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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 3, 4, 11, 16, 19, 23, 26, 32, 108, 112, 141, 160, 161, 163, and 192

[Docket ID OCC-2018-0041]

RIN 1557-AE21

Employment Contracts, Mutual to Stock Conversions, Technical Amendments

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The OCC seeks comment on a proposed rule that would implement changes recommended in the March 2017 Economic Growth and Regulatory Paperwork Reduction Act report, including the repeal of the OCC’s employment contract rule for Federal savings associations, and amend the OCC’s fiduciary rules. The proposed rule also would amend the OCC’s rule for conversions from mutual to stock form of a savings association to reduce burden, increase flexibility, and update cross-references. Additionally, the proposed rule would update cross-references to repealed and integrated rules, remove unnecessary definitions, and make technical changes to other OCC rules.

DATES: Comments must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

ADDRESSES: Commenters are encouraged to submit comments through the Federal eRulemaking Portal or e-mail, if possible. Please use the title “Employment Contracts, Mutual

to Stock Conversions, Technical Amendments” to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- Federal eRulemaking Portal – Regulations.gov Classic or Regulations.gov Beta
Regulations.gov Classic: go to <https://www.regulations.gov/>. Enter “Docket ID OCC-2018-0041” in the Search Box and click “Search.” Click on “Comment Now” to submit public comments. For help with submitting effective comments please click on “View Commenter’s Checklist.” Click on the “Help” tab on the Regulations.gov home page to get information on using Regulations.gov, including instructions for submitting public comments.
Regulations.gov Beta: go to <https://beta.regulations.gov/> or click “Visit New Regulations.gov Site” from the Regulations.gov Classic homepage. Enter “Docket ID OCC-2018-0041” in the Search Box and click “Search.” Public comments can be submitted via the “Comment” box below the displayed document information or by clicking on the document title and then clicking the “Comment” box on the top-left side of the screen. For help with submitting effective comments please click on “Commenter’s Checklist.” For assistance with the Regulations.gov Beta site, please call (877)-378-5457 (toll free) or (703) 454-9859 Monday-Friday, 9am-5pm ET or e-mail regulations@erulemakinghelpdesk.com.

- E-mail: regs.comments@occ.treas.gov.
- Mail: Chief Counsel’s Office, Attention: Comment Processing, Office of the Comptroller of the Currency, 400 7th Street, SW., suite 3E-218, Washington, DC 20219.
- Hand Delivery/Courier: 400 7th Street, SW., suite 3E-218, Washington, DC 20219.
- Fax: (571) 465-4326.

Instructions: You must include “OCC” as the agency name and “Docket ID OCC-2018-0041” in your comment. In general, the OCC will enter all comments received into the docket and publish the comments on the Regulations.gov website without change, including any business or personal information provided such as name and address information, e-mail addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this rulemaking action by any of the following methods:

- Viewing Comments Electronically – Regulations.gov Classic or Regulations.gov

Beta

Regulations.gov Classic: go to <https://www.regulations.gov/>. Enter “Docket ID OCC-2018-0041” in the Search box and click “Search.” Click on “Open Docket Folder” on the right side of the screen. Comments and supporting materials can be viewed and filtered by clicking on “View all documents and comments in this docket” and then using the filtering tools on the left side of the screen. Click on the “Help” tab on the Regulations.gov home page to get information on using Regulations.gov. The docket may be viewed after the close of the comment period in the same manner as during the comment period.

Regulations.gov Beta: go to <https://beta.regulations.gov/> or click “Visit New Regulations.gov Site” from the Regulations.gov Classic homepage. Enter “Docket ID OCC-2018-0041” in the Search Box and click “Search.” Click on the “Comments” tab. Comments can be viewed and filtered by clicking on the “Sort By” drop-down on the right side of the screen or the “Refine

Results” options on the left side of the screen. Supporting materials can be viewed by clicking on the “Documents” tab and filtered by clicking on the “Sort By” drop-down on the right side of the screen or the “Refine Results” options on the left side of the screen.” For assistance with the Regulations.gov Beta site please call (877)-378-5457 (toll free) or (703) 454-9859 Monday-Friday, 9am-5pm ET or e-mail regulations@erulemakinghelpdesk.com.

The docket may be viewed after the close of the comment period in the same manner as during the comment period.

- Viewing Comments Personally: You may personally inspect comments at the OCC, 400 7th Street, SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649-6700 or, for persons who are deaf or hearing impaired, TTY, (202) 649-5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect comments.

FOR FURTHER INFORMATION CONTACT: For additional information, contact Charlotte Bahin, Senior Advisor for Thrift Supervision, (202) 649-6281, Marta Stewart-Bates, Senior Attorney, (202) 649-5490, Chief Counsel’s Office, for persons who are deaf or hearing impaired, TTY, (202) 649-5597, Office of the Comptroller of the Currency, 400 7th Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

I. Background

The OCC continually reviews its regulations with the goal of updating them to reduce burden, increase flexibility, and provide clarity where possible. Section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA) requires that, at least once

every 10 years, the Federal Financial Institutions Examination Council (FFIEC) and each appropriate Federal banking agency (Agencies) represented on the FFIEC (the OCC, the Federal Deposit Insurance Corporation (FDIC), and the Board of Governors of the Federal Reserve System (Federal Reserve Board)) conduct a review of their regulations.¹ The purpose of this review is to identify outdated or otherwise unnecessary regulatory requirements imposed on insured depository institutions. Specifically, EGRPRA requires the Agencies to categorize and publish their regulations for comment, requesting commenters to identify areas of the regulations that are outdated, unnecessary, or unduly burdensome, and eliminate unnecessary regulations to the extent that such action is appropriate. The Agencies completed their second EGRPRA review on March 30, 2017, and published a Report to Congress in the **Federal Register**.² The OCC seeks comment on a proposed rule that addresses recommendations from the March 2017 EGRPRA report, including the repeal of 12 CFR 163.39 (Federal savings association employment contracts) and possible amendments to 12 CFR 9.8 and 150.420 (fiduciary recordkeeping) and 9.10 and 150.320 (acceptable collateral for fiduciary funds awaiting investment or distribution).³

The proposed rule would amend part 192 (Federal savings association conversions from mutual to stock form) to reduce burden, increase flexibility, and replace cross-references to repealed 12 CFR 197 (Securities offerings rules for Federal savings associations) with cross-references to part 16 (Securities offering disclosure rules). The proposed amendments would clarify which forms and accounting standards savings associations must use in connection with a part 192 conversion. The proposed rule also would increase flexibility and reduce burden for

¹ Section 2222 of EGRPRA is codified at 12 U.S.C. 3311(b).

² 82 FR 15900 (March 30, 2017).

³ See FFIEC Joint Report to Congress (March 2017), available at https://www.ffiec.gov/pdf/2017_FFIEC_EGRPRA_Joint-Report_to_Congress.pdf.

Federal savings associations by encouraging electronic filing, electronic meetings, and notice by e-mail and by reducing the number of copies of proxy materials that must be filed with the OCC.

Finally, the proposed rule contains various technical and clarifying amendments to parts 3, 4, 11, 16, 19, 23, 26, 32, 108, 112, 141, 160, 161, and 163.

II. Description of the Proposal

Employment Contracts for Federal Savings Associations.

Twelve CFR 163.39 sets forth requirements for Federal savings associations that enter into employment contracts with their officers and employees. Section 163.39(a) requires a Federal savings association's board of directors to approve all employment contracts with its officers and other employees and for those employment contracts to be in writing. Section 163.39(a) also prohibits a Federal savings association from entering into an employment contract with any of its officers or other employees if the employment contract would constitute an unsafe or unsound practice. Section 163.39(b) sets forth provisions that a Federal savings association must include in the contract, including the Federal savings association's right to terminate the employee at will. There are no similar requirements for national banks.

In March 2017, the FFIEC made its Joint Report to Congress under EGRPRA. One EGRPRA commenter recommended that the OCC eliminate § 163.39 in its entirety because the regulation only applies to Federal savings associations and there is no reason to distinguish Federal savings associations from national banks. Additionally, the commenter stated that it is unnecessary to require board approval of all employment contracts because there are comprehensive safety and soundness standards and interagency guidance on compensation. In the EGRPRA report, the OCC described the plan to limit the requirement for board approval of employment contracts to senior executive officers rather than all employees.

Instead of limiting the scope of § 163.39 in the proposed rule to senior executive officers, the OCC proposes to eliminate § 163.39 in its entirety. This approach would provide for consistent treatment of Federal savings associations and national banks with respect to employment contracts and compensation. The OCC believes that the current framework of rules and guidance on compensation and employment contracts, independent of § 163.39, is adequate to address and safeguard against unsafe and unsound employment and compensation practices for Federal savings associations. Federal savings associations, like national banks, are subject to the safety and soundness standards of 12 U.S.C. 1818; 12 CFR part 30, the prohibition on unsafe and unsound compensation in appendix A to part 30; the prompt corrective action restrictions on compensation to senior executive officers in 12 CFR 6.6(a)(3) and section 38 of the Federal Deposit Insurance Act (FDIA); and are informed by the 2010 Interagency Guidance on Sound Incentive Compensation Policies. Moreover, the boards of directors at national banks and Federal savings associations have oversight responsibilities for compensation, benefits arrangements, and employment contracts for their executive officers and employees.

The proposed rule also would reduce burden and increase flexibility for Federal savings associations by eliminating the requirement for written contracts that must be approved by the board of directors, although Federal savings associations would not be prohibited from voluntarily using those procedures for their employment contracts. It is a good corporate governance practice to have agreements relating to employment and compensation in writing and that the board, or committee thereof, review and approve those agreements. The proposed repeal of § 163.39 would not alter any other obligation with regard to employment agreements entered into by a Federal savings association. For example, if there are other laws and regulations that

apply to Federal savings associations regarding employment contracts, the repeal of § 163.39 does not affect the application of those laws.

The OCC invites comment on whether the OCC should repeal all of § 163.39 or whether there are advantages to retaining the provisions of the rule that provide that an officer or employee has no right to receive compensation or other benefits after termination for cause. Do the safety and soundness standards in part 30, the prohibition on unsafe and unsound compensation in appendix A to part 30, the 2010 Interagency Guidance on Sound Incentive Compensation Policies, board of directors' oversight, and the prompt corrective action restrictions on compensation to senior executive officers provide appropriate safeguards regarding employment and compensation for the officers and employees of Federal savings associations? Would the repeal of § 163.39 reduce burden for Federal savings associations by removing the requirement that employment contracts be in writing and approved by the board? Would the repeal of § 163.39 reduce burden or provide flexibility for Federal savings associations for other reasons?

Fiduciary Recordkeeping.

Part 9 sets forth the standards that apply to the fiduciary activities of national banks. Part 150 sets forth the standards that apply to the fiduciary activities of Federal savings associations. Sections 9.8 and 150.420 contain requirements for the documentation and retention of records for fiduciary accounts at national banks and Federal savings associations, respectively. Sections 9.8(b) and 150.420 require a national bank and Federal savings association to retain fiduciary account records for a period of three years from the later of the termination of the account or the termination of any litigation relating to the account. An EGRPRA commenter recommended that the OCC amend 12 CFR 9.8(b) to require the retention of documents for a "necessary period" or

to refer to applicable State law on the retention of documents, instead of the current three-year requirement. The commenter explained that three years may be inadequate to protect beneficiaries in some situations, such as a suit filed by a beneficiary against a predecessor trustee more than three years after an account is closed but before a State statute of limitations has run. In the EGRPRA report, the OCC agreed to consider aligning this retention requirement with State statutes of limitation.⁴

To address this comment, one option would be to amend §§ 9.8(b) and 150.420 to require a national bank or Federal savings association to retain fiduciary account records for the later of three years from the termination of an account, three years from the termination of any litigation relating to the account, or the minimum period required by applicable fiduciary State law. A concern with this approach is that it would impose additional burden on national banks and Federal savings associations if it increases the number of years an institution would be required to retain records and may also require institutions to monitor changes to states' fiduciary laws.

Another option would be to decline to amend §§ 9.8(b) and 150.420, after having considered the burden related to aligning this regulation's existing three-year documentation and record retention requirement with applicable State fiduciary law. The OCC notes that nothing in §§ 9.8(b) or 150.420 prohibits financial institutions from holding fiduciary account records longer than the three-year period in order to comply with State law. The OCC invites comment on these options for §§ 9.8(b) and 150.420.

Acceptable Collateral for Self-Deposited Trust Funds.

Under 12 U.S.C. 92a(d) and 12 CFR 9.10(b)(1), a national bank may deposit trust funds awaiting investment or distribution in the commercial, savings, or other department of the bank,

⁴ EGRPRA Joint Report to Congress at p. 71, available at https://www.ffiec.gov/pdf/2017_FFIEC_EGRPRA_Joint-Report_to_Congress.pdf.

unless prohibited by applicable law. To the extent the funds are not insured by the Federal Deposit Insurance Corporation (FDIC), the national bank must set aside U.S. bonds or other securities and assets designated by the OCC as collateral for the deposit. Sections 9.10(b)(2) and 150.320 list acceptable collateral types for national banks and Federal savings associations, respectively. During the notice and comment period for the EGRPRA report, one commenter suggested an expansion of the § 9.10(b)(2) list of acceptable collateral for fiduciary funds to allow for other instruments that provide similar protection from loss. In response to this comment, the OCC is contemplating expanding the list of acceptable collateral.

The OCC requests comment on whether to expand the list of acceptable collateral in §§ 9.10(b)(2) and 150.320 to include additional types of instruments. What other instruments should qualify as acceptable collateral and why? Do these instruments provide sufficient protection from loss to qualify as acceptable collateral under § 9.10(b)(2) and 150.320?

Amendments to securities offering disclosure rules.

Twelve CFR 16.8 provides an exemption from the registration and prospectus requirements for offers and sales of national bank- or Federal savings association-issued securities that satisfy the requirements of SEC Regulation A (17 CFR part 230) (General rules and regulations, Securities Act of 1933). The SEC's Form 1-A, the offering statement required by Regulation A, requires audited financial statements for certain offerings. However, a national bank or Federal savings association in organization does not have an operating history and cannot generate detailed financial statements that require an audit. The audited financial statements of a national bank or Federal savings association in organization typically do not add materially to the information already available to the OCC through the chartering process. Therefore, the OCC is proposing to revise § 16.15(e) to clarify that a national bank or Federal

savings association in organization is not required to include audited financial statements as part of its offering statement for the issuance of securities pursuant to § 16.8, unless the OCC determines otherwise.

Twelve CFR 16.17 sets forth the filing requirements and inspection of documents for securities offerings. The OCC is proposing to add a sentence to § 16.17(b) to clarify that all registration statements, offering documents, amendments, notices, or other documents relating to a mutual to stock conversion pursuant to 12 CFR part 192 must be filed with the appropriate OCC Licensing office and not the Securities and Corporate Practices Division of the OCC.

Removal, suspension, or debarment of independent public accountants.

Section 36(g)(4)(A) of the FDIA (12 U.S.C. 1831m(g)(4)(A)) provides that the FDIC or an appropriate Federal banking agency may remove, suspend, or bar an independent public accountant, upon a showing of good cause, from performing audit services required by section 36. The OCC's implementing rules for insured national banks and insured Federal branches of foreign banks are set forth in subpart P to 12 CFR part 19. The former OTS implemented section 36(g)(4) with respect to insured savings associations at 12 CFR 513.8, and these rules are substantively identical to subpart P. However, when republishing the former OTS rules as OCC rules pursuant to Title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), the OCC inadvertently did not republish 12 CFR 513.8 nor amend subpart P of part 19 to apply to Federal savings associations. This proposed amendment would correct that error by amending subpart P to also apply to insured Federal savings associations.

The OCC also proposes clarifying amendments to subpart P. First, the proposal would make a clarifying change to § 19.243(b)(2), which provides that hearings will be conducted in the same manner as other hearings under the Uniform Rules of Practice and Procedure (12 CFR

part 19, subpart A), by adding a cross-reference to the specific rules and limitations for subpart P hearings set forth in § 19.243(c)(4). Second, the OCC proposes a clarifying change to § 19.243(c)(3), which currently states that an accountant or firm immediately suspended from performing audit services may, within 10 calendar days after service of the notice of immediate suspension, file a stay of the immediate suspension with the OCC, and that if no petition is filed, the immediate suspension will remain in effect. The proposed amendment would clarify that if the accountant or firm has not filed a petition within 10 calendar days, they have waived their right to file a petition. The proposal also would add a cross-reference to § 19.243(c)(2) in § 19.243(c)(3), which sets forth the rules for when the OCC may lift a suspension. Third, the OCC proposes to amend § 19.243(c)(4), which provides that upon request of a stay petition, the Comptroller must designate a presiding officer who must fix a place and time for the hearing that is not more than 10 calendar days after receipt of the petition, unless extended by the OCC at the request of petitioner. The proposed amendment would provide that a later hearing date may occur only if permitted by the OCC, and, therefore, the request for an extension would not receive automatic approval. This change would allow the OCC some discretion as to how far into the future a hearing may take place. Fourth, the proposal would clarify that subpart P to part 19 applies only to insured Federal branches by adding “insured Federal branches of foreign banks” where appropriate and removing references to Federal “agencies.” Section 36(g)(4) of the FDIA only applies to insured depository institutions and no insured Federal agencies exist. Finally, the proposed rule would replace the word “shall” with “must,” “will,” or other appropriate language, which is the recommended drafting style of the **Federal Register**.

Definitions of small business loans and small farm loans in lending limits rules.

The OCC is proposing revised definitions of “small business loans” and “small farm loans or extensions of credit” in 12 CFR 32.2(cc) and (dd) of the lending limits rule to align the definitions with the language of the Call Report instructions. The revisions to § 32.2(dd) will clarify that the \$500,000 limit contained within the “loans to small farms” definition in the Call Report instructions does not apply for purposes of the supplemental lending limit program.

Savings Association Conversions from Mutual to Stock Form.

The OCC is proposing amendments to 12 CFR part 192, which governs how a savings association may convert from mutual to stock form of ownership under standard and voluntary supervisory conversions. The proposed amendments would reduce burden and increase flexibility for savings associations and would make a number of technical and clarifying amendments. Unless otherwise noted, part 192 applies to both Federal and State savings associations.

Forms. The proposed rule would amend § 192.5(b) to clarify that a savings association must use the forms prescribed under part 192 and 12 CFR part 16 (the securities offering disclosure rules for Federal savings associations and national banks), including the applicable form for a registration statement under § 16.15. Use of the registration forms required by § 16.15 is the standard industry practice, and the proposed amendment is intended to clarify the use of such forms and, therefore, generally would not increase burden on savings associations. The OCC also is proposing to clarify the accounting guidance and requirements that should be used in the preparation and filing of these forms, financial statements, and related financial data under part 192. The accounting guidance and requirements which applied to part 192 conversions and proxy materials were repealed in 2017.⁵ New § 192.5(d) would provide that the institution must prepare and present the form and content of financial statements and related financial data in a

⁵ See 82 FR 8082 (January 23, 2017).

filing under part 192 in accordance with U.S. Generally Accepted Accounting Principles (GAAP), pursuant to 12 U.S.C. 1463(b)(2)(A), and other applicable accounting guidance and requirements as specified by the OCC in the relevant mutual to stock conversion forms required under § 192.5(b). The OCC notes that it is currently revising its forms under part 192, including Form AC (Application for Conversion); Form PS (Proxy Statement); Form OC (Offering Circular); and Form OF (Order Form), to conform with these proposed amendments to part 192.

