

Board of Governors of the Federal Reserve System

Regulation MM Mutual Holding Companies

12 CFR 239; effective September 13, 2011



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SUBPART A—GENERAL PROVISIONS

SECTION 239.1—Authority, Purpose, and Scope

(a) *Authority.* This part is issued by the Board of Governors of the Federal Reserve System (“Board”) under section 10(g) and (o) of the Home Owners’ Loan Act (“HOLA”).

(b) *Purpose.* The principal purposes of this part are to:

- (1) Regulate the reorganization of mutual savings associations to mutual holding companies and the creation of subsidiary holding companies of mutual holding companies;
- (2) Define and regulate the operations of mutual holding companies and subsidiary holding companies of mutual holding companies; and
- (3) Set forth the procedures for securing approval for these transactions.

(c) *Scope.* Except as the Board may otherwise determine, the reorganization of mutual savings associations into mutual holding companies, any related stock issuances by subsidiary holding companies, and the conversion of mutual holding companies into stock form are exclusively governed by the provisions of this part, and no mutual savings association shall reorganize to a mutual holding company, no subsidiary holding company of a mutual holding company shall issue minority stock, and no mutual holding company shall convert into stock form without the prior written approval of the Board. The Board may grant a waiver in writing from any requirement of this part for good cause shown.

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SECTION 239.2—Definitions

As used in this part and in the forms under this part, the following definitions apply, unless the context otherwise requires:

(a) *Acquiree association* means any savings association, other than a resulting association, that:

- (1) Is acquired by a mutual holding com-

pany as part of, and concurrently with, a mutual holding company reorganization; and

(2) Is in the mutual form immediately prior to such acquisition.

(b) *Acting in concert* has the same meaning as in section 238.31(b) of this chapter.

(c) *Affiliate* has the same meaning as in section 238.2(a) of this chapter.

(d) *Associate* of a person is:

(1) A corporation or organization (other than the mutual holding company, subsidiary holding company, or any majority-owned subsidiaries of such holding companies), if the person is a senior officer or partner, or beneficially owns, directly or indirectly, 10 percent or more of any class of equity securities of the corporation or organization.

(2) A trust or other estate, if the person has a substantial beneficial interest in the trust or estate or is a trustee or fiduciary of the trust or estate. For purposes of sections 239.59(k), 239.59(m), 239.59(n), 239.59(o), 239.59(p), 239.63(b), a person who has a substantial beneficial interest in the mutual holding company or subsidiary holding company’s tax-qualified or non-tax-qualified employee stock benefit plan, or who is a trustee or a fiduciary of the plan, is not an associate of the plan. For the purposes of section 239.59(k), the mutual holding company or subsidiary holding company’s tax-qualified employee stock benefit plan is not an associate of a person.

(3) Any natural person who is related by blood or marriage to such person and:

- (i) Who lives in the same home as the person; or
- (ii) Who is a director or senior officer of the mutual holding company, subsidiary holding company, or other subsidiary.

(e) *Company* means any corporation, partnership, trust, association, joint venture, pool, syndicate, unincorporated organization, joint-stock company or similar organization, as defined in paragraph (u) of this section; but a company does not include:

- (1) The Federal Deposit Insurance Corpora-

tion, the Resolution Trust Corporation, or any Federal Home Loan Bank, or

(2) Any company the majority of shares of which is owned by:

- (i) The United States or any State,
- (ii) An officer of the United States or any State in his or her official capacity, or
- (iii) An instrumentality of the United States or any State.

(f) *Control* has the same meaning as in section 238.2(e) of this chapter.

(g) *Default* means any adjudication or other official determination of a court of competent jurisdiction or other public authority pursuant to which a conservator, receiver, or other legal custodian is appointed for a mutual holding company or subsidiary savings association of a mutual holding company.

(h) *Demand accounts* mean non-interest-bearing demand deposits that are subject to check or to withdrawal or transfer on negotiable or transferable order to the savings association and that are permitted to be issued by statute, regulation, or otherwise and are payable on demand.

