

_____ (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 will be voted upon, except the following:

(1) Any solicitation made otherwise than on behalf of the management of the savings association where the total number of persons solicited is not more than 50;

(2) Any solicitation through the medium of a newspaper advertisement which informs association members, following approval of the plan of conversion, of a source from which they may obtain copies of a proxy statement, form of proxy, or any other soliciting material and does no more than:

(i) Name the savings association;
 (ii) State the reason for the advertisement;

(iii) Identify the proposal or proposals to be acted upon by association members; and

(iv) Urge the member to vote at the meeting.

(b) *Use of proxy soliciting material to be authorized.* No proxy soliciting material required to be filed with the Office prior to use shall be furnished to association members or otherwise released for distribution until the use of such material has been authorized in writing by the Office. Proxy material authorized for use by the Office shall be mailed to the association members within ten days of such authorization unless extended by the Office in writing.

(c) *Information to be furnished association members.* No solicitation subject to this section shall be made unless each person solicited is concurrently furnished, or has previously been furnished, a written proxy statement the use of which has been authorized by the Office.

(d) *Requirements as to proxy.* (1) The form of proxy:

(i) Shall indicate in bold face type whether the proxy is solicited on behalf of the management;

(ii) Shall provide specifically designated blank spaces for dating and signing the proxy;

(iii) Shall identify clearly and impartially each matter or group of related matters intended to be acted upon;

(iv) Shall be clearly labeled "Revocable Proxy" in bold face type (at least as large as 18 point);

(v) Shall describe any charter or State law requirement restricting or conditioning voting by proxy;

(vi) Shall contain an acknowledgment by the person giving the proxy that he has received a proxy statement prior to signing the form of proxy;

(vii) Shall contain the date, time and place of meeting, if practicable;

(viii) Shall provide by a box or otherwise, a means whereby the person solicited is afforded an opportunity to specify by ballot a choice between approval or disapproval of each matter referred to therein as intended to be acted upon; and

(ix) Shall indicate in bold face type how the proxy shall be voted on each such matter to which no choice is so specified.

(2) No proxy subject to this section shall confer authority to vote at any meeting other than the meeting (or any adjournment thereof) to vote on conversion. A proxy may be deemed to confer authority to vote with respect to matters incident to the conduct of such meeting. If the plan of conversion is considered at an annual meeting, existing proxies may be voted with respect to matters not related to the plan of conversion.

(3) The proxy statement or form of proxy shall provide that the votes represented by the proxy will be voted; that, where the person solicited specifies by means of a ballot provided pursuant to paragraph (d)(1)(viii) of this section a choice with respect to any matter to be acted upon, the votes will be voted in accordance with the specifications so made; and that if no choice is so specified, the votes will be cast as indicated in bold face type on the form of proxy.

(4) Each voting member must be furnished a form of proxy conforming with paragraph (d) of this section. No applicant shall use previously-executed proxies.

(e) *Material required to be filed.* (1) Applicants shall file ten preliminary copies of such proxy materials as are required by the form for applying for approval to convert under this part.

(2) Ten preliminary copies of any additional soliciting material subject to this section including soliciting material in the form of press releases, and radio or television scripts, to be used or furnished to association members subsequent to furnishing the proxy statement, shall be filed with the Office at least five business days prior to the date on which the Office is requested to authorize the use of such material. Speeches may, but need not be, filed with the Office prior to use.

(3) Twenty-five copies of the proxy statement and ten copies of the form of proxy and all other soliciting material, in the form in which such material is furnished to association members, shall be filed with or mailed for filing to the Office not later than the date

such material is first sent or given to association members. All materials filed pursuant to this paragraph (e)(3) shall be accompanied by a statement of the date on which copies of such materials are to be released to association members.

(4) If the solicitation is to be made in whole or in part by personal solicitation, ten preliminary copies of all written instructions or other material which discusses or reviews, or comments upon the merits of, any matter to be acted upon and which is to be furnished to the individuals making the actual solicitation for their use directly or indirectly in connection with the solicitation shall be filed with the Office at least five business days prior to the date on which the Office is requested to authorize the use of such material.

(5) All preliminary copies of material filed pursuant to paragraphs (e)(1), (e)(2) and (e)(4) of this section shall be clearly marked on the cover page "Preliminary Copy". Such preliminary copies shall be public unless otherwise deemed confidential pursuant to § 563b.4(c) of this part.

(6) Unless requested by the Office, copies of replies to inquiries from members of the savings association and copies of communications which do no more than request that forms of proxy theretofore solicited be signed and returned need not be filed pursuant to paragraph (e) of this section.

(7) Where any proxy statement, form of proxy or other material filed pursuant to paragraph (e) of this section is amended or revised, four of the required copies of such amended or revised material filed with the Office shall be marked to indicate clearly and precisely the changes effected therein subsequent to the last prior filing.