The proposed rule also would make a technical change to this section by defining “OCC” as the Office of the Comptroller of the Currency in the text of § 192.5(b).

Electronic filing and computation of time. The OCC is proposing to add a new § 192.7 to encourage the electronic filing of all part 192 applications, notices, or other documents through <http://www.banknet.gov>, consistent with other licensing-related filings.⁶ The OCC also is proposing a new § 192.8 to clarify the computation of time under part 192 when the last day of a time period falls on a Saturday, Sunday, or Federal holiday. Specifically, in computing the time period, the OCC would exclude the day of the act or event (*e.g.*, the date an application is received by the OCC) from when the period begins to run. When the last day of a time period is a Saturday, Sunday, or Federal holiday, the time period would run until the end of the next day that is not a Saturday, Sunday, or Federal holiday. This amendment would make the computation of time under part 192 consistent with the computation of time rule that applies to corporate activities and transactions pursuant to 12 CFR part 5.⁷

Definitions. In § 192.25, the OCC is proposing to add definitions of “community offering,” “offering circular,” and “voluntary supervisory conversion,” as these terms are currently undefined in part 192. The proposal defines “community offering” as the offering to

⁶ See 12 CFR 5.2(d).

⁷ See 12 CFR 5.12.

sell to members of the general public in the savings association's community the securities not subscribed for in the subscription offering and provides that the community offering may occur concurrently with the subscription offering and any syndicated community offering or upon conclusion of the subscription offering. The proposal defines "offering circular" as the securities offering materials for the conversion. The proposal defines "voluntary supervisory conversion" as a mutual to stock conversion for a savings association that is unable to complete a standard mutual to stock conversion under subpart A to part 192 and that meets the eligibility requirements of § 192.625.

The proposed rule would also add a number of definitions to § 192.25 that are currently included in 12 CFR part 141 (Definition for regulations affecting Federal savings associations), and 12 CFR part 161 (Definitions for regulations affecting all savings associations). Although the definitions in parts 141 and 161 apply to part 192, the OCC believes that it is more appropriate to include these definitions in part 192 than in a separate rule. Specifically, the proposal would add the definition of: (1) "appropriate Federal banking agency" from § 161.7, which is defined as in section 3 of the FDIA (12 U.S.C. 1813(q)); (2) "demand accounts" from § 161.16, which means non-interest-bearing demand deposits that are subject to check or to withdrawal or transfer on negotiable or transferable order to the savings association and that are permitted to be issued by statute, regulation, or otherwise and are payable on demand; (3) "Federal savings association" from § 141.11, which means a Federal savings association or Federal savings bank chartered under section 5 of the Home Owners' Loan Act (HOLA) (12 U.S.C. 1464); (4) "savings account" from § 161.42, which means any withdrawable account, including a demand account, except this term does not mean a tax and loan account, a note account, a United States Treasury general account, or a United States Treasury time deposit-open

account; and (5) “savings association” from § 161.43, which means a savings association as defined in section 3 of the FDIA (12 U.S.C. 1813(b)(1)). In addition, the proposed rule would add the definition of “state” to mean any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands. This definition would be the same as the definition in § 161.50 as amended by this proposed rule, discussed below.

Finally, the proposed rule would add the definition of “state savings association,” defined to have the same definition as in section 3 of the FDIA (12 U.S.C. 1813(b)(3)). This definition is not included in parts 141 or 161. However, the OCC believes it would be helpful to define this term in part 192 because the proposed rule adds the definitions of other related terms.

Prior to conversion. Twelve CFR 192.100 (Preparing for a conversion) requires that a savings association’s board, or subcommittee of the board, meet with the appropriate Federal banking agency before adopting its plan of conversion. The OCC is proposing to increase flexibility by allowing in person or electronic board meetings for purposes of § 192.100. The OCC also proposes to amend § 192.115 (Review of business plan by the appropriate Federal banking agency) to clarify that the business plan must be filed as a confidential exhibit to Form AC (Application for Conversion).

Plan of conversion. Twelve CFR 192.135 (Notifying members of plan of conversion) requires that a savings association promptly notify its members that its board of directors adopted a plan of conversion and that a copy of the plan is available for the members’ inspection in its home office and its branch offices. The savings association must make this notice by mailing a letter to each member or by publishing a notice in the local newspaper in every local community where the savings association has an office. The savings association may also issue a press

release. The OCC proposes to increase flexibility and reduce burden by allowing a savings association to e-mail a letter with a notification of the plan of conversion instead of mailing a letter to its members who receive electronic communication. The proposal also would allow a savings association to make the press release available on its website.

Rejection of application for conversion. Twelve CFR 192.150 (Information required in an application for conversion) provides that the appropriate Federal banking agency will not accept for filing, and will return, any application for conversion that is executed improperly, materially deficient, substantially incomplete, or that provides for unreasonable conversion expenses. The OCC proposes to amend § 192.150(b) to permit, rather than require, the appropriate Federal banking agency to return any application for conversion that is executed improperly, materially deficient, substantially incomplete, or that provides for unreasonable conversion expenses. A materially deficient or substantially incomplete application may not always be returned, especially if it is submitted electronically as a PDF document or if there are supervisory or enforcement reasons to retain the application.

Notice of filing of application and comment process. Twelve CFR 192.185 sets forth the process for commenters to submit public comments on an application for conversion. Section 192.185 currently requires a commenter to file the original and one copy of any comments on an application for conversion with the appropriate OCC licensing office. The OCC proposes to amend § 192.185 to require the commenter to file only one copy of the comment instead of both an original and copy of any comments with the appropriate OCC licensing office.

Proxy solicitation. Twelve CFR 192.275 requires a savings association to file seven copies of its revised proxy materials and related documents as an amendment to its application for conversion. The OCC proposes to revise § 192.275 to reduce burden for savings associations

by requiring the filing of only one copy of these materials with the OCC. The OCC also proposes to amend § 192.275(c) to remove the requirement that four copies of the revised proxy solicitation materials be marked to clearly indicate the changes from the prior filing. Instead, the savings association would need to file only one copy of the revised proxy solicitation materials that clearly indicates the changes.

Offering circular requirements. Twelve CFR 192.300 currently requires that a Federal savings association file its offering circular with the Securities and Corporate Practices Division of the OCC and that a State savings association file its offering circular with the appropriate FDIC region in compliance with part 192 and Form OC, and, where applicable, part 197. The OCC proposes to amend § 192.300 to replace the cross-reference to repealed part 197 with a more specific cross-reference to the applicable SEC registration statement form required under 12 CFR 16.15. Additionally, the OCC is clarifying that a Federal savings association must file its offering circular with the appropriate OCC Licensing office, not the Securities and Corporate Practices Division.

As a corresponding change, the OCC is proposing to amend § 16.17 (Filing requirements and inspection of documents) to clarify that all registration statements, offering documents, amendments, notices, or other documents relating to a mutual to stock conversion pursuant to part 192 must be filed with the appropriate OCC Licensing office.

The proposal would amend §§ 192.305(b) and (c), 192.310(a), and 192.310(b) to clarify that the SEC, not the “appropriate Federal banking agency,” declares Federal savings association holding company offering circulars effective in mutual to stock conversions under part 192.

Offers and sales of stock. Section 192.340(d) states that any person who is found to have violated the restrictions in § 192.340(b) may face prosecution or other legal action. To clarify

and make consistent the actions that may result from engaging in any of the prohibited activities listed in all of § 192.340, the OCC is proposing to amend § 192.340(d) to state that persons engaged in any of the activities listed in § 192.340(a) and all of § 192.340(b) may be subject to enforcement actions, civil money penalties, or criminal prosecution.

Priority of accounts. Twelve CFR 192.430 describes the requirements for charter amendments, charter cancellations, and new charters that apply to a savings association conducting a conversion under part 192. The OCC proposes to add a new paragraph in § 192.430 to require that, in any conversion pursuant to this section that involves a mutual holding company, the charter of each resulting subsidiary savings association of the holding company must contain a provision, specified in § 192.430(d), indicating that the claims of depositors of the savings association have the same priority as the claims of general creditors of the savings association not having priority (other than any priority arising or resulting from consensual subordination) over other general creditors of the association. The former OTS regulation for mutual holding companies, 12 CFR 575.9(b) (2011), originally required the inclusion of a similar priority of accounts provision in the charters of subsidiary savings associations of mutual holding companies, regardless of whether the subsidiary had a State or Federal charter. When promulgating 12 CFR 575.9(b), the OTS stated that the purpose of the priority of accounts provision was to ensure that claims of depositors of the insured institution were not relegated to a lower priority due to the fact that the deposits confer membership rights in the association's mutual holding company.⁸ However, after the enactment of the Dodd-Frank Act, which transferred the holding company regulations of the former OTS to the Federal Reserve Board,⁹ the Federal Reserve Board republished 12 CFR 575.9(b) as a Federal Reserve Board regulation

⁸ See 56 FR 1126, 1133 (January 11, 1991).

⁹ Section 312(b)(1), Pub. Law. 111-203. 121 Stat. 1376 (July 21, 2010).

without including this charter requirement because it related to savings associations and not mutual holding companies.¹⁰ The OCC believes that the priority of accounts provision in the former OTS regulation protected member rights, and the proposed amendment reinstates this charter requirement for all savings association subsidiaries of a mutual holding company.¹¹ However, notwithstanding this provision, if a savings association is placed in conservatorship or receivership, its assets would be distributed in accordance with the FDIA, 12 U.S.C. 1811, *et seq.*, and the depositor preference provisions of section 11(d)(11) of the FDIA, 12 U.S.C. 1821(d)(11).

Liquidation account. Twelve CFR 192.460 sets forth how a savings association determines the initial balances of liquidation sub-accounts. The OCC proposes to revise § 192.460(a)(1) to provide that a savings association must calculate the initial liquidation sub-account balance of each eligible and supplemental eligible account holder at the time of the conversion. Because the current § 192.460 does not explain when a savings association must perform the calculation, this amendment would clarify that the initial liquidation sub-accounts must be calculated at the time of the conversion.

Section 192.460(a)(1) provides the calculation for a savings account held by an eligible account holder, which is to multiply the initial balance of the liquidation account by a fraction that has as its numerator the qualifying deposit in the savings account expressed in dollars on the eligibility record date and as its denominator the total qualifying deposits of all eligible account holders on the eligibility record date. Section 192.460(a)(2) provides the same calculation for a savings account held by a supplemental eligible account holder, except that the eligibility record

¹⁰ See 76 FR 56508, 56523 (September 13, 2011) (“[This section] contains the provisions from section 575.9 concerning charters, as revised to delete unnecessary provisions specific to savings associations and to reflect the change in supervisory authority.”) See also, 12 CFR 239.13.

¹¹ Twelve CFR 5.21 requires all Federal mutual savings association charters to include this priority of accounts provision.

date is replaced with the supplemental eligibility record date. However, the denominator used for the calculation of the initial sub-account balances for both eligible account holders and supplemental eligible account holders is incorrect because the denominator in the current regulation does not include both the deposits of eligible account holders and the deposits of the supplemental eligible account holders. This results in both eligible account holders and supplemental account holders having a greater claim than their appropriate portion of the liquidation account.

The proposed amendments would correct this error by inserting language in § 192.460 similar to that in the previous OTS regulation, renumbering the § 192.460(a)(1) and (2) calculations to be in § 192.460(a)(2) and (3), making the denominator in the fractions in § 192.460(a)(2) and (3) the total sub-account balances of eligible account holders *and* supplemental eligible account holders as calculated in proposed revised § 192.460(a)(5). As proposed, § 192.460(a)(5) provides that the denominator for calculating the initial sub-account balance of each eligible and supplemental eligible account holder is the sum of the numerator calculations in § 192.460(a)(2) through (4). These proposed changes would make clear that the eligible account holders and the supplemental eligible account holders would be allocated their proportionate shares of the liquidation account (the association's net worth, as defined in 12 CFR 192.455).

In addition, the 2002 OTS amendments to the liquidation account provision inadvertently removed language that addressed savings accounts that increased in value between the eligible record date and the supplemental eligibility record date.¹² As a result, the current regulation does

¹² See 67 FR 52009 (August 9, 2002). The pre-2002 OTS regulation at 12 CFR 563b.3(f)(4) stated “The initial subaccount balance for a savings account held by an eligible account holder and/or supplemental eligible account holder shall be determined by multiplying the opening balance in the liquidation account by a fraction of which the numerator is the amount of qualifying deposits in such savings account on the

not address accounts that increased in size between the two dates. Therefore, the OCC proposes to add language in § 192.460(a)(4) providing that for a savings account held on both the eligibility record date and the supplemental eligibility record date, the amount of the qualifying deposit for calculating the sub-account is the higher account balance of the savings account on either the eligibility record date or the supplemental eligibility record date. The initial sub-account is calculated by multiplying the liquidation account balance by the following fraction: the numerator is the higher amount of the qualifying deposit in the savings account on either the eligibility record date or the supplemental eligibility record date and the denominator is the calculation in proposed added § 192.460(a)(5).

The OCC invites comment on whether the proposed changes to § 192.460 help to clarify the computation of liquidation sub-account balances. Do commenters have any alternative methods for clarifying these computations?

Contributions to charitable organizations. Twelve CFR 192.550 permits a savings association to contribute some of its conversion shares or proceeds to a charitable organization, provided certain requirements are met. One of these requirements, set forth at 12 CFR 192.575(a)(3), is that the charitable organization must annually provide the appropriate Federal banking agency with a copy of the annual report that it submitted to the IRS. The OCC proposes to remove this requirement because is often not used and, if necessary, the OCC may obtain it from the IRS or request it directly from the charitable organization.

Prohibition on self-dealing for charitable organizations. 12 CFR 192.575 (Other requirements for charitable organizations) provides that a charitable organization may not engage

eligibility record date and/or the supplemental eligibility record date and the denominator is the total amount of qualifying deposits of all eligible account holders and supplemental eligible account holders in the converting savings association on such dates. For savings accounts in existence at both dates, separate subaccounts shall be determined on the basis of the qualifying deposits in such saving accounts on such record dates.”

in self-dealing. The OCC proposes to amend § 192.575(a) to provide that a charitable organization *must* not engage in self-dealing, in order to emphasize the prohibition on self-dealing. The OCC also proposes to move the requirement that the charitable organization comply with all laws necessary to maintain its tax-exempt status under the Internal Revenue Code to a new paragraph (a)(5) in § 192.575.

Voluntary supervisory conversions. Section 192.600 describes the purposes of subpart B to part 192, which governs voluntary supervisory mutual to stock conversions. A voluntary supervisory conversion is a transaction to recapitalize an eligible mutual savings association where the association's members have no rights of approval or participation and no rights to the continuance of any legal or beneficial ownership interest in the converted association pursuant to a plan of voluntary supervisory conversion approved by a majority of the board of directors of the converting savings association. The OCC proposes new language in § 192.600 to clarify that a voluntary supervisory mutual to stock conversion would be appropriate when the appropriate Federal banking agency and, in the case of a State-chartered savings association, the appropriate State banking regulator, determines that the savings association has demonstrated that it is unable to complete a standard mutual to stock conversion under subpart A to part 192.

Section 192.650 sets forth the information required to be included in a plan of voluntary supervisory conversion. Among other things, current § 192.650 requires the savings association's name and address; the name, address, date and place of birth, and social security number of each proposed purchaser of conversion shares. The OCC proposes to remove the personal identifying information from the plan of voluntary supervisory conversion (i.e., the name, address, date and place of birth, and social security number of each proposed purchaser of conversion shares) as the OCC does not believe the inclusion of such information is necessary or appropriate. The plan

is a publicly available document and the OCC believes that requiring this information raises privacy concerns. The OCC also proposes to amend § 192.650 to remove from the plan of voluntary supervisory conversion the title, per-unit par value, number, and per-unit and aggregate offering price of shares that the savings association will issue; and the number and percentage of shares that each investor will purchase. The OCC does not find this information to be necessary in the plan of voluntary supervisory conversion. In addition, the OCC proposes to move the information required in the plan by § 192.650(e) (the aggregate number and percentage of shares that each director, officer, and any affiliates or associates of the director or officer will purchase) to the application for voluntary supervisory conversion in § 192.660(d)(5). The OCC believes this information more appropriately belongs in the application, rather than the plan, because the OCC reviews these proposed purchases during the application review process and because the proposed purchases may change during the review of the application. As a result, under revised § 192.650, a plan for voluntary supervisory conversion would be required to contain a complete description of the proposed voluntary supervisory conversion that also describes plans for any liquidation account and certified copies of all resolutions relating to the conversion adopted by the savings association's board of directors.

Twelve CFR 192.660 specifies the information a savings association must include in its application for voluntary supervisory conversion. To assist in its review of these applications, the proposal would require the application to contain some additional information. As described in the preceding paragraph, the proposal would relocate the information contained in current § 192.650(e) (the aggregate number and percentage of shares that each director, officer, and any affiliates or associates of the director or officer will purchase) to § 192.660(d)(5). The proposal would add a new § 192.660(e)(3) to require that the voluntary supervisory conversion application

include any securities offering circular and other securities disclosure materials that the savings association has prepared to use in connection with the proposed voluntary supervisory conversion. In addition, the proposal would require that the application include a statement indicating the role in the successor savings association each director, officer, and affiliate of the savings association or associate of the director or officer will have after the conversion. The OCC finds that information on the role that each director, officer, affiliate, and associate will have after the conversion to be necessary for consideration of the decision factors in § 192.670(c) and (d).¹³ Finally, the proposal would require as part of this application any other information requested by the OCC, as authorized by law.

Federal Home Loan Bank (FHLB) membership. The proposal would remove the references to FHLB membership in §§ 192.135(b)(12) and 192.660(g)(4) because Federal savings associations are no longer required to be members of the FHLB System.¹⁴ The existing provisions of part 192 that reference FHLB membership were drafted when FHLB System membership was required for Federal savings associations. Whether the Federal savings association retains FHLB membership has no impact on the OCC's consideration of an application for a voluntary supervisory conversion in § 192.660(g)(4), nor would it be of interest to members as part of the notice in § 192.135(b)(12).

Technical amendments. The proposal would make several global technical changes to part 192. First, the proposed rule would change the text of part 192 from the OTS question and answer format to the standard format of the national bank rules in 12 CFR parts 1 through 50.

¹³ Under § 192.670(c) and (d), the appropriate Federal banking agency will generally approve a voluntary supervisory conversion application unless it determines the savings association or its acquiror, or the controlling parties or directors and officers of the savings association or its acquiror, have engaged in unsafe or unsound practices in connection with the voluntary supervisory conversion, or the savings association fails to justify an employment contract incidental to the conversion, or the employment contract will be an unsafe or unsound practice or represent a sale of control.

¹⁴ In 1999, HOLA was amended to no longer require Federal savings associations to become FHLB members. *See* 12 U.S.C. 1464(f); Pub. L. 106-102 section 603 (1999).