(i) *Insider* means any officer or director of a company or of any affiliate of such company, and any person acting in concert with any such officer or director.

(j) *Member* means any depositor or borrower of a mutual savings association that is entitled, under the charter of the savings association, to vote on matters affecting the association, and any depositor or borrower of a subsidiary savings association of a mutual holding company that is entitled, under the charter of the mutual holding company, to vote on matters affecting the mutual holding company.

(k) *Mutual holding company* means a holding company organized in mutual form under this part, and unless otherwise indicated, a subsidiary holding company controlled by a mutual holding company, organized under this part.

(l) *Parent* means any company which directly or indirectly controls any other company or companies.

(m) *Person* includes an individual, bank, corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, or any other form of entity.

(n) *Reorganization Notice* means a notice of a proposed mutual holding company reorganization that is in the form and contains the information required by the Board.

(o) *Reorganization Plan* means a plan to reorganize into the mutual holding company format containing the information required by section 239.6.

(p) *Reorganizing association* means a mutual savings association that proposes to reorganize to become a mutual holding company pursuant to this part.

(q) *Resulting association* means a savings association in the stock form that is organized as a subsidiary of a reorganizing association to receive the substantial part of the assets and liabilities (including all deposit accounts) of the reorganizing association upon consummation of the reorganization.

(r) *Savings account* means any withdrawable account, except a demand account, a tax and loan account, a note account, a United States Treasury general account, or a United States Treasury time deposit-open account.

(s) *Savings Association* has the same meaning as in section 238.2(l) of this chapter.

(t) *Savings and loan holding company* has the same meaning as specified in section 10(a)(1) of the HOLA and section 238.2(m) of this chapter.

(u) *Similar organization* for purposes of paragraph (e) of this section means a combination of parties with the potential for or practical likelihood of continuing rather than temporary existence, where the parties thereto have knowingly and voluntarily associated for a common purpose pursuant to identifiable and binding relationships which govern the parties with respect to either:

- (1) The transferability and voting of any stock or other indicia of participation in another entity, or
- (2) Achievement of a common or shared

objective, such as to collectively manage or control another entity.

(v) *Stock* means common or preferred stock, or any other type of equity security, including (without limitation) warrants or options to acquire common or preferred stock, or other securities that are convertible into common or preferred stock.

(w) *Stock Issuance Plan* means a plan, submitted pursuant to section 239.24 and containing the information required by section 239.25, providing for the issuance of stock by a subsidiary holding company.

(x) *Subsidiary* means any company which is owned or controlled directly or indirectly by a person, and includes any service corporation owned in whole or in part by a savings association, or a subsidiary of such service corporation.

(y) *Subsidiary holding company* means a federally chartered stock holding company controlled by a mutual holding company that owns the stock of a savings association whose depositors have membership rights in the parent mutual holding company.

(z) *Tax and loan account* means an account, the balance of which is subject to the right of immediate withdrawal, established for receipt of payments of Federal taxes and certain United States obligations. Such accounts are not savings accounts or savings deposits.

(aa) *Tax-qualified employee stock benefit plan* means any defined benefit plan or defined contribution plan, such as an employee stock ownership plan, stock bonus plan, profit-sharing plan, or other plan, and a related trust, that is qualified under sec. 401 of the Internal Revenue Code (26 U.S.C. 401).

(bb) *United States Treasury General Account* means an account maintained in the name of the United States Treasury the balance of which is subject to the right of immediate withdrawal, except in the case of the closure of the member, and in which a zero balance may be maintained. Such accounts are not savings accounts or savings deposits.

(cc) *United States Treasury Time Deposit Open Account* means a non-interest-bearing

account maintained in the name of the United States Treasury which may not be withdrawn prior to the expiration of 30 days' written notice from the United States Treasury, or such other period of notice as the Treasury may require. Such accounts are not savings accounts or savings deposits.

