants in your local community;

(b) As long as the charitable organization controls shares, you must consider those shares as voted in the same ratio as all other shares voted on each proposal considered by your shareholders;

(c) For at least five years after its organization, one seat on the charitable organization's board of directors (or board of trustees) is reserved for an independent director (or trustee) from your local community. This director may not be your officer, director, or employee, or your affiliate's officer, director, or employee, and should have experience with local community charitable organizations and grant making; and

(d) For at least five years after its organization, one seat on the charitable organization's board of directors (or board of trustees) is reserved for a director from your board of directors or the board of directors of an acquiror or resulting institution in the event of a merger or acquisition of your organization.

§ 563b.570 How do I address conflicts of interest involving my directors?

(a) A person who is your director, officer, or employee, or a person who has the power to direct your management or policies, or otherwise owes a fiduciary duty to you (for example, holding company directors) and who will serve as an officer, director, or employee of the charitable organization, is subject to § 563.200 of this chapter. *See* Form AC (Exhibit 9) for further information on operating plans and conflict of interest plans.

(b) Before your board of directors may adopt a plan of conversion that includes a charitable organization, you must identify your directors that will serve on the charitable organization's board. These directors may not participate in your board's discussions concerning contributions to the charitable organization, and may not vote on the matter.

§ 563b.575 What other requirements apply to charitable organizations?

(a) The charitable organization's charter and bylaws (or trust agreement) and the gift instrument for the contribution must provide that:

(1) OTS may examine the charitable organization at the charitable organization's expense;

(2) The charitable organization must comply with all supervisory directives that OTS imposes;

(3) The charitable organization must annually provide OTS with a copy of the annual report that the charitable organization submitted to the IRS;

(4) The charitable organization must operate according to written policies adopted by its board of directors (or board of trustees), including a conflict of interest policy; and

(5) The charitable organization may not engage in self-dealing, and must comply with all laws necessary to maintain its tax-exempt status under the Internal Revenue Code.

(b) You must include the following legend in the stock certificates of shares that you contribute to the charitable organization or that the charitable organization otherwise acquires: "The board of directors must consider the shares that this stock certificate represents as voted in the same ratio as all other shares voted on each proposal considered by the shareholders, as long as the shares are controlled by the charitable organization."

(c) OTS may review the compensation paid to charitable organization directors (or trustees) who are not your directors, employees, or affiliates.

(d) After you complete your stock offering, you must submit four executed copies of the following documents to the OTS Applications Filing Room in Washington, and three executed copies to the OTS Regional Office: the charitable organization's charter and bylaws (or trust agreement), operating plan, conflict of interest policy, and the gift instrument for your contributions of either stock or cash to the charitable organization.

Subpart B—Voluntary Supervisory Conversions

§ 563b.600 What does this subpart do?

(a) You must comply with this subpart to engage in a voluntary supervisory conversion. This subpart applies to all voluntary supervisory conversions under sections 5(i)(1), (i)(2), and (p) of the Home Owners' Loan Act (HOLA), 12 U.S.C. 1464(i)(1), (i)(2), and (p).

(b) Subpart A of this part also applies to a voluntary supervisory conversion,

unless a requirement is clearly inapplicable.

§ 563b.605 How may I conduct a voluntary supervisory conversion?

(a) You may sell your shares or the shares of a holding company to the public under the requirements of subpart A of this part.

(b) You may convert to stock form by merging into an interim federal- or state-chartered stock association.

(c) You may sell your shares directly to an acquiror, who may be a person, company, depository institution, or depository institution holding company.

(d) You may merge or consolidate with an existing or newly created depository institution. The merger or consolidation must be authorized by, and is subject to, other applicable laws and regulations.

§ 563b.610 Do my members have rights in a voluntary supervisory conversion?

Your members do not have the right to approve or participate in a voluntary supervisory conversion, and will not have any legal or beneficial ownership interests in the converted association, unless OTS provides otherwise. Your members may have interests in a liquidation account, if one is established.

Eligibility

§ 563b.625 When is a savings association eligible for a voluntary supervisory conversion?

