

(1) The opportunity is within the corporate powers of the savings association or a subsidiary of the savings association; and

(2) The opportunity is of present or potential practical advantage to the savings association, either directly or through its subsidiary.

(c) OTS will not deem you to have taken advantage of a corporate opportunity belonging to the savings association if a disinterested and independent majority of the savings association's board of directors, after receiving a full and fair presentation of the matter, rejected the opportunity as a matter of sound business judgment.

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PART 563b—CONVERSIONS FROM MUTUAL TO STOCK FORM

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§ 563b.1 Scope of part.

(a) *General.* Except as the Office may otherwise determine, the provisions of this part shall exclusively govern the conversion of mutual savings associations to capital stock associations, and no mutual savings association shall convert to the capital stock form without the prior written consent of the Office. The Office may grant a waiver in writing from any requirement of this part for good cause shown.

(b) *Provisions of prescribed forms.* Any provision in a form prescribed under this part and covering the same subject matter as any provision of this part shall have the same force and effect as if it were a provision of this part except as it relates to information not deemed material.

(c) *Conflicts with State law.* (1) In the event an applicant finds that compliance with any provision of this part would be in conflict with applicable State law, the applicant may file a written request for waiver of compliance with such provision by the Office. Such request may be incorporated in the application for conversion; otherwise, the applicant shall file four copies of such request.

(2) In making any such request, the applicant shall:

(i) Specify the provision or provisions of this part with respect to which the applicant desires waiver;

(ii) Furnish an opinion of counsel demonstrating that applicable State law is in conflict with the specified provision or provisions of this part; and

(iii) Demonstrate that the requested waiver would not result in any effects that would be inequitable or detrimental to the applicant, its account holders or other savings associations or be contrary to the public interest.

§ 563b.2 Definitions.

(a) As used in this part and in the forms under this part, the following definitions apply, unless the context otherwise requires:

(1) *Acting in concert.* The term “acting in concert” shall be defined as provided in § 574.2(c).

(2) *Affiliate.* An “affiliate” of, or a person “affiliated” with, a specified person, is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

(3) *Amount.* The term “amount”, when used in regard to securities, means the principal amount if relating to evidences of indebtedness, the number of shares if relating to shares, and the number of units if relating to any other kind of security.

(4) *Applicant.* An “applicant” is a savings association which has applied to convert pursuant to this part.

(5) *Associate.* The term “associate”, when used to indicate a relationship with any person, means:

(i) Any corporation or organization (other than the applicant or a majority-owned subsidiary of the applicant) of which such person is an officer or partner or is, directly or indirectly, the beneficial owner of 10 percent or more of any class of equity securities,

(ii) Any trust or other estate in which such person has a substantial beneficial interest or as to which such person serves as trustee or in a similar fiduciary capacity, except that, for the purposes of § 563b.3 (c)(6), (c)(7), (c)(9), and (d)(4), it does not include any tax-qualified employee stock benefit plan or non-tax-qualified employee stock benefit plan in which a person has a substantial beneficial interest or serves as a trustee or in a similar fiduciary capacity, and that, for the purposes of § 563b.3(c)(8), it does not include any tax-qualified employee stock benefit plan, and

(iii) Any relative or spouse of such person, or any relative of such spouse, who has the same home as such person or who is a director or officer of the applicant or any of its parents or subsidiaries.

(6) *Association members.* The term “association members” refers to persons who, pursuant to the charter or bylaws of the applicant, are eligible to vote at the applicant’s meeting at which conversion will be voted upon.

(7) *BIF.* The term “BIF” means the Bank Insurance Fund, as established by the Federal Deposit Insurance Act, 12 U.S.C. 1811 *et seq.*

(8) *Broker.* The term “broker” means any person engaged in the business of effecting transactions in securities for the account of others.

(9) *Capital stock.* The term “capital stock” includes permanent stock, guaranty stock, permanent reserve stock, or any similar certificate evidencing nonwithdrawable capital.

(10) *Charter.* The term “charter” includes articles of incorporation, articles of association, or any similar instrument, as amended, effecting (either with or without filing with any governmental agency) the organization or creation of an incorporated or unincorporated person.

(11) *Control.* The term “control” (including the terms “controlling”, “controlled by”, and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

(12) *Dealer.* The term “dealer” means any person who engages either for all or part of his or her time, directly or indirectly, as agent, broker, or principal, in the business of offering, buying, selling, or otherwise dealing or trading in securities issued by another person.

(13) *Director.* The term “director” means any director of a corporation or any person performing similar functions with respect to any organization whether incorporated or unincorporated.

(14) *Eligibility record date.* The term “eligibility record date” means the