

DEPARTMENT OF THE TREASURY**Office of Thrift Supervision****12 CFR Parts 563b, 574, and 575****[No. 2002–34]****RIN 1550–AB24****Mutual Savings Associations, Mutual Holding Company Reorganizations, and Conversions From Mutual to Stock Form****AGENCY:** Office of Thrift Supervision, Treasury.**ACTION:** Final rule.

SUMMARY: The Office of Thrift Supervision (OTS) is amending its regulations on the mutual-to-stock conversion process and portions of its regulations on mutual holding company reorganizations. This rule is based on the Notice of Proposed Rulemaking (First Proposal) and the Interim Final Rule, published July 12, 2000, and a re-proposed regulation (Re-proposal), published April 9, 2002.

This final rule 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.

DATES: Effective on October 1, 2002.**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. The final rule and the related forms will also be posted on the OTS Internet Site at <http://www.ots.treas.gov>.

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 the First Proposal, proposing changes to OTS rules governing stock conversions and MHCs.³ On April 9, 2002, OTS published the Re-proposal, refining the First Proposal in response to public comments and requesting additional public comment.⁴

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 final 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.

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. See the Re-proposal for specific references to issued guidance.

III. Summary of Comments

OTS received 13 comment letters on the Re-proposal. Two individuals, three law firms, two thrifts, a regulator, and five trade groups submitted comments. OTS also participated in a meeting on the Re-proposal sponsored by America's Community Bankers on April 26

(attended by 23 participants), a conference telephone call on April 16 sponsored by the Mutual Advisory Council of the American Bankers Association (with representatives from 4 mutual institutions, two outside counsel, and representatives of the ABA), and a meeting with representatives of the FDIC on April 17. 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 Re-proposal involved the business plan, Regional Office non-objection to the business plan, and the pre-filing meeting requirements. While most commenters expressed appreciation for OTS revisions to the business plan provisions, there were still specific objections to portions of the Re-proposal. For example, commenters generally approved the removal of prior Regional Office non-objection to the business plan, but certain commenters objected to one or more of the factors OTS proposed to use in evaluating the business plan.

B. Pre-filing Meeting

Under the Re-proposal, OTS would have required each association contemplating a conversion to meet with the appropriate Regional Office, in a pre-filing meeting at least ten days prior to publishing a plan of conversion, to discuss the proposed business plan. The proposed regulations contemplated that the association's board of directors, or a committee of the board including outside directors, would attend the meeting. One commenter commended OTS for the changes to the pre-filing meeting requirement, and stated it had no objection to the requirement. Two commenters opposed the pre-filing meeting in its entirety, and two other commenters supported such meetings, provided they were not used to "second guess" management. One commenter questioned whether the proposed strategic plan to be discussed at the pre-filing meeting was just an early draft of the business plan. A number of commenters asked for clarification of whether OTS was requiring the whole board to attend the pre-filing meeting and where it had to be held.

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 request for

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

² 65 FR 43088.

³ 65 FR 43092.

⁴ 67 FR 17228.

clarification as to where and who must attend the meeting, OTS has added language to the final regulation indicating that, if the board desires, OTS will send a representative from the Regional Office to the association to meet with the board of directors or a committee of the board. To respond to a comment questioning why the pre-filing meeting must occur at least ten days prior to passage of the plan of conversion, OTS has revised the final regulation to require a meeting prior to passage of the plan, but without requiring the meeting to occur a specified number of days before passage. The short, written strategic plan OTS has requested to review and discuss at the meeting is not intended to take the place of the business plan. OTS reiterates that the purpose of this meeting is not to substitute the agency's judgment for that of the directors, but to require the board to articulate its plans for the association and the implications of those plans before the conversion process actually begins.

C. General Comments on the Business Plan

The commenters considered the business plan provisions in the Re-proposal to be an improvement over those in the First Proposal. Several commenters commended OTS for eliminating the requirement for prior Regional Office non-objection to the business plan. Several of the commenters supported a business plan requirement generally. Certain others opposed the business plan as unnecessary, claiming, in one case, that OTS did not require such plans for other capital raising efforts and so should not for conversions. Another commenter suggested that any mutual association that did not convert should produce a business plan to justify that decision. One commenter stated that the implication still remained that if the business plan is unacceptable, the application will be denied.

OTS requires business plans for significant capital raising applications, such as applications for new savings associations and continues to believe such plans are necessary in stock conversions, because of the generally large amount of capital that will be raised and the change in form of ownership inherent in the transaction. Under the final regulation, 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 Re-proposal provided that a converting association's business plan should, 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 lending needs in the proposed market area; (iii) demonstrate how the new capital will support projected operations and activities; (iv) describe the risks associated with the plan; (v) demonstrate adequate expertise and staffing to manage growth prudently; and (vi) demonstrate that the association will achieve a reasonable return on equity. The Re-proposal also provided that the association could not project stock repurchases or returns of capital in the first year of the business plan, or extraordinary dividends at any time during the three-year plan. OTS also clarified that OTS would weigh all of the factors together, and no single factor would determine whether a business plan was acceptable.

One commenter asked for clarification whether the business plan components were "standards" or "requirements" and whether all of them had to be met. The same commenter asked for a waiver provision for when a component was inapplicable. One commenter thought the regulations should specifically state that a business plan for a state-chartered savings association would require state approval by the appropriate state regulator. Several commenters asked for clarification whether there was a business plan requirement for MHC reorganizations that do not involve a stock offering. Several commenters who discussed the business plan opposed the reasonable return on equity (ROE) factor.

In addition, certain commenters asserted that OTS was "over[ly] paternalistic" and concerned about the "need for capital;" that the business plan standards were "onerous" or meant to protect OTS interests; that OTS was biased in favor of management; or that the business plan was a way to "second guess" management. One commenter asserted that OTS appeared to believe that "need" for capital is a threshold requirement for conversion, and that OTS is ignoring the fact that there are many other reasons to justify a conversion.

To address the concerns of the commenters, the final regulation combines several of the business plan components, indicates that no single

factor will be determinative for any business plan, and that OTS will look at every plan on a case-by-case basis. OTS reiterates that the business plan does not create a "needs" test for conversions, and recognizes that many other factors go into the decision whether to convert.

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 final regulation continues to include a business plan requirement, and sets forth the factors OTS will consider in evaluating business plans.⁵

Several of the comments demonstrate that commenters believed the various factors in the Re-proposal were separate "requirements" that had to be satisfied for approval of a conversion. The final regulation 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.

All of the commenters addressing the proposed ROE factor objected to OTS's use of ROE as a factor in evaluating the business plan, pointing out that such a standard was generally unrealistic for a newly converted company, and particularly difficult to achieve for an already well-capitalized company. OTS has reviewed the factors it will consider when evaluating a business plan and decided to combine several factors that address similar issues concerning deployment of proceeds. OTS continues to believe that investor reaction to return on their investment should be a valid concern for a converting institution. The final rule will emphasize that the business plan must describe how it will safely and soundly deploy the proceeds received from the perspectives of opportunities to deploy proceeds, the projected operations and

⁵ OTS notes that failure to submit a business plan for an MHC reorganization gives rise to a rebuttable presumptive disqualifier under § 575.4(c)(2). In addition, establishing a Mid-tier, with or without a stock issuance, requires OTS approval under the Acquisition of Control Regulations, which also establish a rebuttable presumptive disqualifier for failure to submit a business plan. See 12 CFR 574.7(g)(2)(ii). An applicant may provide information to rebut the presumptive disqualifier.

activities, and what the return will be to investors who buy stock in the association, in particular, 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.

One commenter believed that the requirement that the converting association submit a certificate signed by two-thirds of the board of directors, stating that the business plan adequately reflects their plans should be deleted, claiming it is redundant, because the board of directors certifies elsewhere that it has read and approved the plan when it submits the application for conversion. OTS believes it is important that directors certify specifically that the business plan reflects their actual plans. The same commenter also asserted that the required legal opinion at the completion of the conversion was too broad and would cause counsel to opine on matters of which it had no knowledge. OTS has considered this comment and believes that an opinion that the association has complied with all laws applicable to the conversion is appropriate. For years OTS has required similar opinions with respect to compliance with state laws (for converting state-chartered institutions), and has not encountered difficulties regarding the submission of such opinions.

Another commenter objected to the requirement that each applicant demonstrate that the deployment of proceeds in the business plan will help meet the credit and lending needs of the communities served by the applicant. The commenter, apparently believing this requirement to be newly proposed, asserted that the requirement would reduce "flexibility" in the conversion process. OTS points out that this standard has been in the conversion regulations since 1994.⁶ In evaluating applications under this standard, OTS has taken into account the differing positions of converting savings associations, and has found many different types of plans to be acceptable under the standard.

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 first to 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, and a number of other innovations that OTS believes will enhance the attractiveness of the MHC option. Taken together, these steps appeared to some commenters as expressing an agency bias for the MHC form.

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 sec. 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 The final regulation retains the proposed enhancements to the MHC form to make it a long-term alternative to full conversion.

OTS continues to encourage mutual associations seeking new capital to 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.

F. Mutual Capital Questions

OTS asked a number of questions in the preambles to the First Proposal and the Re-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. One commenter suggested that MHCs should be allowed to issue non-voting stock that would have a claim on the economic interest of the MHC without controlling management. OTS is concerned that issuing non-voting stock with a claim on the economic interest of the MHC might complicate the ability of an MHC to complete a second step stock

conversion. Another commenter recommended amending the MHC regulations to allow stock to be issued for acquisitions without offering shares to existing stockholders. OTS has already authorized such an acquisition under existing MHC regulations, and is willing to consider such acquisitions in the future.

Both the preamble to the First Proposal and to the Re-proposal discussed 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 does not propose to issue regulatory guidance on capital distributions by mutual associations as part of this proposal.⁹

However, in response to a request from an association, the Chief Counsel issued a legal opinion addressing this issue on June 21, 2002.¹⁰

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. Two 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 final regulation is consistent with the Interim Rule and the Re-proposal. See §§ 563b.510 and 563b.515. OTS is also making 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

⁶ See 12 CFR 563b.11, as added by 59 FR 61262, Nov. 30, 1994.

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

⁸ 65 FR 43088, Jul. 12, 2000.

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

¹⁰ The legal opinion is available on the OTS website.

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 final regulation, at § 563b.510, clarifies this point. However, OTS will 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. 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.¹¹ The final regulation will extend this exclusion from the repurchase limitations to fully converted companies. OTS notes that the FDIC permits purchases for employee stock ownership plans (ESOPs) 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 certain dividends waived 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, stating their belief that OTS had changed its policy from protecting depositors to protecting management and minority interests. The final regulation is unchanged from the Interim Rule and the Re-proposal. OTS notes that the waiver of dividends results in more capital at the savings association, enhancing the safety and soundness of the savings association. OTS retains the authority to take enforcement action if it discovers abuses.

I. Charitable Organizations

The First Proposal and the Re-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 final regulation 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.

