

(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 applica-

tion on the condition that you will improve your CRA performance or that you will address the particular credit or lending needs of the communities that you will serve.

(2) OTS may deny your application if your business plan does not demonstrate that your proposed use of conversion proceeds will help you to meet the credit and lending needs of the communities that you will serve.

(d) OTS may request that you amend your application if further explanation is necessary, material is missing, or material must be corrected.

(e) OTS will deny your application if the application does not meet the requirements of this subpart, unless OTS waives the requirement under § 563b.5(c).

**§ 563b.205 May a court review OTS's final action on my conversion?**

(a) Any person aggrieved by OTS's final action on your application for conversion may ask the court of appeals of the United States for the circuit in which the principal office or residence of such person is located, or the U.S. Court of Appeals for the District of Columbia Circuit, to review the action under 12 U.S.C. 1464(i)(2)(B).

(b) To obtain court review of the action, this statute requires the aggrieved person to file a written petition requesting that the court modify, terminate, or set aside the final OTS action. The aggrieved person must file the petition with the court within the later of 30 days after OTS publishes notice of OTS's final action in the FEDERAL REGISTER or 30 days after you mail the proxy statement to your members under § 563b.235.

VOTE BY MEMBERS

**§ 563b.225 Must I submit the plan of conversion to my members for approval?**

(a) After OTS approves your plan of conversion, you must submit your plan of conversion to your members for approval. You must obtain this approval at a meeting of your members, which may be a special or annual meeting, unless you are a state-chartered savings association and state law requires you to obtain approval at an annual meeting.

**§ 563b.230**

(b) Your members must approve your plan of conversion by a majority of the total outstanding votes, unless you are a state-chartered savings association and state law prescribes a higher percentage.

(c) Your members may vote in person or by proxy.

(d) You may notify eligible account holders or supplemental eligible account holders who are not voting members of your proposed conversion. You may include only the information in § 563b.135 in your notice.

**§ 563b.230 Who is eligible to vote?**

You determine members' eligibility to vote by setting a voting record date. You must set a voting record date that is not more than 60 days nor less than 20 days before your meeting, unless you are a state-chartered savings association and state law requires a different voting record date.

**§ 563b.235 How must I notify my members of the meeting?**

(a) You must notify your members of the meeting to consider your conversion by sending the members a proxy statement authorized by OTS.

(b) You must notify your members 20 to 45 days before your meeting, unless you are a state-chartered savings association and state law requires a different notice period.

(c) You must also notify each beneficial holder of an account held in a fiduciary capacity:

(1) If you are a federal association and the name of the beneficial holder is disclosed on your records; or

(2) If you are a state-chartered association and the beneficial holder possesses voting rights under state law.

**§ 563b.240 What must I submit to OTS after the members' meeting?**

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

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

(2) The total votes eligible to be cast.

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

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

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

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

(b) Promptly after completion of the conversion, you must submit an opinion of counsel that you complied with all laws applicable to the conversion.

**PROXY SOLICITATION**

**§ 563b.250 Who must comply with these proxy solicitation provisions?**

(a) You must comply with these proxy solicitation provisions when you provide proxy solicitation material to members for the meeting to vote on your plan of conversion.

(b) Your members must comply with these proxy solicitation provisions when they provide proxy solicitation materials to members for the meeting to vote on your conversion, pursuant to § 563b.280, except where:

(1) The member solicits 50 people or fewer and does not solicit proxies on your behalf; or

(2) The member solicits proxies through newspaper advertisements after your board of directors adopts the plan of conversion. Any newspaper advertisements may include only the following information:

(i) Your name;

(ii) The reason for the advertisement;

(iii) The proposal or proposals to be voted upon;

(iv) Where a member may obtain a copy of the proxy solicitation material; and

(v) A request for your members to vote at the meeting.

**§ 563b.255 What must the form of proxy include?**

The form of proxy must include all of the following:

(a) A statement in bold face type stating that management is soliciting the proxy.

(b) Blank spaces where the member must date and sign the proxy.

(c) Clear and impartial identification of each matter or group of related matters that members will vote upon. You must include any proposed charitable contribution as an item to be voted on separately.