

## **Organization and Operation of Stock-Form Savings Banks and Savings and Loan Associations**

**PLEASE NOTE:** Prior consultation with the Department of Financial Services is advised. Questions concerning the application process detailed below may be directed at (212) 709-1540.

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#### **3 NYCRR - Ch. I Part 86 -- Organization And Operation Of Stock-Form Savings Banks And Savings And Loan Associations**

(Statutory authority: Banking Law, §§ 14, 14-e)

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History

Part (§§ 86.1 - 86.15) filed March 5, 1984; amd. filed April 12, 1985 as emergency measure eff. April 12, 1985. Amended statutory authority.

### **3 NYCRR - § 86.1 -- Scope.**

This Part implements the Banking Board's authority under section 14-e of the Banking Law to facilitate the organization of stock-form savings banks and stock-form savings and loan associations and the conversion of mutual savings banks and savings and loan associations to stock form consistent with the declaration of policy of chapter one of the Laws of 1984.

#### History

Sec. filed March 5, 1984; amd. filed Dec. 9, 1985; repealed, new filed Oct. 10, 1995 as emergency measure eff. Oct. 10, 1995.

### **3 NYCRR - § 86.2 -- Definitions.**

As used in this Part and in any forms promulgated hereunder, the following terms shall have the following meanings, unless the context clearly requires otherwise:

(a) The terms company and doing business shall have the same meanings ascribed to them in section 141 of the Banking Law.

(b) The term competing offeror shall mean any person other than a proposed acquiror who makes an offer to purchase control of a converting institution pursuant to section 86.6 of this Part.

(c) The term control shall have the same meaning ascribed to it in section 143-b(1) of the Banking Law.

(d) The term eligible account holder shall mean any depositor of a mutual savings bank who owned in such bank one or more accounts valued in the aggregate at \$100 or more on the eligibility record date, or any shareholder of a mutual savings and loan association who owned shares in such association valued at \$100 or more on the eligibility record date.

(e) The term eligibility record date shall mean the date established by the board of trustees of a savings bank or the board of directors of a savings and loan association as the date on which depositors of such savings bank or shareholders of such savings and loan association shall be deemed to be eligible account holders. The eligibility record date shall be no less than 30 days and no more than 120 days prior to the date on which the plan of conversion is adopted by such directors or trustees.

(f) The term person shall mean any corporation, partnership, trust, unincorporated association, any other entity or a natural person.

(g) The term preliminary offering circular shall mean the form of offering circular filed with the superintendent which has not been approved by the superintendent for use in connection with the sale of capital stock to be issued by the converting institution.

(h) The term preliminary proxy statement shall mean the form of proxy statement filed with the superintendent which has not been approved for public distribution by the superintendent.

(i) The term proposed acquiror shall mean any person who makes an offer to purchase control of a converting institution pursuant to section 86.6 of this Part, which offer is accepted by the board of directors or trustees of the converting institution and is submitted to the superintendent for approval as part of the plan of conversion adopted by such directors or trustees.

(j)(1) The term proxy solicitation shall mean, whether made through the use of the mails, telephone, print media or otherwise:

(i) any request for a proxy whether or not accompanied by or included in a form of proxy; or

(ii) any request to execute, not to execute, or to revoke a proxy; or

(iii) the furnishing of a form of proxy or other communication to eligible account holders under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy; or

(iv) any action or statement that is designed to influence or may reasonably be anticipated to have the effect of influencing the decision whether, or how, to vote by any eligible account holder.

(2) The term proxy solicitation shall not include:

(i) the furnishing of a form of proxy to an eligible account holder upon the unsolicited request of such eligible account holder;

(ii) the performance by any person of ministerial acts on behalf of a person soliciting a proxy;

(iii) statements or publications by any person which do no more than analyze the plan of conversion or specific portions thereof presented to eligible account holders by the board of trustees or board of directors; and

(iv) any proxy solicitation by or on behalf of any person who does not, at any time during such solicitation, seek directly or indirectly, either on his/her own or another's behalf, the power to act as proxy for an eligible account holder and does not furnish or otherwise request, or act on behalf of a person who furnishes or requests, a form of revocation, abstention, consent or authorization; provided that this subparagraph shall not apply to the thrift or any person acting on the thrift's behalf.

(k) The term subaccount shall mean, with respect to each eligible account holder, the portion of the liquidation account which such eligible account holder would be entitled to receive pursuant to this Part upon a complete liquidation of the converted institution.

(l) The term thrift shall mean any mutual savings bank or mutual savings and loan association organized under or subject to the provisions of article VI or X of the Banking Law.

#### History

Sec. filed March 5, 1984; amd. filed Oct. 10, 1995 as emergency measure eff. Oct. 10, 1995.

### **3 NYCRR - § 86.3 -- De Novo Chartering; Conversions From Federal Charter To State Charter, Followed By A Simultaneous Conversion To Stock-Form.**

(a) Five or more persons may incorporate a stock-form thrift in accordance with the requirements of articles II and XV of the Banking Law governing the incorporation of a bank or trust company. If the shares of a de novo stock-form thrift will be offered in a public offering, an offering circular in the form prescribed in section 86.15 of this Part shall be submitted to the superintendent for his approval within such time as shall be prescribed in this Part as a condition precedent to the issuance of an authorization certificate to such thrift.

(b) Where an existing federally chartered mutual savings bank or mutual savings and loan association proposes to convert to State charter pursuant to the provisions of Part 87 of this Title and simultaneously therewith to convert from mutual form to stock-form, any vote taken by the depositors of the Federal mutual thrift which is in compliance with the provisions of this Part shall be deemed equivalent to a vote required of the depositors of State-chartered mutual thrifts for purposes of this Part.

#### History

Sec. filed March 5, 1984; amds. filed: Sept. 9, 1986 as emergency measure, expired 60 days after filing; Nov. 17, 1986 eff. Nov. 17, 1986.

### **3 NYCRR - § 86.4 -- General Provisions Relating To The Conversion (Other Than A Conversion Effected Pursuant To Any Contrary Provisions Of Section 86.12 Of This Part)Of A Thrift From Mutual To Stock-Form Of Organization.**

(a) (1) The board of trustees or the board of directors, as the case may be, of a thrift may determine to convert the institution to stock-form of ownership, and to seek the superintendent's approval therefor, by first securing the approval of its plan of conversion by a majority of the entire board of such trustees or directors, at a meeting duly held upon not less than 15 days' notice (or upon such shorter notice, or without notice, provided all the

members of such board waive in writing such 15-day notice period), said notice to contain a copy of the plan of conversion proposed to be filed with the superintendent.

(2) Following the approval of the plan of conversion by the board of trustees or directors, the converting institution shall promptly provide public notice of its plan to convert to stock form. Such public notice shall be made by means of the posting of a notice in a conspicuous place in the principal and branch offices (which term shall not include separate electronic facilities) of the institution, the issuance of a press release containing all material details of the proposed conversion (and such other information required to make the press release not false or misleading) and the placing of an advertisement containing such material details (and such other information, if any) in a newspaper of general circulation in the communities where the principal offices and branches of the converting institution are located. Thereafter, such institution shall file with the superintendent for approval an application for conversion containing all of the information required by section 86.13 of this Part. The superintendent's approval or disapproval shall be given within 60 days after the superintendent shall have acknowledged to the applicant that the contents of the application and the required documents and exhibits are substantially complete and acceptable in the form submitted.

(3) If approved, such institution shall submit the plan of conversion to its eligible account holders, for approval at a meeting held upon written notice given no less than 20 days nor more than 45 days prior to the date of such meeting. Separate notices shall be sent to joint account holders at each address appearing on the records of the institution as the address of a joint account holder, except that only one notice need be sent to joint account holders residing at the same address. Such notice shall be sent by first class mail postage prepaid and shall consist of a notice of meeting and shall be accompanied by a proxy card and either a proxy statement or a short-form proxy statement, each to comply with the provisions of section 86.14 of this Part. The proxy card:

shall indicate in boldface type whether the proxy is solicited on behalf of the management;

shall provide specifically designated blank spaces for dating and signing such proxy card;

shall identify clearly and impartially each matter or group of related matters intended to be acted upon at the meeting;

shall be clearly labeled "revocable proxy" in boldface type;

shall describe any charter or other requirement restricting or conditioning voting by proxy;

shall contain an acknowledgment by the person giving the proxy that he has received a proxy statement prior to signing the form of proxy;

shall contain the date, time and place of meeting, if practicable; shall provide by a box or otherwise, a means whereby the depositor or shareholder solicited is afforded an opportunity to specify by ballot a choice between approval or disapproval of each matter referred to therein as intended to be acted upon;

and shall indicate in boldface type how the proxy shall be voted on each such matter as to which no choice is so specified.

Only one joint account holder must sign a proxy card sent in connection with a joint account, if clearly stated on the proxy card. No such proxy shall confer authority to vote at any meeting other than the meeting (or any adjournment thereof) to vote on conversion. A proxy may be deemed to confer authority to vote with respect to matters incident to the conduct of such meeting. The proxy statement or form of proxy shall provide that the votes represented by proxy will be voted; that, where the depositor or shareholder solicited specifies by means of a ballot a choice with respect to any matter to be acted upon, the votes will be voted in accordance with the specifications so made; and that if no choice is specified, the votes will be cast as indicated in boldface on the proxy card.

(4) A vote of 75 percent in amount of deposit liabilities or book value of outstanding shares, as the case may be, represented in person or by proxy at such meeting shall be required for approval of the plan. No specific minimum amount of deposits or shares shall be required to be present either in person or by proxy at such meeting in order to constitute a quorum for the transaction of business. No eligible account holder may cast more than 1,000 votes at such meeting. The board of trustees or board of directors, as the case may be, shall appoint an independent custodian and tabulator to receive and hold the proxy cards and to count the votes cast in favor of and in opposition to the plan of conversion. In the event provision is made for the receipt of proxies at offices of the converting institution, proxies must be deposited unopened in sealed containers that are maintained and delivered unopened in a sealed state to the custodian and tabulator. Such custodian and tabulator shall not be affiliated with any party with an interest in the transaction, including any financial advisor, underwriter, appraiser, law firm or proxy solicitation firm engaged by the board of trustees or directors in connection with the conversion.

(5) A depositor or shareholder shall be eligible to vote if he shall have met the requirements of section 9019 of the Banking Law as of the eligibility record date.

(6) Within five days after the meeting of shareholders or depositors (which is any event shall be before the amended organization certificate of the converting thrift is filed pursuant to subdivision (c) of this section), the president and secretary of the converting institution shall certify to the superintendent the result of the vote taken at such meeting.

(b) The application for conversion shall be in the form prescribed by section 86.13 of this Part and shall be accompanied by such statutory fees as shall apply to such application.

(c) When the superintendent shall have determined to approve or disapprove the application for conversion, he or she shall so advise the converting institution in writing and, in the case of a determination of approval, and after the converting institution shall have completed arrangements to sell its shares and shall have taken such other steps as may be required hereunder, the superintendent, if satisfied that the requirements of this Part have been met, shall endorse his or her approval on the amended organization certificate and shall cause it to be filed in the office of the superintendent and with the clerk of the county in which the

converting institution's principal office is located. At the time the conversion from mutual to stock form becomes effective, the converting institution shall cease to be a mutual institution and shall simultaneously become a stock-form institution, and all the property of the mutual institution shall remain as the property of the stock-form institution. All of the rights, powers, franchises, debts, liabilities, obligations and duties of the mutual institution shall continue as such in the stock-form institution and all share interests (in the case of savings and loan associations) and deposits (in the case of savings banks) therein shall remain as deposits of equal value and character of such stock-form institution. The corporate existence of the converting mutual institution shall not terminate, and such converted stock-form institution shall be a continuation of the mutual form institution which existed immediately before the filing of the amended organization certificate.

(d) (1) To the extent consistent with applicable law, a converting institution will be required to make available a list of the names and addresses of all of its eligible account holders to any eligible account holder requesting such list. The eligible account holder requesting such list shall be required to pay the reasonable costs incurred by the converting institution in producing such list. Such list shall not contain any information regarding the amount of deposits or shares held in the accounts of the eligible account holders, except that the converting institution shall be required to disclose the aggregate book value of all such deposits or shares. Such list shall be made available with reasonable promptness so as to permit any eligible account holder to conduct a proxy solicitation of the other eligible account holders in advance of the meeting convened to approve the proposed conversion. Any eligible account holder who requests a list of eligible account holders pursuant to this subdivision shall submit with such request a declaration concerning his or her eligibility to vote on the conversion and a statement indicating the purposes for which the list will be used and shall submit a notarized affidavit, affirmation or similar document attesting that the eligible account holder:

(i) will not use the list for any purpose other than to solicit other eligible account holders with respect to the same solicitation commenced by the thrift;

(ii) will not disclose the information appearing on the list to any person other than an employee or agent of such eligible account holder to the extent necessary to effectuate the communication or solicitation and;

(iii) will return the list and all copies thereof in his or her possession to the converting institution no later than the date of the meeting of eligible account holders, as such date may be postponed or extended.

(2) Subject to the receipt of the items listed in paragraph (1), the thrift shall respond to any bona fide request for a list of eligible account holders with reasonable promptness and such list shall be complete (unless the eligible account holder has requested a more limited list of eligible account holders) and accurate. The list shall be in the form requested to the extent that such form is available to the thrift without undue burden or expense.

(3) As an alternative to providing a list of eligible account holders, a thrift may at its

discretion mail copies of any proxy materials, form of proxy or other solicitation materials furnished by the eligible account holder requesting such list to the other eligible account holders. If the thrift elects to mail these materials itself, it shall notify the eligible account holder requesting the list of such election and provide such eligible account holder with information as to the number of other eligible account holders, or any more limited group of eligible account holders designated by the eligible account holder requesting the list, if available under the thrift's data processing systems. The thrift shall also give the eligible account holder requesting the list the estimated cost of mailing his or her materials. The thrift shall mail such materials to the eligible account holders designated by the requesting eligible account holder with reasonable promptness, but in no event later than 48 hours after delivery of the material to be mailed together with envelopes or other reasonable containers therefor, postage or payment for postage and other reasonable expenses of effecting such mailing; provided, however, that such materials need not be mailed prior to the first day on which solicitation is made on behalf of management of the converting institution. Except for information incorporated by reference to management's own proxy statement, form of proxy or other solicitation materials, neither management of the converting institution nor the converting institution shall be responsible for the content of such materials.

(e) Any proxy solicitation in connection with approval of a plan of conversion pursuant to this Part shall be conducted in accordance with the following:

(1) Except as otherwise provided in section 86.6 of this Part, proxy solicitations subject to this Part may only be conducted by the thrift or an eligible account holder or any person acting on behalf of the foregoing. Notwithstanding the foregoing, any person may finance a proxy solicitation conducted by an eligible account holder; provided that such financing and the nature of the person's interest, if any, in the transaction is disclosed. No person providing financing may engage in any activity that would itself constitute a proxy solicitation or that would amount to a proxy solicitation by an eligible account holder on behalf of that person.

