

§ 563d.2

Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, by submitting such filings to the Securities Filing Desk at the above address, except as noted in § 563d.2 of this part. Except to the extent otherwise specifically provided by the Office in the application fee schedule published in the Thrift Bulletin pursuant to 12 CFR part 502, all filing fees specified by the Commission's rules shall be paid to the Office. If, after the Office reviews a Form 10-K, Form 10-Q, Schedule 13D or Schedule 13G and determines that the filing is materially deficient such that the Office requires that an amendment be filed to correct the deficiency, then, upon the filing of the amendment to the Form 10-K, Form 10-Q, Schedule 13D or Schedule 13G, as the case may be, the filer shall pay an additional filing fee to the Office, in the amount specified by the Office in the application fee schedule published in the Thrift Bulletin pursuant to 12 CFR part 502.

[54 FR 49634 Nov. 30, 1989, as amended at 55 FR 34531, Aug. 23, 1990; 60 FR 66718, Dec. 26, 1995; 61 FR 65179, Dec. 11, 1996; 66 FR 65821, Dec. 21, 2001]

§ 563d.2 Mailing requirements for securities filings.

Any savings association or other party required to file reports with the Business Transactions Division, as set forth in § 563d.1 of this part, shall file one of the required number of copies with the Regional Office of the Region in which the association is located or in the case of an association located in more than one Region, the Region where the association's home office is located. Such copies shall be marked to the attention of the Regional Director. The originally-signed copy and all remaining copies of each filing shall be sent to the Business Transactions Division by submitting such filings to the Securities Filing Desk at the address specified in § 563d.1 of this part. Copies sent to the Regional Offices shall be mailed on the same day as the original and remaining copies are forwarded to the Business Transactions Division.

[55 FR 3041, Jan. 30, 1990, as amended at 60 FR 66718, Dec. 26, 1995; 66 FR 65821, Dec. 21, 2001]

12 CFR Ch. V (1-1-08 Edition)

§ 563d.3b-6 Liability for certain statements by savings associations.

This section replaces adherence to 17 CFR 240.3b-6 and applies as follows:

(a) A statement within the coverage of paragraph (b) of this section which is made by or on behalf of an issuer or by an outside reviewer retained by the issuer shall be deemed not to be a fraudulent statement (as defined in paragraph (d) of this section), unless it is shown that such statement was made or reaffirmed without a reasonable basis or was disclosed other than in good faith.

(b) This section applies to the following statements:

(1) A forward-looking statement (as defined in paragraph (c) of this section) made in a proxy statement or offering circular filed with the Office under part 563b of this chapter; in a registration statement filed with the Office under the Act on Form 10 (17 CFR 249.210); in part I of a quarterly report filed with the Office on Form 10-Q (17 CFR 241.308a); in an annual report to shareholders meeting the requirements of § 563d.1 of this part, particularly 17 CFR 240.14a-3 (b) and (c) or 17 CFR 240.14c-3 (a) and (b) under the Act; in a statement reaffirming such forward-looking statement subsequent to the date the document was filed or the annual report was made publicly available; or a forward-looking statement made prior to the date the document was filed or the date the annual report was made publicly available if such statement is reaffirmed in a filed document or annual report made publicly available within a reasonable time after the making of such forward-looking statement: *Provided*, That

(i) At the time such statements are made or reaffirmed, either:

(A) The issuer is subject to the reporting requirements of section 13(a) or 15(d) of the Act and has complied with the requirements of 17 CFR 240.13a-1 or 240.15d-1 thereunder, if applicable, to file its most recent annual report on Form 10-K; or

(B) If the issuer is not subject to the reporting requirements of section 13(a) or 15(d) of the Act, the statements are made either in a registration statement filed under the Securities Act of 1933 or pursuant to section 12 (b) or (g)

of the Act, or in a proxy statement or offering circular filed with the Office under part 563b of this chapter if such statements are reaffirmed in a registration statement under the Act on Form 10, filed with the Office within 180 days of the savings association's conversion, and

(ii) The statements are not made by or on behalf of an issuer that is an investment company registered under the Investment Company Act of 1940;

(2) Information (i) relating to the effects of changing prices on the business enterprise presented voluntarily or pursuant to item 303 of Regulation S-K (17 CFR 229.303), management's discussion and analysis of financial condition and results of operations, or item 302 of Regulation S-K (17 CFR 229.302), supplementary financial information, and (ii) disclosed in a document filed with the Office or in an annual report to shareholders meeting the requirements of 17 CFR 240.14a-3 (b) and (c) or 17 CFR 240.14c-3 (a) and (b) under the Act: *Provided*, That such information included in a proxy statement or offering circular filed pursuant to part 563b of this chapter shall be reaffirmed in a registration statement under the Act on Form 10 filed with the Office within 180 days of the association's conversion.

(c) For purposes of this section, the term "forward-looking statement" shall mean and shall be limited to:

(1) A statement containing a projection of revenues, income (loss), earnings (loss) per share, capital expenditures, dividends, capital structure, or other financial items;

(2) A statement of management's plans and objectives for future operations;

(3) A statement of future economic performance contained in management's discussion and analysis of financial condition and results of operations pursuant to item 303 of Regulation S-K; or

(4) A statement of the assumptions underlying or relating to any of the statements described in paragraph (c)(1), (c)(2), or (c)(3) of this section.

(d) For purposes of this section, the term "fraudulent statement" shall mean a statement which is an untrue statement of a material fact, a statement false or misleading with respect

to any material fact, an omission to state a material fact necessary to make a statement not misleading, or which constitutes the employment of a manipulative, deceptive, or fraudulent device, contrivance, scheme, transaction, act, practice, course of business, or an artifice to defraud, as those terms are used in the Securities Act of 1933 or the rules or regulations promulgated thereunder.

§ 563d.210 Form and content of financial statements.

The financial statements required to be contained in filings with the Office under the Act are as set out in the applicable form and Regulation S-X, 17 CFR part 210. Those financial statements, however, shall conform as to form and content to the requirements of § 563c.1 of this chapter.

Subpart B—Interpretations

§ 563d.801 Application of this subpart.

This subpart contains interpretations pertaining to the requirements of the Act and the rules and regulations thereunder as applied to savings associations by the Office.

§ 563d.802 Description of business.

(a) This section applies to the description-of-business portion of:

(1) Registration statements filed on Form 10 (item 1) (17 CFR 249.210),

(2) Proxy and information statements relating to mergers, consolidations, acquisitions, and similar matters (item 14 of Schedule 14A and item 1 of Schedule 14C) (17 CFR 240.14a-101 and 240.14c-101), and

(3) Annual reports filed on Form 10-K (item 7) (17 CFR 249.310).

(b) The description of business should conform to the description of business required by item 7 of Form PS under part 563b of this chapter.

(c) No repetitive disclosure is required by virtue of similar requirements in item 7 of Form PS and items 301 and 303 of Regulation S-K (17 CFR 229.301, 303). However, there should be included appropriate disclosure which arises by virtue of the registrant being