(a) If you are an insured savings association, you may be eligible to convert under this subpart if:

(1) You are significantly undercapitalized (or you are undercapitalized and a standard conversion that would make you adequately capitalized is not feasible), and you will be a viable entity following the conversion;

(2) Severe financial conditions threaten your stability and a conversion is likely to improve your financial condition;

(3) FDIC will assist you under section 13 of the Federal Deposit Insurance Act, 12 U.S.C. 1823; or

(4) You are in receivership and a conversion will assist you.

(b) You will be a viable entity following the conversion if you satisfy all of the following:

(1) You will be adequately capitalized as a result of the conversion;

(2) You, your proposed conversion, and your acquiror(s) comply with applicable supervisory policies;

(3) The transaction is in your best interest, and the best interest of the federal deposit insurance funds and the public; and

(4) The transaction will not injure or be detrimental to you, the federal deposit insurance funds, or the public interest.

§ 563b.630 When is a BIF-insured state-chartered savings bank eligible for a voluntary supervisory conversion?

If you are a BIF-insured state-chartered savings bank you may be eligible to convert to a federal stock savings bank under this subpart if:

(a) FDIC certifies under section 5(o)(2)(C) of the HOLA that severe financial conditions threaten your stability and that the voluntary supervisory conversion is likely to improve your financial condition, and OTS concurs with this certification; or

(b) You meet the following conditions:

(1) Your liabilities exceed your assets, as calculated under generally accepted accounting principles, assuming you are a going concern; and

(2) You will issue a sufficient amount of permanent capital stock to meet your applicable FDIC capital requirement immediately upon completion of the conversion, or FDIC determines that you will achieve an acceptable capital level within an acceptable time period.

Plan of Supervisory Conversion

§ 563b.650 What must I include in my plan of voluntary supervisory conversion?

A majority of your board of directors must adopt a plan of voluntary supervisory conversion. You must include all of the following information in your plan of voluntary supervisory conversion.

(a) Your name and address.

(b) The name, address, date and place of birth, and social security number of each proposed purchaser of conversion shares and a description of that purchaser's relationship to you.

(c) The title, per-unit par value, number, and per-unit and aggregate offering price of shares that you will issue.

(d) The number and percentage of shares that each investor will purchase.

(e) The aggregate number and percentage of shares that each director, officer, and any affiliates or associates of the director or officer will purchase.

(f) A description of any liquidation account.

(g) Certified copies of all resolutions of your board of directors relating to the conversion.

Voluntary Supervisory Conversion Application

§ 563b.660 What must I include in my voluntary supervisory conversion application?

You must include all of the following information and documents in a voluntary supervisory conversion application to OTS under this subpart:

(a) *Eligibility.* (1) Evidence establishing that you meet the eligibility requirements under §§ 563b.625 or 563b.630.

(2) An opinion of qualified, independent counsel or an independent, certified public accountant regarding the tax consequences of the conversion, or an IRS ruling indicating that the transaction qualifies as a tax-free reorganization.

(3) An opinion of independent counsel indicating that applicable state law authorizes the voluntary supervisory conversion, if you are a state-chartered savings association converting to state stock form.

(b) *Plan of conversion.* A plan of voluntary supervisory conversion that complies with § 563b.650.

(c) *Business plan.* A business plan that complies with § 563b.105, where required by OTS.

(d) *Financial data.* (1) Your most recent audited financial statements and Thrift Financial Report. You must explain how your current capital levels make you eligible to engage in a voluntary supervisory conversion under §§ 563b.625 or 563b.630.

(2) A description of your estimated conversion expenses.

(3) Evidence supporting the value of any non-cash asset contributions. Appraisals must be acceptable to OTS and the non-cash asset must meet all other OTS policy guidelines. *See* Thrift Activities Handbook Section 110 for guidelines.

(4) Pro forma financial statements that reflect the effects of the transaction. You must identify your tangible, core, and risk-based capital levels and show the adjustments necessary to compute the capital levels. You must prepare your pro forma statements in conformance with OTS regulations and policy.

(e) *Proposed documents.* (1) Your proposed charter and bylaws.

(2) Your proposed stock certificate form.

(f) *Agreements.* (1) A copy of any agreements between you and proposed purchasers.