(2) No proxy solicitation subject to this Part shall be made unless each person solicited is concurrently furnished, or has previously been furnished, a written proxy statement on Form 86-PS, the use of which has been approved by the Banking Department. Any eligible account holder submitting a proxy statement for review by the Banking Department shall do so no less than five business days prior to its intended use.

(3) All additional proxy solicitation materials, including press releases, advertisements, and radio and television scripts, shall be submitted to the Banking Department for review at least five business days before their intended use. Proxy solicitation materials approved for use by the Banking Department shall be distributed to eligible account holders within ten days of such authorization unless extended in writing by the Banking Department.

(4) The fact that a proxy statement, form of proxy or other proxy solicitation material has been filed with or reviewed by the Banking Department and authorized for use shall not be deemed a finding by the Banking Department that such material is accurate or complete or not false or misleading, or that the Banking Department has passed upon the merits of or



endorsed or recommended any proposal contained therein. No representation contrary to the foregoing shall be made by any person.

(5) All proxy solicitation materials used by or on behalf of an eligible account holder shall include, at a minimum, the name of the eligible account holder soliciting the proxy or on whose behalf the proxy is being solicited, the name of the person(s) soliciting proxies on behalf of such eligible account holder, the length of time he or she has been an eligible account holder, and the reasons he or she is making the solicitation. If a proxy solicitation by an eligible account holder is being financed by a third party, such party's identity and interest, if any, in the transaction shall be disclosed.

(6) All proxy solicitation materials used by or on behalf of an eligible account holder shall solicit proxies only for an affirmative or negative vote with respect to the plan of conversion approved by the board of trustees or directors for presentation to eligible account holders and may not confer discretionary authority.

(7) Eligible account holders shall not engage in proxy solicitations at offices of the thrift, except that, if the converting institution is making its proxy solicitation materials available at its offices, it shall give any eligible account holder conducting a proxy solicitation the opportunity to make his or her proxy solicitation materials available at such locations. The converting institution shall display such materials in clearly visible and accessible locations in its offices and shall post a prominent and conspicuous notice of their availability.

(f) A plan of conversion shall contain provisions to the effect that:

(1) The converting institution shall issue and sell its capital stock at a total price equal to the estimated pro forma market value of such stock in the converted institution (plus a control premium, if applicable) based on an independent valuation, as provided in this Part.

(2) An eligibility record date shall be established which date shall be not more than 120 days and no less than 30 days prior to the date on which the board of the converting institution adopts the plan of conversion.

(3) For a period of three years following the effective date of the conversion, no officer, director, trustee (or any person who was an officer, director or trustee at any time after the date on which the board adopts the plan of conversion), or associate of any of them shall, without the prior written approval of the superintendent, purchase or acquire direct or indirect beneficial ownership of the capital stock of the converted institution, except from a broker or dealer registered with the Securities and Exchange Commission.

(4) The sale price of the shares of capital stock to be sold in the conversion shall be a uniform price determined in accordance with section 86.5(c) of this Part.

(5) The conversion must be completed within a specified time period after the date on which the plan of conversion is approved by the superintendent. The time period shall be not more

than 24 months from the date on which the plan of conversion is approved by the superintendent.

(6) Each time, savings or share account holder of the converting mutual institution shall become a withdrawable time or savings account in the converted stock-form institution equal in withdrawable amount to the withdrawal value of such account in the converting mutual institution.

(7) A liquidation account shall be established and maintained for the benefit of the eligible account holders in the event of a subsequent complete liquidation of the converted institution in accordance with the provisions of subdivision (g) of this section.

(8) The holders of the capital stock of the converted stock-form institution to be issued in connection with the conversion shall have exclusive voting rights, except as may be provided in the organization certificate as amended after the effective date of the conversion.

(9) The plan of conversion adopted by the converting institution's board of directors or trustees may be substantively amended by such board as a result of comments received from regulatory authorities or otherwise prior to the solicitation of proxies from depositors or shareholders to vote on the plan of conversion and at any time thereafter with the concurrence of the superintendent; and the conversion (except a conversion effected pursuant to section 86.6(b) of this Part) may be terminated by such board at any time prior to the meeting of depositors or shareholders called to consider the plan of conversion and at any time thereafter with the concurrence of the superintendent.

(10) All shares of capital stock of the converting institution purchased or acquired (either directly or indirectly) by directors, trustees or executive officers (as such form is defined by Part 70 of this Title) on original issue in the conversion either directly from the institution (by subscription or otherwise) or from an underwriter (or otherwise beneficially owned by such directors, trustees or executive officers immediately after such original issuance) shall be subject to the restriction that the shares shall not be sold for a period of not less than one year following the date of purchase, except in the event of death or judicial declaration of incompetency of the director, trustee or executive officer.

(11) In connection with shares of capital stock of the converted stock-form institution subject to restriction on resale:

(i) each certificate for such shares shall bear a legend giving appropriate notice of such restriction;

(ii) appropriate instructions shall be issued to the transfer agent for the converted institution's capital stock with respect to applicable restrictions on transfer of any such restricted stock; and

(iii) any shares issued as a stock dividend, stock split or otherwise with respect to any such restricted stock may not be sold until the restrictions respecting such originally restricted

stock are terminated, and any certificate for such shares shall bear a legend advising of such restrictions.

(12) The converting institution, and in the case of a conversion calling for the formation of a holding company, such holding company, will restrict the repurchases of its stock and the implementation of stock option and management and employee stock benefit plans as provided in subdivision (h) of this section.

(13) The expenses incurred in the conversion shall be reasonable.

(14) No provision contained in such plan shall be determined by the superintendent to be inequitable or detrimental to the converting institution, its depositors or shareholders, or to be contrary to the public interest.

(15) The converting institution shall not loan funds or otherwise extend credit to any person for the purpose of purchasing the capital stock of such institution.

(g) *Liquidation account.* (1) Each converted institution shall, at the time of conversion, establish a liquidation account in an amount equal to at least the amount of net worth (determined in accordance with generally accepted accounting principles) of the converting institution as set forth in its latest statement of financial condition contained in the proxy statement. The function of the liquidation account is to establish a priority on liquidation to providing to eligible account holders rights upon liquidation of the converted institution initially at least equal to the rights that they have to the net worth of the institution if the institution were to be liquidated immediately prior to conversion and, except as provided in paragraph (2) of this subdivision, the existence of the liquidation account shall not operate to restrict the use or application of any of the net worth accounts of the converted institution.

(2) The liquidation account shall be maintained by the converted institution for the benefit of eligible account holders who maintain their accounts in such institution. Each such eligible account holder shall, with respect to each account held, have a related inchoate interest in a portion of the liquidation account balance.

(3) In the event of a complete liquidation of the converted institution (and only in such event), each eligible account holder shall be entitled to receive a liquidation distribution from the liquidation account in the amount of the then-current adjusted subaccount balance for each account of such holder then in the converted institution, before any liquidation distribution may be made with respect to capital stock, except with respect to any preferred stock issued in exchange for the surrender at the time of the conversion of mutual capital certificates or other net worth certificates which have been issued to its Federal deposit insurer by the institution prior to such conversion. Preferred stock issued in exchange for such certificates may receive distributions in liquidation prior to any distribution to an eligible account holder with respect to the liquidation account to the same extent that the holders of such certificates would have been entitled to priority over the residual rights of depositors or shareholders had the institution not been converted as of the date of liquidation.

(4) The initial subaccount balance for an account held by an eligible account holder shall be determined by multiplying the aggregate opening balance in the liquidation account by a fraction of which the numerator is the amount of deposits or shares in the account of such eligible account holder on the eligibility record date and the denominator is the total amount of deposits or shares owned by all eligible account holders in the converting institution on such date. Such initial subaccount balance shall not be increased, and it shall be subject to downward adjustment as provided in paragraph (e)(5) of this section.

(5) If the deposit or share balance in any account of an eligible account holder at the end of any period for which the converted institution has prepared audited financial statements subsequent to the eligibility record date is less than the lesser of:

(i) the deposit or share balance in such account at the end of any period for which the converted institution has prepared audited financial statements subsequent to the eligibility record date; or

(ii) the amount of the deposits or shares as of the eligibility record date, the subaccount balance for such account shall be adjusted by reducing such subaccount balance in an amount proportionate to the reduction in such deposit or share balance. In the event of such a downward adjustment, the subaccount balance shall not be subsequently increased, notwithstanding any increase in the deposit or share balance of the related account. If any such account is closed, the related subaccount balance shall be reduced to zero.

(h) *Restrictions on repurchase of stock; payment of dividends; and use of stock option and management or employee stock benefit plans.* Each institution that converts pursuant to this Part shall be subject to the following conditions:

(1) Except with the prior approval of the superintendent, no converted institution or holding company of a converted institution may repurchase any of its outstanding common stock prior to the first anniversary of the effective date of the conversion. Nor, during the second and third years following conversion, may there be a repurchase in excess of five percent of the holding company's or converted institution's outstanding common stock in any 12-month period without the prior approval of the superintendent. In determining whether to grant such approval, the superintendent shall consider:

(i) the financial condition and history of the holding company and/or the converted institution, as the case may be;

(ii) the adequacy of its capital structure;

(iii) its future earnings prospects;

(iv) the quality of its management;

(v) whether such repurchase shall result in fair treatment to the holding company or the converted institution, as the case may be; and

(vi) the public interest generally.

(2) No converted institution shall declare or pay a cash dividend on any of its capital stock if the effect thereof would cause the net worth of the converted institution to be reduced below the amount required to maintain the liquidation account.

(3) For a period of at least one year from the effective date of the conversion, no converted institution shall implement any non-tax-qualified management or employee stock benefit plan or stock option plan unless:

(i) each plan was fully disclosed in the proxy solicitation and stock offering materials;

(ii) the total number of shares of common stock for which options may be granted does not exceed ten percent of the amount of shares issued in the conversion;

(iii) the aggregate number of shares in management and employee stock benefit plans does not exceed four percent of the amount of shares issued in the conversion;

(iv) no individual shall receive more than 25 percent of the shares of any plan and directors who are not employees of the institution shall not receive more than five percent of the stock individually, or 30 percent in the aggregate, of any plan;

(v) all plans are approved by a majority of the institution's stockholders, or in the case of a holding company formed in connection with the conversion, its stockholders, prior to implementation and no earlier than six months after the conversion;

(vi) the exercise price of options shall be the market price at which the stock is trading at the date of grant; and

(vii) no conversion stock is used to fund management or employee stock benefit plans.

(i) *Manipulative and deceptive devices.* In connection with the conversion of a thrift to stock form, or the offer, sale or purchase of capital stock issued in connection with such conversion, no institution, any director, officer or trustee thereof, any person soliciting proxies or acting on behalf of any person soliciting proxies in connection with such conversion, or any person seeking to acquire control of such institution, shall:

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

(2) make any untrue statement of a material fact, or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or

(3) engage in any act, transaction, practice, or course of business which operated or would operate as a fraud or deceit upon a purchaser or seller of such capital stock.

(j) No person may offer to distribute cash or other valuable consideration to eligible account holders in connection with any conversion other than, with the prior approval of the Superintendent, a supervisory conversion pursuant to section 86.12 of this Part.

(k) *Acquisition of the securities of converting and converted institutions.* (1) Prior to the completion of a conversion, no person shall offer to transfer, or enter into any agreement or understanding to transfer, the legal or beneficial ownership of the capital stock to be issued in connection with the conversion, except pursuant to or contemplated by the plan of conversion filed with the superintendent.

(2) Prior to the completion of a conversion, no person shall make any offer, or any announcement of an offer, for any security of the converting institution issued in connection with the conversion nor shall any person knowingly acquire securities of the converted institution issued in connection with the conversion in excess of the maximum purchase limitations established in the institution's approved plan of conversion.

(3) Except with the prior approval of the superintendent, no person for a period of one year following the date of the completion of the conversion shall directly or indirectly acquire or offer to acquire the beneficial ownership of more than 10 percent of any class of capital stock of an institution converted in accordance with the provisions of this Part. In addition to the provisions of this section, the provisions of article III-A of the Banking Law shall apply to any such acquisition.

(l) *Tax opinions and rulings.* The superintendent may refuse to approve any plan of conversion which may in the judgment of the superintendent result in a taxable reorganization of the converting institution under the Internal Revenue Code of 1954, as amended.

(m) *Consents of experts.* If any accountant, attorney, investment banker, appraiser, or other person whose professions give authority to a statement made in any document filed under this Part is named as having prepared, reviewed, passed upon, or certified any part thereof, or any report or valuation for use in connection therewith, the written consent of such person shall be filed with the application for conversion. If any portion of a report of an expert is quoted or summarized as such in any filing, the written consent of the expert shall expressly state that the expert consents to such use. All written consents filed pursuant to this subdivision shall be dated and signed manually. A list of such consents shall be filed with the application for conversion. Where the consent of the expert is contained in his report, a reference shall be made in the list to the report containing such consent.

## History

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Dec. 11 1, 1984; March 7, 1986; Nov. 20, 1987 as emergency measure, expired 60 days after filing; Feb. 9, 1988 as emergency measure; Feb. 9, 1988; Oct. 10, 1995 as emergency measure; Dec. 8, 1995 as emergency measure; June 13, 1996; June 20, 1996; Nov. 24, 1998 eff. Dec. 9, 1998. Amended (h).

### **3 NYCRR - § 86.5 -- Public Offering Of Capital Stock In Connection With The Conversion Of Mutual Thrift Institutions To Stock-Form.**

(a) A plan of conversion, (except to the extent governed by inconsistent provisions of section 86.6 or by section 86.12 of this Part) shall, in addition to the requirements of section 86.4 of this Part, contain provisions to the effect that:

(1) (i) each eligible account holder shall receive, without payment, nontransferable subscription rights to purchase capital stock of the converting institution in an amount no less than the maximum purchase limitation established for the public offering under paragraph (3) of this subdivision. In the event of an over subscription for such shares, after shares have been allocated among subscribing eligible account holders so as to permit each such account holder, to the extent possible, to purchase 100 shares, shares shall be allocated among subscribing eligible account holders on such equitable basis, related to the amounts of their respective accounts, as may be provided in the plan of conversion.

(ii) Subscription rights to purchase capital stock received by officers, directors, trustees, and their associates, of the converting institution based on their increased deposits or shares in the converting institution in the one-year period preceding the eligibility record date shall be subordinated to all other subscription rights to purchase shares of capital stock granted pursuant to this Part.

(iii) The provisions of subparagraph (i) of this paragraph notwithstanding, a plan of conversion may contain a provision that gives the tax-qualified employee stock benefit plans of the converting institution (and, where applicable, a holding company formed in connection with its conversion to stock form) subscription rights to purchase up to 10 percent of the shares to be issued by the converting institution, and which subordinates the subscription rights of eligible account holders to those of such tax-qualified employee stock benefit plans.

(2) Management of the converting institution collectively shall not be entitled to purchase more than 25 percent of the capital stock issued by the converting institution in a public offering of such stock, and no person (alone, or acting together with any other person or in concert with any group of persons) shall be entitled to purchase more than five percent of such stock in such public offering. Any shares of capital stock purchased pursuant to the exercise of subscription rights shall be included with the shares purchased in a public offering for purposes of determining if the above-described 25 percent and 5 percent limitations have been violated. As used in this section, the term *management* shall refer to directors or trustees and executive officers; provided, however, that such persons shall not be deemed to be acting together or in concert solely as a result of their board membership or employment.

