Office of Thrift Supervision **July 25, 2000**

Department of the Treasury

Transmittal

TR–232

Federal Register, Vol. 65, No. 134, pgs. 43088-43128 **Number: TR–232**

In the attached notice of proposed rulemaking and interim final rule, the Office of Thrift Supervision (OTS) is beginning the implementation of a new comprehensive regulatory strategy designed to better enable institutions that wish to remain mutuals to do so. The proposed regulation has among its purposes that of strengthening the mutual holding company and making it more attractive as a means, short of full conversion, of raising capital and preserving the mutuality of the savings association.

Other provisions of the proposed regulation (1) clarify the standards for business plans that are part of the mutual to stock conversion application process; (2) tighten application of the existing rule prohibiting acquisition of a converted institution within three years following conversions; and (3) deal with creating a charitable organization in a conversion, circumstances for accelerated vesting of management stock benefit plans, and allocating conversion proceeds in holding company conversions.

The interim final rule revises OTS's stock repurchase regulations to conform to the regulations of other banking agencies. In particular, OTS will permit repurchases after the first year following conversion. The rule regarding mutual holding company dividend waivers is changed to eliminate shareholder dilution. In addition, the agency is changing the rules to conform to the MHC provisions of the Gramm-Leach-Bliley Act that allow MHCs to engage in the same type of activities as financial holding companies.

The notice of proposed rulemaking and the interim final rule were published in the July 12, 2000, \ edition of the Federal Register, Vol. 65, No. 134, pp. 43088 through 43128. Written comments must be received on or before October 10, 2000, and should be addressed to: Manager, Dissemination Branch, Information Management and Services Division, Office of Thrift Supervision, 1700 G Street, N.W., Washington, DC 20552. Comments may be mailed, hand-delivered, faxed to 202/906-7755 or e-mailed to: public.info@ots.treas.gov. All commenters should include their name and telephone number.

For further information contact:

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Attachment

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 563b and 575

[No. 2000–56]

RIN 1550–AB24

Repurchases of Stock by Recently Converted Savings Associations, Mutual Holding Company Dividend Waivers, Gramm-Leach-Bliley Act Changes

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Interim rule with request for comment.

SUMMARY: The Office of Thrift Supervision (OTS) is amending its regulations governing repurchases of stock of insured savings associations and certain related provisions in the mutual holding company regulations to ease regulatory burden. OTS is also amending its rules to implement changes regarding waivers of dividends for mutual holding companies, and to incorporate certain changes resulting from the passage of the Gramm-Leach-Bliley Act of 1999 (GLB Act).

DATES: This interim final rule is effective July 12, 2000. Comments must be received by October 10, 2000.

ADDRESSES: Send comments to Manager, Dissemination Branch, Information Management and Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention Docket No. 2000–56. Hand-deliver comments to the Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days. Send facsimile transmissions to FAX Number (202) 906–7755 or (202) 906–6956 (if the comment is over 25 pages). Send e-mails to public.info@ots.treas.gov and include your name and telephone number. Interested persons may inspect comments at the Public Reference Room, 1700 G Street, NW., from 10 a.m. until 4 p.m. on Tuesdays and Thursdays.

FOR FURTHER INFORMATION CONTACT: David A. Permut, Counsel (Banking and Finance), (202) 906–7505, or Gary Jeffers, Counsel (Banking and Finance), (202) 906–6457, Business Transactions Division, Chief Counsel's Office; or Timothy P. Leary, Counsel (Banking and Finance), (202) 906–7170, Regulations and Legislation 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.

SUPPLEMENTARY INFORMATION:

A. Stock Repurchases

Current OTS regulations require savings associations to follow OTS rules on stock repurchases for three years following a conversion from mutual to stock form. *See* 12 CFR 563b.3(g). In the first year following the transaction, the savings association cannot repurchase any stock. In the second and third years, the savings association may repurchase up to five percent of its stock in any twelve month period as long as the repurchases do not cause the institution to become undercapitalized, and certain other conditions have been met. OTS has also permitted repurchases in excess of those limits where an institution has established exceptional circumstances, such as when the stock price has fallen below the initial offering price. Because OTS regulations also prohibit savings association subsidiaries of mutual holding companies (MHCs) from repurchasing their stock for the first three years following the association's stock offering (12 CFR 575.11(c)), savings associations that have reorganized into MHC form must request a waiver from OTS regulations to conduct a stock repurchase.

Numerous stock savings associations and subsidiary holding companies of MHCs have requested waivers for stock repurchases in amounts that do not conform to OTS limitations. OTS has routinely granted the requested waivers. OTS has decided the repurchase of stock after the first year following conversion or issuance in an MHC minority stock offering should be a business decision of the institution. OTS believes that there are sufficient means, such as business plan review and approval, to ensure the safe and sound regulation of converted savings associations. Moreover, the current rule is inconsistent with the treatment accorded by other federal banking agencies.

Therefore, OTS revises its regulations to eliminate restrictions on stock repurchases by converted savings associations after the first year following conversion. Where the institution has established extraordinary circumstances, a converted savings association may repurchase its stock during the first year after conversion, provided the savings association files a notice under amended § 563b.3(g)(3) and OTS does not object to the planned repurchase.[1] OTS will work with the FDIC to establish consistent practices among the agencies regarding implementation of this provision.

In determining whether to object to a proposed stock repurchase during the first year following conversion, OTS will consider how the extraordinary circumstances, absent a repurchase, may detrimentally affect an institution's financial condition, the business purpose for the repurchase, and the permissibility of the repurchase under other applicable regulations. *See* amended § 563b.3(g)(3).

OTS also is making corresponding amendments to the mutual holding company (MHC) regulations, and amending the MHC regulations to address MHC purchases of stock of subsidiary savings associations or of subsidiary holding companies.

B. Dividend Waivers for Mutual Holding Companies

OTS regulation § 575.11(d) allows MHCs to waive dividends subject to certain restrictions. Under § 575.11(d), MHCs file notice of their intent to waive dividends and include a copy of a board of directors resolution concluding that the dividend waiver is consistent with the board's fiduciary duties. OTS will not object to the notice if it determines that the waiver would not be detrimental to the safe and sound operation of the savings association.

Waiving dividends saves the MHC from corporate taxation on the dividends and leaves capital at the subsidiary savings association where, in most cases, it can be deployed more efficiently. MHCs have requested clarification on whether the payment of dividends and MHC waiver of dividends will cause OTS to require minority shareholder dilution if the MHC subsequently determines to fully convert to stock form. Minority shareholder dilution would occur if OTS required converting MHCs to reduce the number of shares minority shareholders receive when they exchange their shares for shares in the fully converted company that correspond to the amount of waived dividends. The reduction in shares for minority shareholders reflects that they previously received their dividends while the MHC waived its dividends. OTS has required some dilution in past transactions, but only to the extent of excess or special dividends paid by the subsidiary holding company or savings association to minority shareholders

[1] The proposed repurchase provisions conform to the FDIC's treatment of stock repurchases by converted institutions. *See* 12 CFR 333.4(d) (1999).

and waived by the MHC. OTS has not required shareholder dilution for ordinary dividends.

OTS has reexamined this issue and has determined to change its practice with respect to waived dividends. OTS will no longer require dilution for any waived dividends in a subsequent conversion to stock form. OTS believes the belief that the minority shareholders would experience dilution caused a number of institutions to fully convert to stock form, rather than remain in MHC form. Instead, to prevent excessive dividends OTS will rely on the business plan filed with the reorganization application and on existing restrictions in OTS capital distribution regulations, as well as the fiduciary duty of the board of directors of the MHC to protect the interests of the depositors. Today, OTS amends the MHC regulation to codify this policy.

C. Gramm-Leach-Bliley

Finally, the Gramm-Leach-Bliley Act of 1999 (GLB Act) changed the activities limitations for MHCs to mirror those applicable to financial holding companies.[2] OTS is amending its regulations to make the GLB Act changes in this interim final rule. These changes enhance the MHC as a more suitable long-term alternative then full conversion to stock form for mutual savings associations contemplating such a conversion. Before the GLB Act, MHCs were limited to the activities and investments available to multiple savings and loan holding companies and those permissible for bank holding companies under the Bank Holding Company Act and those available under Section 10(o)(5) of the Home Owners? Loan Act. This change will give MHCs parity with financial holding companies, which have the ability to create financial supermarkets—banking, brokerage and insurance—all offered under one holding company that meets certain requirements.[3] OTS is amending § 575.11(a) to reflect this change.

D. Related Rulemaking

Elsewhere in today?s **Federal Register**, OTS is publishing a related proposed regulation governing mutual savings association, mutual holding company reorganizations, and conversions to stock form.

[2] 12 U.S.C. 1467a(o)(5)(E).

[3] Those requirements include requiring the depository institution controlled by the parent to be well capitalized, well managed and hold at least a satisfactory rating under the Community Reinvestment Act.

Notice and Comment, Effective Date, and Request for Comment

Section 553 of the Administrative Procedure Act (APA) permits an agency to issue rules without prior notice and comment if the agency, for good cause, finds that notice and comment are impracticable, unnecessary, or contrary to the public interest and explains its finding when it publishes the rule. 5 U.S.C. 553(b)(B).