Most commenters on this subject were in favor of the proposed regulations, although one commenter stated that OTS should not allow for the establishment of a foundation in second step conversions. OTS believes that establishing a foundation in a second step conversion is acceptable with a separate minority shareholder vote in such transactions and has included that requirement in the final regulation. One commenter suggested that the requirement that certain language be included in all of the foundation's governing documents was excessive. In addition, this commenter suggested several regulatory revisions that OTS believes are improvements to the proposal, such as not requiring the submission of the operating plan until six months following the conversion. The final regulation and Exhibit 9 to the Form AC provide that applicants will not be required to submit the operating plan until six months after the conversion, and delete a previously requested legal opinion regarding the legality of the chartering documents under state law. Similarly, OTS will delete the requirement to include certain language in the foundation's bylaws and operating plan, and will make several other minor revisions at the suggestion of this commenter. OTS will also delete the provision that foundation compensation arrangements may need to be reviewed by the agency, because OTS already has that option. Upon effectiveness of the final regulation, waivers from certain provisions in the current conversion regulations now routinely requested in a conversion with a charitable foundation will no longer be necessary.

J. Acquisitions of Converted Associations

OTS regulations at § 563b.3(i)(3) provide 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.

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. In the Re-proposal, OTS requested comment on whether these provisions should apply to MHCs and whether Mid-tiers should be permitted to enact anti-takeover protections in their charters.

Several commenters expressed support for the OTS position that a three-year restriction on acquisitions was appropriate and should apply to MHCs, and that anti-takeover protections for Mid-tiers were appropriate. One commenter thought OTS should implement a five-year restriction on acquisitions. One commenter suggested post-conversion restrictions for state-chartered savings associations should follow state law restrictions, rather than OTS restrictions. One commenter expressed confusion regarding what OTS is willing to allow. Another commenter suggested that OTS needed to show some flexibility in applying the rule, such as allowing acquisitions in less than three years in certain circumstances. Another commenter suggested OTS should allow no exceptions to the three-year "prohibition" on acquisitions. OTS reiterates that it always considers the merits of every case, and will continue to do so. OTS believes that all savings associations that convert under part 563b be subject to the post-conversion restrictions. After considering the comments, for the reasons stated above, OTS is finalizing the regulation as originally proposed.

K. Demand Account Holders

In both the First Proposal and the Re-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

¹¹ See 12 CFR 575.11(c)(1)(iv).

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 and one specifically supported it. OTS will enact the final regulation as proposed.

L. Management Stock Benefit Plans

In the First Proposal and the Re-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 two suggested OTS add retirement within one year of conversion as another reason for allowing acceleration.

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 final regulation does not provide for accelerated vesting based on retirement.

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 commenter pointed out that the proposed language in the revision did not accomplish the purpose of the revision. OTS concurs and has revised the language in the final regulation to be consistent with the proposal.

In response to the First Proposal, most commenters supported expansion of option plan opportunities for MHCs. However, two 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. After considering the potential for small offerings in MHC structures, OTS proposed an additional limitation in 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.

One commenter on the Re-proposal specifically supported establishment of the 25% limitation. Several commenters were unclear on how the 25% limit would be applied, and one commenter asserted that notwithstanding the 25% limit, the Re-proposal increased rewards

to management without justification. One commenter asked OTS to clarify whether the 25% limit would apply to stock benefit plans enacted after the initial stock issuance.

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. With respect to the comments requesting clarification, the regulation has been revised to indicate that all stock benefit plans for officers and directors are included in the 25% limitation, except for ESOPs (whether allocated or unallocated). Also, the 25% limit would apply to subsequent stock benefit plans, but would be based on 25% of the stock outstanding on the date subsequent stock plans were ratified by the shareholders.

One commenter suggested two technical revisions to §§ 563b.380(c) and 563b.500(c). Those revisions correct language that was inadvertently deleted from the proposal regarding ESOP purchases in the offering and amendments of previously approved benefit plans. OTS appreciates the technical corrections and is including them in the final rule.

OTS also proposed 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. This provision is included in the final regulation. See § 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 Re-proposal clarified that 50% of the net proceeds must be infused into the savings association. One commenter concurred with the clarification. OTS is enacting this provision as re-proposed.

N. Mutual Holding Company Revisions

1. General

In the First Proposal and the Re-proposal, OTS proposed allowing the adoption of additional stock option plans without the need to issue stock to all categories of subscribers. The final regulation 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, and supervisory considerations at the converted savings association.

OTS received a number of comments after the First Proposal that holding companies inserted in between MHCs and their savings association subsidiaries (Mid-tiers) should be allowed to be state-chartered entities. In the Re-proposal, OTS noted that Mid-tiers are MHCs, and MHCs, by statute, must be federally chartered.¹² One commenter claimed OTS chartering and regulation of Mid-tiers had worked very well. Two commenters claimed that OTS was attempting to "eviscerate" state law in this area. OTS continues to believe that the statute requires that all Mid-tier holding companies be federally chartered. OTS believes the two commenters may be assuming that OTS's position applies to MHC structures that involve neither a savings association nor an institution that has elected to be treated as a savings association under sec. 10(l) of HOLA (that is, to MHCs that draw membership from banks but not savings associations). OTS notes that if the MHC structure does not include a savings association within the meaning of sec. 10 of HOLA, the MHC structure is not subject to part 575, and in such case, neither the MHC nor the Mid-tier may be chartered by OTS.

Two commenters recommended that OTS allow Mid-tiers to adopt certain provisions of state law with regard to indemnification or limitation of liability currently available to state chartered corporations. As OTS noted in response to a comment from the First Proposal, 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.

2. Acquisitions of Mutual Holding Company Structures

In the Re-proposal, OTS asked for comment on the recent series of proposals to acquire MHC structures. 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,

¹² See 12 U.S.C. 1467a(o)(7).

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.

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-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.¹³ One commenter discussed this issue and agreed with OTS that such provisions should be included in Mid-tier charters.

Accordingly, OTS is allowing Mid-tier holding companies to include the provisions set forth at 12 CFR 552.4(b)(8) in their charters.¹⁴ In addition, OTS intends to apply § 563b.3(i)(3) to Mid-tier holding companies and subsidiary stock institutions that complete stock offerings under § 575.7. One commenter agreed with OTS that 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 proposed 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). One commenter disagreed with OTS on this issue but offered no reasons for the disagreement. OTS has included the requirement in the final regulation.

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. There were no comments on this language. The revised language can be found at §§ 563b.625 and 563b.630 of the final regulation.

P. Merger Conversions

One commenter suggested that OTS should change its policy to allow merger conversions for institutions with greater than \$25 million in assets. Another commenter suggested the federal regulators should take a consistent approach to merger conversions to discourage "forum shopping." That same commenter suggested OTS should use the CAMELS rating categories as factors to be considered in merger conversions. In response to these comments, OTS reiterates that there is no set asset size for an institution undertaking a merger conversion. OTS merely suggested in its 1994 statement about merger conversions that institutions smaller than \$25 million in assets may encounter difficulties in completing standard conversions and, therefore, were more likely candidates for 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.¹⁵

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 that 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. OTS notes that these are the same criteria the FDIC uses when it evaluates proposals for merger conversions.

Q. 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 suggestions for revisions to the section on foundations. As discussed earlier, OTS concurs with some of the proposed revisions and has revised the form 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

| Original provision | Re-proposed provision | Comment |
|---------------------|-----------------------|---------------------------------|
| 12 CFR 563b.1 | 12 CFR 563b.5 | Nonsubstantive revision, moved. |

¹³ 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.

¹⁴ If an existing Mid-tier wishes to amend its charter to include such provisions, it may do so following the provisions at 12 CFR 575.14(c)(2).

¹⁵ See 59 FR 61247, 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.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. |
| 12 CFR 563b.4(a)(5) | 12 CFR 563b.135(c) | Nonsubstantive revision, moved. |

| Original provision | Re-proposed provision | Comment |
|---------------------------------------|--|---|
| 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. |
| 12 CFR 563b.8(t)(2) ..... | ..... | Deleted. |

| Original provision | Re-proposed provision | Comment |
|-------------------------------------|--|---|
| 12 CFR 563b.8(u) | 12 CFR 563b.205 | Nonsubstantial 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. Use of “Plain Language”

Section 722 of the Gramm-Leach-Bliley Act of 1999 requires the use of “plain language” in all proposed and final rules published after January 1, 2001. OTS invited comment on whether the proposed rule was written in “plain language” and how to make the proposed rule easier to understand. No commenter indicated that the First Proposal or the Re-proposal needed to be revised to be understood. The final rule is substantially similar to the First Proposal and the Re-proposal and OTS believes the final rule is written plainly and clearly.

VII. Executive Order 12866

The Director of OTS determined that this final rule is not 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 a final regulatory flexibility analysis with this final rule or certify that the rule would not have a significant impact on a substantial number of small entities.¹⁶ In its proposed rules, OTS requested

comments on whether the rule would have a significant impact on a substantial number of small entities. No commenters addressed this issue. Therefore, OTS has prepared the following analysis.¹⁷

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

1. Small Entities to Which the Final Rule Would Apply

The final rule applies to mutual savings associations that propose to

¹⁶ 5 U.S.C. 605(b).

¹⁷ 5 U.S.C. 604(a).

convert to the stock form of ownership. Under OTS jurisdiction, there are currently approximately 390 mutual savings associations, 34 publicly traded MHCs, 2 non-publicly traded MHCs, and 27 MHCs with no stock issued. Of these institutions, approximately 230 have less than \$100 million in assets. Small depository institutions are generally defined, for RFA purposes, as those with assets under \$100 million.¹⁸ 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 final rule affects fewer than 15 savings associations annually.

2. Requirements of the Final Rule

The final rule 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 final rule 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 final rule would require. As a result, this new requirement should not have any additional impact on small savings associations.

The final rule 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 final regulatory changes, OTS provides the following estimate. The final rule'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 604(a) of the RFA requires OTS to describe how the agency attempted to minimize the rule's impact on small entities and why it chose the alternative adopted in the final rule over other alternatives. Section 603(c) lists several examples of potential 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 final rule 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 final rule 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.

IX. Unfunded Mandates Reform 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 final rule 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 final rule, 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 on August 31, 2000 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.

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.

¹⁸ 13 CFR 121.201 Section 52, Subsection 522 (2002).

12 CFR Part 575

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

Accordingly, the Office of Thrift Supervision amends 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.

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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 in part 574 of this chapter.

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 sec. 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) Your board, or a subcommittee of your board, must meet with OTS before you pass your plan of conversion. The meeting may occur at OTS or your offices at your option. 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), what opportunities are available to reasonably achieve your planned deployment of conversion proceeds in your proposed market areas, and how your deployment will provide a reasonable return on investment commensurate with investment risk, investor expectations, and industry norms, by the final year of the business plan. You must 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) The risks associated with your plan for deployment of conversion proceeds, and the effect of this plan on management resources, staffing, and facilities.

(4) 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.

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

§ 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 of directors must approve, the business plan.

(b) Your chief executive officer and at least two-thirds of the board of directors 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 review my business plan?

(a) OTS will review your business plan to determine that it demonstrates a safe and sound 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 applicable factors of § 563b.105. No single factor will be determinative. OTS will review every case on its merits.

