

I. INTRODUCTION

Part 303 – Subpart I (12 CFR Part 303, Subpart I or “Subpart I”) and Section 333.4 (12 CFR § 333.4) of the FDIC Rules and Regulations set forth requirements and procedures for the conversion of an insured mutual state-chartered savings bank to the stock form of ownership, and the OCC’s Regulations at 12 CFR Part 192 address conversions by state savings associations (as discussed further below). Due to concerns about insiders and investors in mutual-to-stock (MTS) conversion transactions regarding excessive benefits from the transaction, the FDIC Board adopted these rules to address conversion issues and require advance notice of an institution’s conversion plans. Among the problems noted were cases in which insiders at mutual savings banks influenced the setting of the stock offering price well below the true value of the institution, or obtained more than a fair share of the stock subscription. Excessive compensation packages for insiders were also noted. Such activities unjustly enrich insiders and often deny the converting institution all of the capital it should receive from the stock offering, to the detriment of depositors and the Deposit Insurance Fund (DIF).

Merger/conversions (the purchase of a mutual savings bank by a stock bank, with the depositors of the mutual bank offered the opportunity to purchase stock of the acquiring bank or holding company) are closely reviewed by the FDIC to ensure that (i) the value of the converting institution is fairly determined, and (ii) the value is distributed to the proper constituents of the mutual bank. Generally, merger/conversions have been limited to cases involving financially weak institutions or situations in which a converting institution could clearly demonstrate that a standard MTS conversion would not be economically feasible due to the ratio of expenses to gross proceeds or the converting institution’s asset size.

Pursuant to Section 303.163(b) of the FDIC Rules and Regulations, in reviewing a MTS conversion Notice (Notice), the FDIC takes into account the extent to which the proposed conversion follows the various provisions of the MTS conversion regulations of the Office of the Comptroller of the Currency (OCC) (12 CFR Part 192) that are in effect at the time the Notice is submitted. Any non-conformity with those provisions will be closely reviewed. However, conformity with the OCC requirements will not be sufficient for FDIC regulatory purposes if the FDIC determines that the proposed conversion would pose a risk to the institution’s safety or soundness, violate any law or regulation, or present a breach of fiduciary duty.

II. FORM OF NOTICE

A number of filings may be necessary in a MTS conversion, including those listed below.

- A letter request from the bank for non-objection to the conversion under Section 303.161 of the FDIC Rules and Regulations.
- A merger application, under Section 18(c) of the Federal Deposit Insurance (FDI) Act, for an interim merger if an interim institution is used, and/or for a corporate reorganization if a mutual holding company (MHC) is formed, to effect the MTS conversion.
- A deposit insurance application if a *de novo* stock savings bank is proposed to be formed under a purchase and assumption agreement in conjunction with the formation of a MHC. This will generally be included as part of a merger application. A deposit insurance application may also be necessary for a newly formed interim institution in certain states.

- A deposit insurance application when forming a MHC by the chartering of an interim savings association under the provisions of Section 10(o) of the Home Owners' Loan Act (HOLA), 12 U.S.C. § 1467a(o), if the transaction is structured as a purchase and assumption. In such cases, a letter application briefly describing the transaction and requesting deposit insurance, accompanied by a copy of the related filings, should be submitted.
- Notice of Supervisory Conversion. Supervisory conversions may be pursued in situations in which little to no shareholder value exists and the institution requires additional capital to preclude a failure. Although not conclusive, an institution that is categorized as Significantly or Critically Undercapitalized for Prompt Corrective Action purposes may qualify for a supervisory conversion. Regional Offices (ROs) are to process such conversion Notices on a priority basis and should, upon receipt, immediately contact the Associate Director, Risk Management Examination Branch (RMEB). Supervisory conversions require FDIC Board consideration.

The need for a deposit insurance and/or a merger application in connection with a Notice is often driven by the requirements of applicable state MTS conversion laws and regulations. The Case Manager should consult with RO Legal staff to ensure that all required filings have been submitted.

