

# Rules and Regulations

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## FEDERAL HOME LOAN BANK BOARD

### 12 CFR Parts 552 and 563b

(No. 83-149)

#### Conversions From Mutual to Stock Form

March 17, 1983.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule; solicitation of comments.

**SUMMARY:** The Federal Home Loan Bank Board ("Board"), under its authority and as the operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC" or "Corporation"), is amending its regulations governing the conversion to the stock form of mutual institutions the accounts of which are insured by the Corporation ("insured institutions"). The amendments divide the Board's Conversion Regulations, 12 CFR Part 563b, into four subparts. In Subpart A the Board has amended its standard conversion regulations to allow converting insured institutions additional flexibility in structuring their conversions and to decrease the expense and time required for conversion. In addition, the Board is reducing certain restrictions on the operations of converted insured institutions. The Board also has determined to eliminate the test-case restriction on the conversion of insured institutions where the conversion will involve the establishment of a holding company, the acquisition of the converting insured institution by an existing holding company, or the merger of the converting insured institution with an insured stock institution. In Subpart B, the Board for the first time is permitting a converting insured institution to sell a controlling block of

its stock to a third party or parties in connection with the conversion, and has specified the rules and procedures applicable to sale-of-control conversions. This option should provide converting institutions with an alternative that could in appropriate circumstances substantially increase both the feasibility of effecting their conversions and the amount of capital to be received thereby. In Subpart C, the Board also for the first time is specifying the qualifications for the rules and procedures applicable to voluntary supervisory stock conversions, in which an insured institution converts to the stock form without the consent of or participation by the mutual members. Finally, in Subpart D, the Board is establishing guidelines for modified conversions undertaken pursuant to Section 121 of the Garn-St Germain Depository Institutions Act of 1982, under which the Board may authorize a state-chartered insured institution, and order a Federally-chartered insured institution, to convert to the stock form without mutual member consent and with restrictions on the rights of mutual members set forth in the Subpart A standard conversion regulations.

The purpose of these regulations are to ease current restrictions on conversions, provide increased flexibility to converting insured institutions and their members, enable converting insured institutions to reduce the time and expense of conversion, and implement the Board's supervisory and modified conversion authority.

**DATES:** Effective April 11, 1983.

Comments must be received by June 13, 1983.

**ADDRESS:** Send comments to Director, Information Services, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street, N.W., Washington, D.C. 20552.

**FOR FURTHER INFORMATION, CONTACT:**

J. Larry Fleck (202) 377-6413, Deputy Director, Division of Securities and Corporate Analysis, Office of the General Counsel, Federal Home Loan Bank Board, at the above address.

**SUPPLEMENTARY INFORMATION:****Subpart A—Standard Conversions**

The principal amendments to the Board's current standard conversion regulations are the following: (1) Deletion of the authority of a converting

insured institution to adopt a stock option plan for the converted insured institution; (2) addition of a mandatory provision that converting insured institutions shall not knowingly loan funds or otherwise extend credit to any person for the purchase of conversion stock; (3) elimination, on an optional basis, of the separate subscription offering if subscription rights issued in connection with the conversion may be exercised on a priority basis by delivery of order forms to the underwriters or selling group for the public offering or pursuant to any other procedure approved by the Board; (4) reduction of the term of the restriction against repurchases by a converted insured institution of its capital stock from ten years to three years; (5) reduction of the term of the restriction on payment of dividends by a converted institution from ten years to three years; (6) elimination of certain substantive provisions governing the contents of the appraisal of the capital stock of the converting institutions, provided that (a) the converting insured institution files with the Corporation as part of the institution's application all pricing material used by the independent appraiser in connection with the pricing of the capital stock to be issued in the conversion, and (b) the institution files with the Board any additional material with respect to the pricing of the capital stock as the Board may request; (7) deletion of the requirement that the pricing materials be filed with the application for conversion if the converting insured institution does not intend to commence the subscription offering until after the special meeting of association members; (8) a provision permitting the payment of underwriting commissions or discounts with respect to shares of capital stock sold pursuant to the exercise of subscription rights if the plan of conversion provides for the sale of such stock through the underwriters or selling group; (9) elimination of the test-case restrictions on conversions in connection with the formation of a holding company, the acquisition of the converting institution by an existing holding company, or the merger of the converting institution with an existing insured stock institution; and (10) elimination of the restrictions on the adoption of anti-takeover charter amendments by converted insured institutions.



The Board's last major revisions to the Conversion Regulations were adopted on April 28, 1982, pursuant to Resolution No. 82-311 (47 FR 19672), and on February 10 and February 18, 1983, pursuant to Resolution Nos. 83-74 (48 FR 7432) and 83-91 (48 FR 8429), respectively. These amendments eased unnecessary restrictions to allow converting institutions greater flexibility in structuring their conversions. At that time, the Board perceived that intra-industry acquisitions and corporate reorganizations would benefit individual converting insured institutions and the savings and loan industry. The Board therefore determined to permit on a test-case basis complex, multi-party conversions.

Since the adoption of these amendments, the Board has continued to review its Conversion Regulations to determine what further measures, if any, it could take to further relieve converting insured institutions of unnecessary regulatory burdens and, also, to identify those procedures or rules that have not survived the test of time. The Board believes that it has identified several further instances in which the provisions of the current conversion regulations may be further amended without disturbing the balance reflected in the current regulations between the benefits to an institution of flexibility in structuring its conversion and the rights of the institution's members to participate in the conversion process.

The particular regulations being adopted by the Board are discussed in more detail below.

#### *Stock Option Plans*

Current § 563b.3(d)(11) permits a converting insured institution to adopt a stock option plan for the converted insured institution, and specifies the requirements of such a plan. The Board has concluded that a stock option plan is a matter of interest and concern to the stockholders of the converted institution rather than to the mutual members of the converting institution and should not be imposed upon the future stockholders by the mutual members. Therefore, the Board is deleting the current authorization in § 563b.3(d)(11). Converting insured institutions would continue to be required under general disclosure principles to make full disclosure in their proxy statements and offering circulars of any stock option plans that will be proposed to the stockholders following completion of the conversion.

#### *Loan of Funds to Purchase Stock*

The Board is adding new § 563b.3(c)(22) to confirm its policy that a converting insured institution is not permitted to knowingly loan funds or otherwise extend any credit to any person for the purpose of purchasing conversion stock.

#### *Subscription Offering*

The Board's current regulations permit a converting insured institution to commence its subscription offering and, provided that the subscription offering has commenced, to commence its public offering or direct community offering concurrently with the mailing of the proxy statement to association members. In addition, a converting insured institution may close the subscription offering prior to the meeting of the association members, provided that all offers or sales of conversion stock are conditioned upon the approval of the plan of conversion by the association members. In view of this compressed procedure, which permits converting institutions to have simultaneous subscription and public offerings of the conversion stock, the Board believes that it is no longer necessary for the converting institution to hold a separate subscription offering, provided that appropriate procedures are implemented to ensure that subscribers have the right to acquire conversion stock from the underwriters or selling group on a priority basis. The Board believes that elimination of a separate subscription offering should reduce conversion expenses. The optional subscription procedure will allow a converting institution, if it so desires, to employ the underwriter(s) and selling group for the public offering of any unsubscribed shares to assist in selling shares to members with subscription rights.

Although this option would increase the conversion underwriting commissions and fees since they would be applicable to all shares sold in the conversion, and not just those sold in the public offering phase, it is anticipated that converting institutions will negotiate for substantially lower underwriting commissions and fees for shares sold to members exercising subscription rights compared to those for shares sold to the public, since members are likely to have more loyalty to the institution than unrelated investors, and are more likely to purchase shares of the conversion stock. Accordingly, the Board is adopting new section § 563b.3(d)(12) to provide that, instead of a separate subscription offering, a converting institution may

include a provision in its plan of conversion that the conversion shares will be simultaneously offered to subscribers and the public, but that each person entitled to subscription rights will be notified that orders for stock shall first be filled, in the order of priority set forth in § 563b.3, by orders of persons who receive and exercise subscription rights, after which orders for the public will be filled.

In connection with this amendment, the Board is also amending § 563b.7(e) to allow underwriting commissions or discounts with respect to capital stock sold by the underwriters or selling group pursuant to the optional provision of § 563b.3(d)(12). In addition, the Board is amending §§ 563b.3(d)(1), (6), and (7), in order to make them consistent with the intent of the Board when it adopted those provisions on April 28, 1982.

As noted above, § 563b.3(d)(1) permits a converting insured institution to commence the direct community offering or the underwritten public offering concurrently with the mailing to the association members of the proxy statement for the special meeting to consider the plan of conversion. However, the term "concurrently" makes the regulation too restrictive. The Board has no objection to the commencement of the direct community offering, or the underwritten public offering, or both, at any time after the mailing of the proxy statement, and § 563b.3(d)(1) is being amended to clearly permit that procedure. Section 563b.3(d)(1) also is being amended to confirm the permissibility under the current regulations of a direct community offering during a subscription offering or an underwritten public offering. Some converting insured institutions have found it beneficial to offer the conversion stock to current depositors who are not entitled to subscription rights and other members of the public during the subscription offering, and the amendment will make clear that there is no objection to that procedure. Finally, § 563b.3(d)(6) and (7) are being amended to clarify the fact that the written communication provided to voting members and former members entitled to subscription rights to request an offering circular is not required to be actually attached to the proxy statement or notice of conversion but may be mailed separately by the converting insured institution on a date after the mailing of the proxy statement or the notice of conversion.



### Restrictions on Stock Repurchases and Dividends

The Board has determined to ease restrictions on stock repurchases and dividends by a converted institution. Current § 563b.3(g)(1) provides that no converted institution shall for a period of ten years repurchase any of its capital stock from any person except in the case of a repurchase, on a *pro rata* basis, pursuant to an offer approved by the Corporation made to all shareholders of the institution, and except for the repurchase of qualifying shares of a director. Similarly, current § 563b.3(g)(3) provides that, without the prior approval of the Corporation, no converted insured institution shall, for a period of ten years after the date of its conversion, declare or pay a cash dividend on, or repurchase any of, its capital stock in an amount in excess of one-half of the greater of the institution's net income or the average of such net income for the current fiscal year and not more than two of the immediately preceding fiscal years.

As a matter of policy and in view of the rapidly changing nature of the thrift business, the Board does not believe it necessary to continue to impose upon converting insured institutions provisions that restrict redemptions or the payment of dividends for such a significant period of time. Therefore, the Board is reducing these restrictions from a ten-year to a three-year period following the date of conversion.

### Valuation Requirements

Under the Board's current regulations, a converting institution is required to sell all of its conversion stock at a price equal to the *pro forma* market value of the conversion stock, which is determined on the basis of an independent valuation. Among other things, current § 563b.7(f) requires that extensive detailed pricing materials be prepared by an independent appraiser and filed with the Corporation for its review, often resulting in the preparation and filing of pricing materials with hundreds of pages, most of which provide relatively standard information, and very substantial appraisal fees and expenses.

In light of the experience that the Board has gained as a result of reviewing conversion appraisals, the Board has determined that the current appraisal procedure requires the submission of greater detail and entails greater expense than is required to safeguard the rights of association members and to ensure that the conversion stock will be sold at a price that is fair and equitable to the converting institution and its members.

The documentation required under the current appraisal procedure exceeds in detail any documentation generally required or used in the investment banking industry in connection with other initial offerings of stock, which is essentially what a conversion constitutes. In short, the Board believes that it is in a position to review the pricing of future conversions without requiring lengthy and detailed appraisals that in large part merely recount information that is readily available to the Board from internal sources.

Accordingly, the Board is amending § 563b.7(f) to eliminate requirements the Board believes have resulted in appraisals of unnecessary length and detail. As a result of this amendment, the Board expects that future appraisals will be a fraction of their current length and that appraisal fees will be either substantially reduced or, as is the case in other initial public offerings, eliminated since the pricing function in public offerings is generally part of the services provided by the underwriter(s), who is by definition an expert in corporate appraisal, in connection with pricing negotiations with the issuer. Management of a converting insured institution may, of course, continue to retain an appraiser independent of the underwriter(s) if they so desire, but this amendment will permit them to eliminate the substantial expense of a detailed independent appraisal and to rely on the pricing decision reached through negotiations with the underwriter(s) for the institution's public offering, subject to review by the Board. Converting institutions that will not engage an underwriter and will market the unsubscribed shares in a direct community offering will continue to be required to retain for the preparation of the greatly reduced pricing materials an independent appraiser who is experienced and expert in the area of corporate appraisal and acceptable by the Corporation, as required under § 563b.7(f)(1)(i). In addition, it is provided in § 563b.7(f)(3) that the converting institution is required to file any additional pricing material that may be required by the Corporation.

The Board also is amending § 563b.7(a), (c), and (d), and is making conforming amendments to other regulations, to provide that a converting insured institution is not required to file pricing materials with the Corporation prior to approval of the application, or to provide an estimated subscription price range in the proxy statement, if the institution will not commence its subscription offering before the special

meeting of the association members. When an institution does not plan to immediately market its stock, the pricing information in the proxy statement may not bear a significant relationship to the final price established to reflect market reality on the date the stock actually is sold. A converting insured institution which chooses not to secure an appraisal until a decision to market its stock has been made will be required under general disclosure principles to discuss in its proxy statement the methodology that will be used in determining the valuation of the institution.

### Holding Company and Merger Conversions

Current § 563b.9 authorizes an insured institution to convert to stock form as part of a transaction in which a holding company is organized to acquire all of the capital stock of the converted institution. Similarly, current § 563b.10 authorizes an insured institution to convert to stock form as part of a transaction in which an existing holding company acquires all of the capital stock of the converted institution or in which the converting institution merges with an existing insured stock institution. However, under the current regulations, applications for approval of these are conversions accepted by the Corporation on a test-case basis only.

The Board believes that such conversions need no longer be restricted to test cases. Accordingly, the Board is deleting paragraphs (b) and (c) of § 563b.9 and paragraphs (d) and (e) of § 563b.10. In addition, the Board is amending paragraphs (a) of §§ 563b.9 and 563b.10 to eliminate provisions that the Board considers to be redundant as a result of the existing requirement that such conversions comply with all provisions of Part 563b, unless clearly inapplicable. Also, the Board is amending § 563b.10(c) to confirm that a merger conversion may be structured as a type of reverse merger, *i.e.*, the merger of a stock institution into a converting mutual institution.

### Anti-takeover Provisions

As it did when it adopted the April 28, 1982 amendments to its Conversion Regulations, the Board has reassessed its position regarding the adoption by converted insured institutions of charter provisions that inhibit the acquisition of controlling interests in the stock of those institutions. On the one hand, restrictive stock acquisition or anti-takeover provisions can hamper the free operation of market forces, can lead to reduced investment options and result in



the misallocation of capital resources, can restrict the ability of stockholders to secure the highest return on their investment, and may tend to insulate management from the consequences of inadequate performance. On the other hand, there are legitimate institutional and stock holder concerns that may be advanced by the adoption of such provisions. Moreover, the Board's current practice of prohibiting the adoption of any charter provision regarding the acquisition of the stock of a converted insured institution other than that permitted at § 563b.3(i)(7), which prohibits offers to acquire and acquisitions of over ten percent of the stock of the institution by any person, has the ironic effect of restricting the right of stockholders to propose and adopt lawful governing rules for their institutions. Also, the Board recognizes that anti-takeover provisions rarely deter the determined acquirer, who may almost always depend on stockholders to act in their ultimate economic self-interest.

On balance, the Board believes that it should no longer impose its broad authority in this area. There currently is no federal statutory or regulatory corporate law governing restrictive stock acquisition charter provisions, and the Board does not believe that it necessarily is the best or the only forum for the consideration of the complex public policy and legal issues that, in this particular context, traditionally have been resolved at the state level. The status of the law is very fluid even there, but it is there that decisions which are authoritative will be made.

Therefore, the Board is amending § 563b.3(i)(7) to provide that a converted institution may adopt at any special or annual stockholders meeting any provisions regarding the acquisition of its capital stock that is permitted to be adopted by corporations chartered under the laws of the state in which the principal office of the converted insured institution is located. In addition, the Board is amending the former optional anti-take-over provision for federally-chartered insured institutions at § 552.4(b) to provide that it can be included in a converting institution's charter only so long as it terminates no later than one year after completion of the conversion. Federally-chartered insured institutions which seek to amend their charters to include such provisions shall do so pursuant to the normal charter amendment procedures. The Board expects to require before it approves an application by a federally-chartered insured institution to amend its Charter S to include a restrictive

stock acquisition provision the submission by the applicant of an opinion of independent counsel that the charter provision would be lawful under the laws of the state in which its principal office is located.

#### *Miscellaneous, Technical and Conforming Amendments*

1. 12 CFR 563b.1 (a) and (c) are revised to reflect that the Board may take action under Part 563b pursuant to its own authority or as the operating head of the Corporation.

2. 12 CFR 563b.3(a) is amended to delete general principles for conversion that are unnecessary to state in view of the Board's detailed regulations governing conversions.

3. 12 CFR 563b.3 (c)(6), (c)(10), and (d)(3) are amended to refer to subscription rights instead of the subscription offering.

4. 12 CFR 563b.3(c)(9) is amended to delete the reference to § 563.8-1(d)(3)(i), which previously had been deleted by the Board from its Insurance Regulations.

5. 12 CFR 563b.3(i)(5)(iii) is amended to provide that the one-year post-conversion prohibition against the offer for or purchase of more than ten percent of the stock of a converted insured institution does not apply to a transaction undertaken pursuant to §§ 563b.9 or 563b.10.

6. 12 CFR 563b.5(b) is amended to provide that the proxy statement must be mailed within ten days after it has been authorized for use by the Corporation, unless an extension is granted in writing by the Corporation. This amendment conforms to a requirement that the Board formerly had imposed as a condition to approval of applications for conversion.

7. 12 CFR 563b.7 (a), (b), (c)(3), (g), (h), (k), and (c)(3) are amended to reflect the fact that it is no longer necessary to hold a separate subscription offering.