(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 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.485 and 563b.505. 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.485 and 563b.505 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 meeting of your members, which may be a special or annual 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?

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

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

(2) The total votes eligible to be cast.

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

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

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

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

(b) 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, pursuant to § 563b.280, 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 of directors adopts the plan of conversion. Any newspaper advertisements 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 that 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 the 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 re-solicit proxies?

If you amend your application for conversion, OTS may require you to re-solicit 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 member 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 allowable under 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 is not able to or 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) In your plan of conversion, you must set a date by which the conversion must be completed. This date must not be more than 24 months from the date that your members approve the plan of conversion. The date, once set, may not be extended by you or by OTS. You must terminate the conversion if it is not completed by that 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).

(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).

(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 of this chapter.

(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 amended 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 written 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, other than ordinary dividends, to purchasers during the term of the business plan submitted with the conversion.

§ 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–78j), 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 your minority shareholders separately approve the charitable contribution by a majority of their total eligible votes.

§ 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 (or trust agreement) and gift instrument 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, it must vote those shares 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 (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) As long as the charitable organization controls shares, you must

consider those shares as voted in the same ratio as all of the shares voted on each proposal considered by your shareholders.

(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 (within six months after your stock offering), 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 secs. 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, when 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 at OTS's website (www.ots.treas.gov).

(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 parts 563b and 563g of this chapter.

(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, or 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 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”;

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 part 563b of this chapter.

(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”; and
 - 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.295 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: July 26, 2002.
By the Office of Thrift Supervision.
James E. Gilleran,
Director.

Note: The following appendixes will not appear in the Code of Federal Regulations.

Appendix A
Office of Thrift Supervision
Form AC—Application for Conversion

Paperwork Reduction Act Statement

The Office of Thrift Supervision will use this information to provide OTS with all necessary information to evaluate the application for conversion to meet all agency safety and soundness requirements. *See* 12 CFR part 563b.

Public reporting burden for this collection of information is estimated to average 299 hours if not creating a foundation and 309 hours if creating a foundation, per response, including the time for reviewing instructions and completing and reviewing the collection of information. If a valid OMB Control Number does not appear on this form, you are not required to complete this form. 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 Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552. Send a copy of comments to Joseph F. Lackey, Jr., Attention: 1550–0014, by e-mail to Joseph_F_Lackey_Jr@omb.eop.gov or by mail to him at Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

OMB No. 1550–0014
Expiration Date: 08/31/2003

Form AC—Application for Conversion
[Not to be codified in the Code of Federal Regulations]
Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552

Application for Conversion

| | |
|---|--------------|
| (Name of Applicant as specified in charter) | (Docket No.) |
| (Street Address of Applicant) | |
| (City, State, and Zip Code) | |

| | | |
|-----------------------------|---|---|
| Index to Items | Item 2. Plan of Conversion | Item 4. Form of Proxy |
| Item 1. Form of Application | Item 3. Proxy Statement and Offering Circular | Item 5. Additional Information Required for Conversion with a Charitable Contribution |

Item 6. Sequence and Timing of the Plan
 Item 7. Record Dates
 Item 8. Expenses Incident to the Conversion
 Item 9. Indemnification
 Item 10. Federally Chartered Stock Savings Associations
 Exhibits

General Instructions

A. Use of Form AC

You must use Form AC to seek OTS approval of a conversion from the mutual to the stock form of organization under 12 CFR part 563b. You must indicate on the cover if you are filing using Regulation S-B.

B. Application of Rules and Regulations

You should follow the general requirements in this section when you prepare and file this Form AC and all other forms required under 12 CFR part 563b.

(1) *Method of preparation.* In your applications, you must furnish information in item-and-answer form, and must include the captions on the form. You may omit the text of items and instructions. In a proxy statement or offering circular, you may present the required information in any order and omit the captions and text of all items and instruction. You must not present the information in a way that obscures any of the required information or other information necessary to keep the required information from being incomplete or misleading. Where an item requires you to provide information in tabular form, you must provide the information substantially in the tabular form specified in the item.

You must set out all information in the plan of conversion, proxy statement, or offering circular under appropriate headings that reasonably indicate the principal subject matter. Except for financial statements and other tabular data, you must present all information in reasonably short paragraphs or sections. You must set out financial statements, including interim financial statements, in comparative form, and must include all notes and the accountants' certificate or certificates. You must follow 12 CFR 563c.1, which governs the certification, form, and content of financial statements, including the basis of consolidation.

In a proxy statement or offering circular, you must present all information in a clearly understandable format. The reader should not have to refer to the OTS form or 12 CFR part 563b to understand the document. You must include a reasonably detailed table of contents in each proxy statement and offering circular.

In every application, you must include a cross-reference sheet showing where the responses to each item of the appropriate form are located in the proxy statement and offering circular. In the cross-reference sheet, you must state where any item is

inapplicable, or where you omitted an answer because it was no.

(2) *Additional information.* In addition to the information required under 12 CFR part 563b, you must include any material information necessary to make the required statements, in the light of the circumstances under which you have made them, not misleading.

(3) *Information unknown or not reasonably available.* You must provide information to the extent you know the information or it is reasonably available to you. You may omit any required information that you do not know or is not reasonably available to you. You must explain why such information is not known or reasonably available to you. Information is not reasonably available if obtaining it would involve an unreasonable effort or expense, or if it rests peculiarly within the knowledge of another person who is not your affiliate. You must provide all information on the subject that you possess or can acquire without unreasonable effort or expense, together with the sources of the information.

(4) *Incorporation by reference.* If an item in an application calls for certain information and the proxy statement or offering circular does not require you to include it, you may incorporate the information by reference from any part of the application, including exhibits, in the answer, or partial answer, to the item. In a proxy statement or offering circular, you may not incorporate information by reference unless you attach, summarize, or outline the document containing the information. To summarize or outline a document, you must make a brief statement of the most important provisions of the document. In addition, you may incorporate by reference particular items, sections, or paragraphs of any exhibit, and your summary or outline may be qualified in its entirety by the reference. In an offering circular, you may incorporate by reference information from a proxy statement that you have delivered. You do not need to summarize or outline the information. If you incorporate material by reference you must clearly identify the material in the reference. You must expressly state that the specified matter is incorporated by reference at the particular place in the application where the information is required. You may not incorporate information by reference if the incorporation would render the statement incomplete, unclear, or confusing.

(5) *Signatures Required.* The following individuals must manually sign at least two copies of every application and every amendment to an application that you file with OTS:

- (a) Your duly authorized representative.
- (b) Your principal executive officer.
- (c) Your principal financial officer.
- (d) Your principal accounting officer.

(e) At least two-thirds of your directors.

(6) *Consents of persons about to become directors.* If you indicate in a proxy statement or offering circular that a person is about to become a director, and that person has not signed your application, you must file that person's written consent to the application with the appropriate form.

(7) *Consents of experts.* If you indicate that an accountant, attorney, investment banker, appraiser, or other professional prepared, reviewed, passed upon, or certified any part of an application, or any report or valuation used in connection with the application, you must file the written consent of that person to use their name in connection with the stated action with the application. If you quote or summarize any portion of a report of an expert in any filing under 12 CFR part 563b, you must file a written consent of the expert that expressly states that the expert consents to the quotation or summarization. All written consents must be dated and signed manually by the expert. You must file a list of consents with the application. If the expert's report contains his or her consent, you must refer to the report containing the consent in your list. You must file a new consent for any accounting amendment.

(8) *Date of filing.* Your documents are filed as of the date the last OTS office where they are filed receives them, and you paid any applicable fee.

(9) *Amendments.* You must file all amendments to any application with an appropriate facing sheet. You must number your amendments consecutively in the order in which you file them. You must comply with all regulations applicable to the original application.

Item 1. Form of Application

You must include the following form in your application for approval of the plan of conversion. You must set out the names and titles of the officers and directors below their signatures:

The undersigned applies for approval to convert into a stock association. We have attached a statement of the proposed plan of conversion and other information and exhibits as required by 12 CFR part 563b.

In submitting this application, we understand and agree that, if OTS requires further examinations or appraisals, OTS will conduct or approve the examination or appraisal at our expense. We will pay the costs as computed by OTS.

At least two-thirds of the board of directors approved the application. By filing this application, the undersigned officers and directors severally represent that: (1) Each person read this application; and (2) Each person adequately examined and investigated this application and concluded that this application complies with 12 CFR part 563b.

Attest:

(Duly Authorized Representative)

(Principal Executive Officer)

(Principal Financial Officer)

(Principal Accounting Officer)

(Director)

(Director)

(Director) _____ (Director) _____
 (Signatures of at least two-thirds of the Board of Directors)

Item 2. Plan of Conversion

You must furnish the complete written plan that your board of directors adopted for the conversion to the stock form. You must prepare the plan of conversion in accordance with 12 CFR 563b.320 through 563b.485 and 563b.505. OTS will base its approval on the terms of this plan. You must distribute the approved plan as an attachment to the proxy statement.

Item 3. Proxy Statement and Offering Circular

You must furnish preliminary copies of the proxy statement and offering circular. You must prepare the proxy statement and offering circular in accordance with Forms PS and OC, respectively.

Item 4. Form of Proxy

You must furnish preliminary copies of the form of proxy that your management will distribute to your members.

Item 5. Additional Information Required for Conversion With a Charitable Contribution

If your conversion application includes a charitable contribution, you must include the following information in your application:

- Your reasons for concluding that the proposed contribution is reasonable.
- The impact of the proposed contribution on the appraised valuation.
- A description of the charitable organization.
- The exhibits required under Exhibit 9.

Item 6. Sequence and Timing of the Plan

You must describe the expected chronological order of the events for your conversion. Begin with the filing of this application and end with the sale of all the stock under the plan. Estimate the timing of any requisite approvals by state or other regulators other than OTS. Indicate the proposed timing of all aspects of the subscription offering. If a selling agent will assist in the community offering, or if an underwriter will offer shares in the public offering, indicate the proposed timing of all aspects of the community offering and public offering.

Item 7. Record Dates

If the eligibility record date in your plan of conversion is more than one year before your board of directors adopted the plan of conversion, you must state why you selected the earlier date.

You must indicate what circumstances may require you to use a supplemental eligibility record date.

Item 8. Expenses Incident to the Conversion

You must estimate the expense of your conversion in the tabular form indicated below:

| | |
|-------------------------------|-------|
| Postage and Mailing | _____ |
| Printing | _____ |
| Escrow or Agent Fees | _____ |
| Underwriting Fees | _____ |
| Appraisal Fees | _____ |
| Transfer Agent Fees | _____ |
| Auditing and Accounting | _____ |
| Proxy Solicitation Fees | _____ |
| Advertising | _____ |
| Other Expenses | _____ |
| Total | _____ |

Instructions:

- Expenses that you incur in the conversion must be reasonable.
- You may exclude salaries and wages of regular employees and officers, if you state that you excluded these items. You must state solicitation costs by specially engaged employees or paid solicitors under paragraph (b) of item 3 of Form PS under "Proxy Solicitation Fees" in this item.
- You may not include any category of expense exceeding \$10,000 in "Other Expenses." If an expense exceeds \$10,000 and is not specified above, you must itemize the expense under an appropriate category.
- If your management does not conduct the solicitation, you must provide the information under "Proxy Solicitation Fees" for the cost of the solicitation.