Filing Procedures

In addition to complying with the requirements in Section 333.4 of the FDIC Rules and Regulations, a state-chartered mutually owned savings bank that proposes a MTS conversion must file a Notice of intent to convert with the FDIC in accordance with Section 303.161. In accordance with Section 303.161(b), the Notice should be filed in letter form with the appropriate Regional Director at the same time as conversion application materials are filed with the institution's primary state regulator. An insured mutual savings bank chartered by a state that does not require the filing of a conversion application shall file the Notice with the appropriate Regional Director as soon as practicable after adoption of its plan of conversion. As set forth in Section 303.163(c), the Notice should provide a description of the proposed conversion and include all materials that have been filed with any state or federal banking regulator and any state or federal securities regulator. At a minimum, the Notice must include, as applicable, copies of:

1. The plan of conversion with specific information concerning the record date used for determining eligible depositors and the subscription offering priority established in connection with any proposed stock offering;
2. Certified board resolutions relating to the conversion;
3. A business plan, including a detailed discussion of how the capital acquired in the conversion will be used, expected earnings for at least a three-year period following the conversion, and a justification for any proposed stock repurchases;
4. The charter and bylaws of the converted institution;
5. The bylaws and operating plans of any other entities formed in connection with the conversion, such as a holding company or charitable foundation;
6. A full appraisal report, prepared by an independent appraiser, of the value of the converting institution and the pricing of the stock to be sold in the conversion transaction;

7. Detailed descriptions of any proposed management or employee stock benefit plans or employment agreements, and a discussion of the rationale for the level of benefits proposed, individually and by participant group;
8. Indemnification agreements;
9. A preliminary proxy statement and sample proxy;
10. Offering circular(s) and order form;
11. All contracts or agreements relating to the solicitation, underwriting, market-making, or listing of conversion stock and any agreements among members of a group regarding the purchase of unsubscribed shares;
12. A tax opinion concerning the federal income tax consequences of the proposed
13. conversion;
14. Consents from experts to use their opinions as part of the Notice; and,
15. An estimate of conversion-related expenses.

The FDIC may request any additional information it deems necessary to evaluate the proposed conversion.

A state-chartered mutually owned savings association seeking to convert should follow the filing procedures set forth in OCC regulation 12 CFR Part 192. Conversely, Subpart I and Section 333.4 of the FDIC Rules and Regulations are applicable to state-chartered mutually owned savings banks. Consult with the Washington Office (WO) regarding the filing process for state-chartered savings associations.

Waiver from Compliance

As set forth in Section 303.162(a) of the FDIC Rules and Regulations, an institution proposing to convert from mutual to stock form may file a letter requesting a waiver of compliance with Subpart I or Section 333.4 with the appropriate Regional Director:

1. When compliance with any provision of Subpart I or Section 333.4 would be inconsistent or in conflict with applicable state law; or,
2. For any other good cause shown.

For example, institutions in Massachusetts and Connecticut may request waivers of the FDIC's requirement that a majority of depositors vote in favor of the conversion where state law conflicts with this requirement by requiring a vote by the incorporators of the institution. The FDIC Board has delegated its authority to approve such waivers to the Division of Risk Management Supervision (RMS) Director, Deputy Director or Associate Director, but retains its authority to approve "good cause" waiver requests. For example, the FDIC has granted a good cause waiver in situations where a state law was supplemental to, but not in conflict with, the FDIC's regulations requiring a majority vote of depositors. Generally, however, a request to change the regulatory stock purchase priorities (e.g., to place depositors below employee benefit plans in order of priority) would not be waived.

As required by Section 303.162(b) of the FDIC Rules and Regulations, in making a request for a waiver, the institution must demonstrate that the requested waiver, if granted, would not result in any effects that would be detrimental to the safety and soundness of the institution, entail a breach of fiduciary duty on part of the institution's management, or otherwise be detrimental or inequitable to the institution, its depositors, any other insured depository institution(s), the DIF, or the public interest.

III. PROCESSING THE APPLICATION

Notificants should provide one original copy of the Notice and any supporting documentation, along with an electronic copy of the materials. The Case Manager should inform the Notificant of procedures for secure electronic submission. The Case Manager should ensure that the below processing steps are followed.