8. 12 CFR 563b.7(k) is amended to state that post-effective amendments to subscription offering circulars shall be filed under an amendment to the application for conversion.

9. 12 CFR 563b.8(w)(2) is amended to provide for the delegation of authority to the Board's General Counsel to approve applications for conversions pursuant to §§ 563b.9 and 563b.10.

10. Paragraph (d) of Exhibit 2 of Form AC is deleted to reflect the fact that stock option plans cannot be adopted by the association members in connection with a conversion.

11. Item 7 of Form AC, which requires that an application for conversion set forth the savings account balances of the converting insured institution's

management, is deleted since under the amendments adopted by the Board on April 28, 1982, subscription rights are only rarely based on account balances.

12. Exhibit 5 to Form AC is amended to reflect that pricing materials are not required to be filed with the application unless the subscription offering will commence prior to the meeting of association members.

13. Items 8(d), 8(g), and 8(i)(1) of Form PS are amended to reflect the fact that it is no longer necessary to hold a separate subscription offering.

14. Items 8(e) and 8(f) of Form PS are amended to reflect that an appraisal is not required unless the subscription offering is to commence prior to the meeting of association members.

15. Item 8(h)(1) of Form PS is amended to reflect the deletion by the Board on April 28, 1982, of the agreement with the Corporation formerly at § 563b.3(i).

16. Item 12 of Form PS is deleted to reflect the fact that association members cannot adopt a stock option plan in connection with a conversion.

17. Items 2, 5, and 6 of Form OC is amended to reflect the fact that it is no longer necessary to hold a separate subscription offering.

#### **Subpart B—Sale-of-Control Conversions**

Since the adoption by the Board in 1974 of the basic structure of the Board's Conversion Regulations, the Board has imposed restrictions on the amount of stock that may be acquired by any one person in connection with a conversion. Current § 563b.3(c) (6)(i) generally limits purchases by any person in the public offering or the direct community offering to an amount of shares not exceeding five percent of the total offering of shares. The same restriction applies to subscribers under § 563b.3(c)(7). Under § 563b.3(d)(5), the plan of conversion may increase this limit to a percentage less than ten percent of the total offering, provided that orders for conversion stock exceeding five percent of the total offering do not exceed in the aggregate ten percent of the total offering. Finally, under paragraph (c)(8) of § 563b.3, the total number of shares which officers and directors of a converting institution and their associates may purchase in the conversion is limited to a percentage which, depending upon the size of the institution, ranges from 25 percent to 35 percent of the total offering.

The effect of these restrictions has been to prevent an insured institution to convert in connection with a transaction in which a person or group of persons acquires control of the institution. The adoption of § 563b.10 has somewhat



eased this restriction, by permitting an insured institution to convert in connection with a transaction in which the institution is acquired by an existing holding company or merged with an existing insured stock institution. However, these provisions limit the potential pool of persons who might make substantial capital investments in converting institutions.

The Board has concluded that, in order (1) to further increase the flexibility of the conversion process, (2) to grant to members of insured mutual institutions rights of corporate governance similar to those of stockholders in a stock corporation, and (3) to substantially increase the potential sources of capital for converting institutions and the capital received by those institutions, it should permit association members, if they so desire, to vote to sell a controlling stock interest in the institution to a third person or persons in connection with a conversion. The Board believes that this option will more fully recognize the equity rights of members of mutual insured institutions, while substantially expanding the potential pool of capital that might be invested in converting institutions by making investment opportunities available to those persons who would make investments only if they could acquire control. The Board believes that this is an especially important objective in view of the substantially increased number and dollar volume of conversions that recently have been and will be competing for public market equity funds. Accordingly, the Board has adopted new Subpart B of its Conversion Regulations to permit a sale-of-control conversion if the conversion is approved by a majority of the outstanding votes of the converting institution and if the sale of control is subjected to a process that is designed to ensure that the institution will receive a significant premium for the sale of that control.

Under the new sale-of-control conversion regulations, any qualified person or persons, including members of management of an insured institution, can make an offer to acquire all or any portion of the stock of the institution upon its conversion for a price equal to the *pro forma* market value of the stock, determined in the manner prescribed for standard conversions under Subpart A, plus a premium to reflect the fair market value of the control represented by such shares. In addition, the sale-of-control conversion regulations subject such an offer to a series of checks and balances that the Board believes will adequately

protect the institution and ensure the greatest possible control premium in the event of a sale-of-control conversion.

First, no sale-of-control conversion may be initiated unless an offer has been made to and approved by two-thirds of an insured institution's board of directors. This requirement both protects the institution against inadequate or inappropriate offers and gives the board of directors an opportunity to negotiate for the highest possible control premium. Also, of course, it preserves the absolute right of the board of directors of an insured institution to determine in its sole discretion whether to convert from the mutual to the stock form.

Second, in the event a sale-of-control offer is approved by the board of directors, the institution is required to immediately and widely distribute a press release setting forth the principal terms of the proposed sale-of-control conversion in order to notify any person or persons who might wish to make a competing bid. Thereafter, any and all interested persons may make competing offers to acquire control of the converting institution, provided the offers are approved by the Corporation in the same manner that the original sale-of-control offer had to be approved by the Corporation. Moreover, once a competitive bid has been accepted for filing by the Corporation, management of the converting institution is prohibited from cancelling or otherwise postponing the meeting of associations members originally called to vote on management's proposal. The Board believes that the potential for competing bids will help ensure that offers to acquire control will include appropriately significant control premiums. A sale-of-control conversion should, therefore, increase the amount of equity to be received by the converting institution over the amount that it would have received in a standard conversion.

Third, the sale-of-control conversion regulations contain detailed provisions that are designed to ensure that there is full and fair disclosure to members of the insured institution regarding all material facts relating to each sale-of-control offer and each competing offeror. The sale-of-control conversion regulations also provide a procedure requiring management to distribute competing offers to all members of the converting institution.

Fourth, both the price at which the insured institution's stock is to be sold in the conversion and the control premium must be supported by a fairness opinion that will be approved

by the Corporation before approving the application.

Finally, a sale-of-control conversion offer must be approved by a majority of the outstanding votes of the institution after distribution of detailed proxy material to all members of the institution.

The following discussion summarizes in more detail the principal provisions of the Board's new sale-of-control conversion regulations.

#### Definitions

New § 563b.11 sets forth additional definitions applicable to sale-of-control conversions. Under these definitions, a sale-of-control conversion shall include any conversion of an insured institution from mutual-to-stock form pursuant to a plan of conversion which provides for the acquisition of control of the converting institution by any person. For purposes of new Subpart B, control shall be deemed to exist if any person directly or indirectly, or through one or more subsidiaries, owns, controls, or holds with power to vote, or holds proxies representing, ten percent or more of the voting shares of an insured institution, or controls in any manner the election of the majority of the directors of the institution. However, control shall not exist under the Conversion Regulations as the result of the acquisition of shares of the converting insured institution pursuant to a plan of conversion that complies with the provisions of Subpart A. As a result, management acquisition of shares of a converting insured institution within the limitations set forth in Subpart A shall not be deemed to be the acquisition of control under Subpart B.

For purposes of the sale-of-control conversion regulations, a person who acquires control of the converting institution is deemed to be an acquiring person. In addition, any person together with any associate or group of persons acting in concert for the purpose of acquiring shares of capital stock in connection with the conversion shall be deemed to be an acquiring person for purposes of Subpart B.

#### Principles Applicable to a Sale-of-Control Conversion

New § 563b.12 sets forth the general principles applicable to a sale-of-control conversion. This section provides that an insured institution may convert to stock form pursuant to Part 563b as part of a transaction in which the converting institution enters into a binding agreement with any person pursuant to which that person will acquire control of the converting institution. In connection



with a sale-of-control conversion, eligible account holders, supplemental eligible account holders, and voting members will receive subscription rights to purchase shares of capital stock not required to be sold pursuant to the agreement with the acquiring person. A sale-of-control conversion is required to comply with all the provisions of Subpart B and, unless clearly inapplicable, all of the requirements of Subpart A of Part 563b.

#### *Additional Requirements for Sale-of-Control Plans of Conversions*

Under a plan of conversion providing for the sale of control, the converting institution and the acquiring person must enter into a binding agreement providing for the sale to and purchase by the acquiring person of a specified percentage of the conversion stock (including any percentage from ten percent to one hundred percent) or a specified dollar amount of the conversion stock. If the plan of conversion provides for the sale of a specified percentage of the conversion stock to the acquiring person, the acquiring person shall be obligated to purchase that percentage of the conversion stock at the public offering price, plus a control premium to represent the fair market value of the control being sold. If the plan of conversion provides for the acquisition of a specified dollar amount of the conversion stock, the acquiring person shall be obligated to acquire that amount at the public offering price, plus a specified control premium. The control premium shall be stated as a percentage of the *pro forma* market value of the converting insured institution's capital stock in the absence of sale of control.

In order to permit a converting institution and an acquiring person to enter into a binding agreement with respect to the sale of control, the plan of conversion shall be required to provide that subscription rights, if any, of eligible account holders, supplemental eligible account holders, and voting members shall be subordinated to the rights of the acquiring person to acquire capital stock of the converting institution.

Because of the possibility that the market for the public shares of an insured institution converting in a sale-of-control conversion will be limited, the Board has determined that the sale of the public shares may be made through an underwriter or directly to the community, or in any other manner, subject to the applicant demonstrating the feasibility of the method of sale. In connection with the offering of the public shares, the Board will not impose

a condition requiring orders to be filled up to a maximum of two percent of the conversion stock and thereafter on an equal-number-of-shares basis per order or a condition requiring the stock to be offered and sold in a manner that will achieve the widest distribution of the stock. The Board has determined that such conditions would serve little or no purpose in connection with a sale-of-control conversion.

The Board further considers it appropriate to impose restrictions on the purchase of the capital stock of the converted institution by the acquiring person for a period of three years following the conversion. This restriction will prevent an acquiring person from acquiring more than one percent of the outstanding capital stock of the converted institution in any three-month period during such three-year period, except with the prior written approval of the Corporation. This restriction is designed to ensure the integrity of the conversion process and prevent the acquiring person from acquiring additional shares without paying the control premium.

Finally, a sale-of-control plan of conversion is required to provide that no acquiring person shall receive, or be entitled to, subscription rights in connection with the conversion, and no acquiring person shall be permitted to purchase any shares in connection with the conversion other than the shares required to be issued to the acquiring person pursuant to the plan of the conversion. These restrictions are also intended to prevent the acquiring person from acquiring shares of conversion stock without paying the control premium.

#### *Additional Notice Requirements*

New § 563b.14 sets forth additional notice requirements for a sale-of-control conversion. Under these provisions, the notice required to be given to the members of a converting institution pursuant to § 563b.4(a) (3) and (4) is required to include information intended to fully apprise the members of certain basic facts with respect to the sale-of-control conversion. These include (1) the name of the acquiring person; (2) a brief description of the business of the acquiring person; (3) a brief description of the terms and conditions of the sale-of-control conversions; (4) a statement that, pursuant to the Board's regulations, and as an alternative to the sale-of-control conversion, the converting institution could seek approval to convert to stock form in a manner that would prohibit the sale of control to any person; and (5) a statement with respect to the obligations of the converting institution to mail

proxy statements and proxies or other communications on behalf of any person(s) who may propose a competing offer to acquire control. In addition, the notice will be required to include a statement that the proposed sale-of-control plan of conversion must be approved by at least a majority of the votes eligible to be cast either in person or by proxy by association members at a meeting at which the plan will be submitted for their approval.

Simultaneously with the publication of the notice, the converting insured institution is required to widely disseminate a press release concerning the proposed sale-of-control conversion. The press release must be issued on an "immediately release" or "not held" basis to the principal news source of the financial community and to a newspaper having general circulation in each community in which an office of the insured institution is located. This requirement is intended to ensure that the availability of control of the converting insured institution is made known to persons who might wish to make a competing bid for control of the institution.

#### *Record Date and Notice Requirements in Connection with Sale-of-Control Conversions*

Because the Board contemplates that sale-of-control conversions will be subject to competitive bidding, it has been necessary to adopt special record date and notice requirements for the meeting of members called for the purpose of obtaining approval of a sale-of-control conversion. In the event a competing bid is made for a converting institution, the meeting date of members to consider the competing bids is automatically set on a date 70 days from the date notice of the meeting to consider management's sale-of-control plan of conversion is first sent or given to members. Because of this requirement, the Board has adopted new § 563b.15(a) to provide that the record date for determining those persons eligible to vote at any meeting called to consider a sale-of-control plan of conversion shall be not more than 85 days nor less than 70 days prior to the date of such meeting. For the same reason, paragraph (b) of § 563b.15 provides that notice of such meeting shall be given not more than 70 days nor less than 45 days prior to the date of the meeting of each member of the converting insured institution entitled to vote at the meetings.



### *Sale-of-Control Bids*

The Board's sale-of-control conversion regulations contemplate that all sales of control of converting insured institutions will be subject to competitive bidding. Accordingly, new § 563b.16 provides that any person (defined therein as a "proponent") may present a sale-of-control plan of conversion to a vote of the members at any meeting of members of the converting institution called by management of the institution to vote upon any other sale-of-control plan of conversion. Adoption by the members of a sale-of-control plan of conversion will constitute a binding agreement providing for the sale to and purchase by the proponent of a specified percentage of the conversion stock or a specified dollar amount of conversion stock.

Paragraphs (b) and (c) of § 563b.16 set forth the approval and procedural requirements for sale-of-control plans of conversion of proponents, and provide, among other things, that (1) no sale-of-control application for conversion of the proponent shall be accepted for filing by the Corporation unless such application is filed within 20 days of the date that the proxy statement of management of the converting institution is first sent or given to members; (2) a proponent may omit from its application for conversion or proxy statement any information contained in any other application for conversion filed with the Corporation or any other proxy statement which has been or will be furnished to members in connection with the meeting of members to approve the plan of conversion if a reference is made to the particular document containing such information; and (3) on the date a proponent files its application for conversion with the Corporation, the proponent shall hand-deliver a copy of such application to the converting institution at its home office and to any other offeror or proponent.

Paragraph (d) of § 563b.16 implements the requirement that the acceptance for filing by the Corporation of an application for a sale-of-control conversion of any proponent shall automatically extend the date for the holding of the meeting of members called to approve the plan of conversion approved by management of the converting institution to a date 70 days following the date on which notice of such meeting was first given.

New § 563b.17 sets forth the requirements for the inclusion in management's proxy statement of a brief summary of all competing proposals and the mailing by the converting institution of proxy statements

regarding all competing proposals to members of the institution. Paragraph (a) requires management to include a proponent's sale-of-control plan of conversion in its form of proxy if the proponent submits its proposal to the converting institution within 20 days of the date on which the institution's press release concerning management's proposed sale-of-control conversion is first released to the public under § 563b.14(c), provided that prior thereto, the proponent has filed with the Corporation a plan of conversion, a preliminary proxy statement, and a preliminary form of proxy.

The converting insured institution is not required to submit a competing sale-of-control proposal to the vote of the members at the meeting called to consider the plan of conversion unless the proponent or its representative presents the proposal at the meeting and the proponent's plan of conversion has been approved by the Corporation.

### *Additional Disclosure Requirements*

Under new § 563b.16, any proxy solicitation material and any offering circular shall be required to contain certain information which the Board considers to be material to the voting and investment decisions of the converting institution's members. This information is similar to the information required with respect to tender offers for the shares of publicly-held corporations, including: (1) information with respect to the identity and background of the acquiring person; (2) information with respect to past contacts, transactions, or negotiations between the acquiring person and the converting insured institution; (3) information with respect to the source and amount of funds or other consideration to be used by the acquiring person to purchase stock of the converting institution; (4) information with respect to the purpose of the acquisition of control and the plans or proposals of the acquiring person with respect to the converting insured institution; (5) information with respect to the effect of a sale-of-control conversion; (6) information with respect to persons retained, employed or to be compensated by the acquiring person to make solicitations or recommendations in connection with the conversion; (7) certain financial information with respect to the acquiring person; and (8) any other information which is material to a member's decision whether to acquire shares of stock in the conversion or to approve the sale-of-control conversion.

### *Additional Requirements of Sale-of-Control Applications*

Under new § 563b.17, an application for conversion in connection with a sale-of-control conversion shall be required to include certain additional information and documents as exhibits to the Form AC. Most significantly, the applicant is required to submit to the Corporation: (1) a fairness opinion signed by persons independent of the converting insured institution and the acquiring person, experienced and expert in the area of corporate appraisal and acceptable to the Corporation, to the effect that the terms and conditions of the proposed conversion are fair and equitable to the converting institution and to its members; (2) any filings which are required in connection with the sale of control under the Change-in-Control Act or the Savings and Loan Holding Company Act; and (3) information with respect to any competing offers received by the converting insured institution within one year of the filing of the application for conversion which were rejected by the management or the board of directors of the converting institution. The Board believes that in view of the risks presented by sale-of-control conversions, it is essential that the fairness of the transaction be passed upon by experts who are independent of the institution and the acquiring person. In addition, the Board believes that the application for a sale-of-control conversion must be reviewed by the converting insured institution's members in light of all other competing proposals that the institution has received and rejected.

In addition to the foregoing documents, an applicant for approval of a sale-of-control conversion shall be required to file with the Corporation (1) any stock purchase agreement between the converting institution and the acquiring person; (2) any loan agreement under which the acquiring person will fund the purchase of shares of conversion stock; and (3) any document setting forth the terms of any contracts, arrangements, understandings, or relationships between the acquiring person and the converting insured institution.