Item 9. Indemnification

If you will insure or indemnify any underwriter, appraiser, lawyer, accountant or expert, or director or officer against any liability which he or she may incur in his or her capacity under any charter provisions, bylaw, contract, arrangement, statute, or regulation, you must state the general effect of the charter provision, bylaw, contract, arrangement, or regulation.

Item 10. Federally Chartered Stock Savings Associations

You must state whether you are applying to amend your charter and bylaws to comply with 12 CFR part 552.

Exhibits

You must attach the following exhibits to this Form.

Exhibit 1. Resolution of Board of Directors

You must include a certified copy or copies of your board of directors' resolution or resolutions: (1) Adopting the plan of conversion; and (2) authorizing this application. Two-thirds of your board of directors must approve the plan of conversion and authorize this application.

Exhibit 2. Copies of Documents, Contracts, and Agreements

You must furnish the following documents, contracts, and agreements.

- Proposed certificates for shares.
- Proposed order forms with respect to the subscription rights.

(c) Proposed charter (including a liquidation account provision) and bylaws.

(d) Any proposed stock option plan, form of stock option agreement, and management or employee stock benefit plan.

(e) Any proposed management employment contracts.

(f) Any contract described in response to item 6 of Form PS.

(g) Contracts or agreements with paid solicitors described in response to item 3(b) of Form PS.

(h) Any material loan agreements relating to your borrowing other than from a Federal Home Loan Bank and other than subordinated debt securities approved by OTS.

(i) Any appraisal agreement or proposed agreement, underwriting contract, agreement among underwriters, or selling agent agreement.

(j) Any required undertaking or affidavits by officers or directors purchasing shares in the conversion stating that they are acting independently.

(k) Any documents referred to in the answer to item 9 of Form AC.

(l) Any trustee agreements or indentures.

(m) Any agreements for the making of markets or the listing on exchanges of your conversion stock.

(n) Proposed marketing materials.

If you furnish any document, contract, or agreement in draft form under this exhibit, you must furnish the final form immediately after the meeting of your members to consider the plan of conversion. You may provide documents required by subsection (i) above, that by their nature cannot be practically expected until a later time, in substantially final form.

Exhibit 3. Opinion of Counsel

You must furnish an opinion of counsel discussing each of the following matters:

- The legal sufficiency of your proposed certificates and order forms for any shares.
- State law requirements that apply to the plan of conversion. The opinion must cite to applicable state law and address whether the plan will fulfill the requirements.
- The legal sufficiency of your bylaws.
- The type and extent of each class of voting rights after conversion. The opinion must discuss any state law that requires you to provide savings account holders or borrowers with voting rights.

(e) A certification or statement that the proposed charter and bylaws conform to 12 CFR part 552 of this chapter.

(d) The legal sufficiency of your marketing materials.

You must discuss the matters listed in subdivisions (b), (c) and (d) of this Exhibit only if you are converting to a state-chartered stock association.

Exhibit 4. Federal and State Tax Opinions or Ruling

(a) You must furnish an opinion of your tax advisor or an Internal Revenue Service ruling

Legal \$ _____

on the federal income tax consequences of the plan of conversion. The opinion or ruling must address the tax consequences to you and to the various account holders who receive nontransferable subscription rights to purchase shares.

Instruction. OTS may require you to obtain a ruling from the Internal Revenue Service if the IRS has not issued a favorable ruling on plans of conversion that are substantially similar to your plan. OTS also may require you to obtain a ruling if your plan of conversion contains novel provisions or raises questions with federal income tax consequences.

(b) You must furnish an opinion of your tax advisor or, if applicable, a ruling from the appropriate state taxing authority on any tax consequences of the plan of conversion under the laws of the state where you will be located. The opinion must address the tax consequences to you and to your eligible account holders.

Exhibit 5. Valuation Materials

You must furnish the materials required under 12 CFR 563b.200(b) regarding the valuation of your shares. You are not required to file the materials if you will not begin to offer shares before your members' meeting to vote on the plan of conversion.

Exhibit 6. Notice to Members

You must furnish evidence that you have notified your members as required by 12 CFR 563b.135 and 563b.180.

Exhibit 7. Other Materials

(a) If you do not provide information required by an appropriate form because you do not know the information or the information is not reasonably available, you must:

(1) Show that you will incur unreasonable effort or expense to obtain the information; or

(2) Indicate that you have no affiliation with the person who has the information, state that you have requested the person to provide the information, and indicate the result of that request.

(b) You must furnish all required consents.

(c) If anyone has signed an application or any amendment to an application using a power of attorney, you must furnish four copies of the power of attorney. Two copies must be manually signed.

(d) You must furnish the cross-reference sheet.

(e) If you request a waiver under 12 CFR 563b.5(c), you must furnish the materials required by that section.

Exhibit 8. Business Plans

(a) You must furnish a consolidated business plan as required by 12 CFR 563b.105. You must detail how you will use the capital that you acquire in the conversion. You should not project stock returns of capital or payment of extraordinary dividends in your business plan. OTS views a return of capital to shareholders as a material deviation from the business plan that requires the prior written approval of the Regional Director.

(b) You must follow 12 CFR 563b.160 if you wish OTS to deem any portion of your business plan confidential.

Exhibit 9. Conversion Application That Includes a Charitable Organization

If your conversion includes a contribution to a charitable organization, you must provide:

(a) The current and proposed charter and bylaws (or trust agreement) for the charitable organization.

(b) The proposed gift instrument.

(c) Within six months of completing your conversion, a three-year operating plan for the charitable organization, including the following:

(1) Pro-forma financial statements, including a balance sheet and income statement.

(2) Plans and expenses for any office space, employees, office equipment, supplies, and other items.

(3) A description and the estimated annual value of any contributed office space, personnel, furniture, equipment, and supplies and the name of the organization that will make the contribution.

(4) Any director, officer, and employee requirements and job descriptions.

(5) The terms of employment and any expected compensation for the directors (or trustees), officers, and employees.

(6) The charitable causes that the charitable organization will support, including their location and a description of how the activities will aid the local community.

(7) Plans, policies, and procedures for soliciting and accepting grant applications.

(8) Decision standards for grant approval.

(9) The anticipated number and dollar amount of grants the charitable organization will make each year for the three years after it is established.

(10) Projected sources of revenues, including whether the operations and grant activities will be funded by dividends, stock sales, or additional contributions.

(11) An explanation of how the charitable organization will select directors (or trustees)

and how much experience the directors (or trustees) will have with local community charitable organizations and grant making.

(d) A conflicts of interest policy for the charitable organization that prohibits grants to your officers, directors, and employees, your affiliates' officers, directors, and employees, and members of their immediate families.

(e) A tax opinion from an independent accountant or independent tax counsel discussing whether the proposed contribution and any other contributions during the same year are deductible under federal and state law. The tax opinion must address deductibility for the year that you will make the contribution and for a five-year carry forward period.

OTS Form 1680

August 2002

Appendix B

Office of Thrift Supervision

Form PS—Proxy Statement

Paperwork Reduction Act Statement

The Office of Thrift Supervision will use this information to provide mutual members with information necessary for voting on the transaction. See 12 CFR part 563b.

Public reporting burden for this collection of information is estimated to average 50 hours, per response, including the time for reviewing instructions and completing and reviewing the collection of information. If a valid OMB Control Number does not appear on this form, you are not required to complete this form. 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 Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552. Send a copy of comments to Joseph F. Lackey, Jr., Attention: 1550-0014, by e-mail to Joseph_F_Lackey_Jr@omb.eop.gov or by mail to him at Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

OMB No. 1550-0014

Expiration Date: 08/31/2003

Form PS—Proxy Statement

[Not to be codified in the Code of Federal Regulations]

Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552

Proxy Statement

(Name of Applicant as specified in charter)

(Docket No.)

(Street Address of Applicant)

(City, State, and Zip Code)

Index to Items

Item 1. Notice of meeting

Item 2. Revocability of proxy

Item 3. Persons making the solicitation

Item 4. Voting rights and vote required for approval

Item 5. Directors and executive officers
 Item 6. Management compensation
 Item 7. Business
 Item 8. Description of the plan of conversion
 Item 9. Description of stock
 Item 10. Capitalization
 Item 11. Use of new capital
 Item 12. New charter, bylaws, or other documents
 Item 13. Other matters
 Item 14. Financial statements
 Item 15. Consents of experts and reports
 Item 16. Attachments

General Information

If OTS requests information on your directors, officers, or other persons holding specified positions or relationships during a specified period, you must give the information for every person who held the positions or relationships any time during the period. You do not have to include information for any portion of the period when a person did not hold any position or relationship. You must state, however, that you did not include this information.

Item 1. Notice of Meeting

You must include the following information on the cover page of your proxy statement:

- (a) Notice of the members' meeting to vote on the conversion;
- (b) The meeting date, time, and place;
- (c) A brief description of each matter that will be voted at the meeting;
- (d) The date of record for determining which members are entitled to vote at the meeting;
- (e) The date of the proxy statement; and
- (f) Your mailing address, zip code, and telephone number.

Item 2. Revocability of Proxy

- (a) You must state that a member may revoke his or her proxy before it is exercised.
- (b) You must briefly describe the procedures a member must follow to revoke his or her proxy.
- (c) You must describe any charter provision, bylaw, or federal or state law that limits voting by proxy.
- (d) You must state that the proxy is solicited for the meeting and any adjournment of the meeting, and that you will not vote the proxy at any other meeting.

Item 3. Persons Making the Solicitation

- (a) You must state whether your management is soliciting the proxy. If any director informs you in writing that he or she intends to oppose any action, you must name the director and indicate the action he or she intends to oppose.
- (b) You must describe the method that you will use to solicit proxies, unless you solicit by mail. If specially engaged employees or paid solicitors will solicit proxies, you must state the material features of any contract or arrangement and must identify the parties.
- (c) If your management is not soliciting the proxies, you must name the persons on whose behalf the solicitation is made. You do not have to respond to items 5 through 16 for such solicitations, but must comply with 12 CFR 563b.285 on false and misleading statements and other prohibited matters.

Item 4. Voting Rights and Vote Required for Approval

- (a) You must describe briefly:
 - (1) The voting rights of each class of your members;
 - (2) The approximate total number of votes entitled to be cast at the meeting;
 - (3) The approximate number of votes to which each class is entitled; and
 - (4) The voting rights of beneficiaries of accounts held in a fiduciary capacity, such as IRA accounts.
- (b) You must give the record date for members entitled to vote at the meeting.
- (c) You must state the vote required for approval of each matter that you will submit to a vote of members.
- (d) You may not use previously executed proxies to vote on the conversion.