(3) Any shares of the converting institution not sold to depositors or shareholders with subscription rights shall be sold in a public offering through an underwriter, or otherwise in whole or in part to the public without an underwriter, subject to the converting institution demonstrating to the superintendent the feasibility of the method of sale and to such conditions as may be provided in the plan of conversion. Such conditions shall include, but not be limited:

(i) a condition limiting purchases in the public offering by any person together with any associate or group of persons acting in concert to an aggregate of no more than five percent of the total amount of shares offered;

(ii) a condition requiring the stock to be offered and sold in the public offering to be offered and sold in a manner that will achieve a reasonably wide distribution of such stock.

(4) The converting institution shall:

(i) promptly following the conversion register the capital stock issued in connection therewith pursuant to the Securities Exchange Act of 1934 and undertake not to deregister such capital stock for a period of three years after such registration;

(ii) use its best efforts to encourage and assist a market maker to establish and maintain a market for the capital stock issued in connection with the conversion; and

(iii) use its best efforts to list the shares of capital stock issued in connection with the conversion on a national or regional securities exchange or on the NASDAQ quotation system.

(5) The notice of meeting, proxy card, and proxy statement or short-form proxy statement sent to each eligible account holder as required by section 86.4(a)(3) of this Part shall be accompanied by a subscription offering circular and subscription order form. Separate and readily distinguishable postage-paid envelopes shall be provided for the return of proxy cards and subscription order forms.

(b) A plan of conversion providing for the public offering of the capital stock of a converting institution may contain provisions to the effect that:

(1) Shares of the converting institution not sold in the subscription offering or in a public offering pursuant to this section not exceeding one percent of the aggregate shares issued, may be sold in such other manner as provided in the plan of conversion.

(2) Any person exercising subscription rights to purchase capital stock shall be required to purchase a minimum of 25 shares to the extent such shares are available for purchase. In no event shall the aggregate price for any minimum purchase of shares exceed \$500.

(3) Instead of a separate subscription offering, all subscription rights issued in connection



with the conversion shall be exercisable by delivery of properly completed and executed order forms to the underwriters or selling group for the public offering. Orders for stock in the public offering shall not be filled until after orders of persons exercising subscription rights have been filled.

(4) The converting institution shall not be required to issue subscription rights to, or accept orders for the purchase of shares of capital stock from, persons who are residents of a foreign country.

*(c) Pricing and sale of capital stock.* (1) No offer to sell capital stock of a converting institution pursuant to a plan of conversion providing for a public offering may be made prior to approval by the superintendent of the application for conversion and until the preliminary offering circular has been authorized for use by the superintendent. No sale of capital stock may be made except by means of a final offering circular which has been approved by the superintendent. The provisions of this paragraph shall not apply to preliminary negotiations or agreements between a converting institution and any underwriter or among underwriters who are to be in privity of contract with the converting institution.

(2) Any preliminary offering circular which has been authorized for use by the superintendent may be distributed in connection with the offering at the same time as, or after, the proxy statement is mailed to depositors or shareholders pursuant to this Part. No final offering circular shall be distributed until it has been approved by the superintendent. The approval of the final offering circular by the superintendent shall not extend beyond the maximum time period specified for the completion of the sale of all the capital stock in subdivision (e) of this section, or beyond such period of time as the superintendent shall establish upon a subsequent approval in the event of the granting of an extension of time under subdivision (g) of this section.

(3) If the subscription offering is to commence prior to the meeting of the depositors or shareholders held to vote on the plan of conversion, the proxy statement authorized for use by the superintendent shall set forth the estimated price range. Any preliminary offering circular shall set forth the estimated price range. The maximum of such price range should normally be no more than 15 percent above the average of the minimum and maximum of such price range and the minimum should normally be no more than 15 percent below such average. The maximum price used in the price range should be no more than \$40 per share and the minimum no less than \$5 per share.

(4) The materials relating to the pricing of the capital stock referred to in paragraph (6) of this subdivision shall be delivered to the superintendent before he approves the plan of conversion. The superintendent will review the price information in determining whether to approve an application for conversion when the offering is to commence prior to the meeting of depositors or shareholders, and will review such information in determining whether to approve the final offering circular.

(5) Underwriting commissions shall not exceed an amount or percentage per share acceptable to the superintendent. No underwriting commissions shall be allowed or paid with respect to

shares of capital stock sold in the subscription offering, unless the plan of conversion contains the provision permitted by paragraph (b)(4) of this section; provided, however, that an underwriter may be reimbursed for reasonable expenses actually incurred in connection with the subscription offering where the public offering is so small that reasonable underwriting commissions thereon would not be sufficient to cover total expenses reasonably incurred by the underwriter.

(6) The pricing information required under paragraph (4) of this subdivision shall comply with the following guidelines:

(i) The materials shall be prepared by persons independent of the converting institution, experienced and expert in the area of corporate appraisal, and acceptable to the superintendent.

(ii) The materials shall contain a full appraisal, including a complete and detailed description of the elements that make up an appraisal report, justification for the methodology employed and sufficient support for the conclusions reached therein.

(iii) To the extent that the appraisal is based on a capitalization of the *pro forma* income of the converted institution, the materials must indicate the basis for determination of the income to be derived from the proceeds of the sale of stock and demonstrate the appropriateness of the earnings-multiple used, including assumptions made as to future earnings growth. To the extent that the appraisal is based on comparison of the capital stock of the converting institution with outstanding capital stock of existing stock-form thrift institutions, such existing stock institutions must be reasonably comparable to the converting institution in terms of such factors as size, market area, competitive conditions, profit history, and expected future earnings.

(7) In addition to the information required in paragraph (6) of this subdivision, the converting institution shall submit information demonstrating to the satisfaction of the superintendent the independence and expertise of any person preparing materials under this paragraph. However, a person will not be considered as lacking independence for the reason that such person will participate in the effecting a sale of capital stock under the plan of conversion or will receive a fee from the converting institution for services rendered in connection with such appraisal.

(8) In addition to the information required in paragraphs (6) and (7) of this subdivision, the converting institution shall file with the superintendent such additional information with respect to the pricing of the capital stock of the institution as the superintendent may request, including, without limitation, a full appraisal.

(d) *Order forms for subscriptions.* (1) After receiving the approval of the superintendent of its plan for conversion, a converting thrift shall submit said plan to its eligible account holders as provided in section 86.4 of this Part by mailing to each eligible account holder a notice, proxy card and proxy statement or short-form proxy statement conforming to the requirements of section 86.14 of this Part.

(2) Except as provided in paragraph (1)(5) of this section, subscriptions for shares shall be accepted from eligible account holders only to the extent that such holders have (i) executed and delivered in person or by mail a purchase order in such form as the converting institution shall prescribe, and (ii) accompanied such order with payment (either direct or by authorizing withdrawal from a share or deposit account). In the event that subscriptions are cancelled by the converting institution for any lawful reason, payments for the same shall be promptly refunded.

(3) Each order form shall be accompanied or preceded by an offering circular for the subscription offering or the public offering, as the case may be, and a set of detailed instructions explaining how to properly complete such order forms.

(4) The maximum subscription price stated on each order form shall be the amount to be paid when the order form is returned. The maximum subscription price and the actual subscription price shall be within the subscription price range stated in the offering circular. If either the maximum subscription price or the actual subscription price is not within the subscription price range stated in the offering circular, the converting institution must obtain specific approval as to such price from the superintendent. If appropriate, the superintendent will condition his approval by requiring a resolicitation of proxies and/or order forms. If the actual public offering price is less than the maximum subscription price stated on the order form, the actual subscription price shall be correspondingly reduced and the difference shall be refunded to those who have paid the maximum subscription price unless the subscribers affirmatively elect to have the difference applied to the purchase of additional shares of capital stock.

(5) Each order form shall be prepared so as to indicate to the person receiving it, in as simple, clear and intelligible a manner as possible, the actions which are required or available to him with respect to the form and the capital stock offered for purchase thereby. Specifically, each order form shall:

(i) indicate the maximum number of shares that may be purchased pursuant to the subscription rights;

(ii) indicate the period of time within which the subscription rights must be exercised, which period of time shall be no less than 20 days and no more than 45 days following the date of the mailing of the subscription order form;

(iii) state the maximum subscription price per share of capital stock;

(iv) indicate any requirements as to the minimum number of shares of capital stock which may be purchased;

(v) provide a specifically designated blank space or spaces for indicating the number of shares of capital stock which the eligible account holder wishes to purchase;

(vi) indicate the manner of required payment and, if such payment may be made by withdrawal from a certificate of deposit, indicate whether such withdrawal may be made without penalty. If payment is to be made by withdrawal from an account or certificate of deposit, a box to check should be provided;

(vii) provide specifically designated blank spaces for dating and signing the order form;

(viii) contain an acknowledgment by the eligible account holder or other person signing the order form that he has received an offering circular prior to so signing; and

(ix) indicate the consequences of failing to properly complete and return the order form, including a statement that the subscription rights are nontransferable and will become void at the end of the subscription period. The order form may, and the instructions thereto shall, indicate the place or places to which the order forms are to be returned and when the order forms shall be deemed to be received by the converting institution.

(6) The order form may provide that it may not be modified without the converting institution's consent after its receipt as set forth in the order form. If payment is to be made by withdrawal from an account or certificate of deposit, the converting institution may, but need not, cause such withdrawal to be made upon receipt of the order form. If such withdrawal is made at any time prior to the closing date of the public offering, the converting institution shall pay interest to the eligible account holder on the amount withdrawn as if such amount had remained in the account from which it was withdrawn until such closing date.

(e) *Period for completion of sale.* The sale of all shares of capital stock of the converting insured institution to be made under the plan of conversion shall be completed as promptly as possible and within 45 calendar days after the last day of the subscription period unless extended by the superintendent.

(f) *Interest on subscriptions.* The converting institution shall pay interest at not less than the passbook rate on the amounts paid to the institution to purchase shares of capital stock in the subscription offering from the date payment is received by the institution until the conversion is completed or terminated.

(g) *Extension of time to complete public offering.* (1) The superintendent may grant one or more extensions of the time required to complete the sale of all shares of capital stock under subdivision (e) of this section, provided that no single extension of time shall exceed 60 days.

(2) Immediately upon granting of an extension of time pursuant to paragraph (1) of this subdivision, the converting institution shall distribute to each subscriber in the offering a notice of the extension of time, and of the right of each subscriber to increase, decrease or rescind the subscription at any time prior to 20 days before the end of the extension period or at any time prior to the date of the commencement of the public offering.

(3) After the expiration of the subscription period, the converting institution shall file with the

superintendent, for his approval, a notice to be delivered to subscribers upon the occurrence of any event, circumstance, or change of circumstance which would be material to the investment decision of a subscriber. Any such notice distributed to subscribers shall grant to each subscriber the right to increase, decrease or rescind his subscription for a period which shall be no less than the greater of 10 days from the date of the mailing of such notice or the period remaining in an extension of time granted by the superintendent pursuant to and subject to the provisions of this subdivision.

#### History

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### **3 NYCRR - § 86.6 -- Sale Of Control In Connection With The Conversion Of Mutual Thrift Institutions To Stock-Form.**

(a) Pursuant to the provisions of this subdivision and of section 86.4 of this Part, a mutual thrift institution having net worth (determined in accordance with generally accepted accounting principles) of less than three percent of assets as of the end of the most recent period for which such institution has prepared audited financial statements, or which received net worth assistance from its Federal deposit insurer within the 12-month period ending on the date on which the application for conversion was filed with the superintendent, may seek approval to convert to stock form pursuant to a plan of conversion which provides for the sale of its capital stock to a person or persons who will be in control of such institution upon the purchase of such capital stock. Such institution shall be required to retain a reputable financial advisor of national standing with expertise in valuing financial institutions to advise it as to the fairness of the consideration to be paid by the proposed acquiror. The financial advisor shall furnish a written opinion specifically informing the converting thrift institution as to the fairness from a financial point of view to the converting institution of the proposed consideration. Such written opinion shall specifically disclose in reasonable detail:

- (1) the professional standards employed by the financial advisor in arriving at its conclusions; and
- (2) the factual basis upon which such conclusions were reached.

The opinion shall specifically state whether or not the financial advisor, in arriving at its conclusions as to the fairness of the proposed consideration has made efforts to determine whether, in its judgment, there is the reasonably significant probability that financially able purchasers of the character generally capable of securing regulatory approval other than the proposed acquiror, given an opportunity, might have made good faith offers to purchase control of the converting institution for a consideration materially greater than that proposed to be paid by the proposed acquiror, and has compared the consideration to be paid by the

proposed acquiror with the consideration paid in the purchase of other thrift institutions of comparable size, market area, profit history, competitive conditions and projected future earnings. If the financial advisor has made any such efforts or any such comparisons, the nature and scope of such efforts and comparisons shall be discussed in detail. The written opinion shall state whether and on what basis the financial advisor believes that the consideration to be paid by the proposed acquiror exceeds the aggregate amount of net proceeds which the converting institution could have realized if the capital stock to be sold to the proposed acquiror had been sold in a subscription offering followed by an underwritten public offering. The written opinion shall be delivered to the Banking Department before any approval of the application for conversion will be granted by the superintendent.

(b) A mutual thrift institution which does not qualify for a conversion pursuant to subdivision (a) of this section may seek approval to convert to stock-form pursuant to a plan of conversion in which one or more persons will acquire control of such converting institution pursuant to the provisions of this subdivision and of section 86.4 of this Part. After such mutual institution has filed an application for conversion pursuant to the provisions of this Part, any competing offeror may file with the superintendent a plan of conversion providing for the purchase of control (wherein the same percentage of the aggregate capital stock of the converting institution proposed to be purchased pursuant to the plan of conversion adopted by the converting institution will be purchased by the competing offeror) as an alternative to the plan of conversion filed by the converting institution. If such plan is approved by the superintendent, and if the Banking Board approval referred to in paragraph (c)(1) of this section is obtained, then such competing offeror may present its plan of conversion to a vote of the depositors or shareholders at any meeting thereof called by management of the converting institution to vote upon the plan of conversion proposed by the converting institution. Upon approval by at least 75 percent of the total votes of the converting institution's depositors or shareholders represented in person or by valid proxy at such meeting, a competing offeror's plan of conversion will be adopted by the converting institution, and shall be binding on the institution and the competing offeror.

(c) The provisions of section 86.4 of this Part shall apply to any application for conversion which a competing offeror proposes to submit to a meeting of depositors or shareholders, except that:

(1) No application for conversion of a competing offeror shall be accepted for filing by the superintendent unless it is filed with the superintendent within 10 days of the date that notice of approval of management's plan for conversion is approved by the superintendent is made public in the form referred to in section 42 of the Banking Law.

(2) As soon as practicable, on the date that the competing offer is delivered to the superintendent, the competing offeror shall hand-deliver a copy of such application, including all exhibits thereto, to the converting institution at its principal office, to the proposed acquiror, and to any other competing offeror which has filed an application for conversion pursuant to subdivision (b) of this section, at such competing offeror's principal executive offices.