### *Subpart C—Voluntary Supervisory Stock Conversions*

Pursuant to the authority granted it under Section 5(i) of the Home Owners' Loan Act of 1933 ("HOLA"), 12 U.S.C. 1464(i), and Section 402(j) of the National Housing Act ("NHA"), 12 U.S.C. 1725(j), and consistent with applicable constitutional provisions, the



Board has the power to authorize in certain circumstances the supervisory mutual-to-stock conversion of an insured mutual institution. A supervisory conversion is one in which the association members have no right of approval or participation, and upon completion of which the association members have no continuing legal or beneficial ownership interest in the converted insured institution. The Board's power under Section 5(i) of the HOLA and Section 402(j) of the NHA arises when, at a minimum (1) as to a federally-chartered mutual insured institution, the Board has the power to appoint a receiver for the purpose of liquidation, or, as to a state-chartered mutual insured institution, when the conversion is authorized under state law and the Board would have the power to appoint a receiver for the purpose of liquidation were the institution federally chartered, and (2) upon such liquidation there would be no equity value realizable to the association members.

Section 121 of the Garn-St Germain Depository Institutions Act of 1982, Pub. L. 97-320, 96 Stat. 1493 (October 15, 1982), which amends section 5 of the HOLA by adding paragraph (p), to be codified as 12 U.S.C. 1464(p), affirms the Board's inherent power to authorize supervisory conversions to facilitate the rehabilitation of insured institutions by empowering the Board for a three-year period after enactment of new section 5(p) to preempt federal law and state law and state constitutional provisions to authorize, and in the case of a federally-chartered insured institution to order, the conversion of an insured institution if (1) the institution is in receivership, or (2) the Corporation has contracted to provide assistance to the institution, or (3) the Board has determined that severe financial conditions exist which threaten the stability of the institution and that the conversion is likely to improve the financial condition of the institution.

The Board has approved numerous supervisory conversions (most of which involved the merger of mutual insured institutions into existing stock insured institutions) under its section 5(i) and section 402(j) powers. New section 5(p) of the HOLA increases the Board's authority since action by the Board preempts otherwise applicable state and federal law. In addition, section 5(p) significantly expands the range of the Board's supervisory authority in regard to conversions because the criteria for authorizing a section 5(p) conversion in a supervisory context are much less restrictive than those set forth in the first paragraph above in the discussion

of new Subpart C. However, the Board has determined at this time to limit voluntary supervisory conversions under Subpart C to insured institutions that meet the criteria established by the Board for supervisory conversions under sections 5(i) and 402(j), as well as the criteria of section 5(p). When an insured institution does not meet the former criteria, but does meet the latter criteria, it may be qualified for a modified conversion, which is set forth in new Subpart D of Part 563b, or a conversion under § 563b.1.

New Subpart C governs voluntary supervisory stock conversions only, i.e., supervisory conversions which are authorized or ordered by the Board pursuant to a plan of conversion adopted by a majority of the board of directors of the converting insured institution, and which involves the issuance of stock to a third person or persons. The Board will continue to exercise its power to authorize and order non-voluntary supervisory merger conversions and stock conversions on a case-by-case basis.

#### *Qualification for Supervisory Conversion*

Under § 563b.23, the Board may authorize, and in the case of a federally-chartered insured institution may order, the supervisory conversion of an insured institution when (1) as to a federally-chartered insured institution, the Board has the power to appoint a receiver for the purpose of liquidation, or, as to a state-chartered insured institution, the Board would have the power to appoint a receiver for the purpose of liquidation were the institution federally-chartered; (2) upon liquidation there would be no equity value realizable by the mutual accountholders; (3) the criteria of section 5(p) of the HOLA are met; and (4) the insured institution would be a viable entity following the supervisory conversion. For the purpose of Subpart C only, an insured institution may be found to be a viable entity following a supervisory stock conversion if the Board determines that its post-conversion net worth (1) would meet regulatory net-worth requirements, and (2) would be reasonably sufficient to cover projected operating losses for a period of not fewer than three years after the date of completion of the supervisory conversion without application of appraised equity capital or net worth certificates.

While the existence of any of the grounds set forth in section 5(d)(6)(A) of the HOLA for the appointment by the Board of a receiver for the purpose of liquidation will satisfy the first qualification standard of § 563b.23, a

Board finding of insolvency also would satisfy the first requirement of section 5(p) that severe financial conditions exist which threaten the stability of the institution. The requirement established in § 563b.23(d) that the converted institution be a viable entity following conversion would satisfy the second requirement of section 5(p) that the supervisory conversion would be likely to improve the financial condition of the institution.

#### *Procedure*

Section 563b.28(a) provides that an insured institution which seeks approval of a supervisory stock conversion shall file an original and two copies of its supervisory conversion application with the Principal Supervisory Agent ("PSA") of the appropriate Federal Home Loan Bank and one copy with the Board's Office of Examinations and Supervision in Washington, D.C. The PSA or his designee shall conclude whether or not the insured institution meets the qualification standards established in § 563b.23, and the Director of OES or his designee must concur in the conclusions of the PSA.

Section 563b.27 sets forth the minimum filing requirements for a complete supervisory conversion application. Section 563b.28(b) provides that a supervisory stock conversion application that does not meet the filing requirements shall constitute an incomplete application, and requires the PSA to continue to seek another appropriate supervisory resolution of the institution's problems pending the filing of a complete application. These requirements are intended to discourage the filing of incomplete supervisory stock conversion applications by insured institutions for the sole purpose of forestalling supervisory action.

#### *Conditions of Approval and Other Requirements*

Under § 563b.27, Board approval of a supervisory stock conversion application will be conditioned upon the completion of the sale of conversion stock within a maximum period of three months after Board approval of the application, or within such additional period as the Board's General Counsel or his designee may for good cause grant; compliance with all requirements of proposed 12 CFR Part 563g, which was issued by the Board for public comment on March 3, 1983, Bd. Res. 83-126 (48 FR 10684; March 14, 1983) or such final regulatory requirements on that subject as may be adopted by the Board; submission of an opinion of independent legal counsel that all applicable state



securities law requirements have been met in connection with the sale of the insured institution's conversion stock; compliance with all applicable laws, rules, and regulations; and satisfaction of any other requirement or condition the Board may impose. Pursuant to § 563b.31, a converted insured institution shall be subject to the dividend and repurchase restrictions of § 563b.3(g)(2)(ii) and (3). Moreover, § 563b.25, requires that the offer and sale of the conversion stock constitute a non-public offering under § 563g.4 of proposed Part 563g.

#### *Treatment of Appraised Equity Capital*

Section 563.13 of this Subchapter permits, but does not require, an insured institution to include appraised equity capital as part of its net worth. A decision by an insured institution's board of directors regarding whether to adopt appraised equity capital under § 563.13 is a business judgment that, absent a showing of bad faith, ordinarily will not be questioned by the Board. Accordingly, § 563b.32, provides that the PSA is not required to include appraised equity capital in an insured institution's reserve calculations for the purpose of determining whether the institution qualifies for a supervisory stock conversion if the institution has not itself done so pursuant to § 563.13(c), and provided that the institution's board of directors has adopted and filed a resolution determining not to include appraised equity capital in regulatory net worth.

#### *Treatment of Net Worth Certificates*

Section 563b.33 establishes the treatment of net worth certificates ("NWCs") by the PSA in determining whether an insured institution qualifies for a supervisory stock conversion. Section 563b.33 provides that the PSA shall not include NWCs in the institution's regulatory net worth other than outstanding NWCs issued in accordance with Part 572 of this Subchapter or NWCs which the Corporation is committed to purchase from the institution under § 572.1(c) of this Subchapter.

#### *Discretion of the Board*

There is no inherent right to a supervisory conversion. An insured institution that meets the criteria for a supervisory conversion is a failed institution, and the Board has the responsibility of taking action with respect to the institution that it determines is in the best interests of the institution, its depositors, the public, and the Corporation. Therefore, it is specifically stated in § 563b.20 that the

determination to authorize or order a supervisory conversion shall be in the sole discretion of the Board.

#### **Subpart D—Guidelines for Modified Conversions**

As explained above in the discussion of subpart C, section 5(p) of the HOLA authorizes the Board for a period of three years after October 15, 1982, to authorize a state-chartered insured institution and to order a federally-chartered insured institution to convert to the stock form when (1) the insured institution is in receivership; (2) the Corporation has contracted to provide assistance to the insured institution under section 406 of the NHA; or (3) the Board has determined that severe financial conditions exist which threaten the stability of the insured institution and conversion to stock form is likely to improve the financial condition of the institution.

Also as noted above under Subpart C, the Board does not at this time view section 5(p) as an expansion of the authority of the Board to approve supervisory conversions, *i.e.*, conversions undertaken without the consent or participation of the mutual members, except insofar as section 5(p) preempts all provisions of federal law, and the laws and constitution of any state. It is the Board's current position that, at a minimum, section 5(p) also confirms the Board's implicit power under section 5(i) of the HOLA and section 402(j) of the NHA to authorize the elimination and restriction of many of the procedural and substantive rights granted to mutual members under the Board's standard conversion regulations. The power arises when the financial condition of the insured institution is so adverse that it cannot reasonably be expected to be able to convert under the standard conversion regulations. Section 5(p) also expands the Board's implicit power by permitting it to order a federally-chartered insured institution to convert to the stock form on a non-voluntary basis.

In partial implementation of its section 5(p) authority, the Board is adopting under new Subpart D of Part 563b certain guidelines as to qualification for a modified conversion, and certain guidelines that reflect the current views of the Board on the extent to which the procedural and substantive rights of mutual members may be eliminated or restricted in such a conversion.

The Board is not at this time adopting detailed regulations on either the procedures to effectuate modified conversions or the permissible structure of these conversions. The Board's very

substantial experience with standard conversions has enabled it to adopt extensive regulations on sale-of-control conversions, and the regulations adopted by the Board for supervisory conversions are the result of an eighteen-month effort on behalf of the Board and its staff to develop supervisory conversion procedures to expedite the supervisory conversion process. Neither the Board nor the savings and loan industry has had experience with section 5(p) conversions, and the development of extensive regulations at this time would only have the effect of discouraging the filing of innovative proposals that the Board may find acceptable. Therefore, what is set forth in Subpart D are guidelines which are being adopted to alert insured institutions and possible acquirers of the availability of modified conversion transactions.

#### *Guidelines for Qualification*

An insured institution that is in receivership, which is one of the criteria of section 5(p), qualifies for a supervisory conversion under Subpart C or a supervisory conversion under § 563b.1 rather than a modified conversion under Subpart D. An institution presumptively qualifies for a modified conversion under the guidelines if it has contracted to receive assistance from the Corporation, which is another of the section 5(p) criteria. As to the final section 5(p) criterion, the guidelines indicate that severe financial conditions may exist which threaten the stability of an insured institution for purposes of Subpart D when (1) the institution does not meet its regulatory net-worth requirement; (2) it has had negative net income under generally accepted accounting principles for (i) its last three fiscal quarters if it has more than two percent net worth, (ii) two out of the last three fiscal quarters if it has more than one percent net worth, and (iii) one out of the last three fiscal quarters if it has less than one percent net worth; and (3) it is demonstrated to the satisfaction of the Board (i) that the amount of capital that would be raised by the insured institution in a standard Subpart A conversion would not be sufficient (A) to enable the institution to meet its net-worth requirement, or (B) to reasonably ensure the financial safety and soundness of the insured institution or (ii) that there would not be a reasonable likelihood that the institution could successfully market its stock in a standard conversion.



### *Elimination and Restriction of Rights of Mutual Members Established in Subpart A*

Because section 5(p) specifically gives the Board the power to authorize or order the conversion of an insured institution when the section 5(p) criteria have been met, it is the opinion of the Board that Congress clearly intended that a section 5(p) conversion could be effectuated without a vote of the mutual members. Therefore, in its guidelines the Board provides that an insured institution converting under 5(p) is not required to seek the approval of the institution's members.

The Board retains in its guidelines for Subpart D conversions the requirement that the converting insured institution establish a liquidation account for the benefit of the institution's members pursuant to § 563b.3(f) of this Subpart A.

A section 5(p) conversion may be authorized or ordered by the Board only if the conversion would be likely to improve the financial condition of the converting insured institution. The Board states in its guidelines that an insured institution which seeks to undertake a modified conversion should be prepared to submit to the Board a detailed analysis prepared by an independent investment banking firm or other qualified person that the net capital infusion resulting from the proposed modified conversion would (1) bring the converted institution into net-worth compliance, on the basis of generally accepted accounting principles, and (2) would be reasonably sufficient to ensure the financial safety and soundness of the institution.

Implicit in this guideline is the Board's view that it is not necessary for an insured institution in a modified conversion to offer and sell its stock for its appraised valuation, and, indeed, the Board expects that an insured institution which converts under Subpart D would raise substantially more capital than its appraised valuation. An appraisal will still be required, however, for disclosure purposes in connection with the offer and sale of the conversion stock.

The most difficult issue faced by the Board in the modified conversion area is whether to eliminate or restrict the preemptive right of association members to subscribe for all of the stock of a converting insured institution, as established in the standard conversion regulations of Subpart A. Of course, association members may approve a limitation of or even the elimination of their preemption rights in a sale-of-control conversion under Subpart B. However, unlike a sale-of-control conversion, it is not contemplated in the

modified conversion guidelines that association members will be given the opportunity to approve the modified conversion proposal.

The Board at this time has resolved the issue in its guidelines in the following manner. If the converting insured institution proposes to sell its conversion stock to the public, without a sale of control of the institution as defined in Subpart B, the conversion would be subject to all of the provisions of Subpart A, unless they were clearly inapplicable. This guideline would require recognition of the preemptive subscription rights of the association members, and the purchase limitations of Subpart A would be applicable. The Board does not expect, however, because of the grave risks to an insured institution of a failure to complete a conversion, that any institution will seek to undertake a modified conversion through a non-control sale of conversion stock to the public.

Rather than resembling a standard conversion without an appraised valuation, the Board expects that a modified conversion would resemble sale-of-control conversions without competitive bidding. However, because the association members would not be given the opportunity to approve a sale of control of the insured institution, the Board has determined to state in the guidelines that association members shall be given the opportunity to exercise the preemptive right to subscribe for all of the conversion stock prior to the purchase by the proposed controlling person of unsubscribed shares, and to require that the proposed controlling person pay an appropriate control premium for unsubscribed shares.

What the Board contemplates is likely to result under its modified conversion guidelines are what may be termed take-out conversions, where an acquiring person is contractually bound to a converting insured institution to purchase up to one hundred percent of the conversion stock for an established price per share, plus a control premium per share, and any lesser percentage of the conversion stock remaining after the exercise of subscription rights by the association members. Such a take-out commitment could be subject to there being a minimum percentage of stock remaining after the exercise of subscription rights which would be negotiated between the proposed acquirer and the converting insured institution. Such a modified conversion would be subject to all of the provisions of Subparts A and B unless clearly inapplicable.

The Board is aware, of course, that its modified conversion guidelines hardly provide the type of standardized substantive and procedural guidance that makes the ability to market stock the sole issue in standard conversions. The Board also is aware that there are undoubtedly a number of ways to structure modified conversions that the Board has not considered simply because it has not been presented with those alternative proposals. For that reason, the Board will permit Subpart D conversions on a test-case basis; it specifically solicits comments regarding its guidelines, and encourages the filing of proposals for modified conversions.

### *Delegation*

As the Board had provided when it first adopted amendments permitting holding company and merger conversions under its standard conversion regulations, the modified conversion guidelines provide that no application for a modified conversion shall be filed without the prior written consent of the Board, and the Board has delegated to the General Counsel or his designee the authority to grant that consent.

### *Solicitation of Comments*

The Board has determined that the notice and public comment procedure of 5 U.S.C. 552(d) and 12 CFR 508.11, and the 30-day delayed effective date imposed by 5 U.S.C. 552(d) and 12 CFR 508.14 are unnecessary and not in the public interest. The amendments adopted by the Board significantly ease current restrictions, provide increased flexibility to converting insured institutions and their members, enable converting insured institutions to reduce substantially the time and expense of conversion, and implement the Board's supervisory and modified conversion authority. Because of these factors, the Board finds that it is in the public interest for insured institutions which intend to convert to the stock form of organization to be permitted to take immediate advantage of the revised regulations. The Board also finds that it would be impracticable and contrary to the public interest to delay final action or the effective date of these regulations because of the possible market disruption which would ensue to institutions currently considering conversion and to investors and the financial community involved in that process. However, the Board solicits comments on its Conversion Regulations both as to the amendments adopted here and as to any other current provision or provisions of the Conversion



Regulations. Comments will be accepted for a 60-day period following the effective date of the amendments.

#### Regulatory Flexibility Act Certification

Pursuant to Section 3 of the Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164 (September 19, 1980), the Board certifies that the amendments will not have a significant impact on a substantial number of small entities.

#### List of Subjects in 12 CFR Parts 552 and 563b

Stock associations, Conversions from mutual to stock form.

Accordingly, the Board hereby amends Part 552, Subchapter C, and Part 563b, Subchapter D, Chapter V of Title 12, Code of Federal Regulations, as set forth below.

#### SUBCHAPTER C—FEDERAL SAVINGS AND LOAN SYSTEM

##### PART 552—STOCK ASSOCIATIONS

###### § 552.4 [Amended.]

1. Amend § 552.4 by removing paragraph (b) and redesignating paragraphs (c) and (d) as paragraphs (b) and (c), respectively.

#### SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

##### PART 563b—CONVERSIONS FROM MUTUAL TO STOCK FORM

2. Amend § 563b.1 by revising paragraphs (a) and (c)(1), as follows:

###### § 563b.1 Scope of part.

(a) *General.* Except as the Board, acting pursuant to its authority or as the operating head of the Corporation, may otherwise determine, the provisions of this part shall exclusively govern the conversion of mutual insured institutions to capital stock institutions, and no mutual insured institution shall convert to the capital stock form without the prior written consent of the Board. The Board may grant a waiver in writing from any requirement of this part for good cause shown.

(c) *Conflicts with State law.* (1) In the event an applicant finds that compliance with any provision of this part would be in conflict with applicable State law, the applicant may file a written request for waiver of compliance with such provision by the Board, acting pursuant to its authority or as the operating head of the Corporation. Such request may be incorporated in the application for conversion; otherwise, the applicant shall file four copies of such request.