Item 5. Directors and Executive Officers

- (a) You must furnish the information on directors and executive officers and certain relationships and related transactions required in items 401 and 404 of Regulation S-K, 17 CFR 229.401 and 229.404, and item 6 of Regulation 14A, 17 CFR 240.14a-101. Unless the context otherwise requires, the words "registrant" and "issuer" in those regulations refer to you and the word "Commission" refers to OTS.
- (b) If your conversion application includes a charitable contribution, you must disclose:
 - (1) The proposed number of directors (or trustees) and officers of the charitable organization.
 - (2) The name and background of each person proposed as a director (or trustee) or officer of the charitable organization.
 - (3) The position, if any, that each proposed director (or trustee) and officer holds with you.
 - (c) You must state whether anyone will exercise control through the use of proxies and describe the nature of the control.

Item 6. Management Compensation

You must furnish the information on executive compensation required in item 402 of Regulation S-K, 17 CFR 229.402, and item 7 of Regulation 14A, 17 CFR 240.14a-101. Unless the context otherwise requires, the words "registrant" and "issuer" in those regulations refer to you and the word "Commission" refers to OTS.

Item 7. Business

- (a) *Narrative description of business.* (1) You must discuss briefly your organizational history, including the year of organization, the identity of the chartering authority, and any material charter conversions.
- (2) You must describe the business that you and your subsidiaries conduct and intend to conduct. You must describe how your business and any predecessor(s) business developed over the past five years. If you have been engaged in business less than five years, you must provide information from when you began operations. You must disclose this information for earlier periods if the information is material to understand how your business developed. You must discuss material changes in the way you conduct business.

Instruction. If you are filing under Regulation S-B, you must include audited comparative balance sheets for the two most recent fiscal years.

(3) You must describe your historical lending practices, including the average remaining term to maturity of your portfolio of mortgage loans. You must state your plans for lending. You must address whether you will offer real estate or other types of loans, the nature of security you will receive, the terms of loans you will offer, whether the loans will carry fixed or variable interest rates, and whether you will retain the loans or resell them in secondary mortgage markets. You must identify the magnitude of various activities.

(4) You must explain whether any material acquisitions have had or will have significant impact on you, and the nature of the impact.

(b) *Selected financial data.* You must furnish a summary of your selected financial data. You must provide this information in columns that permit the comparison of data in each of the last five fiscal years. You must provide data for any additional fiscal years, if the data is necessary to keep the summary from being misleading.

Instructions:

1. The purpose of this summary is to supply selected data highlighting significant trends in your financial condition and results of operations in a convenient and readable format.

2. You must include the following items in the summary total interest income; total interest expense; income (loss) from continuing operations; net income; total loans; total investments; total assets; total deposits; total borrowings; total retained earnings; total shareholders' equity; total regulatory capital; and total number of customer service facilities, indicating the number which provide full service. You may vary this data if the variance is appropriate to conform to the nature of your business. You may include additional items if you believe the items would enhance understanding and highlight trends in your financial condition and results of operations. You must briefly describe factors that materially affect the comparability of the financial data, such as accounting changes, business combinations, or dispositions of business operations. You may describe such factors by a cross reference to other discussions in the proxy statement. You must also discuss any material uncertainties that may cause the data not to be indicative of your future financial condition or results of operations.

3. If you elect to provide five-year summary information in accordance with the Financial Accounting Standards Board's Statement of Financial Accounting Standards No. 89 ("SFAS 89") "Financial Reporting and Changing Prices," you may combine this information with the selected financial data required in this item.

4. If you include interim-period financial statements, or you are required to include interim-period financial statements under item 14, you must update the selected financial data for the interim period to reflect any material change in the trends indicated. If updating information is necessary, you

must provide the information on a comparative basis, unless the comparison is not necessary to understand the updating information. You must provide a management statement of presentation for the required interim-period financial data reported.

5. "You" in the summary and in these instructions refers to you and your consolidated subsidiaries.

(c) *Management's discussion and analysis of financial condition and results of operations.* (1) You must discuss your financial condition, changes in financial condition, and results of operations. You must discuss the information in paragraphs (i), (ii), and (iii) of this paragraph (c) with respect to liquidity, capital resources, and results of operations. You must also provide all other information necessary to understand your financial condition, changes in your financial condition, and results of your operations. You must discuss significant business combinations. You may combine the discussion of liquidity and capital resources, if the two topics are interrelated. If a discussion of the subdivisions of your business is appropriate to understand your business, you must focus your discussion on each relevant, reportable segment or other subdivision of the business, and on your business as a whole.

(i) *Liquidity.* You must identify any known trends or any known demands, commitments, events, or uncertainties that are reasonably likely to cause your liquidity to materially increase or decrease. If you identify a material deficiency, indicate what you have done or will do to remedy the deficiency. You must identify and separately describe internal and external sources of liquidity, and briefly discuss any material unused sources of liquid assets. You must comment on maturity imbalances between assets and liabilities, and planned activities in the secondary mortgage market.

(ii) *Committed resources.* You must describe your material commitments for funding loans or other expenditures as of the end of the latest fiscal period. You must indicate the general purpose of the commitments and the anticipated source of funds to fulfill the commitments. You must describe known material trends, favorable or unfavorable, in your committed resources. You must indicate any expected material changes in the mix and the relative cost of the resources. You must discuss changes between deposits, equity, debt, and any off-balance-sheet financing arrangements.

(iii) *Results of operations.* (A) You must describe any unusual or infrequent events or transactions or any significant economic changes that materially affected the amount of reported income from continuing operations. In each case, you must indicate the extent to which these events, transactions, or changes affected income. In addition, you must describe any other significant components of revenues or expenses necessary to understand your results of operations.

(B) You must describe any known trends or uncertainties that have had, or will have, a materially favorable or unfavorable impact on net sales or revenues or income from your

continuing operations. If you know of events which will cause a material change in the relationship between costs and revenues, you must disclose the change in the relationship.

(C) If your financial statements disclose material increases in interest expense, you must discuss the extent to which the increases are attributable to increases in rates or to increases in volume.

(D) For your three most recent fiscal years, or for those fiscal years in which you have been engaged in business, whichever period is shorter, you must discuss the impact of inflation and changing prices on your revenues and on income from continuing operations.

(E) For the most recent financial statement, you must discuss any unusual risk characteristics in your assets, including real estate development, significant amounts of commercial real estate held as loan collateral, and significant increases in amounts of nonaccrual, past due, restructured, and potential problem loans (see Securities and Exchange Commission's Securities Act Industry Guide 3, section III C).

(iv) You must provide a qualitative and quantitative discussion of your market risk analysis.

Instructions:

1. Your discussion and analysis must address your financial statements and other statistical data that will enhance a reader's understanding of your financial condition, changes in your financial condition, and results of your operations. Generally, you must discuss the three-year period covered by the financial statements and use year-to-year comparisons or other formats to enhance a reader's understanding. However, where trend information is relevant, you should refer to the five-year selected financial data appearing in item 7(b) above.

2. Your discussion and analysis should provide investors and other users with relevant information to assess your financial condition and results of operations, based on the user's evaluation of the amounts and certainty of cash flows from operations and from outside sources. You must only provide information that you may obtain without undue effort or expense, and that does not clearly appear in your financial statements.

3. Your discussion and analysis must specifically focus on material events and uncertainties known to you which would cause reported financial information not to be indicative of future operating results or of future financial condition. You should describe (a) matters that would affect future operations, but have not affected reported operations, and (b) matters that have affected reported operations, but would not affect future operations.

4. If the consolidated financial statements reveal material changes from year to year in one or more line items, you must state the causes for the changes if the causes are necessary to understand your business as a whole. If the causes for a change in one line item also relate to other line items, you do not have to repeat the explanation. You do not have to provide a line-by-line analysis of the financial statements as a whole. You do not have to recite the amounts of changes from year to year, if the reader may readily

compute these changes from the financial statements. You must not merely repeat numerical data contained in the consolidated financial statements.

5. "Liquidity," as used in paragraph (c)(1)(i) of this item 7, refers to your ability to generate adequate amounts of cash to meet your cash needs. You must identify the balance sheet conditions or income or cash flow items that indicate your liquidity condition. You must discuss liquidity in the context of your own business or businesses. Liquidity means more than "liquid assets," as defined in OTS liquidity regulations at 12 CFR part 566.

6. OTS encourages you, but does not require you, to supply forward-looking information. You must disclose known data that will have an impact upon future operating results, such as known future increases in rates or other costs. If you provide any forward-looking information, you may have a safe-harbor from liability for the projections under 12 CFR 563d.3b-6.

7. If you disclose narrative explanations of supplementary information in accordance with SFAS 89, you may combine these explanations with your discussion and analysis required under this provision or you may supply the information separately. If you combine the information, you must place it reasonably near the discussion and analysis. If you do not combine the information, you may omit the required discussion of the impact of inflation and cross reference the explanations provided under SFAS 89.

8. If you do not disclose explanations of supplementary information in accordance with SFAS 89, you may discuss the effects of inflation and changes in prices in an appropriate manner. OTS encourages you to voluntarily comply with SFAS 89. However, you must include a brief textual presentation of management's views. You do not have to present specific numerical financial data.

9. "You" in the discussion and in these instructions means you and your consolidated subsidiaries.

(2) If you include interim-period financial statements, you must provide management's discussion and analysis of the financial condition and results of operations. This discussion and analysis must enable the reader to assess material changes in your financial condition and results of operations between the periods specified in subdivisions (i) and (ii) of this paragraph (2). Your discussion and analysis must address material changes in the items specifically listed in paragraph (c)(1) of this item 7. However, you do not have to address the impact of inflation and changing prices on operations for interim periods.

(i) *Material changes in financial condition.* You must discuss any material changes in financial condition from the end of the preceding fiscal year to the date of the most recent interim balance sheet that you provide. If you provide an interim balance sheet as of the corresponding interim date of the preceding fiscal year, you must discuss any material change in financial condition from that date to the date of the most recent interim balance sheet that you provide. You may combine any discussion of changes from the end, and the corresponding interim date, of the preceding fiscal year.

(ii) *Material changes in results of operations.* You must discuss any material changes in your results of operations from the most recent fiscal year-to-date period for which you provide an income statement to the corresponding year-to-date period of the preceding fiscal year. If you provide an income statement for the most recent fiscal year quarter, you must discuss material changes with respect to that fiscal quarter and the corresponding fiscal quarter in the preceding fiscal year. In addition, if you provide an income statement for the 12-month period ended as of the date of the most recent interim balance sheet you provide, you must discuss material changes with respect to that 12-month period and the 12-month period ended as of the corresponding interim balance sheet date of the preceding fiscal year.

Instructions:

1. If you present interim financial statements and financial statements for full fiscal years, you must discuss the interim financial information under paragraph (c)(2) and the full fiscal year information under paragraph (c)(1) of this item 7. You may combine the discussions.

2. In your discussion and analysis required by paragraph (c)(2), you must focus on material changes. If your interim financial statements reveal material change from period to period in one or more significant line items, you must describe the causes for the changes, unless you have already disclosed these causes. You do not have to repeat the description if the causes for a change in one line item relate to other line items. You do not have to recite the amounts of changes from period to period, if a reader may readily compute the amounts from the financial statements. You must not merely repeat numerical data from the financial statements. You must only provide information that you may obtain without undue effort or expense, and that does not clearly appear in your interim financial statements.

