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Handbook: Thrift Activities
Subject: Capital Stock and Ownership

Section: 310
TB 58

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RESCINDED

Merger Conversion Disclosures

Summary: This bulletin sets forth disclosure requirements for merger conversion proxy statements to ensure that accountholders receive adequate and accurate disclosure about proposed merger conversion transactions.

For Further Information Contact: Corporate & Securities Division, Chief Counsel's Office, Washington, D.C.

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Background

One of the objectives of the OTS Conversion Regulations, 12 C.F.R. Part 563b, is to ensure that accountholders of savings associations undertaking a mutual to stock conversion receive adequate and accurate information about their role and rights in the conversion process. The proxy materials used to solicit the votes of an association's accountholders are subject to disclosure standards found in OTS Form PS, 12 C.F.R. section 563b.101, and must be cleared by the OTS staff before they are used. The OTS also retains broad authority under section 563b.101 to require, by interpretive release or otherwise, conversion proxy statements to include such other information deemed necessary to comply with Form PS.

In recent years, there has been a significant increase in merger conversion transactions where a mutual savings association converts to the stock form and is acquired by a depository institution or holding company, or merged with another depository institution. The OTS con-

version regulations require that accountholders of an association that will undertake a merger conversion must consider and vote on the proposed Plan of Conversion. However, unlike a standard conversion, accountholders of the converting association not only decide whether their association converts to stock form, but also implicitly approve the terms of the acquisition or merger with another insured institution or holding company acquiror.

In addition, because merger conversions are a uniquely attractive transaction from the perspective of the acquiror, merger conversions provide more opportunities than standard conversions for insiders of the converting association to abuse their position as part of the process of agreeing to the merger conversion. All these considerations heighten the need for accountholders of converting associations to receive full, fair, accurate and pertinent disclosures when they consider and vote on these transactions.

Additional Required Disclosure

To provide accountholders with sufficient information to vote to approve or reject a merger conversion by their savings association, the OTS requires converting associa-

tions in merger conversion transactions to provide expanded disclosure in the following areas:

- The association must provide detailed reasons for the association entering into the proposed transaction. Institutions must discuss the costs, benefits, drawbacks, and other alternatives to the proposed transaction in the context of explaining why the proposed transaction is preferable.
- The disclosure must discuss whether management believes the proposed transaction is in the best interests of accountholders and the association and, if so, detailed reasons why.
- The disclosure must (1) include a discussion of the specific fiduciary duties owed to accountholders by the directors and officers and (2) specify under what basis and why, in considering the proposed transaction and in the exercise of those fiduciary duties, the directors determined to undertake a merger conversion. This discussion should include a statement that management believes that the Plan of Conversion is equitable to the accountholders and to the institution and the basis for that belief.

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- The disclosure should indicate whether or not the transaction was considered separately by the independent directors of the association, and whether those directors, voting as a class, voted to undertake the merger conversion transaction.
- The compensation and other benefits that will be received by the directors and executive officers of the resulting institution should be discussed and compared, in tabular form, with current compensation and benefits. The reasons for any increases or changes should be thoroughly explained.

Merger Conversion proxy statements are subject to all the disclosure requirements of Form PS, including all information regarding current management compensation required by Item 402 of Regulation S-K, and Item 8 of Schedule 14A under the Securities Exchange Act of 1934. Item 402 requires disclosure of all forms of management compensation including cash compensation, bonuses, deferred compensation, compensation pursuant to plans, stock option and stock appreciation rights, other compensation, termination of employment and change of control arrangements. *See*, Reg. S-K, Item 402, 17 C.F.R. sec-

tion 229.402 and Regulation 14A, Schedule 14A, Item 8, 17 C.F.R. section 240.14a-101(Item 8).

- Disclosure must be included regarding the accountholder's right to contest the conversion under the conversion regulations and other applicable federal and state laws. A cross-reference to 12 C.F.R. section 563b.8(u) will not be sufficient to meet this obligation.
- The proxy/offering materials must prominently disclose that OTS regulatory approval of the transaction does not mean the OTS endorses the transaction or its fairness to the accountholders.



—John F. Robinson
Acting Deputy Director for
Washington Operations