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SUBPART B—MUTUAL HOLDING COMPANIES

SECTION 239.3—Mutual Holding Company Reorganizations

(a) A mutual savings association may not reorganize to become a mutual holding company, or join in a mutual holding company reorganization as an acquiree association, unless it satisfies the following conditions:

- (1) A Reorganization Plan is approved by a majority of the board of directors of the reorganizing association and any acquiree association;
- (2) A Reorganization Notice is filed with the Board pursuant to section 238.14 of this chapter;
- (3) The Reorganization Plan is submitted to the members of the reorganizing association and any acquiree association pursuant and is approved by a majority of the total votes of the members of each association eligible to be cast at a meeting held at the call of each association's directors in accordance with the procedures prescribed by each association's charter and bylaws; and
- (4) All necessary regulatory approvals have been obtained and all conditions imposed by the Board have been satisfied.

(b) Upon receipt of an application under this section, the Reserve Bank will promptly furnish notice and a copy of the Reorganization Plan to the primary federal supervisor of any savings association involved in the transaction. The primary supervisor will have 30 calendar days from the date of the letter giving notice in which to submit its views and recommendations to the Board.

4-765.1**SECTION 239.4—Grounds for Disapproval of Reorganizations**

(a) *Basic standards.* The Board may disapprove a proposed mutual holding company reorganization filed pursuant to section 239.3(a) if:

- (1) Disapproval is necessary to prevent unsafe or unsound practices;
- (2) The financial or managerial resources of the reorganizing association or any acquiree association warrant disapproval;
- (3) The proposed capitalization of the mutual holding company fails to meet the requirements of paragraph (b) of this section;
- (4) A stock issuance is proposed in connection with the reorganization pursuant to section 239.24 that fails to meet the standards established by that section;
- (5) The reorganizing association or any acquiree association fails to furnish the information required to be included in the Reorganization Notice or any other information requested by the Board in connection with the proposed reorganization; or
- (6) The proposed reorganization would violate any provision of law, including (without limitation) section 239.3(a) and (c) (regarding board of directors and membership approval) or section 239.5(a) (regarding continuity of membership rights).

(b) *Capitalization.*

- (1) The Board shall disapprove a proposal by a reorganizing association or any acquiree association to capitalize a mutual holding company in an amount in excess of a nominal amount if immediately following the reorganization, the resulting association or the acquiree association would fail to be “adequately capitalized” under the regulatory capital requirements applicable to the savings association.
- (2) Proposals by reorganizing associations and acquiree associations to capitalize mutual holding companies shall also comply with any applicable statutes, and with regulations or written policies of the Comptroller of the Currency or the Federal Deposit Insurance Corporation, as applicable, gov-

erning capital distributions by savings associations in effect at the time of the reorganization.

(c) *Presumptive disqualifiers.*

(1) *Managerial resources.* The factors specified in section 238.15(d)(1)(i) through (vi) of this chapter shall give rise to a rebuttable presumption that the managerial resources test of paragraph (a)(2) of this section is not met. For this purpose, each place the term acquiror appears in section 238.15(d)(1)(i) through (vi) of this chapter, it shall be read to mean the reorganizing association or any acquiree association, and the reference in section 238.15(d)(1)(v) of this chapter to filings under this part shall be deemed to include filings under either part 238 of this chapter or this part.

(2) *Safety and soundness and financial resources.* Failure by a reorganizing association and any acquiree association to submit a business plan in connection with a Reorganization Notice, or submission of a business plan that projects activities that are inconsistent with the credit and lending needs of the reorganizing association or acquiree association’s proposed market area or that fails to demonstrate that the capital of the mutual holding company will be deployed in a safe and sound manner, shall give rise to a rebuttable presumption that the safety and soundness and financial resources tests of paragraphs (a)(1) and (a)(2) of this section are not met.