OTS has concluded that it may issue an interim final rule revising the stock repurchase provisions. The current rule is inconsistent with the treatment accorded by other federal banking agencies, not required for the safe and sound regulation of converted savings associations, significantly restricts the ability of institution?s managers to make appropriate business decisions and, thus, unnecessarily limits the ability of savings associations to repurchase stock following a conversion. As a result, the retention of these restrictions would, in the absence of an interim final rule, continue to negatively impact the operations of thrifts and their holding companies. Accordingly, OTS concludes that public notice and comment on these changes are unnecessary and contrary to the public interest.

Notice and public comment also are not required for the interim rule on dividend waivers and shareholder dilution. As noted above, OTS's current policy on shareholder dilution may have inappropriately: (1) Encouraged some institutions in MHC structures to fully convert to stock form; (2) discouraged MHCs from taking full advantage of corporate tax advantages from dividend waivers; and (3) prevented MHCs from exercising their business judgment in deploying capital at the most appropriate level within the corporate structure. These regulatory disincentives would continue to hamper effective decision-making by MHCs in the absence of an effective interim final rule. As a result, OTS concludes that notice and public comment are inappropriate and contrary to public interest.

Similarly, OTS does not believe that public notice and comment are required for the technical change regarding MHC activities. The interim rule merely updates OTS regulations to correctly cite new statutory authority expanding the activities authorized for MHCs. Notice and comment procedures for this change are impractical and contrary to the public interest because such procedures could delay implementation of this new expanded authority for MHCs.

Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRIA), 12 U.S.C. 4802, requires that new OTS regulations and amendments to existing regulations take effect on the first day of a calendar quarter which begins on or after the date on which the regulations are published. This delayed effective date provision, however, does not apply unless the rule imposes additional reporting, disclosures, or other new requirements on insured depository institution. As a related matter, section 553(d) of the APA states that publication of a rule shall be made not less than 30 days before its effective date. 5 U.S.C. 553(d). This APA provision does not apply if the rule grants or recognizes an exemption or relieves a restriction. OTS believes neither CDRIA nor the APA precludes the publication of this rule with an immediate effective date. As noted above, this rule makes only burden reducing, clarifying and technical conforming amendments to OTS rules and relieves current restrictions on repurchases.[4]

OTS invites comments on this interim final rule during the 60-day period that runs concurrently with its request for comment on companion proposed regulation published elsewhere in today's **Federal Register**.

Regulatory Flexibility Act Analysis

An initial regulatory flexibility analysis under the Regulatory Flexibility Act (RFA) is required when an agency must publish a general notice of proposed rulemaking. 5 U.S.C. 603. As noted previously, OTS has determined that it is not necessary to publish a notice of proposed rulemaking for this interim final rule. Accordingly, the RFA does not require an initial regulatory flexibility analysis. Nonetheless, OTS has considered the likely impact of the rule on small entities and believes that the rule will not have a significant impact on a substantial number of small entities. This interim rule eliminates restrictions, imposes no new requirements, and makes only burden reducing, clarifying, and technical conforming amendments to OTS current regulations.

[4] In addition, both CDRIA and the APA permit an agency to select an earlier effective date for "good cause" published with the regulation. As noted above, the OTS has determined that there is good cause for publishing rule without notice and public comment. For these same reasons, OTS finds good cause to dispense with the delayed effective date requirements under CDRIA and the APA.

Paperwork Reduction Act

OTS invites comments on all of the following issues:

(1) Whether the information collections contained in this proposal are necessary for the proper performance of OTS? functions, including whether the information has practical utility.

(2) The accuracy of OTS? estimate of the burden of the information collections.

(3) Ways to enhance the quality, utility, and clarity of the information to be collected.

(4) Ways to minimize the burden of the information collection of respondents, including through the use of automated collection techniques or other forms of information technology.

(5) Estimates of capital and start-up costs of operation, maintenance and purchases of services to provide information.

Respondents/recordkeepers are not required to respond to these collections of information unless they display a currently valid OMB control number.

OTS has submitted the collections of information requirements contained in this proposal to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Send comments on the collections of information to the Office of Management and Budget, Paperwork Reduction Act Project (conversion information collection requirement: 1550–0014 or the mutual holding company information collection requirement: 1550–0072) Washington, DC 20503, with copies to the Regulations and Legislation Division (1550–0014 or 1550–0072), Chief Counsel's Office, Office of Thrift Supervisions, 1700 G Street, NW., Washington, DC 20552.

The collections of information requirements in this rule are in parts 563b and 575. OTS requires this information for the proper supervision of savings associations that convert from mutual to stock form under OTS regulations and mutual holding company activities. The likely respondents/recordkeepers are Federal savings associations or mutual holding companies.

OMB Control Number: 1550–0014.

Estimated average annual burden hours per respondent/recordkeeper: 510 hours.

Estimated number of respondents/ recordkeepers: 16 per year.

Estimated total annual reporting and recordkeeping burden: 8,160 hours.

Start up costs to respondents/ recordkeepers: N/A.

OMB Control Number: 1550–0072.

Estimated average annual burden hours per respondent/recordkeeper: 263 hours.

Estimated number of respondents/ recordkeepers: 16 per year

Estimated total annual reporting and recordkeeping burdenhours: 4,874 hours.

Start up costs to respondents/ recordkeepers: N/A.

Executive Order 12866

OTS has determined that this interim final rule is not a significant regulatory action under Executive Order 12866.

Unfunded Mandates Reform Act Analysis

The Unfunded Mandates Reform Act of 1995 (UMA), Pub. L. 104–4, applies only when an agency is required to issue a general notice of proposed rulemaking or a final rule for which a general notice of proposed rulemaking was published. 2 U.S.C. 1532. As noted previously, OTS has determined, for good cause, that this interim final rule should take immediate effect and, therefore, that a notice of proposed rulemaking is not required. Accordingly, OTS has concluded that the UMA does not require an unfunded mandates analysis of this interim final rule.

Moreover, OTS finds that this interim rule will not result in expenditure by state, local, and tribal governments, or by the private sector, of more than $100 million in any one year. Rather, the rule eliminates restrictions, imposes no new requirements, and makes only burden reducing, clarifying, and technical conforming amendments to OTS regulations. Accordingly, OTS has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

List of Subjects

12 CFR Part 563b

Reporting and recordkeeping requirements, Savings associations, Securities.

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 title 12, Chapter V, Code of Federal Regulations as set forth below:

PART 563b—CONVERSIONS FROM MUTUAL TO STOCK FORM

1.The authority citation for part 563b continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 2901; 15 U.S.C. 78c,78l, 78m,78n,78w.

2. Section 563b.3 is amended by revising paragraphs (g)(1) and (g)(3) to read as follows:

§ 563b.3 General principles for conversions.

* * * * *

(g) * * *

(1) No converted savings association may, for a period of one year from the date of the completion of the conversion, repurchase any of its capital stock from any person, except that this restriction shall not apply to:

(i) A repurchase, on a *pro rata* basis, pursuant to an offer approved by OTS and made to all shareholders of such association;

(ii) A repurchase of qualifying shares of a director; or

(iii) A repurchase approved by OTS under paragraph (g)(3) of this section.

* * * * *

(3) A savings association that is subject to paragraph (g)(1) of this section may not repurchase its capital stock within one year following its conversion to stock form, except that open market stock repurchases of up to five percent of its outstanding capital stock may occur during the first year after the conversion where extraordinary circumstances exist. The savings association must establish compelling and valid business purposes for the repurchases, to the satisfaction of the OTS. The savings association must file a notice with the Regional Director, with a copy to the Office of Examination and Supervision, at least ten days before commencement of the proposed repurchase. The notice must describe the proposed repurchase program and the effects of the proposed repurchases on the savings association's regulatory capital. OTS will not object to the proposed repurchase program if:

(i) The repurchase does not adversely affect the savings association's financial condition;

(ii) The savings association submits sufficient information to evaluate the repurchase program;

(iii) The savings association demonstrates extraordinary circumstances and a compelling and valid business purpose for the repurchase program consistent with the savings association's business plan; or

(iv) The repurchase program would not be contrary to other applicable regulations.

* * * * *

PART 575—MUTUAL HOLDING COMPANIES

3. The authority citation for part 575 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1828, 2901.

4. Section 575.11 is amended by:

a. Removing, in paragraph (a) the phrase "12 U.S.C. 1467a(c)(2)(A) or (c)(2)(C)–(c)(2)(G)", and by adding in lieu thereof the phrase ";12 U.S.C. 1467a(c)(2) or (c)(9)(A)(ii)";

b. Redesignating, in paragraph (c), the introductory text as paragraph (c)(1) introductory text, and paragraphs (c)(1), (c)(2) and (c)(3), as (c)(1)(ii), (c)(1)(iii) and (c)(1)(iv), respectively;

c. Removing, in newly designated paragraph (c)(1) introductory text the word "shall", and by adding in lieu thereof the word "may"; by removing the phrase "three years", and by adding in lieu thereof the phrase "one year";

d. Adding, in newly designated paragraph (c)(1), a new paragraph (c)(1)(i);

e. Removing, in newly designated paragraph (c)(1)(iv) the phrase "but not" and by adding in lieu thereof the word "or";

f. Adding a new paragraph (c)(2); and

g. Adding a new paragraph (d)(3).