(d) In the event that such converting institution shall receive notice of any competing offers to purchase control of such institution, within the 10-day period referred to in subdivision (c) of this section, such institution shall give notice of such competing offers to its depositors or shareholders as soon as possible.

(e) The acceptance for filing by the superintendent of an application for conversion of a competing offeror shall, without further action on the part of the converting institution, extend the date for the holding of the meeting of depositors or shareholders called to approve the plan of conversion approved by management of the converting institution to a date 70 days following the date on which notice of such meeting is or was first given, unless such date falls on a weekend or legal holiday, in which case such meeting shall be held on the next business day. The notice to depositors or shareholders referred to in subdivision (d) of this section shall inform such depositors or shareholders of the revised date (and if applicable, the revised time and location) of such meeting.

(f) Upon filing with the superintendent of an application for conversion by a competing offeror, management of the converting institution shall not, without the prior written approval of the superintendent, further extend or cancel or otherwise terminate the meeting of depositors or shareholders called to vote upon any plan of conversion.

(g) If any competing offeror notifies the converting institution of such competing offeror's intention to present an alternative plan of conversion at the meeting of depositors or shareholders called to vote on the plan of conversion approved by management of the institution, the converting institution shall identify and provide the information required by a short-form proxy statement with respect to the competing offeror's plan of conversion in management's form of proxy and the converting institution's proxy statement. Notwithstanding the foregoing, the converting institution shall not be required to include such information regarding the competing offeror's proposal in the management's form of proxy and proxy statement unless the competing offeror has complied with the following requirements of this subdivision:

(1) The competing offeror shall submit its proposal in writing to the converting institution within 20 days of the date on which the converting institution files its application for conversion with the superintendent.

(2) Prior to the date on which a competing offeror's submission is made to the converting institution, the competing offeror shall have (i) filed with the superintendent all of the materials required to be filed by this section and section 86.4 of this Part, and (ii) delivered copies of all of such materials to the converting institution. The converting institution shall not be required to present the competing offeror's plan of conversion at the meeting of depositors or shareholders unless the superintendent has given his prior written approval of such plan of conversion.

(h) The competing offeror's plan of conversion may be presented at the meeting of depositors or shareholders of the converting institution either by the competing offeror or its

representative who is qualified under applicable law to make such presentation on the competing offeror's behalf at the meeting. In the event that the competing offeror or its representative fails to present the competing offeror's proposal for action at the meeting, the converting institution shall not be required to make such presentation.

(i) If the management of the converting institution has adopted a plan of conversion pursuant to subdivision (b) of this section, the converting institution shall perform such of the following acts as may be duly requested in writing with respect to a competing offeror's plan of conversion by a competing offeror who will defray the reasonable expenses to be incurred by the converting institution in the performance of the act or acts requested:

(1) The converting institution shall mail or otherwise furnish to such competing offeror the following information as promptly as practicable after receipt of such request:

(i) a statement of the approximate number of depositors or shareholders of the converting institution who have been or are to be solicited on behalf of the management, or any group of such depositors or shareholders which the competing offeror shall designate;

(ii) if the converting institution has made or intends to make, through brokers or nominees or other persons, any solicitation of beneficial owners of deposits, a statement of the approximate number of such beneficial owners, or any group of such owners which the competing offeror shall designate; and

(iii) an estimate of the cost of mailing a specified proxy statement, form of proxy, or other communications to such depositors or shareholders of the converting institution.

(2) Copies of any proxy statement, form of proxy, or other communication furnished by the competing offeror and approved by the superintendent shall be mailed by the converting institution to such of the depositors or shareholders specified in subparagraph (1)(i) of this subdivision as the competing offeror shall designate. The converting institution shall also mail to each broker, nominee, or other person specified in subparagraph (1)(ii) of this subdivision a sufficient number of copies of such proxy statement, form of proxy, or other communications as will enable the broker, nominee, or other person to furnish a copy thereof to each beneficial owner solicited or to be solicited through him. The competing offeror shall pay the estimated costs of mailing the above-described materials before such materials are mailed, and the converting institution shall promptly repay to the competing offeror any estimated amounts paid in excess of the actual costs of such mailing.

(3) Any such material which is furnished to the converting institution by the competing offeror shall be mailed with reasonable promptness by the converting institution after receipt of the material to be mailed, envelopes, or other containers therefor, and postage or payment for postage; provided, however, that such material need not be mailed prior to the first day on which solicitation is made on behalf of management of the converting institution. Except for information incorporated by reference to management's own proxy statement, form of proxy or other communication, neither management of the converting institution nor the converting



institution shall be responsible for the proxy statement, form of proxy or any other communication mailed on behalf of a competing offeror.

(j) In lieu of performing the acts specified in subdivision (i) of this section, the converting institution may, at its option, if not prohibited by applicable law, furnish promptly to the competing offeror a reasonably current list of the names and addresses of the depositors or shareholders of the converting institution specified in subparagraph (i)(1)(i) of this section as the competing offeror shall designate, and a list of the names and addresses of such of the brokers, nominees or other persons specified in subparagraph (i)(1)(ii) of this section as the competing offeror shall designate together with a statement of the approximate number of beneficial owners solicited or to be solicited through each such broker, nominee or other person, and a schedule of the handling and mailing costs of each such broker, nominee, or other person, if such schedule has been supplied to the converting institution. The foregoing information shall be furnished promptly upon the request of the competing offeror or at reasonable intervals as it becomes available to the converting institution.

(k) No solicitation of proxies in connection with a conversion pursuant to this section shall be made unless the person so solicited is concurrently furnished with or has been previously furnished with a proxy statement or a short-form proxy statement complying with section 86.14 of this Part. In the event that the persons to whom capital stock is offered or sold pursuant to a conversion effected in compliance with the section shall exceed 20 in number, each of such persons shall be furnished with an offering circular complying with section 86.15 of this Part prior to the consummation of any such sale.

(l) In the case of a proposed conversion pursuant to this section, the converting institution, together with the proposed acquiror, shall file with the superintendent an application containing the information applicable to acquisitions of control of banks and trust companies under Supervisory Procedure CB 105 or CB 117 of this Title, as applicable. Such application, together with the superintendent's recommendation thereon, shall be submitted to the Banking Board, which shall grant or deny the application in accordance with the applicable provisions of article III-A of the Banking Law, except that the Banking Board shall grant or deny such application within 60 days of the date on which the application for conversion is filed with the superintendent.

(m) In any conversion effected pursuant to the terms of this section the eligible account holders of such converting mutual institution shall receive the subscription rights discussed in section 86.5 of this Part to purchase any shares of capital stock issued in connection with the conversion not purchased by the proposed acquiror or the competing offeror. Any such shares not purchased by the proposed acquiror and not subscribed for by the depositors or shareholders of the converting institution shall be sold pursuant to the provisions of section 86.5 of this Part.

(n) Any conversion in which a mutual institution merges into an existing stock-form institution or becomes a subsidiary of an existing holding company, and in which eligible account holders receive the right to purchase shares of the acquiror, shall be governed by the provisions of this section.

## History

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### **3 NYCRR - § 86.7 -- Applicability Of Certain Provisions Of The Banking Law To Stock-Form Savings Banks.**

(a) The provisions of the following sections of the Banking Law shall have no applicability to stock-form savings banks:

(1) Section 23 -- Acceptance or rejection of certificate; investigation fees (to the extent that it shall require the payment of an investigation fee other than the fee payable under Banking Law, section 14-e[2]).

(2) Section 230 -- Incorporation; organization certificate.

(3) Section 231 -- Notice of intention or organize.

(4) Section 232 -- Organization certificate to be submitted to superintendent; proof of publication and service of notice of intention.

(5) Section 233 -- When corporate existence begins; conditions precedent to commencing business.

(6) Section 234(1) -- General powers (only insofar as said provision authorizes the payment of "dividends" on deposit accounts).

(7) Section 234(2) -- General powers (only relative to contributions of mutual incorporators or trustees).

(8) Section 243 -- Surplus fund.

(9) Section 244 -- Earnings; how and when to be computed; transfers to surplus fund; undivided profits available for dividends (excluding definition of "net worth").

(10) Section 245 -- Dividends; regulations and restrictions; liability of trustees; extra dividends.

(11) Section 246 -- Board of trustees; number; vacancies; qualifications; oath and declaration.

(12) Section 246-a -- Executive committee and other committees.

(13) Section 247 -- Restrictions upon trustees and officers.

(14) Section 248 -- Removal and forfeiture of office of trustee.

(15) Section 249 -- Compensation of trustees and officers.

(16) Section 250 -- Pensions; insurance.

(17) Section 251 -- Meetings; quorum; bylaws; officers.

(b) In addition to such other requirements of law and regulations imposed upon savings banks, stock-form savings banks shall be subject to the following sections of the Banking Law, to the same extent as banks and trust companies referred to therein, and any reference in such sections to a bank or trust company shall be deemed to refer also to a stock-form savings bank:

(1) Section 103(8) -- Restrictions on loans, purchases of securities and total liabilities to bank or trust company of any one person.

(2) Section 109 -- Closing of books; profits; how to be computed.

(3) Section 110 -- Surplus fund; of what composed; and for what purpose used.

(4) Section 111 -- Profits; credits to surplus fund and to undivided profits.

(5) Section 112 -- Dividends; payable from net profits; restrictions.

(6) Section 130 -- Restrictions on officers, directors and employees.

(7) Section 140-a -- Stock option plans.

#### History

Sec. filed March 5, 1984; amds. filed: Nov. 15, 1985; Dec. 9, 1985; March 7, 1986; Sept. 21, 1987; Feb. 8, 1988 eff. Feb. 24, 1988. Amended (b)(7).

### **3 NYCRR - § 86.8 -- Applicability Of Certain Provisions Of The Banking Law To Stock-Form Savings And Loan Associations.**

(a) The provisions of the following sections of the Banking Law shall have no applicability to stock-form savings and loan associations:

(1) Section 23 -- Acceptance or rejection of certificate; investigation fees (to the extent that it

shall require the payment of an investigation fee other than the fee payable under Banking Law, section 14-e[2]).

- (2) Section 375 -- Incorporation; organization certificate.
- (3) Section 376 -- Proposed bylaws.
- (4) Section 377 -- When corporate existence begins.
- (5) Section 378 -- Power to issue shares; dues thereon (only to the extent that deposit accounts are denominated therein as share accounts).
- (6) Section 385 -- Surplus account.
- (7) Section 386 -- Profits; how and when to be computed.
- (8) Section 387 -- Credits to surplus account and undivided profits; dividends to shareholders.
- (9) Section 388 -- Fines and penalties for failure to make payments on installment shares.
- (10) Section 389 -- Matured shares; conversion into shares of another class upon notice.
- (11) Section 390(1, 2, 3, 4, 6) -- Withdrawal of unpledged shares, provisions for dividends.
- (12) Section 392 -- Retirement of shares; suspension; transfer.
- (13) Section 397 -- Number, qualifications and disqualifications of directors; oath; quorum; meeting of directors.
- (14) Section 398 -- Filling of vacancies in board of directors; change in number of directors.
- (15) Section 398-a -- Forfeiture of office of director.
- (16) Section 398-b -- Duties of directors and officers.
- (17) Section 398-c -- Executive committee and other committees.
- (18) Section 399 -- Restrictions on directors and officers.
- (19) Section 400 -- Pensions; insurance.
- (20) Section 402 -- Amendment of articles of association and by-laws; application to supreme court.
- (21) Section 405 -- Annual report to shareholders; delivery and publication.

(22) Section 406 -- Charters conformed to this article; obligations and rights unimpaired; saving clause.

(b) In addition to such other requirements of law and regulations imposed upon savings and loan associations, stock-form savings and loan associations shall be subject to the following sections of the Banking Law, to the same extent as banks and trust companies referred to therein and any reference in such sections to a bank or trust company shall be deemed to refer also to a stock-form savings and loan association:

(1) Section 103(8) -- Restrictions on loans, purchases of securities and total liabilities to bank or trust company of any one person.

(2) Section 109 -- Closing of books; profits; how to be computed.

(3) Section 110 -- Surplus fund; of what composed; and for what purposes raised.

(4) Section 111 -- Profits; credits to surplus fund and to undivided profits.

(5) Section 112 -- Dividends; payable from net profits; restrictions.

(6) Section 130 -- Restrictions on officers, directors and employees.

(7) Section 140-a -- Stock option plans.

#### History

Sec. filed March 5, 1984; amds. filed: Nov. 15, 1985; Dec. 9, 1985; Sept. 21, 1987; Feb. 8, 1988 eff. Feb. 24, 1988. Amended (b)(7).

### **3 NYCRR - § 86.9 -- Formation Of A Holding Company In Connection With The Conversion Of A Mutual Institution To Stock Form.**

The board of trustees or directors, as the case may be, of a thrift seeking to convert to stock form may cause a company to be formed to acquire all the stock of such converting institution. In such case, the converting institution shall file with its application for conversion detailed information as to the formation of such holding company (including specific details as to the rights of depositors or shareholders of such mutual institution to subscribe for stock of such holding company) as well as the proxy statement or short-form proxy statement complying with the provisions of section 86.14 of this Part. In addition, the thrift institution shall, as a condition of the superintendent's approval of the institution's conversion from mutual to stock form, file with the superintendent a copy of (a) any prospectus of such holding company as it shall be required to prepare under applicable State and Federal securities laws, and (b) any application for approval to become a bank holding company or savings and loan holding company as it shall be required to file under applicable Federal law.

Unless clearly inapplicable, all of the requirements of this Part shall apply to a conversion under this section.

#### History

Sec. filed March 5, 1984; amds. filed Oct. 10, 1995 as emergency measure; June 13, 1996 eff. July 3, 1996.

### **3 NYCRR - § 86.10 -- Limitations On Certain Acquisitions Of Control Of Stock-Form Thrift Institutions.**

An organization certificate of a converting thrift may contain provisions, the effect of which would be to prohibit the acquisition of control of the converted stock-form thrift institution for a period not exceeding three years from the effective date of the conversion from mutual to stock-form.

#### History

Sec. filed March 5, 1984 eff. March 5, 1984.

### **3 NYCRR - § 86.11 -- Conflict Between State And Federal Law And Regulation.**

In the event that any converting institution or other person subject to the provisions of this Part shall find that it cannot either absolutely or without undue hardship comply with the provisions of this Part and at the same time satisfy the requirements of any State or Federal law or any regulation promulgated by the Federal Deposit Insurance Corporation, Federal Savings and Loan Insurance Corporation, Securities and Exchange Commission or any other regulatory agency as may have jurisdiction over any person or transaction referred to herein, such converting institution or other person may request a waiver of such conflicting provision from the superintendent, which the superintendent may grant for good cause after considering the declaration of policy in section one of chapter one of the Laws of 1984.

#### History

Sec. filed March 5, 1984 eff. March 5, 1984.

