

IC 28-1-7.1

Chapter 7.1. Voluntary Supervisory Conversion

IC 28-1-7.1-1

"Depository financial institution"

Sec. 1. As used in this chapter, "depository financial institution" has the meaning set forth in IC 28-1-1-6, but does not include a credit union.

As added by P.L.89-2011, SEC.33.

IC 28-1-7.1-2

"Standard conversion"

Sec. 2. As used in this chapter, "standard conversion" refers to a transaction permitted under any of the following:

- (1) IC 28-1-21.4.
- (2) IC 28-1-21.6.
- (3) IC 28-1-21.8.
- (4) IC 28-1-21.9.

As added by P.L.89-2011, SEC.33.

IC 28-1-7.1-3

Depository financial institution with mutual ownership; authority to engage in voluntary supervisory conversion

Sec. 3. A depository financial institution with mutual ownership may engage in a voluntary supervisory conversion only as set forth in this chapter.

As added by P.L.89-2011, SEC.33.

IC 28-1-7.1-4

Voluntary supervisory conversion; types of transactions

Sec. 4. A voluntary supervisory conversion of a depository financial institution may include one (1) or more of the following transactions:

- (1) A merger of the depository financial institution into an interim depository financial institution with stock ownership.
- (2) Following a conversion of the depository financial institution, a sale of shares of the converted depository financial institution directly to an acquirer, which may be a person, company, depository institution, or depository institution holding company.
- (3) A merger or consolidation with an existing or newly created depository financial institution. Except as provided in this chapter, a merger or consolidation under this subdivision must be authorized by, and is subject to, any other applicable laws and regulations.

As added by P.L.89-2011, SEC.33.

IC 28-1-7.1-5

Voluntary supervisory conversion; eligibility; conditions

Sec. 5. A depository financial institution with mutual ownership

is eligible for a voluntary supervisory conversion under this chapter if, in the judgment of the director, the voluntary supervisory conversion satisfies at least one (1) of the following conditions:

- (1) Both of the following apply:
 - (A) The depository financial institution is significantly undercapitalized, or is undercapitalized and a standard conversion to stock form is not feasible.
 - (B) After the voluntary supervisory conversion, the converted depository financial institution will likely be a viable entity, or the one (1) or more entities resulting from the voluntary supervisory conversion will likely be viable entities.
- (2) Severe financial conditions threaten the stability of the depository financial institution and a voluntary supervisory conversion to stock form is likely to:
 - (A) improve the financial condition of the depository financial institution; or
 - (B) result in one (1) or more entities with an improved financial condition.
- (3) The depository financial institution is in receivership or conservatorship, or in imminent danger of receivership or conservatorship, and the voluntary supervisory conversion will enable the depository financial institution to:
 - (A) terminate the receivership or conservatorship; or
 - (B) avoid the institution of a receivership or conservatorship.

As added by P.L.89-2011, SEC.33.

IC 28-1-7.1-6

Director's determination of resulting entity's viability; conditions; authority of director to act; applicability of law governing mergers and consolidations; waiver of law

Sec. 6. (a) The director may determine under section 5(1)(B) of this chapter, based upon information then available to the director, that a voluntary supervisory conversion will likely result in a depository financial institution becoming a viable entity with stock ownership if all the following are satisfied:

- (1) The depository financial institution resulting from the conversion will be adequately capitalized.
- (2) The depository financial institution resulting from the conversion, and any person acquiring capital stock in the depository financial institution resulting from the conversion, will comply with all applicable supervisory policies.
- (3) The depository financial institution involved in, or the one (1) or more entities resulting from, the conversion will be insured by the Federal Deposit Insurance Corporation.
- (4) The voluntary supervisory conversion is in the best interest of:
 - (A) the depository financial institution involved in, or the one (1) or more entities resulting from, the conversion; and
 - (B) the public.

(5) The voluntary supervisory conversion will not injure or be detrimental to:

- (A) the depository financial institutions involved in, or the one (1) or more entities resulting from, the conversion; or
- (B) the public interest.

(b) The director may act on a voluntary supervisory merger, consolidation, sale, or other disposition on behalf of the department.

(c) Except as otherwise provided in this chapter, a provision of IC 28-1-7 concerning mergers or consolidations applies to a voluntary supervisory conversion under this chapter unless the director determines that the provision should be waived or considered inapplicable with respect to a particular voluntary supervisory conversion. The director may make a determination described in this subsection if the director finds, in the director's discretion, that the determination will:

- (1) facilitate the consummation of the voluntary supervisory conversion; and
- (2) in the director's judgment and considering the available information under the prevailing circumstances, result in one (1) or more entities that are more favorable to the public than if:
 - (A) the provision were not waived or considered inapplicable; or
 - (B) the voluntary supervisory conversion were not approved.

As added by P.L.89-2011, SEC.33. Amended by P.L.6-2012, SEC.192.

IC 28-1-7.1-7

Depositors; no right to participate in or approve conversion; no ownership interests in converted institution; liquidation account

Sec. 7. Depositors of a depository financial institution with mutual ownership do not have the right to approve or participate in a voluntary supervisory conversion, and will not have any legal or beneficial ownership interests in the converted depository financial institution, unless the department allows otherwise. Depositors may have interests in a liquidation account, if one is established.

As added by P.L.89-2011, SEC.33.

IC 28-1-7.1-8

Plan of conversion; adoption by board; contents

Sec. 8. A majority of the board of directors of a depository financial institution with mutual ownership must adopt a plan of voluntary supervisory conversion. The plan adopted must include the following:

- (1) The name and address of the depository financial institution.
- (2) The name and address of each proposed purchaser of conversion shares and a description of that purchaser's relationship to the depository financial institution.
- (3) The title, per unit par value, number, and per unit and aggregate offering price of shares that the converted depository financial institution will issue.

