(*1*) Item 6. Management Remuneration.

(*2*) Item 7. Business of the Applicant. Paragraphs (c) through (m), and (o).

(*3*) Item 14. Financial Statements.

(*4*) Item 15. Consents of Experts and Reports. Paragraph (b).

(B) The disclosure requirements of items 8(j), 9 and 13 of Form PS may be prepared in summary form.

(C) The disclosure requirements of item 5 may be met through disclosure of the names, ages, and present occupations of all directors and executive officers.

(D) The plan of conversion shall not be required to be attached to the summary proxy statement under item 16.

(E) The statement contained in § 563b.8(u) of this part shall be included.

(d) *Notice to eligible account holders and supplemental account holders who are not voting members.* The converting savings association may give notice of the proposed conversion and the meeting of the association members by letter or other written communication authorized for use by the Office to eligible account holders and supplemental account holders who are not voting members. The contents of the notice shall be subject to §§ 563b.4(a)(4) and (a)(5), and 563b.5(g) of this part; the use of the notice shall be subject to § 563b.5(b) of this part; and filing of the notice with the Office shall be subject to § 563b.5(e)(1), (e)(3), (e)(5), and (e)(7) of this part.

(e) *Required vote.* The plan shall be approved by a vote of at least a majority of the total outstanding votes of the association members, unless State law requires a higher percentage for a State-chartered converting savings association, in which case the higher percentage shall be used. Voting may be in person or by proxy.

§ 563b.7 Pricing and sale of securities.

(a) *General.* (1) No offer to sell securities of an applicant pursuant to a plan of conversion may be made prior to approval by the Office of the application for conversion and until the proxy statement has been authorized for use by the Office.

(2) No offering circular may be transmitted to any person in connection with an offer or sale of a security that is the subject of a plan of conversion which has been filed with the Office unless the offering circular meets the requirements of this part or part 563g.

(3) No sale of securities may be made except by means of a final offering circular which has been declared effective by the Office.

(4) The provisions of § 563b.7(a) shall not apply to preliminary negotiations or agreements between an applicant and any underwriter or among underwriters who are to be in priority of contract with the applicant.

(b) *Distribution of offering materials.* Any preliminary offering circular which has been filed with the Office may be distributed in connection with the offering at the same time as or after the proxy statement is mailed to association members pursuant to § 563b.6(c) of this part. No final offering circular shall be distributed until it has been declared effective by the Office. The declaration of effectiveness of the final offering circular by the Office shall not extend beyond the maximum time period specified for the completion of the sale of all the capital stock in paragraph (i) of this section, or beyond such period of time as the Office shall establish upon a subsequent declaration of effectiveness in the event of the granting of an extension of time under paragraph (k) of this section.

(c) *Estimated price information.* If the offering is to commence prior to the meeting of the association members held to vote on the plan of conversion, the proxy statement authorized for use by the Office shall set forth the estimated price range. Any preliminary offering circular shall set forth the estimated price range. The maximum of such price range should normally be no more than 15 percent above the average of the minimum and maximum of such price range and the minimum should normally be no more than 15 percent below such average. The maximum price used in the price range should normally be no more than $50 per share and the minimum no less than $5 per share.

(d) *Prohibited representations.* The Office will review the price information

required under this section in determining whether to give approval to applications for conversion when the offering is to commence prior to the meeting of association members, and will review the information in determining whether to declare a final offering circular effective. No representations may be made in any manner that such price information has been approved by the Office or that the shares of capital stock sold pursuant to the plan of conversion have been approved or disapproved by the Office or that the Office has passed upon the accuracy or adequacy of any offering circular covering such shares.