3. Add a heading for new Subpart A following § 563b.2, as follows:

#### Subpart A—Standard Conversions

4. Amend § 563b.3 by: revising paragraphs (a), (c)(6), (c)(9), (c)(10), (d)(1), (d)(3), (d)(6), (d)(7), (g)(1), (g)(3), and (i)(7), removing paragraph (d)(11), redesignating paragraph (d)(12) as (d)(11), and by adding new paragraphs (c)(22) and (d)(12), as follows:

###### § 563b.3 General principles for conversions.

(a) *Applicability of Subpart.* The provisions of this Subpart shall govern conversions undertaken pursuant to any other Subpart of this Part unless clearly inapplicable.

(c) *Required provisions in plan of conversion.*

(6) Provide that any shares of the converting insured institution not sold to persons with subscription rights shall be sold either in a public offering through an underwriter or directly by the converting insured institution in a direct community offering, subject to the applicant demonstrating to the Corporation the feasibility of the method of sale and to such conditions as may be provided in the plan of conversion. Such conditions shall include, but not be limited to:

(9) Provide that no officer, director, or their associates shall purchase, without the prior written approval of the Corporation, the capital stock of the converted insured institution except from a broker or dealer registered with the Securities and Exchange Commission, for a period of three years following the conversion. This paragraph (c)(9) shall not apply to negotiated transactions involving more than one percent of the outstanding capital stock of the converted insured institution.

(10) Provide that the sales price of the shares of capital stock to be sold in the conversion shall be a uniform price determined in accordance with § 563b.7 of this Part; and specify the underwriting and/or other marketing arrangements to be made to ensure the sale of all shares not sold to persons with subscription rights.

(22) That the converting insured institution shall not loan funds or otherwise extend credit to any person to purchase the capital stock of the institution.

(d) *Optional provisions in plan of conversion.*

(1) That the converting insured institution may commence the direct community offering or the public offering, or both, concurrently with or at any time during the subscription offering. The subscription offering may be commenced concurrently with or at any time after the mailing to association members pursuant to § 563b.6(c) of this Part of the proxy statement authorized for use by the Corporation. The subscription offering may be closed before the meeting of the association members held to vote on the plan of conversion, provided that the offer and sale of the capital stock shall be conditioned upon the approval of the plan of conversion by the association members as provided in § 563b.6.

(3) That the directors, officers and employees of the converting insured institution shall receive, without payment, nontransferable subscription rights to purchase shares of capital stock, to the extent that shares are available after satisfying the subscriptions of eligible account holders, supplemental eligible account holders, and voting members provided for under paragraphs (c) (2), (4) and (5) of this section, subject to the following conditions:

(6) That the converting insured institution may require association members to return by a reasonable date certain a postage-paid written communication provided by the converting insured institution requesting receipt of a subscription offering circular, or a preliminary or final offering circular in an offering pursuant to paragraph (d)(12) of this section, in order to be entitled to receive an offering circular from the converting insured institution: *Provided*, that the subscription offering or the offering pursuant to paragraph (d)(12) shall not be closed until the expiration of thirty days after the mailing by the converting insured institution to association members of the postage-paid written communication. If the subscription offering or the offering pursuant to paragraph (d)(12) is not commenced within 45 days after the meeting of association members, the converting insured institution that has adopted this optional provision shall transmit no more than 30 days prior to the commencement of the subscription offering or the offering pursuant to paragraph (d)(12) to each association member who had been furnished with proxy soliciting materials, written notice of the commencement of the offering,



which notice shall state that the converting insured institution is not required to furnish an offering circular to an association member unless the association member returns by a reasonable date certain the postage-paid written communication provided by the converting insured institution requesting receipt of an offering circular.

(7) That the converting insured institution may require eligible account holders and supplemental eligible account holders who are not voting members pursuant to § 563b.6(d) of this Part to return by a reasonable date certain a postage-paid written communication provided by the converting insured institution requesting the receipt of a subscription offering circular, or a preliminary or final offering circular in an offering pursuant to paragraph (d)(12) of this section, in order to be entitled to receive an offering circular from the converting insured institution: *Provided*, that the subscription offering or the offering pursuant to paragraph (d)(12) shall not be closed until the expiration of thirty days after the mailing by the converting insured institution to the non-voting eligible account holders and supplemental eligible account holders of the postage-paid written communication. If the subscription offering or the offering pursuant to paragraph (d)(12) is not commenced within 45 days after the meeting of association members, the converting insured institution that has adopted this optional provision shall transmit no more than 30 days prior to the commencement of the subscription offering or the offering pursuant to paragraph (d)(12) to each eligible account holder and supplemental account holder who had been furnished with a notice pursuant to paragraph (d)(12) written notice of the commencement of the offering, which notice shall state that the converting insured institution is not required to furnish an offering circular to a non-voting eligible account holder or supplemental eligible account holder unless the eligible account holder or supplemental eligible account holder returns by a reasonable date certain the postage-paid written communication provided by the converting insured institution requesting receipt of an offering circular.

(12) That, instead of a separate subscription offering, all subscription rights issued in connection with the conversion shall be exercisable by delivery of properly completed and executed order forms to the

underwriters or selling group for the public offering or pursuant to any other procedure, subject to the applicant demonstrating to the Corporation the feasibility of the method of exercising such rights and to such conditions as shall be provided in the plan of conversion. Such conditions shall include, but not be limited to, a condition requiring that orders for stock in the public offering or direct community offering shall first be filled, in the order of priority set forth in this section, by orders of persons exercising subscription rights.

(g) *Restrictions on repurchase of stock and payment of dividends.* \* \* \*

(1) No converted insured institution shall for a period of three years repurchase any of its capital stock from any person except in the case of a repurchase, on a *pro rata* basis pursuant to an offer approved by the Corporation, made to all shareholders of such institution and except for the repurchase of qualifying shares of a director.

(3) Without the prior approval of the Corporation, no converted insured institution shall, for a period of three years after the date of its conversion, declare or pay a cash dividend on, or repurchase any of, its capital stock in an amount in excess of one half of the greater of:

(i) *Acquisition of the securities of converting and converted insured institutions.* \* \* \*

(7) *Optional charter provision.* To the extent permitted by applicable Federal or State law, the plan of conversion may provide for the charter of the converted insured institution to state that, for a period of one year following the date of the completion of the conversion, no person shall directly or indirectly offer to acquire or acquire the beneficial ownership of more than ten percent of any class of an equity security of the converted insured institution. At any annual or special meeting of its shareholders, a converted insured institution may adopt any charter provision regarding the acquisition by any person or persons of its equity securities that would be permitted to be adopted by a corporation chartered by the state in which the principal office of the converted insured institution is located: *Provided*, that the institution shall file as part of its charter amendment filing an opinion of counsel independent from the institution that

such charter provision is permissible under the law of the applicable state.

5. Amend § 563b.5 by revising paragraph (b), as follows:

§ 563b.5 *Solicitation of proxies; proxy statement.* \* \* \*

(b) *Use of proxy soliciting material to be authorized.* No proxy soliciting material required to be filed with the Corporation prior to use shall be furnished to association members or otherwise released for distribution until the use of such material has been authorized in writing by the Corporation. Proxy material authorized for use by the Corporation shall be mailed to the association members within ten days of such authorization unless extended by the Corporation in writing.

6. Amend § 563b.7 by revising paragraphs (a) through (f), (g)(1), (g)(2), (g)(4) (i), (vi), (viii), and (ix), (g)(5), (h), (j), (k)(2), (k)(4), and (k)(5), as follows:

§ 563b.7 *Pricing and sale of securities.*

(a) *General.* No offer to sell securities of an applicant pursuant to a plan of conversion may be made prior to approval by the Corporation of the application for conversion and until the proxy statement has been authorized for use by the Corporation. No sale of securities may be made except by means of a final offering circular which has been declared effective by the Corporation. The provisions of this paragraph shall not apply to preliminary negotiations or agreements between an applicant and any underwriter or among underwriters who are to be in privity of contract with the applicant.

(b) *Distribution of offering materials.* Any preliminary offering circular which has been filed with the Corporation may be distributed in connection with the offering at the same time as or after the proxy statement is mailed to association members pursuant to § 563b.6(c) of this Part. No final offering circular shall be distributed until it has been declared effective by the Corporation. The declaration of effectiveness of the final offering circular by the Corporation shall not extend beyond the maximum time period specified for the completion of the sale of all the capital stock in paragraph (i) of this section, or beyond such period of time as the Corporation shall establish upon a subsequent declaration of effectiveness in the event of the granting of an extension of time under paragraph (k) of this section.



(c) *Estimated price information.* If the offering is to commence prior to the meeting of the association members held to vote on the plan of conversion, the proxy statement authorized for use by the Corporation shall set forth the estimated price range. Any preliminary offering circular shall set forth the estimated price range. The maximum of such price range should normally be no more than 15 percent above the average of the minimum and maximum of such price range and the minimum should normally be no more than 15 percent below such average. The maximum price used in the price range should normally be no more than \$50 per share and the minimum no less than \$5 per share.

(d) *Prohibited representations.* The Corporation will review the price information required under this section in determining whether to give approval to applications for conversion when the offering is to commence prior to the meeting of association members, and it will review the information in determining whether to declare a final offering circular effective. No representations may be made in any manner that such price information has been approved by the Corporation or that the shares of capital stock sold pursuant to the plan of conversion have been approved or disapproved by the Federal Home Loan Bank Board or the Corporation or that the Board or the Corporation has passed upon the accuracy or adequacy of any offering circular covering such shares.

(e) *Underwriting expenses.* Underwriting commissions shall not exceed an amount or percentage per share acceptable to the Corporation. No underwriting commission shall be allowed or paid with respect to shares of capital stock sold in the subscription offering unless the plan of conversion contains the optional provision permitted by § 563b.3(d)(12) of this Part; however, an underwriter may be reimbursed for accountable expenses in connection with the subscription offering where the public offering is so small that reasonable underwriting commissions thereon would not be sufficient to cover total accountable expenses. The term "underwriting commissions" includes underwriting discounts.

(f) *Pricing materials.* (1) In considering the pricing information required under paragraph (c) of this section, the Corporation will apply the following guidelines:

(i) The materials shall be prepared by persons independent of the applicant, experienced and expert in the area of

corporate appraisal, and acceptable to the Corporation;

(ii) The materials shall contain a brief summary of data that is sufficient to support the conclusions reached therein; and

(iii) To the extent that the appraisal is based on a capitalization of the pro forma income of the converted insured institution, the materials must indicate the basis for determination of the income to be derived from the proceeds of the sale of stock and demonstrate the appropriateness of the earnings-multiple used, including assumptions made as to future earnings growth. To the extent that the appraisal is based on comparison of the capital stock of the applicant with outstanding capital stock of existing stock institutions, such existing stock institutions must be reasonably comparable to the converting insured institution in terms of such factors as size, market area, competitive conditions, profit history, and expected future earnings.

(2) In addition to the information required in paragraph (f)(1) of this section, the applicant shall submit information demonstrating to the satisfaction of the Corporation the independence and expertise of any person preparing materials under this paragraph. However, a person will not be considered as lacking independence for the reason that such person will participate in effecting a sale of capital stock under the plan of conversion or will receive a fee from the applicant for services rendered in connection with such appraisal.

(3) In addition to the information required in paragraphs (f)(1) and (2) of this section, the applicant shall file with the Corporation such additional information with respect to the pricing of the capital stock of the institution (including, without limitation, the amount of the control premium in a sale-of-control conversion pursuant to Subpart B of this Part) as the Corporation may request, including, without limitation, a full appraisal.

(g) *Order forms for purchase of capital stock.* (1) Promptly after the Corporation has declared effective the offering circular for the subscription offering, the applicant shall distribute order forms for the purchase of shares of capital stock in the offering to all eligible account holders, supplemental eligible account holders, voting members and other persons who may subscribe for shares of capital stock under the plan of conversion. If the converting insured institution shall have adopted in its plan of conversion the optional provisions set forth in

§ 563b.3(d) (6), (7), or (12) of this Part, the applicant shall deliver order forms to the eligible account holders, supplemental eligible account holders, and voting members who requested receipt of the offering circular.

(2) Each order form shall be accompanied or preceded by the final offering circular for the subscription offering or the public offering, as the case may be, and a set of detailed instructions explaining how to properly complete such order forms.

• • • • •

(4) • • •

(i) Indicate the maximum number of shares that may be purchased pursuant to the subscription rights;

• • • • •

(vi) Indicate the manner of required payment and, if such payment may be made by withdrawal from a certificate of deposit, indicate that such withdrawal may be made without penalty. If payment is to be made by withdrawal from a savings account or certificate of deposit, a box to check should be provided;

• • • • •

(viii) Contain an acknowledgment by the account holder or other person signing the order form that he has received a final offering circular prior to so signing; and

(ix) Indicate the consequences of failing to properly complete and return the order form, including a statement that the subscription rights are nontransferable and will become void at the end of the subscription period. The order form may, and the set of instructions shall, indicate the place or places to which the order forms are to be returned and when the order forms shall be deemed to be received, such as by date and time of actual receipt at the address indicated or by date and time of postmark.

(5) The order form may provide that it may not be modified without the applicant's consent after its receipt as set forth in the order form. If payment is to be made by withdrawal from a savings account or certificate of deposit, the applicant may, but need not, cause such withdrawal to be made upon receipt of the order form. If such withdrawal is made at any time prior to the closing date of the public offering, the applicant shall pay interest to the account holder on the amount withdrawn as if such amount had remained in the account from which it was withdrawn until such closing date.

(h) *Withdrawal from certificate accounts.* Notwithstanding any regulatory provision regarding penalties



for early withdrawal from certificate accounts, the applicant may allow payment for capital stock pursuant to the exercise of subscription rights by withdrawal from a certificate account without the assessment of such penalties. In the case of early withdrawal of only a portion of such account, the certificate evidencing such account shall be cancelled if the applicable minimum balance requirement ceases to be met. The remaining balance will earn interest at the passbook rate.

(j) *Interest on subscriptions and direct community offering purchase orders.* The converting insured institution shall pay interest at not less than the passbook rate on all amounts paid in cash or by check or money order to the institution to purchase shares of capital stock in the subscription offering or direct community offering from the date payment is received by the institution until the conversion is completed or terminated.

(k) *Extensions of time to complete public offering or direct community offering; post-effective amendments to subscription offering circular.*

(2) Immediately upon the granting of an extension of time pursuant to paragraph (k)(1) of this section, the converting insured institution shall distribute to each subscriber in the offering and, if applicable, each person who has ordered capital stock in the direct community offering, a post-effective amendment to the offering circular filed under an amendment to the application for conversion and declared effective by the Corporation pursuant to paragraph (k)(4) of this section which shall notify each subscriber and each ordering person of the granting of the extension of time, and of the right of each subscriber and each ordering person to increase, decrease or rescind this subscription (i) at any time prior to 20 days before the end of the extension period, or (ii) at any time prior to the date of the commencement of the public offering or the direct community offering: *Provided*, that if the public offering or the direct community offering is not completed within 20 days after its commencement, all instructions from subscribers and ordering persons to increase, decrease, or rescind their subscriptions or orders received during the 20-day offering period shall be honored by the converting insured institution.

(4) After the expiration of subscription rights, the converting insured institution

shall file with and have declared effective by the Corporation a post-effective amendment to the offering circular delivered to subscribers upon the occurrence of any event, circumstance, or change of circumstance which would be material to the investment decision of a subscriber or, if applicable, a person who has ordered capital stock in the direct community offering.

(5) Any post-effective amendment to an offering circular distributed to subscribers in the offering shall be distributed by the converting insured institution immediately after the declaration of effectiveness to each subscriber, and, if applicable, each person who has ordered stock in the direct community offering, and the converting insured institution shall grant to each subscriber and ordering person the right to increase, decrease, or rescind his subscription or order for a period which shall be no less than the greater of ten days from the date of the mailing of the post-effective amendment or the period remaining in an extension of time granted by the Corporation pursuant and subject to the provisions of paragraph (k)(2) of this section.

7. Amend § 563b.8 by revising paragraphs (c)(3) and (w)(2), as follows:

**§ 563b.8 Procedural requirements.**

*(c) Additional filing requirements.*

(3) Each offering circular for the offering shall be prepared in compliance with this Part and Form OC. The applicant shall file with the Corporation ten copies of each preliminary offering circular and twenty-five copies of each final offering circular.

*(w) Delegation of authority.*

(2) *Approval of applications for conversion.* The Corporation delegates to the General Counsel or his designee the authority to approve but not to deny applications for conversion pursuant to the standards and restrictions set forth in this Subpart A, and to exercise any other authority of the Corporation under this Subpart A, excepting (i) the authority to waive any provision of this Subpart A pursuant to § 563b.1(a); (ii) the authority to approve other equitable provisions in the plan of conversion under § 563b.3(d)(13); (iii) the authority to approve any application for conversion in regard to which an objection has been filed pursuant to § 563b.4(b)(1); and (iv) the authority to approve or deny an application for approval to offer to acquire or to acquire more than 10 percent of the stock of a converted insured institution under

§ 563b.3(i)(3). The Board also delegates to the General Counsel or his designee, in connection with the approval of an application for conversion under this Subpart A, the authority to approve but not to deny applications for approval of security forms, charter amendments, and bylaw amendments under § 563.1 of this subchapter, and §§ 544.1, 544.5 and 555.2 of this chapter.

8. Revise § 563b.9 as follows:

**§ 563b.9 Conversion of an insured institution in connection with the formation of a holding company.**

An insured institution may convert to the stock form pursuant to this Subpart A as part of a transaction in which a holding company is organized to acquire upon issuance all the capital stock of the converted insured institution. In such a transaction eligible account holders, supplemental eligible account holders, and voting members of the converting insured institution shall receive, without payment, nontransferable rights under § 563b.3(c) (2), (4), and (5) of this Part to purchase capital stock of the newly-formed holding company in lieu of capital stock of the converting institution. Unless clearly inapplicable, all of the requirements of this Subpart A shall apply to a conversion under this section.