1. Review the Notice promptly to determine that it is substantially complete and that all required information has been submitted. In general, a complete Notice will contain the 14 items detailed on the two preceding pages; however, depending on the transaction, more or less documentation may be appropriate. (For example, a Notice may not include an offering circular or stock order form if the institution is not conducting a public stock offering.) Some items such as employment agreements or legal opinions are submitted in draft form and finalized later in the conversion process. The most important documents are the business plan, appraisal, a draft copy of the prospectus or offering circular which will contain the plan of conversion, and copies of all documents submitted to the other regulators. Legal should be made aware of the Notice and assist on the review as necessary.
2. Send an electronic copy of the Notice with all supporting documentation to RMAS, WO and RO Legal, and the RMS Accounting and Securities Disclosure Section so they may begin their respective reviews. The Case Manager should discuss the specifics of the Notice with a Review Examiner in the WO Risk Management and Applications Section (RMAS) to ensure timely and consistent handling of the Notice.
3. A record must be created within the appropriate internal database upon receipt for all Notices complete or not, to maintain an accurate inventory. If considered incomplete, the Notice should be returned with a letter outlining the deficiencies, following entry into the system of record. If there are only minor deficiencies, the Notice should be entered into the system of record and the Notificant should be contacted in writing and requested to provide the missing information. If the Notificant fails to provide the information in a timely manner (Notices should usually not be held in abeyance for more than 30 days), the Notice and any related filings should be deemed abandoned and returned to the applicant.
4. If the Notice is deemed substantially complete, notify the institution by letter that the Notice has been accepted. The acceptance date should be the date the FDIC received a substantially complete Notice. (Importantly, a Notice should not be accepted until the FDIC has received all information necessary to process the Notice.)

The acceptance letter should identify the Case Manager as the FDIC's primary point of contact for the Notice. As circumstances dictate, the Case Manager may advise the Notificant of names of individuals at either the RO or WO that may be directly contacted for specific matters related to the Notice (for example, individuals reviewing the appraisal or the disclosure materials).

5. Complete the Summary of Investigation (SOI) form. Refer to *Summary of Investigation*, Section 1.2 of these Procedures, for additional instruction. In addition to the format and content requirements described in Section 1.2, the narrative portion of the SOI should discuss the Notificant's rationale for the MTS conversion, the applicable statutory or regulatory considerations (e.g., Subpart I, Section 333.4 of the FDIC Rules and Regulations, 12 CFR Part 192, and notable state law requirements), and any matters raising safety and soundness concerns.
6. Under statutory or regulatory considerations, the SOI must specifically review and discuss the following factors set forth in Section 303.163(a) of the FDIC Rules and Regulations:
 - (a) the proposed use of the proceeds from the sale of stock, as set forth in the business plan;
 - (b) the adequacy of the disclosure materials;*
 - (c) the participation of depositors in approving the transaction (must be a majority of those members eligible to vote, with a simple majority required for approval);
 - (d) the form of the proxy statement required for the vote of the depositors/members on the conversion (relates closely to the disclosure portion but there must be a depositor vote approving the conversion for a non-objection). Running proxies cannot be used. (There must be a separate vote on the conversion.);*
 - (e) any proposed increased compensation and other remuneration (including stock grants, stock option rights, and other similar benefits, such as warrants or management recognition plans) to be granted to officers and directors/trustees of the bank in connection with the conversion;
 - (f) the adequacy and independence of the appraisal of the value of the mutual savings bank for purposes of determining the price of the shares of stock to be sold to the public;*
 - (g) the process by which the bank's trustees approved the appraisal, the pricing of the stock, and the compensation arrangements for insiders;
 - (h) the nature and apportionment of stock subscription rights; and,
 - (i) the bank's plans to fulfill its commitment to serving the convenience and needs of its community.