(e) *Underwriting expenses.* Underwriting commissions shall not exceed an amount or percentage per share accepted as reasonable by the Office or its delegate. No underwriting commission shall be allowed or paid with respect to shares of capital stock sold in the subscription offering unless the plan of conversion contains the optional provision permitted by § 563b.3(d)(11) of this part; however, an underwriter may be reimbursed for accountable expenses in connection with the subscription offering where the public offering is limited such that reasonable underwriting commissions thereon would not be sufficient to cover total accountable expenses and, in the case in which no public offering occurs, an underwriter may be paid a consulting fee reasonable under the circumstances as the Office shall accept. The term ''underwriting commissions'' includes underwriting discounts.

(f) *Pricing materials.* (1) In considering the pricing information required under paragraph (c) of this section, the Office will apply the following guidelines:

(i) The materials shall be prepared by persons independent of the applicant, experienced and expert in the area of corporate appraisal, and acceptable to the Office;

(ii) The materials shall contain a full appraisal, including a complete and detailed description of the elements that make up an appraisal report, justification for the methodology employed and sufficient support for the conclusions reached therein;

(iii) To the extent that the appraisal is based on a capitalization of the *pro forma* income of the converted savings association, the materials must indicate the basis for determination of the income to be derived from the proceeds of the sale of stock and demonstrate the appropriateness of the earnings-multiple used, including assumptions made as to future earnings growth. To the extent that the appraisal is based on comparison of the capital stock of the applicant with outstanding capital stock of existing stock associations, such existing stock associations must be reasonably comparable to the converting savings association in terms of such factors as size, market area, competitive conditions, profit history, and expected future earnings;

(iv) In those instances where the initial appraisal report is deemed to be materially deficient and/or substantially incomplete, the OTS may deem the entire conversion application materially deficient and/or substantially incomplete, and in accordance with the OTS applications processing rules, 12 CFR part 516, decline to further process the application.

(2) In addition to the information required in paragraph (f)(1) of this section, the applicant shall submit information demonstrating to the satisfaction of the Office the independence and expertise of any person preparing materials under this paragraph. No appraiser shall serve as an underwriter or selling agent under the same plan of conversion. No affiliate of an appraiser may act as an underwriter or selling agent unless procedures are followed and representations made to ensure that an appraiser is separate from the underwriter or selling agent affiliate and the underwriter or selling agent affiliate does not make recommendations or in any way impact the appraisal. No appraiser shall receive any other fee except for the fee for services rendered in connection with such appraisal.

(3) In addition to the information required in paragraphs (f)(1) and (f)(2) of this section, the applicant shall file with the Office such additional information with respect to the pricing of the capital stock of the association as the Office may request.

(g) *Order forms for purchase of capital stock.* (1) Promptly after the Office has declared effective the offering circular

for the subscription offering, the applicant shall distribute order forms for the purchase of shares of capital stock in the offering to all eligible account holders, supplemental eligible account holders, voting members and other persons who may subscribe for shares of capital stock under the plan of conversion. If the converting savings association shall have adopted in its plan of conversion the optional provisions set forth in § 563b.3 (d)(5), (d)(6), or (d)(11) of this part, the applicant shall deliver order forms to the eligible account holders, supplemental eligible account holders, and voting members who requested receipt of the offering circular.

(2) Each order form shall be accompanied or preceded by the final offering circular for the subscription offering or the public offering, as the case may be, and a set of detailed instructions explaining how to properly complete such order forms.

(3) The maximum subscription price stated on each order form shall be the amount to be paid when the order form is returned. The maximum subscription price and the actual subscription price shall be within the subscription price range stated in the Office's approval and the offering circular. If either the maximum subscription price or the actual subscription price is not within the subscription price range, the applicant must obtain an amendment to the Office's approval. If appropriate, the Office will condition its approval by requiring a resolicitation of proxies and/or order forms. If the actual public offering price is less than the maximum subscription price stated on the order form, the actual subscription price shall be correspondingly reduced and the difference shall be refunded to those who have paid the maximum subscription price, unless the subscribers affirmatively elect to have the difference applied to the purchase of additional shares of capital stock.

