

CHAPTER 32

CONVERSIONS OF ASSOCIATIONS

Authority

N.J.S.A. 17:1-8, 8.1, and 15e, 17:12B-1 et seq. and 17:12B-319.

Source and Effective Date

R.2004 d.115, effective February 19, 2004.
See: 35 N.J.R. 5187(a), 36 N.J.R. 1355(b).

Chapter Expiration Date

Chapter 32, Conversions of Associations, expires on February 19, 2009.

Chapter Historical Note

Chapter 32, Stock Associations, was adopted as R.1975 d.352, effective January 1, 1976. See: 7 N.J.R. 92(c), 8 N.J.R. 9(c).

Subchapter 2, Conversion of an Association to a Savings Bank, was adopted as R.1991 d.294, effective June 17, 1991. See: 23 N.J.R. 929(b), 23 N.J.R. 1919(b).

Pursuant to Executive Order No. 66(1978), Chapter 32, Stock Associations, expired on October 3, 1993.

Chapter 32, Conversions of Associations, was adopted as new rules by R.1993 d.535, effective November 1, 1993. See: 25 N.J.R. 2799(a), 25 N.J.R. 4900(c).

Subchapter 3, Mutual State Association Holding Companies, was adopted as R.1994 d.373, effective July 18, 1994. See: 26 N.J.R. 1213(a), 26 N.J.R. 2892(b).

Pursuant to Executive Order No. 66(1978), Chapter 32, Conversions of Associations, was readopted as R.1998 d.559, effective October 30, 1998. See: 30 N.J.R. 3124(a), 30 N.J.R. 4209(a).

Chapter 32, Conversions of Associations, was readopted as R.2004 d.115, effective February 19, 2004. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. CONVERSION OF A MUTUAL ASSOCIATION TO A CAPITAL STOCK ASSOCIATION

3:32-1.1 Authorization for conversion

An insured mutual association may convert to a capital stock association subject to the limitations and provisions of N.J.S.A. 17:12B-1 et seq., and this chapter. The association shall also be subject to the requirements promulgated by the Office of Thrift Supervision at 12 CFR 563b relating to conversions from mutual to stock form.

Amended by R.1988 d.472, effective October 3, 1988.
See: 20 N.J.R. 697(a), 20 N.J.R. 2450(a).

Added subsection (b).

Amended by R.1998 d.559, effective December 7, 1998.
See: 30 N.J.R. 3124(a), 30 N.J.R. 4209(a).

Rewrote the section.

3:32-1.2 Application

Applications and other forms provided by the Office of Thrift Supervision shall be considered as acceptable material by the Commissioner for compliance with the provisions of this chapter and N.J.S.A. 17:12B-1 et seq. Copies of all forms required to be filed with the Office of Thrift Supervision should be forwarded to the Commissioner as part of the application for preliminary approval.

Amended by R.1988 d.472, effective October 3, 1988.
See: 20 N.J.R. 697(a), 20 N.J.R. 2450(a).

Added (b).

Amended by R.1998 d.559, effective December 7, 1998.
See: 30 N.J.R. 3124(a), 30 N.J.R. 4209(a).

Rewrote the section.

3:32-1.3 Conversion; general

(a) A State chartered association making such conversion shall comply with the following conditions and procedures:

1. Any plan for conversion shall be approved by two-thirds of the board of such association, and a resolution shall be adopted to that effect;

2. A preliminary application for approval of conversion with a proxy statement and a proxy form shall be submitted to the commissioner who shall determine that:

i. The plan of conversion has been adopted and approved by the board of directors;

ii. The plan of conversion is fair and equitable to all members;

iii. Sufficient provision has been made to protect the interest of the depositors of the prospective capital stock association;

(b) If the preliminary application for approval of conversion is deemed acceptable by the Commissioner, he or she shall issue a notice of intent to approve subject to the affirmative vote of a majority of eligible members and compliance with the conditions prescribed in the conversion provisions of N.J.S.A. 17:12B-1 et seq. and this regulation.

Amended by R.1998 d.559, effective December 7, 1998.

See: 30 N.J.R. 3124(a), 30 N.J.R. 4209(a).

In (b), substituted a reference to N.J.S.A. 17:12B-1 et seq. for a reference to article XXI of the Savings and Loan Act (1963).

3:32-1.4 Meeting of members

(a) Savings and/or borrowing members, as defined by the mutual association's bylaws, who are 16 years of age, or over, shall be entitled to vote at the special meeting to consider conversion to a capital stock association.

(b) The record date for determining those members eligible to vote at the special meeting called to consider the plan of conversion shall not be less than 90 days prior to the date of approval of such plan by the board of directors.

