

amount of securities, manner of acquisition, and formula for determining price.

(iii) The term *acquire* includes every type of acquisition, whether effected by purchase, exchange, operation of law or otherwise.

(iv) The term *security* includes non-transferable subscription rights issued pursuant to a plan of conversion as well as a *security* as defined in 15 U.S.C. 78c(2)(10).

(j) *Priority of regulations.* The provisions of this part shall supersede all inconsistent charter and bylaw provisions of federally-chartered savings associations converting to the stock form.

[54 FR 49596, Nov. 30, 1989, as amended at 55 FR 13516, Apr. 11, 1990; 55 FR 27197, July 2, 1990; 56 FR 59867, Nov. 26, 1991; 57 FR 14347, Apr. 20, 1992; 58 FR 4314, Jan. 14, 1993; 59 FR 22733, May 3, 1994; 59 FR 61261, Nov. 30, 1994; 60 FR 66718, Dec. 26, 1995]

§ 563b.4 Notice of filing; public statements; confidentiality.

(a) Information prior to approval of plan of conversion. (1) A savings association which is considering converting pursuant to this part and its directors, officers and employees shall keep such consideration in the strictest confidence and shall only discuss the potential conversion as would be consistent with the need to prepare information for filing an application for conversion. Should this confidence be breached the Office may require remedial measures including:

(i) A public statement by the association that its board of directors is currently considering converting pursuant to this part;

(ii) Providing for an eligibility record date which shall be as of such a date prior to the adoption of the plan by the converting savings association's board of directors as to assure the equitability of the conversion;

(iii) Limitation of the subscription rights of any person violating or aiding the violation of this section to an amount deemed appropriate by the Office; and

(iv) Any other actions the Office may deem appropriate and necessary to assure the fairness and equitability of the conversion.

(2) If it should become essential as a result of rumors prior to the adoption of a plan of conversion by the applicant's board of directors, a public statement limited to that purpose may be made by the applicant.

(3) Promptly after the adoption of a plan of conversion by not less than two-thirds of its board of directors, the savings association shall:

(i) Notify its members of such action by publishing a statement in a newspaper having general circulation in each community in which an office of the savings association is located and/or by mailing a letter to each of its members; and

(ii) Have copies of the adopted plan of conversion available for inspection by its members at each office of the savings association. The savings association may also issue a press release with respect to such action. Copies of the proposed statement, letter and press release are not required to be filed with the Office, but may be submitted for comment to the Chief Counsel's Office, Corporate and Securities Division. Copies of the definitive statement, letter and press release shall be filed with the Office as part of the application for conversion.

(4) The statement, letter and press release, unless otherwise authorized by the Office shall contain only (but need not contain all of) the following:

(i) A statement that the board of directors has adopted a proposed plan to convert the savings association from a Federal (or State, as the case may be) mutual association to a Federal (or State, as the case may be) capital stock savings association;

(ii) A statement that the proposed plan of conversion must be approved by at least a majority of the votes eligible to be cast either in person or by proxy by association members at a meeting at which the plan will be submitted for their approval;

(iii) A statement that existing proxies held with respect to voting rights in the savings association will not be voted regarding the conversion, and that new proxies will be solicited for voting on the proposed plan of conversion;

(iv) A statement that a proxy statement setting forth more detailed information with respect to the proposed plan of conversion will be sent to association members prior to the meeting of members;

(v) A statement that the proposed plan of conversion is subject to approval by the Office and by the appropriate State regulatory authority or authorities (naming such an authority or authorities) before such plan can become effective and that members of the applicant will have an opportunity to file written comments including objections and materials supporting such objections to the Office;

(vi) A statement that the proposed plan of conversion is contingent upon obtaining favorable tax rulings from the Internal Revenue Service or an appropriate tax opinion;

(vii) A statement that there is no assurance that the approval of the Office or the approval of any appropriate State authority or authorities will be obtained, and also no assurance that the favorable tax rulings or tax opinion will be received;

(viii) The proposed record date for determining the eligible account holders entitled to receive nontransferable subscription rights to purchase capital stock of the applicant;

(ix) A brief statement describing the circumstances that would require supplemental eligible account holders to receive nontransferable subscription rights to purchase capital stock of the applicant;

(x) A brief statement as to the extent to which voting members will participate in the conversion;

(xi) A brief description of the proposed plan of conversion;

(xii) The par value (if any) and approximate number of shares of capital stock to be issued and sold under the proposed plan of conversion;

(xiii) A brief statement as to the extent to which directors, officers and employees will participate in the conversion;

(xiv) A statement that savings account holders will continue to hold accounts in the converted savings association identical as to dollar amount, rate of return and general terms, and

that their accounts will continue to be insured by the FDIC;