Second, the proposed rule would add paragraph headings in compliance with *Federal Register* guidelines. Third, the proposed rule would clarify that calendar days are used for computations of time under part 192. Finally, the proposed rule replaces cross-references to the repealed 12 CFR part 197 (2017) (Securities offering disclosure rules) with cross-references to the OCC rule that now applies to Federal savings associations, 12 CFR part 16.

Furthermore, the proposed rule would make a number of technical changes to specific sections of part 192. First, the proposed rule would amend § 192.200 to remove the cross-reference to the FDIC's repealed capital rules in subpart Z to part 390. In addition, the proposed rule would remove from § 192.520(b) the cross-reference to part 167 and replace it with a cross-reference to integrated part 3. Finally, the proposed rule would amend § 192.660 by replacing an outdated cross-reference to the Thrift Financial Report with the Call Report.

Miscellaneous technical amendments. The proposal would amend subpart J to 12 CFR part 3 to correct an out-of-date cross-reference. Currently, at 12 CFR 3.601(b), OCC regulations provide, in part, that a capital directive (*i.e.*, an order issued by the OCC to a national bank or Federal savings association to take certain actions to achieve and/or maintain a specified capital ratio) is enforceable in the same manner and to the same extent as a final cease and desist order as defined under 12 U.S.C. 1818(k). Because section 1818(k) has been repealed, the OCC is amending this provision to provide instead that a capital directive is enforceable under section 1818(i) in the same manner and to the same extent as an effective and outstanding cease and desist order issued pursuant to section 1818(b) that has become final. This revision is consistent with the OCC's existing authority as set forth under the International Lending Supervision Act at 12 U.S.C. 3907(b) and is not intended to have any substantive impact on the procedures for the enforcement of a capital directive.

The proposal would amend 12 CFR 4.14(a)(9) to remove cross-references to 12 CFR parts 194 (2017) and 197, which have been repealed. The requirements in former parts 194 and 197 have been added to parts 11 and 16, respectively, and the cross-references to those parts have been added to § 4.14(a)(9) accordingly.

The proposal would amend 12 CFR 4.34(c)(2), 4.37(a)(2)(ii), 108.6(d), 108.7(c) and (d), and 112.4 to change “the OCC’s Enforcement and Compliance Division” to “the OCC’s Law Department.” Similarly, the proposal would amend 12 CFR 11.3(a), 16.17(a) and (f), and 16.30(a) by removing the phrase “the OCC’s Securities and Corporate Practices Division” and replacing it with “the OCC’s Law Department.”

The proposal would amend 12 CFR 23.6 to change an incorrect singular subject and verb to the correct plural subject and verb.

The proposal would amend 12 CFR 26.6(b)(4) to correct a cross-reference. The cross-reference to § 5.51(c)(6) is incorrect; the correct cross-reference is § 5.51(c)(7).

The proposal also removes a number of definitions in the OCC’s rules for Federal and State savings associations that are no longer necessary. These definitions are currently included in 12 CFR part 141 (Definition for regulations affecting Federal savings associations) and 12 CFR part 161 (Definitions for regulations affecting all savings associations). These definitions apply only to the OCC’s rules in parts 100 through 195, which the former OTS originally issued and the OCC republished as OCC rules pursuant to the Dodd-Frank Act. Because the OCC has integrated and amended a number of these rules, many of the terms defined in parts 141 and 161 are no longer used in parts 100 through 195 and, therefore, these definitions are no longer necessary. Specifically, the OCC proposes to remove the definitions of “Act,” “debit card,” “improved nonresidential real estate,” “improved residential real estate,” “interim Federal

savings association,” “interim state savings association,” “unimproved real estate,” “withdrawal value of a savings account,” “accontholder,” “audit period,” “land loan,” “low-rent housing,” “Money Market Deposit Accounts,” “Negotiable Order of Withdrawal (NOW) accounts,” “nonresidential construction loan,” “nonwithdrawable account,” “parent company,” “principal office,” “service corporation,” and “subordinated debt security.”

The OCC also proposes to amend the definition of “state” in § 161.50 so that it is identical to the definition of this term in section 3 of the FDIA (12 U.S.C. 1813(a)(3)). Specifically, the proposed definition would include any territory of the United States, American Samoa, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands, in addition to a State, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands.

The proposal would amend 12 CFR 160.60(b)(3) to remove a cross-reference to the repealed § 163.43 and replace with § 31.2. The proposed rule also would amend parts 160 and 163 to define “OCC” as the Office of the Comptroller of the Currency in the text of §§ 160.1 and 163.47, and to define “FDIC” as the Federal Deposit Insurance Corporation in § 163.80.

Finally, the OCC proposes to update the authority citation for 12 CFR 195.11(a) to include a citation to section 312 of the Dodd-Frank Act (12 U.S.C. 5412(b)(2)(B)).

III. Request for Comments

The OCC encourages comment on any aspect of this proposal and especially on those issues noted in this preamble.

IV. Regulatory Analysis

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, (RFA), requires an agency, in connection with a proposed rule, to prepare an Initial Regulatory Flexibility Analysis describing

the impact of the rule on small entities (defined by the Small Business Administration (SBA) for purposes of the RFA to include commercial banks and savings institutions with total assets of \$600 million or less and trust companies with total revenue of \$41.5 million or less) or to certify that the proposed rule would not have a significant economic impact on a substantial number of small entities. The OCC currently supervises approximately 886 small entities, of which 258 are Federal savings associations.¹⁵ The proposed rule would place one new mandate on Federal savings associations to submit additional information to the OCC as part of their voluntary supervisory conversion applications to convert from mutual to stock form pursuant to 12 CFR 192.660. Because the additional reporting requirement for Federal savings associations that are converting from mutual to stock form through a voluntary supervisory conversion would likely require minimal additional effort relative to the overall conversion application, the additional cost of collecting this additional information would likely be *de minimis*. Therefore, the OCC certifies that the proposed rule, if implemented, would not have a significant economic impact on a substantial number of OCC-supervised small entities.

Unfunded Mandates Reform Act of 1995

Consistent with the Unfunded Mandates Reform Act, the OCC's review considers whether the mandates imposed by the proposed rule may result in an expenditure of \$100 million or more (adjusted for inflation) by state, local, and tribal governments, or by the private sector, in

¹⁵ The OCC bases its estimate of the number of small entities on the SBA's size thresholds for commercial banks and savings institutions, and trust companies, which are \$600 million and \$41.5 million, respectively. Consistent with the General Principles of Affiliation 13 CFR 121.103(a), the OCC counts the assets of affiliated financial institutions when determining if we should classify an OCC-supervised institution a small entity. The OCC uses December 31, 2017, to determine size because a "financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year." See footnote 8 of the U.S. Small Business Administration's Table of Size Standards.

any one year. The proposed rule would place one new mandate on Federal savings associations to submit additional information to the OCC as part of their voluntary supervisory conversion applications to convert from mutual to stock form pursuant to 12 CFR 192.660. This additional requirement for Federal savings associations to submit additional information to the OCC would likely result in a *de minimis* increase in costs. Therefore, we conclude that the proposed rule would not result in the expenditure of \$100 million or more annually (adjusted for inflation) by state, local, and tribal governments, or by the private sector.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995,¹⁶ the OCC may not conduct or sponsor, and a person is not required to respond to, an information collection unless the information collection displays a valid OMB control number. The OCC has submitted the information collection requirements imposed by this proposal to OMB for review.

The proposal would add a new § 192.660(e)(3) to require that the voluntary supervisory conversion application include a statement indicating the role in the successor savings association each director, officer, and affiliate of the savings association or associate of the director or officer will have after the conversion. This burden for this requirement will be added to the existing information collection for OCC's Licensing Manual.

Title: Voluntary Supervisory Conversion Application: Successor Savings Association Roles.

OMB Control No.: 1557-NEW.

Frequency of Response: On occasion.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 1.

¹⁶ 44 U.S.C. 3501 *et seq.*

Estimated Burden per Respondent: 2 hours.

Estimated Total Annual Burden: 2 hours.

Please submit comments using the instructions in the ADDRESSES section of this document. Comments are invited on:

- (a) Whether the collections of information are necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;
- (b) The accuracy of the OCC's estimates of the burden of the collections of information;
- (c) Ways to enhance the quality, utility, and clarity of the information to be collected;
- (d) Ways to minimize the burden of the collections on respondents, including through the use of automated collection techniques or other forms of information technology; and
- (e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

List of Subjects

12 CFR Part 3

Administrative practice and procedure, Banks, banking, Federal Reserve System, Investments, National banks.

12 CFR Part 4

Administrative practice and procedure, Freedom of Information, Individuals with disabilities, Minority businesses, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Women.

12 CFR Part 11

Business information, National banks, Reporting and recordkeeping requirements, Securities.

12 CFR Part 16

National banks, Reporting and recordkeeping requirements, Securities.

12 CFR Part 19

Crime, Equal access to justice, Investigations, National banks, Penalties, Securities.

12 CFR Part 23

Banks, banking, National banks, Reporting and recordkeeping requirements.

12 CFR Part 26

Antitrust, Holding companies, National banks.

12 CFR Part 32

National banks, Reporting and recordkeeping requirements.

12 CFR Part 108

Administrative practice and procedure, Crime, Savings associations.

12 CFR Part 112

Administrative practice and procedure, Investigations.

12 CFR Part 141

Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 160

Consumer protection, Investments, Manufactured homes, Mortgages, Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 161

Administrative practice and procedure, Savings associations.

12 CFR Part 163

Accounting, Administrative practice and procedure, Advertising, Crime, Currency, Investments, Mortgages, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 192

Reporting and recordkeeping requirements, Savings associations, Securities

Accordingly, the Office of the Comptroller of the Currency proposes to amend 12 CFR chapter I as follows:

PART 3—CAPITAL ADEQUACY STANDARDS

1. The authority citation for part 3 continues to read as follows:

Authority: 12 U.S.C. 93a, 161, 1462, 1462a, 1463, 1464, 1818, 1828(n), 1828 note, 1831n note, 1835, 3907, 3909, and 5412(b)(2)(B).

§ 3.2 [Amended]

2. Section 3.2 is amended in the definition of *Qualifying master netting agreement* in paragraph (2)(i)(A) by removing “; or” and adding a period in its place.

3. Section 3.601 is amended by revising paragraph (b) to read as follows:

§ 3.601 Purpose and Scope

* * * * *

(b) A directive issued under this rule, including a plan submitted under a directive, is enforceable under the provisions of 12 U.S.C. 1818(i) in the same manner and to the same extent as an effective and outstanding cease and desist order issued pursuant to 12 U.S.C. 1818(b) that has become final. Violation of a directive may result in assessment of civil money penalties in accordance with 12 U.S.C. 3909(d).

PART 4—ORGANIZATION AND FUNCTIONS, AVAILABILITY AND RELEASE OF INFORMATION, CONTRACTING OUTREACH PROGRAM, POST-EMPLOYMENT RESTRICTIONS FOR SENIOR EXAMINERS

4. The authority citation for part 4 continues to read as follows:

Authority: 5 U.S.C. 301, 552; 12 U.S.C. 1, 93a, 161, 481, 482, 484(a), 1442, 1462a, 1463, 1464 1817(a), 1818, 1820, 1821, 1831m, 1831p-1, 1831o, 1833e, 1867, 1951 et seq., 2601 et seq., 2801 et seq., 2901 et seq., 3101 et seq., 3401 et seq., 5321, 5412, 5414; 15 U.S.C. 77uu(b), 78q(c)(3); 18 U.S.C. 641, 1905, 1906; 29 U.S.C. 1204; 31 U.S.C. 5318(g)(2), 9701; 42 U.S.C. 3601; 44 U.S.C. 3506, 3510; E.O. 12600 (3 CFR, 1987 Comp., p. 235).

§ 4.14 [Amended]

5. Section 4.14 is amended in paragraph (a)(9) by removing the phrase “parts 11, 16, 194 or 197 of this chapter” and adding in its place “part 11 or 16 of this chapter”.

§ 4.34 [Amended]

6. Section 4.34 is amended in paragraph (c)(2) by removing the phrase “and Compliance”.

§ 4.37 [Amended]

7. Section 4.37 is amended in paragraph (a)(2)(ii) by removing the phrase “and Compliance”.

PART 11—SECURITIES EXCHANGE ACT DISCLOSURE RULES

8. The authority citation for part 11 continues to read as follows:

Authority: 12 U.S.C. 93a, 1462a, 1463, 1464 and 5412(b)(2)(B); 15 U.S.C. 78j-1(m), 78m, 78n, 78p, 78w, 78l, 7241, 7242, 7243, 7244, 7261, 7262, 7264, and 7265.

§ 11.3 [Amended]

9. Section 11.3 is amended:

a. In paragraph (a)(1)(i) and the second sentence of paragraph (a)(1)(ii) by removing the phrase “the Securities and Corporate Practices Division” and by adding the phrase “the OCC’s Law Department in its place; and

b. In the first sentence of paragraph (a)(1)(ii) by removing the phrase “the OCC’s Securities and Corporate Practices Division” and by adding the phrase “the OCC’s Law Department” in its place.

PART 16—SECURITIES OFFERING DISCLOSURE RULES

10. The authority citation for part 16 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 93a, 1462a, 1463, 1464, and 5412(b)(2)(B).

§ 16.15 [Amended]

11. Section 16.15 is amended in paragraph (e) by adding the phrase “or as part of its offering statement for the offer and sale of its securities pursuant to 12 CFR 16.8,” after “registration statement for the offer and sale of its securities.”.

12. Section 16.17 is amended by:

a. Removing the phrase “the OCC’s Securities and Corporate Practices Division” and by adding the phrase “the OCC’s Law Department” in its place in paragraph (a);

b. Adding a sentence at the end of paragraph (b); and

c. Removing the phrase “the OCC’s Securities and Corporate Practices Division” and by adding the phrase “the OCC’s Law Department” in its place in the first and second sentences of paragraph (f).

The addition reads as follows:

§ 16.17 Filing requirements and inspection of documents.

* * * * *

(b) * * * All registration statements, offering documents, amendments, notices, or other documents relating to a mutual to stock conversion pursuant to 12 CFR part 192 must be filed with the appropriate OCC Licensing office at <http://www.banknet.gov/>.

* * * * *

§ 16.30 [Amended]

13. Section 16.30 is amended in paragraph (a) by removing the phrase “the OCC’s Securities and Corporate Practices Division” and by adding the phrase “the OCC’s Law Department” in its place.

PART 19 – RULES OF PRACTICE AND PROCEDURE

14. The authority citation for part 19 continues to read as follows:

Authority: 5 U.S.C. 504, 554-557; 12 U.S.C. 93(b), 93a, 164, 481, 504, 1817, 1818, 1820, 1831m, 1831o, 1832, 1884, 1972, 3102, 3108(a), 3110, 3909, and 4717; 15 U.S.C. 78(h) and (i), 78o-4(c), 78o-5, 78q-1, 78s, 78u, 78u-2, 78u-3, 78w, and 1639e; 28 U.S.C. 2461 note; 31 U.S.C. 330 and 5321; and 42 U.S.C. 4012a.

§ 19.241 [Amended]

15. Section 19.241 is amended in paragraph (a) by:

a. Removing the phrase “Federal Deposit Insurance Act (FDI Act)” and adding in its place “FDIA”;

b. Removing the phrase “section 36 of the FDI Act” and adding in its place “section 36 of the FDIA”; and

c. Removing the phrase “insured national banks and Federal branches and agencies of foreign banks” and adding in its place the phrase “insured national banks, insured Federal savings associations, and insured Federal branches of foreign banks”.

§ 19.242 [Amended]

16. Section 19.242 is amended by:

a. Removing the word “shall” in the introductory text; and

b. Adding the phrase “(12 U.S.C. 1831m)” after the phrase “section 36 of the FDIA” in paragraph (b).

17. Section 19.243 is amended by:

a. Adding “(12 U.S.C. 1831m)” after “section 36 of the FDIA” in paragraph (a)(1) introductory text;

b., Adding the phrase “, insured Federal savings associations, or insured Federal branches of foreign banks” after the phrase “national banks” in paragraph (a)(1) introductory text;

c. Removing the phrase “particular national bank or class of national banks” and adding in its place the phrase “particular insured national bank, insured Federal savings association, or insured Federal branch of a foreign bank, or class of insured national banks, insured Federal savings associations, or insured Federal branches of foreign banks” in paragraph (a)(3);

d. In paragraph (b)(2):

i. Removing the word “shall” and adding in its place the word “will”; and

ii. Adding the phrase “, subject to the limitations in § 19.243(c)(4)” at the end of the second sentence;

e., Adding the phrase “, insured Federal savings associations, or insured Federal branches of foreign banks” after the phrase “national banks” in paragraph (c)(1) introductory text;

f. Revising the last sentence of paragraph (c)(3);

g. In paragraph (c)(4):

i. Removing the phrase “who shall fix a place” in the first sentence and adding in its place the phrase “who will fix a place”;

ii. Removing the phrase “unless extended” in the first sentence and adding in its place the phrase “unless further time is allowed by the presiding officer”;

iii. Removing the phrase “there shall be no discovery” in the last sentence and adding in its place the phrase “there will be no discovery”; and

iv. Removing the phrase “of this part shall apply” and adding in its place “of this part apply”;

h. Removing the word “shall” in the first sentence and adding in its place the word “will” in paragraph (c)(5); and

i. Removing the word “shall” each time that it appears and adding in its place the word “will” in paragraph (c)(6).

The revision reads as follows:

§ 19.243 Removal, suspension, or debarment.

* * * * *

(c) * * *

(3) * * * If no petition is filed within 10 calendar days, the right to a petition is waived and the immediate suspension remains in effect pursuant to paragraph (c)(2).

* * * * *

18. Section 19.244 is amended by:

a. Revising the section heading;

b. Adding the phrase “, insured Federal savings associations, or insured Federal branches of foreign banks” after the phrase “national banks” in paragraph (a) introductory text;

b. In paragraph (a)(1):

i. Adding the word “former” before the phrase “Office of Thrift Supervision”; and

ii. Adding “(12 U.S.C. 1831m)” after the phrase “section 36 of the FDIA”;

c. In paragraph (b):

- i. Adding the word “insured” before the phrase “national banks”;
- ii. Adding the phrase “, insured Federal savings associations, or insured Federal branches of foreign banks” after the phrase “national banks”; and
- iii. Removing the word “shall” and adding in its place the word “must”.

The revision reads as follows:

§ 19.244 Automatic removal, suspension, or debarment.

* * * * *

§ 19.245 [Amended]

19. Section 19.245 is amended by:

- a. Adding a comma after the word “suspension” in the section heading;
- b. Removing the word “shall” and adding in its place the word “will” in paragraph (a);
- c. In paragraph (b) introductory text:
 - i. Adding the word “insured” before the phrase “national bank ”; and
 - ii. Adding the phrase “, insured Federal savings association, or insured Federal branch of a foreign bank” after the phrase “national bank”;
- d. Removing the phrase “Sarbanes-Oxley Act)” and adding in its place the phrase “Sarbanes-Oxley Act” in paragraph (b)(2); and
- e. Removing the word “shall” and adding in its place the word “must” in paragraph (c).

§ 19.246 [Amended]

20. Section 19.246 is amended by:

- a. Removing the word “shall” and adding in its place the word “must” in paragraph (a);
- b. In paragraph (b):

i. Removing the phrase “shall bear” each time it appears and adding in its place the word “bears”; and

ii. In the penultimate and last sentences, removing the word “shall” and adding in its place the word “will”.