The additions and revisions read as follows:

§ 575.11 Operating restrictions.

* * * * *

(c)(1) * * *

(i) Is in compliance with § 563b3(g)(1) of this chapter;

* * * * *

(2) No mutual holding company may purchase shares of its subsidiary savings association or subsidiary holding company within one year after a stock issuance, except if the purchase complies with § 563b.3(g)(1) of this chapter. For purposes of this subsection, the reference in § 563b.3(g)(3) of this chapter to five percent refers to minority shareholders.

* * * * *

(d)* * *

(3) The OTS will not consider waived dividends in determining an appropriate exchange ratio in the event of a full conversion to stock form.

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Dated: June 20, 2000.

By the Office of Thrift Supervision.

Ellen Seidman,

Director.

[FR Doc. 00–16346 Filed 7–11–00; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 563b and 575

[No. 2000–57]

RIN 1550–AB24

Mutual Savings Associations, Mutual Holding Company Reorganizations, and Conversions From Mutual to Stock Form

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Thrift Supervision (OTS) proposes to implement a comprehensive strategy governing mutual institutions, mutual holding company reorganizations, and the mutual to stock conversion process. OTS intends to modify its examination and supervisory policies within the context of safe and sound operations to address many of the concerns mutual institutions have raised about OTS's examination and supervision of their business form. OTS is also proposing to amend certain provisions in its mutual holding company regulations, and its regulations and forms governing mutual to stock conversions of insured savings associations. These proposed regulations include new provisions addressing business plans and charitable contributions. In addition, OTS clarifies 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, and clarifying the policy on the amount of proceeds allowed to be retained at the holding company level. Further, OTS is rewriting the conversion regulation in a plain language format. In a companion interim final regulation published elsewhere in today's **Federal Register**, OTS is amending the regulations on stock repurchases, changing its practices regarding mutual holding company dividend waivers, and making certain revisions as a result of the Gramm-Leach-Bliley Act of 1999 (GLB Act).

DATES: Written comments must be received on or before October 10, 2000.

ADDRESSES: Send comments to Manager, Dissemination Branch, Information Management and Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention Docket No. 2000–57. Hand-deliver comments to the Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9:00 a.m. to 4:00 p.m. on business days. Send facsimile transmissions to FAX Number (202) 906–7755 or (202) 906–6956 (if the comment is over 25 pages). Send e-mails to public.info@ots.treas.gov and include your name and telephone number. Interested persons may inspect comments at the Public Reference Room, 1700 G Street, NW., from 10:00 a.m. until 4:00 p.m. on Tuesdays and Thursdays.

FOR FURTHER INFORMATION CONTACT: David A. Permut, Counsel (Banking and Finance), (202) 906–7505, or Gary Jeffers, Counsel (Banking and Finance), (202) 906–6457, Business Transactions Division, Chief Counsel's Office; or Timothy P. Leary, Counsel (Banking and Finance), (202) 906–7170, Regulations and Legislation 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.

SUPPLEMENTARY INFORMATION: OTS has broad authority to regulate mutual savings associations, to authorize mutual holding company reorganizations, and to regulate mutual to stock conversions of savings associations under the Home Owners' Loan Act, as amended (HOLA), 12 U.S.C. 1464(a), (i) and (p) and 1467a(o). OTS and its predecessor, the Federal Home Loan Bank Board, in exercising their supervisory responsibilities, periodically refined their regulatory strategies and mutual holding company reorganization and conversion regulations, based on their experience with mutual institutions, the conversion process, and in response to developments in the marketplace. OTS has again reviewed its policies, practices, and regulations to assess whether additions or revisions are necessary. OTS identifies several areas of the regulations that it must revise and update to further clarify the standards governing mutual holding company reorganizations and the conversion process. Also, OTS is revising part 563b using the plain language format.

I. Overview

Despite the large number of mutual-to-stock conversions over the years, there are 422 OTS-regulated mutuals, comprising nearly 40 percent of all OTS-regulated thrifts. In many respects, mutuals form the heart of the thrift industry. Mutuals tend to be community-based, community-focused institutions whose sole purpose is to provide a safe place for community members to save, and to invest those savings back into the community through prudent credit programs. History has demonstrated that this community focus is often lost or diluted when institutions convert to stock form and must respond to the interests of their stockholders.

OTS is developing a comprehensive regulatory strategy governing mutual institutions, mutual holding company reorganizations, and the mutual to stock conversion process. This comprehensive strategy will include: (1) New policy and examination guidance; (2) proposed regulations governing reorganizations into mutual holding companies and the mutual to stock conversion process; (3) interim final rules addressing share repurchases and mutual holding company dividend waivers; and (4) revisions to the application forms used for mutual holding company reorganizations and the mutual to stock conversion process.

A. Policy Guidance

Today, OTS is developing new analytical techniques, examination procedures, and industry guidance to address, within the context of safe and sound operations, many of the concerns mutual institutions have raised about their business form and to improve supervision of mutual institutions. OTS makes these changes in concert with the proposed changes to the mutual holding company and conversion regulations and the interim final rules concerning stock repurchases, dividend waivers, and GLB Act[1] revisions published in today's **Federal Register**.

Specifically, the guidance will focus on capitalization, compensation, and on-site examinations and financial analyses of mutual institutions. For mutual institutions seeking to augment their capital base, OTS is exploring the feasibility and utility of various capital-raising alternatives, such as the use of subordinated debt instruments, mutual capital certificates, non-withdrawable accounts, trust preferred securities, and other financing transactions. Conversely, OTS will study the issues and, if necessary, provide guidance or regulations concerning payment of special dividends by mutual institutions seeking to return excess capital to their communities.

OTS will revise its existing guidance on compensation to clarify its position that mutual institutions are subject to and governed by the same prudential standards as stock institutions. OTS will also explore a methodology by which mutual institutions can choose to have

[1] Pub.L. 106–102, 113 Stat. (1999).

their management and board of directors' compensation plans reviewed in a manner similar to shareholder review and approval for stock institutions. Finally, OTS will inform its examiners on emerging compensation issues and programs. This guidance will enhance the ability of mutual institutions to provide competitive compensation plans to attract and retain qualified management and staff.

OTS is currently developing enhanced analytical tools that will improve supervision of mutual institutions. Revised examination procedures, targeted more directly to the quality of operations, risk management, and internal controls, will enable examiners to more effectively gauge the overall financial condition and the ability of mutual institutions to sustain long-term economic viability throughout economic cycles, including during periods of prolonged adverse economic conditions. OTS also will revise the pre-examination response kit (PERK) to streamline information requests prior to the start of examinations to ensure information requested is germane to the operations of a mutual institution and is essential to the completion of the examination. Enhancements to off-site monitoring systems will also provide for more appropriate comparative financial analyses among similarly situated, community-oriented mutual institutions across geographic boundaries.

For mutuals that elect to convert to stock form, OTS encourages consideration of the mutual holding company (MHC) alternative. The MHC structure retains the benefits and essential nature of the mutual charter, while providing greater access to capital markets. In addition, in section 401(b) of the GLB Act, Congress recently expanded the investment and activities authority of MHCs to include the activities of financial holding companies. More than 40% of the MHCs that have been created to date have chosen to remain MHCs; nevertheless, OTS is today proposing significant enhancements to the MHC form to make it even more attractive as a long-term alternative to full conversion, and is seeking comments on still more enhancements. Whether a savings association elects the MHC format or full conversion, today's rule clarifies various aspects of the conversion process and proposes certain new requirements. In a companion interim final regulation published elsewhere in today's **Federal Register**, OTS is amending certain aspects of the regulations immediately.

B. Conversion Considerations

Stock conversion is a major step for mutual institutions. There are many parties who provide consulting services to mutual institutions concerning the benefits of conversion, and who help institutions through the process. Mutual savings associations, their boards of directors, and management must carefully consider whether the benefits of conversion, and the need for capital, justify the costs and other business implications of conversion.

In considering conversion, mutual boards must carefully examine their need for additional capital and the prospects for prudently deploying capital at competitive returns for investors. Institutions that fail to produce adequate returns on equity will likely face pressure from dissatisfied shareholders to improve performance or sell. OTS believes such pressure can distract management and the board from more fundamental business matters, cost an institution considerable sums in legal and management expense, and lead to disruption of normal business activities.

Often, mutual institutions considering conversion are already highly capitalized. They do not need to raise additional capital through conversion to grow or expand into new markets. Lack of opportunity, not capital, constrains the growth of mutual institutions. Opportunities may be limited by aggressive competition in the mutual institution's market area, lack of economic growth in the market area, unwillingness to venture into unfamiliar markets or products, or lack of adequate staff or appropriate expertise to manage new business. Without a clear need for additional capital, and a clear opportunity for prudently deploying it at a competitive shareholder return over the long term, mutual boards should consider other alternatives to conversion.

Other implications of conversion include fundamental changes in management and operations. Whether conversion brings expansion to new markets, introduction of new products or activities, or simply the continued growth of current activities, successful management of new capital generally requires additional management depth. Conversion also may require new management skills and experience, new staff, new facilities, new or upgraded data processing systems, expansion or refocus of internal audit and compliance management processes, and changes in marketing or customer service strategy.