9. Revise § 563b.10 as follows:

**§ 563b.10 Conversion of an insured institution in connection with an acquisition by an existing holding company; conversion of an insured institution through merger with an existing insured stock institution.**

(a) *Conversion involving an existing holding company.* An insured institution may convert to the stock form pursuant to this Part 563b as part of a transaction in which an existing holding company acquires upon issuance all the capital stock of the converted insured institution. In such a transaction the eligible account holders, supplemental eligible account holders, and voting members of the converting insured institution shall receive, without payment, nontransferable rights under § 563b.3(c) (2), (4), and (5) of this Part from the holding company to purchase its capital stock in lieu of capital stock of the converting institution. Unless clearly inapplicable, all of the requirements of this Part 563b shall apply to a conversion under this paragraph (a).

(b) *Merger involving the issuance of holding company capital stock.* An insured institution may convert to the stock form pursuant to this Part 563b by merging into an existing insured stock institution which is a wholly-owned



subsidiary of a holding company. In such a transaction the eligible account holders, supplemental eligible account holders, and voting members of the converting insured institution shall receive, without payment, nontransferable rights under § 563b.3(c) (2), (4), and (5) from the holding company to purchase its capital stock in lieu of capital stock of the converting insured institution. Unless clearly inapplicable, all of the requirements of this Part 563b shall apply to a conversion under this paragraph (b).

(c) *Merger with an existing insured stock institution.* An insured institution may convert to the stock form by merging with an existing insured stock institution as part of a transaction in which the equity securities of the existing insured stock institutions or the converting insured institutions are issued. In such a transaction in which the existing insured stock institution is the surviving institution, the eligible account holders, supplemental eligible account holders, and voting members of the converting institution shall receive, without payment, nontransferable rights under § 563b.3(c) (2), (4), and (5) from the existing insured stock institution to purchase its capital stock in lieu of capital stock of the converting insured institution. Unless clearly inapplicable, all of the requirements of this Part 563b shall apply to a conversion under this paragraph (c).

10. Amend Form AC which follows § 563b.10 by removing Item 7 and redesignating Items 8 through 10 as Items 7 through 9, respectively; and by revising Exhibit 5; as follows:

#### Form AC

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#### General Instructions

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#### Exhibits

• • • • •

#### Exhibit 5. Valuation Materials.

Furnish any materials required to be filed by § 563b.7 regarding the valuation of the applicant's capital stock. An applicant is not required to file such materials if the offering of capital stock will not commence before the meeting of association members to vote on the plan of conversion.

11. Amend Form PS which follows Form AC by revising paragraphs (d) through (i)(1) of Item 8; and by removing Item 12 and redesignating Items 13 through 17 as Items 12 through 16, respectively; as follows:

#### Form PS

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#### Item 8. Description of the Plan of Conversion.

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(d) With respect to the subscription rights of members, furnish the following information: (1) the formula to be used for determining the subscription rights of account holders to purchase shares pursuant to § 563b.3(c) (2), (4), and (5); (2) any optional provisions included in the plan of conversion pursuant to § 563b.3(d) for the purchase of shares of capital stock, including the purchase priorities, limitation on total purchases, the total number of shares which may be purchased, and the formula for the allocation; (3) the allocation formulas to be used in the event that there is an oversubscription of shares at any time during the sale of stock under the plan of conversion; and (4) the use and timing of the order forms with respect to the exercise of subscription rights.

(e)(1) Set forth on a per-share basis the estimated public offering price range of the shares of capital stock to be sold pursuant to the plan of conversion, except that an estimated price range is not required to be stated if the offering of stock is not to commence until after the meeting of association members to vote on the plan of conversion; (2) state that the offering price will be the pro forma market value of such shares as determined by the institution's management and the underwriters, as the case may be; and (3) state that all of the shares are required to be sold.

(f) Unless the offering of stock is not to commence until after the meeting of association members to vote on the plan of conversion, discuss (1) the earnings per share on a pro forma basis of the capital stock to be sold as of the end of the most recent period covered by the statements of operation required by Item 15(b) (1); and (2) the book value per share on a pro forma basis as of the date of the latest statement of financial condition required by Item 15(a).

Instruction. Earnings and book value per share shall be furnished without giving effect to the estimated net proceeds from the sale of the capital stock, and then after giving effect to such proceeds with all assumptions used clearly stated.

(g) State the proposed commencement and expiration dates of the subscription period and describe any provisions in the plan of conversion related to the timing or extension of the subscription period. Also, state (1) that a maximum subscription price will be set forth in the offering circular used for offering of subscription rights; (2) that the actual subscription price will be the public offering price; (3) that the actual subscription price will not exceed the maximum subscription price shown on the order form; and (4) that any difference between the maximum and actual subscription prices will be refunded unless the subscribers affirmatively elect to have the difference applied to the purchase of additional shares of capital stock.

(h) Furnish the following information: (1) describe to the extent practicable the applicant's present intentions with respect to listing the capital stock on an exchange or otherwise providing a market for the purchase and sale of the capital stock in the future; (2) describe briefly the tax effect of the conversion both to the applicant and to the various classes of account holders

receiving nontransferable subscription rights to purchase capital stock in the conversion; (3) state that the plan of conversion is attached as an exhibit to the proxy statement (or will be made available on request if the summary proxy statement provided for by § 563b.3(d)(14) is being used) and should be consulted for further information.

(i)(1) State whether the plan of conversion provides for unsubscribed capital stock to be offered to the public through underwriters or directly by the converting institution. If such is the case, provide the information to the extent known required by Item 6 of Form OC and indicate the estimated timing of the proposed offering. (2) State whether the plan of conversion provides for the purchase by any person or group of any insignificant residue of shares remaining at the conclusion of the offering.

12. Amend Form OC which follows Form PS by revising Items 2, 5, and 6 (except for the instructions to paragraph (e) of that Item), as follows:

#### Form OC

• • • • •

#### Item 2. Additional Current Information Required.

Each offering circular shall, as of its respective dates of issuance, include, to the extent available, the following additional current information to the extent that such information is not already included in the proxy statement:

(a) Information with respect to the vote of association members upon the plan of conversion and any other proposals considered at the meeting of members.

(b) Information with respect to any recent material developments in the business or affairs of the applicant.

(c) Information with respect to the trading market that is expected to exist for the capital stock following the conversion.

(d) Information, on the outside front cover page, summarizing the results of any separate subscription offering including the number of shares sold to eligible account holders, voting members and others, the price at which the shares were sold, and the number of unsubscribed shares.

(e) The information required by Items 8(e)(1) and 8(f) of Form PS.

(f) Any other information necessary to make such offering circular current, including full financial statements of the applicant within six months prior to the date of issuance of such offering circular.

#### Item 5. Information with Respect to Exercise of Subscription Rights.

Any offering circular which is required to be delivered to subscribers shall describe all material terms of the offering relating to the exercise of subscription rights to the extent that such description is not already in the proxy statement. Such terms include the expiration date, any subscription agent, method of exercising subscription rights, payment for shares, delivery of stock certificates for shares purchased, maximum subscription price, possible reduction of



subscription price, relationship of subscription price to public offering price, requirement that all unsubscribed shares be sold, and any other material conditions relating to the exercise of subscription rights.

**Item 6. Information with Respect to Public Offering or Direct Community Marketing.**

Each offering circular shall describe the material terms of the plan or plans of distribution for all unsubscribed shares of capital stock to the extent such description is not already in the proxy statement, including the following:

(a) If the shares are to be offered through underwriters, the outside front cover page of both offering circulars shall give the information called for by this paragraph. In the case of the offering circular for any public offering, such information shall be given in substantially the tabular form set forth below. In any other case, the information may be given in narrative form. If the information is not known at the time of the subscription offering, so state and estimate.

	Price to public	Underwriting discounts and commissions	Proceeds to applicant
Per share.....	\$.....	\$.....	\$.....
Total.....			

(b) An offering circular for a public offering or direct community marketing, where the plan of conversion does not contain the optional provision permitted by § 563b.3(d)(12), may omit the description relating to the exercise of subscription rights required by Item 5.

(c) If any shares are to be offered through underwriters, the offering circular for the public offering shall state the names of the principal underwriters and the respective amounts underwritten by each. The names of the principal underwriters other than the managing underwriters and the respective amounts to be underwritten may be omitted from the offering circular for the subscription offering, unless the plan of conversion contains the optional provision permitted by § 563b.3(d)(12). Each offering circular shall identify each principal underwriter having a material relationship to the applicant and state the nature of the relationship. Each offering circular shall state briefly the nature of the underwriter's obligation to take the unsubscribed shares.

(d) The offering circular for the public offering shall state briefly the discounts and commissions to be allowed or paid to dealers in connection with the sale of the unsubscribed shares. Such information may be omitted from the offering circular for any subscription offering, unless the plan of conversion contains the optional provision permitted by § 563b.3(d)(12).

(e) If any shares are to be offered through underwriters, the offering circular for the public offering shall identify any principal underwriter that intends to confirm sales to any accounts over which it exercises discretionary authority and include an estimate of the number of shares so intended

to be confirmed. Such information may be omitted from the offering circular for any subscription offering.

**Instructions.**

- (1) \* \* \*
- (2) \* \* \*
- (3) \* \* \*

(f) If any shares are to be sold by the converting insured institution through a direct community marketing, indicate the timing of the offering, the geographical area where the offering will be made, the method to be employed to market the shares, including the frequency and nature of communications or contracts with potential purchasers, any preferences that will be given any such geographical area or class of potential purchasers, and the limitations on purchases by potential purchasers.

13. Add new Subparts B, C, and D to read as set forth below:

**Subpart B—Sale-of-Control Conversions**

**Sec.**

- 563b.11 Definitions.  
 563b.12 Conversion of an insured institution in connection with a sale of control.  
 563b.13 Additional requirements for sale-of-control conversions.  
 563b.14 Additional notice requirements.  
 563b.15 Record date: notice requirements in sale-of-control conversions.  
 563b.16 Competing sale-of-control offers.  
 563b.17 Management's proxy: mailing communications for proponents.  
 563b.18 Additional disclosure requirements.  
 563b.19 Additional requirements of sale-of-control applications.

**Subpart C—Voluntary Supervisory Stock Conversions**

- 563b.20 Scope of Subpart.  
 563b.21 Supervisory stock conversions.  
 563b.22 Authorization of supervisory conversions.  
 563b.23 Qualification for supervisory conversion.  
 563b.24 Power to appoint a receiver.  
 563b.25 No equity value realization upon liquidation.  
 563b.26 Viability of converted insured institution.  
 563b.27 Application for supervisory stock conversion.  
 563b.28 Procedural requirements.  
 563b.29 Conditions of approval.  
 563b.30 Sale of conversion stock.  
 563b.31 Restrictions on payments of dividends.  
 563b.32 Treatment of appraised equity capital.  
 563b.33 Treatment of net worth certificates.

**Subpart D—Guidelines for Modified Conversions**

- 563b.34 Scope of Subpart.  
 563b.35 Purpose of Subpart.  
 563b.36 Guidelines of qualification.  
 563b.37 Substantive guidelines.  
 563b.38 Acceptance of test-case applications.

**Subpart B—Sale-of-Control Conversions**

**§ 563b.11 Definitions.**

As used in this Subpart B, the following definitions apply unless the context otherwise requires:

(a) *Acquiring person.* An "acquiring person" is a person who acquires control of an insured institution as part of a sale-of-control conversion. Any person, together with any associate or group of persons acting in concert for the purpose of acquiring shares of capital stock in connection with the conversion of an insured institution, shall be deemed to be a "person" for purposes of this Subpart.

(b) *Control.* A person shall be deemed to have "control" of an insured institution if the person directly or indirectly, or through one or more subsidiaries, owns, controls, or holds with power to vote, or holds proxies representing, 10 percent or more of the voting shares of such insured institution, or controls in any manner the election of a majority of the directors of such institution: *Provided*, that control shall not exist as a result of the acquisition of shares of a converting institution pursuant to a plan of conversion that complies with the provisions of § 563b.3 of Subpart A of this Part.

(c) *Public shares.* The term "public shares" means any shares of capital stock of an insured institution, if any, which are issued in a sale-of-control conversion to any person who is not an acquiring person.

(d) *Sale-of-control conversion.* A sale-of-control conversion is any conversion of an insured institution from mutual to stock form pursuant to a plan of conversion which provides for the acquisition of control of the converting institution by any person.

**§ 563b.12 Conversion of an insured institution in connection with a sale of control.**

As insured institution may convert to stock form pursuant to this Part 563b as part of a transaction in which the converting institution enters into a binding agreement with any person pursuant to which such person will purchase control of the converting institution. In any sale-of-control conversion, eligible account holders, supplemental eligible account holders, and voting members of the converting institution shall receive, without payment, nontransferable rights under § 563b.3(c) (2), (4), and (5) of Subpart A of this Part to purchase shares of capital stock, if any, not required to be sold pursuant to such agreement. A sale-of-



control conversion shall comply with all of the provisions of this Subpart B, and, unless clearly inapplicable, all of the requirements of Subpart A of this Part.

**§ 563b.13 Additional requirements for sale-of-control conversions.**

The following requirements shall apply to any sale-of-control conversion:

(a) *Additional required provisions in the plan of conversion.* A sale-of-control plan of conversion shall, in addition to containing the applicable provisions required by § 563b.3(c) of this Part:

(1) Provide that the converting insured institution shall issue and sell a specified percentage or specified dollar amount of its capital stock to an acquiring person in connection with the conversion at a price per share equal to the estimated pro forma market value of its capital stock, plus a specified control premium over such price equal to the estimated pro forma market value of the control over the converting insured institution represented by such shares.

(2) Provide that subscription rights, if any, of eligible account holders, supplemental eligible account holders, and voting members shall be subordinated to the rights of any acquiring person to acquire capital stock of the converting insured institution.

(3) Provide that any public shares shall be sold pursuant to the exercise of subscription rights or otherwise either in a public offering through an underwriter(s) or directly by the converting insured institution in a direct community offering or in any other manner, subject to the applicant demonstrating to the Corporation the feasibility of the method of sale and to such conditions as may be provided in the plan of conversion. Such conditions shall include, but not be limited to, the conditions set forth in § 563b.3(c)(5) (i) and (iv) of this Part.

(4) Provide that no acquiring person or affiliate or associate thereof, for a period of three years following the conversion, shall, without the prior written approval of the Corporation, purchase any shares of the capital stock of the converted insured institution if the amount of shares so acquired in any three-month period would exceed one percent of the outstanding shares of capital stock of the converted insured institution.

(5) Provide that all shares of capital stock purchased by an acquiring person or any affiliate thereof shall be subject to the restriction that the shares shall not be sold for a period of not less than one year following the date of purchase.

(6) Provide that, in connection with shares of such capital stock:

(i) Each certificate for such stock shall bear a legend giving appropriate notice of the restriction of paragraph (a)(5) of this section;

(ii) Appropriate instructions shall be issued to the transfer agent for the converted insured institution's capital stock with respect to applicable restrictions on transfer of any such restricted stock; and

(iii) Any shares issued as a stock dividend, stock split, or otherwise with respect to any such restricted stock shall be subject to the same restrictions as may apply to such restricted stock.

(7) Provide that no acquiring person or any affiliate thereof shall receive, or be entitled to, subscription rights in connection with the conversion.

(8) Provide that, in connection with the conversion, no acquiring person shall purchase any shares of the insured institution other than the shares required to be issued to the acquiring person pursuant to the plan of conversion.

(b) *No summary proxy statement.* A sale-of-control plan of conversion may not contain the optional provision contained in § 563b.3(d)(14) of this Part with respect to the use of proxy statements in summary form.

**§ 563b.14 Additional notice requirements.**

Promptly after the adoption of a plan of conversion providing for the sale of control, the insured institution shall give notice to its members as required by § 563b.4(a) (3) and (4) and as set forth in this section.

(a) *Additional information.* In addition to the information permitted or required to be included in such notice by § 563b.4(a)(4), such notice in the case of a sale-of-control conversion shall include the following information:

(1) The name(s) of the acquiring person;

(2) A brief description of the business(es) of the acquiring person;

(3) A brief description of the terms and conditions of the sale-of-control transaction including (i)(A) the percent of shares proposed to be issued in the conversion to the acquiring person or (B) the amount of consideration that the acquiring person has agreed to pay for shares of the converting institution in the conversion and an estimate of the percent of shares in the conversion which may be acquired for such amount; and (ii) the amount of the control premium to be paid by the acquiring person which shall be stated as a percentage of the offering price of the public shares;

(4) A statement that, pursuant to the Board's regulations and as an alternative to the sale-of-control

conversion, the converting insured institution could seek approval to convert to stock form in a manner that would prohibit the sale of control to any person, and that conversion pursuant to such regulations might result in a wider distribution of the converting institution's capital stock and a more active trading market for such stock; and a detailed explanation by management of the converting institution as to the reasons why it favors the proposed sale-of-control conversion; and

(5) A statement of the acts that the converting institution may be requested to perform pursuant to § 563b.17 of this Part with respect to the mailing of proxy statements and proxies or other communications to be furnished with respect to alternative offers to acquire control of the converting insured institution.

(b) The statement permitted by § 563b.4(a)(4)(ii) of this Part with respect to the required approval of members is required to be included in a notice relating to a sale-of-control conversion.

(c) *Additional dissemination.* Simultaneously with the publication of the notice required by § 563b.4(a)(3), the converting institution shall issue a press release containing the information required by this section. Such press release shall be issued on an "immediate release" or "not held" basis to *The Wall Street Journal*, to a newspaper having general circulation in each community in which an office of the insured institution is located, to the news-ticker services operated by Dow Jones & Company, Inc., to Reuters Economic Services and to the news-wire services of the Associated Press and United Press International.