### **3 NYCRR - § 86.12 -- Supervisory Stock Conversions.**

Notwithstanding any other provision of this Part, where the superintendent has determined that grounds exist for him to take possession of the business and property of a mutual thrift institution, in that such institution:

(a) is or will in the immediate future be unable to meet its obligations;

(b) is or otherwise would be in an unsafe and unsound condition;

(c) cannot with safety and expediency continue business;

he may authorize the institution to convert to stock-form and to effect a sale or other transfer of its capital stock to a third party or parties in a transaction in which the converting institution's depositors or shareholders have no right of approval or right to subscribe for shares to be issued by the converting institution. In determining whether to authorize such a transaction, the superintendent shall take into consideration the declarations of policy contained in section 10 of the Banking Law and section 1 of chapter 1 of the Laws of 1984. Upon approval of such a transaction, the superintendent shall file the converted institution's amended organization certificate with the same force and effect as provided in section 86.4(c) of this Part.

#### History

Sec. filed March 5, 1984; amd. filed July 11, 1984 as emergency measure eff. July 11, 1984.

### **3 NYCRR - § 86.13 -- Application For Conversion.**

A converting institution shall be required to file with the superintendent an application for conversion which complies with form 86-AC, which reads in its entirety as follows:

#### **FORM 86-AC**

**[Facing Sheet]**

#### **NEW YORK STATE BANKING DEPARTMENT**

**One State Street**

**New York, New York 10004**

#### **Application for Conversion**

---

(Exact name of Converting Institution as specified in charter)

---

(Street address of Converting Institution)

---

(City, State and ZIP Code)

---

Date of Application

**General Instructions**

A. Rules as to Use of Form 86-AC

Form 86-AC shall be used by any thrift institution seeking New York State Banking Department approval to convert from mutual to the stock-form pursuant to Part 86 of the General Regulations of the Banking Board.

Item 1. Form of Application.

Set forth an application for approval of the plan of conversion in the following form with the names and titles of the officers and directors or trustees signing the application indicated below their signatures:

The undersigned hereby makes application for approval to convert from a mutual thrift institution into a stock-form thrift institution, and submits herewith a statement of its proposed plan of conversion and other information and exhibits as required by Part 86 of the General Regulations of Banking Board.

This application has been approved by at least a majority of the board of directors or trustees of the converting institution. The undersigned officers and members of the board of directors or trustees severally represent (i) that each such person has read this application, (ii) that in the opinion of each such person, he or she has made such examination and investigation as is necessary to enable him or her to express an informed opinion that this application complies to the best of his or her knowledge and belief with the applicable requirements of this Part, and (iii) that each such person holds such informed opinion.

ATTEST:

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Name of Converting Institution

By \_\_\_\_\_  
President

\_\_\_\_\_  
(Principal Executive Officer)

\_\_\_\_\_



(Principal Executive Officer)

\_\_\_\_\_  
(Director or Trustee)

(Signatures of at least a majority of  
the Board of Directors or Trustees)

\_\_\_\_\_  
(Director or Trustee)

\_\_\_\_\_  
(Director or Trustee)

\_\_\_\_\_  
(Director or Trustee)

\_\_\_\_\_  
(Director or Trustee)

\_\_\_\_\_  
(Director or Trustee)

Item 2. Plan of Conversion.

Furnish the complete formal written plan adopted by the board of directors or trustees for conversion of the mutual institution to the stock-form of organization. The terms of the plan submitted pursuant to this Item will be a basis for the Superintendent's approval and the plan as approved will be distributed as an attachment to the proxy statement and the offering circular as provided in Part 86.

Item 3. Proxy Statement and Offering Circular.

Furnish copies of the proxy statement and offering circular. The proxy statement and offering circular should be prepared in accordance with Forms 86-PS and 86-OC, respectively.

Item 4. Form of Proxy.

Furnish preliminary copies of the form of proxy to be distributed to Eligible Account Holders by the management.

Item 5. Sequence and Timing of the Plan.

Set forth the expected chronological order of the events connected with the plan of conversion beginning with the filing of this application through completion of the sale of all the capital stock to be issued pursuant to the plan. Indicate the expected timing of any requisite approvals

of Federal authorities. Indicate the proposed timing of all aspects of the subscription offering. If there will be an underwritten public offering of the capital stock as part of the plan of conversion, indicate the proposed timing of all aspects of such offering.

Item 6. Record Dates.

If the converting institution's plan of conversion contains an eligibility record date earlier than 90 days prior to the date of adoption of the plan of conversion by the board of directors or trustees, state the reason for the selection of such earlier date.

Item 7. Expenses Incident to the Conversion.

Provide in substantially the tabular form indicated below the estimated expenses of the conversion to be incurred by the converting institution.

Legal	\$
Postage and Mailing	
Printing	
Escrow or Agent Fees	
Underwriting Fees	
Appraisal Fees	
Transfer Agent Fees	
Auditing and Accounting	
Proxy Solicitation Fees	
Advertising	
Other Expenses	
<hr/>	
Total	\$

Instructions:

1. The converting institution may exclude costs represented by salaries and wages of regular employees and officers, if a statement to that effect is made. The cost of solicitation by specially engaged employees or paid solicitors under paragraph (b) of Item 3 of Form 86-PS shall be stated under "Proxy Solicitation Fees" in this Item.

2. If the converting institution has any category of expense exceeding \$10,000 which is not specified in this Item, such expenses shall be itemized rather than including it under the category "Other Expenses".

3. If the solicitation is conducted other than by management of the converting institution, the information required in this Item shall be provided with respect to the cost of such solicitation.

Item 8. Indemnification.

State the general effect of any charter provision, bylaw, contract, arrangement, statute or regulation to be in effect during or after the conversion under which any underwriter, appraiser, lawyer, accountant or expert, or director, officer, or trustee of the converting institution will be insured or indemnified in any manner against any liability which he may incur in his; capacity as such.

## **EXHIBITS**

The following exhibits shall be attached to this Form.

Exhibit 1. Resolution of Board of Directors or Trustees.

Set forth a certified copy or copies of a resolution or resolutions of the board of directors or trustees (1) adopting the plan of conversion filed with this application; (2) authorizing the filing of this application; and (3) applying for continued insurance of accounts by its Federal deposit insurer. The action adopting the plan of conversion and authorizing the filing of this application must be approved by a majority of the board of directors or trustees.

Exhibit 2. Copies of Documents, Contracts and Agreements.

Furnish the following documents, contract and agreements:

- (a) proposed certificates for capital stock to be issued;
- (b) proposed order forms with respect to the subscription rights;
- (c) any proposed management employment contracts;
- (d) any contract described in response to Item 6(e) of Form 86-PS;
- (e) contracts or agreements with paid solicitors described in response to Item 3(b) of Form 86-PS;
- (f) any material loan agreements relating to borrowings by the converting institution other than subordinated debt securities approved by the Superintendent;
- (g) any appraisal agreement or proposed agreement, underwriting contract or agreements among underwriters;
- (h) any required undertakings or affidavits by officers, trustees or directors purchasing shares in the conversion that they are acting independently; and
- (i) any agreements for the making of markets or the listing on exchanges of the stock of the converted institution.

Documents, contracts and agreements which are furnished in proposed form under this exhibit shall be furnished in final form immediately after the meeting of depositors or shareholders to consider the plan of conversion, except for documents which by their nature cannot be in final form until a later time, in which case they shall be furnished in substantially final form.

### Exhibit 3. Opinion of Counsel.

Furnish an opinion of counsel for the converting institution regarding each of the following matters:

- (a) the legal sufficiency of the converting institution's proposed certificates and order forms for shares of capital stock;
- (b) the conformance with the Banking Law and any regulations promulgated thereunder of the plan of conversion;
- (c) the compliance with the Banking Law and any regulations promulgated thereunder of the converting institution's bylaws;
- (d) the type and extent of voting rights in the converting institution after conversion;
- (e) and the valid authorization and issuance of the capital stock and the nonassessability of such stock.

### Exhibit 4. Federal and State Tax Opinions and Rulings.

- (a) Furnish an opinion of the converting institution's tax advisor or an Internal Revenue Service ruling as to the Federal income tax consequences of the plan of conversion to the converting institution and to the depositors or shareholders who receive nontransferable subscription rights to purchase capital stock.

Instruction: The Superintendent may require that such an Internal Revenue Service ruling be obtained if the converting institution's plan of conversion is not substantially similar to plans of conversion which have received favorable rulings. The Superintendent may also require that such a ruling be obtained if the converting institution's plan of conversion contains novel provisions or there is otherwise a question as to the Federal income tax consequences of the plan.

- (b) Furnish an opinion of the converting institution's tax advisor or if applicable, a ruling from the appropriate State taxing authority, as to any tax consequences of the plan of conversion to the converting institution and to its depositors and shareholders under the laws of the State of New York.

### Exhibit 5. Valuation Materials.

Furnish any materials required to be filed by section 86.5(c)(4) of Part 86 regarding the valuation of the converting institution's capital stock. A converting institution is not required to file such materials if the offering of capital stock will not commence before the meeting of depositors or shareholders to vote on the plan of conversion.

Exhibit 6. Notice to Depositors or Shareholders.

Furnish the notice to the converting institution's depositors or shareholders required by section 86.4 of Part 86.

Exhibit 7. Organization Certificate and Bylaws.

Furnish a copy of the converting institution's proposed amended organization certificate and bylaws which shall be effective upon the conversion of the institution to stock form. If a holding company is being formed in connection with the conversion, also furnish a copy of the proposed organization and bylaws of the holding company.

Exhibit 8. Business Plans.

Furnish a consolidated business plan. The converting institution shall provide, as part of the business plan, a detailed discussion of how the capital acquired in the conversion will be utilized, including, among other things, any proposed stock repurchases.

Exhibit 9. Other Materials.

(a) If information required by an appropriate form is not provided because such information is unknown or unavailable, furnish a detailed statement as to the reasons for each such omission.

(b) Furnish all consents of experts required to be filed by section 86.4(1) of Part 86.

(c) If applicable, furnish the statement required by the Instruction to Item 5(e) of Form 86-PS regarding events which occurred within the last 10 years to directors or trustees or the converting institution.

(d) If information required by Item 14(h) of Form 86-PS relating to historical financial information is omitted, furnish the statement required by Item 14(h)(1) of Form 86-PS.

(e) Furnish any powers of attorney employed pursuant to Part 86.

(f) A converting institution shall also submit a copy of an opinion from an independent executive compensation expert stating whether or not the total compensation for the executive officers, directors or trustees, viewed as a whole and on an individual basis, is reasonable and proper in comparison to the compensation provided to executive officers, directors or trustees of similar publicly traded financial institutions. The opinion shall address any stock option and employee or director stock benefit plans disclosed in the proxy solicitation and stock

offering materials that are intended to be presented to stockholders for a vote in the year following the effective date of the conversion. A detailed discussion of the basis of such opinion shall be included in the opinion.

(g) Furnish copies of any written offers or written expressions of interest to acquire the converting institution submitted by any person to the board of trustees or directors any time after the date one year prior to the publication of approval of the plan of conversion by the board of trustees or directors.

#### History

Sec. filed March 5, 1984; amds. filed Oct. 10, 1995 as emergency measure; June 13, 1996 eff. July 3, 1996.

#### **3 NYCRR - § 86.14 -- Proxy Statement.**

The proxy statement required by this Part shall comply with form 86-PS, except that a converting institution may combine the proxy statement and offering circular in one document. A short-form proxy statement shall contain the information required by Items 1, 2, 3, 4 and 5 of form 86-PS. A short-form proxy statement shall also include cross references to the sections of the offering circular containing the information required by form 86-PS, which reads in its entirety as follows:

#### **FORM 86-PS**

**[Facing Sheet]**

**NEW YORK STATE BANKING DEPARTMENT  
One State Street  
New York, New York 10004**

#### **Proxy Statement**

---

(Exact name of converting institution as specified in charter)

---

(Street address of converting institution)

---

(City, State and ZIP Code)

## Proxy Statement Form -- Index to Items

- Item 1. Notice of Meeting
- Item 2. Revocability of Proxy
- Item 3. Persons Making Solicitation
- Item 4. Voting Rights and Vote Required for Approval
- Item 5. Directors and Executive Officers
- Item 6. Remuneration and Other Transactions with Management and Others
- Item 7. Business of the Converting Institution
- Item 8. Description of the Plan of Conversion
- Item 9. Description of Capital Stock
- Item 10. Capitalization
- Item 11. Use of New Capital
- Item 12. New Charter, Bylaws or Other Documents
- Item 13. Other Matters
- Item 14. Financial Statements
- Item 15. Consents of Experts and Reports
- Item 16. Attachments

### **FORM 86-PS**

#### **Information Required in Conversion Proxy Statement**

Note:

1. Except as otherwise specifically provided, where any item calls for information for a specified period in regard to directors, officers, trustees or other persons holding specified positions or relationships, the information shall be given in regard to any person who held any of the specified positions or relationships at any time during the period. However, information need not be included for any portion of the period during which such person did not hold any such position or relationship provided a statement to that effect is made.
2. The proxy statement shall include such information which the Superintendent by interpretative release or otherwise has deemed necessary to comply with items of this Form 87-PS.

Item 1. Notice of Meeting.

The cover page of the proxy statement shall give notice of the meeting of the depositors or shareholders called by the board of directors or trustees to act upon the conversion. The cover page shall include the date, time, and place of the meeting, a brief description of each matter to be acted upon at the meeting, the date of record for depositors or shareholders entitled to vote at the meeting, the date of the statement, and the full address, zip code and telephone number of the converting institution.

## Item 2. Revocability of Proxy.

State that the person giving the proxy has the power to revoke it before the proxy is exercised at the meeting. If the right of revocation is subject to compliance with any formal procedure, briefly describe such procedure. Briefly describe any charter, bylaw or applicable Federal or State law requirements otherwise restricting voting by proxy. State that the proxy is solicited for the meeting called to consider the conversion, and any adjournment thereof, and will not be used for any other meeting.

## Item 3. Persons Making the Solicitation.

(a) State whether the solicitation is made by the management of the converting institution. Give the name of any director or trustee of the converting institution who has informed the management in writing that he intends to oppose any action intended to be taken by the management and indicate the action which he intends to oppose.

(b) If the solicitation is to be made otherwise than by the use of the mails, describe the methods to be employed. If the solicitations is to be made by specially engaged employees or paid solicitors, state the material features of any contract or arrangement for such solicitation and identify the parties.

(c) If the solicitation is made otherwise than by the management of the converting institution, so state and give the names of the eligible account holder by whom or on whose behalf it is made, the name of any person soliciting proxies on behalf of such eligible account holder, the length of time he or she has been a depositor, and the reasons he or she is making the solicitation. Any such solicitation normally need not respond to Items 5 through 16, but must include such information as to make such solicitation comply with section 86.4(h) of Part 86. All proxy solicitation materials used by or on behalf of an eligible account holder shall solicit proxies only for an affirmative or negative vote with respect to the plan of conversion approved by the board of trustees or directors for presentation to eligible account holders and may not confer discretionary authority. If the depositor's proxy solicitation is being financed by a third party, such party's identity and any interest of such person in the transaction must be disclosed.

## Item 4. Voting Rights and Vote Required for Approval.

(a) Describe briefly the voting rights of the depositors or shareholders. State the approximate total number of votes entitled to be cast at the meeting.