(d) *Failure of the Board to act on a Reorganization Notice within the prescribed time period.* A proposed reorganization that obtains regulatory clearance from the Board due to the operation of section 238.14 of this chapter may take place in the manner proposed, subject to the following conditions:

- (1) The reorganization shall be consummated within one year of the date of the expiration of the Board’s review period under section 238.14 of this chapter;
- (2) The mutual holding company shall not be capitalized in an amount in excess of what is permissible under section 239.4(b);
- (3) No request for regulatory waivers or forbearances shall be deemed granted;

(4) The following information shall be submitted within the specified time frames:

(i) On the business day prior to the date of the reorganization, the chief financial officers of the reorganizing association and any acquiree association shall certify to the Board in writing that no material adverse events or material adverse changes have occurred with respect to the financial condition or operations of their respective associations since the date of the financial statements submitted with the Reorganization Notice;

(ii) No later than thirty days after the reorganization, the mutual holding company shall file with the Board a certification by legal counsel stating the effective date of the reorganization, the exact number of shares of stock of the resulting association and any acquiree association acquired by the mutual holding company and by any other persons, and that the reorganization has been consummated in accordance with section 239.3 and all other applicable laws and regulations and the Reorganization Notice;

(iii) No later than thirty days after the reorganization, the mutual holding company shall file with the Board an opinion from its independent auditors certifying that the reorganization was consummated in accordance with generally accepted accounting principles; and

(iv) No later than thirty days after the reorganization, the mutual holding company shall file with the Board a certification stating that the mutual holding company will not deviate materially, or cause its subsidiary savings associations to deviate materially, from the business plan submitted in connection with the Reorganization Notice, unless prior written approval from the Board is obtained.

(1) Confer upon existing and future depositors of the resulting association the same membership rights in the mutual holding company as were conferred upon depositors by the charter of the reorganizing association as in effect immediately prior to the reorganization;

(2) Confer upon existing and future depositors of any acquiree association or any association that is in the mutual form when acquired by the mutual holding company the same membership rights in the mutual holding company as were conferred upon depositors by the charter of the acquired association immediately prior to acquisition, *provided that* if the acquired association is merged into another association from which the mutual holding company draws members, the depositors of the acquired association shall receive the same membership rights as the depositors of the association into which the acquired association is merged;

(3) Confer upon the borrowers of the resulting association who are borrowers at the time of reorganization the same membership rights in the mutual holding company as were conferred upon them by the charter of the reorganizing association immediately prior to reorganization, but shall not confer any membership rights in connection with any borrowings made after the reorganization; and

(4) Confer upon the borrowers of any acquiree association or any association that is in the mutual form when acquired by the mutual holding company who are borrowers at the time of the acquisition the same membership rights in the mutual holding company as were conferred upon them by the charter of the acquired association immediately prior to acquisition, but shall not confer any membership rights in connection with any borrowings made after the acquisition, *provided that* if the acquired association is merged into another association from which the mutual holding company draws members, the borrowers of the acquired association shall instead receive the same grandfathered membership rights as the borrowers of the association into which the acquired association is merged received at

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SECTION 239.5—Membership Rights

(a) *Depositors and borrowers of resulting associations, acquiree associations, and associations in mutual form when acquired.* The charter of a mutual holding company must:

the time that association became a subsidiary of the mutual holding company.

(b) *Depositors and borrowers of associations in the stock form when acquired.* A mutual holding company that acquires a savings association in the stock form, other than a resulting association or an acquiree association, shall not confer any membership rights upon the depositors and borrowers of such association, unless such association is merged into an association from which the mutual holding company draws members, in which case the depositors of the stock association shall receive the same membership rights as other depositors of the association into which the stock association is merged.

form, and attach and incorporate such charter and bylaws;

(e) Provide that, upon consummation of the reorganization, substantially all of the assets and liabilities (including all savings accounts, demand accounts, tax and loan accounts, United States Treasury General Accounts, or United States Treasury Time Deposit Open Accounts, as those terms are defined in this part) of the reorganizing association shall be transferred to the resulting association, which shall thereupon become an operating subsidiary savings association of the mutual holding company;

(f) Provide that all assets, rights, obligations, and liabilities of whatever nature of the reorganizing association that are not expressly retained by the mutual holding company shall be deemed transferred to the resulting association;

