

(iii) The savings association is or will be able to service the covered securities.

(iv) The covered securities are consistent with the requirements of this section.

(v) The covered securities and related transactions sufficiently transfer risk from the Deposit Insurance Fund.

(vi) OTS has no objection to the issuance based on the savings association's overall policies, condition, and operations.

(3) OTS approval or non-objection is conditioned upon no material changes to the information disclosed in the application or notice submitted to OTS. OTS may impose such additional requirements or conditions as it may deem necessary to protect purchasers, the savings association, OTS, or the Deposit Insurance Fund.

(e) *Amendments.* If a savings association amends the covered securities or related documents following the completion of OTS review, it must obtain OTS approval or non-objection under this section before it may include the amended securities in supplementary capital.

(f) *Sale of covered securities.* The savings association must complete the sale of covered securities within one year after OTS approval or non-objection under this section. A savings association may request an extension of the offering period by filing a written request with OTS. The savings association must demonstrate good cause for the extension and file the request at least 30 days before the expiration of the offering period or any extension of the offering period.

(g) *Reports.* A savings association must file the following information with OTS within 30 days after the savings association completes the sale of covered securities includable as supplementary capital. If the savings association filed its application or notice following the completion of the sale, it must submit this information with its application or notice:

(1) A written report indicating the number of purchasers, the total dollar amount of securities sold, the net proceeds received by the savings association from the issuance, and the amount of covered securities, net of all ex-

penses, to be included as supplementary capital;

(2) Three copies of an executed form of the securities and a copy of any related documents governing the issuance or administration of the securities; and

(3) A certification by the appropriate executive officer indicating that the savings association complied with all applicable laws and regulations in connection with the offering, issuance, and sale of the securities.

[72 FR 1927, Jan. 17, 2007]

EFFECTIVE DATE NOTE: At 72 FR 69438, Dec. 7, 2007, § 563.81 was amended as follows, effective Apr. 1, 2008.

a. In paragraph (a), remove the phrase "in supplementary capital under 12 CFR 567.5(b)" and add the phrase "in supplementary capital (tier 2 capital) under part 567 of this chapter" in its place.

b. In paragraph (d)(2)(ii), remove the phrase "regulatory capital requirements at § 567.2 of this chapter" and add the phrase "regulatory capital requirements at part 567 of this chapter" in its place.

Subpart D [Reserved]

Subpart E—Capital Distributions

SOURCE: 64 FR 2809, Jan. 19, 1999, unless otherwise noted.

§ 563.140 What does this subpart cover?

This subpart applies to all capital distributions by a savings association ("you").

§ 563.141 What is a capital distribution?

A capital distribution is:

(a) A distribution of cash or other property to your owners made on account of their ownership, but excludes:

(1) Any dividend consisting only of your shares or rights to purchase your shares; or

(2) If you are a mutual savings association, any payment that you are required to make under the terms of a deposit instrument and any other amount paid on deposits that the OTS determines is not a distribution for the purposes of this section;

(b) Your payment to repurchase, redeem, retire or otherwise acquire any

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of your shares or other ownership interests, any payment to repurchase, redeem, retire, or otherwise acquire debt instruments included in your total capital under § 567.5 of this chapter, and any extension of credit to finance an affiliate’s acquisition of your shares or interests;

(c) Any direct or indirect payment of cash or other property to owners or affiliates made in connection with a corporate restructuring. This includes your payment of cash or property to shareholders of another association or to shareholders of its holding company to acquire ownership in that association, other than by a distribution of shares;

(d) Any other distribution charged against your capital accounts if you would not be well capitalized, as set forth in § 565.4(b)(1) of this chapter, following the distribution; and

(e) Any transaction that the OTS or the Corporation determines, by order or regulation, to be in substance a distribution of capital.

EFFECTIVE DATE NOTE: At 72 FR 69438, Dec. 7, 2007, § 563.141(b) was amended by removing the phrase “in your total capital under § 567.5 of this chapter” and adding the phrase “in your total capital under part 567 of this chapter” in its place, effective Apr. 1, 2008.

§ 563.142 What other definitions apply to this subpart?

The following definitions apply to this subpart:

Affiliate means an affiliate, as defined under § 563.41(b) of this part.

Capital means total capital, as defined under § 567.5(c) of this chapter.

Net income means your net income computed in accordance with generally accepted accounting principles.

Retained net income means your net income for a specified period less total capital distributions declared in that period.

Shares means common and preferred stock, and any options, warrants, or other rights for the acquisition of such stock. The term “share” also includes convertible securities upon their conversion into common or preferred stock. The term does not include convertible debt securities prior to their conversion into common or preferred stock or other securities that are not equity securities at the time of a capital distribution.

EFFECTIVE DATE NOTE: At 72 FR 69438, Dec. 7, 2007, § 563.142 was amended in the definition of “capital” by removing the phrase “total capital, as described under § 567.5(c) of this chapter” and adding the phrase “total capital, as computed under part 567 of this chapter” in its place, effective Apr. 1, 2008.

§ 563.143 Must I file with OTS?

Whether and what you must file with the OTS depends on whether you and your proposed capital distribution fall within certain criteria.

(a) *Application required.*

If:	Then you:
(1) You are not eligible for expedited treatment under § 516.5 of this chapter.	Must file an application with the OTS.
(2) The total amount of all of your capital distributions (including the proposed capital distribution) for the applicable calendar year exceeds your net income for that year to date plus your retained net income for the preceding two years.	Must file an application with the OTS.
(3) You would not be at least adequately capitalized, as set forth in § 565.4(b)(2) of this chapter, following the distribution.	Must file an application with the OTS.
(4) Your proposed capital distribution would violate a prohibition contained in any applicable statute, regulation, or agreement between you and the OTS (or the Corporation), or violate a condition imposed on you in an OTS-approved application or notice.	Must file an application with the OTS.