(b) As part of the description give the date of record for the depositors or shareholders entitled to vote at the meeting.

(c) As to each matter which will be submitted to a vote of the depositors or shareholders, state the vote required for its approval.



Item 5. Directors, Trustees and Executive Officers.

(a) Furnish the information regarding directors, trustees and executive officers and certain relationships and related transactions required to be disclosed under Item 5 of 12 CFR 563b.101.<sup>1</sup> Unless the context otherwise requires, the words "registrant" and "issuer" in those regulations shall refer to the converting institution and the word "Commission" shall refer to the Banking Department.

*<sup>1</sup> 12 CFR Part 563b was published in the November 30, 1994 copy of the Federal Register, Vol. 59. Publisher: Office of the Federal Register, National Archives and Records Administration, Washington DC 20408. A copy of this document is on file at the NYS Department of State, Office of Information Services, 162 Washington Avenue, Albany, NY 12247 and in the library of New York State Banking Department, at [One State Street, New York, NY 10004.]*

(b) State whether control of the converting institution has been exercised through the use of proxies and the nature of such control.

Item 6. Management Remuneration.

(a) Furnish the information regarding management remuneration required to be disclosed under Item 6 of 12 CFR 563b.101<sup>1</sup>. Unless the context otherwise requires, the words registrant and issuer in those regulations shall refer to the converting institution and the word Commission shall refer to the Banking Department.

*<sup>1</sup> 12 CFR Part 563b was published in the November 30, 1994 copy of the Federal Register, Vol. 59. Publisher: Office of the Federal Register, National Archives and Records Administration, Washington DC 20408. A copy of this document is on file at the NYS Department of State, Office of Information Services, 162 Washington Avenue, Albany, NY 12247 and in the library of New York State Banking Department, at [One State Street, New York, NY 10004.]*

(b) A statement shall be included in this Item indicating that an independent executive compensation expert (the name of such expert shall be given) has reviewed the total compensation package for executive officers, directors or trustees for the purpose of determining whether or not such compensation package, viewed as a whole and on an individual basis, is reasonable and proper in comparison to compensation provided to executive officers, directors or trustees of similar publicly traded financial institutions.

Item 7. Business of the Converting Institution.

(a) Narrative Description of Business. (1) Discuss briefly the organizational history of the converting institution, including the year or the organization, the identity of the chartering authority, and any material charter conversion.

(2) Describe the business conducted and intended to be conducted by the converting institution and its subsidiaries. This should include a description of the general development of the business of the converting institution and any predecessor(s) during the past five years, or such shorter period as the applicant may have been engaged in business. Information shall be disclosed for earlier periods if material to an understanding of the general development of the business. Any material changes in the mode of conducting the business should be discussed.

(3) Consideration should be given to inclusion of a description of the converting institution's historical practices, including the average remaining term of maturity of its portfolio of mortgage loans, and present intention regarding the making of loans, whether real estate or other, the nature of security received, the terms of loans, whether carrying fixed or variable interest rates, and the retention of loans or their resale in secondary mortgage markets. Historical description might require a general identification of the magnitude of various activities.

(4) Also explain any significant impact to the thrift institution as a result of any material acquisitions.

(b) Selected Financial Data. Furnish in comparative columnar form a summary of selected financial data for the converting institution for:

(1) each of the last five fiscal years of the converting institution (or for the life of the converting institution and its predecessors, if less); and

(2) any additional fiscal years necessary to keep the summary from being misleading.

Instructions.

1. The purpose of the summary of selected financial data shall be to supply in convenient and readable format selected data which highlight significant trends in the converting institution's financial condition and results of operations.

2. Subject to appropriate variation to conform to the nature of the converting institution's business, the following items, as a minimum, shall be included in the summary: total interest income; total interest expense; income (loss) from continuing operations; net income; total loans; total investments; total assets; total savings; total borrowings; total regulatory capital; and total number of offices indicating the number which provide full service. Converting institutions may include additional items which they believe would enhance understanding and highlight trends in their financial and results of operations. Briefly describe, or cross reference to a discussion of, factors such as accounting changes, business combinations, or dispositions of business operations that materially affect the comparability of the information reflected in selected financial data. Discussion of, or reference to, any material uncertainties should also be included where those matters might cause the data reflected not be indicative of the converting institution's future financial condition or results of operations.

3. Those converting institutions which elect to provide five-year summary information in accordance with the standards identified in Instruction 3 to Item 7(b) of 12 CFR 563b.101<sup>1</sup>, may combine such information with the selected financial data appearing pursuant to this Item.

4. All references to the converting institution in the summary and in these instructions shall mean the converting institution and its consolidated subsidiaries.

5. If interim-period financial statements are included, or are required to be included by Item 14, converting institutions should update the selected financial data for the interim period to reflect any material change in the trends indicated, where such updating information is necessary, converting institutions shall provide the information on a comparative basis unless not necessary to an understanding of the updating information.

(c) Management's Discussion and Analysis of Financial Condition and Results of Operations.

(1) Discuss the converting institution's financial condition, changes in financial condition, and results of operations. The discussion shall provide information as specified in subparagraphs (i), (ii) and (iii) of this paragraph with respect to liquidity, capital resources, and results of operations and also should provide all other information which the converting institution believes to be necessary to an understanding of its financial condition, changes in financial condition, and results of operations. Significant business combinations should be discussed. Discussion of liquidity and capital resources may be combined whenever the two topics are interrelated. Where in the converting institution's judgment a discussion of subdivisions of the converting institution's business would be appropriate to an understanding of the business, the discussion should focus on each relevant, reportable segment or other subdivision of the business and on the converting institution as a whole.

(i) Liquidity. Identify any known trends or any known demands, commitments, events, or uncertainties which will result in or which are reasonably likely to result in the converting institution's liquidity increasing or decreasing in any material way. If a material deficiency is identified, indicate the course of action which the converting institution has taken or proposes to take to remedy the deficiency. Identify and separately describe internal and external sources of liquidity, and briefly discuss any material unused sources of liquid assets. Comment on maturity imbalances between assets and liabilities and planned activities in the secondary mortgage market.

(ii) Committed Resources.

(a) Describe the converting institution's material commitments for loan fundings or other expenditures as of the end of the last fiscal period and indicate the general purpose of the commitments and the anticipated source of funds needed to fulfill the commitments.

(b) Describe any known material trends, favorable or unfavorable, in the converting institution's committed resources. Indicate any expected material changes in the mix and the

relative cost of the resources. This discussion should consider changes between savings, equity, debt, and any off-balance-sheet financing arrangements.

(iii) Results of Operations.

(a) Describe any unusual or infrequent events or transactions or any significant economic changes that materially affected the amount or reported income from continuing operations and, in each case, indicate the extent to which income was affected. In addition, describe any other significant components of revenues or expenses which, in the converting institution's judgment should be described in order to understand the converting institution's results of operations.

(b) Describe any known trends or uncertainties which have had, or which the converting institution reasonably expects will have, a materially favorable or unfavorable impact on net sales or revenues or income from continuing operations. If the converting institution knows of events which will cause a material change in the relationship between costs and revenues (such as known future increases in costs of money or interest rates) the change in the relationship should be disclosed.

(c) To the extent that the financial statements disclose material increases in interest expense, provide a narrative discussion of the extent to which the increases are attributable to increases in rates or to increases in volume.

(d) For the three most recent fiscal years of the converting institution, or for those fiscal years in which the converting institution has been engaged in business, whichever period is shorter, discuss the impact of inflation and changing prices on the converting institution's revenues and on income from continuing operations.

(e) For the most recent financial statement presented, discuss any unusual risk characteristics in the assets of the converting institution. This would include real estate development, significant amounts of commercial real estate as loan collateral, and any other significant risk factors inherent in the converting institution's lending or investment portfolios, including significant increases in amounts of nonaccrual, past due, restructured, and potential problem loans.

Instructions.

1. The converting institution's discussion and analysis shall be of the financial statements and of other statistical data which the converting institution believes will enhance a reader's understanding of its financial condition, changes in financial condition, and results of operations. Generally, the discussion should cover the three-year period covered by the financial statements and should utilize year-to-year comparisons or other formats which in the converting institution's judgment enhance a reader's understanding. However, where trend information is relevant, reference to the five-year selected financial data appearing in Item 7(b) above may be necessary.

2. The purpose of the discussion and analysis should be to provide to investors and other users information relevant to an assessment of the financial condition and results of operations of the converting institution as determined by evaluating the amounts and certainty of cash flows from operations and from outside sources. The information provided in this Item 7(c) need only include that which is available to the converting institution without undue effort or expense and which does not clearly appear in the converting institution's financial statements.

3. The discussion and analysis should specifically focus on material events and uncertainties known to management which would cause reported financial information not to be necessarily indicative of future operating results or future financial condition. This would include description and amounts of (a) matters which would have an impact on future operations and have not had an impact in the past, and (b) matters which would have an impact on reported operations and are not expected to have an impact upon future operations.

4. Where the consolidated financial statements reveal material changes from year to year in one or more line items, the causes for the changes should be described to the extent necessary to an understanding of the converting institution's business as a whole; provided, however, if the causes for a change in one line item also relate to other line items, no repetition is required and a line-by-line analysis of the financial statements as a whole is not required or generally appropriate. Converting institutions need not recite the amounts of changes from year to year which are readily computable from the financial statements. The discussion should not merely repeat numerical data contained in the consolidated financial statements.

5. The term "liquidity" as used in paragraph (c)(1)(i) of this Item 7 refers to the ability of an enterprise to generate adequate amounts of cash to meet the enterprise's needs for cash. Except where it is otherwise clear from the discussion, the converting institution should indicate those balance sheet conditions or income or cash flow items which the converting institution believes may be indicators of its liquidity condition. Liquidity generally should be discussed on both a long-term and short-term basis. The issue of liquidity should be discussed in the context of the converting institution's own business or businesses.

6. Converting institutions are encouraged, but not required, to supply forward-looking information. This is to be distinguished from presently known data which will have an impact upon future operating results, such as known future increases in rates or other costs. This latter data is required to be disclosed.

7. Converting institutions which elect to provide narrative explanations of supplementary information disclosed in accordance with Instruction 7 to Item 7(c)(1) of 12 CFR 563b.101<sup>1</sup>, may combine the explanations with their discussion and analysis required pursuant to this provision or they may supply the information separately.

8. Converting institutions which elect not to provide explanations of supplementary information disclosed in accordance with Instruction 8 to Item 7(c)(1) of 12 CFR 563b.101.

9. All references to the converting institution in the discussion and in these instructions shall mean the converting institution and its consolidated subsidiaries.

(2) If interim-period financial statements are included or are required to be included by Item 14, a management's discussion and analysis of the financial condition and results of operations shall be provided to enable the reader to assess material changes in financial condition and results of operations between the periods specified in (i) and (ii) below. The discussion and analysis shall include a discussion of material changes in those items specifically listed in paragraph (c)(1) of this Item 7, except that the impact of inflation and changing prices on operations for interim period needs not be addressed.

(i) **Material Changes in Financial Condition.** Discuss any material changes in financial condition from the end of the preceding fiscal year to the date of the most recent interim balance sheet provided. If the interim financial statements include an interim balance sheet as of the corresponding interim date of the preceding fiscal year, any material change in financial condition from that date to the date of the most recent interim balance sheet provided shall also be discussed. If discussions of changes from both the end and the corresponding interim date of the preceding fiscal year are required, the discussions may be combined at the discretion of the converting institution.

(ii) **Material Changes in Results of Operations.** Discuss any material changes in the converting institution's results of operations with respect to the most recent fiscal year-to-date period for which an income statement is provided and the corresponding year-to-date period of the preceding fiscal year. If the converting institution is required to or has elected to provide an income statement for the most recent fiscal year quarter, the discussion also shall cover material changes with respect to that fiscal quarter and the corresponding fiscal quarter in the preceding fiscal year. In addition, if the converting institution has elected to provide an income statement for the 12-month period ended as of the date of the most recent interim balance sheet provided, the discussion shall also cover material changes with respect to that 12-month period and the 12-month period ended as of the corresponding interim balance sheet date of the preceding fiscal year.

#### Instructions.

1. If interim financial statements are presented together with financial statements for full fiscal years, the discussion of the interim financial information shall be prepared pursuant to paragraph (c)(2) and the discussion of the full fiscal year information shall be prepared pursuant to paragraph (c)(1) of this Item 7. Such discussions may be combined.

2. The discussion and analysis required by this paragraph (c)(2) is required to focus only on material changes. Where the interim financial statements reveal material changes from period to period in one or more significant line items, the causes for the changes should be described if they have not already been disclosed; however, if the causes for a change in one line item also relate to other line items, no repetition is required. Converting institutions need not recite the amounts of changes from period to period which are readily computable from the

financial statements. This discussion should not merely repeat numerical data contained in the financial statements. The information provided should include that which is available to the converting institution without undue effort or expense and which does not clearly appear in the converting institution's interim financial statements.

3. The converting institution's discussion of material changes in results of operations should identify any significant elements of the converting institution's income or loss from continuing operations which do not arise from or are not necessarily representative of the converting institution's ongoing business.

4. Converting institutions are encouraged but are not required to discuss forward-looking information.

(d) Lending Activities.

(1) Briefly describe the applicable Federal and State restrictions on the lending activities of the converting institution, including applicable laws affecting mortgage loan interest rates. Also briefly describe the converting institution's general policy concerning loan-to-value ratios; customary methods of obtaining loan originations, such as the use of loan consultants; approval of properties as security for loans; the use of a loan committee, if any; and policies as to requiring title, fire, and casualty insurance on security properties. Indicate the converting institution's general future intentions with respect to activities in secondary mortgage markets, including transactions with the Federal Home Loan Mortgage Corporation or mortgage bankers. If significant, indicate loan service fee income as a percentage of net interest income for the years required by Item 14(b).

(2) As to the lending area of the converting institution, describe briefly (i) the lending area restrictions, if any, applicable to the converting institution, (ii) the areas in which the converting institution normally lends, and (iii) any material loan concentration areas of the converting institution.

The descriptions may include maps illustrating one or more of these areas. Furnish an estimate of the housing vacancy rates in areas where the converting institution's loan concentrations are located, if practicable.

(3) Describe briefly the general long-term nature of investment in mortgage loans and the consequent effect upon the earnings spread of thrift institutions. State the normal maturity of loans made by the converting institution on the security of single-family dwellings and furnish an estimate as to the average length of time the loans are outstanding.

(4) For each of the periods required by Item 14(b), set forth in tabular form, excluding fees which are not considered adjustments of yield, the following:

(i) Average yield during the period on:

(a) loan portfolio,

- (b) investment portfolio,
- (c) other interest-earning assets, and
- (d) all interest-earning assets. Average yield should be computed on no greater than a monthly basis.

(ii) Average rate paid during the period on:

- (a) deposits,
- (b) borrowings and Federal Home Loan Bank advances,
- (c) other interest-bearing liabilities,
- (d) all interest-bearing liabilities (a), (b), and (c).

Average rate paid should be computed on no greater than a monthly basis.