**§ 563b.15 Record date: notice requirements in sale-of-control conversions.**

(a) *Determining members eligible to vote.* The record date for determining those persons eligible to vote at the meeting called to consider a sale-of-control plan of conversion shall be not more than 85 days nor less than 70 days prior to the date of such meeting, unless State law requires a different voting record date.

(b) *Notice to members.* Notice of the meeting to consider a plan of conversion shall be given by means of the proxy statement of management of the converting institution that has been authorized for use by the Corporation or, in the event of an extension of such meeting date pursuant to § 563b.16(d) of this Part, by means of the notice required by that section. The notice



shall be given not more than 70 days nor less than 45 days prior to the date of the meeting to each member of the converting institution entitled to vote at the meeting, unless State law requires a different notice period.

**§ 563b.16 Competing sale-of-control offers.**

(a) *General.* Any person (hereinafter the "proponent") may present a sale-of-control plan of conversion (but not any other plan of conversion) to a vote of the members at any meeting of members of the converting insured institution called by management of the converting institution to vote upon any other sale-of-control plan of conversion. Upon approval by at least a majority of the total outstanding votes of the converting insured institution's members, a proponent's plan of conversion shall be adopted by the institution, and shall be binding on the institution and the proponent, unless State law requires approval by a higher percentage for a State-chartered converting insured institution, in which case the higher percentage shall control.

(b) *Approval requirements of proponent's proposals.* No application for a sale-of-control conversion of a proponent shall be approved by the Corporation unless the sale-of-control plan of conversion of the proponent is in accordance with the provisions of § 563b.3 of Subpart A, unless such provision is clearly inapplicable, and this Subpart B.

(c) *Procedural requirements.* The provisions of Subpart A shall apply to any application for conversion concerning a sale-of-control conversion which a proponent proposes to submit to a meeting of members, unless such provision is clearly inapplicable, except that:

(1) No sale-of-control conversion application of a proponent shall be accepted for filing by the Corporation unless it is filed with the Corporation within 20 days of the date that the proxy statement of management of the converting institution giving notice of the meeting called to consider the sale-of-control plan of conversion approved by management of the converting institution is first sent or given to members;

(2) There may be omitted from the application for conversion and the proxy statement of any proponent any information contained in any other application for sale-of-control conversion filed with the Corporation or any other proxy statement which has been or will be furnished to each member solicited in connection with the meeting to approve the sale-of-control

plan of conversion if a reference is made to the particular document containing such information;

(3) As soon as practicable on the date the sale-of-control conversion application is accepted for filing by the Corporation, the proponent shall hand-deliver a copy of the application, including all exhibits thereto, to the converting insured institution at its home office, to the person whose sale-of-control plan of conversion was approved by management of the converting institution, and to any other proponent which has given notice pursuant to § 563b.4(a)(3) of this Part, at such proponent's principal executive offices; and

(4) Promptly after receipt of a proponent's sale-of-control conversion application pursuant to paragraph (c)(3) of this section, the converting institution shall give notice to its members regarding proponent's sale-of-control conversion application pursuant to § 563b.14 of this Part.

(d) *Extension of meeting date.* The acceptance for filing by the Corporation of a sale-of-control conversion application of a proponent shall, without further action on the part of the converting insured institution, extend the date for the holding of the meeting of members called to approve the plan of conversion approved by management of the converting institution to a date 70 days following the date on which notice of such meeting is or was first given, unless such date falls on a weekend or legal holiday, in which case such meeting shall be held on the next business day. Unless such date is the date established in a notice of meeting already given or to be given to the converting institution's members, the converting institution shall, after receiving the sale-of-control conversion application of a proponent, promptly give notice, by postcard or other appropriate form, to each member of the converting institution eligible to vote at such meeting of such new meeting date and include the information required by § 563b.14.

(2) Upon acceptance for filing by the Corporation of a proponent's sale-of-control plan of conversion, management of the converting insured institution shall not, without the prior written approval of the Corporation, further extend or cancel or otherwise terminate the meeting of members called to vote upon the sale-of-control plan of conversion approved by management.

**§ 563b.17 Management's proxy: mailing communications for proponents.**

(a) *Proxy requirements.* If any proponent notifies an insured institution

proposing to convert to stock form in a sale-of-control conversion of such proponent's intention to present an alternative sale-of-control plan of conversion at the meeting of members called to vote on the sale-of-control plan of conversion approved by management of the institution, the institution shall identify and provide the information required by § 563b.14 with respect to the proponent's sale-of-control plan of conversion in management's form of proxy and the institution's proxy statement and provide the information required by § 563b.5(d)(1) (iii) and (viii) of this Part. Notwithstanding the foregoing, the converting insured institution shall not be required to include such information regarding proponent's proposal in the management's form of proxy and proxy statement unless the proponent has complied with the requirements of this paragraph.

(1) *Timeliness.* The proponent shall submit his proposal to the converting institution within 20 days of the date on which notice is given to members under § 563b.4(a)(3) of this Part and the converting institution's press release is released to the public under § 563b.14(c) of this Part.

(2) *Prior filing.* Prior to the date on which a proponent's submission is made to the converting insured institution, the proponent shall have filed with the Corporation (i) a plan of conversion; (ii) a preliminary proxy statement; and (iii) a preliminary form of proxy, and shall have delivered to the converting institution a copy of such proponent's conversion application as required by paragraph (c) of this section. The converting insured institution shall not be required to present the proponent's sale-of-control plan of conversion at the meeting called to vote thereon unless the Corporation has given its prior written approval of such plan of conversion.

(3) *Notice and attendance at the meeting.* A proposal may be presented at the meeting either by the proponent or its representative who is qualified under applicable law to present the proposal on the proponent's behalf at the meeting. In the event that the proponent or its representative fails, without good cause, to present the proposal for action at the meeting, the converting institution shall not be required to present such proposal.

(b) *Mailing communications for proponents.* If the management of the converting institution has adopted a sale-of-control plan of conversion, the converting institution shall perform such of the following acts as may be duly



requested in writing with respect to a proponent's sale-of-control plan of conversion by a proponent who will defray the reasonable expenses to be incurred by the converting institution in the performance of the act or acts requested.

(1) The converting institution shall mail or otherwise furnish to such proponent the following information as promptly as practicable after receipt of such request:

(i) A statement of the approximate number of members of the converting institution who have been or are to be solicited on behalf of the management, or any group of such members which the proponent shall designate;

(ii) If the converting insured institution has made or intends to make, through brokers or nominees or other persons, any solicitation of beneficial owners of accounts or deposits, a statement of the approximate number of such beneficial owners, or any group of such owners which the proponent shall designate; and

(iii) An estimate of the cost of mailing a specified proxy statement, form of proxy, or other communication to such members of the converting insured institution.

(2) Copies of any proxy statement, form of proxy, or other communication furnished by the proponent and approved by the Corporation shall be mailed by the converting insured institution to such of the members specified in paragraph (b)(1)(i) of this section as the proponent shall designate. The converting institution shall also mail to each broker, nominee, or other person specified in paragraph (b)(1)(ii) of this section a sufficient number of copies of such proxy statement, form of proxy, or other communication as will enable the broker, nominee, or other person to furnish a copy thereof to each beneficial owner solicited or to be solicited through him.

(3) Any such material which is furnished to the converting institution by the proponent shall be mailed with reasonable promptness by the converting institution after receipt of the material to be mailed, envelopes, or other containers therefor, and postage or payment for postage; provided, however, that such material need not be mailed prior to the first day on which solicitation is made on behalf of management of the converting institution.

(4) Except for information incorporated by reference to management's own proxy statement, form of proxy or other communication, neither management of the converting institution nor the converting institution

shall be responsible for such proxy statement, form of proxy or other communication.

(c) In lieu of performing the acts specified above, the converting institution may, at its option, if not prohibited by applicable law, furnish promptly to such proponent a reasonably current list of the names and addresses of such of the members of the converting institution specified in paragraph (b)(1)(i) of this section as the proponent shall designate, and a list of the names and addresses of such of the brokers, nominees or other persons specified in paragraph (b)(1)(ii) of this section as the proponent shall designate together with a statement of the approximate number of beneficial owners solicited or to be solicited through each such broker, nominee or other person, and a schedule of the handling and mailing costs of each such broker, nominee, or other person, if such schedule has been supplied to the converting insured institution. The foregoing information shall be furnished promptly upon the request of the proponent or at daily or other reasonable intervals as it becomes available to the converting insured institution.

#### **§ 563b.18 Additional disclosure requirements.**

(a) No solicitation of proxies and no offer or sale of capital stock in connection with a sale-of-control conversion shall be made unless the person so solicited is concurrently furnished or has been previously furnished a proxy statement containing the information required by Form PS and the additional information required by this section, or the person to whom capital stock is so offered or sold is concurrently furnished or has been previously furnished an offering circular containing the information required by Form OC and the additional information required by this section, with the exception of paragraph (b)(5).

(1) *Instruction:* If the acquiring person is a partnership, limited partnership, syndicate or other group, the information called for by paragraphs (b)(1) through (4), inclusive, and (6) of this section ("the cited provisions") shall be given with respect to: (i) each partner of such partnership; (ii) each partner who is denominated as a general partner or who functions as a general partner of such limited partnership; (iii) each member of such syndicate or group; and (iv) each person controlling such partner or member. If the acquiring person is a corporation, or if a person referred to in paragraphs (i), (ii), (iii), or (iv) of this Instruction is a corporation,

the information called for by the cited provisions shall be given with respect to: (v) each executive officer and director of such corporation; (vi) each person controlling such corporation; and (vii) each executive officer and director of any corporation ultimately in control of such corporation. A response to the cited provisions is required with respect to the acquiring person and all other persons referred to in this Instruction unless any of the cited provisions specifies to the contrary.

(b) The additional information required to be disclosed in a proxy statement or offering circular used in connection with a sale-of-control conversion shall include the following:

(1) *Identity and background.* If the acquiring person is a corporation, partnership, limited partnership, syndicate or other group of persons, state its name, the state or other place of its organization, the address of its principal office, and the information required by paragraphs (v), (vi), (vii), and (viii) of this paragraph (b)(1). If the acquiring person is a natural person, provide the information required by paragraphs (i) through (viii) of this paragraph (b)(1) with respect to such person(s).

(i) Name;

(ii) Residence or business addresses;

(iii) Present principal occupation or employment and the name, principal business, and address of any corporation or other organization in which such occupation or employment is conducted;

(iv) Material occupations, positions, offices, or employments during the last 5 years, giving the starting and ending dates of each and the name, principal business and address of any business corporation or other organization in which such occupation, position, office, or employment was carried on;

(v) The information required by paragraphs (a) and (c) of Item 101 of Regulation S-K, 17 CFR 229.101, of the Securities and Exchange Commission; and, if such person is a reporting person under the Securities Exchange Act of 1934, a statement that such person files periodic reports, proxy statements, and other information with the Securities and Exchange Commission under such Act relating to its business, financial statements, and other matters, and a statement of the addresses of the Securities and Exchange Commission and of any stock exchange(s) where copies of such periodic reports, proxy statements, and other information may be inspected or obtained;

(vi) Whether or not, during the last 5 years, such person has been convicted



in a criminal proceeding (excluding traffic violations or similar misdemeanors) and, if so, give the dates, nature of conviction, name and location of court, and penalty imposed or other disposition of the case;

(A) *Instruction.* A negative answer to this paragraph is not required.

(vii) Whether or not, during the last five years, such person was a party to a civil proceeding of a judicial or administrative body of competent jurisdiction and as a result of such proceeding was or is subject to a judgment, decree, or final order enjoining future violation of, or prohibiting activities subject to, federal or state securities laws, the Commodity Exchange Act, the Federal Home Loan Bank Act, the Home Owners' Loan Act, or the National Housing Act, or any federal or state banking laws or insurance laws, or finding any violation of such laws or finding any material violation of any other federal, state or foreign laws; and, if so, identify and describe such proceedings and summarize the terms of such judgment, decree, or final order; and

(A) *Instruction:* A negative answer to this paragraph is not required.

(viii) Citizenship(s).

(2) *Past contracts, transactions, or negotiations with the converting institution.*

(i) Briefly state the nature and approximate amount (in dollars) of any transaction, other than those described in paragraph (b)(2)(ii) of this section which has occurred since the commencement of the converting insured institution's third full fiscal year preceding the date of the proxy statement or offering circular, between the acquiring person or any of its affiliates and the converting insured institution or any of its affiliates.

(ii) Describe any contracts, negotiations, or transactions which have occurred since the commencement of the converting insured institution's third full fiscal year preceding the date of the proxy statement or offering circular between the acquiring person or its affiliates and the converting institution or its affiliates concerning a merger, consolidation, or acquisition; an election of directors; or a sale or other transfer of a material amount of assets.

(3) *Source and amount of funds or other consideration.* (i) State the source and the total amount of funds or other consideration for the purchase of the maximum number of shares of capital stock which the acquiring person proposes to acquire.

(ii) If all or any part of such funds or other consideration are, or are expected

to be, directly or indirectly, borrowed for the purpose of the acquisition:

(A) Provide a summary of each loan agreement or arrangement containing the identity of the parties, the term, the collateral, the stated and effective interest rates, and other material terms or conditions relative to such loan agreement; and

(B) Briefly describe any plans or arrangements to finance or repay such borrowings, or, if no such plans or arrangements have been made, make a statement to that effect.

(iii) If the source of all or any part of the funds to be used in the acquisition of control is a loan made in the ordinary course of business by a bank or association, the name of such bank or association need not be disclosed if the acquiring person so request in writing and files such request, naming such bank or association, with the Corporation, unless the bank or association is the converting institution or an affiliate of the converting institution.

(4) *Purpose of the acquisition of control and plans or proposals of the acquiring person.* State the purpose or purposes of the sale or acquisition of control. Describe any plans or proposals of the acquiring person or the converting insured institution which relate to or would result in:

(i) An extraordinary corporate transaction, such as a merger, reorganization, or liquidation, involving the converting institution or any of its subsidiaries;

(ii) Failure of the public shareholders to have voting rights or appraisal rights with respect to any such extraordinary corporate transaction;

(iii) A sale or transfer of a material amount of assets of the converting insured institution or any of its subsidiaries;

(iv) Any change in the present board of directors or management of the converting institution and any plans or proposals regarding continued employment or compensation of any of such persons;

(v) Any other material change in the converting insured institution's business;

(vi) Causing the converting insured institution's capital stock to fail to be authorized to be quoted in an interdealer quotation system of a registered national securities association; or

(vii) The capital stock of the converting insured institution becoming eligible for termination of registration pursuant to section 12(g)(4) of the Securities Exchange Act of 1934 after the expiration of the undertaking required by § 563b.3(c)(19)(i) of this Part.

(5) *Effect of sale-of-control conversion.* Briefly describe the effects of a sale-of-control conversion, including the following:

(i) A statement that, pursuant to the Board's regulations and as an alternative to the sale-of-control conversion, the converting insured institution could seek approval to convert to stock form in a manner that would prohibit the sale of control to any person and that conversion pursuant to such regulations might result in a wider distribution of the converting institution's capital stock and a more active trading market for such capital stock;

(ii) If the proxy statement is to be used by management to solicit proxies, a statement of why management is recommending approval of the sale-of-control conversion;

(iii) A statement that, in connection with a conversion not involving the sale of control, the subscription rights of eligible account holders, supplemental eligible account holders, and voting members would not be subordinated to the rights of the acquiring person to acquire capital stock of the converting institution; and

(iv) A statement that approval of the sale-of-control conversion may result in the converting institution not receiving other offers to acquire control of the converting institution on terms and conditions that might be more favorable to the converting institution and its members.

(6) *Contracts, arrangements, understandings, or relationships with respect to the converting institution's securities.* Describe any contract, arrangement, understanding, or relationship (whether or not legally enforceable) between the acquiring person or its affiliates and any person with respect to any securities of the converting insured institution naming the persons with whom such contracts, arrangements, understandings or relationships have been entered into and giving the material provisions thereof. Include such information for any of such securities that are pledged or otherwise subject to a contingency the occurrence of which would give another person the power to direct the voting or disposition of such securities, except that disclosure of standard default and similar provisions contained in loan agreements need not be included. State whether any of such contracts, arrangements, understandings, or relationships are in violation of § 563b.3(i) of this Part.

(7) *Persons retired, employed, or to be compensated.* Identify all persons and



classes of persons employed, retained, or to be compensated by the acquiring person, or by any person on the acquiring person's behalf, to make solicitations or recommendations in connection with the conversion, and describe briefly the terms of such employment, retainer, or arrangement for compensation.

(8) *Financial statements of the acquiring person.* (i) The following current financial statements shall be provided unless the sale-of-control plan of conversion requires the issuance of all of the capital stock of the converting institution to the acquiring person:

(A) where the acquiring person is other than a natural person, furnish the financial information concerning the acquiring person set forth in paragraph (f) of this paragraph (b)(8)(i); *Provided*, that if the acquiring person is controlled by another entity which is not a natural person and has been formed for the purpose of acquiring the shares of capital stock of the converting institution, furnish financial information concerning the controlling entity; and (B) where the acquiring person is a natural person, furnish the financial information set forth in paragraph (2) of this paragraph (b)(8)(i).

(j) *Income statement.*

Net sales and operating revenues and other revenues

Income before extraordinary items

Net income

Balance sheet (at end of period);

Working capital

Total assets

Total assets less deferred research and development charges and excess cost of assets acquired over book value

Total indebtedness

Shareholders' equity

Per share

Income per common share before extraordinary items

Extraordinary items

Net income per common share (and common share equivalents, if applicable)

Net income per share on a fully diluted basis

(2) *Statement of net worth.*

(ii) If the acquiring person is not subject to the periodic reporting requirements of the Securities Exchange Act of 1934, the financial statements required by this paragraph need not be audited if such audited financial statements are not available or obtainable without unreasonable cost or expense and a statement is made to that effect disclosing the reasons therefor.