Finally, the costs of conversion can be significant and often are underestimated, particularly the added burden on existing staff and systems. Mutual boards should consider the cost of additional staff to manage quarterly and annual shareholder reporting, the need for additional or more experienced (and more expensive) independent accountant and legal services to prepare shareholder reporting, the cost of managing shareholder relations, and the cost of annual and special shareholder meetings. Also, there may be a cost to the community if converted institutions are acquired by out-of-town institutions that may not share the same commitment to local community service as many mutuals.

Today's proposed rule includes measures to ensure that mutual boards of directors consider all these factors in determining whether to convert, and consider alternatives to meet the institution's business objectives when conversion may not be an appropriate option. The proposed rule confirms OTS practice of requiring pre-filing meetings, and proposes a new requirement to obtain prior OTS non-objection of conversion business plans. It also sets forth the proposed business plan standards to be addressed by converting institutions and considered in OTS review. OTS requests comment on these proposals.

C. Outline of the Process

The conversion process is complex. An institution that is considering a mutual to stock conversion must first update its business plan. Under today's proposed rule, OTS will require each institution contemplating a conversion to meet with the appropriate Regional Office to discuss the proposed business plan and receive the non-objection of the Regional Director to the business plan before submitting either an application to convert to stock form or a notice to reorganize to mutual holding company form.

Once the board of directors updates and receives OTS's non-objection to its business plan, the board must pass a Plan of Conversion that includes, among other things, an eligibility record date for persons who may subscribe for stock in any stock offering. After it approves the plan, the board of directors must publish a notice of adoption of the Plan of Conversion.

In the next stage, the institution must prepare the application for conversion or reorganization, write a proxy statement for the members to vote on the Plan of Conversion or reorganization, and write an offering circular to offer the institution's new stock. This process can take several months.

The institution must next submit all of these documents to OTS, together with an independent appraisal of the institution and current financial statements. If the institution is forming a holding company to hold its stock, it also must submit the documents to the Securities and Exchange Commission (SEC) for concurrent review. OTS and SEC review generally takes 5 to 6 weeks.

After receiving regulatory clearance, an institution prints and mails its documents to members and potential subscribers. The mailing starts the process of soliciting member votes and selling the institution's stock, which generally takes six to twelve weeks.

II. Description of Revisions to the Conversion Regulations

A. Business Plan

OTS currently requires converting institutions to submit a business plan before filing a Plan of Conversion or reorganization. *See* 12 CFR 563b.11. The proposed regulation clarifies that submitting a business plan is the first step in the conversion process. OTS emphasizes that the board of directors and management of converting institutions need to carefully consider their future operations and activities and, in particular, must have realistic plans regarding how they intend to use the conversion proceeds.

As a preliminary stage in business plan development, the proposed rule establishes a new requirement for a pre-filing meeting with the Regional Office to discuss initial plans for conversion and related implications. Generally, the board of directors, or a committee including outside directors, should participate in the meeting. The purpose of the meeting is to ensure that the board of directors has fully considered the costs and benefits of conversion and the available alternatives, and to generally discuss conversion application requirements.

Under the proposed rule, OTS would not formally accept a business plan, and the 30-day business plan review period provided in the proposed rule would not commence, until after the pre-filing meeting is held. The Regional Office may extend the review period as deemed necessary to request, receive, and review additional information from the institution. OTS will not accept an application for conversion until the Regional Office advises an applicant that the Regional Office does not object to the business plan.

Today's proposed rule also establishes written standards for an acceptable conversion business plan. The business plan should include a complete description of the proposed deployment of capital, demonstrate feasibility, discuss the risks, and address managerial and other resources required. The business plan should discuss the institution's record of success and experience in implementing prior growth or expansion initiatives. OTS strongly encourages institutions with management that does not have sufficient or favorable experience with expansion to consider alternatives to full conversion.

The business plan should demonstrate the ability to realize a reasonable return on equity. OTS recognizes that investor requirements vary with time and market conditions, and so has not proposed an absolute standard. Generally, returns should be considered in relation to trends for publicly-traded thrift and bank stocks, broader equity market returns, and the general level of interest rates. At a minimum, the projected return on equity should exceed, by a margin reflecting relative investment risk, the institution's rates on long-term certificates of deposit. The institution should not consider speculative short-term stock price appreciation, or the effect of returns of capital or repurchases of stock, in assessing the reasonableness of projected return on equity, even though these may indeed be factors considered by investors. Management must provide for consistent, sustainable returns to satisfy long-term investor expectations.

The proposed rule is intended to clarify that OTS expects business plans to fully support the business objectives of conversion. By requiring prior Regional Office non-objection to the business plan, OTS seeks to avoid the delays and unnecessary expense later in the conversion process that may arise from the submission of inadequate or incomplete business plans. The proposed rule also clarifies that institutions, upon completion of conversion, must follow their business plans and that any material deviation from an approved business plan will require the prior written approval of the Regional Director.

OTS also seeks to address the problem that many institutions converting from mutual to stock form experience when they convert without well developed business plans. Generally, institutions quickly realize that they cannot earn an acceptable return on equity or otherwise prudently deploy the conversion proceeds without resorting to large capital distributions (in the form of stock repurchases or extraordinary dividends) in the first few years following the conversion. This return of capital, so soon after its creation, undermines the considerable effort (and expenditures) involved in the conversion process and causes OTS to question whether there was a need for the capital in the first place. OTS views a return of capital to shareholders a material deviation from the business plan that requires the prior written approval of the Regional Director.

OTS encourages institutions considering raising new capital to seriously consider the mutual holding company (MHC) form of reorganization with a limited stock issuance, rather than a full conversion. OTS particularly encourages institutions that have no immediate plans for deployment of the new capital to consider this option. OTS requests comment on whether there are other capital raising techniques for mutual savings associations, short of conversion to stock form or MHC reorganization, that might also work. Currently, mutual institutions can raise capital in a variety of ways, including mutual capital certificates, subordinated debt, trust preferred securities, or the formation of real estate insurance trusts (REITs). OTS is particularly interested in the advantages and disadvantages of one instrument versus another, and why these forms of capital are not widely used. OTS is also interested in knowing why an institution would prefer the conversion or MHC reorganization over other methods of raising capital.

B. Mutual Capital Distributions

In contrast to situations where mutual institutions are seeking ways to raise additional capital, a number of mutual institutions have approached OTS for guidance on the distribution of excess capital to their communities in situations where the institution has determined it is prudent and appropriate. OTS is seeking comment on whether to issue guidance or regulations regarding special capital distributions by mutual institutions.

C. Stock Repurchases

In a separate interim final regulation, OTS is revising its regulations to eliminate restrictions on stock repurchases by converted savings associations after the first year following conversion. *See* Interim Final Rule regarding repurchases of stock, dividend waivers, and GLB Act revisions published elsewhere in this issue of the **Federal Register**. The new rule will be codified at proposed § 563b.515(c)(3) if this proposed rule is adopted as a final rule. OTS is also enacting corresponding amendments to the mutual holding company regulations in the interim final regulation.

D. Charitable Organizations

The current mutual to stock conversion regulations do not address when OTS will approve a charitable organization established as part of the mutual to stock conversion process. To date, OTS has not issued a regulation or guidance on establishing a charitable organization as part of the mutual to stock conversion.[2] OTS currently imposes, on a case-by-case basis, various procedures, requirements, and conditions on mutual savings associations contemplating the establishment of a foundation in the process of a stock conversion. Savings associations wishing to contribute conversion stock to a foundation currently must request waivers of a number of requirements in OTS conversion regulations.

To clarify the standards and procedures for forming a charitable organization or contributing stock as part of the conversion process, OTS proposes new regulations describing when OTS will approve a charitable organization in a conversion. These rules codify the current practices, so that waivers routinely requested in a conversion with a charitable foundation are no longer necessary. The standards include 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 institution, and dealing with conflicts of interest. The rules also specify 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.

E. Demand Account Holders

Current § 563b.3(c) provides that each eligible account holder and supplemental eligible account holder will receive the right to purchase stock. This right is tied to the amount of the account holder's "qualifying deposit." Section 563b.3(e) states that the amount of the "qualifying deposit" is the total of the deposit balances in the eligible or supplemental eligible account holder's savings accounts on the close of business on the eligibility or supplemental eligibility record date. The term "savings account" is defined by a cross reference to 12 CFR part 561, and includes "any withdrawable account, except a demand account as defined in 12 CFR 561.16." *See* 12 CFR 561.42.

Converting savings associations have requested that both savings and demand accounts be eligible to receive subscription rights. OTS believes converting savings associations should treat all savings and demand account holders the same way. Savings account and demand account holders are both members of the savings association and, therefore, should be given equal treatment. Accordingly, OTS proposes to clarify that the amount of the qualifying deposit is the total of the deposit balances in both savings and demand accounts.

F. Revision of Policy Regarding Management Stock Benefit Plans

In 1994, OTS substantially revised its conversion regulations to codify policies regarding the establishment of management recognition plans and stock option plans in connection with a conversion.[3] OTS intended these amendments to limit benefits realized by management and a few selected individuals in conversions and to give shareholders an opportunity to consider management performance before voting on plans.

Before the 1994 amendment, plans could provide for accelerated vesting in case of death, disability, or a change of control. Existing § 563b.3(g)(4)(xii), as modified by the 1994 amendment, provides for such accelerated vesting only in the case of disability or death.