(c) A special meeting of the members shall be called by the board of directors, not later than 180 days following preliminary approval of the plan of conversion by both the Commissioner and the Office of Thrift Supervision. The members shall consider and vote upon, either in person or by proxy, the following business:

1. The adoption of the plan of conversion of the mutual association into a capital stock association;

2. The election of directors to hold office from the effective date of conversion until the next annual meeting; and

3. The adoption of bylaws for the capital stock association.

(d) Upon affirmative vote of a majority of the members present either in person or by proxy determining to convert the mutual association into a capital stock association, the board of directors shall within 45 days file with the Commissioner the following documents:

1. A copy of the minutes of the proceedings of such meeting;

2. A certified copy of the resolution adopted by the stockholders or members relating to the plan of conversion, and a certified statement signed by two officers, one of whom shall be the president or a vice-president, containing the following information with regard to the resolution:

i. The total number of votes eligible to be cast;

ii. The total number of votes represented in person or by proxy at the special meeting; and

iii. The total number of votes cast in favor and against the resolution and each matter related to the resolution including, but not limited to, adopted and defeated amendments;

3. A certificate of incorporation as provided at N.J.S.A. 17:12B-1 et seq.;

4. A copy of the bylaws for the stock corporation; and

5. The conversion application for final approval.

Amended by R.1988 d.472, effective October 3, 1988.

See: 20 N.J.R. 697(a), 20 N.J.R. 2450(a).

Substantially amended.

Amended by R.1998 d.559, effective December 7, 1998.

See: 30 N.J.R. 3124(a), 30 N.J.R. 4209(a).

In (c), substituted a reference to the Office of Thrift Supervision for a reference to the Federal Savings and Loan Insurance Corporation at the end of the first sentence and deleted a former second sentence in the introductory paragraph; and in (d), deleted "or, in the case of a 3121 Association, the affirmative vote of at least two-thirds" following "majority" in the introductory paragraph, and substituted a reference to N.J.S.A. 17:12B-1 et seq. for a reference to article XXI, section 18 of the Savings and Loan Act (1963) in 2.

Amended by R.2004 d.115, effective March 15, 2004.

See: 35 N.J.R. 5187(a), 36 N.J.R. 1355(b).

In (d), added a new 2 and recodified former 2 through 4 as 3 through 5.

3:32-1.5 Voting in person or by proxy

(a) Every proxy shall be executed and dated by the member or his agent and filed with the secretary of the association not later than the commencement of the scheduled meeting.

(b) A proxy shall be revocable at will; however the presence of the member at the meeting of the members shall not revoke such proxy unless the member files a written notice of such revocation with the secretary of the meeting prior to the voting of such proxy.

(c) A proxy shall not be revoked by the death or incapacity of the member but such proxy shall continue in force until revoked by the legally constituted or appointed representative or guardian of the member.

(d) The proxies shall be valid only for the meeting at which a conversion plan will be voted upon.

(e) Requirements as to proxy forms:

1. Shall indicate in boldface type whether proxy is solicited on behalf of management;

"Department" means the New Jersey Department of Banking and Insurance.

"Mutual state association" means a mutual association which has its principal place of business in this State.

"Mutual state association holding company" means a mutual state association holding company which has its principal office of business in this State and which has been formed by a mutual state association pursuant to N.J.S.A. 17:12B-298 through N.J.S.A. 17:12B-318.

"Organizing mutual state association" means a mutual state association which has its principal office or business in this State, the board of directors of which propose to form a mutual state association holding company pursuant to the provisions of this subchapter.

"State association" means any savings and loan association or any corporation, however named, now or hereafter chartered pursuant to N.J.S.A. 17:12B-1 et seq.

"Subsidiary capital stock state association" means a capital stock state association which has been incorporated by the directors of a mutual state association holding company, a majority of the stock of which subsidiary capital stock state association is held by a mutual state association holding company.

"Subsidiary holding company" means a mid-tier stock holding company, controlled by a mutual stock association holding company, that owns the stock of a savings association whose depositors have membership rights in the parent mutual holding company.

Amended by R.1998 d.559, effective December 7, 1998.
See: 30 N.J.R. 3124(a), 30 N.J.R. 4209(a).

In "Capital stock state association" deleted a reference to P. L. 1974, c.137; and in "State association", deleted a reference to P.L. 1963, c.144.

Amended by R.2004 d.115, effective March 15, 2004.
See: 35 N.J.R. 5187(a), 36 N.J.R. 1355(b).

Added "Subsidiary holding company".