**Primary review of these areas is the responsibility of the WO. Nonetheless, the RO should ensure a comprehensive review is completed and summarized in the SOI.*

If applicable, the following conversion related issues should also be discussed in the SOI:

- (a) proposed waiver of dividends by a MHC;
- (b) applicability of Sections 23A and 23B of the Federal Reserve Act to any employee stock ownership plan (ESOP) borrowing to fund a stock purchase where the bank is the loan guarantor; and,
- (c) requirements of state law relative to depositor approval of proposed conversions.

The SOI should resolve or provide mitigating information for any issues or concerns raised during the review of the Notice. If approval of an application or non-objection to a Notice is being recommended, there should be no significant unresolved matters.

An SOI form must also be completed for the related merger and/or deposit insurance applications. The narrative portion should address the statutory factors applicable to those

filings (see Sections 6 and 18(c) of the FDI Act).

7. If a Notice contains deficiencies that may result in the issuance of an objection by the FDIC, the RO should consult with the WO prior to contacting the Notificant to discuss the deficiencies and provide an opportunity to make corrections or supplement the filing. Refer to the Applications Overview and Denials and Disapprovals sections of these Procedures (Sections 1.1 and 1.3, respectively) for further instruction.
8. Legal staff will be required to concur with all recommendations concerning the Notice.
9. Other involved regulators and the WO should be copied on all pertinent correspondence related to the Notice and the merger/deposit insurance application(s).
10. In accordance with Section 303.163(c)(2) of the FDIC Rules and Regulations, the FDIC, in its discretion, may send a letter to extend the Notice period for an additional 60 days.
11. Update the system of record with the date the notice was forwarded to the WO and other pertinent information.

IV. AREAS OF CONSIDERATION

In accordance with Section 303.163(d) of the FDIC Rules and Regulations, Case Managers should communicate to prospective Notificants that the FDIC will issue a letter of non-objection if it determines, in its discretion, that the proposed conversion transaction would not: 1) pose a risk to the institution's safety or soundness; 2) violate any law or regulation; or 3) present a breach of fiduciary duty. Case Managers should clearly identify any issues that may require a waiver request pursuant to Section 303.162 or could result in a recommendation to issue a letter of objection pursuant to Section 303.163(e).

In addition to other requirements that are imposed by applicable state and federal statutes and regulations, the FDIC will not allow an insured mutual state savings bank to convert to the stock form of ownership unless the following requirements of Section 333.4(c) of the FDIC Rules and Regulations are satisfied:

- Eligible depositors (as defined in Section 333.4(b)) shall have higher subscription rights than ESOPs;
- The proposed conversion shall be approved by a vote of at least a majority of the bank's depositors and, as reasonably determined by the bank's directors or trustees, other stakeholders of the bank who are entitled to vote on the conversion, unless the applicable state law requires a higher percentage, in which case the higher percentage shall be used. Voting may be in person or by proxy. Non-objection letters typically phrase this requirement in terms of approval by a vote of a majority of the votes eligible to be cast by depositors.
- Management shall not use proxies executed outside the context of the proposed conversion to satisfy the voting requirement imposed in the previous paragraph.

Stock Benefit Plan Limitations

In accordance with Section 333.4(e) of the FDIC Rules and Regulations, the FDIC will presume that a stock option plan or management or employee stock benefit plan that does not conform

with the applicable percentage limitations of OCC regulations constitutes excessive insider benefits and thereby evidences a breach of the board of directors' fiduciary responsibility. In addition, no converted insured mutual state savings bank shall be allowed by the FDIC, for one year from the date of the conversion, to implement a stock option plan or management or employee stock benefit plan, other than a tax-qualified ESOP, unless each of the following requirements is met:

1. Each of the plans was fully disclosed in the proxy solicitation and conversion stock offering materials;
2. All such plans are approved by a majority of the bank's stockholders, or in the case of a recently formed holding company, its stockholders, prior to implementation at a duly called meeting of shareholders, either annual or special, to be held no sooner than six months after the completion of the conversion;
3. In case of a savings bank subsidiary of a MHC, all such plans are approved by a majority of stockholders other than its parent MHC, prior to implementation at a duly called meeting of shareholders, either annual or special, to be held no sooner than six months following the stock issuance;
4. For stock option plans, stock options are granted at no lower than the market price at which the stock is trading at the time of grant; and,
5. For management or employee stock benefit plans, no conversion stock is used to fund the plans.