Most converting associations object to this restriction. To avoid the restriction many converted associations have waited until the first year after conversion, amended their plans to allow for vesting in case of a change of control, and then had shareholders approve the amended plans. Amending plans requires shareholder approval, which entails additional expense and effort, and OTS is unaware of any case where such an amendment was rejected. The revised regulation rescinds the 1994 modification and clarifies that a plan may permit accelerated vesting for disability or death, or a change of control of the converted savings association. OTS will retain the right to object to any payments made in connection with a merger or acquisition.

OTS also is revising its regulation to clarify that it would allow dividend equivalent rights, dividend adjustment rights, or other similar provisions that permit cash payments, adjustment of the number of shares, or exercise price of options as a result of stock dividends or splits, in management recognition plans, stock option plans, or other stock benefit plans. OTS does not believe these types of provisions, which are common in option plans, unduly benefit recipients, as long as these provisions do not violate OTS vesting requirements or pricing requirements for options. *See* proposed § 563b.500.

OTS notes that when an institution lists its stock on the National Association of Securities Dealers Automated Quotation (NASDAQ) National Market System (which many do because it provides for a wider opportunity for trading an institution's stock than the over the counter market), NASDAQ requires shareholder ratification of stock benefit plans. OTS currently requires shareholder ratification of plans within the first year following conversion. OTS proposes to revise the section on management benefit plans to clarify that an institution must present to shareholders for ratification any material amendments to 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.

OTS also is adding a provision to the proposed rule that clarifies a supervisory policy requiring exercise or forfeiture of stock benefits in certain circumstances, such as if an institution becomes critically undercapitalized. *See* proposed § 563b.500.

G. Holding Company Formation

OTS allows a savings association to organize a holding company as part of a mutual to stock conversion. OTS, however, never formally imposed any limit on the amount of conversion proceeds that the holding company may retain. In the past, OTS staff advised institutions that a holding company may keep no more than 50 percent of conversion proceeds. This limit was based on OTS's belief that the institution should get the most proceeds from the conversion. This policy also ensures sufficient capital at the savings association. In today's proposed rule, OTS codifies this position. Accordingly, proposed § 563b.105 will state that the converted savings association must retain at least 50% of the gross conversion proceeds. The amount of proceeds proposed for the holding company level must also be consistent with the business plan.

H. Mutual Holding Company Revisions

The proposed regulation makes some conforming changes to the MHC

[2] A 1992 legal opinion concludes that savings associations have the authority to establish charitable foundations under the "incidental powers doctrine." 1992 OTS LEXIS 76 (Nov. 12, 1992). The opinion does not address the establishment of charitable foundations as part of the mutual-to-stock conversion process.

[3] 59 FR 61247, 61253 (November 30, 1994).

regulations to reflect OTS' intent to make the MHC a more suitable, long-term alternative to full conversion and to incorporate changes made to the conversion regulations. OTS is also proposing that institutions under the MHC format may have option plans that provide more flexibility than currently permitted.

The proposed regulation allows savings association subsidiaries of MHCs, or holding companies inserted in between MHCs and their savings association subsidiaries (Mid-tiers) to offer management benefits or stock option plans that permit issuance of more shares than currently permitted under the regulations. Under the current rule, an institution issuing 20 percent of its stock to minority shareholders could promulgate a stock option plan including two percent of its outstanding shares (*i.e.*, 10 percent of the minority stock issuance). OTS proposes that a savings association subsidiary of an MHC (or Mid-tier) may offer management benefit plans or stock option plans as if minority shareholders held 49 percent of the stock, provided that the MHC retains majority control. Using this option, under the proposed rule an institution issuing 20 percent of its stock to minority shareholders could promulgate a stock option plan including 4.9 percent of the outstanding shares (*i.e.*, 10 percent of the maximum shares that could be issued to minority shareholders).

In addition, OTS will allow the savings association or Mid-tier to adopt the plans at the time of reorganization. However, purchasers of the stock must approve the plan by a separate vote on the stock order form. In addition, the savings association or Mid-tier may make no grants under the plan until at least six months following the reorganization. The delay is designed to allow the stock price to settle in the marketplace before the savings association or Mid-tier makes grants.

Finally, OTS will allow the adoption of additional option plans without requiring an additional stock issuance to all categories of subscribers. Additional plans would be subject to certain restrictions, such as retention of majority ownership at the MHC level, and other applicable regulatory requirements. OTS notes that listing on the NASDAQ and qualification of some plans under IRS rules requires shareholder ratification of benefit plans, and of course OTS's regulation has no impact on these requirements. Additional plan offerings would require notice to OTS, but could be adopted unless OTS objects within 30 days of submission. Among the factors OTS will consider when reviewing the plans are the purpose for creating additional plans, management ratings, or supervisory problems at the converted savings association.

I. Revision of Policy Regarding Acquisitions

Current and proposed rules provide that no person or company may acquire more than 10% of any class of equity security of a recently converted institution for three years following conversion without OTS approval. The primary purposes of this rule are to provide a reasonable period of time for the institution to prudently deploy the new capital according to the plan described in the offering documents, for it to acclimate to operating as a public company, and to do both without the distraction of considering takeover proposals. (*See* approval standards at section 563b.3(i)(5) or proposed section 563b.525(d)).

OTS is aware that shareholder groups have approached management and other shareholders of recently converted institutions as soon as the first quarter following conversion, asserting that shareholder return on equity is inadequate or that management should consider a sale of the institution immediately. In certain situations, OTS has approved acquisitions of recently converted institutions, but in no event before the second year following conversion.

OTS is reconsidering its application of its approval standards. OTS does not believe acquisitions within the first three years following conversion are always in the best interest of newly converted institutions, the communities the institutions serve, or the shareholders. In addition, OTS is concerned that even where the acquisition is considered friendly, approval of the acquisition may be inconsistent with the purposes of the existing rules.

Current and proposed regulations provide newly converted institutions needed time to implement their business plans as presented to OTS and stock purchasers, and fully deploy proceeds according to those plans during the first three years after conversion. Therefore, OTS is notifying the public that it intends to take a very close look at applications under the existing standards to make sure all criteria are fully met before it will give written approval of acquisitions within the first three years following conversion.

J. Comments

OTS invites comment on all aspects of these proposed changes. In addition, OTS may convene a focus group during the public comment period, to ascertain other views on the proposed regulation. OTS will publish the views of the focus group in the public comment summary in the final regulation. In addition to questions posed throughout this preamble, OTS asks:

- How can OTS make the MHC form more attractive? The agency is interested in other enhancements to the MHC form that commenters might suggest.
- For institutions that have determined it is necessary to convert to stock form, will the proposal increase industry interest in converting to MHC form and remaining in that form? OTS asks mutual institutions that are considering converting to stock form if the proposed changes in OTS examination and supervisory policy, coupled with changes to the MHC regulations and the revisions enacted today by the interim final rule accompanying this proposal, make the MHC form a better choice of business organization than a full conversion to stock form.
- Should reorganization into MHC or Mid-tier form require a vote of the members? OTS is unaware of any reorganization that has failed to receive the majority vote of the members. OTS questions the necessity for the expenditure of funds by the institution to obtain a certain vote, particularly since members retain the same voting rights at the MHC that they had before reorganization at the savings association. If OTS removes this requirement for a reorganization, should it be imposed in the event of a full conversion to stock form, when members would lose their voting rights?
- Should mutual institutions be permitted to affiliate with other mutual institutions to leverage managerial and administrative resources while simultaneously retaining their independent community focus using means other than conversion to stock form or reorganization into MHC form? OTS requests comments on this issue in response to inquiries from mutual institutions for ways to affiliate with each other that do not involve the issuance of stock.
- OTS is also exploring the feasibility of creating bankers' banks specifically focused on serving the needs of community-oriented mutual institutions. OTS is seeking comment regarding the level of interest among mutual institutions in the formation of

bankers' banks to specifically serve their needs. Additionally, OTS would like commenters to identify potential regulatory requirements or other obstacles that may impede creation of bankers' banks for mutual institutions.

• What consideration may MHCs or Mid-tiers use to acquire other institutions, such as trust preferred securities, REITs, mutual capital certificates, and stock repurchases to issue stock for acquisitions? OTS has received a number of inquiries recently from MHCs about other currency to accomplish acquisitions.

• How can OTS make it more attractive for mutual institutions to stay in mutual form, particularly where capital raising is not a necessary objective for the institution?

Elsewhere in this issue of the **Federal Register**, OTS is amending its regulations to clarify another area of concern to MHCs, the ability to waive dividends and any attendant consequences.

K. Miscellaneous Revisions

In addition to the proposed revisions described above, OTS proposes a number of miscellaneous revisions to filing and other requirements. Among the other changes, the proposed rule will:

• Revise the definition section of the regulation to include only those definitions that are not defined elsewhere in OTS regulations, or to move specific definitions to the appropriate section of the regulation. *See* proposed § 563b.25.

• Reduce the number of copies of applications that a savings association must file with OTS from ten to seven. *See* proposed § 563b.155.

• Revise the filing requirements to coordinate the place of filing, and number of copies filed, for the application for conversion and any amendments to the application for conversion. *See* proposed §§ 563b.115, 563b.155, 563b.180 and 563b.185.