(2) A copy and description of all existing and proposed employment contracts. You must describe the term, salary, and severance provisions of the contract, the identity and background of

the officer or employee to be employed, and the amount of any conversion shares to be purchased by the officer or employee or his or her affiliates or associates.

(g) *Related applications.* (1) All filings required under the securities offering rules of 12 CFR parts 563b and 563g.

(2) Any required Holding Company Act application, Control Act notice, or rebuttal submission under part 574 of this chapter, including prior-conduct certifications under Regulatory Bulletin 20.

(3) A subordinated debt application, if applicable.

(4) Applications for permission to organize a stock association and for approval of a merger, if applicable, and a copy of any application for Federal Home Loan Bank membership or FDIC insurance of accounts, if applicable.

(5) A statement describing any other applications required under federal or state banking laws for all transactions related to your conversion, copies of all dispositive documents issued by regulatory authorities relating to the applications, and, if requested by OTS, copies of the applications and related documents.

(h) *Waiver request.* A description of any of the features of your application that do not conform to the requirements of this subpart, including any request for waiver of these requirements.

OTS Review of the Voluntary Supervisory Conversion Application

§ 563b.670 Will OTS approve my voluntary supervisory conversion application?

OTS will generally approve your application to engage in a voluntary supervisory conversion unless it determines:

(a) You do not meet the eligibility requirements for a voluntary supervisory conversion under §§ 563b.625 or 563b.630 or because the proceeds from the sale of your conversion stock, less the expenses of the conversion, would be insufficient to satisfy any applicable viability requirement;

(b) The transaction is detrimental to or would cause potential injury to you or the federal deposit insurance funds or is contrary to the public interest;

(c) You or your acquiror, or the controlling parties or directors and officers of you or your acquiror, have engaged in unsafe or unsound practices in connection with the voluntary supervisory conversion; or

(d) You fail to justify an employment contract incidental to the conversion, or the employment contract will be an unsafe or unsound practice or represent

a sale of control. In a voluntary supervisory conversion, OTS generally will not approve employment contracts of more than one year for your existing management.

§ 563b.675 What conditions will OTS impose on an approval?

(a) OTS will condition approval of a voluntary supervisory conversion application on all of the following.

(1) You must complete the conversion stock sale within three months after OTS approves your application. OTS may grant an extension for good cause.

(2) You must comply with all filing requirements of parts 563b and 563g of this chapter.

(3) You must submit an opinion of independent legal counsel indicating that the sale of your shares complies with all applicable state securities law requirements.

(4) You must comply with all applicable laws, rules, and regulations.

(5) You must satisfy any other requirements or conditions OTS may impose.

(b) OTS may condition approval of a voluntary supervisory conversion application on either of the following:

(1) You must satisfy any conditions and restrictions OTS imposes to prevent unsafe or unsound practices, to protect the federal deposit insurance funds and the public interest, and to prevent potential injury or detriment to you before and after the conversion. OTS may impose these conditions and restrictions on you (before and after the conversion), your acquiror, controlling parties, directors and officers of you or your acquiror; or

(2) You must infuse a larger amount of capital, if necessary, for safety and soundness reasons.

Offers and Sales of Stock

§ 563b.680 How do I sell my shares?

If you convert under this subpart, you must offer and sell your shares under part 563g of this chapter.

Post-Conversion

§ 563b.690 Who may not acquire additional shares after the voluntary supervisory conversion?

For three years after the completion of a voluntary supervisory conversion, neither you nor any of your controlling shareholder(s) may acquire shares from minority shareholders without OTS's prior approval.

PART 574—ACQUISITION OF CONTROL OF SAVINGS ASSOCIATIONS

2. The authority citation for part 574 is revised to read as follows:

Authority: 12 U.S.C. 1467a, 1817, 1831i.

§ 574.3 [Amended]

3. Section 574.3(c)(1)(vii) is amended by removing the phrase “563b.2(a)(39)” and adding in lieu thereof the phrase “563b.25”.