(iii) Weighted-average yield at end of the latest required period for the items in (i) and (ii) above.

(iv) The net yield on average interest-earning assets (net interest earnings divided by average interest-earning assets, with net interest earnings equaling the difference between the dollar amount of interest earned and paid). Average interest-earning assets should be determined on an interval no more frequent than monthly.

(v) For each of the periods required by Item 14(b), set forth in tabular form:

- (a) the dollar amount of change in interest income and
- (b) the dollar amount of change in interest expense.

The changes should be segregated for each major category of interest-earning asset and interest-bearing liability (as stated in (i) and (ii) above) into amounts attributable to (1) changes in volume (change in volume multiplied by old rate), (2) changes in rates (change in rate multiplied by old volume), and (3) changes in rate-volume (change in rate multiplied by the change in volume). The rate/volume variances should be allocated on a consistent basis between rate and volume variance and the basis of allocation disclosed in a note in the table.

(5) For each of the periods required by Item 14(b), present the following:

- (i) return on assets (net income divided by average total assets);
- (ii) return on equity (net income divided by average equity);



(iii) equity-to-assets ratio (average equity divided by average total assets).

Instructions. Converting institutions should supply any additional ratios which they deem necessary to explain their operations.

(6) As of the end of the last fiscal year reported on, with respect to (i) real estate mortgage loans, (ii) real estate construction loans, (iii) installment loans, and (iv) commercial, financial, and agricultural loans, present separately the amounts of loans in each category which are due:

(i) in each of the three years following the balance sheet,

(ii) after three through five years,

(iii) after five through ten years,

(iv) after ten through fifteen years, and

(v) after fifteen years.

In addition, present separately the total amount of all such loans due after one year which have predetermined interest rates and floating or adjustable interest rates.

Instructions:

1. Scheduled principal repayments should be reported in the maturity category in which the payment is due.

2. Demand loans, loans having no stated schedule of repayments and no stated maturity, and overdrafts should be reported as due in one year or less.

3. Determinations of maturities should be based upon contract terms. However, such terms may vary due to the converting institution's "rollover policy," in which case the maturity should be revised as appropriate and the rollover policy should be briefly discussed.

(7) Describe briefly the risk elements within the loan and investment portfolios including the converting institution's customary procedures regarding delinquent loans. As of the end of each of the periods covered by the statements of operation required by Item 14(b)(1) and as of the date of the latest statement of financial condition required by Item 14(a), set forth in tabular form the amounts and categories of nonaccrual, past due, restructured, and potential problem loans and the ratio of such loans to total assets. Where the amount of real estate that has been in substance foreclosed, acquired by foreclosure, or by deed in lieu thereof is significant, include a brief description of the major properties and a statement as to the converting institution's probable losses, if any, upon disposition of such properties.

(e) Savings Activities.

(1) State whether the maximum rate of interest which the converting institution may pay is established by regulatory authorities. State that, in the event of liquidation of the converting institution after conversion, savings account holders will be entitled to full payment of their accounts prior to payment to holders of the capital stock of the institution. Also indicate the percentage of total savings accounts which are from out-of-state sources, if such total is significant.

(2) Set forth in tabular form the amounts of time deposit accounts by categories of interest rates as of the dates of each balance sheet filed. Each interest-rate category should not be more than 200 basis points. As of the date of the latest balance sheet, set forth, in tabular form for each interest-rate category, the amounts of savings maturing during each of the three years following the balance sheet date and the total maturing thereafter.

(3) Disclose the weighted-average rate and general terms (as well as formal provisions for the extension of the maturity) of each category of short-term borrowings, along with the maximum amount of borrowings in each category outstanding at any month-end during each period for which an end-of-period balance sheet is required. In addition, disclose the approximate average short-term borrowings outstanding during the period and the approximate weighted-average interest rate (and a brief description of the means used to compute such average) for such aggregate short-term borrowings. The disclosure required by this paragraph (3) need not be furnished as regards borrowings in each particular category when the aggregate amount of such borrowings at the balance sheet date does not exceed one percent of assets at that date. Notwithstanding this reporting threshold, if the weighted average of such borrowings outstanding during the year exceeds one percent of assets at year-end and significantly exceeds the amount of such borrowings at year-end, the disclosure called for by this paragraph (3) should be furnished. This information is not required to be given for any category of short-term borrowings for which the average balance outstanding during the period was less than 30 percent of stockholders' equity at the end of the period.

(f) Federal Regulation. Describe briefly, to the extent not otherwise covered by other items, Federal regulation of the converting institution and the conduct of its operations. In particular, describe briefly the Federal Home Loan Bank System, the Federal Deposit Insurance Corporation, and/or the Federal Reserve System, as applicable and state that the converting institution is a member or is otherwise subject to the jurisdiction thereof. Such description shall include (i) the insurance of accounts and the general regulatory authority of the Federal Deposit Insurance Corporation, (ii) Federal regulatory capital requirements and the converting institution's regulatory capital position in relation to those requirements, (iii) limitations on borrowings, (iv) recent loan policies of the converting institution's Federal Home Loan Bank or other applicable regulator and current interest rates, and (v) Federal Home Loan Bank or other applicable regulator's stock purchase requirements and the converting institution's position with respect to those requirements. Also describe the assessment authority and requirements of the Federal Deposit Insurance Corporation. In addition, describe briefly

applicable liquidity requirements and state the converting institution's position with respect to those requirements.

(g) State Law. Describe briefly provisions of State law which have a material effect on the business of the converting institution.

(h) Federal and State Taxation. Describe briefly the Federal income tax laws applicable to the converting institution including:

(1) permissible bad debt reserves;

(2) the converting institution's position with respect to the maximum bad debt reserve limitations as of the date of the latest statement of financial condition required under Item 14(a);

(3) future increases in the effective income tax rate;

(4) the date through which the converting institution's Federal income tax returns have been audited by the Internal Revenue Service; and

(5) the tax effect to the converting institution of the payment of cash dividends on capital stock of the applicant after conversion. Also describe briefly the State taxation of the converting institution.

(i) Competition. Describe the material sources of competition for thrift institutions generally and indicate to the extent practicable the converting institution's position in its principal lending and savings markets.

Instruction. In answering Item 7(j) give to the extent known the converting institution's savings and mortgage product market shares by county in its geographic market. Also indicate its rank and any material changes or trends in its competitive standing.

(j) Offices and Other Material Properties.

(1) Furnish the location of the converting institution's principal office and each existing and approved branch office and other office facilities. State the total net book value of all such offices as of the date of the latest statement of financial condition required by Item 14(a). If any such office is leased, state the expiration dates of such leases.

(2) Describe briefly undeveloped land owned by the converting institution, including location, net book value, and prospective use and holding period. If the converting institution or a subsidiary own or leases electronic data processing equipment principally for its own use, describe briefly such equipment indicating net book value if owned or the principal lease terms if leased.

(k) Employees. State the number of persons employed full-time by the converting institution

including executive officers listed under Item 5. State whether employees are represented by a collective bargaining group and whether the converting institution's relations with its employees is satisfactory. Summarize briefly any loans, profit sharing, retirement, medical, hospitalization or other remuneration plans provided for employees not already included pursuant to Item 6.

(l) Service Corporations, Operations Subsidiaries and Leeway Subsidiaries. Describe briefly the converting institution's investment in any subsidiary and the major lines of business (including any joint ventures) of the subsidiary which are material to its operations.

(m) Legal Proceedings. Furnish the information regarding legal proceedings required to be disclosed by Item 7(n) of 12 CFR 563b.101<sup>1</sup>. Unless the context otherwise requires, the word "registrant" in that regulation shall refer to the converting institution.

*<sup>1</sup> 12 CFR Part 563b was published in the November 30, 1994 copy of the Federal Register, Vol. 59. Publisher: Office of the Federal Register, National Archives and Records Administration, Washington DC 20408. A copy of this document is on file at the NYS Department of State, Office of Information Services, 162 Washington Avenue, Albany, NY 12247 and in the library of New York State Banking Department, at [One State Street, New York, NY 10004.]*

(n) Additional Information. The Superintendent may upon the request of converting institution, and where consistent with the protection of account holders and others, permit the omission of any of the information required by this Item or the furnishing in substitution therefor of appropriate information of comparable character. The Superintendent may also require the furnishing of other information in addition to, or in substitution for, the information required by this Item in any case where such information is necessary or appropriate for an adequate description of the converting institution's business done or intended to be done.

#### Item 8. Description of the Plan of Conversion.

(a) A statement to the following effect shall be inserted in the proxy statement immediately preceding the information required by this Item:

The Banking Department has given approval to the Plan of Conversion, subject to its approval by depositors or shareholders, as applicable, and the satisfaction of certain other conditions. However, such Department approval does not constitute a recommendation or endorsement of the Plan of Conversion by the Department.

(b) The proxy statement shall contain a description of the plan of conversion. Such description shall contain the information required by paragraphs (c) through (j) of this Item and such additional information as may be necessary to accurately describe the material provisions of the plan.

(c) Describe the effects of conversion from a mutual institution to a stock institution including the following information:

(1) state that share and deposit accounts of the converting institution will not be affected by the conversion with respect to such matters as balances in the accounts and the extent of insurance of such accounts by the federal deposit insurer;

(2) state whether shareholders or borrowers of the converting institution will continue to have voting rights in the converting institution after conversion, and describe any voting rights they will have;

(3) state the present liquidation rights of account holders and describe the liquidation account to be established and maintained by the converting institution, including the conditions under which such account will be paid, the interest of Eligible Account Holders in such account and the formula by which such account will be adjusted;

(4) state that the rights and obligations of borrowers from the applicant will not be changed in any manner;

(5) state that capital stock to be sold by the converting institution will not be insured;

(6) state that none of the assets of the converting institution will be distributed in order to effect the conversion other than to pay expenses incident thereto;

(7) state the reasons why management is recommending the conversion, including any advantages to the community served by the converting institution; and

(8) state any reasons why management believes that such conversion would be detrimental to the interests of the depositors or shareholders.

(d) Describe any contacts, negotiations, or related transactions which have been entered into or which have occurred during the period beginning one year prior to publication of approval of the plan of conversion by the board of trustees or directors with the converting institution, or any of its trustees, directors, or executive officers, concerning: a merger conversion, the acquisition of securities of any class of the converting institution, or a sale or other transfer of a material amount of assets of the converting institution or any of its subsidiaries. Describe in detail the factors considered by the board of trustees or directors in rejecting any such proposed transaction.

(e) With respect to the subscription rights of depositors or shareholders, furnish the following information:

(1) the formula to be used for determining the subscription rights of depositors or shareholders to purchase shares;

(2) any optional provisions included in the plan of conversion for the purchase of shares of capital stock, including the purchase priorities, limitations on total purchases, the total number of shares which may be purchased, and the formula for the allocation;

(3) the allocation formulas to be used in the event that there is an oversubscription of shares at any time during the sale of stock under the plan of conversion; and

(4) the use and timing of the order forms with respect to the exercise of subscription rights.

(f)(1) Set forth on a per-share basis the estimated public offering price range of the shares of capital stock to be sold pursuant to the plan of conversion, except that an estimated price range is not required to be stated if the offering of stock is not to commence until after the meeting of depositors or shareholders to vote on the plan of conversion;

(2) state that the offering price will be the pro forma market value of such shares as determined by the institution's management and the underwriters, as the case may be; and

(3) state that all of the shares are required to be sold.

(g) Unless the offering of stock is not to commence until after the meeting of depositors or shareholders to vote on the plan of conversion, discuss (1) the earnings per share on a pro forma basis of the capital stock to be sold as of the end of the most recent period covered by the statement of operation required by Item 14(b)(1); and (2) the book value per share on a pro forma basis as of the date of the latest statement of financial condition required by Item 14(a).

Instructions:

1. Earnings and book value per share shall be furnished, without giving effect to the estimated net proceeds from the sale of the capital stock, and then after giving effect to such proceeds with all assumptions used clearly stated.

2. In computing pro forma earnings, the applicant shall use the arithmetic average of the (i) average yield on all interest-earning assets (Item 7(d)(4)(i)(D)) and (ii) average rate paid of deposits (Item 7(d)(4)(ii)(A)).

3. If significant changes in interest rates occur during the periods presented, the Superintendent will consider permitting alternative computations proposed by a converting institution that are properly supported.

4. An appropriate statement should be included which explains that the pro forma data should not be relied upon as indicative of the actual financial position or results of continuing operations that will be experienced by the converting institution after its conversion.

(h) State the proposed commencement and expiration dates of the subscription period and

describe any provisions in the plan of conversion related to the timing or extension of the subscription period. Also, state (1) that a maximum subscription price will be set forth in the offering circular used for offering of subscription rights; (2) that the actual subscription price will be the public offering price; (3) that the actual subscription price will not exceed the maximum subscription price shown on the order form; and (4) that any difference between the maximum and actual subscription prices will be refunded unless the subscribers affirmatively elect to have the difference applied to the purchase of additional shares of capital stock.

(i) Furnish the following information: (1) describe to the extent practicable the converting institution's present intentions with respect to listing the capital stock on an exchange or otherwise providing a market for the purchase and sale of the capital stock in the future; (2) describe the tax effect of the conversion both to the converting institution and to the depositors or shareholders receiving nontransferable subscription rights to purchase capital stock in the conversion; (3) state that the plan of conversion is attached as an exhibit to the proxy statement (or will be made available on request in the case where a short-form proxy statement is used) and should be consulted for further information.

(j)(1) State whether the plan of conversion provides for unsubscribed capital stock to be offered to the public through underwriters or directly by the converting institution. If such is the case, provide the information to the extent known required by Item 6 of Form 86-OC and indicate the estimated timing of the proposed offering.

(2) State whether the plan of conversion provides for the purchase by any person or group of any insignificant residue of shares remaining at the conclusion of the offering.

(k) Furnish the following information in tabular form regarding proposed purchases of capital stock involving directors, officers and trustees of the converting institution:

(1) State the total number of shares proposed to be purchased by all directors, officers and trustees as a group without naming them.

(2) As to each officer, director or trustee named in Item 6(a)(1)(i), name him, state his position, and the number of shares proposed to be purchased by him.

(3) As to any officer, director, trustee or associate thereof who proposes to purchase one percent or more of the total number of shares of capital stock of the converting institution to be outstanding, name him, state his position, and the number of shares proposed to be purchased by him.

(4) With respect to the information required by (1), (2), and (3) above, indicate separately the number of shares proposed to be purchased in each offering category.

Instructions:

With respect to the information requested as to associates of officers, directors and trustees,

such information is required only to the extent known. In a case where such information is not obtainable, only the number of shares which the associate is given subscription rights to purchase need to be disclosed.

(1) With respect to the appraisal required by section 86.4(e) of this Part:

(1) Briefly describe the qualifications of the appraisers and the method of selecting the appraiser.

(2) Describe any material relationship between the appraiser and the converting institution or any underwriter.

(3) Furnish a summary concerning such appraisal which shall include, but not be limited to, the procedures followed, the findings and recommendations, the bases and assumptions for and methods of arriving at such findings and recommendations, instructions received from the converting institution or any underwriter, and any limitation imposed by the converting institution or underwriters on the scope of the investigation.