PART 23 – LEASING

21. The authority citation for part 23 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 24(Seventh), 24(Tenth), and 93a.

§ 23.6 [Amended]

22. Section 23.6 is amended by:

a. Removing the word “lease” before the phrase “entered into pursuant to this part” and adding in its place the word “leases”; and

b. Removing the word “is” before the phrase “subject to the lending limits prescribed” and adding in its place the word “are”.

PART 26 – MANAGEMENT INTERLOCKS

23. The authority citation for part 26 continues to read as follows:

Authority: 12 U.S.C. 1, 93a, 1462a, 1463, 1464, 3201-3208, 5412(b)(2)(B).

§ 26.6 [Amended]

24. Section 26.6 is amended in paragraph (b)(4) by removing “5.51(c)(6)” and adding in its place “5.51(c)(7)”.

PART 32 – LENDING LIMITS

25. The authority citation for part 32 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 12 U.S.C. 84, 93a, 1462a, 1463, 1464(u), 5412(b)(2)(B), and 15 U.S.C. 1639h.

26. Section 32.2 is amended by revising paragraphs (cc) and (dd) to read as follows:

§ 32.2 Definitions.

* * * * *

(cc) *Small business loans* means loans or extensions of credit “secured by nonfarm nonresidential properties” or “commercial and industrial loans” as defined in the instructions for preparation of the Consolidated Report of Condition and Income.

(dd) *Small farm loans or extensions of credit* means “loans secured by farmland” or “loans to finance agricultural production and other loans to farmers” as defined in the instructions for preparation of the Consolidated Report of Condition and Income.

* * * * *

§ 32.7 [Amended]

27. Section 32.7 is amended in paragraph (d) by removing the phrase “Federal banking agency” each time it appears and adding in its place “supervisory office”.

PART 108—REMOVALS, SUSPENSIONS, AND PROHIBITIONS WHERE A CRIME IS CHARGED OR PROVEN

28. The authority citation for part 108 continues to read as follows:

Authority: 12 U.S.C. 1464, 1818, 5412(b)(2)(B).

§ 108.6 [Amended]

29. Section 108.6 is amended in paragraph (d) by removing the phrase “and Compliance”.

§ 108.7 [Amended]

30. Section 108.7 is amended in the first sentence of paragraph (c) and in paragraph (d) by removing the phrase “and Compliance”.

§ 108.13 [Amended]

31. Section 108.13 is amended in paragraph (c) by removing the phrase “and Compliance”.

PART 112—RULES FOR INVESTIGATIVE PROCEEDINGS AND FORMAL EXAMINATION PROCEEDINGS

32. The authority citation for part 112 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467, 1467a, 1813, 1817(j), 1818(n), 1820(c), 5412(b)(2)(B); 15 U.S.C. 78*l*.

§ 112.4 [Amended]

33. Section 112.4 is amended in the second sentence by removing the phrase “and Compliance”.

PART 141 – DEFINITIONS FOR REGULATIONS AFFECTING FEDERAL SAVINGS ASSOCIATIONS

34. The authority citation for part 141 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 5412(b)(2)(B).

§§ 141.2, 141.8, 141.15, 141.16, 141.18, 141.19, 141.27, 141.28 [Removed and Reserved]

35. Sections 141.2, 141.8, 141.15, 141.16, 141.18, 141.19, 141.27, and 141.28 are removed and reserved.

PART 160 – LENDING AND INVESTMENT

36. The authority for part 160 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467a, 1701j-3, 1828, 3803, 3806, 5412(b)(2)(B); 42 U.S.C. 4106.

§ 160.1 [Amended]

37. Section 160.1 is amended in paragraph (a) by removing “OCC” and adding in its place the phrase “Office of the Comptroller of the Currency (OCC)”.

§ 160.60 [Amended]

38. Section 160.60 is amended in paragraph (b)(3) by removing the phrase “12 CFR part 32 and § 163.43 of this chapter” and adding in its place “12 CFR 31.2 and part 32 of this chapter”.

PART 161—DEFINITIONS FOR REGULATIONS AFFECTING ALL SAVINGS

ASSOCIATIONS

39. The authority citation for part 161 continues to read as follows:

AUTHORITY: 12 U.S.C. 1462a, 1463, 1464, 1467a, 5412(b)(2)(B).

§§ 161.3, 161.6, 161.26, 161.27, 161.28, 161.29, 161.30, and 161.31 [Removed and Reserved]

40. Sections 161.3, 161.6, 161.26, 161.27, 161.28, 161.29, 161.30, and 161.31 are removed and reserved.

§ 161.37 [Amended]

41. Section 161.37 is amended by removing the first sentence.

§§ 161.39 and 161.45 [Removed and Reserved]

42. Sections 161.39 and 161.45 are removed and reserved.

43. Section 161.50 is revised to read as follows:

§ 161.50 State.

The term “State” means any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

§ 161.51 [Removed and Reserved]

44. Section 161.51 is removed and reserved.

PART 163 – SAVINGS ASSOCIATIONS – OPERATIONS

45. The authority for part 163 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467a, 1817, 1820, 1828, 1831o, 3806, 5101 *et seq.*, 5412(b)(2)(B); 31 U.S.C. 5318; 42 U.S.C. 4106.

§ 163.39 [Removed and Reserved]

46. Section 163.39 is removed and reserved.

§ 163.47 [Amended]

47. Section 163.47 is amended in paragraph (d) by removing “OCC” and adding in its place the phrase “Office of the Comptroller of the Currency (OCC)”.

§ 163.76 [Amended]

48. Section 163.76 is amended:

a. In paragraph (b), by removing the phrase “§ 197.10 of this chapter” and adding in its place “§ 16.32 of this chapter”; and

b. In paragraph (c), in the second paragraph of the Form of Certification, by removing “[” after “I should call the Office of the Comptroller of the Currency”.

§ 163.80 [Amended]

49. Section 163.80 is amended in paragraph (c) by removing the phrase “FDIC” and adding in its place the phrase “Federal Deposit Insurance Corporation (FDIC)”.

§ 163.180 [Amended]

50. In section 163.180, remove the first paragraph (d)(12)(i)(A) paragraph designation and subject heading “(A) General rule” and redesignate the paragraph as paragraph (d)(12)(i) introductory text.

51. Part 192 is revised to read as follows:

PART 192—CONVERSIONS FROM MUTUAL TO STOCK FORM

Sec.

- 192.5 Purpose, prescribed forms, waiver.
- 192.7 Electronic filing.
- 192.8 Computation of time.
- 192.10 Forming a holding company upon conversion.
- 192.15 Forming a charitable organization upon conversion.
- 192.20 Acquiring another insured depository institution upon conversion.
- 192.25 Definitions.

Subpart A – Standard Conversions

PRIOR TO CONVERSION

- 192.100 Preparing for a conversion.
- 192.105 Information required in business plan.
- 192.110 Review of business plan by chief executive officer and board of directors.
- 192.115 Review of business plan by the appropriate Federal banking agency.
- 192.120 Confidentiality of conversion information.

PLAN OF CONVERSION

- 192.125 Adoption of plan of conversion by board of directors.
- 192.130 Information required in plan of conversion.
- 192.135 Notifying members of adopted plan of conversion.
- 192.140 Amendments to plan of conversion.

FILING REQUIREMENTS

- 192.150 Information required in an application for conversion.
- 192.155 Filing an application for conversion.
- 192.160 Request for confidential treatment.
- 192.165 Amendments to an application for conversion.

NOTICE OF FILING OF APPLICATION AND COMMENT PROCESS

- 192.180 Public notice of an application for conversion.
- 192.185 Public comment on application for conversion.

AGENCY REVIEW OF THE APPLICATION FOR CONVERSION

- 192.200 Review, approval, or denial of application for conversion.

192.205 Court review of final action on application for conversion.

VOTE BY MEMBERS

192.225 Approval of plan of conversion by members.

192.230 Members' voting eligibility.

192.235 Notice of members' meeting.

192.240 Submission of documents to the appropriate Federal banking agency after the members' meeting.

PROXY SOLICITATION

192.250 Compliance with proxy solicitation provisions.

192.255 Form of proxy requirements.

192.260 Previously executed proxies.

192.265 Proxies executed under this part.

192.270 Proxy statement requirements.

192.275 Filing revised proxy materials.

192.280 Mailing member's proxy solicitation materials.

192.285 Prohibited solicitations.

192.290 Remedial measures for prohibited solicitations.

192.295 Re-solicitation of proxies.

OFFERING CIRCULAR

192.300 Offering circular requirements.

192.305 Distribution of offering circular.

192.310 Filing a post-effective amendment to an offering circular.

OFFERS AND SALES OF STOCK

192.320 Order of priority to purchase conversion shares.

192.325 Timing of offer to sell conversion shares.

192.330 Pricing of conversion shares.

192.335 Procedures for the sale of conversion shares.

192.340 Prohibited sales practices.

192.345 Permissible forms of subscriber payment.

192.350 Interest on payments for conversion shares.

192.355 Subscription rights for eligible account holders and supplemental eligible account holders.

192.360 Officers, directors, and associates as eligible account holders.

192.365 Purchase of conversion shares by other voting members.

192.370 Limits on aggregate purchases by officers, directors, and associates.

192.375 Allocation of oversubscribed conversion shares.

192.380 Purchase of conversion shares by employee stock ownership plan.

192.385 Purchase limitations.

192.390 Community offering of conversion shares.

192.395 Other conditions for community and public offerings.

COMPLETION OF THE OFFERING

192.400 Time period for completion of sale of stock.

192.405 Extension of the offering period.

COMPLETION OF THE CONVERSION

192.420 Time period for completion of the conversion.

192.425 Termination of conversion.

192.430 Charter amendments.

192.435 Corporate existence after conversion.

192.440 Stockholder voting rights after conversion.

192.445 Savings account holder's account after conversion.

LIQUIDATION ACCOUNT

192.450 Liquidation accounts.

192.455 Initial balance of liquidation account.

192.460 Initial balance of liquidation sub-account.

192.465 Retention of voting rights based on liquidation sub-accounts.

192.470 Required adjustments to liquidation sub-accounts.

192.475 Definition of liquidation.

192.480 Effect of liquidation account on net worth.

192.485 Required liquidation account provision in new Federal charter.

POST-CONVERSION

192.500 Possible management stock benefit plans after conversion.

192.505 Restrictions on the trading of shares by directors, officers, and associates.

192.510 Repurchase of shares after conversion.

192.515 Information to be filed with Federal banking agency prior to repurchase of shares.

192.520 Declaring and paying dividends after the conversion.

192.525 Restrictions on acquisition of shares after conversion.

192.530 Other post-conversion requirements.

CONTRIBUTIONS TO CHARITABLE ORGANIZATIONS

192.550 Donating conversion shares or conversion proceeds to a charitable organization.

192.555 Member approval of charitable contributions.

192.560 Limitations on charitable contributions.

192.565 Contents of organizational documents of charitable organization.

192.570 Conflicts of interest among directors.

192.575 Other requirements for charitable organizations.

Subpart B – Voluntary Supervisory Conversions

- 192.600 Voluntary supervisory conversions.
- 192.605 Conducting a voluntary supervisory conversion.
- 192.610 Member rights in a voluntary supervisory conversion.

ELIGIBILITY

- 192.625 Eligibility for a voluntary supervisory conversion.
- 192.630 Eligibility of State-chartered savings bank for voluntary supervisory conversion.

PLAN OF SUPERVISORY CONVERSION

- 192.650 Contents of plan of voluntary supervisory conversion.

VOLUNTARY SUPERVISORY CONVERSION APPLICATION

- 192.660 Contents of voluntary supervisory conversion application.

APPROPRIATE FEDERAL BANKING AGENCY REVIEW OF THE VOLUNTARY SUPERVISORY

CONVERSION APPLICATION

- 192.670 Approval of voluntary supervisory conversion application.
- 192.675 Conditions imposed upon approval of voluntary supervisory conversion application.

OFFERS AND SALES OF STOCK

- 192.680 Offer and sale of shares in a voluntary supervisory conversion.

POST-CONVERSION

- 192.690 Restrictions on acquisition of additional shares after voluntary supervisory conversion.

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467a, 2901 *et seq.*, 5412(b)(2)(B); 15 U.S.C. 78c, 78l, 78m, 78n, 78w.

§ 192.5 Purpose, prescribed forms, waiver.

(a) *General.* This part governs how a savings association may convert from the mutual to the stock form of ownership. Subpart A of this part governs standard mutual-to-stock conversions. Subpart B of this part governs voluntary supervisory mutual-to-stock conversions.

This part supersedes all inconsistent charter and bylaw provisions of Federal savings associations converting to stock form.

(b) *Prescribed forms.* A savings association must use the forms prescribed under this part and part 16 and provide such information as the appropriate Federal banking agency may require under the forms and by regulation. The forms required under this part include: Form AC (Application for Conversion); Form PS (Proxy Statement); Form OC (Offering Circular); Form OF (Order Form); and the applicable form for a registration statement under 12 CFR 16.15. Forms AC, PS, OC, and OF are available on the website of the Office of the Comptroller of the Currency (OCC) at <http://www.occ.gov>.

(c) *Waivers.* The appropriate Federal banking agency may waive any requirement of this part or a provision in any prescribed form. To obtain a waiver, a savings association must file a written request with the appropriate Federal banking agency that:

(1) Specifies the requirement(s) or provision(s) the savings association wants the appropriate Federal banking agency to waive;

(2) Demonstrates that the waiver is equitable; is not detrimental to the savings association, its account holders, or other savings associations; and is not contrary to the public interest; and

(3) Includes an opinion of counsel demonstrating that applicable law does not conflict with the waiver of the requirement or provision.

(d) *Financial statements.* The form and content of financial statements and related financial data in a filing under this part must be prepared and presented in accordance with U. S. generally accepted accounting principles and other applicable accounting guidance and requirements as specified by the OCC in the forms required under paragraph (b) of this section.

§ 192.7 Electronic filing.

For Federal savings associations, the OCC encourages the electronic filing of all applications, notices, or other documents required by this part through <http://www.banknet.gov/>. The Comptroller's Licensing Manual describes the OCC's electronic filing procedures.

§ 192.8 Computation of time.

In computing the period of days, the OCC excludes the day of the act or event (*e.g.*, the date an application is received by the OCC) from when the period begins to run. When the last day of a time period is a Saturday, Sunday, or Federal holiday, the time period runs until the end of the next day that is not a Saturday, Sunday, or Federal holiday.

§ 192.10 Forming a holding company upon conversion.

A savings association may convert to the stock form of ownership as part of a transaction where the savings association organizes a holding company to acquire all of the savings association's shares upon their issuance. In this transaction, the savings association's holding company will offer rights to purchase its shares instead of the savings association's shares. Regulations of the Board of Governors of the Federal Reserve System address holding company application requirements.

§ 192.15 Forming a charitable organization upon conversion.

When a savings association converts to the stock form, it may form a charitable organization. A savings association's contributions to the charitable organization are governed by the requirements of §§ 192.550 through 192.575.

§ 192.20 Acquiring another insured depository institution upon conversion.

When a savings association converts to stock form, it may acquire for cash or stock another insured depository institution that is already in the stock form of ownership.

§ 192.25 Definitions.

The following definitions apply to this part and the forms prescribed under this part:

Acting in concert has the same meaning as in 12 CFR 5.50(d)(2). The rebuttable presumptions of 12 CFR 5.50(f)(2), other than 12 CFR 5.50(f)(2)(ii)(A) and (B), apply to the share purchase limitations at §§ 192.355 through 192.395.

Affiliate of, or a person *affiliated with*, a specified person is a person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the specified person.

Appropriate Federal banking agency means appropriate Federal banking agency as defined in section 3 of the Federal Deposit Insurance Act (12 USC 1813(q)).

Associate of a person is:

(1) A corporation or organization (other than a savings association or its majority-owned subsidiaries), if the person is a senior officer or partner, or beneficially owns, directly or indirectly, 10 percent or more of any class of equity securities of the corporation or organization.

(2) A trust or other estate, if the person has a substantial beneficial interest in the trust or estate or is a trustee or fiduciary of the trust or estate. For purposes of §§ 192.370 through 192.395 and 192.505, a person who has a substantial beneficial interest in a savings association's tax-qualified or non-tax-qualified employee stock benefit plan, or who is a trustee or a fiduciary of the plan, is not an associate of the plan. For the purposes of § 192.370, a savings association's tax-qualified employee stock benefit plan is not an associate of a person.

(3) Any person who is related by blood or marriage to such person and:

(i) Who lives in the same home as the person; or

(ii) Who is the saving association's director or senior officer, or a director or senior officer of the saving association's holding company or its subsidiary.

Association members or members are persons who, under applicable law, are eligible to vote at the meeting on conversion.

Community offering means the offer to sell to the members of the general public in the savings association's community the securities not subscribed for in the subscription offering. The community offering may occur concurrently with the subscription offering and any syndicated community offering, or upon conclusion of the subscription offering.

Control (including *controlling*, *controlled by*, and *under common control with*) means the direct or indirect power to direct or exercise a controlling influence over the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise as described in 12 CFR 5.50.

Demand accounts means non-interest-bearing demand deposits that are subject to check or to withdrawal or transfer on negotiable or transferable order to the savings association and that are permitted to be issued by statute, regulation, or otherwise and are payable on demand.

Eligibility record date is the date for determining eligible account holders. The eligibility record date must be at least one year before the date a savings association's board of directors adopts the plan of conversion.

Eligible account holders are any persons holding qualifying deposits on the eligibility record date.

Federal savings association means a Federal savings association or Federal savings bank chartered under section 5 of the Home Owners' Loan Act (HOLA) (12 U.S.C. 1464).

IRS is the Internal Revenue Service.

Local community includes:

- (1) Every county, parish, or similar governmental subdivision in which a savings association has a home or branch office;
- (2) Each county's, parish's, or subdivision's metropolitan statistical area;
- (3) All zip code areas in a savings association's Community Reinvestment Act assessment area; and
- (4) Any other area or category that a savings association sets out in its plan of conversion, as approved by the appropriate Federal banking agency.

Offer, offer to sell, or offer for sale is an attempt or offer to dispose of, or a solicitation of an offer to buy, a security or interest in a security for value. Preliminary negotiations or agreements with an underwriter, or among underwriters who are or will be in privity of contract with a savings association, are not offers, offers to sell, or offers for sale.

Offering circular means the securities offering materials for the conversion.

Person is an individual, a corporation, a partnership, an association, a joint-stock company, a limited liability company, a trust, an unincorporated organization, or a government or political subdivision of a government.

Proxy soliciting material includes a proxy statement, form of proxy, or other written or oral communication regarding the conversion.

Purchase or buy includes every contract to acquire a security or interest in a security for value.

Qualifying deposit is the total balance in an account holder's savings accounts at the close of business on the eligibility or supplemental eligibility record date. A savings association's plan of conversion may provide that only savings accounts with total deposit balances of \$50 or more will qualify.

Sale or sell includes every contract to dispose of a security or interest in a security for value. An exchange of securities in a merger or acquisition approved by the appropriate Federal banking agency is not a sale.

Savings account means any withdrawable account, including a demand account, except this term does not mean a tax and loan account, a note account, a United States Treasury general account, or a United States Treasury time deposit-open account.

