

(2) No one may represent or imply that the appropriate Federal banking agency determined that the proxy solicitation material is accurate, complete, not false or not misleading, or passed upon the merits of or approved any proposal.

(b) *Other prohibited solicitations.* No person may solicit:

- (1) An undated or post-dated proxy;
- (2) A proxy that states it will be dated after the date it is signed by a member;
- (3) A proxy that is not revocable at will by the member; or
- (4) A proxy that is part of another document or instrument.

**§ 192.290 What will the appropriate Federal banking agency do if a solicitation violates these prohibitions?**

(a) If a solicitation violates § 192.285, the appropriate Federal banking agency may require remedial measures, including:

- (1) Correction of the violation by a retraction and a new solicitation;
- (2) Rescheduling the members' meeting; or
- (3) Any other actions necessary to ensure a fair vote.

(b) The appropriate Federal banking agency may also bring an enforcement action against the violator.

**§ 192.295 Will the appropriate Federal banking agency require me to re-solicit proxies?**

If you amend your application for conversion, the appropriate Federal banking agency may require you to re-solicit proxies for your members' meeting as a condition of approval of the amendment.

OFFERING CIRCULAR

**§ 192.300 What must happen before the appropriate Federal banking agency declares my offering circular effective?**

(a) You must prepare and file your offering circular with the Securities and Corporate Practices Division of the OCC if you are a Federal savings association and with the appropriate FDIC region if you are a state savings association, in compliance with this part and Form OC and, where applicable,

part 197 of this chapter. File your offering circular in accordance with the procedures in section 192.155.

(b) You must condition your stock offering upon member approval of your plan of conversion.

(c) The appropriate Federal banking agency will review the Form OC and may comment on the included disclosures and financial statements.

(d) You must file any revised offering circular, final offering circular, and any post-effective amendment to the final offering circular in accordance with the procedures in section 192.155.

(e) The appropriate Federal banking agency will not approve the adequacy or accuracy of the offering circular or the disclosures.

(f) After you satisfactorily address the appropriate Federal banking agency's concerns, you must request the appropriate Federal banking agency to declare your Form OC effective for a time period. The time period may not exceed the maximum time period for the completion of the sale of all of your shares under § 192.400.

**§ 192.305 When may I distribute the offering circular?**

(a) You may distribute a preliminary offering circular at the same time as or after you mail the proxy statement to your members.

(b) You may not distribute an offering circular until the appropriate Federal banking agency declares it effective. You must distribute the offering circular in accordance with this part.

(c) You must distribute your offering circular to persons listed in your plan of conversion within 10 days after the appropriate Federal banking agency declares it effective.

**§ 192.310 When must I file a post-effective amendment to the offering circular?**

(a) You must file a post-effective amendment to the offering circular with the appropriate Federal banking agency when a material event or change of circumstance occurs.

(b) After the appropriate Federal banking agency declares the post-effective amendment effective, you must immediately deliver the amendment to

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each person who subscribed for or ordered shares in the offering.

(c) Your post-effective amendment must indicate that each person may increase, decrease, or rescind their subscription or order.

(d) The post-effective offering period must remain open no less than 10 days nor more than 20 days, unless the appropriate Federal banking agency approves a longer rescission period.

### OFFERS AND SALES OF STOCK

#### § 192.320 Who has priority to purchase my conversion shares?

You must offer to sell your shares in the following order:

- (a) Eligible account holders.
- (b) Tax-qualified employee stock ownership plans.
- (c) Supplemental eligible account holders.
- (d) Other voting members who have subscription rights.
- (e) Your community, your community and the general public, or the general public.

#### § 192.325 When may I offer to sell my conversion shares?

(a) You may offer to sell your conversion shares after the appropriate Federal banking agency approves your conversion, clears your proxy statement, and declares your offering circular effective.

(b) The offer may commence at the same time you start the proxy solicitation of your members.

#### § 192.330 How do I price my conversion shares?

(a) You must sell your conversion shares at a uniform price per share and at a total price that is equal to the estimated pro forma market value of your shares after you convert.

(b) The maximum price must be no more than 15 percent above the midpoint of the estimated price range in your offering circular.

(c) The minimum price must be no more than 15 percent below the midpoint of the estimated price range in your offering circular.

(d) If the appropriate Federal banking agency permits, you may increase the maximum price of conversion shares sold. The maximum price, as ad-

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justed, must be no more than 15 percent above the maximum price computed under paragraph (b) of this section.

(e) The maximum price must be between \$5 and \$50 per share.

(f) You must include the estimated price in any preliminary offering circular.

#### § 192.335 How do I sell my conversion shares?

(a) You must distribute order forms to all eligible account holders, supplemental eligible account holders, and other voting members to enable them to subscribe for the conversion shares they are permitted under the plan of conversion. You may either send the order forms with your offering circular or after you distribute your offering circular.

(b) You may sell your conversion shares in a community offering, a public offering, or both. You may begin the community offering, the public offering, or both at any time during the subscription offering or upon conclusion of the subscription offering.

(c) You may pay underwriting commissions (including underwriting discounts). The appropriate Federal banking agency may object to the payment of unreasonable commissions. You may reimburse an underwriter for accountable expenses in a subscription offering if the public offering is limited. If no public offering occurs, you may pay an underwriter a consulting fee. The appropriate Federal banking agency may object to the payment of unreasonable consulting fees.

(d) If you conduct the community offering, the public offering, or both at the same time as the subscription offering, you must fill all subscription orders first.

(e) You must prepare your order form in compliance with this part and Form OF.

#### § 192.340 What sales practices are prohibited?

(a) In connection with offers, sales, or purchases of conversion shares under this part, you and your directors, officers, agents, or employees may not:

- (1) Employ any device, scheme, or artifice to defraud;