

§ 563b.340

offering if the public offering is limited. If no public offering occurs, you may pay an underwriter a consulting fee. OTS may object to the payment of unreasonable consulting fees.

(d) If you conduct the community offering, the public offering, or both at the same time as the subscription offering, you must fill all subscription orders first.

(e) You must prepare your order form in compliance with this part and Form OF. You may obtain Form OF from OTS Washington and Regional Offices (see § 516.40 of this chapter) and OTS's website (<http://www.ots.treas.gov>).

§ 563b.340 What sales practices are prohibited?

(a) In connection with offers, sales, or purchases of conversion shares under this part, you and your directors, officers, agents, or employees may not:

(1) Employ any device, scheme, or artifice to defraud;

(2) Obtain money or property by means of any untrue statement of a material fact or any omission of a material fact necessary to make the statements, in light of the circumstances under which they were made, not misleading; or

(3) Engage in any act, transaction, practice, or course of business that operates or would operate as a fraud or deceit upon a purchaser or seller.

(b) During your conversion, no person may:

(1) Transfer, or enter into any agreement or understanding to transfer, the legal or beneficial ownership of subscription rights for your conversion shares or the underlying securities to the account of another;

(2) Make any offer, or any announcement of an offer, to purchase any of your conversion shares from anyone but you; or

(3) Knowingly acquire more than the maximum purchase allowable under your plan of conversion.

(c) The restrictions in paragraphs (b)(1) and (b)(2) of this section do not apply to offers for more than 10 percent of any class of conversion shares by:

(1) An underwriter or a selling group, acting on your behalf, that makes the offer with a view toward public resale; or

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(2) One or more of your tax-qualified employee stock ownership plans so long as the plan or plans do not beneficially own more than 25 percent of any class of your equity securities in the aggregate.

(d) If any person is found to have violated the restrictions in paragraphs (b)(1) and (b)(2) of this section, they may face prosecution or other legal action.

§ 563b.345 How may a subscriber pay for my conversion shares?

(a) A subscriber may purchase conversion shares with cash, by a withdrawal from a savings account, or a withdrawal from a certificate of deposit. If a subscriber purchases shares by a withdrawal from a certificate of deposit, you may not assess a penalty for the withdrawal.

(b) You may not extend credit to any person to purchase your conversion shares.

§ 563b.350 Must I pay interest on payments for conversion shares?

(a) You must pay interest from the date you receive a payment for conversion shares until the date you complete or terminate the conversion. You must pay interest at no less than your passbook rate for amounts paid in cash, check, or money order.

(b) If a subscriber withdraws money from a savings account to purchase conversion shares, you must pay interest on the payment until you complete or terminate the conversion as if the withdrawn amount remained in the account.

(c) If a depositor fails to maintain the applicable minimum balance requirement because he or she withdraws money from a certificate of deposit to purchase conversion shares, you may cancel the certificate and pay interest at no less than your passbook rate on any remaining balance.

§ 563b.355 What subscription rights must I give to each eligible account holder and each supplemental eligible account holder?

(a) You must give each eligible account holder subscription rights to purchase conversion shares in an amount equal to the greater of:

(1) The maximum purchase limitation established for the community offering or the public offering under § 563b.395;

(2) One-tenth of one percent of the total stock offering; or

(3) Fifteen times the following number: The total number of conversion shares that you will issue, multiplied by the following fraction. The numerator is the total qualifying deposit of the eligible account holder. The denominator is the total qualifying deposits of all eligible account holders. You must round down the product of this multiplied fraction to the next whole number.

(b) You must give subscription rights to purchase shares to each supplemental eligible account holder in the same amount as described in paragraph (a) of this section, except that you must compute the fraction described in paragraph (a)(3) of this section as follows: The numerator is the total qualifying deposit of the supplemental eligible account holder. The denominator is the total qualifying deposits of all supplemental eligible account holders.

§ 563b.360 Are my officers, directors, and their associates eligible account holders?

Your officers, directors, and their associates may be eligible account holders. However, if an officer, director, or his or her associate receives subscription rights based on increased deposits in the year before the eligibility record date, you must subordinate subscription rights for these deposits to subscription rights exercised by other eligible account holders.

§ 563b.365 May other voting members purchase conversion shares in the conversion?

(a) You must give rights to purchase your conversion shares in the conversion to voting members who are neither eligible account holders nor supplemental eligible account holders. You must allocate rights to each voting member that are equal to the greater of:

(1) The maximum purchase limitation established for the community offering and the public offering under § 563b.395; or

(2) One-tenth of one percent of the total stock offering.

(b) You must subordinate the voting members' rights to the rights of eligible account holders, tax-qualified employee stock ownership plans, and supplemental eligible account holders.

§ 563b.370 Does OTS limit the aggregate purchases by officers, directors, and their associates?

(a) When you convert, your officers, directors, and their associates may not purchase, in the aggregate, more than the following percentage of your total stock offering:

Institution size	Officer and director purchases (percent)
\$50,000,000 or less	35
\$50,000,001–100,000,000	34
\$100,000,001–150,000,000	33
\$150,000,001–200,000,000	32
\$200,000,001–250,000,000	31
\$250,000,001–300,000,000	30
\$300,000,001–350,000,000	29
\$350,000,001–400,000,000	28
\$400,000,001–450,000,000	27
\$450,000,001–500,000,000	26
Over \$500,000,000	25

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

§ 563b.375 How do I allocate my conversion shares if my shares are oversubscribed?

(a) If your conversion shares are oversubscribed by your eligible account holders, you must allocate shares among the eligible account holders so that each, to the extent possible, may purchase 100 shares.

(b) If your conversion shares are oversubscribed by your supplemental eligible account holders, you must allocate shares among the supplemental eligible account holders so that each, to the extent possible, may purchase 100 shares.

(c) If a person is an eligible account holder and a supplemental eligible account holder, you must include the eligible account holder's allocation in determining the number of conversion shares that you may allocate to the