Savings association means a savings association as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(1)).

Solicitation and *solicit* is a request for a proxy, whether or not accompanied by or included in a form of proxy; a request to execute, not execute, or revoke a proxy; or the furnishing of a form of proxy or other communication reasonably calculated to cause a savings association's members to procure, withhold, or revoke a proxy. Solicitation or solicit does not include providing a form of proxy at the unsolicited request of a member, the acts required to mail communications for members, or ministerial acts performed on behalf of a person soliciting a proxy.

State means any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

State savings association means a State savings association as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(3)).

Subscription offering is the offering of shares through nontransferable subscription rights to:

- (1) Eligible account holders under § 192.355;
- (2) Tax-qualified employee stock ownership plans under § 192.380;

- (3) Supplemental eligible account holders under § 192.355; and
- (4) Other voting members under § 192.365.

Supplemental eligibility record date is the date for determining supplemental eligible account holders. The supplemental eligibility record date is the last day of the calendar quarter before the appropriate Federal banking agency approves a savings association's conversion and will only occur if such agency has not approved such conversion within 15 months after the eligibility record date.

Supplemental eligible account holders are any persons, except a savings association's officers, directors, and their associates, holding qualifying deposits on the supplemental eligibility record date.

Tax-qualified employee stock benefit plan is any defined benefit plan or defined contribution plan, such as an employee stock ownership plan, stock bonus plan, profit-sharing plan, or other plan, and a related trust, that is qualified under section 401 of the Internal Revenue Code (26 U.S.C. 401).

Underwriter is any person who purchases any securities from a savings association with a view to distributing the securities, offers or sells securities for a savings association in connection with the securities' distribution, or participates or has a direct or indirect participation in the direct or indirect underwriting of any such undertaking. Underwriter does not include a person whose interest is limited to a usual and customary distributor's or seller's commission from an underwriter or dealer.

Voluntary supervisory conversion is a mutual to stock conversion for a savings association that is unable to complete a standard mutual to stock conversion under part 192, subpart A, and that meets the eligibility requirements of § 192.625.

Subpart A—Standard Conversions

PRIOR TO CONVERSION

§ 192.100 Preparing for a conversion.

(a) *Meeting with appropriate Federal banking agency prior to passing plan.* A savings association's board, or a subcommittee of its board, must meet, in person or electronically, with the appropriate Federal banking agency before the savings association passes its plan of conversion. At this meeting the savings association must provide the appropriate Federal banking agency with a written strategic plan that outlines the objectives of the proposed conversion and the intended use of the conversion proceeds.

(b) *Consultation with appropriate Federal banking agency before filing application.* A savings association also should consult with the appropriate Federal banking agency before filing its application for conversion. The appropriate Federal banking agency will discuss the information that the savings association must include in the application for conversion, general issues that it may confront in the conversion process, and any other pertinent issues.

§ 192.105 Information required in business plan.

(a) *Minimum requirements.* Prior to filing an application for conversion, a savings association must adopt a business plan reflecting its intended plans for deployment of the proposed conversion proceeds. The savings association's business plan is required, under § 192.150, to be included in its application for conversion. At a minimum, the business plan must address:

(1) The savings association's projected operations and activities for three years following the conversion. These projections must include how the savings association will accomplish the following by the final year of the business plan:

(i) Deploy the conversion proceeds at the converted savings association (and holding company, if applicable);

(ii) What opportunities are available to reasonably achieve its planned deployment of conversion proceeds in the proposed market areas; and

(iii) How the deployment will provide a reasonable return on investment commensurate with investment risk, investor expectations, and industry norms. The savings association must include three years of projected financial statements. The business plan must provide that the converted savings association must retain at least 50 percent of the net conversion proceeds. The appropriate Federal banking agency may require that a larger percentage of proceeds remain in the institution.

(2) The savings association's plan for deploying conversion proceeds to meet credit and lending needs in the proposed market areas. The appropriate Federal banking agencies strongly discourage business plans that provide for a substantial investment in mortgage securities or other securities, except as an interim measure to facilitate orderly, prudent deployment of proceeds during the three years following the conversion or as part of a properly managed leverage strategy.

(3) The risks associated with the saving association's plan for deployment of conversion proceeds, and the effect of this plan on management resources, staffing, and facilities.

(4) The expertise of the savings association's management and board of directors, or plans for adequate staffing and controls to prudently manage the growth, expansion, new investment, and other operations and activities proposed in the business plan.

(b) *Prohibited information.* The savings association may not project returns of capital or special dividends in any part of the business plan. A newly converted company may not plan on stock repurchases in the first year of the business plan.

§ 192.110 Review of business plan by chief executive officer and board of directors.

(a) *Review and approval.* A savings association's chief executive officer and members of the board of directors must review, and at least two-thirds of the board of directors must approve, the business plan.

(b) *Certification.* A savings association's chief executive officer and at least two-thirds of the board of directors must certify that the business plan accurately reflects the intended plans for deployment of conversion proceeds, and that any new initiatives reflected in the business plan are reasonably achievable. The savings association must submit these certifications with its business plan, as part of its application for conversion under § 192.150.

§ 192.115 Review of business plan by the appropriate Federal banking agency.

(a) *Agency review.* The appropriate Federal banking agency will review the savings association's business plan to determine that it demonstrates a safe and sound deployment of conversion proceeds, as part of its review of the application for conversion. In making its determination, the appropriate Federal banking agency will consider how the savings association has addressed the applicable factors of § 192.105. No single factor will be determinative.

(b) *Filing of business plan.* A savings association must file its business plan as a separate confidential exhibit to the Form AC with the appropriate OCC licensing office if it is a Federal savings association, or with the appropriate Federal Deposit Insurance Corporation (FDIC) region if it is a State savings association. The appropriate Federal banking agency may request

additional information, if necessary, to support its determination under paragraph (a) of this section.

(c) *Operation within business plan.* If the appropriate Federal banking agency approves a savings association's application for conversion and the conversion is completed, the savings association must operate within the parameters of its business plan. The savings association must obtain the prior written approval of the appropriate Federal banking agency for any material deviations from its business plan.

§ 192.120 Confidentiality of conversion information.

(a) *Permitted disclosure.* A savings association may discuss information about its conversion with individuals that the savings association authorizes to prepare documents for its conversion.

(b) *Confidential information.* Except as permitted under paragraph (a) of this section, a savings association must keep all information about its conversion confidential until its board of directors adopts the plan of conversion.

(c) *Violations of confidentiality.* If a savings association violates this section, the appropriate Federal banking agency may require the savings association to take remedial action. For example, the appropriate Federal banking agency may require the savings association to take any or all of the following actions:

- (1) Publicly announce that the savings association is considering a conversion;
- (2) Set an eligibility record date acceptable to the appropriate Federal banking agency;
- (3) Limit the subscription rights of any person who violates or aids a violation of this section; or
- (4) Any other action to assure that the conversion is fair and equitable.

PLAN OF CONVERSION

§ 192.125 Adoption of plan of conversion by board of directors.

Prior to filing an application for conversion, a savings association's board of directors must adopt a plan of conversion that conforms to §§ 192.320 through 192.485 and 192.505. The savings association's board of directors must adopt the plan by at least a two-thirds vote. Pursuant to § 192.150, the savings association must include the plan of conversion in the application for conversion.

§ 192.130 Information required in plan of conversion.

A savings association must include the information included in §§ 192.320 through 192.485 and 192.505 in its plan of conversion. The appropriate Federal banking agency may require the savings association to delete or revise any provision in its plan of conversion if it determines the provision is inequitable; is detrimental to the savings association, its account holders, or other savings associations; or is contrary to public interest.

§ 192.135 Notifying members of adopted plan of conversion.

(a) *Notice.* A savings association must promptly notify its members that the board of directors adopted a plan of conversion and that a copy of the plan is available for the members' inspection in the savings association's home office and in its branch offices. The savings association must provide this notice by sending to each member a letter, through the mail or electronically if the member receives electronic communication, or by publishing a notice in the local newspaper in every local community where the savings association has an office. The savings association also may issue a press release and may make this notice available on its web site. The appropriate Federal banking agency may require broader publication, if necessary, to ensure adequate notice to the savings association's members.

(b) *Contents of notice.* The savings association may include only the following statements and descriptions in the letter, notice, or press release.

(1) The savings association's board of directors adopted a proposed plan to convert from a mutual to a stock savings institution.

(2) The savings association will send its members a proxy statement with detailed information on the proposed conversion before the savings association convenes a members' meeting to vote on the conversion.

(3) The savings association's members will have an opportunity to approve or disapprove the proposed conversion at a meeting. A majority of the eligible votes must approve the conversion.

(4) The savings association will not vote existing proxies to approve or disapprove the conversion. The savings association will solicit new proxies for voting on the proposed conversion.

(5) The appropriate Federal banking agency, and in the case of a State-chartered savings association, the appropriate State regulator, must approve the conversion before the conversion will be effective. The savings association's members will have an opportunity to file written comments, including objections and materials supporting the objections, with the appropriate Federal banking agency.

(6) The IRS must issue a favorable tax ruling, or a tax expert must issue an appropriate tax opinion, on the tax consequences of the savings association's conversion before the appropriate Federal banking agency will approve the conversion. The ruling or opinion must indicate the conversion will be a tax-free reorganization.

(7) The appropriate Federal banking agency, and in the case of a State-chartered savings association, the appropriate State regulator, might not approve the conversion, and the IRS or a tax expert might not issue a favorable tax ruling or tax opinion.

(8) Savings account holders will continue to hold accounts in the converted savings association with the same dollar amounts, rates of return, and general terms as existing deposits. The FDIC will continue to insure the accounts.

(9) The savings association's conversion will not affect borrowers' loans, including the amount, rate, maturity, security, and other contractual terms.

(10) The savings association's business of accepting deposits and making loans will continue without interruption.

(11) The savings association's current management and staff will continue to conduct current services for depositors and borrowers under current policies and in existing offices.

(12) The savings association may substantively amend its proposed plan of conversion before the members' meeting.

(13) The savings association may terminate the proposed conversion.

(14) After the appropriate Federal banking agency, and in the case of a State-chartered savings association, the appropriate State regulator, approves the proposed conversion, the savings association will send proxy materials providing additional information. After the savings association sends proxy materials, members may telephone or write to the savings association with additional questions.

(15) The proposed record date for determining the eligible account holders who are entitled to receive subscription rights to purchase the savings association's shares.

(16) A brief description of the circumstances under which supplemental eligible account holders will receive subscription rights to purchase the savings association's shares.

(17) A brief description of how voting members may participate in the conversion.

(18) A brief description of how directors, officers, and employees will participate in the conversion.

(19) A brief description of the proposed plan of conversion.

(20) The par value (if any) and approximate number of shares the savings association will issue and sell in the conversion.

(c) *Other requirements.* (1) The savings association may not solicit proxies, provide financial statements, describe the benefits of conversion, or estimate the value of its shares upon conversion in the letter, notice, or press release.

(2) If the savings association responds to inquiries about the conversion, it may address only the matters listed in paragraph (b) of this section.

§ 192.140 Amendments to plan of conversion.

A savings association may amend its plan of conversion before it solicits proxies. After the savings association solicits proxies, it may amend the plan of conversion only if the appropriate Federal banking agency concurs.

FILING REQUIREMENTS

§ 192.150 Information required in an application for conversion.

(a) *Required information.* A savings association's application for conversion must include all of the following information.

(1) The savings association's plan of conversion.

(2) Pricing materials meeting the requirements of § 192.200(b).

(3) Proxy soliciting materials under § 192.270, including:

(i) A preliminary proxy statement with signed financial statements;

(ii) A form of proxy meeting the requirements of § 192.255; and

(iii) Any additional proxy soliciting materials, including press releases, personal solicitation instructions, radio or television scripts that the savings association plans to use or furnish to its members, and a legal opinion indicating that any marketing materials comply with all applicable securities laws.

(4) An offering circular described in § 192.300.

(5) The documents and information required by Form AC. The savings association may obtain Form AC from the appropriate Federal banking agency.

(6) Where indicated, written consents, signed and dated, of any accountant, attorney, investment banker, appraiser, or other professional who prepared, reviewed, passed upon, or certified any statement, report, or valuation for use. *See* Form AC, instructions.

(7) The savings association's business plan, submitted as a separately bound, confidential exhibit. *See* § 192.160.

(8) Any additional information that the appropriate Federal banking agency requests.

(b) *Rejection of filing.* The appropriate Federal banking agency will not accept for filing, and may return, any application for conversion that is executed improperly, materially deficient, substantially incomplete, or that provides for unreasonable conversion expenses.

§ 192.155 Filing an application for conversion.

A Federal savings association must file Form AC with the appropriate OCC licensing office. A State savings association must file its application with the appropriate FDIC region.

§ 192.160 Request for confidential treatment.

(a) *In general.* The appropriate Federal banking agency makes all filings under this part available to the public, but may keep portions of the application for conversion confidential under paragraph (b) of this section.

(b) *Requests for confidential treatment.* A savings association may request that the appropriate Federal banking agency keep portions of the savings association's application confidential. To make this request, the savings association must clearly designate as "confidential" any portion of its application for conversion that it deems confidential. The savings association must provide a written statement specifying the grounds supporting its request for confidentiality. The appropriate Federal banking agency will not treat as confidential the portion of a savings association's application describing how it plans to meet Community Reinvestment Act (CRA) objectives. The CRA portion of a savings association's application may not incorporate by reference information contained in the confidential portion of the application.

(c) *Determination of confidential treatment.* The appropriate Federal banking agency will determine whether confidential information must be made available to the public under 5 U.S.C. 552 and 12 CFR part 4 or 12 CFR part 309, as appropriate. The appropriate Federal banking agency will advise the savings association before it makes information designated as "confidential" available to the public.

§ 192.165 Amendments to an application for conversion.

To amend its application for conversion, a savings association must:

- (a) File an amendment with an appropriate facing sheet;
- (b) Number each amendment consecutively;
- (c) Respond to all issues raised by the appropriate Federal banking agency; and

(d) Demonstrate that the amendment conforms to all applicable regulations.

NOTICE OF FILING OF APPLICATION AND COMMENT PROCESS

§ 192.180 Public notice of an application for conversion.

(a) *In general.* A Federal savings association must publish a public notice of the application in accordance with the procedures in 12 CFR 5.8. The Federal savings association must simultaneously prominently post the notice in its home office and all branch offices and may also make this notice available on its web site.

(b) *Additional notice.* If the appropriate Federal banking agency does not accept a savings association's application for conversion under § 192.200 and requires the savings association to file a new application, the savings association must publish and post a new notice and allow an additional 30 calendar days for comment.

§ 192.185 Public comment on application for conversion.

Commenters may submit comments on a Federal savings association's application in accordance with the procedures in 12 CFR 5.10.

AGENCY REVIEW OF THE APPLICATION FOR CONVERSION

§ 192.200 Review, approval, or denial of application for conversion.

(a) *Standards for review of application.* The appropriate Federal banking agency may approve an application for conversion only if:

(1) The conversion complies with this part;

(2) The savings association will meet its regulatory capital requirements under 12 CFR part 3 or part 324, as applicable, after the conversion; and

(3) The conversion will not result in a taxable reorganization under the Internal Revenue Code of 1986, as amended.

(b) *Standards for review of appraisal.* The appropriate Federal banking agency will review the appraisal required by § 192.150(a)(2) in determining whether to approve the application. The appropriate Federal banking agency will review the appraisal under the following requirements.

(1) Independent persons experienced and expert in corporate appraisal, and acceptable to the appropriate Federal banking agency, must prepare the appraisal report.

(2) An affiliate of the appraiser may serve as an underwriter or selling agent, if the savings association ensures that the appraiser is separate from the underwriter or selling agent affiliate and the underwriter or selling agent affiliate does not make recommendations or affect the appraisal.

(3) The appraiser may not receive any fee in connection with the conversion other than for appraisal services.

(4) The appraisal report must include a complete and detailed description of the elements of the appraisal, a justification for the appraisal methodology, and sufficient support for the conclusions.

(5) If the appraisal is based on a capitalization of the savings association's pro forma income, it must indicate the basis for determining the income to be derived from the sale of shares, and demonstrate that the earnings multiple used is appropriate, including future earnings growth assumptions.

(6) If the appraisal is based on a comparison of the savings association's shares with outstanding shares of existing stock associations, the existing stock associations must be reasonably comparable in size, market area, competitive conditions, risk profile, profit history, and expected future earnings.

(7) The appropriate Federal banking agency may decline to process the application for conversion and deem it materially deficient or substantially incomplete if the initial appraisal report is materially deficient or substantially incomplete.

(8) A savings association may not represent or imply that the appropriate Federal banking agency approved the appraisal.

(c) *Compliance with the Community Reinvestment Act.* The appropriate Federal banking agency will review the savings association's compliance record under 12 CFR part 195 and its business plan to determine how the savings association will serve the convenience and needs of its communities after the conversion.

(1) Based on this review, the appropriate Federal banking agency may approve the application, deny the application, or approve the application on the condition that the savings association will improve its CRA performance or that the savings association will address the particular credit or lending needs of the communities that it will serve.

(2) The appropriate Federal banking agency may deny the application if the savings association's business plan does not demonstrate that its proposed use of conversion proceeds will help the savings association to meet the credit and lending needs of the communities that it will serve.

(d) *Additional information.* The appropriate Federal banking agency may request that a savings association amend its application if further explanation is necessary, material is missing, or material needs correction.

(e) *Denial of application.* The appropriate Federal banking agency will deny an application if the application does not meet the requirements of this subpart, unless the appropriate Federal banking agency waives the requirement under § 192.5(c).

§ 192.205 Court review of final action on application for conversion.

(a) *In general.* Any person aggrieved by the appropriate Federal banking agency's final action on a savings association's application for conversion may ask the court of appeals of the United States for the circuit in which the principal office or residence of such person is located, or the U.S. Court of Appeals for the District of Columbia Circuit, to review the action under 12 U.S.C. 1464(i)(2)(B).

(b) *Filing procedures.* To obtain court review of the action, this statute requires the aggrieved person to file a written petition requesting that the court modify, terminate, or set aside the final appropriate Federal banking agency action. The aggrieved person must file the petition with the court within the later of 30 calendar days after the appropriate Federal agency publishes notice of its final action in the FEDERAL REGISTER or 30 calendar days after the savings association mails the proxy statement to its members under § 192.235.

VOTE BY MEMBERS

§ 192.225 Approval of plan of conversion by members.

(a) *In general.* After the appropriate Federal banking agency approves a plan of conversion, the savings association must submit the plan of conversion to its members for approval. The savings association must obtain this approval at a meeting of its members, which may be a special or annual meeting, unless the savings association is State-chartered and State law requires approval via an annual meeting.

(b) *Approval.* The savings association's members must approve the plan of conversion by a majority of the total outstanding votes, unless the savings association is State-chartered and State law prescribes a higher percentage.

(c) *Voting method.* Savings association members may vote in person or by proxy.

(d) *Notification to non-voting members.* The savings association may notify eligible account holders or supplemental eligible account holders who are not voting members of its proposed conversion. The savings association may include only the information in § 192.135 in its notice.

§ 192.230 Members' voting eligibility.