• Codify the current informal standard requiring a legal opinion indicating that any marketing materials comply with all applicable securities laws. *See* proposed § 563b.275.

• Delete the requirement for a legal opinion regarding insured accounts. *See* proposed § 563b.100 Exhibit 3(d).

L. Forms

OTS is proposing to revise all of the forms currently in the conversion regulations, and has 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. *See* proposed § 563b.05(b). To ensure that the public will have an opportunity to comment on these forms, OTS has appended the forms to this proposed rule and will publish the final forms along with the final rule. The forms, however, will not be codified in the Code of Federal Regulations. They will continue to be available through OTS Washington and Regional Offices and will be accessible on OTS's website after issuance of the final rule.

M. Plain Language Format

OTS redrafted all of part 563b and the related forms using the plain language format. Section 722 of the GLB Act requires federal banking agencies to use "plain language" in all proposed and final rules published after January 1, 2000. These proposed revisions do not affect the substance of the regulation or forms, but do make them easier to understand.

OTS invites your comments on how to make this proposed rule easier to understand. For example:

• Did we organize the material to suit your needs? If not, how could the material be better organized?

• Do we clearly state the requirements in the rule? If not, how could the rule be more clearly stated?

• Does the rule contain technical language or jargon that isn't clear? If so, what language requires clarification?

• Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand? If so, what changes to the format would make the rule easier to understand?

• Would more (but shorter) sections be better? If so, what sections should be changed?

• What else could we do to make the rule easier to understand?

III. Disposition of Existing Rules

Original provision	Proposed provision	Comment
12 CFR 563b.1	12 CFR 563b.5	Nonsubstantive revision, moved.
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.

Original provision	Proposed provision	Comment
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.340(b)(2)(ii), 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.
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.235(d)	Nonsubstantive revision, moved.
12 CFR 563b.6(e)	12 CFR 563b.225(b)–(c)	Nonsubstantive revision, moved.

Original provision	Proposed provision	Comment
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)–(1)	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.
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.

Original provision	Proposed provision	Comment
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.105, 110, 115	New provisions.
	12 CFR 563b.295	New provision.
	12 CFR 563b.550–575	New provisions.
	Form OF–1683	New form.

IV. Executive Order 12866

The Director of OTS determined that this proposed rule does not constitute a "significant regulatory action" for the purposes of Executive Order 12866.

V. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act of 1980 (RFA) requires federal agencies to either prepare an initial regulatory flexibility analysis (IRFA) with this proposed rule or certify that the rule would not have a significant impact on a substantial number of small entities.[4] OTS cannot at this time determine whether the rule would have a significant impact on a substantial number of small entities. Therefore, OTS includes the following IRFA.[5]

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

1. Small Entities to Which the Proposed Rule Would Apply

The proposed rule applies to mutual savings associations that propose to convert to the stock form of ownership. There are currently approximately 422 mutual savings associations and 27 MHCs subject to OTS oversight. Of these institutions, approximately 252 have less than $100 million in assets. Small depository institutions are generally defined, for RFA purposes, as those with assets under $100 million.[6] In the past two years, OTS has processed 45 and 17 applications, respectively, to convert from mutual to stock or mutual holding company form. Based on this experience, OTS believes that the proposed rule affects fewer than 20 savings associations annually.

2. Requirements of the Proposed Rule

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

The proposed 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 proposed regulatory changes, OTS provides the following estimate. The proposed 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 VII. The new requirement for information supporting a proposed charitable contribution should not increase these costs appreciably.

3. Significant Alternatives

Section 603(c) of the RFA requires OTS to describe any significant alternatives to the proposed rule that

[4] 5 U.S.C. 605(b).

[5] 5 U.S.C. 603(a).

[6] 13 CFR 121.201, Division H (1999).

accomplish the stated objectives of the rule while minimizing any significant economic impact of the rule on small entities. Section 603(c) lists several examples of significant 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 proposed 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 proposed rule specifically permits OTS to waive any requirement under the part where the waiver is equitable and not detrimental to the savings association, the accountholders, 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.

Nevertheless, OTS requests comments on the burdens associated with the proposed rule that particularly affect small savings associations, and whether any modifications or exemptions from the rules for small savings associations would be appropriate.

VI. Unfunded Mandates 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, section 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 proposed 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 section 202 of the Unfunded Mandates Act.

VII. Paperwork Reduction Act

OTS invites comment on all of the following issues:

- Whether the proposed information collection contained in this proposal is necessary for the proper performance of OTS's functions, including whether the information has practical utility.
- The accuracy of OTS's estimate of the burden of the proposed information collection.
- Ways to enhance the quality, utility, and clarity of the information to be collected.
- Ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.
- Estimates of capital and start-up costs of operation, maintenance and purchases of services to provide information.

Respondents/recordkeepers are not required to respond to this collection of information unless it displays a currently valid OMB control number.

OTS submitted the collection of information requirements contained in this proposal to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Send comments on the collections of information to the Office of Management and Budget, Paperwork Reduction Project (1550–0014), Washington, DC 20503, with copies to the Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552.

The collection of information requirements in this proposed rule are in 12 CFR part 563b. OTS requires this information for the proper supervision of savings associations that convert from mutual to stock form under OTS regulations. The likely respondents/recordkeepers are federal savings associations.

Estimated average annual burden hours per respondent/recordkeeper: 510 hours.

Estimated number of respondents/recordkeepers: 16 per year.

Estimated total annual reporting and recordkeeping burden: 8160 hours.

Start up costs to respondents: N/A.

List of Subjects

12 CFR Part 563b

Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 575

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

Accordingly, the Office of Thrift Supervision proposes to amend title 12, Chapter V, Code of Federal Regulations as set forth below.

1. Part 563b is revised to read as follows:

PART 563b—CONVERSIONS FROM MUTUAL TO STOCK FORM

Sec.
563b.5 What does this part do?
563b.10 May I form a holding company as part of my conversion?
563b.15 May I form a charitable organization as part of my conversion?
563b.20 May I acquire another insured stock depository institution as part of my conversion?
563b.25 What definitions apply to this part?

Subpart A—Standard Conversions

Prior to Conversion

563b.100 What must I do before a conversion?
563b.105 What information must I include in my business plan?
563b.110 Who must review my business plan?
563b.115 Under what circumstances will OTS not object to my business plan?
563b.120 May I discuss my plans to convert with others?

Plan of Conversion

563b.125 Must my board of directors adopt a plan of conversion?
563b.130 What must I include in my plan of conversion?
563b.135 How do I notify my members that my board of directors approved a plan of conversion?
563b.140 May I amend my plan of conversion?

Filing Requirements

563b.150 What must I include in my application for conversion?
563b.155 How do I file my application for conversion?
563b.160 May I keep portions of my application for conversion confidential?
563b.165 How do I amend my application for conversion?

Notice of Filing of Application and Comment Process

563b.180 How do I notify the public that I filed an application for conversion?
563b.185 How may a person comment on my application for conversion?

OTS Review of the Application for Conversion

563b.200 What actions may OTS take on my application?
563b.205 May a court review OTS's final action on my conversion?

Vote by Members

563b.225 Must I submit the plan of conversion to my members for approval?
563b.230 Who is eligible to vote?
563b.235 How must I notify my members of the meeting?
563b.240 What must I submit to OTS after the members' meeting?

Proxy Solicitation

563b.250 Who must comply with these proxy solicitation provisions?
563b.255 What must the form of proxy include?
563b.260 May I use previously executed proxies?
563b.265 How may I use proxies executed under this part?
563b.270 What must I include in my proxy statement?
563b.275 How do I file revised proxy materials?
563b.280 Must I mail a member's proxy soliciting material?
563b.285 What solicitations are prohibited?
563b.290 What will OTS do if a solicitation violates these prohibitions?
563b.295 Will OTS require me to re-solicit proxies?

Offering Circular

563b.300 What must happen before OTS declares my offering circular effective?
563b.305 When may I distribute the offering circular?
563b.310 When must I file a post-effective amendment to the offering circular?

Offers and Sales of Stock

563b.320 Who has priority to purchase my conversion shares?
563b.325 When may I offer to sell my conversion shares?
563b.330 How do I price my conversion shares?
563b.335 How do I sell my conversion shares?
563b.340 What sales practices are prohibited?
563b.345 How may a subscriber pay for my conversion shares?
563b.350 Must I pay interest on payments for conversion shares?
563b.355 How many subscription rights must I give to each eligible account holder and each supplemental eligible account holder?
563b.360 Are my officers, directors, and their associates eligible account holders?
563b.365 May other voting members purchase conversion shares in the conversion?
563b.370 Does OTS limit aggregate purchases by officers, directors, and their associates?
563b.375 How do I allocate my conversion shares if my shares are oversubscribed?
563b.380 May my employee stock ownership plan purchase conversion shares?
563b.385 May I impose any purchase limitations?
563b.390 Must I provide a purchase preference to members of my local community?
563b.395 What other conditions apply when I offer conversion shares in a community offering, a public offering, or both?

Completion of the Offering

563b.400 When must I complete the sale of my stock?
563b.405 How do I extend the offering period?

Completion of the Conversion

563b.420 When must I complete my conversion?
563b.425 Who may terminate the conversion?
563b.430 What happens to my old charter?
563b.435 What happens to my corporate existence after conversion?
563b.440 What voting rights must I provide to stockholders after the conversion?
563b.445 What must I provide my savings account holders?

