

(c) *Voluntary liquidation.* The provisions of §546.4 of this chapter shall apply to mutual holding companies in the same manner as if they were federal savings associations.

[58 FR 44114, Aug. 19, 1993, as amended at 63 FR 11366, Mar. 9, 1998; 67 FR 52036, Aug. 9, 2002]

§ 575.13 Procedural requirements.

(a) *Proxies and proxy statements—(1) Solicitation of proxies.* The provisions of §§563b.225 to 563b.295 of this chapter shall apply to all solicitations of proxies by any person in connection with any membership vote required by this part. OTS must authorize all proxy materials used in connection with such solicitations. Proxy materials must be in the form and contain the information specified in §§563b.255 and 563b.270 of this chapter and Form PS, to the extent such information is relevant to the action that members are being asked to approve, with such additions, deletions, and other modifications as are necessary or appropriate under the disclosure standard set forth in §563b.280 of this chapter. File proxies and proxy statements in accordance with §563b.155 of this chapter and address them to the Business Transactions Division, Chief Counsel's Office, Office of Thrift Supervision, at the address set forth in §516.40 of this chapter. For purposes of this paragraph (a)(1), the term *conversion*, as it appears in the provisions of part 563b of this chapter cited above in this paragraph (a)(1), refers to *the reorganization or the stock issuance*, as appropriate.

(2) *Additional proxy disclosure requirements.* In addition to all disclosure required by Form PS, all proxies requesting accountholder approval of a mutual holding company reorganization shall address in detail:

(i) The reasons for the reorganization, including the relative advantages and disadvantages of undertaking the transaction proposed instead of a standard conversion;

(ii) Whether management believes the reorganization is in the best interests of the association and its accountholders and the basis of that belief;

(iii) The fiduciary duties owed to accountholders by the association's of-

ficers and directors and why the reorganization is in accord with those duties and is otherwise equitable to the accountholders and the association;

(iv) Any compensation agreements that will be entered into by management in connection with the reorganization; and

(v) Whether the mutual holding company intends to waive dividends, the implications to accountholders, and the reasons such waivers are consistent with the fiduciary duties of the directors of the mutual holding company.

(3) *Nonconforming minority stock issuances.* Savings associations proposing non-conforming minority stock issuances pursuant to § 575.7(d)(6)(ii)(2) of this part must include in the proxy materials to accountholders seeking approval of a proposed reorganization an additional disclosure statement that serves as a cover sheet that clearly addresses:

(i) The consequences to accountholders of voting to approve a reorganization in which their subscription rights are prioritized differently and potentially eliminated; and

(ii) Any intent by the mutual holding company to waive dividends, and the implications to accountholders.

(4) *Use of "running" proxies.* A mutual savings association or mutual holding company may make use of any proxy conferring general authority to vote on any and all matters at any meeting of members, provided that the member granting such proxy has been furnished a proxy statement regarding the matters and the member does not grant a later-dated proxy to vote at the meeting at which the matter will be considered or attend such meeting and vote in person, and further provided that "running" proxies or similar proxies may not be used to vote for a mutual holding company reorganization, mutual-to-stock conversion undertaken either by a mutual savings association or a mutual holding company or any other material transaction. Subject to the limitations set forth in this paragraph, any proxy conferring on the board of directors or officers of a mutual savings association general authority to cast a member's votes on any and all matters presented to the members shall be deemed to cover the

member's votes as a member of the mutual holding company and such authority shall be conferred on the board of directors or officers of a mutual holding company.

(b) *Applications under this part.* Except as provided in paragraph (c) of this section, any application, notice or certification required to be filed with OTS under this part must be filed in accordance with part 516, subpart A of this chapter.

(c) *Reorganization Notices and stock issuance applications—(1) Contents.* Each Reorganization Notice submitted to the OTS pursuant to § 575.3(b) of this part and each application for approval of the issuance of stock submitted to the OTS pursuant to § 575.7(a) of this part shall be in the form and contain the information specified by the OTS.

(2) *Filing instructions.* Any Reorganization Notice submitted under § 575.3(b) of this part must be filed in accordance with part 516, subpart A of this chapter. Any stock issuance application submitted pursuant to § 575.7(a) of this part shall be filed in accordance with § 563b.150 of this chapter.

(3) *Public notice, public comment, and meetings.* This part imposes no requirements regarding public notice, public comment, or meetings for mutual holding company reorganizations. However, mutual holding company reorganizations under this part are subject to applicable public notice, public comment, and meeting requirements under the Bank Merger Act regulations at § 563.22(e)(1) of this chapter and the Savings and Loan Holding Company Act regulations at § 574.6(d) and (e) of this chapter.

(d) *Amendments.* Any association or mutual holding company may amend any notice or application submitted pursuant to this part or file additional information with respect thereto upon request of the OTS or upon the association's or mutual holding company's own initiative.

(e) *Time-frames.* All Reorganization Notices and applications filed pursuant to this part must be processed in accordance with standard treatment processing procedures at part 516, subparts A and E. Any related approvals requested in connection with Reorganization Notices or applications for ap-

proval of stock issuances (including, without limitation, requests for approval to transfer assets to resulting associations, to acquire acquiree associations, and to organize resulting associations or interim associations, and requests for approval of charters, by-laws, and stock forms) shall be processed pursuant to the procedures specified in this section in conjunction with the Reorganization Notice or stock issuance application to which they pertain, rather than pursuant to any inconsistent procedures specified elsewhere in this chapter. The approval standards for all such related applications, however, shall remain unchanged. The review by OTS of proxy solicitation materials, including forms of proxy and proxy statements, and of any other materials used in connection with the issuance of stock under § 575.7 of this part must not be subject to the applications processing time-frames set forth in §§ 516.210 through 516.290 of this chapter.

(f) *Disclosure.* The rules governing disclosure of any notice or application submitted pursuant to this part, or any public comment submitted pursuant to paragraph (c) of this section, shall be the same as set forth in § 574.6(f) of this chapter for notices, applications, and public comments filed under part 574 of this chapter.

(g) [Reserved]

(h) *Appeals.* Any party aggrieved by a final action by the OTS which approves or disapproves any application or notice pursuant to this part 575 may obtain review of such action only by complying with 12 U.S.C. 1467a(j).

(i) *Federal preemption.* This part 575 preempts state law with regard to the creation and regulation of mutual holding companies.

[58 FR 44114, Aug. 19, 1993, as amended at 59 FR 22735, May 3, 1994; 59 FR 44627, Aug. 30, 1994; 59 FR 61262, Nov. 30, 1994; 66 FR 13010, Mar. 2, 2001; 67 FR 52036, Aug. 9, 2002; 69 FR 68251, Nov. 24, 2004]

§ 575.14 **Subsidiary holding companies.**

(a) *Subsidiary holding companies.* A mutual holding company may establish a subsidiary holding company as a direct subsidiary to hold 100% of the stock of its savings association subsidiary. The formation and operation of