A savings association determines members' eligibility to vote by setting a voting record date. The savings association must set a voting record date that is not more than 60 calendar days nor less than 20 calendar days before its meeting, unless the savings association is State-chartered and State law requires a different voting record date.

§ 192.235 Notice of members' meeting.

(a) *In general.* A savings association must notify its members of the meeting to consider its conversion by sending the members a proxy statement cleared by the appropriate Federal banking agency.

(b) *Timing of notice.* The savings association must notify its members 20 to 45 calendar days before the meeting, unless the savings association is State-chartered and State law requires a different notice period.

(c) *Notice to beneficial account holders.* The savings association must also notify each beneficial holder of an account held in a fiduciary capacity:

(1) If the savings association is a Federal savings association, and the name of the beneficial holder is disclosed on the savings association's records; or

(2) If the savings association is a State-chartered savings association and the beneficial holder possesses voting rights under State law.

§ 192.240 Submission of documents to the appropriate Federal banking agency after the members' meeting.

(a) *Filings after members' meeting.* Promptly after the members' meeting, a savings association must file all of the following information with the appropriate OCC licensing office, if the savings association is Federally-chartered, and with the appropriate FDIC region if the savings association is State-chartered.

(1) A certified copy of each adopted resolution on the conversion.

(2) The total votes eligible to be cast.

(3) The total votes represented in person or by proxy.

(4) The total votes cast in favor of and against each matter.

(5) The percentage of votes necessary to approve each matter.

(6) An opinion of counsel that the savings association conducted the members' meeting in compliance with all applicable State or Federal laws and regulations.

(b) *Filing after conversion.* Promptly after completion of the conversion, the savings association must submit an opinion of counsel that it complied with all laws applicable to the conversion.

PROXY SOLICITATION

§ 192.250 Compliance with proxy solicitation provisions.

(a) *Savings association compliance.* A savings association must comply with these proxy solicitation provisions when it provides proxy solicitation material to members for the meeting to vote on the plan of conversion.

(b) *Member compliance.* Members of the savings association must comply with these proxy solicitation provisions when they provide proxy solicitation materials to members for the meeting to vote on the conversion, pursuant to § 192.280, except where:

(1) The member solicits 50 people or fewer and does not solicit proxies on the savings association's behalf; or

(2) The member solicits proxies through newspaper advertisements after the savings association's board of directors adopts the plan of conversion. Any newspaper advertisements may include only the following information:

- (i) The name of the savings association;
- (ii) The reason for the advertisement;
- (iii) The proposal or proposals to be voted upon;
- (iv) Where a member may obtain a copy of the proxy solicitation material; and
- (v) A request for the savings association's members to vote at the meeting.

§ 192.255 Form of proxy requirements.

The form of proxy must include all of the following:

- (a) A statement in bold face type stating that management is soliciting the proxy.
- (b) Blank spaces where the member must date and sign the proxy.
- (c) Clear and impartial identification of each matter or group of related matters that members will vote upon. The savings association must include any proposed charitable contribution as an item to be voted on separately.
- (d) The phrase "Revocable Proxy" in bold face type (at least 18 point).
- (e) A description of any charter or State law requirement that restricts or conditions votes by proxy.
- (f) An acknowledgment that the member received a proxy statement before he or she signed the form of proxy.
- (g) The date, time, and the place of the meeting, when available.

(h) A way for the member to specify by ballot whether he or she approves or disapproves of each matter that members will vote upon.

(i) A statement that management will vote the proxy in accordance with the member's specifications.

(j) A statement in bold face type indicating how management will vote the proxy if the member does not specify a choice for a matter.

§ 192.260 Previously executed proxies.

A savings association may not use previously executed proxies for the plan of conversion vote. If members consider the plan of conversion at an annual meeting, the savings association may vote proxies obtained through other proxy solicitations only on matters not related to the plan of conversion.

§ 192.265 Proxies executed under this part.

A savings association may vote a proxy obtained under this part on matters that are incidental to the conduct of the meeting. The savings association may not vote a proxy obtained under this subpart at any meeting other than the meeting (or any adjournment of the meeting) to vote on the plan of conversion.

§ 192.270 Proxy statement requirements.

(a) *Content requirements.* A savings association must prepare its proxy statement in compliance with this part and Form PS.

(b) *Other requirements.* (1) The appropriate Federal banking agency will review the proxy solicitation material when it reviews the application for conversion and will clear the proxy solicitation material.

(2) The savings association must provide a cleared written proxy statement to its members before or at the same time it provides any other soliciting material. The savings association must mail cleared proxy solicitation material to its members within 10 calendar days after the appropriate Federal banking agency clears the solicitation.

§ 192.275 Filing revised proxy materials.

(a) *In general.* A savings association must file revised proxy solicitation materials as an amendment to its application for conversion. The proxy solicitation materials must be in the form in which it furnished the materials to its members.

(b) *Content of filing.* To revise its proxy solicitation materials, the savings association must file:

- (1) Its revised proxy materials as required by Form PS;
- (2) Its revised form of proxy, if applicable;
- (3) Any additional proxy solicitation material subject to § 192.270; and
- (4) A copy of the revised proxy solicitation materials marked to clearly indicate changes from the prior filing.

(c) *When to file.* The savings association must file no later than the date that it sends or gives the proxy solicitation material to its members. The savings association must indicate the date that it will release the materials.

(d) *Material not required to be filed.* Unless requested by the appropriate Federal banking agency, the savings association does not have to file copies of replies to inquiries from its members or copies of communications that merely request members to sign and return proxy forms.

§ 192.280 Mailing member's proxy solicitation materials.

(a) *In general.* A savings association must mail the member's cleared proxy solicitation material if:

(1) The savings association's board of directors adopted a plan of conversion;

(2) A member requests in writing that the savings association mail the proxy solicitation material;

(3) The appropriate Federal banking agency has cleared the member's proxy solicitation; and

(4) The member agrees to defray the savings association's reasonable expenses.

(b) *Required information.* As soon as practicable after the savings association receives a request under paragraph (a) of this section, it must mail or otherwise furnish the following information to the member:

(1) The approximate number of members that the savings association solicited or will solicit, or the approximate number of members of any group of account holders that the member designates; and

(2) The estimated cost of mailing the proxy solicitation material for the member.

(c) *Timing.* The savings association must mail cleared proxy solicitation material to the designated members promptly after the member furnishes the materials, envelopes (or other containers), and postage (or payment for postage) to the savings association.

(d) *Content.* The savings association is not responsible for the content of a member's proxy solicitation material.

(e) *Sharing of proxy material.* A member may furnish other members its own proxy solicitation material, cleared by the appropriate Federal banking agency, subject to the rules in this section.

§ 192.285 Prohibited solicitations.

(a) *False or misleading statements.* (1) No one may use proxy solicitation material for the members' meeting if the material contains any statement which, considering the time and the circumstances of the statement:

(i) Is false or misleading with respect to any material fact;

(ii) Omits any material fact that is necessary to make the statements not false or misleading;

or

(iii) Omits any material fact that is necessary to correct a statement in an earlier communication that has become false or misleading.

(2) No one may represent or imply that the appropriate Federal banking agency determined that the proxy solicitation material is accurate, complete, not false or not misleading, or passed upon the merits of or approved any proposal.

(b) *Other prohibited solicitations.* No person may solicit:

(1) An undated or post-dated proxy;

(2) A proxy that states it will be dated after the date it is signed by a member;

(3) A proxy that is not revocable at will by the member; or

(4) A proxy that is part of another document or instrument.

§ 192.290 Remedial measures for prohibited solicitations.

(a) *In general.* If a solicitation violates § 192.285, the appropriate Federal banking agency may require remedial measures, including:

(1) Correction of the violation by a retraction and a new solicitation;

(2) Rescheduling the members' meeting; or

(3) Any other actions necessary to ensure a fair vote.

(b) *Other action.* The appropriate Federal banking agency also may bring an enforcement action against the violator.

§ 192.295 Re-solicitation of proxies.

If a savings association amends its application for conversion, the appropriate Federal banking agency may require the savings association to re-solicit proxies for its members' meeting as a condition of approval of the amendment.

OFFERING CIRCULAR

§ 192.300 Offering circular requirements.

(a) *Content and filing requirements.* A savings association must prepare and file its offering circular in compliance with this part, Form OC, and the applicable SEC registration statement form required under 12 CFR 16.15. A Federal savings association must file its offering circular with the appropriate OCC licensing office and a State savings association must file its offering circular with the appropriate FDIC region. If filing an amendment, the savings association also must comply with §§ 192.155 and 192.165.

(b) *Member approval.* A savings association must condition its stock offering upon member approval of its plan of conversion.

(c) *Agency review.* The appropriate Federal banking agency will review the offering circular and may comment on the included disclosures and financial statements. The appropriate Federal banking agency will not approve the adequacy or accuracy of the offering circular or the disclosures.

(d) *Revised filings.* A savings association must file any revised offering circular, final offering circular, and any post-effective amendment to the final offering circular in accordance with the procedures in §§ 192.155 and 192.165.

(e) *Request for effectiveness.* After a savings association satisfactorily addresses the appropriate Federal banking agency's comments, the savings association must request that the appropriate Federal banking agency declare the offering circular effective for a time period. The time period may not exceed the maximum time period for the completion of the sale of all of the savings association's shares under § 192.400.

§ 192.305 Distribution of offering circular.

(a) *Preliminary offering circular.* A savings association may distribute a preliminary offering circular at the same time as or after it mails the proxy statement to its members.

(b) *Early distribution prohibited.* A savings association may not distribute a final offering circular for stock issued in the transaction until after the appropriate Federal banking agency declares the offering circular effective or the Securities and Exchange Commission declares the registration statement for the offering circular effective. The savings association must have the offering circular delivered in accordance with this part.

(c) *Effective offering circular.* A savings association must distribute a final offering circular for stock issued in the transaction to persons listed in its plan of conversion within 10 calendar days after the appropriate Federal banking agency declares the offering circular effective or the Securities and Exchange Commission declares the registration statement for the offering circular effective.

§ 192.310 Filing a post-effective amendment to an offering circular.

(a) *In general.* A savings association must file a post-effective amendment to the offering circular with the appropriate Federal banking agency or have its proposed stock holding company file a post-effective amendment to its registration statement for the offering circular

with the Securities and Exchange Commission, when a material event or change of circumstances occurs.

(b) *Timing of delivery.* After the appropriate Federal banking agency or the Securities and Exchange Commission declares the post-effective amendment effective, the savings association must immediately have the amendment to the offering circular delivered to each person who subscribed for or ordered shares in the offering.

(c) *Content.* The post-effective amendment must indicate that each person may increase, decrease, or rescind their subscription or order.

(d) *Post-effective offering period.* The post-effective offering period must remain open no less than 10 calendar days nor more than 20 calendar days, unless the appropriate Federal banking agency approves a longer rescission period.

OFFERS AND SALES OF STOCK

§ 192.320 Order of priority to purchase conversion shares.

A savings association must offer to sell its shares in the following order:

(a) Eligible account holders.

(b) Tax-qualified employee stock ownership plans.

(c) Supplemental eligible account holders.

(d) Other voting members who have subscription rights.

(e) The savings association's community, its community and the general public, or the general public.

§ 192.325 Timing of offer to sell conversion shares.

(a) *In general.* A savings association may offer to sell its conversion shares after the appropriate Federal banking agency approves the conversion, clears the proxy statement, and declares the offering circular effective.

(b) *Timing.* The offer may commence at the same time the savings association starts the proxy solicitation of its members.

§ 192.330 Pricing of conversion shares.

(a) *In general.* A savings association must sell its conversion shares at a uniform price per share and at a total price that is equal to the estimated pro forma market value of its shares after the conversion.

(b) *Maximum price.* The maximum price must be no more than 15 percent above the midpoint of the estimated price range in the savings association's offering circular.

(c) *Minimum price.* The minimum price must be no more than 15 percent below the midpoint of the estimated price range in the savings association's offering circular.

(d) *Increase in price.* If the appropriate Federal banking agency permits, the savings association may increase the maximum price of conversion shares sold. The maximum price, as adjusted, must be no more than 15 percent above the maximum price computed under paragraph (b) of this section.

(e) *Price range.* The maximum price must be between \$5 and \$50 per share.

(f) *Inclusion in preliminary offering circular.* The savings association must include the estimated price in any preliminary offering circular.

§ 192.335 Procedures for the sale of conversion shares.

(a) *Distribution of order forms.* A savings association must distribute order forms to all eligible account holders, supplemental eligible account holders, and other voting members to

enable them to subscribe for the conversion shares they are permitted under the plan of conversion. The savings association may either send the order forms with its offering circular or after the savings association distributes its offering circular.

(b) *Sale of shares.* A savings association may sell its conversion shares in a community offering, a public offering, or both. The savings association may begin the community offering, the public offering, or both at any time during the subscription offering or upon conclusion of the subscription offering.

(c) *Underwriting commissions and fees.* A savings association may pay underwriting commissions (including underwriting discounts). The appropriate Federal banking agency may object to the payment of unreasonable commissions. The savings association may reimburse an underwriter for accountable expenses in a subscription offering if the public offering is limited. If no public offering occurs, the savings association may pay an underwriter a consulting fee. The appropriate Federal banking agency may object to the payment of unreasonable consulting fees.

(d) *Sequence of order fulfillment.* If a savings association conducts the community offering, the public offering, or both at the same time as the subscription offering, the savings association must fill all subscription orders first.

(e) *Preparation of order form.* A savings association must prepare its order form in compliance with this part and Form OF.

§ 192.340 Prohibited sales practices.

(a) *Offers, sales, or purchases of conversion shares.* In connection with offers, sales, or purchases of conversion shares under this part, a savings association and its directors, officers, agents, or employees may not:

(1) Employ any device, scheme, or artifice to defraud;

(2) Obtain money or property by means of any untrue statement of a material fact or any omission of a material fact necessary to make the statements, in light of the circumstances under which they were made, not misleading; or

(3) Engage in any act, transaction, practice, or course of business that operates or would operate as a fraud or deceit upon a purchaser or seller.

(b) *Conversion*. During the conversion, no person may:

(1) Transfer, or enter into any agreement or understanding to transfer, the legal or beneficial ownership of subscription rights for the savings association's conversion shares or the underlying securities to the account of another;

(2) Make any offer, or any announcement of an offer, to purchase any of the savings association's conversion shares from anyone but the savings association; or

(3) Knowingly acquire more than the maximum purchase allowable under the savings association's plan of conversion.

(c) *Exceptions*. The restrictions in paragraphs (b)(1) and (2) of this section do not apply to offers for more than 10 percent of any class of conversion shares by:

(1) An underwriter or a selling group, acting on the savings association's behalf, that makes the offer with a view toward public resale; or

(2) One or more of the savings association's tax-qualified employee stock ownership plans so long as the plan or plans do not beneficially own more than 25 percent of any class of the savings association's equity securities in the aggregate.

(d) *Violations.* Any person found to have violated the restrictions in paragraphs (a) or (b) of this section may become subject to an enforcement action, civil money penalties, criminal prosecution, or other legal action.

§ 192.345 Permissible forms of subscriber payment.

(a) *In general.* A subscriber may purchase conversion shares with cash, by a withdrawal from a savings account, or a withdrawal from a certificate of deposit. If a subscriber purchases shares by a withdrawal from a certificate of deposit, the savings association may not assess a penalty for the withdrawal.

(b) *Prohibition.* A savings association may not extend credit to any person to purchase the savings association's conversion shares.

§ 192.350 Interest on payments for conversion shares.

(a) *In general.* A savings association must pay interest from the date the savings association receives a payment for conversion shares until the date the savings association completes or terminates the conversion. The savings association must pay interest at no less than its passbook rate for amounts paid in cash, check, or money order.

(b) *Interest on withdrawals from savings accounts.* If a subscriber withdraws money from a savings account to purchase conversion shares, the savings association must pay interest on the payment until the savings association completes or terminates the conversion as if the withdrawn amount remained in the account.

(c) *Interest on withdrawals from certificates of deposit.* If a depositor fails to maintain the applicable minimum balance requirement because he or she withdraws money from a certificate of deposit to purchase conversion shares, the savings association may cancel the certificate and pay interest at no less than its passbook rate on any remaining balance.

§ 192.355 Subscription rights for eligible account holders and supplemental eligible account holders.

(a) *Eligible account holders.* A savings association must give each eligible account holder subscription rights to purchase conversion shares in an amount equal to the greater of:

(1) The maximum purchase limitation established for the community offering or the public offering under § 192.395;

(2) One-tenth of one percent of the total stock offering; or

(3) Fifteen times the following number: The total number of conversion shares that the savings association will issue, multiplied by the following fraction. The numerator is the total qualifying deposit of the eligible account holder. The denominator is the total qualifying deposits of all eligible account holders. The savings association must round down the product of this multiplied fraction to the next whole number.

(b) *Supplemental eligible account holders.* The savings association must give subscription rights to purchase shares to each supplemental eligible account holder in the same amount as described in paragraph (a) of this section, except that the savings association must compute the fraction described in paragraph (a)(3) of this section as follows: The numerator is the total qualifying deposit of the supplemental eligible account holder. The denominator is the total qualifying deposits of all supplemental eligible account holders.

§ 192.360 Officers, directors, and associates as eligible account holders.

A savings association's officers, directors, and their associates may be eligible account holders. However, if an officer, director, or his or her associate receives subscription rights based on increased deposits in the year before the eligibility record date, the savings association must

subordinate subscription rights for these deposits to subscription rights exercised by other eligible account holders.

§ 192.365 Purchase of conversion shares by other voting members.

(a) *In general.* A savings association must give rights to purchase its conversion shares in the conversion to voting members who are neither eligible account holders nor supplemental eligible account holders. The savings association must allocate rights to each voting member that are equal to the greater of:

(1) The maximum purchase limitation established for the community offering and the public offering under § 192.395; or

(2) One-tenth of one percent of the total stock offering.

(b) *Subordination of voting rights.* The savings association must subordinate the voting members' rights to the rights of eligible account holders, tax-qualified employee stock ownership plans, and supplemental eligible account holders.

§ 192.370 Limits on aggregate purchases by officers, directors, and associates.

(a) *In general.* When a savings association converts, its officers, directors, and their associates may not purchase, in the aggregate, more than the following percentage of the savings association's total stock offering:

Institution size	Officer and director purchases (percent)
\$50,000,000 or less	35
\$50,000,001-100,000,000	34

\$100,000,001-150,000,000	33
\$150,000,001-200,000,000	32
\$200,000,001-250,000,000	31
\$250,000,001-300,000,000	30
\$300,000,001-350,000,000	29
\$350,000,001-400,000,000	28
\$400,000,001-450,000,000	27
\$450,000,001-500,000,000	26
Over \$500,000,000	25

(b) *Exception.* The purchase limitations in this section do not apply to shares held in tax-qualified employee stock benefit plans that are attributable to the savings association's officers, directors, and their associates.

§ 192.375 Allocation of oversubscribed conversion shares.

(a) *Eligible account holders.* If a savings association's conversion shares are oversubscribed by its eligible account holders, the savings association must allocate shares among the eligible account holders so that each, to the extent possible, may purchase 100 shares.

(b) *Supplemental eligible account holders.* If a savings association's conversion shares are oversubscribed by its supplemental eligible account holders, the savings association must allocate shares among the supplemental eligible account holders so that each, to the extent possible, may purchase 100 shares.