Liquidation Account

563b.450 What is a liquidation account?
563b.455 What is the initial balance of the liquidation account?
563b.460 How do I determine the initial balances of liquidation sub-accounts?
563b.465 Do account holders retain any voting rights based on their liquidation sub-accounts?
563b.470 Must I adjust liquidation sub-accounts?
563b.475 What is a liquidation?
563b.480 Does the liquidation account affect my net worth?
563b.485 What provision must I include in my new Federal charter?

Post-Conversion

563b.500 May I implement a stock option plan or management or employee stock benefit plan?
563b.505 May my directors, officers, and their associates freely trade shares?
563b.510 May I repurchase shares after conversion?
563b.515 What information must I provide to OTS before I repurchase my shares?
563b.520 May I declare or pay dividends after I convert?
563b.525 Who may acquire my shares after I convert?
563b.530 What other requirements apply after I convert?

Contributions to Charitable Organizations

563b.550 May I donate conversion shares or conversion proceeds to a charitable organization?
563b.555 How do my members approve a charitable contribution?
563b.560 How much may I contribute to a charitable organization?
563b.565 What must the charitable organization include in its organizational documents?
563b.570 How do I address conflicts of interest involving my directors?
563b.575 What other requirements apply to charitable organizations?

Subpart B—Voluntary Supervisory Conversion

563b.600 What does this subpart do?
563b.605 How may I conduct a voluntary supervisory conversion?
563b.610 Do my members have rights in a voluntary supervisory conversion?

Eligibility

563b.625 When is a SAIF-insured savings association eligible for a voluntary supervisory conversion?
563b.630 When is a BIF-insured savings association eligible for a voluntary supervisory conversion?

Plan of Supervisory Conversion

563b.650 What must I include in my plan of voluntary supervisory conversion?

Voluntary Supervisory Conversion Application

563b.660 What must I include in my voluntary supervisory conversion application?

OTS Review of the Voluntary Supervisory Conversion Application

563b.670 Will OTS approve my voluntary supervisory conversion application?
563b.675 What conditions will OTS impose on an approval?

Offers and Sales of Stock

563b.680 How do I sell my shares?

Post-Conversion

563b.690 Who may not acquire additional shares after the voluntary supervisory conversion?

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 2901; 15 U.S.C. 78c, 78l, 78m,78n,78w.

PART 563b—CONVERSIONS FROM MUTUAL TO STOCK FORM

§ 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 public interest;

and

(3) If applicable, includes an opinion of counsel demonstrating that state law conflicts 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, or 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 at 12 CFR part 574.

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 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* is a 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 any savings account with total deposit balances of $50 or less do not qualify.

Sale or *sell* is a 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 do 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 section 401 of the Internal Revenue Code.

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) You must meet with OTS before you may file your business plan. You must submit your business plan at least 30 days before you file your application for conversion. You may not file your application for conversion if the Regional Director objects to your business plan.

(b) You must 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) Your business plan must:

(1) Clearly and completely describe 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), and include three years of projected financial statements for the converted institution and each holding company, and three years of consolidated financial statements for the holding company. The business plan must provide that the converted savings association must retain at least 50 percent of the gross conversion proceeds.

(2) Demonstrate that your plan for deployment of conversion proceeds will substantially serve to meet credit and lending needs in your proposed market areas. OTS will not approve a business plan that provides 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 the investment is part of a properly managed leverage strategy.

(3) Demonstrate that you have a reasonable need for new capital to support projected operations and activities. You must show that opportunities are reasonably available in your proposed market areas to achieve your planned deployment of conversion proceeds.

(4) Describe your experience with respect to prior growth, expansion, or other initiatives similar to the operations and activities proposed in your business plan.

(5) Describe the risks associated with your plan for deployment of conversion proceeds, and the effect of this plan on management resources, staffing, and facilities.

(6) Demonstrate that your management and board of directors have the expertise, and that you have adequate staffing and controls to prudently manage the growth, expansion, new investment, and other operations and activities proposed in your business plan.

(7) Demonstrate that you will achieve a reasonable return on equity, commensurate with investment risk, investor expectations, and industry norms, without consideration of assumed, speculative stock price appreciation.

(b) You may not project stock repurchases, returns of capital, or extraordinary dividends in any part of the business plan. A newly converted company should not plan on significant returns of conversion proceeds during the business plan period, except in extraordinary circumstances.

§ 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 must approve, the business plan.

(b) Your chief executive officer and at least two-thirds of the board 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.

§ 563b.115 Under what circumstances will OTS not object to my business plan?

(a) You must file your business plan with the Regional Office. OTS may request additional information, if necessary. You must file your business plan as a confidential exhibit to the Form AC.

(b) OTS will not object to your business plan if it demonstrates prudent deployment of capital and otherwise meets the requirements of § 563b.105.

(c) OTS will review your business plan and will either not object to the plan or will disapprove your business plan. You may not submit your application for conversion until OTS advises you that it does not object to your business plan, except in extraordinary circumstances.

(d) If OTS approves your application for conversion and you complete your conversion, you must operate within the parameters of your approved 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?

Your board of directors must adopt a plan of conversion that conforms to §§ 563b.320 through 563b.395 ("Offers and Sales of Stock"). Your board of directors must adopt the plan by at least a two-thirds vote.

§ 563b.130 What must I include in my plan of conversion?

You must include the information included in §§ 563b.320 through 563b.395 ("Offers and Sales of Stock") 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.

(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, approve 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.

(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 § 516.1 of this chapter) and OTS's website (www.ots.treas.gov).

(6) 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.

(7) 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, or 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 § 516.1 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. Your CRA Plan is not considered confidential information. 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 available to the public under 5 U.S.C. 552 and part 505 of this chapter. OTS will advise you if it makes available to the public any information you designated as "confidential."

(d) If OTS issues a public statement with its decision on the application for conversion, OTS may comment on confidential submissions in the public statement without notifying you.

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 subpart B of part 516 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.

(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 § 516.1 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 § 516.1 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.

§ 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 special 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?

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

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

(b) The total votes eligible to be cast.

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

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

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

(f) An opinion of counsel that:

(1) You conducted the members' meeting in compliance with all applicable state or federal laws and regulations; and

(2) You complied with all federal or state 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 soliciting 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, 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 adopts the plan of conversion. The newspaper advertisement 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 soliciting 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 whether 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 § 516.1 of this chapter) and OTS's website (www.ots.treas.gov).

(b) *Other requirements.* (1) OTS will review your proxy soliciting material when it reviews the application for conversion and will authorize the use of proxy soliciting material.

(2) You must provide an authorized written proxy statement to your members before you provide any other soliciting material. You must mail authorized proxy soliciting 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 soliciting 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 soliciting material subject to § 563b.270, 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.

(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 soliciting 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 soliciting 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 soliciting material?

(a) You must mail the member's authorized proxy soliciting material if:

(1) Your board of directors adopted a plan of conversion;

(2) A member requests in writing that you mail proxy soliciting material; and

(3) 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 soliciting material for the member.

(c) You must mail authorized proxy soliciting 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 soliciting material.

(e) A member may furnish other members its own proxy soliciting material, authorized by OTS, subject to these rules.

§ 563b.285 What solicitations are prohibited?

(a) *False or misleading statements.* (1) No one may use proxy soliciting 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 proxy soliciting 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 § 516.1 of this chapter) and OTS's website (www.ots.treas.gov).

(b) You must condition your stock offering upon the members' 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 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 Form OC 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, circumstance, 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.

(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 § 516.1 of this chapter) and OTS's website (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 limitations established in 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.

§ 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 by 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 the 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 How many 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 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. If you set a limit of five percent, you may provide that any person, group of associated persons, or persons otherwise acting in concert subscribing for five percent, may purchase more than five percent as long as the total amount that the subscribers purchase over five percent does not in the aggregate exceed 10 percent of the total stock offering.

(b) 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.

(c) 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) You must select a date for the completion of the conversion that is within 24 months of the date that your members approve the conversion. Once OTS approves the conversion, it will not permit extension of the completion 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). OTS will state the effective date of your charter amendments in its approval of the conversion.

(b) 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). OTS will state the effective date of your charter amendments with its approval of the conversion.

(c) 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, your mutual charter terminates when the state issues a stock charter. You must promptly file a copy of your new state stock charter with OTS. If you were a federally chartered mutual savings association or savings bank and you convert to a state-chartered stock savings association, you must also surrender your federal charter to OTS for cancellation promptly after the state issues your charter.

(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 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 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 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?

No. You may use or apply any of your net worth accounts notwithstanding the existence of the liquidation account, except as provided in § 563b.520.

§ 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), is subject to OTS enforcement action, or receives a capital directive under § 565.7.

(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.

(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 adopted more than one year following your conversion, any material amendments 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) 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 made to all shareholders of your association.

(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, 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 extraordinary circumstances necessitating the repurchases.

(b) You must file your notice with your Regional Director, with a copy to the Chief Counsel's Office, Business Transactions Division, at least ten days before you begin your repurchase program.

