Office of Thrift Supervision, Treasury

§ 563b.470 Require you to solicit proxies from the savings account holders and borrowers in the same manner that you solicit proxies from your stockholders.

§ 563b.450 What is a liquidation account?

(a) A liquidation account represents the potential interest of eligible account holders and supplemental eligible account holders in your net worth at the time of conversion. You must maintain a sub-account to reflect the interest of each account holder.

(b) Before you may provide a liquidation distribution to common stockholders, you 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) You may not record the liquidation account in your financial statements. You must disclose the liquidation account in the footnotes to your financial statements.

§ 563b.455 What is the initial balance of the liquidation account?

The initial balance of the liquidation account is your net worth in the statement of financial condition included in the final offering circular.

§ 563b.460 How do I determine the initial balances of liquidation sub-accounts?

(a)(1) You determine the initial sub-account balance for a savings account held by an eligible account holder by multiplying the initial balance of the liquidation account by the following fraction: The numerator is the qualifying deposit in the savings account expressed in dollars on the eligibility record date. The denominator is total qualifying deposits of all eligible account holders on that date.

(2) You determine the initial sub-account balance for a savings account held by a supplemental eligible account holder by multiplying the initial balance of the liquidation account by the following fraction: The numerator is the qualifying deposit in the savings account expressed in dollars on the supplemental eligibility record date. The denominator is total qualifying deposits of all supplemental eligible account holders on that date.

(b) If an account holder holds a savings account on the eligibility record date and a separate savings account on the supplemental eligibility record date, you must compute separate sub-accounts for the qualifying deposits in the savings account on each record date.

(c) If an account holder holds a savings account on the eligibility record date and a separate savings account on the supplemental eligibility record date, you must compute separate sub-accounts for the qualifying deposits in the savings account on each record date.

§ 563b.465 Do account holders retain any voting rights based on their liquidation sub-accounts?

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

§ 563b.470 Must I adjust liquidation sub-accounts?

(a)(1) You 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 your fiscal year end, after the relevant eligibility record date 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) If you reduce the balance of a liquidation sub-account, you may not subsequently increase it if the deposit balance increases.

(c) You are not required to adjust the liquidation account and sub-account balances at each annual closing date if you maintain sufficient records to make the computations if a liquidation subsequently occurs.
§ 563b.475  What is a liquidation?
(a) A liquidation is a sale of your assets and settlement of your liabilities with the intent to cease operations and close. Upon liquidation, you must return your charter to the governmental agency that issued it. The government agency must cancel your charter.
(b) A merger, consolidation, or similar combination or transaction with another depository institution, is not a liquidation. If you are involved in such a transaction, the surviving institution must assume the liquidation account.

§ 563b.480  Does the liquidation account affect my net worth?
The liquidation account does not affect your net worth.

§ 563b.485  What provision must I include in my new federal charter?
If you convert to federal stock form, you must include the following provision in your new charter: “Liquidation Account. Under OTS regulations, the association must establish and maintain a liquidation account for the benefit of its savings account holders as of [date]. If the association undergoes a complete liquidation, it must comply with OTS 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
§ 563b.500.  What management stock benefit plans may I implement?
(a) During the 12 months after your conversion, you 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 you meet all of the following requirements.
   (1) You disclose the plans in your proxy statement and offering circular and indicate in your 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. Your ESOP must be tax-qualified.
   (2) Your Option Plan does not encompass more than ten percent of the number of shares that you issued in the conversion.
   (3)(i) Your ESOP and MRP do not encompass, in the aggregate, more than ten percent of the number of shares that you issued in the conversion. If you have tangible capital of ten percent or more following the conversion, OTS may permit your ESOP and MRP to encompass, in the aggregate, up to 12 percent of the number of shares issued in the conversion; and
   (ii) Your MRP does not encompass more than three percent of the number of shares that you issued in the conversion. If you have tangible capital of ten percent or more after the conversion, OTS may permit your MRP to encompass up to four percent of the number of shares that you issued in the conversion.
   (4) No individual receives more than 25 percent of the shares under any plan.
   (5) Your directors who are not your officers do not receive more than five percent of the shares of your MRP or Option Plan individually, or 30 percent of any such plan in the aggregate.
   (6) Your 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 you establish or implement the plan. You may not hold this meeting until six months after your conversion.
   (7) When you distribute proxies or related material to shareholders in connection with the vote on a plan, you state that the plan complies with OTS regulations and that OTS does not endorse or approve the plan in any way. You may not make any written or oral representations to the contrary.