

## Federal Deposit Insurance Corporation

## § 333.101

state savings bank shall not convert to the stock form of ownership unless the following requirements are satisfied:

(1) Eligible depositors shall have higher subscription rights than employee stock ownership plans;

(2) 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; and

(3) Management shall not use proxies executed outside the context of the proposed conversion to satisfy the voting requirement imposed in the previous paragraph.

(d) *Restriction on repurchase of stock.* An insured mutual state savings bank that has converted from the mutual to stock form of ownership may not repurchase its capital stock within one year following the date of its conversion to stock form, except that stock repurchases of no greater than 5% of the bank's outstanding capital stock may be repurchased during this one-year period where compelling and valid business reasons are established, to the satisfaction of the FDIC. Any stock repurchases shall be subject to the requirements of section 18(i)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1828(i)(1)).

(e) *Stock benefit plan limitations.* 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 the regulations issued by the Office of Thrift Supervision constitutes excessive insider benefits and thereby evidences a breach of the board of directors' or trustees' fiduciary responsibility. In addition, no converted insured mutual state savings bank shall, for one year from the date of the conversion, implement a stock option plan or management or employee stock benefit plan, other than a tax-qualified employee stock ownership plan, 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 the case of a savings bank subsidiary of a mutual holding company, all such plans are approved by a majority of stockholders other than its parent mutual holding company 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.

[59 FR 61246, Nov. 30, 1994, as amended at 63 FR 44750, Aug. 20, 1998; 68 FR 50461, Aug. 21, 2003]

### INTERPRETATIONS

#### § 333.101 Prior consent not required.

(a) The extension by any State nonmember insured bank of its business to include personal, character or installment loans, or the extension by an industrial bank of its business to include the business of a commercial bank, is not a change in the general character or type of business requiring the prior written consent of the Corporation.

(b) An insured State nonmember bank, not exercising trust powers, may act as trustee or custodian of Individual Retirement Accounts established pursuant to the Employee Retirement Income Security Act of 1974 (26 U.S.C. 408), Self-Employed Retirement Plans established pursuant to the Self-Employed Individuals Retirement Act of 1962 (26 U.S.C. 401), Roth Individual Retirement Accounts and Coverdell Education Savings Accounts established pursuant to the Taxpayer Relief Act of 1997 (26 U.S.C. 408A and 530 respectively), Health Savings Accounts

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established pursuant to the Medicare Prescription Drug Improvement, and Modernization Act of 2003 (26 U.S.C. 223), and other similar accounts without the prior written consent of the Corporation provided:

(1) The bank’s duties as trustee or custodian are essentially custodial or ministerial in nature,

(2) The bank is required to invest the funds from such plans only

(i) In its own time or savings deposits, or

(ii) In any other assets at the direction of the customer, provided the bank does not exercise any investment discretion or provide any investment advice with respect to such account assets, and

(3) The bank’s acceptance of such accounts without trust powers is not contrary to applicable State law.

[41 FR 2375, Jan. 16, 1976, as amended at 50 FR 10754, Mar. 18, 1985; 70 FR 60422, Oct. 18, 2005]

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AUTHORITY: 12 U.S.C. 1818, 1819 (Tenth), and 1831p–1; 15 U.S.C. 1681a, 1681b, 1681c, 1681m, 1681s, 1681s–2, 1681s–3, 1681t, 1681w, 6801 *et seq.*, Pub. L. 108–159, 117 Stat. 1952.

SOURCE: 69 FR 77618, Dec. 28, 2004, unless otherwise noted.

**Subpart A—General Provisions**

SOURCE: 70 FR 70685, Nov. 22, 2005, unless otherwise noted.

**§334.1 Purpose and scope.**

(a) *Purpose.* The purpose of this part is to implement the Fair Credit Reporting Act. This part generally applies to persons that obtain and use information about consumers to determine the consumer’s eligibility for products, services, or employment, share such information among affiliates, and furnish information to consumer reporting agencies.