(4) Each order form shall be prepared so as to indicate to the person receiving it, in as simple, clear and intelligible a manner as possible, the actions which are required or available to him or her with respect to the form and the capital stock offered for purchase thereby. Specifically, each order form shall:

(i) Indicate the maximum number of shares that may be purchased pursuant to the subscription rights;

(ii) Indicate the period of time within which the subscription rights must be exercised, which period of time shall be no less than 20 days and no more than 45 days following the date of the mailing of the subscription offering order form;

(iii) State the maximum subscription price per share of capital stock;

(iv) Indicate any requirements as to the minimum number of shares of capital stock which may be purchased;

(v) Provide a specifically designated blank space or spaces for indicating the number of shares of capital stock which the eligible account holder or other person wishes to purchase;

(vi) Indicate the manner of required payment and, if such payment may be made by withdrawal from a certificate of deposit, indicate that such withdrawal may be made without penalty. If payment is to be made by withdrawal from a savings account or certificate of deposit, a box to check should be provided;

(vii) Provide specifically designated blank spaces for dating and signing the order form;

(viii) Contain an acknowledgment by the account holder or other person signing the order form that he or she has received a final offering circular prior to so signing; and

(ix) Indicate the consequences of failing to properly complete and return the order form, including a statement that the subscription rights are nontransferable and will become void at the end of the subscription period. The order form may, and the set of instructions shall, indicate the place or places to which the order forms are to be returned and when the order forms shall be deemed to be received, such as by date and time of actual receipt at the address indicated or by date and time of postmark.

(5) The order form may provide that it may not be modified without the applicant's consent after its receipt as set forth in the order form. If payment is to be made by withdrawal from a savings account or certificate of deposit, the applicant may, but need not, cause

such withdrawal to be made upon receipt of the order form. If such withdrawal is made at any time prior to the closing date of the public offering, the applicant shall pay interest to the account holder on the account withdrawn as if such amount had remained in the account from which it was withdrawn until such closing date.

(h) *Withdrawal from certificate accounts.* Notwithstanding any regulatory provision regarding penalties for early withdrawal from certificate accounts, the applicant may allow payment for capital stock pursuant to the exercise of subscription rights by withdrawal from a certificate account without the assessment of such penalties. In the case of early withdrawal of only a portion of such account, the certificate evidencing such account shall be cancelled if the applicable minimum balance requirement ceases to be met. The remaining balance will earn interest at the passbook rate.

(i) *Period for completion of sale.* The sale of all shares of capital stock of the converting savings association to be made under the plan of conversion, including any sale in a public offering or direct community marketing, shall be completed as promptly as possible and within 45 calendar days after the last day of the subscription period, unless extended by the Office.

(j) *Interest on subscriptions and direct community offering purchase orders.* The converting savings association shall pay interest at not less than the passbook rate on all amounts paid in cash or by check or money order to the association to purchase shares of capital stock in the subscription offering or direct community offering from the date payment is received by the association until the conversion is completed or terminated.

(k) *Extensions of time to complete public offering or direct community offering; post-effective amendments to subscription offering circular.* (1) The Office may grant one or more extensions of the time required to complete the sale of all shares of capital stock under paragraph (i) of this section, provided that no single extension of time shall exceed 90 days.

(2) Immediately upon the granting of an extension of time pursuant to paragraph (k)(1) of this section, the converting savings association shall distribute to each subscriber in the offering and, if applicable, each person who has ordered capital stock in the direct community offering, a post-effective amendment to the offering circular filed under an amendment to the application for conversion and declared effective by the Office pursuant to paragraph (k)(4) of this section which shall notify each subscriber and each ordering person of the granting of the extension of time, and of the right of each subscriber and each ordering person to increase, decrease or rescind this subscription:

(i) At any time prior to 20 days before the end of the extension period; or (ii) at any time prior to the date of the commencement of the public offering or the direct community offering: *Provided,* That if the public offering or the direct community offering is not completed within 20 days after its commencement, all instructions from subscribers and ordering persons to increase, decrease, or rescind their subscriptions or orders received during the 20-day offering period shall be honored by the converting savings association.