(c) *Eligible and supplemental eligible account holders.* If a person is an eligible account holder and a supplemental eligible account holder, the savings association must include the eligible account holder's allocation in determining the number of conversion shares that the savings association may allocate to the person as a supplemental eligible account holder.

(d) *Additional allocations.* For conversion shares that the savings association does not allocate under paragraphs (a) and (b) of this section, the savings association must allocate the shares among the eligible or supplemental eligible account holders equitably, based on the amounts of qualifying deposits. The savings association must describe this method of allocation in its plan of conversion.

(e) *Oversubscription.* If shares remain after the savings association has allocated shares as provided in paragraphs (a) and (b) of this section, and if the savings association's voting members oversubscribe, the savings association must allocate its conversion shares among those members equitably. The savings association must describe the method of allocation in its plan of conversion.

§ 192.380 Purchase of conversion shares by employee stock ownership plan.

(a) *In general.* A savings association's tax-qualified employee stock ownership plan may purchase up to 10 percent of the total offering of the savings association's conversion shares.

(b) *Revised stock valuation range.* If the appropriate Federal banking agency approves a revised stock valuation range as described in § 192.330(e), and the final conversion stock valuation range exceeds the former maximum stock offering range, a savings association may allocate conversion shares to its tax-qualified employee stock ownership plan, up to the 10 percent limit in paragraph (a) of this section.

(c) *Open market purchase.* If a savings association's tax-qualified employee stock ownership plan is not able to or chooses not to purchase stock in the offering, it may, with prior appropriate Federal banking agency approval and appropriate disclosure in the savings association's offering circular, purchase stock in the open market, or purchase authorized but unissued conversion shares.

(d) *Charitable organizations.* A savings association may include stock contributed to a charitable organization in the conversion in the calculation of the total offering of conversion shares under paragraphs (a) and (b) of this section, unless the appropriate Federal banking agency objects on supervisory grounds.

§ 192.385 Purchase limitations.

(a) *In general.* A savings association may limit the number of shares that any person, group of associated persons, or persons otherwise acting in concert, may subscribe to up to five percent of the total stock sold.

(b) *Modification of purchase limit.* If a savings association sets a limit of five percent under paragraph (a) of this section, the savings association may modify that limit with appropriate Federal banking agency approval to provide that any person, group of associated persons, or persons otherwise acting in concert subscribing for five percent, may purchase between five and 10 percent as long as the aggregate amount that the subscribers purchase does not exceed 10 percent of the total stock offering.

(c) *Minimum purchase.* A savings association may require persons exercising subscription rights to purchase a minimum number of conversion shares. The minimum number of shares must equal the lesser of the number of shares obtained by a \$500 subscription or 25 shares.

(d) *Aggregation.* In setting purchase limitations under this section, a savings association may not aggregate conversion shares attributed to a person in the savings association's tax-qualified employee stock ownership plan with shares purchased directly by, or otherwise attributable to, that person.

§ 192.390 Community offering of conversion shares.

(a) *Purchase preference in subscription offering.* In a subscription offering, a savings association may give a purchase preference to eligible account holders, supplemental eligible account holders, and voting members residing in its local community.

(b) *Purchase preference in community offering.* In a community offering, a savings association must give a purchase preference to natural persons residing in its local community.

§ 192.395 Other conditions for community and public offerings.

A savings association must offer and sell its stock to achieve a widespread distribution of the stock. If a savings association offers shares in a community offering, a public offering, or both, it must first fill orders for its stock up to a maximum of two percent of the conversion stock on a basis that will promote a widespread distribution of stock. The savings association must allocate any remaining shares on an equal number of shares per order basis until it fills all orders.

COMPLETION OF THE OFFERING

§ 192.400 Time period for completion of sale of stock.

A savings association must complete all sales of its stock within 45 calendar days after the last day of the subscription period, unless the offering is extended under § 192.405.

§ 192.405 Extension of the offering period.

(a) *In general.* A savings association must submit a request in writing to the appropriate Federal banking agency for an extension of any offering period. The appropriate Federal banking agency will not grant any single extension of more than 90 calendar days.

(b) *Post-effective amendment to offering circular.* If the appropriate Federal banking agency grants a savings association's request for an extension of time, the savings association must provide a post-effective amendment to the offering circular under § 192.310 to each person who subscribed for or ordered stock. The amendment must indicate that the appropriate Federal banking agency extended the offering period and that each person who subscribed for or ordered stock may increase, decrease, or rescind their subscription or order within the time remaining in the extension period.

COMPLETION OF THE CONVERSION

§ 192.420 Time period for completion of conversion.

In its plan of conversion, a savings association must set a date by which the conversion must be completed. This date must not be more than 24 months from the date that the savings association's members approve the plan of conversion. The date, once set, may not be extended by the savings association or by the appropriate Federal banking agency. The savings association must terminate the conversion if it is not completed by that date. The conversion is complete on the date that the savings association accepts the offers for its stock.

§ 192.425 Termination of conversion.

A conversion may be terminated by:

- (a) A savings association's members failing to approve the conversion at its members' meeting;
- (b) A savings association before its members' meeting; or

(c) A savings association after the members' meeting, but only if the appropriate Federal banking agency concurs.

§ 192.430 Charter amendments.

(a) *Conversion from Federally-chartered mutual savings association or savings bank to Federally-chartered stock savings association or savings bank.* If the savings association is a Federally-chartered mutual savings association or savings bank and it converts to a Federally-chartered stock savings association or savings bank, it must apply to the OCC to amend its charter and bylaws consistent with 12 CFR 5.22, as part of the savings association's application for conversion. The savings association may only include OCC pre-approved anti-takeover provisions in its amended charter and bylaws. *See* 12 CFR 5.22(g)(7).

(b) *Conversion from Federally-chartered mutual savings association or savings bank to State-chartered stock savings association or savings bank.* If the savings association is a Federally-chartered mutual savings association or savings bank and is converting to a State-chartered stock savings association under this part, the savings association must surrender its charter to the OCC for cancellation promptly after the State issues its new State stock charter. The savings association must promptly file a copy of its new State stock charter with the FDIC.

(c) *Conversion from State-chartered mutual savings association or savings bank to Federally State-chartered stock savings association or savings bank.* If the savings association is a State-chartered mutual savings association or savings bank, and is converting to a Federally chartered stock savings association or savings bank, it must apply to the OCC for a new charter and bylaws consistent with 12 CFR 5.22. The savings association may only include OCC pre-approved anti-takeover provisions in its charter and bylaws. *See* 12 CFR 5.22(g)(7).

(d) *Priority of accounts.* In any conversion described in this section that involves a mutual holding company, the charter of each resulting subsidiary savings association of the holding company must contain the following provision:

In any situation in which the priority of the accounts of the association is in controversy, all such accounts must, to the extent of their withdrawable value, be debts of the association having the same priority as the claims of general creditors of the association not having priority (other than any priority arising or resulting from consensual subordination) over other general creditors of the association.

(e) *Liquidation account.* The savings association's new or amended charter must require the savings association to establish and maintain a liquidation account for eligible and supplemental eligible account holders under § 192.450.

§ 192.435 Corporate existence after conversion.

A savings association's corporate existence will continue following its conversion, unless it converts to a State-chartered stock savings association and State law prescribes otherwise.

§ 192.440 Stockholder voting rights after conversion.

A savings association must provide its stockholders with exclusive voting rights, except as provided in § 192.445(c).

§ 192.445 Savings account holder's account after conversion.

(a) *In general.* The savings association must provide each savings account holder, without payment, a withdrawable savings account or accounts in the same amount and under the same terms and conditions as their accounts before the conversion.

(b) *Liquidation account.* The savings association must provide a liquidation account for each eligible and supplemental eligible account holder under § 192.450.

(c) *Voting rights.* If the savings association is State-chartered and State law requires the savings association to provide voting rights to savings account holders or borrowers, the charter must:

(1) Limit these voting rights to the minimum required by State law; and

(2) Require the savings association to solicit proxies from the savings account holders and borrowers in the same manner that the savings association solicits proxies from its stockholders.

LIQUIDATION ACCOUNT

§ 192.450 Liquidation accounts.

(a) *In general.* A liquidation account represents the potential interest of eligible account holders and supplemental eligible account holders in the savings association's net worth at the time of conversion. A savings association must maintain a sub-account to reflect the interest of each account holder.

(b) *Distribution of liquidation.* Before a savings association may provide a liquidation distribution to common stockholders, it must give a liquidation distribution to those eligible account holders and supplemental eligible account holders who hold savings accounts from the time of conversion until liquidation.

(c) *Recording of liquidation account in financial statements.* A savings association may not record the liquidation account in its financial statements. The savings association must disclose the liquidation account in the footnotes to the savings association's financial statements.

§ 192.455 Initial balance of liquidation account.

The initial balance of the liquidation account is the savings association's net worth in the statement of financial condition included in the final offering circular.

§ 192.460 Initial balance of liquidation sub-account.

(a) *General rule.* (1) A savings association must calculate the initial liquidation sub-account balance of each eligible and supplemental eligible account holder at the time of the conversion.

(2) The initial liquidation sub-account balance for a savings account held by an eligible account holder, for a savings account not held by the eligible account holder on the supplemental eligibility record date, is calculated by multiplying the initial liquidation account balance by the following fraction: the numerator is the qualifying deposit in the savings account on the eligibility record date and the denominator is the calculation in paragraph (a)(5) of this section.

(3) The initial liquidation sub-account balance for a savings account held by a supplemental eligible account holder, for a savings account not held by the supplemental eligible account holder on the eligibility record date, is calculated by multiplying the initial liquidation account balance by the following fraction: the numerator is the qualifying deposit in the savings account on the supplemental eligibility record date and the denominator is the calculation in paragraph (a)(5) of this section.

(4) For a savings account held on both the eligibility record date and the supplemental eligibility record date, the amount of the qualifying deposit for calculating the initial liquidation sub-account is the higher account balance of the savings account on either the eligibility record date or the supplemental eligibility record date. The initial liquidation sub-account balance is calculated by multiplying the liquidation account balance by the following fraction: the numerator is the higher amount of the qualifying deposit in the savings account on either the eligibility record date or the supplemental eligibility record date and the denominator is the calculation in paragraph (a)(5) of this section.

(5) The denominator for calculating the initial liquidation sub-account balance of each eligible and supplemental eligible account holder is the sum of the numerator calculations in paragraphs (a)(2) through (4) of this section.

(b) *Balance increases and decreases.* A savings association must not increase the initial liquidation and sub-account balances. It must decrease the initial liquidation account and the sub-account balances under § 192.470 as depositors reduce or close their savings accounts.

§ 192.465 Retention of voting rights based on liquidation sub-accounts.

Eligible account holders or supplemental eligible account holders do not retain any voting rights based on their liquidation sub-accounts.

§ 192.470 Required adjustments to liquidation sub-accounts.

(a) *Reductions.* (1) A savings association must reduce the balance of an eligible account holder's or supplemental eligible account holder's sub-account if the deposit balance in the account holder's savings account at the close of business on any annual closing date, which for purposes of this section is the savings association's fiscal year end, after the relevant eligibility record dates is less than:

(i) The deposit balance in the account holder's savings account at the close of business on any other annual closing date after the relevant eligibility record date; or

(ii) The qualifying deposits in the account holder's savings account on the relevant eligibility record date.

(2) The reduction must be proportionate to the reduction in the deposit balance.

(b) *Prohibition on increases.* If a savings association reduces the balance of a liquidation sub-account, it may not subsequently increase it if the deposit balance increases.

(c) *Liquidation account adjustments.* A savings association is not required to adjust the liquidation account and sub-account balances at each annual closing date if the savings association maintains sufficient records to make the computations if a liquidation subsequently occurs.

(d) *Maintenance of liquidation sub-account.* A savings association must maintain the liquidation sub-account for each account holder as long as the account holder maintains an account with the same social security number.

(e) *Complete liquidation.* If there is a complete liquidation, the savings association must provide each account holder with a liquidation distribution in the amount of the sub-account balance.

§ 192.475 Definition of liquidation.

(a) *In general.* A liquidation is a sale of a saving association's assets and settlement of its liabilities with the intent to cease operations and close. Upon liquidation, a savings association must return its charter to the governmental agency that issued it. The government agency must cancel the savings association's charter.

(b) *Other transactions.* A merger, consolidation, or similar combination or transaction with another depository institution, is not a liquidation. If a savings association is involved in such a transaction, the surviving institution must assume the liquidation account.

§ 192.480 Effect of liquidation account on net worth.

The liquidation account does not affect a saving association's net worth.

§ 192.485 Required liquidation account provision in new Federal charter.

If a savings association converts to Federal stock form, it must include the following provision in its new charter: "Liquidation Account. Under appropriate Federal banking agency

regulations, the association must establish and maintain a liquidation account for the benefit of its savings account holders as of _____. If the association undergoes a complete liquidation, it must comply with appropriate Federal banking agency regulations with respect to the amount and priorities on liquidation of each of the savings account holder's interests in the liquidation account. A savings account holder's interest in the liquidation account does not entitle the savings account holder to any voting rights.”

POST-CONVERSION

§ 192.500 Permissible management stock benefit plans after conversion.

(a) *In general.* During the 12 months after its conversion, a savings association may implement a stock option plan (Option Plan), an employee stock ownership plan or other tax-qualified employee stock benefit plan (collectively, ESOP), and a management recognition plan (MRP), provided that the savings association meets all of the following requirements:

(1) The savings association discloses the plans in its proxy statement and offering circular and indicates in its offering circular that there will be a separate shareholder vote on the Option Plan and the MRP at least six months after the conversion. No shareholder vote is required to implement the ESOP. The savings association’s ESOP must be tax-qualified.

(2) The savings association’s Option Plan does not encompass more than 10 percent of the number of shares that the savings association issued in the conversion.

(3)(i) The savings association’s ESOP and MRP do not encompass, in the aggregate, more than 10 percent of the number of shares that the savings association issued in the conversion. If the savings association has tangible capital of 10 percent or more following the conversion, the appropriate Federal banking agency may permit the ESOP and MRP to encompass, in the aggregate, up to 12 percent of the number of shares issued in the conversion; and

(ii) The savings association's MRP does not encompass more than three percent of the number of shares that the savings association issued in the conversion. If the savings association has tangible capital of 10 percent or more after the conversion, the appropriate Federal banking agency may permit the MRP to encompass up to four percent of the number of shares that the savings association issued in the conversion.

(4) No individual receives more than 25 percent of the shares under any plan.

(5) The savings association's directors who are not officers of the savings association do not receive more than five percent of the shares of the MRP or Option Plan individually, or 30 percent of any such plan in the aggregate.

(6) The savings association's shareholders approve each of the Option Plan and the MRP by a majority of the total votes eligible to be cast at a duly called meeting before the savings association establishes or implements the plan. The savings association may not hold this meeting until six months after its conversion.

(7) When the savings association distributes proxies or related material to shareholders in connection with the vote on a plan, the savings association states that the plan complies with the appropriate Federal banking agency's regulations and that the appropriate Federal banking agency does not endorse or approve the plan in any way. The savings association may not make any written or oral representations to the contrary.

(8) The savings association does not grant stock options at less than the market price at the time of grant.

(9) The savings association does not fund the Option Plan or the MRP at the time of the conversion.

(10) The savings association's plan does not begin to vest earlier than one year after shareholders approve the plan, and does not vest at a rate exceeding 20 percent per year.

(11) The savings association's plan permits accelerated vesting only for disability or death, or if the savings association undergoes a change of control.

(12) The saving association's plan provides that its executive officers or directors must exercise or forfeit their options in the event the institution becomes critically undercapitalized (as defined in 12 CFR 6.4 or 324.403, as applicable), is subject to appropriate Federal banking agency enforcement action, or receives a capital directive under 12 CFR part 6, subpart B or 12 CFR 308.201, as applicable.

(13) The savings association files a copy of the proposed Option Plan or MRP with the appropriate Federal banking agency and certify to such agency that the plan approved by the shareholders is the same plan that the savings association filed with, and disclosed in, the proxy materials distributed to shareholders in connection with the vote on the plan.

(14) The savings association files the plan and the certification with the appropriate Federal banking agency within five calendar days after its shareholders approve the plan.

(b) *Stock splits or other adjustments.* The savings association may provide dividend equivalent rights or dividend adjustment rights to allow for stock splits or other adjustments to its stock in the ESOP, MRP, and Option Plan.

(c) *Plans implemented more than 12 months after conversion.* The restrictions in paragraph (a) of this section do not apply to plans implemented more than 12 months after the conversion, provided that materials pertaining to any shareholder vote regarding such plans are not distributed within the 12 months after the conversion. If a plan adopted in conformity with

paragraph (a) of this section is amended more than 12 months following the conversion, shareholders must ratify any material deviations to the requirements in paragraph (a).

§ 192.505 Restrictions on the trading of shares by directors, officers, and associates.

(a) *Sales restriction.* Directors and officers who purchase conversion shares may not sell the shares for one year after the date of purchase, except that in the event of the death of the officer or director, the successor in interest may sell the shares.

(b) *Notice of sales restriction on stock certificate.* The savings association must include notice of the restriction described in paragraph (a) of this section on each certificate of stock that a director or officer purchases during the conversion or receives in connection with a stock dividend, stock split, or otherwise with respect to such restricted shares.

(c) *Stock purchase restrictions.* For three years after the conversion, the savings association's officers, directors, and their associates may purchase the savings association's stock only from a broker or dealer registered with the Securities and Exchange Commission. However, the savings association's officers, directors, and their associates may engage in a negotiated transaction involving more than one percent of the savings association's outstanding stock, and may purchase stock through any of the savings association's management or employee stock benefit plans.

(d) *Communication of restrictions with transfer agent.* The savings association must instruct its stock transfer agent about the transfer restrictions in this section.

§ 192.510 Repurchase of shares after conversion.

(a) *Repurchases during first year after conversion.* A savings association may not repurchase its shares in the first year after the conversion except:

(1) In extraordinary circumstances, a savings association may make open market repurchases of up to five percent of its outstanding stock in the first year after the conversion if the savings association files a notice under § 192.515(a) and the appropriate Federal banking agency does not disapprove the repurchase. The appropriate Federal banking agency will not approve such repurchases unless the repurchase meets the standards in § 192.515(c), and the repurchase is consistent with paragraph (c) of this section.

(2) A savings association may repurchase qualifying shares of a director or conduct an appropriate Federal banking agency-approved repurchase pursuant to an offer made to all shareholders of the savings association.

(3) Repurchases to fund management recognition plans that have been ratified by shareholders do not count toward the repurchase limitations in this section. Repurchases in the first year to fund such plans require prior written notification to the appropriate Federal banking agency.

(4) Purchases to fund tax qualified employee stock benefit plans do not count toward the repurchase limitations in this section.

(b) *Repurchases following first year after conversion.* After the first year, a savings association may repurchase its shares, subject to all other applicable regulatory and supervisory restrictions and paragraph (c) of this section.

(c) *Restrictions on all repurchases.* All stock repurchases are subject to the following restrictions.

(1) A savings association may not repurchase its shares if the repurchase will reduce the savings association's regulatory capital below the amount required for its liquidation account

under § 192.450. The savings association must comply with the capital distribution requirements at 12 CFR 5.55.

