

§ 563b.600

12 CFR Ch. V (1-1-06 Edition)

board of trustees), including a conflict of interest policy; and

(5) The charitable organization may not engage in self-dealing, and must comply with all laws necessary to maintain its tax-exempt status under the Internal Revenue Code.

(b) You must include the following legend in the stock certificates of shares that you contribute to the charitable organization or that the charitable organization otherwise acquires: “The board of directors must consider the shares that this stock certificate represents as voted in the same ratio as all other shares voted on each proposal considered by the shareholders, as long as the shares are controlled by the charitable organization.”

(c) As long as the charitable organization controls shares, you must consider those shares as voted in the same ratio as all of the shares voted on each proposal considered by your shareholders.

(d) After you complete your stock offering, you must submit four executed copies of the following documents to the OTS Applications Filing Room in Washington, and three executed copies to the OTS Regional Office: the charitable organization’s charter and bylaws (or trust agreement), operating plan (within six months after your stock offering), conflict of interest policy, and the gift instrument for your contributions of either stock or cash to the charitable organization.

Subpart B—Voluntary Supervisory Conversions

§ 563b.600 What does this subpart do?

(a) You must comply with this subpart to engage in a voluntary supervisory conversion. This subpart applies to all voluntary supervisory conversions under secs. 5(i)(1), (i)(2), and (p) of the Home Owners’ Loan Act (HOLA), 12 U.S.C. 1464(i)(1), (i)(2), and (p).

(b) Subpart A of this part also applies to a voluntary supervisory conversion, unless a requirement is clearly inapplicable.

§ 563b.605 How may I conduct a voluntary supervisory conversion?

(a) You may sell your shares or the shares of a holding company to the

public under the requirements of subpart A of this part.

(b) You may convert to stock form by merging into an interim federal- or state-chartered stock association.

(c) You may sell your shares directly to an acquiror, who may be a person, company, depository institution, or depository institution holding company.

(d) You may merge or consolidate with an existing or newly created depository institution. The merger or consolidation must be authorized by, and is subject to, other applicable laws and regulations.

§ 563b.610 Do my members have rights in a voluntary supervisory conversion?

Your members do not have the right to approve or participate in a voluntary supervisory conversion, and will not have any legal or beneficial ownership interests in the converted association, unless OTS provides otherwise. Your members may have interests in a liquidation account, if one is established.

ELIGIBILITY

§ 563b.625 When is a savings association eligible for a voluntary supervisory conversion?

(a) If you are an insured savings association, you may be eligible to convert under this subpart if:

(1) You are significantly undercapitalized (or you are undercapitalized and a standard conversion that would make you adequately capitalized is not feasible) and you will be a viable entity following the conversion;

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

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

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

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

(1) You will be adequately capitalized as a result of the conversion;

(2) You, your proposed conversion, and your acquiror(s) comply with applicable supervisory policies;

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

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

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

If you are a BIF-insured state-chartered savings bank you may be eligible to convert to a federal stock savings bank under this subpart if:

(a) FDIC certifies under section 5(o)(2)(C) of the HOLA that severe financial conditions threaten your stability and that the voluntary supervisory conversion is likely to improve your financial condition, and OTS concurs with this certification; or

(b) You meet the following conditions:

(1) Your liabilities exceed your assets, as calculated under generally accepted accounting principles, assuming you are a going concern; and

(2) You will issue a sufficient amount of permanent capital stock to meet your applicable FDIC capital requirement immediately upon completion of the conversion, or FDIC determines that you will achieve an acceptable capital level within an acceptable time period.

PLAN OF SUPERVISORY CONVERSION

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

A majority of your board of directors must adopt a plan of voluntary supervisory conversion. You must include all of the following information in your plan of voluntary supervisory conversion.

(a) Your name and address.

(b) The name, address, date and place of birth, and social security number of each proposed purchaser of conversion shares and a description of that purchaser's relationship to you.

(c) The title, per-unit par value, number, and per-unit and aggregate offering price of shares that you will issue.

(d) The number and percentage of shares that each investor will purchase.

(e) The aggregate number and percentage of shares that each director, officer, and any affiliates or associates of the director or officer will purchase.

(f) A description of any liquidation account.

(g) Certified copies of all resolutions of your board of directors relating to the conversion.

VOLUNTARY SUPERVISORY CONVERSION APPLICATION

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

You must include all of the following information and documents in a voluntary supervisory conversion application to OTS under this subpart:

(a) *Eligibility.* (1) Evidence establishing that you meet the eligibility requirements under §§ 563b.625 or 563b.630.

(2) An opinion of qualified, independent counsel or an independent, certified public accountant regarding the tax consequences of the conversion, or an IRS ruling indicating that the transaction qualifies as a tax-free reorganization.

(3) An opinion of independent counsel indicating that applicable state law authorizes the voluntary supervisory conversion, if you are a state-chartered savings association converting to state stock form.

(b) *Plan of conversion.* A plan of voluntary supervisory conversion that complies with § 563b.650.

(c) *Business plan.* A business plan that complies with § 563b.105, when required by OTS.

(d) *Financial data.* (1) Your most recent audited financial statements and Thrift Financial Report. You must explain how your current capital levels make you eligible to engage in a voluntary supervisory conversion under §§ 563b.625 or 563b.630.

(2) A description of your estimated conversion expenses.

(3) Evidence supporting the value of any non-cash asset contributions. Appraisals must be acceptable to OTS and the non-cash asset must meet all other OTS policy guidelines. See Thrift Activities Handbook Section 110 for