

§575.12

the mutual holding company is consistent with the directors' fiduciary duties to the mutual members of such company. A dividend waiver notice shall include a copy of the resolution of the board of directors of the mutual holding company, in form and substance satisfactory to the OTS, together with any supporting materials relied upon by the board, concluding that the proposed dividend waiver is consistent with the board's fiduciary duties to the mutual members of the mutual holding company.

(3) The OTS will not consider waived dividends in determining an appropriate exchange ratio in the event of a full conversion to stock form.

(e) *Restrictions on issuance of stock to insiders.* A subsidiary of a mutual holding company that is not a savings association or subsidiary holding company may issue stock to any insider, associate of an insider or tax-qualified or non-tax-qualified employee stock benefit plan of the mutual holding company or any subsidiary of the mutual holding company, provided that such persons or plans provide written notice to the OTS at least 30 days prior to the stock issuance, and OTS does not object to the subsequent stock issuance. Subsidiary savings associations and subsidiary holding companies may issue stock to such persons only in accordance with §575.7.

(f) *Restrictions on indemnification.* The provisions of §545.121 of this chapter shall apply to mutual holding companies in the same manner as if they were federal savings associations.

(g) *Restrictions on employment contracts.* The provisions of §563.39 of this chapter and any policies of the OTS thereunder shall apply to mutual holding companies in the same manner as if they were savings associations.

(h) *Applicability of rules governing savings and loan holding companies.* Except as expressly provided in this part, mutual holding companies shall be subject to the provisions of 12 U.S.C. 1467a and 3201 *et seq.* and parts 563e, 574, 583, and 584 of this chapter.

(i) *Separate vote for charitable organization contribution.* In a mutual holding company stock issuance, a separate vote of a majority of the outstanding shares of common stock held by stock-

12 CFR Ch. V (1-1-04 Edition)

holders other than the mutual holding company or subsidiary holding company must approve any charitable organization contribution.

[58 FR 44114, Aug. 19, 1993, as amended at 60 FR 66720, Dec. 26, 1995; 63 FR 11365, Mar. 9, 1998; 65 FR 43091, July 12, 2000; 67 FR 52036, Aug. 9, 2002]

§575.12 Conversion or liquidation of mutual holding companies.

(a) *Conversion—(1) Generally.* A mutual holding company may convert to the stock form in accordance with the rules and regulations set forth in part 563b of this chapter.

(2) Exchange of savings association stock. Any stock issued pursuant to §575.7 by a subsidiary savings association or subsidiary holding company of a mutual holding company to persons other than the parent mutual holding company may be exchanged for the stock issued by the parent mutual holding company in connection with the conversion of the parent mutual holding company to stock form. The parent mutual holding company and the subsidiary holding company or savings association must demonstrate to the satisfaction of the OTS that the basis for the exchange is fair and reasonable.

(3) If a subsidiary holding company or subsidiary savings association has issued shares to an entity other than the mutual holding company, the conversion of the mutual holding company to stock form may not be consummated unless a majority of the shares issued to entities other than the mutual holding company vote in favor of the conversion. This requirement applies in addition to any otherwise required account holder or shareholder votes.

(b) *Involuntary liquidation.* (1) The OTS may file a petition with the federal bankruptcy courts requesting the liquidation of a mutual holding company pursuant to 12 U.S.C. 1467a(o)(9) and title 11, United States Code, upon the occurrence of any of the following events:

(i) The default of the resulting association, any acquiree association, or any subsidiary savings association of the mutual holding company that was

in the mutual form when acquired by the mutual holding company;

(ii) The default of the parent mutual holding company or its subsidiary holding company; or

(iii) Foreclosure on any pledge by the mutual holding company of subsidiary savings association stock or subsidiary holding company stock pursuant to § 575.11(b).

(2) Except as provided in paragraph (b)(3) of this section, the net proceeds of any liquidation of any mutual holding company shall be transferred to the members of the mutual holding company or the stock holders of the subsidiary holding company in accordance with the charter of the mutual holding company or subsidiary holding company.

(3) If the FDIC incurs a loss as a result of the default of any savings association subsidiary of a mutual holding company and that mutual holding company is liquidated pursuant to paragraph (b)(1) of this section, the FDIC shall succeed to the membership interests of the depositors of such savings association in the mutual holding company, to the extent of the FDIC's loss.

(c) *Voluntary liquidation.* The provisions of § 546.4 of this chapter shall apply to mutual holding companies in the same manner as if they were federal savings associations.

[58 FR 44114, Aug. 19, 1993, as amended at 63 FR 11366, Mar. 9, 1998; 67 FR 52036, Aug. 9, 2002]

§ 575.13 Procedural requirements.

(a) *Proxies and proxy statements*—(1) *Solicitation of proxies.* The provisions of §§ 563b.225 to 563b.295 of this chapter shall apply to all solicitations of proxies by any person in connection with any membership vote required by this part. OTS must authorize all proxy materials used in connection with such solicitations. Proxy materials must be in the form and contain the information specified in §§ 563b.255 and 563b.270 of this chapter and Form PS, to the extent such information is relevant to the action that members are being asked to approve, with such additions, deletions, and other modifications as are necessary or appropriate under the disclosure standard set forth in § 563b.280 of this chapter. File proxies

and proxy statements in accordance with § 563b.155 of this chapter and address them to the Business Transactions Division, Chief Counsel's Office, Office of Thrift Supervision, at the address set forth in § 516.40 of this chapter. For purposes of this paragraph (a)(1), the term *conversion*, as it appears in the provisions of part 563b of this chapter cited above in this paragraph (a)(1), refers to *the reorganization or the stock issuance*, as appropriate.

(2) *Additional proxy disclosure requirements.* In addition to all disclosure required by Form PS, all proxies requesting acountholder approval of a mutual holding company reorganization shall address in detail:

(i) The reasons for the reorganization, including the relative advantages and disadvantages of undertaking the transaction proposed instead of a standard conversion;

(ii) Whether management believes the reorganization is in the best interests of the association and its acountholders and the basis of that belief;

(iii) The fiduciary duties owed to acountholders by the association's officers and directors and why the reorganization is in accord with those duties and is otherwise equitable to the acountholders and the association;

(iv) Any compensation agreements that will be entered into by management in connection with the reorganization; and

(v) Whether the mutual holding company intends to waive dividends, the implications to acountholders, and the reasons such waivers are consistent with the fiduciary duties of the directors of the mutual holding company.

(3) *Nonconforming minority stock issuances.* Savings associations proposing non-conforming minority stock issuances pursuant to § 575.7(d)(6)(ii)(2) of this part must include in the proxy materials to acountholders seeking approval of a proposed reorganization an additional disclosure statement that serves as a cover sheet that clearly addresses:

(i) The consequences to acountholders of voting to approve a reorganization in which their subscription rights are prioritized differently and potentially eliminated; and