(xv) A statement that the savings association will continue to be a member of the Federal Home Loan Bank System;

(xvi) A statement that borrowers' loans will be unaffected by conversion, and that the amount, rate, maturity, security and other conditions will remain contractually fixed as they existed prior to conversion;

(xvii) A statement that the normal business of the savings association in accepting savings and making loans will continue without interruption; that the converted savings association will continue after conversion to conduct its present services to savings account holders and borrowers under current policies to be carried on in existing offices and by the present management and staff;

(xviii) A statement that the proposed plan of conversion may be substantively amended by the board of directors as a result of comments from the regulatory authorities or otherwise prior to the meeting, and that the proposed plan may also be terminated by the board of directors; and

(xix) A statement that questions of members will be answered in the proxy material to be sent after the regulatory approvals of the proposed plan of conversion have been obtained and that any questions at this time may be answered by telephoning or writing to the savings association.

(5) Such statement, letter and press release shall not in any manner solicit proxies, include financial statements or describe the benefits of conversion or the value of the capital stock of the savings association upon conversion. In replying to inquiries, the savings association should limit its answers to the matters listed in paragraph (a)(3) of this section.

(b) *Notice of filing.* (1)(i) Immediately upon filing an application for conversion with the Office, the applicant shall publish a notice of the filing. If an application for conversion is not properly executed or is materially deficient or substantially incomplete, the Office may require a new application to be filed, publication of a new notice and an additional 20-day comment period.

The applicant shall prominently post the notice in each of its offices and publish the notice in at least one newspaper printed in the English language and having a substantial general circulation in each community in which an office of the applicant is located, as follows:

NOTICE OF FILING OF AN APPLICATION FOR
CONVERSION TO CONVERT TO A STOCK SAV-
INGS AND LOAN ASSOCIATION OR A STOCK
SAVINGS BANK

Notice is hereby given that, pursuant to part 563b of the Rules and Regulations Applicable to All Savings Associations, _____ (fill in name of applicant) has filed an application with the Office of Thrift Supervision ("Office") for approval to convert to the _____ (State-chartered or Federally-chartered) stock form of organization. Copies of the application have been delivered to the Chief Counsel, Corporate and Securities Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and to the Regional Director at _____ (Address, including zip code, of Regional Director).

(ii) Written comments, including objections to the plan of conversion and materials supporting the objections, from any member of the applicant or aggrieved person will be considered by the Office if filed within twenty calendar days after the date of this notice. The OTS may, in its discretion, and upon written request, extend the twenty day comment period for an additional twenty calendar days. Failure to provide the written comments in twenty calendar days may preclude the pursuit of any administrative or judicial remedies. Two copies of the comments should be sent to the Chief Counsel, Business Transactions Division, one copy to the Corporate Activities Division and one copy to the Regional Director. The proposed plan of conversion and any comments will be available for inspection by any member of the applicant at the Chief Counsel's Office and at the Regional Director's Office. A copy of the plan of conversion may also be inspected at the home office and each branch office of the applicant.

(2) If a significant number of the applicant's members speak a language other than English and a newspaper in that language is published in the area served by the applicant, an appropriate

translation of the notice shall also be published in that newspaper.

(3) Promptly after publication of the notice or notices prescribed in paragraphs (b)(1) and (b)(2), the applicant shall file four copies of each notice with the Office accompanied by an affidavit of publication from each publisher.

(c) Should the applicant desire to submit any information it deems to be of a confidential nature regarding the answer to any item or any part of any exhibit included in any application under this part, such information pertaining to such item or exhibit shall be separately bound and labeled "confidential," and a statement shall be submitted therewith briefly setting forth the grounds on which such information should be treated as confidential. Only general reference thereto need be made in that portion of the application which the applicant deems not to be confidential. Applications under this part shall be made available for inspection by the public, except for portions which are bound and labeled "confidential" and which the Office determines to withhold from public availability under 5 U.S.C. 552 and part 505 of this chapter. Preliminary soliciting materials will be made available upon filing, unless such materials are not otherwise available to the public and are bound and labeled "confidential." The applicant will be advised of any decision by the Office to make public information designated "confidential" by the applicant. Even though sections of the application are considered "confidential," as far as public inspection thereof is concerned, to the extent it deems necessary, the Office may comment on such confidential submissions in any public statement in connection with its decision on the application without prior notice to the applicant.

[54 FR 49596, Nov. 30, 1989, as amended at 59 FR 22734, May 3, 1994; 59 FR 61262, Nov. 30, 1994; 60 FR 66718, Dec. 26, 1995]

§ 563b.5 Solicitation of proxies; proxy statement.

(a) *Solicitations to which rules apply.* This section applies to every solicitation of a proxy from an association member of a savings association for the meeting at which a conversion plan