(g) Provide that each depositor in the reorganizing association or any acquiree association immediately prior to the reorganization shall upon consummation of the reorganization receive, without payment, an identical account in the resulting association or the acquiree association, as the case may be (Appropriate modifications should be made to this provision if savings associations are being merged as a part of the reorganization);

(h) Provide that the Reorganization Plan as adopted by the boards of directors of the reorganizing association and any acquiree association may be substantively amended by those boards of directors as a result of comments from regulatory authorities or otherwise prior to the solicitation of proxies from the members of the reorganizing association and any acquiree association to vote on the Reorganization Plan and at any time thereafter with the concurrence of the Board; and that the reorganization may be terminated by the board of directors of the reorganizing association or any acquiree association at any time prior to the meeting of the members of the association called to consider the Reorganization Plan and at any time thereafter with the concurrence of the Board;

(i) Provide that the Reorganization Plan shall

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SECTION 239.6—Contents of Reorganization Plans

Each Reorganization Plan shall contain a complete description of all significant terms of the proposed reorganization, shall attach and incorporate any Stock Issuance Plan proposed in connection with the Reorganization Plan, and shall:

(a) Provide for amendment of the charter and bylaws of the reorganizing association to read in the form of the charter and bylaws of a mutual holding company, and attach and incorporate such charter and bylaws;

(b) Provide for the organization of the resulting association, which shall be an interim federal or state subsidiary savings association of the reorganizing association, and attach and incorporate the proposed charter and bylaws of such association;

(c) If the reorganizing association proposes to form a subsidiary holding company, provide for the organization of a subsidiary holding company and attach and incorporate the proposed charter and bylaws of such subsidiary holding company.

(d) Provide for amendment of the charter and bylaws of any acquiree association to read in the form of the charter and bylaws of a state or federal savings association in the stock

be terminated if not completed within a specified period of time (The time period shall not be more than 24 months from the date upon which the members of the reorganizing association or the date upon which the members of any acquiree association, whichever is earlier, approve the Reorganization Plan and may not be extended by the reorganizing or acquiree association); and

(j) Provide that the expenses incurred in connection with the reorganization shall be reasonable.

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SECTION 239.7—Acquisition and Disposition of Savings Associations, Savings and Loan Holding Companies, and Other Corporations by Mutual Holding Companies

(a) *Acquisitions.*

(1) *Stock savings associations.* A mutual holding company may not acquire control of a savings association that is in the stock form unless the necessary approvals are obtained from the Board, including approval pursuant to section 238.11 of this chapter.

(2) *Mutual savings associations.* A mutual holding company may not acquire a savings association in the mutual form by merger of such association into any subsidiary savings association of such holding company from which the parent mutual holding company draws members or into an interim subsidiary savings association of the mutual holding company, unless:

(i) The proposed acquisition is approved by a majority of the board of directors of the mutual association;

(ii) The proposed acquisition is submitted to the mutual association's members and is approved by a majority of the total votes of the association's members eligible to be cast at a meeting held at the call of the association's directors in accordance with the procedures prescribed by the association's charter and bylaws;

(iii) The necessary approvals are obtained from the Board, including approval pursuant to section 238.11 of this chapter, and any other approvals required to form

an interim association, to amend the charter and bylaws of the association being acquired, and/or to amend the charter and bylaws of the mutual holding company consistent with section 239.6(a); and

(iv) The approval of the members of the mutual holding company is obtained, if the Board advises the mutual holding company in writing that such approval will be required.

(3) *Mutual holding companies.* A mutual holding company that is not a subsidiary holding company may not acquire control of another mutual holding company, including a subsidiary holding company, by merging with or into such company, unless the necessary approvals are obtained from the Board, including approval pursuant to section 238.11 of this chapter. The approval of the members of the mutual holding companies shall also be obtained if the Board advises the mutual holding companies in writing that such approval will be required.

(4) *Stock holding companies.* A mutual holding company may not acquire control of a savings and loan holding company in the stock form that is not a subsidiary holding company, unless the necessary approvals are obtained from the Board, including approval pursuant to section 238.11 of this chapter. The acquired holding company may be held as a subsidiary of the mutual holding company or merged into the mutual holding company.