(2) The restrictions on share repurchases apply to a charitable organization under § 192.550. A savings association must aggregate purchases of shares by the charitable organization with the savings association's repurchases.

§ 192.515 Information to be filed with Federal banking agency prior to repurchase of shares.

(a) *Notice requirement.* To repurchase stock in the first year following conversion, other than repurchases under § 192.510(a)(3) or (4), a savings association must file a written notice with the appropriate OCC licensing office if Federally chartered, and with the appropriate FDIC region if State-chartered. The savings association must provide the following information:

- (1) The proposed repurchase program;
- (2) The effect of the repurchases on the savings association's regulatory capital; and
- (3) The purpose of the repurchases and, if applicable, an explanation of the extraordinary circumstances necessitating the repurchases.

(b) *Filing of notice.* A Federal savings association must file its notice with the appropriate OCC licensing office, and a State savings association must file its notice with the appropriate regional director of the FDIC, at least 10 calendar days before the savings association begins its repurchase program.

(c) *Agency review.* A savings association may not repurchase its shares if the appropriate Federal banking agency objects to the repurchase program. The appropriate Federal banking agency will not object to a repurchase program if:

(1) The repurchase program will not adversely affect the savings association's financial condition;

(2) The savings association submits sufficient information to evaluate the proposed repurchases;

(3) The savings association demonstrates extraordinary circumstances and a compelling and valid business purpose for the share repurchases; and

(4) The repurchase program would not be contrary to other applicable regulations.

§ 192.520 Declaring and paying dividends after the conversion.

A savings association may declare or pay a dividend on its shares after the conversion if:

(a) The dividend will not reduce the savings association's regulatory capital below the amount required for the liquidation account under § 192.450;

(b) The savings association complies with all capital requirements under 12 CFR part 3 after it declares or pays dividends;

(c) The savings association complies with the capital distribution requirements under 12 CFR 5.55; and

(d) The savings association does not return any capital, other than ordinary dividends, to purchasers during the term of the business plan submitted with the conversion.

§ 192.525 Restrictions on acquisition of shares after conversion.

(a) *Prior agency approval.* For three years after conversion, no person may, directly or indirectly, acquire or offer to acquire the beneficial ownership of more than 10 percent of any class of the savings association's equity securities without the appropriate Federal banking agency's prior written approval. If a person violates this prohibition, the savings association may

not permit the person to vote shares in excess of 10 percent, and may not count the shares in excess of 10 percent in any shareholder vote.

(b) *Beneficial ownership.* A person acquires beneficial ownership of more than 10 percent of a class of shares when he or she holds any combination of the savings association's stock or revocable or irrevocable proxies under circumstances that give rise to a conclusive control determination or rebuttable control determination under 12 CFR 5.50. The appropriate Federal banking agency will presume that a person has acquired shares if the acquiror entered into a binding written agreement for the transfer of shares. For purposes of this section, an offer is made when it is communicated. An offer does not include non-binding expressions of understanding or letters of intent regarding the terms of a potential acquisition.

(c) *Exceptions.* Notwithstanding the restrictions in this section:

(1) Paragraphs (a) and (b) of this section do not apply to any offer with a view toward public resale made exclusively to the savings association, to the underwriters, or to a selling group acting on the savings association's behalf.

(2) Unless the appropriate Federal banking agency objects in writing, any person may offer or announce an offer to acquire up to one percent of any class of shares. In computing the one percent limit, the person must include all of his or her acquisitions of the same class of shares during the prior 12 months.

(3) A corporation whose ownership is, or will be, substantially the same as the savings association's ownership may acquire or offer to acquire more than 10 percent of the savings association's common stock, if it makes the offer or acquisition more than one year after the saving association's conversion.

(4) One or more of the savings association's tax-qualified employee stock benefit plans may acquire the savings association's shares, if the plan or plans do not beneficially own more than 25 percent of any class of the savings association's shares in the aggregate.

(5) An acquiror does not have to file a separate application to obtain the appropriate Federal banking agency's approval under paragraph (a) of this section if the acquiror files an application under 12 CFR 5.50 that specifically addresses the criteria listed under paragraph (d) of this section and the savings association does not oppose the proposed acquisition.

(d) *Factors for agency denial.* The appropriate Federal banking agency may deny an application under paragraph (a) of this section if the proposed acquisition:

- (1) Is contrary to the purposes of this part;
- (2) Is manipulative or deceptive;
- (3) Subverts the fairness of the conversion;
- (4) Is likely to injure the savings association;
- (5) Is inconsistent with the savings association's plan to meet the credit and lending needs of its proposed market area;
- (6) Otherwise violates laws or regulations; or
- (7) Does not prudently deploy the savings association's conversion proceeds.

§ 192.530 Other post-conversion requirements.

After a savings association converts, it must:

(a) Promptly register its shares under the Securities Exchange Act of 1934 (15 U.S.C. 78a-78jj, as amended). The savings association may not deregister the shares for three years.

(b) Encourage and assist a market maker to establish and to maintain a market for its shares.

A market maker for a security is a dealer who:

(1) Regularly publishes bona fide competitive bid and offer quotations for the security in a recognized inter-dealer quotation system;

(2) Furnishes bona fide competitive bid and offer quotations for the security on request; or

(3) May effect transactions for the security in reasonable quantities at quoted prices with other brokers or dealers.

(c) Use its best efforts to list its shares on a national or regional securities exchange or on the National Association of Securities Dealers Automated Quotation system.

(d) File all post-conversion reports that the appropriate Federal banking agency requires.

CONTRIBUTIONS TO CHARITABLE ORGANIZATIONS

§ 192.550 Donating conversion shares or conversion proceeds to a charitable organization.

A savings association may contribute some of its conversion shares or proceeds to a charitable organization if:

(a) The savings association's plan of conversion provides for the proposed contribution;

(b) The savings association's members approve the proposed contribution; and

(c) The IRS either has approved, or approves within two years after formation, the charitable organization as a tax-exempt charitable organization under the Internal Revenue Code.

§ 192.555 Member approval of charitable contributions.

At the meeting to consider the conversion, a savings association's members must separately approve, by a majority of the total eligible votes, a charitable contribution of conversion shares or proceeds. If the savings association is in mutual holding company form and adding a charitable contribution as part of a second step stock conversion, the savings association must also have its minority shareholders separately approve the charitable contribution by a majority of their total eligible votes.

§ 192.560 Limitations on charitable contributions.

A savings association may contribute a reasonable amount of conversion shares or proceeds to a charitable organization if such contribution will not exceed limits for charitable deductions under the Internal Revenue Code and the appropriate Federal banking agency does not object on supervisory grounds. If the savings association is well-capitalized, the appropriate Federal banking agency generally will not object if the savings association contributes an aggregate amount of eight percent or less of the conversion shares or proceeds.

§ 192.565 Contents of organizational documents of charitable organization.

The charitable organization's charter (or trust agreement) and gift instrument must provide that:

(a) The charitable organization's primary purpose is to serve and make grants in the savings association's local community;

(b) As long as the charitable organization controls shares, it must vote those shares in the same ratio as all other shares voted on each proposal considered by the savings association's shareholders;

(c) For at least five years after its organization, one seat on the charitable organization's board of directors (or board of trustees) is reserved for an independent director (or trustee) from the savings association's local community. This director may not be an officer, director, or employee of the savings association or of an affiliate of the savings association, and should have experience with local community charitable organizations and grant making; and

(d) For at least five years after its organization, one seat on the charitable organization's board of directors (or board of trustees) is reserved for a director from the savings association's

board of directors or the board of directors of an acquiror or resulting institution in the event of a merger or acquisition of the savings association.

§ 192.570 Conflicts of interest among directors.

(a) *In general.* A person is subject to 12 CFR 163.200 if that person:

(1) Is a director, officer, or employee of the savings association; has the power to direct the savings association's management or policies; or otherwise owes a fiduciary duty to the savings association (for example, holding company directors); and

(2) Will serve as an officer, director, or employee of the charitable organization. *See* Form AC for further information on operating plans and conflict of interest plans.

(b) *Identification and recusal of directors.* Before the savings association's board of directors may adopt a plan of conversion that includes a charitable organization, the savings association must identify its directors that will serve on the charitable organization's board. These directors may not participate in the board's discussions concerning contributions to the charitable organization, and may not vote on the matter.

§ 192.575 Other requirements for charitable organizations.

(a) *Charter and gift instrument requirements.* The charitable organization's charter (or trust agreement) and the gift instrument for the contribution must provide that:

(1) The appropriate Federal banking agency may examine the charitable organization at the charitable organization's expense;

(2) The charitable organization must comply with all supervisory directives that the appropriate Federal banking agency imposes;

(3) The charitable organization must operate according to written policies adopted by its board of directors (or board of trustees), including a conflict of interest policy;

(4) The charitable organization must not engage in self-dealing; and

(5) The charitable organization must comply with all laws necessary to maintain its tax-exempt status under the Internal Revenue Code.

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

(c) *Voting ratio.* As long as the charitable organization controls shares, the savings association must consider those shares as voted in the same ratio as all of the shares voted on each proposal considered by the savings association’s shareholders.

(d) *Filing requirement.* After the savings association completes its stock offering, it must submit copies of the following documents to the appropriate OCC licensing office if it is a Federal savings association or with the appropriate FDIC region if it is a State savings association:

(1) The charitable organization's charter and bylaws (or trust agreement);

(2) The charitable organization's operating plan (within six months after the savings association’s stock offering);

(3) The charitable organization's conflict of interest policy; and

(4) The gift instrument for the contributions of either stock or cash to the charitable organization.

Subpart B—Voluntary Supervisory Conversions

§ 192.600 Voluntary supervisory conversions.

(a) *In general.* A savings association must comply with this subpart and part 16 to engage in a voluntary supervisory conversion. This subpart applies to all voluntary supervisory conversions under sections 5(i)(1), (i)(2), and (p) of HOLA, 12 U.S.C. 1464(i)(1), (i)(2), and (p).

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

§ 192.605 Conducting a voluntary supervisory conversion.

A savings association may conduct a voluntary supervisory conversion through one of the following methods:

(a) A savings association may sell its shares or the shares of a holding company to the public under the requirements of subpart A of this part.

(b) A savings association may convert to stock form by merging into an interim Federal-or State-chartered stock association.

(c) A savings association may sell its shares directly to an acquiror, who may be a person, company, depository institution, or depository institution holding company.

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

§ 192.610 Member rights in a voluntary supervisory conversion.

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

ELIGIBILITY

§ 192.625 Eligibility for a voluntary supervisory conversion.

(a) *Eligibility.* An insured savings association may be eligible to convert under this subpart B if:

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

(2) Severe financial conditions threaten the savings association's stability and a conversion is likely to improve its financial condition;

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

(4) The savings association is in receivership and a conversion will assist the savings association.

(b) *Requirements for viability after conversion.* The savings association will be a viable entity following the conversion if it satisfies all of the following:

(1) The savings association will be adequately capitalized as a result of the conversion;

(2) The savings association, its proposed conversion, and its acquiror(s) comply with applicable supervisory policies;

(3) The transaction is in the savings association's best interest, and the best interest of the Deposit Insurance Fund and the public; and

(4) The transaction will not injure or be detrimental to the savings association, the Deposit Insurance Fund, or the public interest.

§ 192.630 Eligibility of State-chartered savings bank for voluntary supervisory conversion.

A State-chartered savings bank may be eligible to convert to a Federal stock savings bank under this subpart if:

(a) The FDIC certifies under section 5(o)(2)(C) of the HOLA that severe financial conditions threaten the savings bank's stability and that the voluntary supervisory conversion is likely to improve its financial condition; or

(b) The savings bank meet the following conditions:

(1) The savings bank's liabilities exceed its assets, as calculated under generally accepted accounting principles, assuming the savings bank is a going concern; and

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

PLAN OF SUPERVISORY CONVERSION

§ 192.650 Contents of plan of voluntary supervisory conversion.

A majority of the board of directors of the savings association must adopt a plan of voluntary supervisory conversion. The savings association must include all of the following information in its plan of voluntary supervisory conversion.

(a) The savings association's name and address.

(b) A complete description of the proposed voluntary supervisory conversion transaction that also describes plans for any liquidation account.

(c) Certified copies of all resolutions relating to the conversion adopted by the board of directors of the savings association.

VOLUNTARY SUPERVISORY CONVERSION APPLICATION

§ 192.660 Contents of voluntary supervisory conversion application.

A savings association must include all of the following information and documents in a voluntary supervisory conversion application to the appropriate OCC licensing office if it is a Federal savings association and to the appropriate FDIC region if it is a State savings association under this subpart:

(a) *Eligibility.* (1) Evidence establishing that the savings association meets the eligibility requirements under § 192.625 or § 192.630.

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

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

(b) *Plan of conversion.* A plan of voluntary supervisory conversion that complies with § 192.650.

(c) *Business plan.* A business plan that complies with § 192.105, when required by the appropriate Federal banking agency.

(d) *Financial data.* (1) The savings association's most recent audited financial statements and Consolidated Reports of Condition and Income or Call Report, as appropriate. The savings

association must explain how its current capital levels make the savings association eligible to engage in a voluntary supervisory conversion under § 192.625 or § 192.630.

(2) A description of the savings association's estimated conversion expenses.

(3) Evidence supporting the value of any non-cash asset contributions. Appraisals must be acceptable to the appropriate Federal banking agency and the non-cash assets must meet all other appropriate Federal banking agency policy guidelines.

(4) Pro forma financial statements that reflect the effects of the transaction. The savings association must identify its tangible, core, and risk-based capital levels and show the adjustments necessary to compute the capital levels. The savings association must prepare its pro forma statements in conformance with the appropriate Federal banking agency's regulations and the applicable accounting requirements.

(5) A statement describing the aggregate number and percentage of shares that each director, officer, and any affiliates or associates of the director or officer will purchase.

(e) *Proposed documents.* (1) The savings association's proposed charter and bylaws.

(2) The savings association's proposed stock certificate form.

(3) Any securities offering circular and other securities disclosure materials to be used in connection with the proposed voluntary supervisory conversion.

(f) *Agreements.* (1) A copy of any agreements between the savings association and proposed purchasers.

(2) A copy and description of all existing and proposed employment contracts. The savings association must describe the term, salary, and severance provisions of the contract, the identity and background of the officer or employee to be employed, and the amount of any conversion shares to be purchased by the officer or employee or his or her affiliates or associates.

(g) *Related filings and applications.* (1) All filings required under the securities offering rules of 12 CFR parts 16 and 192.

(2) Any required Change in Bank Control Act notice and rebuttal of control submissions under 12 U.S.C. 1817(j) and 12 CFR 5.50, or copies of any Holding Company Act applications, including prior-conduct certifications listed under the appropriate Federal banking agency's regulatory guidance.

(3) A subordinated debt application, if applicable.

(4) Applications for permission to organize a stock association and for approval of a merger, if applicable, and a copy of any application for FDIC insurance of accounts, if applicable.

(5) A statement describing any other applications required under Federal or State banking laws for all transactions related to the conversion, copies of all dispositive documents issued by regulatory authorities relating to the applications, and, if requested by the appropriate Federal banking agency, copies of the applications and related documents.

(h) *Other information.* (1) A statement indicating the role each director, officer, and affiliate of the savings association or associate of the director or officer will have after the conversion.

(2) Any additional information requested by the OCC, as authorized by law.

(i) *Waiver request.* A description of any of the features of the savings association's application that do not conform to the requirements of this subpart, including any request for waiver of these requirements.

APPROPRIATE FEDERAL BANKING AGENCY REVIEW OF THE VOLUNTARY SUPERVISORY
CONVERSION APPLICATION

§ 192.670 Approval of voluntary supervisory conversion application.

The appropriate Federal banking agency will generally approve a savings association's application to engage in a voluntary supervisory conversion unless it determines:

(a) The savings association does not meet the eligibility requirements for a voluntary supervisory conversion under § 192.625 or § 192.630 or because the proceeds from the sale of conversion stock, less the expenses of the conversion, would be insufficient to satisfy any applicable viability requirement;

(b) The transaction is detrimental to or would cause potential injury to the savings association or the Deposit Insurance Fund or is contrary to the public interest;

(c) The savings association or its acquiror, or the controlling parties or directors and officers of the savings association or its acquiror, have engaged in unsafe or unsound practices in connection with the voluntary supervisory conversion; or

(d) The savings association fails to justify an employment contract incidental to the conversion, or the employment contract will be an unsafe or unsound practice or represent a sale of control. In a voluntary supervisory conversion, the appropriate Federal banking agency generally will not approve employment contracts of more than one year for existing management.

§ 192.675 Conditions imposed upon approval of voluntary supervisory conversion application.

(a) *Required condition.* The appropriate Federal banking agency will condition approval of a voluntary supervisory conversion application on all of the following.

(1) The savings association must complete the conversion stock sale within three months after the appropriate Federal banking agency approves the application. The appropriate Federal banking agency may grant an extension for good cause.

(2) The savings association must comply with all filing requirements of this part, and 12 CFR part 16.

(3) The savings association must submit an opinion of independent legal counsel indicating that the sale of its shares complies with all applicable State securities law requirements.

(4) The savings association must comply with all applicable laws, rules, and regulations.

(5) The savings association must satisfy any other requirements or conditions the appropriate Federal banking agency may impose.

(b) *Discretionary conditions.* The appropriate Federal banking agency may condition approval of a voluntary supervisory application for conversion on either of the following:

(1) The savings association must satisfy any conditions and restrictions the appropriate Federal banking agency imposes to prevent unsafe or unsound practices, to protect the Deposit Insurance Fund and the public interest, and to prevent potential injury or detriment to the savings association before and after the conversion. The appropriate Federal banking agency may impose these conditions and restrictions on the savings association (before and after the conversion) or, as appropriate, the savings association's acquiror, controlling parties, or its directors and officers;
or

(2) The savings association must infuse a larger amount of capital, if necessary, for safety and soundness reasons.

OFFERS AND SALES OF STOCK

§ 192.680 Offer and sale of shares in a voluntary supervisory conversion.

If a savings association converts under this subpart, it must offer and sell its shares in accordance with the applicable requirements of 12 CFR parts 16 and 192.

POST-CONVERSION

§ 192.690 Restrictions on acquisition of additional shares after voluntary supervisory conversion.

For three years after the completion of a voluntary supervisory conversion, neither the savings association nor its controlling shareholder(s) may acquire shares from minority shareholders without the appropriate Federal banking agency's prior approval.

PART 195 – COMMUNITY REINVESTMENT

52. The authority citation for part 195 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1814, 1816, 1828(c), 2901 through 2908, and 5412(b)(2)(B).

53. Section 195.11 is amended by revising paragraph (a) to read as follows:

§ 195.11 Authority, purposes, and scope.

(a) Authority. This part is issued under the Community Reinvestment Act of 1977 (CRA), as amended (12 U.S.C. 2901 *et seq.*); section 5, as amended, and sections 3, and 4, as added, of the Home Owners' Loan Act of 1933 (12 U.S.C. 1462a, 1463, and 1464); sections 4, 6, and 18(c), as amended of the Federal Deposit Insurance Act (12 U.S.C. 1814, 1816, 1828(c)); and section 312 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5412(b)(2)(B)).

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Dated: December 20, 2019.

Morris R. Morgan

First Deputy Comptroller, Comptroller of the Currency

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