**Section 1075.2170 Sale of Control in Connection with the Conversion of a Mutual Savings Bank to Capital Stock Savings Bank − Undercapitalized Mutual Savings Bank**

a) A mutual savings bank not meeting an applicable capital requirement as of the end of the most recent period for which the savings bank has prepared audited financial statements, may seek approval to convert to stock form pursuant to a plan of conversion that provides for the sale of its capital stock directly to acquirors, who may be a person, company, depository institution, holding company, who will be in control of the savings bank upon the purchase of the capital stock. If in accordance with applicable laws and regulations, the conversion may result in the converting savings bank being merged into or consolidated with an existing or newly created depository institution.

b) The provisions of this Section shall govern a conversion authorized by subsection (a). All other Sections of this Subpart shall not apply to the conversion unless provided in the plan of conversion adopted by the board of directors of the converting savings bank or required by the Director.

c) A majority of the converting savings bank board of directors must adopt a plan of conversion that complies with this Section. The members of the association have no rights or approval or participation in a conversion under this Section or to the continuance of any legal or beneficial ownership interests in the converted savings bank, unless otherwise provided by the Director. The members shall have an interest in a liquidation account established pursuant to Section 1075.1940 of this Subpart if one is established pursuant to subsection (h).

d) In connection with approval under this Section, the Director may impose conditions and restrictions on the converting or resulting institution, the acquiror, and controlling parties, organization directors and officers of either, to prevent unsafe and unsound practices, to protect the deposit insurance fund and the public interest, and to prevent potential injury or detriment to the converting or resulting institution.

e) The Director may deny a savings bank's conversion if he or she determines that the converting or resulting institution, the acquiror, or controlling parties or organization directors or officers of either, have engaged in unsafe or unsound practices in connection with the conversion, or that the conversion is detrimental to or would cause potential injury to the converting or resulting institution, deposit insurance funds, or is contrary to the public interest.

f) For 3 years following the date of completion of a conversion under this Section, neither any controlling shareholder nor the resulting institution may acquire shares from minority shareholders without prior approval of the Director.

g) An application for conversion under this Section shall, at a minimum, include:

1) A plan of conversion adopted by a majority of the directors of the savings bank, which shall contain at a minimum the name and address of the savings bank; the names, addresses, dates and places of birth, and social security numbers of the proposed purchasers of conversion stock and their relationship to the savings bank; the title, per-unit par value, number, and per-unit and aggregate offering price of shares of conversion stock to be authorized and issued; the number and percentage of shares of conversion stock to be purchased by each investor, the aggregate number and percentage of shares of conversion stock to be purchased by organization directors, officers and their affiliates and associates; a description of the liquidation account, if required under subsection (h), or if otherwise established; and certified copies of all resolutions of the board of directors relating to the plan of conversion;

2) A copy of any agreements between the savings bank and the proposed conversion stock purchasers;

3) An opinion of qualified, independent counsel or an independent, certified public accountant regarding the tax consequences to the savings bank arising from the conversion;

4) A business plan, which shall contain a description of the proposed operating policies of the savings bank or the resulting savings bank following the conversion, including a statement as to how the conversion proceeds will be used, and a projection of the savings bank's results of operations for the 3 year period following completion of the conversion. The projections should show the continuing ability of the converted savings bank to meet applicable capital requirements. The savings bank shall specify the assumptions on which its projections are based;

5) An application under Section 1075.1700 of Subpart N of this Part;

6) The proposed charter and bylaws of the converted savings bank;

7) The proposed stock certificate form;

8) A description of all existing and proposed employment contracts, if applicable;

9) All findings required under the securities offering rules of this Subpart;

10) Applications for permission to organize a stock savings bank and for approval of a merger, if applicable, and FDIC insurance of accounts, if applicable;

11) Information to support the value of any non-cash assets to be contributed to the savings bank in connection with the conversion, if applicable. Appraisals submitted in this connection must be acceptable to the Director;

12) A description of the estimated expenses of the conversion to the savings bank;

13) The savings bank's most recent audited financial statements with an appropriate explanation to support the determination that the savings bank's current capital levels qualify it to undertake a supervisory conversion;

14) "Pro forma" financial statements to reflect the effects of the transaction. These pro forma financial statements should be supplemented to identify the converting or resulting capital levels and show the appropriate adjustments necessary to compute such capital levels;

15) A specific description of any of the features of the savings bank's application that do not conform to the requirements of this Subpart;

16) A specific description of and detailed justification for any waivers or supervisory forbearances that are requested as part of the conversion;

17) A statement of all other applications required pursuant to federal law for all transactions related to the savings bank's conversion, copies of all decisions, orders, opinions, and other similar dispositive documents issued by regulatory authorities relating to such applications, and, if requested, copies of such applications and related documents; and

18) Opinion of financial advisor:

A) The savings bank shall be required to retain a reputable financial advisor with expertise in valuing depository institutions to advise it as to the fairness or the consideration to be paid by the proposed acquiror. The financial advisor shall furnish a written opinion specifically informing the converting savings bank as to the fairness from a financial point of view to the converting savings bank of the proposed consideration.

B) The written opinion shall specifically disclose in reasonable detail:

i) the professional standards employed by the financial advisor in arriving at its conclusions; and

ii) the factual basis upon which the conclusions were reached.

C) The opinion shall specifically state whether the financial advisor, in arriving at his or her conclusions as to the fairness of the proposed consideration, has made efforts to determine whether, in his or her judgment, there is the reasonable 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 savings bank 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 savings banks or savings and loan associations of comparable size, market area, profit history, competitive conditions and projected future earnings.

D) If the financial advisor has made any such efforts or comparisons, the nature and scope of the 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 savings bank 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 Director before any approval of the application for conversion will be granted by the Director.

h) A liquidation account must be established in accordance with Section 1075.1940 of this Subpart; however, the Director may waive this requirement upon a written finding that the savings bank's net worth is zero or less than zero, or for other good cause upon a written finding that specifies the existence of good cause.

i) 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 this Subpart. If the persons to whom capital stock is offered or sold pursuant to a conversion effected in compliance with this Section shall exceed 20 in number, each of the persons shall be furnished with an offering circular complying with this Subpart before the consummation of any sale.

j) Upon the Director's approval of the plan of conversion, the mutual savings bank charter shall be surrendered to the Director and a stock charter issued by the Director.

k) The corporate existence of a mutual savings bank converting to stock savings bank shall not terminate and shall be considered to be a continuation of the savings bank so converted.

l) The Director's approval of a conversion under this Section shall be conditioned upon the following:

1) Completion of the sale of conversion stock within 3 months after the Director approves the application, or within an additional period as the Director may for good cause grant;

2) Compliance with all filing requirements of this Subpart, subject to subsection (b); and

3) Satisfaction of any other requirements or conditions the Director may impose.

(Source: Amended at 30 Ill. Reg. 19068, effective December 1, 2006)