(4) Furnish a statement to the effect that such appraisal shall be made available for inspection and copying at the principal executive offices of the converting institution during its regular business hours by any interested eligible account holder of the converting institution or his or her representative who has been so designated in writing. This statement may also provide that a copy of such appraisal will be transmitted by the converting institution to any interested eligible account holder of the converting institution or his or her representative who has been so designated in writing upon written request and at the expense of the requesting eligible account holder.

Item 9. Description of Capital Stock.

(a) Furnish the information regarding capital stock of the converting institution required to be disclosed under Item 9(a) of 12 CFR 563b.101.<sup>1</sup> Unless the context otherwise requires, the term registrant in that regulation shall refer to the converting institution.

*<sup>1</sup> 12 CFR Part 563b was published in the November 30, 1994 copy of the Federal Register, Vol. 59. Publisher: Office of the Federal Register, National Archives and Records Administration, Washington DC 20408. A copy of this document is on file at the NYS Department of State, Office of Information Services, 162 Washington Avenue, Albany, NY 12247 and in the library of New York State Banking Department, at [One State Street, New York, NY 10004.]*

(b) An undertaking should be included in the proxy statement that the converting institution where practical will use its best efforts to encourage and assist a professional market maker in establishing and maintaining a market for the capital stock of the converting institution.

(c) Outline briefly the trading market that is expected to exist for the capital stock following



the conversion including the estimated number of market makers and stockholders, and the anticipated success of the converting institution in listing the stock.

Instructions:

Any discussion of the listing of the converting institution's stock should include the basic requirements that must be satisfied in order to accomplish such listing.

(d) If the rights evidenced by the capital stock will be materially limited or qualified by the rights of savings account holders or borrowers, include the information regarding the limitations or qualifications necessary to enable investors to understand the rights evidenced by the capital stock.

Item 10. Capitalization.

Set forth in substantially the tabular form indicated below the dollar amounts of the capitalization of the converting institution:

	(A) Capitalization as of Latest Statement of Condition Date	(B) Adjustments as a Result of Conversion	(C) Pro forma Capitalization After Giving Effect to the Conversion
1. Share and Deposit Accounts	\$	\$	\$
2. FHL Bank Advances			
3. Subordinated Debt Securities			
4. Other Borrowings			
5. Capital Stock			
6. Paid in Capital			
7. Undivided Profits			
8. Other Net Worth			
9. Federal Insurance Reserve, if applicable			
10. Other Reserves			
11. Total	\$ _____	\$ _____	\$ _____

Instructions:

1. With respect to capital stock, indicate in the table or in a footnote the total number of shares to be authorized, the par or stated value of such shares, and the number of shares to be sold as part of the conversion.

(2) With respect to the funds to be received by the converting institution from the sale to its capital stock, indicate in the table the estimated total amount of funds to be obtained and in a footnote state the price per share used in making such estimate. Such total amount and price per share shall be clearly identified as being estimates.

#### Item 11. Use of New Capital.

State the principal purposes for which the net proceeds to the converting institution from the capital stock to be sold are intended to be invested or otherwise used, and the approximate amount intended for each such purpose.

#### Instructions:

Details of proposed investments are not to be given. There need be furnished, for example, only a brief statement of any investment or other activity of the converting institution which will be affected materially by the availability of the proceeds. Examples of such activities may include expanded secondary market activities, larger scale lending projects, loan portfolio diversification, increased liquidity investments, repayment of debt, additional branch offices and other facilities, service corporation investments, and acquisitions.

#### Item 12. New Charter, Bylaws or Other Documents.

Describe briefly any material differences between the provisions of existing charter, bylaws and any similar documents of the converting institution and those which will take effect after conversion, including, if applicable, optional charter provisions provided for in Section 86.10 of Part 86.

#### Instruction:

This Item requires only a brief summary of the provisions which are pertinent from both an investment and a voting point of view. A complete legal description of the provisions referred to is not required and should not be given. Do not set forth the provisions verbatim; only a succinct summary is required.

#### Item 13. Other Matters.

State that the converting institution will register its capital stock under section 12(g) of the Securities Exchange Act of 1934, as amended, and that it will not deregister such stock for a period of three years. State that upon such registration the proxy rules, insider trading reporting and restrictions, annual and periodic reporting and other requirements of that Act will be applicable.

Item 14. Financial Statements.

Notes:

1. The following instructions specify the consolidated balance sheets, the consolidated statements of income, the consolidated statements of cash flows, and stockholders' equity required to be included in the proxy statement.

2. If the converting institution has previously used an audit period in connection with its certified financial statements which does not coincide with its fiscal year, such audit period may be used in place of any fiscal year requirement provided it covers a full 12 months' operations and is used consistently.

(a) Consolidated Balance Sheets.

(1) There shall be furnished for the applicant and its subsidiaries consolidated, audited balance sheets as of the end of each of the two most recent fiscal years.

(2) If the latest balance sheets furnished under (1) of this paragraph are in excess of 135 days prior to the date of the Superintendent's approval of the conversion, there shall be furnished an interim balance sheet as of date within 135 days of such approval. This interim balance sheet need not be audited.

(b) Consolidated statements of income and cash flow.

(1) There shall be furnished for the converting institution and its subsidiaries and predecessors consolidated, audited statements of income and cash flows for each of the three fiscal years preceding the date of the most recent balance sheet furnished.

(2) In addition, for any interim period between the latest audited balance sheet and the date of the most recent interim balance sheet being filed, and for the corresponding period of the preceding fiscal year, statements of income and cash flows shall be furnished. The interim statements may be unaudited.

(c) Changes in stockholders' equity. An analysis of the changes in each caption of stockholders' equity presented in the balance sheets shall be given in a note or separate statement. This analysis shall be presented in the form of a reconciliation of the beginning balance to the ending balance for each period for which an income statement is required to be furnished with all significant reconciling items described by appropriate captions.

(d) Financial statements of business acquired or to be acquired. There shall be furnished the information required under Item 14(d) of 12 CFR 563b.101<sup>1</sup> regarding business acquired or to be acquired.

<sup>1</sup> 12 CFR Part 563b was published in the November 30, 1994 copy of the Federal Register,

*Vol. 59. Publisher: Office of the Federal Register, National Archives and Records Administration, Washington DC 20408. A copy of this document is on file at the NYS Department of State, Office of Information Services, 162 Washington Avenue, Albany, NY 12247 and in the library of New York State Banking Department, at [One State Street, New York, NY 10004.]*

(e) Separate financial statements of subsidiaries not consolidated and 50 percent or less owned persons. There shall be furnished the information required under Item 14(e) of 12 CFR 563b.101<sup>1</sup> regarding separate financial statements of subsidiaries not consolidated and 50 percent or less owned persons.

(f) Filing of other statements in other cases. The Superintendent may, upon the request of the converting institution, and where consistent with the protection of eligible account holders and others, permit the omission of one or more of the statements herein required or the filing in substitution therefor of appropriate statements of comparable character. The Superintendent may also require the inclusion of other statements in addition to, or in substitution for, the statements herein required in any case where such statements are necessary or appropriate for an adequate presentation of the financial condition of any person whose financial statements are required, or whose statements are otherwise necessary for the protection of eligible account holders and others.

#### Item 15. Consents of Experts and Reports.

- (a) The proxy statement shall briefly describe all consents of experts filed pursuant to Part 86.
- (b) The statement shall contain a report of the independent public accountants who have certified the financial statements and other matters in the statement.

#### Item 16. Attachments.

There shall be attached to the proxy statement distributed to depositors or shareholders and others a copy of the converting institution's plan of conversion as approved by the Superintendent unless the following procedure is observed. The converting institution may in the alternative set forth in the proxy statement that the plan of conversion will not be provided unless the recipient so requests by returning within a specified period a postage-paid or other written communication.

#### History

Sec. filed March 5, 1984; amds. filed: May 14, 1984 as emergency measure, expired 60 days after filing; July 26, 1984; March 7, 1986; Oct. 10, 1995 as emergency measure; June 13, 1996; Oct. 22, 1997 as emergency measure, expired 90 days after filing; June 9, 1998 eff. June 24, 1998. Amended Item 8(d).

#### **3 NYCRR - § 86.15 -- Offering Circular.**

A converting institution (as applicable) shall be required to file with the superintendent and distribute to its eligible account holders and to the public an offering circular which complies with Form 86-OC, which reads in its entirety as follows:

**FORM 86-OC**

**[Facing Sheet]**

**NEW YORK STATE BANKING DEPARTMENT**

**One State Street  
New York, New York 10004**

**Offering Circular**

---

(Exact name of converting institution as specified in charter)

---

(Street address of converting institution)

---

(City, State and ZIP Code)

**Offering Circular Form**

**Item 1. Information Required by and Use of Form 86-OC.**

The offering circular shall be dated as of the date of its issuance. The offering circular shall contain substantially the same information required to be included in the proxy statement of the converting institution distributed to depositors or shareholders to vote upon the plan of conversion. Information of the type required to be included in the proxy statement may be omitted from the offering circular only to the extent that it is clearly inapplicable. The offering circular may be in "wrap around" form with the proxy statement attached.

**Instructions:**

1. The term offering circular refers to both the offering circular for the subscription offering and the offering circular for the public offering through a underwriter, unless otherwise indicated.
2. The offering circular shall include such information which the Superintendent by interpretive release or otherwise, has deemed necessary to comply with this Form 86-OC.
3. An offering circular for the subscription offering in "wrap around" form distributed to

depositors or shareholders and other persons who have previously been furnished a copy of the proxy statement need not contain the proxy statement as an attachment provided such offering circular states that a copy of the proxy statement has previously been furnished to such persons and that an additional copy thereof will be furnished promptly upon request to the converting institution (with the telephone number and mailing address of the converting institution stated).

#### Item 2. Additional Current Information Required.

Each offering circular shall, as of its respective date of issuance, include to the extent available, the following additional current information to the extent that such information is not already included in the proxy statement:

- (a) Information with respect to the vote of depositors or shareholders upon the plan of conversion and any other proposals considered at the meeting of depositors or shareholders.
- (b) Information with respect to any recent material developments in the business affairs of the converting institution.
- (c) Information with respect to the trading market that is expected to exist for the capital stock following the conversion.
- (d) Information, on the outside front cover page, summarizing the results of any separate subscription offering including the number of shares sold to Eligible Account Holders, the price at which the shares were sold, and the number of unsubscribed shares to be sold in the public offering.
- (e) The information required by Items 8(e)(1) and 8(f) of Form 86-PS.
- (f) Any other information necessary to make such offering circular current, including full financial statements of the converting institution within six months prior to the date of issuance of such offering circular.

#### Item 3. Statement Required in Offering Circulars.

There shall be set forth on the outside cover page of every offering circular the following statement in capital letters printed in boldface Roman type at least as large as 10-point modern type and at least two points leaded:

**THESE SHARES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE NEW YORK STATE BANKING DEPARTMENT, THE FEDERAL DEPOSIT INSURANCE CORPORATION OR THE FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION NOR HAVE SUCH DEPARTMENT OR CORPORATIONS PASSED UPON THE ACCURACY OR ADEQUACY OF THIS OFFERING CIRCULAR. ANY REPRESENTATION TO THE CONTRARY IS UNLAWFUL.**

Item 4. Preliminary Offering Circular.

The outside front cover page of any preliminary offering circular shall bear, in red ink, the caption "Preliminary Offering Circular," the date of its issuance, and the following statement printed in type as large as that used generally in the body of such offering circular:

"This offering circular has been filed with the New York State Banking Department, but has not been authorized for use in the final form. Information contained herein is subject to completion or amendment. The shares covered hereby may not be sold nor may offers to buy be accepted prior to the time the offering circular is approved for use by the New York State Banking Department. This offering circular shall not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of these shares in any state in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such state."

Item 5. Information with Respect to Exercise of Subscription Rights.

Any offering circular which is required to be delivered to subscribers shall describe all material terms of the offering relating to the exercise of subscription rights to the extent that such description is not already in the proxy statement. Such terms include the expiration date, any subscription agent, method of exercising subscription rights, payment for shares, delivery of stock certificates for shares purchased, maximum subscription price, possible reduction of subscription price, relationship of subscription price to public offering price, requirements that all unsubscribed shares be sold, and any other material conditions relating to the exercise of subscription rights.

Item 6. Information with Respect to Public Offering.

Each offering circular shall describe the material terms of the plan or plans of distribution for all unsubscribed shares of capital stock to the extent such description is not already in the proxy statement, including the following:

(a) The outside front cover page of the offering circular shall give the information called for by this paragraph. Such information shall be given in substantially the tabular form set forth below. If the information is not known at the time of the subscription offering, so state and estimate.

	Price to Public	Underwriting Discounts and Commissions	Proceeds to Converting Institution
Per Share .....	\$.....	\$.....	\$.....
Total.....	\$.....	\$.....	\$.....

(b) An offering circular for a public offering, where the plan of conversion does not contain the optional provision permitted by section 86.5(b)(4) of Part 86, may omit the description relating to the exercise of subscription rights required by Item 5.

(c) If any shares are to be offered through underwriters, the offering circular for the public offering shall state the names of the principal underwriters and the respective amounts underwritten by each. The names of the principal underwriters other than the managing underwriters and the respective amounts to be underwritten may be omitted from the offering circular for the subscription offering, unless the plan of conversion contains the optional provision permitted by section 86.5(b)(4) of Part 86. Each offering circular shall identify each principal underwriter having a material relationship to the converting institution and state the nature of the relationship. Each offering circular shall state briefly the nature of the underwriter's obligation to take the unsubscribed shares.

(d) The offering circular for the public offering shall state briefly the discounts and commissions to be allowed or paid to dealers in connection with the sale of the unsubscribed shares. Such information may be omitted from the offering circular for any subscription offering, unless the plan of conversion contains the optional provision permitted by section 86.5(b)(4) of Part 86.

(e) If any shares are to be offered through underwriters, the offering circular for the public offering shall identify any principal underwriter that intends to confirm sales to any accounts over which it exercises discretionary authority and include an estimate of the number of shares so intended to be confirmed. Such information may be omitted from the offering circular for any subscription offering.

Instructions:

1. Commissions include all cash, securities, contracts, or anything else of value, paid, to be set aside, disposed of, or understandings made with or for the benefit of any persons in which any underwriter or dealer is interested, in connection with the sale of the shares.

2. Only commissions paid by the converting institution in cash are to be included in the table. Any other consideration to the underwriters shall be set forth following the table with a reference thereto in the second column of the table. Any finder's fees or similar payments shall be appropriately disclosed.

3. All that is required as to the nature of the underwriters' obligation is whether the underwriters are or will be committed to take and to pay for all of the shares if any are taken, or whether it is merely an agency or "best efforts" arrangement under which the underwriters are required to take and pay for only such shares as they may sell to the public. Conditions precedent to the underwriters' taking the shares, including customary "market outs," need not be described. If a "best efforts" arrangement is used, describe any standby commitments for shares not sold.



## History

Sec. filed March 5, 1984; amd. filed Oct. 10, 1995 as emergency measure eff. Oct. 10, 1995.