(c) You may not repurchase your shares if OTS disapproves your repurchase program. OTS will disapprove your repurchase program if:

(1) Your repurchase program will adversely affect your financial condition;

(2) You fail to submit sufficient information to evaluate your proposed repurchases;

(3) You do not demonstrate extraordinary circumstances and a compelling and valid business purpose for the shares repurchases; or

(4) Your repurchase program would be contrary to other applicable regulations.

§ 563b.520 May I declare or pay dividends after I convert?

(a) You may declare or pay a dividend on your shares after you convert, unless the dividend will reduce your regulatory capital below the amount required for your liquidation account under § 563b.450.

(b) You must comply with all capital requirements under part 567 of this chapter after you declare or pay dividends.

(c) You must comply with the capital distribution requirements under part 563, subpart E of this chapter.

(d) You may not return any capital to purchasers in the first year following conversion. You may only return capital to purchasers after the first year, if the return of capital is consistent with your business plan.

§ 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 these shares 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 law or regulation; 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. 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 approves 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.

§ 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. Except in extraordinary circumstances, OTS will not object on supervisory grounds 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 and bylaws (or trust agreement), gift instrument, and operating plan must provide that:

(a) The charitable organization's purpose is to serve and make grants in your local community;

(b) As long as the charitable organization controls shares, you must consider those shares as voted 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.

§ 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 and bylaws (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 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) OTS may review the compensation paid to charitable organization directors

(or trustees) who are not your directors, employees, or affiliates.

(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, 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 sections 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 acquirer, 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 SAIF-insured savings association eligible for a voluntary supervisory conversion?

(a)(1) You may be eligible to convert under this subpart if:

(i) You are a SAIF-insured savings association;

(ii)You are significantly undercapitalized (or you are undercapitalized and a standard conversion that would make you adequately capitalized is not feasible); and

(iii) You will be a viable entity following the conversion.

(2) You will be a viable entity following the conversion if you satisfy all of the following.

(i) You will be adequately capitalized as a result of the conversion.

(ii) You, your proposed conversion, and your acquirer(s) comply with applicable supervisory policies.

(iii) The transaction is in your best interest, and the best interest of the federal deposit insurance funds, and the public.

(iv) The transaction will not injure or be detrimental to you, the federal deposit insurance funds, or the public interest.

(b) If you are a SAIF-insured savings association, you may be eligible to convert under this subpart and section 5(p) of the Home Owners' Loan Act, 12 U.S.C. 1464(p) if one of the following occurs:

(1) Severe financial conditions threaten your stability and a conversion is likely to improve your financial condition;

(2) FDIC will assist you under section 13 of the Federal Deposit Insurance Act, 12 U.S.C. 1823; or

(3) You are in receivership and a conversion will assist you.

§ 563b.630 When is a BIF-insured savings association eligible for a voluntary supervisory conversion?

If you are a BIF-insured savings association you may be eligible to convert 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 submit a voluntary supervisory conversion application to OTS under this subpart. You must include all of the following information and documents in your conversion application.

(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, where 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.

(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 12 CFR parts 563b and 563g.

(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, and 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 acquirer, or the controlling parties or directors and officers of you or your acquirer, 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 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 acquirer, and controlling parties, directors and officers of you or your acquirer; 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 any of your controlling shareholder(s) may acquire shares from minority shareholders without OTS's prior approval.

PART 575—MUTUAL HOLDING COMPANIES

2. 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]

3. 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]

4. 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".

5. Section 575.7 is amended by:

a. Adding a new first sentence to paragraph (a);

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 of this chapter";

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) *Approval 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. A savings association subsidiary may not submit a notice to reorganize if OTS objects to the business plan.

* * * * *

(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, tax qualified or non-tax qualified employee stock benefit plan of the mutual holding company or subsidiary of the mutual holding company, if written notice is made to the OTS at least 30 days prior to the stock issuance and OTS does not object to the subsequent stock issuance.

(8) You may contribute a reasonable amount of shares or proceeds to a charitable organization that complies with §§ 563b.550 to 563b.575 of this chapter. In the case of a mutual holding company stock issuance no more than two percent of the savings association or subsidiary holding company stock may be contributed to the charitable organization.

* * * * *

6. 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. Revising paragraph (a)(7);

c. Removing paragraph (a)(8);

d. Redesignating paragraphs (a)(9) through (a)(21) as paragraphs (a)(8) through (a)(20), respectively;

e. Amending newly designated paragraph (a)(8) by removing the phrase "12 CFR 563b.102", and by adding in lieu thereof the phrase "Form OC";

f. Adding new paragraph (b)(5); and

g. Adding a new paragraph (b)(6).

The additions and revisions read as follows:

§ 575.8 Contents of Stock Issuance Plans.

(a) * * *

(7)(i) When you issue common or preferred stock, your officers, directors, and their associates may not purchase, in the aggregate, more than the following percentage of your total common or preferred stock offering, respectively, held by persons other than the mutual holding company:

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) The purchase limitations in this section do not apply to shares held in tax-qualified or non-tax-qualified employee stock benefit plans that are attributable to your officers, directors, and their associates.

* * * * *

(b) * * *

(5) Provide that the association may adopt a stock benefit plan at the time of issuance if purchasers are given the opportunity to vote for or against the plan on the stock order form, and provided no shares may be granted for six months after the stock issuance.

(6) Provide that stock benefit plans for insiders may issue 49 percent of the amount of stock that is available under a plan subject to § 563b.500, provided that the mutual holding company holds more than 50 percent of the savings association's total outstanding common stock.

7.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.

8. 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.290 and 563b.25 to 563b.35 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 § 516.1(a) 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: June 20, 2000.

By the Office of Thrift Supervision.

Ellen Seidman,

Director.

Appendix A—Form AC—Application for Conversion

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

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* 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 regarding this burden estimate or any other aspect of the collection of information, including suggestions for reducing this burden, the Business Transactions Division, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552; and to the Office of Management and Budget, Paperwork Reduction Project (1550–0014), Washington, DC 20503.

Form AC—Application for Conversion

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

Application for Conversion

(Name of Applicant in charter) (Docket No.)

(Street address of Applicant)

(City, State and Zip Code)

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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; (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 12 CFR 563b.320 through 563b.395. OTS will base its approval on the terms of this plan. You must distribute the approved plan as an attachment to the proxy statement and the offering circular.

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:

(a) Your reasons for concluding that the proposed contribution is reasonable.

(b) The impact of the proposed contribution on the appraised valuation.

(c) A description of the charitable organization.

(d) 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:

Legal	$
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. 1. Expenses that you incur in the conversion must be reasonable.

2. 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.

3. 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.

4. 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.

(a) Proposed certificates for shares.

(b) 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:

(a) The legal sufficiency of your proposed certificates and order forms for any shares.

(b) 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.

(c) The legal sufficiency of your bylaws.

(d) 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.

(f) 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 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 to 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 repurchases, 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) 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) 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 legal opinion from independent counsel discussing whether the charitable organization's proposed charter and bylaws (or trust agreement), including the required pro-rata voting provision discussed in 12 CFR 563b.575, comply with applicable state law.

(f) 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, June 2000

Appendix B—Form PS—Proxy Statement

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

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* 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 regarding this burden estimate or any other aspect of the collection of information, including suggestions for reducing this burden, the Business Transactions Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; and to the Office of Management and Budget, Paperwork Reduction Project (1550–0014), Washington, DC 20503.

Form PS—Proxy Statement

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

Proxy Statement

_____

(Name of Applicant in charter)—(Docket No.)

_____

(Street address of Applicant)

_____

(City, State and Zip Code)

Index to Items

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Item 2. Revocability of proxy
Item 3. Persons making the solicitation
Item 4. Voting rights and vote required for approval
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Item 6. Management compensation
Item 7. Business
Item 8. Description 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 § 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 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. 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 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 affect 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 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 affect 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.390;

(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 (1) of this paragraph 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 (1) of this paragraph 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, June 2000.

Appendix C—Form OC—Offering Circular

[Not To Be Codified in the Code of Federal Regulations]

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* Part 563b and Part 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 regarding this burden estimate or any other aspect of the collection of information, including suggestions for reducing this burden, the Business Transactions Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; and to the Office of Management and Budget, Paperwork Reduction Project (1550–0014), Washington, DC 20503.

FORM OC—Offering Circular

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

Offering Circular

_____
(Name of Applicant 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 date that you mail it. 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. The offering circular may be in "wrap around" form, where the proxy statement is attached.

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 as an attachment to your offering circular for a subscription offering in "wrap around" form. 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

You must set out the following statement on the outside front cover page of every offering circular. You must set out the statement in capital letters printed in boldface Roman type at least as large as ten-point modern type and at least two points leaded:

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, June 2000.

Appendix D—Form OF—Order Form

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

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* Part 563b and section 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 regarding this burden estimate or any other aspect of the collection of information, including suggestions for reducing this burden, the Business Transactions Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; and to the Office of Management and Budget, Paperwork Reduction Project (1550–0014), Washington, DC 20503.

Form OF—Order Form

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

Order Form for purchase of conversion shares

(Name of Applicant 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 separate one page certification.

"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 and affiliation to issuer (if different)*], I received an offering circular.

The offering circular that I received contains disclosure concerning the nature of the security being offered and describes the risks involved in the investment including: [list briefly the principle risks involved and cross reference certain specified pages of the offering circular where a more complete description of the risks is made.]

Signature _____

Date _____

OTS Form 1683, June 2000.

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