PART 575—MUTUAL HOLDING COMPANIES

4. The authority citation for part 575 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1828, 2901.

§ 575.2 [Amended]

5. Section 575.2(a) is amended by removing the phrase “12 CFR 563b.2”, and by adding in lieu thereof the phrase “563b.25 of this chapter”.

§ 575.4 [Amended]

6. Section 575.4(c)(2) is amended by removing the phrase “economical home financing”, and by adding in lieu thereof the phrase “the credit and lending needs of your proposed market area”.

7. Section 575.7 is amended by:

a. Revising the paragraph heading and adding a new first sentence to paragraph (a) introductory text;

b. Removing, in paragraph (a)(7), the phrase “§ 563b.11 of this chapter”, and by adding in lieu thereof the phrase “§ 563b.200(c) of this chapter”;

c. Removing, in paragraph (b)(1), the phrase “§ 563b.7” where it appears in the first and second sentences, and by adding in lieu of both phrases the phrase “part 563b of this chapter”;

d. Removing, in paragraph (b)(2), the phrase “§ 563b.7(c)”, and by adding in lieu thereof the phrase “§ 563b.330”.

e. Removing, in paragraph (d)(6)(i), the phrase “12 CFR 563b.102”, and by adding in lieu thereof the phrase “Form OC”;

f. Adding new paragraphs (d)(7) and (d)(8);

g. Removing, in paragraph (e), the phrase “§§ 563b.3 through 563b.8 of this chapter”, and adding in lieu thereof the phrase “12 CFR part 563b”.

The additions read as follows:

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

(a) *Requirements.* Before any stock issuance, a savings association subsidiary of a mutual holding company must submit a business plan in accordance with the provisions of §§ 563b.105 through 563b.115 of this chapter. * * *

(d) * * *

(7) Notwithstanding the restrictions in paragraph (d)(6)(ii) of this section, a

savings association subsidiary of a mutual holding company may issue stock as part of a stock benefit plan to any insider, associate of an insider, or tax qualified or non-tax qualified employee stock benefit plan of the mutual holding company or subsidiary of the mutual holding company without including the purchase priorities of 12 CFR part 563b.

(8) As part of a reorganization, a reasonable amount of shares or proceeds may be contributed to a charitable organization that complies with §§ 563b.550 to 563b.575 of this chapter, provided such contribution does not result in any taxes on excess business holdings under section 4943 of the Internal Revenue Code (26 U.S.C. 4943).

* * * * *

8. Section 575.8 is amended by:

a. Removing, in paragraph (a) introductory text, the phrase “§ 563b.27(a)”, and by adding in lieu thereof the phrase “§ 563b.650”;

b. Amending paragraphs (a)(3), (a)(4), (a)(5), and (a)(6) to remove the phrase “ten”, and by adding in lieu thereof the phrase “4.9”, and by removing the phrase “held by persons other than the association’s mutual holding company parent”;

c. Revising paragraph (a)(7);

d. Revising paragraph (a)(8);

e. Redesignating paragraphs (a)(9) through (a)(21) as paragraphs (a)(10) through (a)(22), respectively;

f. Adding a new paragraph (a)(9);

g. Amending newly designated paragraph (a)(10) by removing the phrase “12 CFR 563b.102”, and by adding in lieu thereof the phrase “Form OC”.

The additions and revisions read as follows:

§ 575.8 Contents of Stock Issuance Plans.

(a) * * *

(7)(i) Provide that the aggregate amount of common stock acquired in the proposed issuance, plus all prior issuances of the association, by all non-tax-qualified employee stock benefit plans of the association, insiders of the association, and associates of insiders of the association, exclusive of any stock acquired by such plans, insiders, and associates in the secondary market, shall not exceed the following percentages of the outstanding common stock of the association, held by persons other than the association’s mutual holding company parent at the close of the proposed issuance:

Institution size	Officer and director purchases (percent)
\$50,000,000 or less	35
\$50,000,001–100,000,000	34
\$100,000,001–150,000,000	33
\$150,000,001–200,000,000	32
\$200,000,001–250,000,000	31
\$250,000,001–300,000,000	30
\$300,000,001–350,000,000	29
\$350,000,001–400,000,000	28
\$400,000,001–450,000,000	27
\$450,000,001–500,000,000	26
Over \$500,000,000	25

(ii) In calculating the number of shares held by insiders and their associates under this provision or the provision in paragraph (a)(8) of this section, shares held by any tax-qualified or non-tax-qualified employee stock benefit plan of the association that are attributable to such persons shall not be counted.