(3) For the purpose of paragraph (k) of this section, the public offering shall be deemed to commence upon the filing with the Office of the preliminary offering circular for the public offering, and the direct community offering shall be deemed to commence upon the declaration of effectiveness by the Office of the final offering circular.

(4) After the expiration of subscription rights, the converting savings association shall file with and have declared effective by the Office a post-effective amendment to the offering circular delivered to subscribers upon the occurrence of any event, circumstance, or change of circumstance which would be material to the investment decision of a subscriber or, if applicable, a person who has ordered capital stock in the direct community offering.

(5) Any post-effective amendment to an offering circular distributed to subscribers in the offering shall be distributed by the converting savings association immediately after the declaration of effectiveness to each subscriber, and,

if applicable, each person who has ordered stock in the direct community offering, and the converting savings association shall grant to each subscriber and ordering person the right to increase, decrease, or rescind his or her subscription or order for a period which shall be no less than the greater of ten days from the date of the mailing of the post-effective amendment or the period remaining in an extension of time granted by the Office pursuant and subject to the provisions of paragraph (k)(2) of this section.

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

§ 563b.8 Procedural requirements.

(a) Filing an application for conversion. An applicant that desires to convert in accordance with this part shall file ten copies of an application for approval in the form prescribed by the Office.

(b) *Return of improperly executed or materially incomplete filings.* (1) Any application for approval that is improperly executed shall not be accepted for filing and shall be returned to the applicant.

(2) Subject to the provisions of paragraph (b)(3) of this section, any application for approval that does not contain copies of:

(i) A plan of conversion;

(ii) A preliminary proxy statement with signed financial statements; and

(iii) A preliminary form of proxy, shall not be accepted for filing and shall be returned to the applicant.

Any application for approval containing a materially incomplete plan of conversion, proxy statement, or form of proxy may be returned by the Office to the applicant.

(3) Any application for approval which contains, at a minimum, a materially complete plan of conversion shall be accepted for filing if the application for approval is accompanied by the written request of the applicant that the application not be reviewed by the Office until the applicant requests and the Office consents to the filing of the additional materials set forth in paragraph (b)(2) of this section.

(c) *Additional filing requirements.* An applicant whose plan of conversion has been approved by the Office shall fulfill the following requirements.

(1) The applicant shall file with the Office promptly after the meeting of association members called to consider the plan of conversion a certified copy of each resolution adopted at such meeting relating to the plan of conversion, together with the following information:

(i) The total number of votes eligible to be cast;

(ii) The total number of votes represented in person or by proxy at the meeting;

(iii) The total number of votes cast in favor of and against each such matter; and

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

The compilation of the votes cast at the meeting may be prepared for the savings association by an independent public accountant or by an independent transfer agent.

(2) The applicant shall file with the Office promptly after the meeting of association members called to consider the plan of conversion an opinion of counsel to the effect that:

(i) The meeting of members was duly held in accordance with all requirements of applicable State and Federal law and regulation;

(ii) All requirements of State law applicable to the conversion have been complied with; and

(iii) If the association has used proxies executed prior to the proxy solicitation required by § 563b.6(c)(1), the authority conferred by such proxies includes authority to vote on the plan of conversion.

(3) Each offering circular for the offering shall be prepared in compliance with this part and Form OC. The applicant shall file with the Office ten copies of each preliminary offering circular and twenty-five copies of each final offering circular.

(d) *Termination or amendment of charter.* (1) Upon approval of a plan of conversion by the members of a State-chartered savings association or a Federal savings association which is converting to a State-chartered stock savings association, the charter of such savings association shall terminate effective upon the issuance to it of a