3. In your discussion of material changes in results of operations, you must identify significant elements of your income or loss from continuing operations that do not arise from or are not necessarily representative of your ongoing business.

4. You are encouraged, but not required, to supply forward-looking information. You must disclose known data that will have an impact upon future operating results, such as known future increases in rates or other costs. If you provide any forward-looking information, you may have a safe-harbor from liability for the projections under 12 CFR 563d.3b-6.

(d) *Lending activities.* (1) You must briefly describe federal and state restrictions on your lending activities and laws affecting mortgage lending or other lending. You must also briefly describe your general policy on loan-to-value ratios; your customary methods of obtaining loan originations (*e.g.*, the use of loan consultants or brokers); your general policy on approval of properties as security for loans; your use of a loan committee, if any; and your title, fire, and casualty insurance requirements on security properties. You must indicate your future

plans for secondary mortgage market activities, such as transactions with Freddie Mac or other secondary mortgage agency. You must identify significant loan service fee income as a percentage of net interest income for the years required by item 14(b).

(2) You must describe briefly (i) the areas where you normally lend; and (ii) any areas where you have a material concentration of loans. You may include maps illustrating these areas. You must estimate the housing vacancy rates in areas where you have a concentration of loans, if practicable.

(3) You must describe briefly your long-term investments in mortgage loans, and the effect of these investments on your earnings spread. You must provide the normal maturity of loans that you made on the security of single-family dwellings and estimate the average length of time these loans are outstanding.

(4) For each of the periods required by item 14(b), you must provide the following information in tabular form. You may exclude fees that are not adjustments of yield.

(i) Average yield during the period on: (A) Your loan portfolio, (B) your investment portfolio, (C) other interest-earning assets, and (D) all interest-earning assets. You must compute average yield at least monthly.

(ii) Average rate paid during the period on: (A) Deposits, (B) borrowings and Federal Home Loan Bank advances, (C) other interest-bearing liabilities, and (D) all interest-bearing liabilities ((A), (B), and (C)). You must compute average rate paid at least monthly.

(iii) Weighted-average yield at the end of the latest required period, for items (i) and (ii) of paragraph (4).

(iv) The net yield on average interest-earning assets (*i.e.*, net interest earnings divided by average interest-earning assets. Net interest earnings is the difference between the amount of interest earned and interest paid). You must determine average interest-earning assets no more frequently than monthly.

(v) For each of the periods required by item 14(b), you must provide in tabular form: (A) The amount of change in interest income, and (B) the amount of change in interest expense. For each major category of interest-earning asset and interest-bearing liability (as stated in items (i) and (ii) of paragraph (4)), you must attribute the amount of change to: (1) Changes in volume (change in volume multiplied by old rate), (2) changes in rates (change in rate multiplied by old volume), and (3) changes in rate-volume (change in rate multiplied by the change in volume). You must allocate the rate/volume variances consistently between rate and volume variance and disclose the basis of allocation in a note to the table.

(5) For each of the periods required by item 14(b), you must present the following:

(i) Return on assets (net income divided by average total assets).

(ii) Return on equity (net income divided by average equity).

(iii) Equity-to-assets ratio (average equity divided by average total assets).

Instruction. You must supply any additional ratios if the ratios are necessary to explain your operations.

(6) As of the end of the latest reported fiscal year, you must present separately the amounts of loans in each category required by balance sheet item 7(b), 12 CFR 563c.102, which are due:

(i) In each of the three years following the balance sheet,

(ii) After three through five years,

(iii) After five through ten years,

(iv) After ten through fifteen years, and

(v) After fifteen years.

In addition, you must present separately the total amount of all loans due after one year which have predetermined interest rates, and floating or adjustable interest rates.

Instructions.

1. You must report scheduled principal repayments in the maturity category in which the payment is due.

2. You must report demand loans, loans having no stated schedule of repayments and no stated maturity, and overdrafts as due in one year or less.

3. You must base your maturities on contract terms. If terms vary due to your "rollover policy," you must revise the maturity and briefly discuss the rollover policy.

(7) You must describe briefly the risk elements in your loan and investment portfolios, and your procedures for delinquent loans. As of the end of each of the periods covered by the statements of operation required by item 14(b)(1) and as of the date of the latest statement of financial condition required by item 14(a), you must set forth in tables the amounts and categories of nonaccrual, past due, restructured, and potential problem loans (*see* Securities and Exchange Commission's Securities Act Industry Guide 3, section III. C.) and the ratio of such loans to total assets. If the amount of real estate that has been in substance foreclosed, or acquired by foreclosure or by deed in lieu of foreclosure is significant, you must briefly describe the major properties. You must also estimate your probable losses, if any, on disposition of the properties.

(e) *Savings activities.* (1) You must state that, if you liquidate after conversion, you will fully pay savings account holders before you pay shareholders. You also must indicate the percentage of total savings accounts that are from out-of-state sources, if the total is significant.

(2) You must set forth in a table the amounts of time deposit accounts categorized by interest rates on the dates of each balance sheet that you filed. You must use interest-rate categories that are not more than 200 basis points wide. As of the date of the latest balance sheet, you must set forth, in a table for each interest-rate category, the amounts of savings that will mature during each of the three years following the balance sheet date, and the total amount that will mature after three years.

Instruction. This information is not required for S-B filers.

(3) You must disclose the weighted-average rate and general terms (as well as formal provisions for the extension of the maturity) of each category of short-term borrowings required by Balance Sheet Caption 14, 12 CFR 563c.102. You must also disclose the maximum amount of borrowings in each

category that are outstanding at any month-end during each period for which an end-of-period balance sheet is required. You must disclose the approximate average short-term borrowings outstanding during the period and the approximate weighted-average interest rate for such aggregate short-term borrowings. You must briefly describe how you computed these averages. You do not have to disclose borrowings in each category if the aggregate amount of the borrowings at the balance sheet date does not exceed one percent of assets at that date. However, if the weighted average of your borrowings outstanding during the year exceeds one percent of assets at year-end and significantly exceeds the amount of your borrowings at year-end, you must furnish this disclosure. You are not required to provide this information for any category of short-term borrowings if the average balance outstanding during the period was less than 30 percent of shareholders equity at the end of the period.

(f) *Federal regulation.* You must describe briefly, to the extent not otherwise covered by other items, how federal agencies regulate you and your operations. In particular, you must describe briefly how the Federal Deposit Insurance Corporation (FDIC) insures your accounts and how FDIC and OTS regulate your operations. You must describe federal regulatory capital requirements, what will happen to you if you fail to meet those capital requirements, and whether your regulatory capital position complies with those requirements. You must also describe how the FDIC and OTS charge assessments on your operations. In addition, you must describe briefly the liquidity requirements under section 6 of the Home Owners' Loan Act and OTS liquidity regulations, and state law. You must state whether you meet those liquidity requirements.

(g) *Federal Home Loan Bank System.* You must describe briefly the Federal Home Loan Bank (FHLB) System and state whether you are a member. If you are a member, you must describe the following:

- (1) Limitations on your borrowings,
- (2) Recent loan policies of your FHLB and the current interest rates your FHLB charges, and
- (3) FHLB share purchase requirements and the amount of FHLB stock you own.

(h) *State savings association law.* If you are converting to a state-chartered stock association, you must describe state law provisions that materially affect your business.

(i) *Federal and state taxation.* (1) You must describe briefly applicable federal income tax laws, including:

- (i) Permissible bad debt reserves;
- (ii) Your position with respect to the maximum bad debt reserve limitations as of the date of the latest statement of financial condition required under item 14(a);
- (iii) Future increases in your effective income tax rate;
- (iv) The date through which the Internal Revenue Service audited your federal income tax returns; and
- (v) How the payment of cash dividends on your capital stock after conversion will effect your federal income taxes.

(2) You must briefly describe applicable state tax laws.

(j) *Competition.* You must describe the material sources of competition for savings associations generally. You must indicate, to the extent practicable, your position in your principal lending and savings markets.

(k) *Office and other material properties.* (1) You must furnish the location of your home office, branch offices, and other office facilities (such as mobile or satellite offices). You must state the total net book value of all offices as of the date of the latest statement of financial condition required by item 14(a). You must state the expiration date of the lease on every leased office.

(2) You must describe briefly any undeveloped land that you own, including its location, net book value, prospective use, and holding period.

(l) *Employees.* You must state the number of full-time employees, including executive officers listed under item 5. You must state whether employees are represented by a collective bargaining group, and whether you have satisfactory relations with your employees. You must summarize briefly any loan, profit sharing, retirement, medical, hospitalization, or other compensation plans that you provide to your employees, unless you have already included this information under item 6.

(m) *Subsidiaries.* You must describe briefly your investment in each subsidiary, and the major lines of the subsidiary's business (including any joint ventures) that are material to your operations.

(n) *Legal proceedings.* You must furnish the information on legal proceedings required by item 103 of Regulation S-K, 17 CFR 229.103. Unless the context otherwise requires, "registrant" in that regulation means you.

(o) *Additional information.* You may request permission to omit any information required by this item, or to substitute appropriate information of comparable character. OTS may permit you to omit or substitute information where it is consistent with the protection of account holders. OTS may also require you to furnish other additional or substitute information if the information is necessary or appropriate to adequately describe past and future business.

Item 8. Description of the Plan of Conversion

(a) You must include the following statement in the proxy statement. You must place this statement before the information required by this item 8. "OTS has approved the plan of conversion, subject to member approval of the plan and certain other conditions. OTS approval does not mean that OTS recommends or endorses the plan."

(b) You must describe your plan of conversion. You must describe the information required by paragraphs (c) through (j) of this item. You must include any additional information necessary to accurately describe the material provisions of the plan.

(c) You must briefly describe the effects of conversion from a mutual to a stock association, including all of the following:

- (1) That your savings account holders will continue to hold FDIC-insured accounts in

the converted savings association, with the same dollar amount, rates of return, and general terms as existing accounts;

(2) That your savings and borrowing members will not have voting rights after conversion. In the mutual holding company context, however, you must describe what voting rights, if any, your savings and borrowing members will have after reorganization;

(3) That the account holders have liquidation rights. You must describe the liquidation account you will establish and maintain, including when you will pay the account, the interest of eligible account holders and supplemental eligible account holders in the account, and the formula that you will use to adjust the account;

(4) That the conversion will not effect borrowers' loans, including the amount, rate, maturity, security, or other contractual terms;

(5) That the FDIC will not insure your stock;

(6) That you will not distribute any assets other than to pay conversion expenses or to make a charitable contribution; and

(7) The reasons management recommends the conversion, including any advantages to the community that you serve.

(d) You must furnish the following information regarding the subscription rights of members:

(1) The formula that you will use to determine the subscription rights of account holders to purchase shares under 12 CFR 563b.320 through 563b.395;

(2) The purchase priorities, total purchase limitations, total number of shares that members may purchase, and the allocation formula in the plan of conversion;

(3) The allocation formulas that you will use if shares are oversubscribed during the sale under the plan of conversion; and

(4) The use and timing of the order forms for the exercise of subscription rights.