OCC regulations allow implementation of a stock option plan or management recognition plan (MRP) (*i.e.*, a management stock benefit plan) within 12 months after a conversion if the requirements outlined in 12 CFR § 192.500 are met. These requirements include:

1. The institution discloses the plan(s) in its proxy statement and offering circular and indicates in the offering circular that there will be a separate shareholder vote on the stock option and management stock benefit plan(s) at least six months after the conversion.
2. The stock option plan does not encompass more than 10 percent of the shares that are issued in the conversion.
3. The institution does not permit management stock benefit plans (in aggregate) to hold more than 3 percent of the shares issued at conversion. However, if a tangible capital ratio of 10 percent or more is present following conversion, the appropriate federal banking agency may permit up to 4 percent.
4. The institution does not permit the institution's ESOP and its management stock benefit plan(s), in the aggregate, to hold more than 10 percent of the shares issued in the conversion. However, if a tangible capital ratio of 10 percent or more is present following conversion, the appropriate federal banking agency may permit up to 12 percent.
5. No individual receives more than 25 percent of the shares under any plan.
6. Directors who are not officers do not receive more than 5 percent of the shares of any

- plan individually, or 30 percent of the shares of any plan in aggregate.
7. Shareholders approve each plan by a majority of the total votes eligible to be cast at a duly called meeting before the plan is established or implemented and held at least six months after the conversion.
 8. The institution does not grant stock options at less than market price at the time of grant.
 9. The institution communicates to shareholders (via proxy or related material) that the plan(s) complies with the appropriate federal banking agency's regulations and that the appropriate federal banking agency does not endorse or approve the plan(s) in any way.
 10. The institution does not use stock issued at the time of conversion to fund the stock option or management recognition plan.
 11. The plan does not begin to vest earlier than one year after the shareholders approve the plan and does not vest at a rate exceeding 20 percent per year.
 12. The plan(s) permits accelerated vesting only for disability, death, or a change of control.
 13. The plan provides that executive officers or directors must exercise or forfeit their options in the event the institution becomes Critically Undercapitalized, is subject to appropriate federal banking agency enforcement action, or receives a capital directive.
 14. The institution files a copy of the proposed stock option plan or management recognition plan with the appropriate federal banking agency and certifies to the agency in writing that the plan approved by the shareholders is the same plan filed with, and disclosed in, the materials distributed to shareholders in connection with the vote on the plan.
 15. The institution files the plan and the certification with the appropriate federal banking agency within five calendar days after the shareholders approve the plan.

Under 12 CFR § 192.500(b), dividend equivalent rights or dividend adjustment rights – e.g., rights that allow for stock splits or other adjustments to shares issued under a stock option, management, or employee stock benefit plan -- can be provided for in a plan.

As set forth in 12 CFR § 192.500(c), the foregoing restrictions do not apply to plans implemented more than 12 months after the institution's conversion, provided that materials pertaining to any shareholder vote regarding such plans are not distributed within the 12 month period following conversion. If a plan adopted in conformity with the foregoing restrictions is amended more than 12 months after conversion, the shareholders must ratify any material deviations to the foregoing restrictions. Case Managers should read 12 CFR § 192.500 for additional requirements.

Note that the above limits on stock benefit plans under 12 CFR § 192.500 are only applicable to plans that were implemented within one year after the conversion. In the event a MHC is created and the benefit plans are not implemented until more than one year after the conversion, the MHC as majority stockholder could potentially approve a plan that did not include such restrictions.

Under those conditions, the FDIC could consider including as a condition to its non-objection any such plan be approved by the minority shareholders, thus in effect excluding the MHC.

Sensitivity to the Securities and Exchange Commission's (SEC) 135- Day Rule

A common concern raised by Notificants is the perceived inability of conversion proponents to obtain conditional nonobjection by the FDIC to the conversion transaction prior to the date applicant's financial statements go "stale."

SEC Rule 3-12 provides that the "as of date" for financial statements in the registration statement filing must not be more than 135 days prior to the date the filing is expected to become effective. In addition, the SEC will not declare the filing "effective" unless the registrant confirms that, at the time acceleration is requested: (1) the offering will commence promptly after effectiveness, and (2) the registrant is in compliance with all regulatory requirements relating to the conversion. Therefore, an offering cannot commence until the applicant can assert to the SEC that the FDIC intends to issue a letter of non-objection.

Because financial statements are typically not issued until 30 to 45 days after the end of a financial reporting period and some additional time is often required by the Notificant's attorney to prepare the Notice submission, the FDIC may receive Notices well into the SEC's 135-day time period under Rule 3-12. If the 135-day time period expires during the FDIC's 60-day Notice review period, the Notificant may need to update its financial information (at additional expense) to comply with SEC requirements.

Under current processing procedures, a Notice that is filed with financial statements dated reasonably proximate to the FDIC's receipt date can be processed within the SEC Rule's 135-day time frame. However, if the financial statements are dated too close to the "stale" date for SEC purposes when the FDIC receives the Notice, and particularly if additional information or revisions to a Notice are necessary, the Notificant may not be able to avoid updating the financial statements. Case Managers should be aware of this potential issue and pay particularly close attention to whether the Notice is received more than 45 days after the "as of date" of the financial statements.

Holding Company Structures

The four most common organization structures resulting from MTS conversions are as follows:

- (1) The mutual savings bank is converted into a stock savings bank. The stock savings bank's stock is 100 percent owned by the public:

Stock Bank

- (2) The mutual savings bank is converted into a stock savings bank, and a stock bank holding company is formed. The stock savings bank's stock is 100 percent owned by the stock bank holding company. The stock bank holding company's stock is 100 percent owned by the public:

Stock Bank Holding Company

Stock Bank

- (3) The mutual savings bank is converted into a stock savings bank, and a MHC is formed. Depending upon state law and the structure of the conversion, 50.01 percent to 100.0 percent of the stock savings bank's stock will be owned by the MHC and the remaining stock, if any, owned by the public.

Mutual Holding Company

Stock Bank

- (4) The mutual savings bank is converted into a stock savings bank, and a stock bank holding company and a MHC are formed. The stock savings bank's stock is 100 percent owned by the stock bank holding company. Depending upon state law and the structure of the conversion, 50.01 percent to 100.0 percent of the stock bank holding company's stock will be owned by the MHC and the remaining stock, if any, owned by the public.

Mutual Holding Company

Stock Bank Holding Company

Stock Bank

Various conditions may be included in any FDIC non-objection. Conditions are designed to ensure that the FDIC will receive notice of subsequent transactions or significant corporate events. A database maintained by RMAS contains a listing of conditions that either should be included in each non-objection to a MTS conversion transaction, or considered for inclusion depending on the circumstances of the Notice. Other conditions may also be necessary or appropriate for specific situations. *Any condition proposed under such circumstances must be reviewed by the WO. Further, the relevant parties must agree in writing to any non-standard conditions imposed on the MTS conversion.*

Establishment of a two-tiered structure may permit a stock holding company, assuming it has issued stock to the public, to engage in stock repurchase programs without potential adverse tax consequences. The two-tier structure also gives MHCs greater flexibility in structuring and completing mergers and acquisitions and diversifying holding company operations.

Savings Associations

Federal Reserve Board (FRB) Regulation MM (Mutual Holding Companies), 12 CFR Part 239, permits a MHC to establish a subsidiary stock holding company that would hold all of the stock of a savings association subsidiary. The FRB permits the establishment of intermediate stock holding companies subject to restrictions that are substantially similar to those currently applicable to MHCs. The stock holding company, like the stock savings association subsidiary under the current rule, will be required to issue at least a majority of its shares to the MHC and may issue up to 49.9 percent of its shares to the public. The stock holding company structure may not be used to evade the purposes of the OCC regulations at 12 CFR Part 192 that govern MTS conversions by savings associations. Generally, the substantive and procedural limitations applicable to such transactions mirror those for a MTS conversion of a savings association. This helps to ensure that insiders or minority shareholders do not obtain a greater ownership interest through a MHC reorganization and subsequent conversion to stock form than they could accomplish through a direct MTS conversion.

Charitable Foundations

Foundations may be proposed to provide funding to support charitable causes and community development activities. The expectation is that the institution will receive recognition under the Community Reinvestment Act for the initial contribution to the foundation and for the foundation's activities. The institution's board may also be responsible for directing the activities of the foundation, including the management of the contributed common stock. Foundations should be carefully evaluated for the following potential issues:

Control by Management: Contributions of shares of stock to charitable foundations may present control issues if the institution's management also directs the voting of the foundation's shares. For this reason, the OCC regulations at 12 CFR § 192.575 require pro-rata voting (*i.e.*, that the foundation's shares are voted in the same ratio as all other shares voted on each proposal by the shareholders). The maximum contribution allowed by the OCC regulations is 8 percent of the number of shares sold in the offering.

Dilution of Shareholder Interests: As a result of a donation of stock to a foundation, shareholders will have their ownership, voting interests, and earnings per share diluted, as compared to completing the conversion without a foundation.

Impact on Appraisal: The establishment of a foundation can have a significant negative effect on the valuation of the institution.

Potential Anti-Takeover Effect: A foundation's shares, when combined with shares purchased directly by officers and directors, and shares held by an ESOP and other stock programs, could serve as an anti-takeover device. However, the FDIC has typically imposed a pro-rata voting condition, as discussed above, on stock held by the foundation.

OCC Conversion Regulations: The establishment of and contribution to a foundation should be consistent with the provisions of the OCC regulations at 12 CFR Part 192.550-575.

Return of Capital

The Case Manager should be aware of any discussions and review disclosures regarding the institution's plans to return capital to stockholders. A non-objection may include a condition requiring that the FDIC be notified of a return of capital that deviates materially from the business plan provided with the Notice. However, it is not the intention of the FDIC to prevent the payment of cash dividends in reasonable amounts typically paid by publicly traded savings institutions and their holding companies.

V. TIME FRAME FOR PROCESSING

As set forth in Section 303.163(c) of the FDIC Rules and Regulations, the notice period in which the FDIC may object to the proposed conversion transaction is the *later of*:

- 60 days after receipt of a substantially complete Notice; or
- 20 days after the last applicable state or other federal regulator has approved the proposed conversion.

The FDIC may, in its discretion, extend the initial 60-day review period for up to an additional 60 days by providing written notice to the institution per Section 303.163(c)(2).

If the FDIC does not act within these time periods (by issuing a letter of non-objection or objection), the institution may consummate the MTS conversion.

If a letter of objection is issued, the conversion shall not be consummated unless and until such letter is rescinded.

VI. PUBLICATION REQUIREMENT

If related merger or deposit insurance applications are filed, those publication requirements apply. The deposit insurance publication may be incorporated into the merger publication.

VII. DELEGATED AUTHORITY

Authority is delegated to the Regional Director and Deputy Regional Director to approve MTS conversions involving a corporate reorganization of a single institution in satisfactory condition with no public offering. The RO should consult with the WO as appropriate. RMAS will ask the Legal Division to concur in its decisions on any MTS Notices. Additional information regarding Delegations of Authority regarding Notices are discussed in *Applications Overview*, Section 1.1 of these Procedures.

VIII. REFERENCES

Part 303, Subpart I and Section 333.4 of the FDIC Rules and Regulations, 12 CFR Part 303, Subpart I and 12 CFR § 333.4

Statement of Policy - "Use of Offering Circulars in Connection with Public Distribution of Bank Securities"

Part 192 of the OCC Regulations (Conversions from Mutual to Stock Form), 12 CFR Part 192

Part 239 of the FRB Regulations (Regulation MM, Mutual Holding Companies), 12 CFR Part 239

Section 10(o) of the Home Owners' Loan Act (Mutual Holding Companies) 12 U.S.C. § 1467a(o)

SEC Regulation S-X, 17 CFR § 210.3-12