(4) The number and percentage of shares that each investor will purchase or acquire in a merger or other combination.

(5) The aggregate number and percentage of shares that each director or officer of the converted depository financial institution, and any affiliates (as defined in IC 28-1-18.2-1) or associates (as defined in 12 CFR 563b.25) of the director or officer, will purchase.

(6) A description of any liquidation account to be established in connection with the voluntary supervisory conversion.

(7) Certified copies of all resolutions of the board of directors of the depository financial institution relating to the conversion.

As added by P.L.89-2011, SEC.33. Amended by P.L.27-2012, SEC.41.

IC 28-1-7.1-9

Application to department; required information and documents

Sec. 9. The following information and documents must be included in an application for a voluntary supervisory conversion made to the department:

(1) Evidence establishing that the depository financial institution with mutual ownership meets the eligibility requirements set forth in this chapter.

(2) An opinion of qualified, independent counsel or of an independent, certified public accountant concerning the tax consequences of the conversion, or an IRS ruling indicating that the transaction qualifies as a tax free reorganization.

(3) A plan of voluntary supervisory conversion that complies with section 8 of this chapter.

(4) A business plan, when required by the department.

(5) The depository financial institution's most recent audited financial statements and call report.

(6) A detailed explanation of how the current capital levels make the depository financial institution eligible to engage in a voluntary supervisory conversion under this chapter.

(7) A description of the estimated conversion expenses.

(8) Evidence supporting the value of any noncash asset contributions. Appraisals must be acceptable to the department and each noncash asset must meet all other department policy guidelines.

(9) Pro forma financial statements that reflect the effects of the transaction. The depository financial institution must identify its tangible, core, and risk based capital levels and show the adjustments necessary to compute the pro forma capital levels. The depository financial institution must prepare its pro forma statements in conformance with department regulations and policy.

(10) The proposed articles of incorporation and bylaws, if any, of the depository financial institution formed as a result of the voluntary supervisory conversion.

(11) The proposed stock certificate form, if any, for the

depository financial institution formed as a result of the voluntary supervisory conversion.

(12) A copy of any agreements between the depository financial institution formed as a result of the voluntary supervisory conversion and proposed purchasers.

(13) A copy and description of all existing and proposed employment contracts. The depository financial institution formed as a result of the voluntary supervisory conversion must include information describing the term, salary, and severance provisions of the contract, the identity and background of the officer or employee to be employed, and the amount of any conversion shares to be purchased by the officer or employee or his or her affiliates (as defined in IC 28-1-18.2-1) or associates (as defined in 12 CFR 563b.25).

(14) Any:

(A) required filings under federal law; or

(B) waivers of compliance with federal law obtained as a result of conflicts with state law.

(15) Applications for permission to organize a stock association and for approval of a merger, if applicable, and a copy of any application for Federal Home Loan Bank membership or FDIC insurance of accounts, if applicable.

(16) A statement describing any other applications required under federal or state banking laws for all transactions related to the conversion, copies of all dispositive documents issued by regulatory authorities relating to the applications, and, if requested by the department, copies of the applications and related documents.

(17) A description of any of the features of the application that do not conform to the requirements of this section, including any request for waiver of such requirements.

(18) An opinion of counsel acceptable to the department as to the legality of the voluntary supervisory conversion.

(19) Any other information or documents requested by the director.

As added by P.L.89-2011, SEC.33. Amended by P.L.27-2012, SEC.42.

IC 28-1-7.1-10

Denial of application; findings by director

Sec. 10. The director may not approve an application to engage in a voluntary supervisory conversion if the director makes any of the following findings:

(1) That the depository financial institution does not meet the eligibility requirements for a voluntary supervisory conversion under this chapter, or that the proceeds from the sale of the conversion stock, less the expenses of the conversion, would be insufficient to satisfy any applicable viability requirement.

(2) That the transaction is detrimental to or would cause potential injury to the depository financial institution or is

contrary to the public interest.

(3) That the depository financial institution or its acquirer, or the controlling parties or directors and officers of the depository financial institution or its acquirer, have engaged in unsafe or unsound practices in connection with the voluntary supervisory conversion.

(4) That the depository financial institution fails to justify an employment contract incidental to the conversion, or that the employment contract will be an unsafe or unsound practice or represent a sale of control.

As added by P.L.89-2011, SEC.33.

IC 28-1-7.1-11

Approval of application; conditions

Sec. 11. (a) The director shall condition approval of a voluntary supervisory conversion application on the applicant satisfying all of the following:

(1) The depository financial institution must complete the conversion stock sale, if any, not later than three (3) months after the director approves the application. The director may grant an extension for good cause.

(2) The depository financial institution and its acquirer must comply with all applicable laws, rules, and regulations.

(3) The depository financial institution and its acquirer must satisfy any other requirements or conditions imposed by the director.

(4) The depository financial institution involved in, or the one (1) or more entities resulting from, the voluntary supervisory conversion must obtain insurance coverage of their deposits by the Federal Deposit Insurance Corporation.

(b) The director may condition approval of a voluntary supervisory conversion application on either of the following:

(1) The applicant must satisfy any conditions and restrictions the director imposes to prevent unsafe or unsound practices, to protect the public interest, or to prevent potential injury or detriment to the depository financial institution before and after the conversion. The director may impose these conditions and restrictions on the depository financial institution (before and after the conversion), its acquirer, controlling parties, or directors and officers of the depository financial institution or its acquirer.

(2) A larger amount of capital, if necessary, for safety and soundness reasons must be infused following the voluntary supervisory conversion.

As added by P.L.89-2011, SEC.33.