(e)(1) You must estimate the price range per share of the shares you will sell in the public offering under your plan of conversion. You do not have to estimate the price range if you will not begin the offering until after your members' meeting;

(2) You must indicate that the offering price will be the pro forma market value of the shares, as determined by your management and the underwriter; and

(3) You must state that you must sell all of the shares.

(f) Unless you will not begin the offering until after your members' meeting, you must discuss the following for stock you will sell:

- (1) the earnings per share on a pro forma basis as of the most recent year-end and interim period required by item 14(b); and
- (2) the book value per share on a pro forma basis as of the most recent year-end and interim period required by item 14(a).

Instructions:

1. You must provide earnings and book value per share data (a) without giving effect to the estimated net proceeds from the sale of the stock and (b) after giving effect to such proceeds. You must clearly state all of your assumptions.

2. In computing pro forma earnings, you must use the average of (i) the average yield on all interest-earning assets (item

7(d)(4)(i)(D)) and (ii) the average rate paid on deposits (item 7(d)(4)(ii)(A)).

3. If interest rates have significantly changed during the applicable periods, OTS may permit you to use properly supported alternative computations.

4. You must explain that pro forma data may not be indicative of your actual financial position or the results of continuing operations after the conversion.

(g) You must state when the proposed subscription period will begin and end, and must describe whether the plan of conversion permits you to change or extend these dates. You must also state the following:

(1) You will set a maximum subscription price in the offering circular that you will use for the offering of subscription rights;

(2) The actual subscription price will be the public offering price;

(3) The actual subscription price will not exceed the maximum subscription price on the order form; and

(4) You will refund any difference between the maximum and actual subscription prices, unless the subscriber affirmatively elects to apply the difference to the purchase of additional shares.

(h) You must also:

(1) Describe, to the extent practicable, whether you intend to list your shares on an exchange, or how you will otherwise provide a market for the purchase and sale of shares in the future;

(2) Describe briefly the tax effect of the conversion on you and on the various classes of account holders receiving nontransferable subscription rights in the conversion;

(3) State that the plan of conversion is attached as an exhibit to the proxy statement and that the reader may consult the plan for further information.

(i) You must state whether the plan of conversion permits you to offer unsubscribed shares to the public directly or through

underwriters. If so, you must provide the information, to the extent known, required by item 6 of Form OC, and indicate the estimated timing of the proposed offering.

(j) You must furnish the following information on proposed purchases of shares by your directors and officers in a table:

(1) The total proposed number of shares that all officers, directors, and their associates as a group may purchase.

(2) The name and position of each officer and director in item 5(a) and the number of shares each will purchase.

(3) If any officer, director, or his or her associate proposes to purchase one percent or more of the total number of shares that will be outstanding, the name, position, and the number of shares that the officer, director, or associate will purchase.

(4) Indicate separately the number of shares that will be purchased in each offering category with respect to the information required by items (1), (2), and (3) of paragraph (j).

(5) If your conversion application includes a charitable contribution, you must disclose the following additional information:

(i) The amount and percentage of shares that each proposed director (or trustee) and officer of the charitable organization will purchase in the conversion.

(ii) The aggregate number and percentage of shares that the charitable organization and its proposed officers and directors (or trustees) will hold.

(iii) The number of shares and value of the contribution at the minimum, midpoint, maximum, and maximum as adjusted, of the valuation range.

(iv) The decrease in shares that you will sell in the conversion, in number of shares and dollar amounts, at the minimum, midpoint, maximum, and maximum as adjusted, of the valuation range.

(v) The dilution in ownership and book value per share from the proposed contribution.

(vi) Your plans for additional charitable contributions over the next three years.

Instruction. You are only required to furnish information on associates of officers and directors to the extent that you know this information. If you are unable to confirm the number of shares an associate will purchase, you must disclose the number of shares the associate is given subscription rights to purchase.

Item 9. Description of Stock

(a) You must furnish the information required in item 202 of Regulation S-K, 17 CFR 229.202. Unless the context otherwise requires, "registrant" refers to you.

(b) You must undertake to use your best efforts to encourage and assist a professional market maker to establish and maintain a market for your shares.

(c) You must discuss the trading market that you expect will exist for your shares. You must estimate the number of market makers and shareholders, and describe your plans for listing the stock.

Instruction. You must describe the basic requirements you must meet to list your stock.

(d) If the rights of your stockholders will be materially limited or qualified by the rights of savings account holders or borrowers, you must describe these limitations or qualifications so that investors can understand their stock rights.

Item 10. Capitalization

You must set forth the amounts of your capitalization in substantially the tabular form indicated below. You may modify the captions as appropriate.

| | (A) Capitalization on most recent balance sheet date | (B) Pro forma adjustments as a result of conversion | (C) Pro forma capitalization, after giving effect to the conversion |
|-------------------|--|---|---|
| Deposits | | | |
| FHLB advances | | | |
| Other | | | |
| Borrowings | | | |
| Capital stock | | | |
| Preferred stock | | | |
| Paid-in capital | | | |
| Retained earnings | | | |
| Restricted | | | |
| Unrestricted | | | |
| Total | | | |

Instructions:

1. You must indicate in the table, or in a footnote to the table, the total number of shares you will authorize, the par or stated value of the shares, and the number of shares you will sell in the conversion.

2. You must estimate in the table the total amount of funds you will receive when you sell your stock. In a footnote, you must state the price per share that you used for the estimate. You must clearly indicate that the total amount and price per share are estimates.

3. In Column A, you must use the most recent balance sheet date required by item 14.

Item 11. Use of New Capital

You must explain how you will use the new proceeds of the conversion, including the approximate amount that you will use for each purpose.

Instruction. You do not have to detail proposed investments. You must, for example, only briefly describe any investment or other activity that will be affected materially by availability of the

proceeds. Examples of such activities include: expanded secondary market activities, larger scale lending projects, loan portfolio diversification, increased liquidity investments, repayment of debt, additional branch offices and other facilities, service corporation investments, and acquisitions.

Item 12. New Charter, Bylaws, or Other Documents

You must describe the material changes to your existing charter, bylaws, and other similar documents that will take effect after conversion.

Instruction. You only have to briefly summarize provisions that are pertinent from an investment and a voting standpoint. You do not have to provide a complete legal description of each provision.

Item 13. Other Matters

You must state that you will register your stock under section 12(g) of the Securities Exchange Act of 1934, and that you will not deregister the stock for three years after the date of conversion. You are subject to the proxy rules, insider trading reporting and restrictions, annual and periodic reporting, and other requirements of that Act when you register your stock.

Item 14. Financial Statements

Subpart A of 12 CFR part 563c governs the certification, form, and content of the financial statements, including the basis of consolidation.

(a) *Consolidated balance sheets.* (1) You and your subsidiaries must furnish consolidated, audited balance sheets as of the end of each of the two most recent fiscal years, even if the applicant is filing using the provisions of Regulation S-B.

(2) If the latest balance sheets you furnish under paragraph (1) of this paragraph (a) are dated 135 days or more before the date OTS approves the conversion, you must furnish an interim balance sheet dated within 135 days of OTS approval. This interim balance sheet may be unaudited.

(3) If the latest balance sheets you furnish under paragraph (1) of this paragraph (a) are dated 105 days or more before the date OTS approves the conversion, you must furnish a Recent Development section of selected financial data and a Management's Discussion and Analysis section of significant variances.

(b) *Consolidated statements of income and cash flows.* (1) You, your subsidiaries, and your predecessors must furnish consolidated, audited statements of income and cash flows for each of the three fiscal years preceding the date of the most recent balance sheet furnished.

(2) In addition, you must furnish statements of income and cash flows (i) for any interim period between the latest audited balance sheet and the date of the most recent interim balance sheet that you file, and (ii) for the corresponding period of the preceding fiscal year. The interim financial statements may be unaudited.

(c) *Changes in stockholders' equity.* You must analyze the changes in each caption of stockholders' equity in the balance sheets.

You must present this analysis in a note or separate statement that reconciles the beginning balance with the ending balance for each period for which you are required to furnish an income statement. You must describe all significant reconciling items with appropriate captions. You must reconcile total generally accepted accounting principles (GAAP) capital with actual tangible, core, and risk-based capital in the notes to the financial statements.

(d) *Financial statements of business acquired or to be acquired.* You must furnish the information required by 17 CFR 210.3-05 and 210.11-01 to -03 for any business that you have acquired or will acquire.

(e) *Separate financial statements of subsidiaries not consolidated and 50-percent- or less-owned persons.* You must furnish the information required by 17 CFR 210.3-09 on separate financial statements of subsidiaries not consolidated and 50-percent- or less- owned persons.

(f) *Filing of other statements in certain cases.* You may request permission to omit any of the statements required by this item, or to substitute appropriate statements of comparable character. OTS may permit you to omit or substitute statements where it is consistent with the protection of account holders. OTS may also require you to include other additional or substitute statements, if the statements are necessary or appropriate to adequately present the financial condition of any person whose financial statements are required, or whose statements are otherwise necessary for the protection of account holders and others.

Instructions:

1. If you previously used an audit period for your certified financial statements and this audit period does not coincide with your fiscal year, you may use the audit period instead of any required fiscal year. You may use this audit period, however, only if it covers a full twelve months' operations and you have used this period consistently.

2. Interim financial statements must be comparative and reported in the same format as the audited financial statements.

Item 15. Consents of Experts and Reports

(a) You must briefly describe all consents of experts filed under the instructions in the Form AC.

(b) You must provide a report of the independent public accountants who certified your financial statements and other matters in the proxy statement.

Instruction. You must summarize only the provisions of the consents that are pertinent

from an investment and a voting standpoint. You do not have to provide a complete legal description of each consent.

Item 16. Attachments

You must attach a copy of your plan of conversion as approved by OTS to the proxy statement distributed to members and others. Alternatively, in a transaction that does not utilize a state-chartered holding company, you may disclose in the proxy statement that you will provide the plan of conversion, if a recipient requests it within a specified period by means of a postage-paid postcard or other written communication.

OTS Form 1681

August 2002

Appendix C

Office of Thrift Supervision

Form OC—Offering Circular

Paperwork Reduction Act Statement

The Office of Thrift Supervision will use this information to ensure that the public receives adequate information about the Applicant and the securities being offered. See 12 CFR parts 563b and 563g.

Public reporting burden for this collection of information is estimated to average 150 hours, per response, including the time for reviewing instructions and completing and reviewing the collection of information. If a valid OMB Control Number does not appear on this form, you are not required to complete this form. 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 Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552. Send a copy of comments to Joseph F. Lackey, Jr., Attention: 1550-0014, by e-mail to Joseph_F.Lackey_Jr@omb.eop.gov or by mail to him at Office of Information and Regulatory Affairs, Office of Management and Budget New Executive Office Building, Washington, DC 20503.

OMB No. 1550-0014

Expiration Date: 08/31/2003

Form OC—Offering Circular

[Not to be codified in the Code of Federal Regulations]

Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552

Offering Circular

(Name of Applicant as specified in charter)

(Docket No.)