(9) *Additional information.* If material to a decision by a member whether to

acquire shares of stock in the conversion, furnish information as to the following:

(i) Any present or proposed contracts, arrangements, understandings, or relationships between the acquiring person or any of its executive officers, directors, controlling persons or subsidiary affiliates or associates and the converting institution or any of its executive officers, directors, affiliates or associates (other than any contract, arrangement or understanding required to be disclosed pursuant to paragraphs (b) (2) and (6) of this section);

(ii) The applicability of anti-trust laws;

(iii) The applicability of Section 407(q) and 408 of the National Housing Act and the regulations promulgated thereunder; and

(iv) Such additional material information, if any, as may be necessary to make the required statement, in light of the circumstances under which they are made, not materially misleading.

#### § 563b.19 Additional requirements of sale-of-control application.

In addition to the information required by Form AC, an application for conversion in connection with a sale-of-control conversion shall include the following:

(a) Any stock purchase or other agreement between the converting insured institution and the acquiring person.

(b) Any loan agreement referred to in § 563b.16(b)(3) of this Part;

(c) Any document setting forth the terms of any contracts, arrangements, understandings, or relationships referred to in § 563b.18(b) (2) and (6) of this Part;

(d) All documents in the possession of the converting insured institution which set forth the material terms of any proposal received by the institution within one year preceding the date of the filing of the application for conversion, and thereafter until approval is received from the Corporation, relating to an acquisition of control of the converting insured institution in a conversion subject to this Subpart C which was rejected by management or the board of directors of the institution;

(e) A fairness opinion signed by persons independent of the converting association and the acquiring person, experienced and expert in the area of corporate appraisal and acceptable to the Corporation to the effect that the terms and conditions of the proposed conversion are fair and equitable to the converting insured institution and to its members;

(f) Information demonstrating to the satisfaction of the Corporation the independence and expertise of any person preparing the fairness opinion required by paragraph (e) of this section: *Provided*, that a person will not be considered as lacking independence for the reason that such person will participate in effecting a sale of capital stock under the plan of conversion or will receive a fee from the applicant for services rendered in connection with such opinion;

(g) Any notices which are required to be filed with the Corporation prior to the acquisition of control under § 563.18-2 of this Subchapter; and

(h) Any application for approvals of the Corporation which are required under Part 584 of this Subchapter as a result of the transaction contemplated by the plan of conversion.

#### Subpart C—Voluntary Supervisory Stock Conversions

##### § 563b.20 Scope of subpart.

Except as the Board may otherwise determine, the provisions of this Subpart shall govern the voluntary conversion of mutual insured institutions to capital stock insured institutions. A voluntary supervisory stock conversion is a conversion authorized or ordered by the Board pursuant to a Plan of Conversion adopted by majority vote of the board of directors of the converting insured institution. The determination to authorize or order a supervisory stock conversion shall be in the sole discretion of the Board.

##### § 563b.21 Supervisory stock conversions.

A supervisory conversion is the sale of a mutual insured institution's newly-issued capital stock to a third party or parties in a transaction in which the association members have no rights of approval or participation, and no rights to the continuance of any legal or beneficial ownership interest in the converted insured institution.

##### § 563b.22 Authorization of supervisory conversions.

The Board will consider authorizing or ordering a supervisory stock conversion if the insured institution files an application containing the information and documents specified in § 563b.27 of this Part, in accordance with the procedures specified in § 563b.28 of this Subpart, and meets the qualification standards specified in § 563b.23 of this Subpart. If the Board authorizes or orders a supervisory stock conversion, the conditions specified in § 563b.29 of this Part must be fulfilled, and the converted insured institution and the



purchaser or purchasers of its conversion stock must comply with the requirements of § 523b.30 of this Part.

**§ 563b.23 Qualification for supervisory conversion.**

The Board may in its discretion authorize, and in the case of a Federally-chartered insured institution, may in its discretion order, the supervisory stock conversion of an insured institution when: (a) as to a Federally-chartered insured institution, the Board has the power to appoint a receiver for the purpose of liquidation, or, as to a state-chartered insured institution, the Board would have the power to appoint a receiver for the purpose of liquidation were the institution Federally-chartered; (b) upon liquidation, there would be no equity value realizable by the mutual accountholders; (c) the insured institution is in receivership, or the Corporation has contracted to provide assistance to the insured institution under Section 406 of the National Housing Act, or the Board has determined that severe financial conditions exist which threaten the financial condition of the insured institution and that such authorization is likely to improve the financial condition of the insured institution; and (d) the insured institution would be a viable entity under § 563b.26 of this Part following the conversion.

**§ 563b.24 Power to appoint a receiver.**

(a) The existence of any of the grounds set forth in Section 5(d)(6)(A) of the Home Owners' Loan Act of 1933 for the appointment by the Board of a receiver for the purpose of liquidation shall satisfy the requirement of § 563b.23(a) of this Subpart.

(b) Insolvency may be found to exist under Section 5(d)(6)(A) of the Home Owners' Loan Act of 1933 for the purposes of this Subpart on either a book-value balance-sheet basis or a market-value balance-sheet basis. The finding of insolvency shall be based upon the conclusions of the Principal Supervisory Agent or his designee ("PSA"), with the concurrence of the Director of the Board's Office of Examinations and Supervision or his designee ("Director").

(1) The PSA shall base his conclusion that the insured institution is insolvent on a book-value balance-sheet basis on the insured institution's latest semi-annual report and the most current audited or unaudited financial information dated after the date of the semi-annual report, which shall be provided by the insured institution to the PSA.

(2) If the insured institution is not insolvent on a book-value balance-sheet basis, but is projected to be insolvent on such a basis in less than one year, and such projected insolvency is not reasonably reversible, the PSA may determine whether the insured institution is insolvent on a market-value balance-sheet basis. Interest-rate projections used by the PSA or his designee for the book-value balance-sheet insolvency projection shall be the most recent forecast provided by the Board's Office of Policy and Economic Research. The conclusion of the PSA that the institution is insolvent on a market-value balance-sheet basis must be based upon clearly identified assumptions with supporting justifications, and an insolvency analysis performed by the Quantitative Analysis Division of the Corporation.

**§ 563b.25 No equity value realizable upon liquidation.**

The finding that no value would be realizable upon liquidation by the members of the insured institution shall be based upon the conclusion of the PSA with the concurrence of the Director. The conclusion of the PSA shall be based upon a liquidation analysis performed by the Quantitative Analysis Division.

**§ 563b.26 Viability of converted insured institution.**

(a) An application of an insured institution to convert pursuant to this Subpart may be approved by the Board in its discretion if it finds that the insured institution will be a viable entity following conversion. For the purposes of this Subpart only, a converting insured institution may be deemed a viable entity if it is determined by the Board that the net worth of the insured institution after conversion would meet regulatory requirements and would be reasonably sufficient to absorb projected operating losses for a period of not less than three years after the date of completion of the conversion without the application of appraised equity capital or net worth certificates. The finding of viability shall be based upon the conclusion of the PSA with the concurrence of the Director.

(b) The determination of the PSA regarding the viability of the converting insured institution shall be based upon the most recent interest-rate forecast of the Office of Policy and Economic Research, the application of reasonable assumptions in the analysis of the insured institution's business plan required by § 563b.27(d) of this Part, relevant historical experience, and material tax consequences, if any, of the

conversion. If the proposed conversion stock purchaser or purchasers guarantee to maintain the insured institution's net worth in the amount required by § 563.13 of this Subchapter for a period of not less than three years after the date of completion of the conversion, the conclusion of the PSA shall be based upon the projected operating results of the insured institution over a three-year period and the financial capability of the purchaser or purchasers to maintain net-worth compliance.

**§ 563b.27 Application for supervisory stock conversion.**

An insured institution may apply for Board approval of a supervisory conversion pursuant to this Subpart by filing the following information and documents in accordance with the procedures specified in § 563b.28 of this Subpart:

(a) The plan of conversion ("Plan") adopted by the board of directors of the institution. The Plan shall contain at a minimum the name and address of the insured institution; the names and addresses of the proposed purchasers of conversion stock and their relationship to the insured institution; the title, per-unit par value, number, and per-unit and aggregate offering price of shares of conversion stock to be authorized and issued; the number and percentage of shares of conversion stock to be purchased by each investor; the aggregate number and percentage of shares of conversion stock to be purchased by directors, officers, or their associates (as defined in § 563b.2(a)(4) of this Part); the form of consideration to be paid for the conversion stock; and certified copies of all resolutions of the board of directors relating to the Plan.

(b) A copy of all supervisory stock conversion agreements between the insured institution and the proposed conversion stock purchaser(s).

(c) An opinion of qualified, independent counsel or an independent, certified public accountant regarding the tax consequences to the insured institution arising from the conversion, or an Internal Revenue Service ruling that the transaction qualifies as a tax-free reorganization, unless the proposed conversion stock purchaser(s) guarantee to maintain the insured institution's net worth in the amount required by § 563.13 of this Subchapter for a period of not less than three years from the date of completion of the conversion.

(d) The business plan, which shall contain a description of the proposed operating policies of the insured institution following the conversion, including a statement as to how the



conversion proceeds will be used, and a projection of the insured institution's results of operations for the three-year period following completion of the conversion. The insured institution shall specify the assumptions on which its projections are based.

(e) A savings and loan holding company application as required by § 584.4 of this Chapter or a Change-in-Control Act Notice as required by § 563.18-2 of this Subchapter, if applicable.

(f) The proposed charter and bylaws of the converted insured institution.

(g) The proposed stock certificate form.

(h) A description of all existing and proposed employment contracts.

(i) Resolutions of the board of directors of the institution regarding appraised equity capital as required by § 563b.32 of this Part, if applicable.

(j) All filings required under the securities offering rules of proposed 12 CFR Part 563g (48 FR 10684; March 14, 1983), or such final regulatory requirements on that subject as may be adopted by the Board.

#### § 563b.28 Procedural requirements.

(a) *Filing of supervisory conversion application.* An insured institution seeking to convert pursuant to this Subpart shall file an original and two copies of its supervisory conversion application containing the information and documents specified in § 563b.27 of this Part with the PSA and one copy with the Board's Office of Examinations and Supervision, Washington, D.C. The application shall be deemed to be filed on the date received by the PSA, provided that the copy required to be filed with the Office of Examinations and Supervision has been submitted by that date.

(b) *Incomplete application.* An application for supervisory stock conversion that does not contain all of the information and documents specified in § 563b.27 shall constitute an incomplete application, and the PSA shall continue to seek other appropriate supervisory resolutions of the institution's financial condition pending the filing of a complete application.

(c) *Termination or amendment of charter.* (1) Upon Board approval of a plan of supervisory stock conversion of a state-chartered insured institution or a Federally-chartered insured institution which is converting to a state-chartered stock insured institution, the charter of such insured institution shall terminate upon issuance to it of a stock charter under the laws of the state in which its home office is located. If such converting insured institution is a

Federally-chartered insured institution, its Federal charter shall be surrendered promptly to the Board for cancellation. An insured institution converting to a state-chartered stock insured institution shall promptly file with the Corporation a copy of the stock charter issued to it. The certificate of insurance of such insured institution shall be surrendered promptly to the Corporation for amendment or cancellation, and the Corporation shall promptly issue an amended or new certificate of insurance to the converted insured institution.

(2) A Federally-chartered mutual insured institution converting to a Federally-chartered stock insured institution shall apply to amend its charter and bylaws to read in the form of charter and bylaws for a Charter S or Charter T institution, whichever is appropriate. The effective date of such amendment shall be stated in the Board's resolution approving the conversion.

(3) The corporate existence of a Federally-chartered mutual insured institution converting to a Federally-chartered stock insured institution shall be deemed to be a continuation of the entity of the institution so converted. In the case of a Federally-chartered or a state-chartered mutual insured institution converting to a state-chartered stock insured institution, unless state law otherwise prescribes, the corporate existence of the converting mutual insured institution shall similarly not terminate and the converted stock insured institution shall be deemed to be a continuation of the entity of the insured institution so converted.

#### § 563b.29 Conditions of approval.

Board approval of a supervisory conversion application will be conditioned upon the following: (a) completion of the sale of conversion stock within a maximum of three months after the Board approves the application, or within such additional period as the General Counsel or his designee may for good cause grant; (b) compliance with all filing requirements of proposed 12 CFR Part 563g, or such final regulatory requirements on that subject as may be adopted by the Board; (c) submission of an opinion of independent legal counsel that all applicable state securities law requirements have been met in connection with the sale of the institution's conversion stock; (d) compliance with all applicable laws, rules, and regulations; and (e) satisfaction of any other requirement or condition the Board may impose.

#### § 563b.30 Sale of conversion stock.

Each insured institution that converts pursuant to this Subpart shall offer and sell its conversion stock pursuant to the requirements of proposed 12 CFR Part 563g, or such final regulatory requirements on that subject as may be adopted by the Board, and the offering and sale of the conversion stock must constitute a non-public offering under those provisions.

#### § 563b.31 Restrictions on payments of dividends.

An insured institution that converts pursuant to this Subpart shall be subject to the conditions set forth in § 563b.3(g) (2)(ii) and (3) of this Part.

#### § 563b.32 Treatment of appraised equity capital.

(a) In determining whether an insured institution qualifies for a supervisory conversion pursuant to this Subpart, the PSA shall not include appraised equity capital in the institution's regulatory net worth unless the institution has done so pursuant to § 563b.13(c) of this Subchapter.

(b) No insured institution which excludes appraised equity capital from its regulatory net worth shall convert pursuant to this Subpart unless resolutions of its board of directors containing the following information and evidencing approval thereof have been filed with the PSA:

(1) An estimate of the available amount of appraised equity capital under § 563.13(c) of this subchapter and the grounds on which the estimate is based; and

(2) A determination not to include the estimated available amount of appraised equity capital in the institution's regulatory net worth pursuant to § 563.13(c), if such inclusion would disqualify the institution for conversion pursuant to this Subpart, and the grounds on which the determination is based.

#### § 563b.33 Treatment of net worth certificates.

In determining whether an insured institution qualifies for a supervisory conversion pursuant to this Subpart, the PSA shall not include net worth certificates ("NWCs") in the institution's regulatory net worth other than outstanding NWCs issued in accordance with Part 572 of this Subchapter or NWCs which the Corporation is committed to purchase from the institution under § 572.1(c) of this Subchapter.



## Subpart D—Guidelines for Modified Conversions

### § 563b.34 Scope of subpart.

This Subpart establishes guidelines for modified conversions from the mutual to stock form authorized or ordered by the Board under Section 5(p) of the Home Owners' Loan Act of 1933. The provisions of this Subpart are not exclusive and the Board may waive or modify any provision in its sole discretion.

### § 563b.35 Purpose of subpart.

The purpose of this Subpart is to give guidance to insured institutions and potential acquirors of the stock of insured institutions regarding the qualification of insured institutions for a modified conversion under this Subpart, and guidance as to the extent to which the Board will permit, by means of a modified conversion, deviance from the substantive and procedural requirements adopted by the Board for standard conversions under Subpart A of this Part. The guidelines are intended to assist insured institutions and potential acquirors of insured institutions to develop proposals for submission to the Board in seeking the Board's approval for the filing of formal applications for modified conversions pursuant to § 563b.38 of this Subpart.

### § 563b.36 Guidelines for qualification.

(a) The Board may, in its discretion, find that an insured institution qualifies for a modified conversion when the following conditions have been met: (1) The insured institution has contracted to receive assistance from the Corporation under section 406 of the National Housing Act; or (2) the Board determines that (i) severe financial difficulties exist which threaten the stability of the insured institution, and (ii) the conversion to stock form is likely to improve the financial condition of the institution.

(b) The Board may, in its discretion, make the finding set forth in paragraph (a)(2)(i) of this section if: (1) the insured institution does not meet its regulatory net-worth requirement; (2) it has had negative net income, under generally accepted accounting principles, for (i) its last three fiscal quarters, if it has more than two percent net worth; (ii) for two of its last three fiscal quarters, if it has more than one percent net worth; or (iii) one of its last three fiscal quarters, if it has less than one percent net worth; (3) it is demonstrated to the Board's satisfaction that (i) the net proceeds of the sale of conversion stock by the insured institution pursuant to an appraised valuation under Subpart A of

this Part would not be sufficient to enable the insured institution to meet its net-worth requirement; or (ii) the net proceeds would not be sufficient to reasonably ensure the financial safety and soundness of the insured institution; or (iii) there would not be a reasonable likelihood that the insured institution could market its stock in a conversion undertaken pursuant to Subpart A of this Part.

### § 563b.37 Substantive guidelines.

(a) All of the provisions of Subpart A and Subpart B of this Part shall apply to a conversion undertaken pursuant to this Subpart unless clearly inapplicable.

(b) The Board may order the conversion to the stock form of a Federally-chartered insured institution under this Subpart without the consent of the institution's members or its board of directors.

(c) The Board may authorize the conversion to the stock form of a state-charter insured institution under this Subpart upon the filing of an application approved by resolution of the majority of the board of directors of the institution, but neither the Board nor the institution would be required to secure the prior approval of the institution's members to the conversion.

(d) An insured institution that has converted to the stock form pursuant to this Subpart is required to establish a liquidation account on behalf of the institution's members as required under § 563b.3(f) of this Part.

(e) An insured institution converting under this Subpart is not required to sell its conversion stock for an amount determined pursuant to an independent appraisal as required in Subpart A and Subpart B of this Part.

(f) The Board may, in its discretion, approve an application for conversion pursuant to this Subpart if it is demonstrated to the Board's satisfaction, through a detailed submission prepared by an independent investment banking firm or other qualified person, that the net capital to be received from the sale by the converting insured institution of its capital stock pursuant to this Subpart: (1) would bring the insured institution into regulatory net-worth compliance, on the basis of generally accepted accounting principles, and (2) would be reasonably sufficient to ensure the financial safety and soundness of the insured institution.

(g) The eligible accountholders, the supplemental eligible accountholders, and the voting members of the insured institution converting pursuant to this Subpart shall be granted subscription rights to purchase all of the stock

proposed to be issued by the insured institution, in accordance with the rules and regulations of Subpart A of this Part.