(5) *Non-controlling acquisitions of savings association stock.* A mutual holding company may acquire non-controlling amounts of the stock of savings associations and savings and loan holding companies subject to the restrictions imposed by 12 U.S.C. 1467a(e) and (q) and sections 238.41 and 238.11 of this chapter.

(6) *Other corporations.* A mutual holding company may not acquire control of, or make non-controlling investments in the stock of, any corporation other than a savings association or savings and loan holding company unless:

(i) (A) Such corporation is engaged exclusively in activities that are permissible for mutual holding companies pursuant to section 239.8(a); or

(B) It is lawful for the stock of such corporation to be purchased by a federal savings association under the applicable regulations of the Comptroller of the Currency or by a state savings association under the applicable regulations of the Federal Deposit Insurance Corporation and the laws of any state where any subsidiary savings association of the mutual holding company has its home office; and

(ii) Such corporation is not controlled, directly or indirectly, by a subsidiary savings association of the mutual holding company.

(b) *Dispositions.*

(1) A mutual holding company shall provide written notice to the appropriate Reserve Bank at least 30 days prior to the effective date of any direct or indirect transfer of any of the stock that it holds in a subsidiary holding company, a resulting association, an acquiree association, or any subsidiary savings association that was in the mutual form when acquired by the mutual holding company, including stock transferred in connection with a pledge pursuant to section 239.8(b) or any transfer of all or a substantial portion of the assets or liabilities of any such subsidiary holding company or association. Any such disposition shall comply with the requirements of this part, as appropriate, and with any other applicable statute or regulation.

(2) A mutual holding company may, subject to applicable laws and regulations, transfer any or all of the stock or cause or permit the transfer of any or all of the assets and liabilities of:

(i) Any subsidiary savings association that was in the stock form when acquired, provided such association is not a resulting association or an acquiree association;

(ii) Any subsidiary holding company acquired pursuant to paragraph (a)(4) of this section; or

(iii) Any corporation other than a savings association or savings and loan holding company.

(3) A mutual holding company may, subject

to applicable laws and regulations, transfer any stock acquired pursuant to paragraph (a)(5) of this section.

(4) No transfer authorized by this section may be made to any insider of the mutual holding company, any associate of an insider of the mutual holding company, or any tax-qualified or non-tax-qualified employee stock benefit plan of the mutual holding company unless the mutual holding company provides notice to the appropriate Reserve Bank at least 30 days prior to the effective date of the proposed transfer. This notice shall be in addition to any other application or notice required under applicable laws or regulations, including those imposed by this part or Regulation LL.

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SECTION 239.8—Operating Restrictions

(a) *Activities restrictions.* A mutual holding company may engage in any business activity specified in 12 U.S.C. 1467a(c)(2) or (c)(9)(A)(ii). In addition, the business activities of subsidiaries of mutual holding companies may include the activities specified in section 239.7(a)(6). A mutual holding company or its subsidiaries may engage in the foregoing activities only upon compliance with the procedures specified in sections 238.53(c) or 238.54(b) of this chapter.

(b) *Pledging stock.*

(1) No mutual holding company may pledge the stock of its resulting association, an acquiree association, or any subsidiary savings association that was in the mutual form when acquired by the mutual holding company (or its parent mutual holding company), unless the proceeds of the loan secured by the pledge are infused into the association whose stock is pledged. No mutual holding company may pledge the stock of its subsidiary holding company unless the proceeds of the loan secured by the pledge are infused into any subsidiary savings association of the subsidiary holding company that is a resulting association, an acquiree association, or a subsidiary savings association that was in the mutual form when acquired by the subsidiary holding

company (or its parent mutual holding company). In the event the subsidiary holding company has more than one subsidiary savings association, the loan proceeds shall, unless otherwise approved by the Board, be infused in equal amounts to each subsidiary savings association. Any amount of the stock of such association or subsidiary holding company may be pledged for these purposes. Nothing in this paragraph shall be deemed to prohibit:

(i) The payment of dividends from a subsidiary savings association to its mutual holding company parent to the extent otherwise permissible; or

(ii) The payment of dividends from a subsidiary holding company to its mutual holding company parent to the extent otherwise permissible; or

(iii) A mutual holding company from pledging the stock of more than one subsidiary savings association provided that the stock pledged of each such subsidiary association is proportionate to the proceeds of the loan infused into each subsidiary association.