(Street Address of Applicant)

(City, State, and Zip Code)

Index to Items

Item 1. Information Required by and Use of Form OC

Item 2. Additional Current Information Required
Item 3. Statement Required in Offering Circulars

Item 4. Preliminary Offering Circular
Item 5. Information with Respect to Exercise of Subscription Rights
Item 6. Stock Selling Arrangements

Item 1. Information Required by and Use of Form OC

You must date the offering circular as of the effective date. You must include in your offering circular substantially the same information that you must include in the proxy statement that you distribute to your members to vote on the conversion. You may omit information from the offering circular that you included in the proxy statement only to the extent the information is clearly inapplicable and only if the offering circular is delivered with the proxy statement.

Instructions:

1. The "offering circular" is the offering circular for the subscription offering and the offering circular for any community offering or public offering, or both. It may also be called a "prospectus."

2. If you previously furnished a copy of the proxy statement to your members, you do not need to include the proxy statement with your offering circular in the subscription offering. However, you must state in the offering circular that you previously furnished a copy of the proxy statement to the members, and that you will furnish an additional copy promptly upon request. You also must state your telephone number and mailing address.

Item 2. Additional Current Information Required

You must include the following additional current information in your offering circular, if the information is available and you did not already include the information in the proxy statement:

(a) If your members' meeting took place before you mailed the Form OC, the result of the vote of your members on the conversion and any other proposals considered at the meeting.

(b) Any recent material developments in your business or affairs.

(c) The trading market that you expect for your conversion shares.

(d) A summary of the results of any separate subscription offering. You must include the number of shares that you sold to eligible account holders, supplemental eligible account holders, and other voting members; the price at which you sold the shares; and the number of unsubscribed shares. You must include this summary on the outside front cover page.

(e) The information required by Items 8(e)(1) and 8(f) of Form PS.

(f) Any other information necessary to make the offering circular current, including full financial statements dated within six months before the date you mail the offering circular. You must also include, in your subscription offering circular, any more recent financial statements if, at the time you commence your subscription offering, you determine that you must include the financial statement in an offering circular in the community offering or public offering, or both.

Item 3. Statement Required in Offering Circulars

If you are not forming a holding company as part of your reorganization, you must set out the following statement on the outside front cover page of every offering circular. You must set out the statement printed in bold-face Roman type at least as large as ten-point modern type:

"The Office of Thrift Supervision has not approved or disapproved these shares. The office has not passed on the accuracy or adequacy of this offering circular. Any representation to the contrary is unlawful."

Item 4. Preliminary Offering Circular

You must include the caption "Preliminary Offering Circular," the date you issue the preliminary offering circular, and the following statement on the outside front cover page of any preliminary offering circular. You must set out the statement in

red ink, printed in type as large as you use generally in the body of the offering circular.

"We have filed this offering circular with the Office of Thrift Supervision, but it has not been authorized for use in final form. We may complete or amend the information in this offering circular. We may not sell or accept offers to buy the shares covered by this offering circular before the Office of Thrift Supervision declares the offering circular effective. The offering circular is not an offer to sell or the solicitation of an offer to buy. We will not sell these shares in a state that prohibits offers, solicitations, or sales before registration or qualification under the securities laws of that state."

Item 5. Information With Respect to Exercise of Subscription Rights

In any offering circular that you will deliver to subscribers, you must describe all material terms of the offering relating to the exercise of subscription rights. You may exclude this information if you have already included this information in the proxy statement. Material terms include the expiration date, any subscription agent, method of exercising subscription rights, payment for shares, delivery of stock certificates for shares purchased, maximum subscription price, possible reduction of subscription price, relationship of subscription price to public offering price, requirement that all unsubscribed shares be sold, and any other material conditions relating to the exercise of subscription rights.

Item 6. Stock Selling Arrangements

In each offering circular you must describe the material terms of the plan or plans of distribution for all shares.

(a) You must include the following information in substantially the tabular form set forth below. You must set out this information on the outside front cover page of the offering circular.

| | Price to public | Selling discounts and commissions | Proceeds to applicant |
|-----------------|-----------------|-----------------------------------|-----------------------|
| Per share | \$ | \$ | \$ |
| Total | | | |

(b) If there is a community offering or public offering, or both, you must provide an offering circular. You may omit the description relating to the exercise of subscription rights required by item 5, unless you commence your community offering or public offering, or both, simultaneously with your subscription offering.

(c) If you sell any shares through a community offering, you must indicate: (1) The timing for the offering, (2) the geographic area where you will make the offering, (3) the method you will employ to market the shares (including the frequency and nature of communications or contracts with potential purchasers), (4) any preferences that you will give to any geographic area or to any class of potential purchasers, and (5) the limitations on purchases by potential purchasers.

(d) If a selling agent assists in offering shares, you must identify the selling agent, disclose how the selling agent will offer the shares, and disclose the commissions and fees you will pay to the selling agent.

(e) If you will offer any shares through underwriters, you must include in the offering circular for the public offering the names of the principal underwriters and the amounts that each will underwrite. You may omit this information for principal underwriters, other than the managing underwriters, from the offering circular for the subscription offering if you include the following conditions: (1) that all subscription rights will be exercisable by delivery of order forms to the underwriters or selling group for the public offering; and (2) that orders of persons exercising subscription rights will be filled prior to orders for stock in the direct community or public offerings, or both. You

must identify each principal underwriter that has a material relationship with you and describe the relationship. In each offering circular, you must state briefly the underwriter's obligation to take unsubscribed shares.

(f) You must briefly disclose in the offering circular the discounts and commissions that you may allow or may pay dealers in connection with the sale of unsubscribed shares for the community or public offering, or both. You may omit this information from the offering circular for any subscription offering, unless you use the subscription offering circular for the community offering or public offering, or both.

Instructions:

1. Commissions include all cash, securities, contracts, or anything else of value, paid, to be set aside, or disposed of. Commissions also include understandings

made with or for the benefit of any persons in which any underwriter or dealer is interested, in connection with the sale of the shares.

2. You must include any cash commissions in the table. You must describe other consideration you will make to the underwriters following the table with a reference in the second column of the table. You also must appropriately disclose any finder's fees or similar payments.

3. You must state whether the selling agents or underwriters are or will be committed to take and to pay for all of the shares if any are taken, or whether it is merely an agency or "best efforts" arrangement under which the selling agents or underwriters are required to take and pay for only the shares that they sell to the public.

OTS Form 1682
August 2002

Appendix D

Office of Thrift Supervision

Form OF—Order Form

Paperwork Reduction Act Statement

The Office of Thrift Supervision will use this information to ensure subscribers to Applicant's stock receive adequate disclosures regarding the purchase of Applicant's stock. See 12 CFR part 563b and § 563.76.

Public reporting burden for this collection of information is estimated to average one hour, per response, including the time for reviewing instructions and completing and reviewing the collection of information. If a valid OMB Control Number does not appear on this form, you are not required to complete this form. 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 Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552. Send a copy of comments to Joseph F. Lackey, Jr., Attention: 1550-0014, by e-mail to Joseph_F._Lackey_Jr@omb.eop.gov or by mail to him at Office of Information and Regulatory Affairs, Office of Management and Budget New Executive Office Building, Washington, DC 20503.

OMB No. 1550-0014
Expiration Date: 08/31/2003

Form OF—Order Form

[Not to be codified in the Code of Federal Regulations]

Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552

Order Form for Purchase of Conversion Shares

(Name of Applicant as specified in charter)

(Docket No.)

(Street Address of Applicant)

(City, State, and Zip Code)

(1) After OTS declares your offering circular for the subscription offering effective, you must promptly distribute order forms for the purchase of shares of stock to:

(a) All eligible account holders, (b) supplemental eligible account holders, and (c) other voting members who may subscribe for shares under the plan of conversion.

(2) You must provide a final offering circular for the subscription offering or any community or public offerings with the order form (unless you previously provided a final offering circular). You must include detailed instructions explaining how to complete the order forms.

(3) You must state the maximum subscription price on each order form. This amount is the amount that is payable to you when the subscriber returns the order form. You must establish a maximum subscription price and an actual subscription price that is within the subscription price range stated in OTS's approval and in the offering circular. If the maximum subscription price or the actual subscription price is not within the subscription price range, you must receive OTS approval to amend the range. If appropriate, OTS may require you to resolicit proxies and order forms as a condition to its approval. If the public offering price is less than the maximum subscription price on the order form, you must reduce the actual subscription price to correspond to the public offering price. You must refund the difference to those subscribers who paid the maximum subscription price, unless the subscriber affirmatively elects to apply the difference to the purchase of additional shares.

(4) You must describe in a simple, clear, and intelligible manner the actions that are required or available to the persons who will

receive the order form. Specifically, you must provide all of the following information:

(i) Indicate the maximum number of shares that the person may purchase under the subscription rights;

(ii) Indicate the time period during which the person must exercise the subscription rights. This period must be at least 20 days and not more than 45 days after you mail the subscription offering order form;

(iii) State the maximum subscription price per share;

(iv) Indicate any minimum share purchase requirements;

(v) Specifically designate blank space or spaces for the person to indicate the number of shares he or she wishes to purchase;

(vi) Indicate how the person must pay. If the person withdraws funds from a certificate of deposit, you must indicate that the person may withdraw the funds without penalty. If the person pays by withdrawing from a savings account or certificate of deposit, you must provide for the person to check a box on the order form. If a person pays by withdrawing from a savings account or certificate of deposit, you may, but need not, withdraw funds from the account when you receive the order form. If the person withdraws funds before the closing date of the public offering, you must pay interest to the account holder as if the amount remained in the account until the closing date;

(vii) Specifically designate blank spaces for the person to date and sign the order form;

(viii) Include an acknowledgment that the person who signed the order form received a final offering circular before he or she signed the form; and

(ix) Indicate what will happen if the person does not properly complete and return the order form. You must state that the person may not transfer the subscription rights to

another and state that the subscription rights are void at the end of the subscription period. You must include in the instructions to the form the address where the person must send the order form and the date that you will deem the order form received (for instance, by date and time of actual receipt at the indicated address, or by date and time of postmark).

(5) You may state that no one may modify the order form without your consent.

(6) You must include the following statements in bold print in your order form:

(a) **"Federal Regulations prohibit any person from transferring or entering into any agreement directly or indirectly to transfer the legal or beneficial ownership of conversion subscription rights, or the underlying securities to the account of another."**

(b) **"Under penalty of perjury, I certify that I, _____, am purchasing shares solely for my account and that there is no agreement or understanding regarding the sale or transfer of such shares, or my right to subscribe for shares."**

(7) You must also include the following certification on your order form.

"I ACKNOWLEDGE THAT THIS SECURITY IS NOT A DEPOSIT OR ACCOUNT AND IS NOT FEDERALLY INSURED, AND IS NOT GUARANTEED BY [insert name of savings association] OR BY THE FEDERAL GOVERNMENT."

If anyone asserts that this security is federally insured or guaranteed, or is as safe as an insured deposit, I should call the Office of Thrift Supervision Regional Director [insert Regional Director's name and telephone number with area code].

I further certify that, before purchasing the [description of security being offered] of [name of issuer, name of savings association,