### § 563b.38 Acceptance of test-case applications.

(a) The Board will accept applications under this Subpart D on a test-case basis.

(b) No application may be filed under this Subpart D without the prior written approval of the Corporation.

(c) *Delegation of authority.* The Board delegates to the General Counsel or his designee the authority of the Board under this section.

(Secs. 402, 403, 407, Stat. 1256, 1257, 1260, as amended; 12 U.S.C. 1725, 1726, 1730; Sec. 5, 48 Stat. 132, as amended; 12 U.S.C. 1464; Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR 1943-48 Comp., p. 1071)

By the Federal Home Loan Bank Board.

J. J. Finn,  
Secretary.

[FR Doc. 83-0409 Filed 4-11-83; 8:45 am]

BILLING CODE 6720-01-M

## CIVIL AERONAUTICS BOARD

### 14 CFR Part 389

[Organization Reg. Amdt. No. 33 to Part 389; Reg. OR-210]

### Fees and Charges for Special Services

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

**SUMMARY:** The CAB is setting a new fee category on its filing fee schedule. It has found that there are a significant number of requests for exemption from the need to obtain approval for acquisitions of control of air carriers. These requests are primarily for the benefit of the applicant, who should be charged a fee. By setting a fee for this category, the Board will remove the uncertainty from the determination of what fee should be charged.

### DATES:

Effective: April 7, 1983.

Adopted: April 12, 1983.

**FOR FURTHER INFORMATION CONTACT:** Joseph A. Brooks, Office of the General Counsel, 202-673-5442 or Betsy Wolf, Competition Maintenance Division, 202-673-5915, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428.

**SUPPLEMENTARY INFORMATION:** The Board's fees for filing applications and documents that primarily benefit the applicant are set forth in 14 CFR Part 389. The standards by which the Board



set those fees are set forth in OR-204 (48 FR 635, January 6, 1983) and in Docket 30586.

Section 408 of the Federal Aviation Act of 1958, as amended, requires, among other things, prior Board approval of certain acquisitions of control involving U.S. and foreign air carriers. Persons often ask for exemption from that prior approval requirement for transactions that present no novel or material issue of law or fact. The grant of an exemption enables them to proceed with a transaction as quickly as possible, avoiding time-consuming hearings and other government procedures. The Board thus finds that such exemption requests are primarily for the benefit of the applicant.

The application is filed in the Docket Section, processed, and then sent to the Competition Maintenance Division for initial analysis. The time for the initial analysis is 15 staff hours. By using the formula developed in OR-204, the Board sets the fee for this application at \$371.

Because this amendment only makes a minor change in the Board's fees, setting up a new fee category that amounts to a lowering of costs to the public, the Board finds that notice and public comment are unnecessary. Further, because this rule relieves a burden on those filing a waiver request by reducing the possible fee that could be charged from \$1080 to \$371, the Board finds good cause to make this rule effective upon publication in the Federal Register.

#### List of Subjects in Part 389

Archives and records.

Accordingly, the Civil Aeronautics Board amends 14 CFR Part 389, *Fees and Charges for Special Services*, as follows:

#### PART 389—[AMENDED]

##### 1. The authority for Part 389 is:

Authority: Secs. 204, 1002, Pub. L. 85-726, as amended, 72 Stat. 743, 797; 49 U.S.C. 1324, 1502. Act of August 3, 1951, Ch. 376, 65 Stat. 268; 31 U.S.C. 483a.

2. The fee schedule in § 389.25 is amended by adding a category number 47a after number 47 under the title, *Other (U.S. and foreign air carriers)* to read:

##### § 389.25 Schedule of processing fees.

*Other (U.S. and Foreign Air Carriers)*

47 Merger or Acquisition of Control, 1080

—47a Exemption request, 371

By the Civil Aeronautics Board.  
Phyllis T. Kaylor,  
Secretary.

[FR Doc. 83-9619 Filed 4-11-83; 8:45 am]  
BILLING CODE 6320-01-M

## DEPARTMENT OF LABOR

### Employment and Training Administration

#### 20 CFR Parts 651 and 654

#### Preference in Federal Procurement for Labor Surplus Areas Under Executive Orders 12073 and 10582

AGENCY: Employment and Training Administration, Labor.

ACTION: Final rule.

**SUMMARY:** The Department of Labor is modifying its regulations for classifying labor surplus areas under Executive Order 12073 and areas of substantial unemployment under Executive Order 10582 in order to change the date of the annual listing of labor surplus areas so that the annual listing will be effective on a fiscal-year basis, to delete references to Defense Manpower Policy No. 4A (DMP-4A), and to revise the complaint procedures.

**EFFECTIVE DATE:** June 1, 1983.

#### FOR FURTHER INFORMATION CONTACT:

Richard C. Gilliland, Director, U.S. Employment Service, 601 D Street, N.W., Washington, D.C. 20213—(202) 376-6289.

**SUPPLEMENTARY INFORMATION:** The purpose in designating labor surplus areas is to encourage the purchase of goods and services by the Federal Government and the placement of Federal facilities in areas of high unemployment. Under Executive Orders 12073 and 10582, the Secretary of Labor is required to classify labor surplus areas and disseminate this information for the use of all Federal agencies in directing procurement activity and locating new plants or facilities. Employers who agree to perform most of the work in labor surplus areas are eligible for preference in the award of procurement contracts and grants, and the execution of agreements.

The Department of Labor (Department), in this document, amends the regulations for classifying labor surplus areas, to conform the effective date of the annual listing of labor surplus areas to the fiscal year, to delete references to Defense Manpower Policy No. 4A (DMP-4A), and to revise the complaint procedures.

The Department published the proposed amendments for comment on June 1, 1982 (47 FR 23754), with a 30-day

comment period. Only one comment was received during this period, recommending that the Department publish the labor surplus areas by zip code. After serious consideration, it was decided not to amend the rule. Zip code boundaries do not coincide with the boundaries of the civil jurisdictions comprising the labor surplus areas.

The current regulations for classifying labor surplus areas in 20 CFR Part 654, Subparts A and B, establish June 1 as the annual date of the eligibility determinations. In order to make the annual listing conform to the fiscal year period, the Department of Labor is amending its regulations to change the annual date of the eligibility determinations to October 1. The amendment simplifies procurement planning by Federal staff and by contractors. The change will become effective October 1, 1983, and will require extending the current listing for four months beyond its scheduled expiration date of May 31, 1983. Under the modifications, the current listing will remain in effect through September 30, 1983, when it will be replaced by the next annual listing of labor surplus areas on October 1, 1983.

Prior to June 23, 1980, the Secretary of Labor had certain duties pursuant to the Federal Emergency Management Agency's Defense Manpower Policy No. 4A (DMP-4A, 32A CFR Part 134, 1979). Effective June 23, 1980, DMP-4A was replaced by DMP-4B in order to recognize Executive Order 12073 and to preserve the mobilization aspects of the labor surplus area program (45 FR 344884, May 23, 1980). Although specific responsibilities had been assigned to the Secretary of Labor under DMP-4A, those responsibilities were not carried over to DMP-4B. Accordingly, the Department of Labor is deleting all references to DMP-4A in its regulations for classifying labor surplus areas.

Section 654.5(b) of the Department's regulations for classifying labor surplus areas indicates that until the end of Fiscal Year 1981, Current Population Survey (CPS) data would be used in classifying civil jurisdictions within those standard metropolitan statistical areas and for central cities for which CPS data were used to determine annual unemployment data prior to January 1, 1978. With the expiration of Fiscal Year 1981, the current § 654.5(b) is being deleted.

Modifications are also being made to § 654.9, concerning the filing of Employment Service-related complaints, in order to reflect the fact that the classification of labor surplus areas no longer involves the Department of



Labor's Regional Offices but is done exclusively in the Department's National Office. As a result, the complaint procedure is being modified to have complaints sent directly to the Assistant Secretary for Employment and Training rather than to a Department of Labor Regional Office. Other minor technical, editorial, and clarifying amendments are made as well.

At the time the proposed rule was published, it was certified, pursuant to 5 U.S.C. 605(b), that the changes would not have significant impact on a substantial number of small entities. The financial and other impact of this regulation is less than specified in Section 1(b) of Executive Order 12291 (46 FR 13193), for designation as a major rule which requires a regulatory impact analysis. Therefore, a regulatory analysis was not prepared for this final rule.

Authority: 41 U.S.C. 10a *et seq.* (29 U.S.C. 49 *et seq.*); E.O. 12073; E.O. 10562, as amended by E.O. 11051 and 12148.

#### List of Subjects

20 CFR Part 651

Employment, labor.

20 CFR Part 654

Agriculture, Employment, Government procurement, Housing standards, Labor, Migrant labor, Unemployment.

#### Final Rule

Part 651 and Part 654, Subparts A and B, of Chapter V of Title 20, Code of Federal Regulations are amended as follows:

### PART 651—GENERAL PROVISIONS GOVERNING THE FEDERAL-STATE EMPLOYMENT SERVICE SYSTEM

#### § 651.9 [Amended]

1. The table of contents for Part 654, Subpart A, in § 651.9, "Consolidated Table of Contents for Parts 651-658," is amended by deleting the reference to "654.2 Description of DMP-4A," by adding a reference to "654.10 Transition provision," and by revising the heading for Subpart A to read "Subpart A—Responsibilities Under Executive Order 12073."

### PART 654—SPECIAL RESPONSIBILITIES OF THE EMPLOYMENT SERVICE SYSTEM

2. The heading for Subpart A of Part 654 is revised to read as set forth.

### Subpart A—Responsibilities Under Executive Order 12073

#### § 654.1 [Amended]

3. Section 654.1 is amended by removing from the first sentence therein the phrase "Defense Manpower Policy No. 4A of the Federal Preparedness Agency, General Services Administration (32A CFR Part 134—Preservation of the Mobilization Base Through the Placement of Procurement and Facilities in Labor Surplus Areas (DMP-4A), and".

#### § 654.2 [Removed]

4. Section 654.2 is removed.

#### § 654.3 [Amended]

5. Section 654.3 is amended by removing from the first sentence therein the word "also."

#### § 654.4 [Amended]

6. Section 654.4 is amended as follows:

- In paragraph (a)(3) the period after the word "above" is removed and "; or" inserted in lieu thereof.
- In paragraph (a)(4) the period after the parenthetical phrase is removed and "; or" inserted in lieu thereof.
- In paragraph (c) the words, "for the purpose of Defense Manpower Policy No. 4A" are removed.
- In paragraph (d) the date "June 1" is removed and the date "October 1" inserted in lieu thereof.

7. Section 654.5 is revised to read as follows:

7. Section 654.5 is revised to read as follows:

7. Section 654.5 is revised to read as follows:

#### § 654.5 Classification of labor surplus areas.

(a) *Basic criteria.* The Assistant Secretary shall classify a civil jurisdiction as a labor surplus area whenever, as determined by the Bureau of Labor Statistics, the average unemployment rate for all civilian workers in the civil jurisdiction for the reference period is (1) 120 percent of the national average unemployment rate for civilian workers or higher for the reference period as determined by the Bureau of Labor Statistics, or (2) 10 percent or higher. No civil jurisdiction shall be classified as a labor surplus area if the average unemployment rate for all civilian workers for the reference period is less than 6.0 percent.

(b) *Criteria for exceptional circumstances.* The Assistant Secretary, upon petition submitted by the appropriate State employment security agency, may classify a civil jurisdiction as a labor surplus area without regard to the unemployment rate for all civilian workers for the reference period, whenever the civil jurisdiction meets or is expected to meet the unemployment tests established under § 654.5(a) as a

result of exceptional circumstances. For purposes of this paragraph, "exceptional circumstances" shall mean catastrophic events, such as natural disasters, plant closings, and contract cancellations expected to have a long-term impact on labor market area conditions, discounting temporary or seasonal factors.

#### § 654.6 [Amended]

8. Section 654.6 is amended by removing from paragraph (a) the words "and (b)"; and by removing from paragraph (b) the citation "§ 654.5(c)" and inserting in lieu thereof the citation "§ 654.5(b)".

#### § 654.7 [Amended]

9. Section 654.7 is amended by inserting at the end thereof the following sentence: "The Assistant Secretary periodically may cause these lists to be published in the Federal Register."

#### § 654.8 [Amended]

10. Section 654.8 is amended by removing from the introductory language the words "Defense Manpower Policy No. 4A," and inserting in lieu thereof the words "Executive Order 12073".

11. Section 654.9 is revised to read as follows:

#### § 654.9 Filing of complaints.

Complaints alleging that the Department of Labor has violated the labor surplus area regulations should be mailed to the Assistant Secretary for Employment and Training, U.S. Department of Labor, Washington, D.C. 20210. Such complaints should include: (a) The allegations of wrongdoing; (b) the date of the incident; and (c) any other relevant information available to the complainant. The Assistant Secretary shall make a determination and respond to the complainant after investigation of the incident. If the complaint is not resolved following this investigation, the Assistant Secretary, at his discretion, may offer, in writing by certified mail, the complainant a hearing before a Department of Labor Administrative Law Judge, provided that the complainant requests such a hearing from the Assistant Secretary within 20 working days of the certified date of receipt of the Assistant Secretary's offer of a hearing.

12. A new § 654.10 is added, to read as follows:

#### § 654.10 Transition provisions.

The annual list of labor surplus areas for the period June 1, 1982, through May 31, 1983, shall be extended through September 30, 1983.



13. Section 654.14 is revised to read as follows:

**§ 654.14 Filing of complaints.**

Complaints arising under Subpart B of this part alleging that the Department of Labor has violated the labor surplus area regulations shall be made pursuant to the procedures set forth at § 654.9 of this part.

Signed at Washington, D.C., this 6th day of April, 1983.

Albert Angrisani,

Assistant Secretary of Labor.

[FR Doc. 83-0431 Filed 4-11-83; 8:45 am]

BILLING CODE 4510-30-M

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**21 CFR Parts 175 and 178**

[Docket No. 82F-0267]

**Indirect Food Additives: Adhesive Coatings and Components; Adjuvants, Production Aids, and Sanitizers**

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of 4-[[4,6-bis(octylthio)-s-triazin-2-yl]amino]-2,6-di-*tert*-butylphenol as a component of adhesives and pressure-sensitive adhesives. This action responds to a petition filed by the Ciba-Geigy Corp.

**DATES:** Effective April 12, 1983; objections by May 12, 1983.

**ADDRESS:** Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Rudolph Harris, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St., SW., Washington, DC 20204, 202-472-5690.

**SUPPLEMENTARY INFORMATION:** In a notice published in the Federal Register of October 1, 1982 (47 FR 43425), FDA announced that a food additive petition (FAP 2B3644) had been filed by the Ciba-Geigy Corp., Hawthorne, NY 10532, proposing that § 175.105 Adhesives (21 CFR 175.105), § 175.125 Pressure-sensitive adhesives (21 CFR 175.125), and § 178.2010 Antioxidants and/or stabilizers for polymers (21 CFR 178.2010) be amended to provide for the safe use of 4-[[4,6-bis(octylthio)-s-triazin-2-yl]amino]-2,6-di-*tert*-

butylphenol as a component of adhesives and pressure-sensitive adhesives.

FDA has evaluated the data in the petition and other relevant material and concludes that the proposed food additive use is safe and that the regulations should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Bureau of Foods (address above) by appointment with the information contact person listed above. As provided in § 171.1(h)(2) (21 CFR 171.1(h)(2)), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has previously considered the potential environmental effects of this regulation as announced in the notice of filing published in the Federal Register. No new information or comments have been received that would alter the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above), between 9 a.m. and 4 p.m., Monday through Friday.

**List of Subjects**

**21 CFR Part 175**

Adhesives, Food additives, Food packaging.

**21 CFR Part 178**

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Bureau of Foods (21 CFR 5.61 as revised February 4, 1983; 48 FR 5251), Parts 175 and 178 are amended as follows:

**PART 175—INDIRECT FOOD ADDITIVES: ADHESIVE COATINGS AND COMPONENTS**

**1. Part 175 is amended:**

a. In § 175.105(c)(5) by alphabetically inserting a new item in the list of substances, to read as follows:

**§ 175.105 Adhesives.**

(c) \* \* \*

(5) \* \* \*

Substance	Limitations
4-[[4,6-bis(octylthio)-s-triazin-2-yl]amino]-2,6-di- <i>tert</i> -butylphenol (CAS Reg. No. 991-84-4).	

b. In § 175.125 by adding new paragraph (a)(6) and by revising paragraph (b)(1), to read as follows:

**§ 175.125 Pressure-sensitive adhesives.**

(a) \* \* \*

(6) 4-[[4,6-bis(octylthio)-s-triazin-2-yl]amino]-2,6-di-*tert*-butylphenol (CAS Reg. No. 991-84-4) as an antioxidant/stabilizer at a level not to exceed 1.5 percent by weight of the finished pressure-sensitive adhesive.

(b) \* \* \*

(1) Substances listed in paragraph (a)(1), (2), (3), (5), and (6) of this section, and those substances prescribed by paragraph (a)(4) of this section that are not identified in paragraph (b)(2) of this section.

**PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS**

2. Part 178 is amended in § 178.2010(b) by adding the third item in the list of limitations for "4-[[4,6-bis(octylthio)-s-triazin-2-yl]amino]-2,6-di-*tert*-butylphenol", to read as follows:

**§ 178.2010 Antioxidants and/or stabilizers for polymers.**

(b) \* \* \*

Substance	Limitations
4-[[4,6-bis(octylthio)-s-triazin-2-yl]amino]-2,6-di- <i>tert</i> -butylphenol (CAS Reg. No. 991-84-4).	For use only: * * *
	3. In adhesives complying with § 175.105 of this chapter; and in pressure-sensitive adhesives complying with § 175.125 of this chapter, subject to the limitations noted in that section.

Any person who will be adversely affected by the foregoing regulation may at any time on or before May 12, 1983, submit to the Dockets Management Branch (address above) written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each