(2) Any mutual holding company that fails to make any payment on a loan secured by the pledge of stock pursuant to paragraph (b)(1) of this section on or before the date on which such payment is due shall, on the first day after such payment is due, provide written notice of nonpayment to the appropriate Reserve Bank.

(c) *Restrictions on stock repurchases.*

(1) No subsidiary holding company that has any stockholders other than its parent mutual holding company may repurchase any share of stock within one year of its date of issuance (which may include the time period the shares issued by the savings association were outstanding if the subsidiary holding company was formed after the initial issuance by the savings association), unless the repurchase:

(i) Is in compliance with the requirements set forth in section 239.63;

(ii) Is part of a general repurchase made on a pro rata basis pursuant to an offer approved by the Board and made to all stockholders of the association or subsid-

iary holding company (except that the parent mutual holding company may be excluded from the repurchase with the Board's approval);

(iii) Is limited to the repurchase of qualifying shares of a director; or

(iv) Is purchased in the open market by a tax-qualified or non-tax-qualified employee stock benefit plan of the savings association (or of a subsidiary holding company) in an amount reasonable and appropriate to fund such plan.

(2) No mutual holding company may purchase shares of its subsidiary savings association or subsidiary holding company within one year after a stock issuance, except if the purchase complies with section 239.63. For purposes of this section, the reference in section 239.63 to five percent refers to minority shareholders.

(d) *Restrictions on waiver of dividends.*

(1) A mutual holding company may waive the right to receive any dividend declared by a subsidiary of the mutual holding company, if—

(i) No insider of the mutual holding company, associate of an insider, or tax qualified or non-tax-qualified employee stock benefit plan of the mutual holding company holds any share of the stock in the class of stock to which the waiver would apply; or

(ii) The mutual holding company gives written notice to the Board of the intent of the mutual holding company to waive the right to receive dividends, not later than 30 days before the date of the proposed date of payment of the dividend, and the Board does not object to the waiver.

(2) A notice of a waiver under paragraph (d)(1)(ii) of this section shall include a copy of the resolution of the board of directors of the mutual holding company together with any supporting materials relied upon by the board of directors of the mutual holding company, concluding that the proposed dividend waiver is consistent with the fiduciary duties of the board of directors to the mutual members of the mutual holding company. The resolution shall include:

(i) A description of the conflict of interest that exists because of a mutual holding company director's ownership of stock in the subsidiary declaring dividends and any actions the mutual holding company and board of directors have taken to eliminate the conflict of interest, such as waiver by the directors of their right to receive dividends;

(ii) A finding by the mutual holding company's board of directors that the waiver of dividends is consistent with the board of directors' fiduciary duties despite any conflict of interest;

(iii) If the mutual holding company has pledged the stock of a subsidiary holding company or subsidiary savings association as collateral for a loan made to the mutual holding company, or is subject to any other loan agreement, an affirmation that the mutual holding company is able to meet the terms of the loan agreement; and

(iv) An affirmation that a majority of the mutual members of the mutual holding company eligible to vote have, within the 12 months prior to the declaration date of the dividend by the subsidiary of the mutual holding company, approved a waiver of dividends by the mutual holding company, and any proxy statement used in connection with the member vote contained—

(A) A detailed description of the proposed waiver of dividends by the mutual holding company and the reasons the board of directors requested the waiver of dividends;

(B) The disclosure of any mutual holding company director's ownership of stock in the subsidiary declaring dividends and any actions the mutual holding company and board of directors have taken to eliminate the conflict of interest, such as the directors waiving their right to receive dividends; and

(C) A provision providing that the proxy concerning the waiver of dividends given by the mutual members may be used for no more than 12 months from the date it is given.