(f) *Mailing communications for associations members.* If the management of the applicant has adopted a plan of conversion, the applicant shall perform such of the following acts as may be duly requested in writing with respect to a matter to be considered at the meeting to vote on the plan of conversion by any association member who will defray the reasonable expenses to be incurred by the applicant in the performance of the act or acts requested.

(1) The applicant shall mail or otherwise furnish to such association member the following information as promptly as practicable after the receipt of such request:

(i) A statement of the approximate number of association members who have been or are to be solicited on behalf of the management, or any group of such holders which the association member shall designate; and

(ii) An estimate of the cost of mailing a specified proxy statement, form of proxy or other communication to such association member.

(2) Copies of any proxy statement, form of proxy or other communication furnished by the association member and as approved by the Office shall be mailed by the applicant to such of the association members specified in paragraph (f)(1)(i) of this section as the association member shall designate.

(3) Any such material which is furnished by the association member shall be mailed with reasonable promptness by the applicant after receipt of the material to be mailed, envelopes or other containers therefor and postage or payment for postage.

(4) Neither the management nor the applicant shall be responsible for such proxy statement, form of proxy or other communication.

(g) *False or misleading statements.* (1) No solicitation of a proxy by the applicant, its management, or any other person for the meeting to vote on conversion shall be made by means of any proxy statement, form of proxy, notice of meeting or other communication, written or oral, containing any statement which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading or necessary to correct any statement in any earlier communication with respect to the solicitation of a proxy for such meeting which has become false or misleading.

(2) The fact that a proxy statement, form of proxy or other soliciting material has been filed with or examined by the Office and authorized for use shall not be deemed a finding by the Office

that such material is accurate or complete or not false or misleading, or that the Office has passed upon the merits of or approved any proposal contained therein. No representation contrary to the foregoing shall be made by any person.

(3) If a solicitation by management violates any provision of this section, the Office may require remedial measures including:

(i) Correction of any such violation by means of a retraction and new solicitation;

(ii) Rescheduling of the meeting for a vote on the conversion; and

(iii) Any other actions the Office may deem appropriate in the circumstances in order to ensure a fair vote.

(h) *Prohibition of certain solicitations.* No person soliciting a proxy from an association member for the meeting to vote on conversion shall solicit:

(1) Any undated or post-dated proxy;

(2) Any proxy which provides that it shall be deemed to be dated as of any date subsequent to the date on which it is signed by the association members;

(3) Any proxy which is not revocable at will by the association member giving it; or

(4) Any proxy which is part of any other document or instrument (such as an account card).

[54 FR 49596, Nov. 30, 1989, as amended at 59 FR 22734, May 3, 1994]

§ 563b.6 Vote by members.

(a) *Vote at special meeting.* Following approval by the Office of an application for conversion, the plan of conversion shall be submitted to a special meeting of members, unless in the case of a State-chartered converting savings association State law requires that the plan be considered at an annual meeting of members.

(b) *Determining members eligible to vote.* The record date for determining those members eligible to vote at the meeting called to consider a plan of conversion shall not be more than 60 nor less than 10 days prior to the date of such meeting, without prior approval of the Office, unless State law requires a different voting record date.

(c)(1) *Notice to members.* Notice of the meeting to consider a plan of conversion shall be given by means of the

proxy statement authorized for use by the Office. The notice shall be given not more than 45 nor fewer than 20 days prior to the date of the meeting to each association member, unless State law requires a different notice period. Such notice shall also be sent to each beneficial holder of an account held in a fiduciary capacity:

(i) In the case of a Federal association, where the account is an Individual Retirement Account and the name of the beneficial holder is disclosed on the association's records; and

(ii) In the case of a State-chartered association, where the beneficial holder possesses voting rights.

(2) *Summary proxy statement.* The proxy statement required by paragraph (c)(1) of this section may be in summary form, *Provided:*

(i) A statement is made in bold-face type on the notice to members required under paragraph (c)(1) of this section that a more detailed description of the proposed transaction may be obtained by returning an attached postage-paid postcard or other written communication requesting a supplemental information statement which, together with the summary proxy statement, complies with the requirements of Form PS;

(ii) The last date on which the summary proxy statement is mailed to members will be deemed the date on which notice is given for purposes of paragraph (c)(1) of this section. Without prior approval by the Office, the special meeting of members shall not be held fewer than 20 days after the last date on which the supplemental information statement is mailed to requesting members;

(iii) The supplemental information statement required to be furnished to members pursuant to paragraph (c)(2)(i) of this section may be combined with Form OC, if the subscription offering is commenced concurrently with or during the proxy solicitation period pursuant to § 563b.3(d)(1) of this subpart A; and

(iv) The summary proxy statement shall be prepared in accordance with the following requirements:

(A) All of the requirements of Form PS shall be met, with the exception of the following: