

§ 563.140

securities, the report(s) required by paragraph (h) of this section and the following additional items:

(i) Three copies of an executed form of the securities issued pursuant to the subject application or notice and a copy of any related agreement or indenture governing the issuance of securities; and

(ii) A certificate from the principal executive officer of the savings association that states that to the best of his or her knowledge, none of the securities issued pursuant to the subject application or notice were sold to any association whose accounts are insured by the Savings Association Insurance Fund, or a corporate affiliate thereof, except as permitted by 12 CFR 563.81;

(4) That as of the date of approval or nonobjection, there have been no material changes with respect to the information disclosed in the application or notice as submitted to the OTS;

(5) The savings association receives prior written approval or nonobjection from the OTS for any post-approval amendment to the securities or any related indenture if:

(i) The proposed amendment modifies or is inconsistent with any provision of the securities, or the indenture that is required to be included therein by the OTS's regulations as may then be in effect or would result in a transfer of risk to the savings association or the Savings Association Insurance Fund or the Bank Insurance Fund, as appropriate; and

(ii) All or a portion of the proceeds from the issuance and sale of the securities would continue to be included in the regulatory capital of the savings association following adoption of the amendment;

(6) The savings association shall submit to the OTS promptly after execution, one copy of each amendment to the securities or the related indenture, made after approval or nonobjection, and if prior approval of or nonobjection to such amendment was not obtained, shall also state the reason(s) such prior approval or nonobjection was not required; and

(7) Before any offers or sales of the securities are made on the premises of the association or its affiliates, the savings association shall submit to the

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OTS a set of policies and procedures for such sale of the securities satisfactory to the OTS.

[54 FR 49552, Nov. 30, 1989, as amended at 55 FR 13515, Apr. 11, 1990; 57 FR 14345, Apr. 20, 1992; 62 FR 66262, Dec. 18, 1997; 66 FR 13008, Mar. 2, 2001]

Subpart D [Reserved]

Subpart E—Capital Distributions

SOURCE: 64 FR 2809, Jan. 19, 1999, unless otherwise noted.

§ 563.140 What does this subpart cover?

This subpart applies to all capital distributions by a savings association ("you").

§ 563.141 What is a capital distribution?

A capital distribution is:

(a) A distribution of cash or other property to your owners made on account of their ownership, but excludes:

(1) Any dividend consisting only of your shares or rights to purchase your shares; or

(2) If you are a mutual savings association, any payment that you are required to make under the terms of a deposit instrument and any other amount paid on deposits that the OTS determines is not a distribution for the purposes of this section;

(b) Your payment to repurchase, redeem, retire or otherwise acquire any of your shares or other ownership interests, any payment to repurchase, redeem, retire, or otherwise acquire debt instruments included in your total capital under § 567.5 of this chapter, and any extension of credit to finance an affiliate's acquisition of your shares or interests;

(c) Any direct or indirect payment of cash or other property to owners or affiliates made in connection with a corporate restructuring. This includes your payment of cash or property to shareholders of another association or to shareholders of its holding company to acquire ownership in that association, other than by a distribution of shares;

(d) Any other distribution charged against your capital accounts if you