3:32-3.2 Formation of mutual State association holding company

(a) The board of directors of an organizing mutual State association may apply to the Commissioner to form a mutual State association holding company in any of the following ways:

1. Plan 1: The board of directors may apply to incorporate a mutual state association holding company, transfer a portion of the organizing mutual state association's assets to the mutual state association holding company, and then convert the organizing mutual state association to a capital stock state association;

2. Plan 2: The board of directors may apply to incorporate a mutual state association holding company, form a subsidiary capital stock state association, and either

merge the organizing mutual state association into the capital stock state association or sell or transfer the assets and liabilities of the organizing mutual state association to the capital stock state association and liquidate the organizing mutual state association;

3. Plan 3: The board of directors may apply to form a mutual State association holding company by incorporating a subsidiary capital stock State association, and by transferring a substantial part of the assets and liabilities of the organizing mutual State association to the newly formed capital stock State association in return for a majority of its capital stock;

4. Plan 4: The board of directors may apply to incorporate a mutual State association holding company that will hold a controlling interest (51 percent or more) in a newly formed subsidiary holding company, which in turn will hold 100 percent of the outstanding stock of the capital stock State association that has been formed by one of the methods set forth in Plans 1 through 3; or

5. Any other method of reorganization approved by the Commissioner.

(b) In the event that the proposed mutual State association holding company reorganization provides for a minority stock issuance by either the subsidiary holding company or capital stock State association, the procedural and substantive requirements set forth in N.J.S.A. 17:12B-261 et seq. and N.J.A.C. 3:32, regarding the conversion from mutual to stock form of ownership shall apply, unless clearly inapplicable.

Amended by R.2004 d.115, effective March 15, 2004.

See: 35 N.J.R. 5187(a), 36 N.J.R. 1355(b).

In (a), added a new 4 and recodified former 4 as 5; added (b).

3:32-3.3 Application

(a) The board of directors of an organizing mutual state association may apply to form a mutual state association holding company by submitting the following to the Commissioner:

1. A description of the proposed formation of the mutual state association holding company;

2. A certified copy of the resolution of the board of directors of the organizing mutual state association authorizing the application by a two-thirds vote of the board;

3. A certified copy of the resolution adopted by the stockholders or members relating to the plan of conversion, containing the following information:

i. The total number of votes eligible to be cast;

ii. The total number of votes represented in person or by proxy at the special meeting;

iii. The total number of votes cast in favor and against each matter; and

iv. The percentage of votes cast in favor and against each matter.

4. A certificate of incorporation for the mutual state association holding company containing:

i. The name by which the mutual state association holding company shall be known;

ii. The street, street number, and municipality where the principal office of the mutual state association holding company is to be located;

iii. The names and addresses of the directors of the organizing mutual state association;

iv. The number of directors of the mutual state association holding company;

v. The names of persons who are to act as directors of the mutual state association holding company, until their successors are elected and qualified;

vi. The amount of capital deposits and surplus which are to be transferred from the organizing mutual state association to the mutual state association holding company;

vii. A provision allowing for the retention of any interests of the respective depositors of the organizing mutual state association in the assets of the organizing mutual state association, according to a fair valuation, including assets which are proposed to be transferred from the organizing mutual state association to the mutual state association holding company; and

viii. A provision providing for the establishment of a liquidation account;

5. Proposed by-laws of the surviving subsidiary capital stock state association and mutual state association holding company;

6. A copy of any applications for establishment of a mutual state association holding company filed with any Federal regulator; and

7. An application fee of \$10,000.

(b) The Commissioner may require the applicant to supply one or more of the following items:

1. Biographical statements for any director of the subsidiary capital stock state association and mutual state association holding company;

2. A completed form from the New Jersey State Police requesting criminal history record information for any director of the subsidiary capital stock state association and mutual state association holding company along with a cashier's check, certified check or money order for the applicable amount, payable to the Division of State Police—S.B.I.; and

3. A business plan for the subsidiary capital stock state association and mutual state association holding company.

(c) Along with the certificate of incorporation, each incorporator of the subsidiary capital stock state association bank shall submit an affidavit setting forth the following:

1. That no fee, commission, or other compensation has been paid, directly or indirectly, by the mutual state association holding company or by the subsidiary capital stock state association in the course of organizing the subsidiary capital stock state association, and that no promotion fees or charges have been provided or are contemplated;

2. A complete disclosure of all fees paid or agreed to be paid in the matter of chartering and organizing the proposed subsidiary capital stock state association;

3. That at least a majority of the shares of the authorized stock of the subsidiary capital stock state association is held by the mutual state association holding company; and

4. That the subsidiary capital stock state association proposes to either:

i. Merge with the organizing mutual state association;

ii. Purchase the assets of the organizing mutual state association; or

iii. Receive the assets and liabilities of the organizing mutual state association.

(d) Within 10 days after the date upon which a completed application is filed with the Commissioner, the applicant shall cause to be published a notice of application containing:

1. The name and address of the applicant;

2. A brief statement of the nature of the application; and

3. A statement advising that objections to the application can be filed with the New Jersey Commissioner of Banking and Insurance along with the address of the Commissioner.

Amended by R.1998 d.559, effective December 7, 1998.

See: 30 N.J.R. 3124(a), 30 N.J.R. 4209(a).

Rewrote the section.

3:32-3.4 Approval of application

(a) The Commissioner shall approve the application for a mutual state association holding company upon a finding of the following factors:

1. The establishment of a mutual state association holding company is in the best interests of the depositors of the mutual state association;