(8) Provide that the aggregate amount of stock, whether common or preferred, acquired in the proposed issuance, plus all prior issuances of the association, by all non-tax-qualified employee stock benefit plans of the association, insiders of the association, and associates of insiders of the association, exclusive of any stock acquired by said plans, insiders, and associates in the secondary market, shall not exceed the following percentages of the stockholders' equity of the association, held by persons other than the association's mutual holding company parent at the close of the proposed issuance:

Institution size	Officer and director purchases (percent)
\$50,000,000 or less	35
\$50,000,001–100,000,000	34
\$100,000,001–150,000,000	33
\$150,000,001–200,000,000	32
\$200,000,001–250,000,000	31
\$250,000,001–300,000,000	30
\$300,000,001–350,000,000	29
\$350,000,001–400,000,000	28
\$400,000,001–450,000,000	27
\$450,000,001–500,000,000	26
Over \$500,000,000	25

(9) Provide that the aggregate amount of common stock acquired in the proposed issuance, plus all prior issuances of the association, by all stock benefit plans, other than employee stock ownership plans, shall not exceed more than 25% of the outstanding common stock of the association held by persons other than the association's mutual holding company parent.

9. Section 575.11 is amended by:
a. Removing, in paragraphs (c)(1) and (c)(2) the phrases “§ 563b.3(g)(1)” or “§ 563b.3(g)(3)” wherever they appear, and by adding in lieu thereof the phrase “§ 563b.510”;

b. Adding, in paragraph (e), after the phrase “stock issuance” the phrase “, and OTS does not object to the subsequent stock issuance”;

c. Adding new paragraph (i).
The addition reads as follows:

§ 575.11 Operating restrictions.

* * * * *

(i) *Separate vote for charitable organization contribution.* In a mutual holding company stock issuance, a separate vote of a majority of the outstanding shares of common stock held by stockholders other than the mutual holding company or subsidiary holding company must approve any charitable organization contribution.

10. Section 575.12 is amended by adding new paragraph (a)(3) to read as follows:

§ 575.12 Conversion or liquidation of mutual holding companies.

(a) * * *

(3) If a subsidiary holding company or subsidiary savings association has issued shares to an entity other than the mutual holding company, the conversion of the mutual holding company to stock form may not be consummated unless a majority of the shares issued to entities other than the mutual holding company vote in favor of the conversion. This requirement applies in addition to any otherwise required account holder or shareholder votes.

* * * * *

11. Section 575.13 is amended by removing, in paragraph (c)(2), the phrase “§ 563b.8 of this chapter”, and by adding in lieu thereof the phrase “§ 563b.150 of this chapter”, and by revising paragraph (a)(1) to read as follows:

§ 575.13 Procedural requirements.

(a) *Proxies and proxy statements—(1) Solicitation of proxies.* The provisions of §§ 563b.225 to 563b.290 and 563b.25 to 563b.35 of this chapter shall apply to all solicitations of proxies by any person in connection with any membership vote required by this part. OTS must authorize all proxy materials used in connection with such solicitations. Proxy materials must be in the form and contain the information specified in §§ 563b.255 and 563b.270 of this chapter and Form PS, to the extent such information is relevant to the action that members are being asked to approve, with such additions, deletions, and other modifications as are necessary or appropriate under the disclosure standard set forth in § 563b.280 of this chapter. File proxies and proxy statements in accordance with § 563b.155 of this chapter and address them to the Business Transactions Division, Chief Counsel's Office, Office of Thrift Supervision, at the address set forth in § 516.40 of this chapter. For purposes of this paragraph (a)(1), the term *conversion*, as it appears in the provisions of part 563b of this chapter cited above in this paragraph (a)(1), refers to *the reorganization or the stock issuance*, as appropriate.

* * * * *

Dated: March 27, 2002.

By the Office of Thrift Supervision.

James E. Gilleran,

Director.

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