(3) The Board may not object to a waiver of dividends under paragraph (d)(1)(ii) of this section if:

(i) The waiver would not be detrimental to the safe and sound operation of the savings association;

(ii) The board of directors of the mutual holding company expressly determines that a waiver of the dividend by the mutual holding company is consistent with the fiduciary duties of the board of directors to the mutual members of the mutual holding company; and

(iii) The mutual holding company has, prior to December 1, 2009—

(A) Reorganized into a mutual holding company under section 10(o) of HOLA;

(B) Issued minority stock either from its mid-tier stock holding company or its subsidiary stock savings association; and

(C) Waived dividends it had a right to receive from the subsidiary stock savings association.

(4) For a mutual holding company that does not meet each of the conditions in paragraph (d)(3) of this section, the Board will not object to a waiver of dividends under paragraph (d)(1)(ii) of this section if:

(i) The savings association currently operates in a manner consistent with the safe and sound operation of a savings association, and the waiver is not detrimental to the safe and sound operation of the savings association;

(ii) If the mutual holding company has pledged the stock of a subsidiary holding company or subsidiary savings association as collateral for a loan made to the mutual holding company, or is subject to any other loan agreement, an affirmation that the mutual holding company is able to meet the terms of the loan agreement;

(iii) Within the 12 months prior to the declaration date of the dividend by the subsidiary of the mutual holding company, a majority of the mutual members of the mutual holding company has approved the waiver of dividends by the mutual holding company. Any proxy

statement used in connection with the member vote must contain—

(A) A detailed description of the proposed waiver of dividends by the mutual holding company and the reasons the board of directors requested the waiver of dividends;

(B) The disclosure of any mutual holding company director's ownership of stock in the subsidiary declaring dividends and any actions the mutual holding company and board of directors have taken to eliminate the conflict of interest, such as the directors waiving their right to receive dividends; and

(C) A provision providing that the proxy concerning the waiver of dividends given by the mutual members may be used for no more than 12 months from the date it is given;

(iv) The board of directors of the mutual holding company expressly determines that the waiver of dividends is consistent with the board of directors' fiduciary duties despite any conflict of interest;

(v) (A) A majority of the entire board of directors of the mutual holding company approves the waiver of dividends and any director with direct or indirect ownership, control, or the power to vote shares of the subsidiary declaring the dividend, or who otherwise directly or indirectly benefits through an associate from the waiver of dividends, has abstained from the board vote; or

(B) Each officer or director of the mutual holding company or its affiliates, associate of such officer or director, and any tax-qualified or non-tax-qualified employee stock benefit plan in which such officer or director participates that holds any share of the stock in the class of stock to which the waiver would apply waives the right to receive any dividend declared by a subsidiary of the mutual holding company;

(vi) The Board does not object to the amount of dividends declared by a subsidiary of the mutual holding company. In reviewing whether a declaration by a

subsidiary of the mutual holding company is appropriate, the Board may consider, among other factors, the reasonableness of the entire dividend distribution declared if the waiver is not approved;

(vii) The waived dividends are excluded from the capital accounts of the subsidiary holding company or savings association, as applicable, for purposes of calculating any future dividend payments;

(viii) The mutual holding company appropriately accounts for all waived dividends in a manner that permits the Board to consider the waived dividends in evaluating the proposed exchange ratio in the event of a full conversion of the mutual holding company to stock form; and

(ix) The mutual holding company complies with such other conditions as the Board may require to prevent conflicts of interest or actions detrimental to the safe and sound operation of the savings association.

(5) *Valuation.*

(i) The Board will consider waived dividends in determining an appropriate exchange ratio in the event of a full conversion to stock form.

(ii) In the case of a savings association that has reorganized into a mutual holding company, has issued minority stock from a mid-tier stock holding company or a subsidiary stock savings association of the mutual holding company, and has waived dividends it had a right to receive from a subsidiary savings association before December 1, 2009, the Board shall not consider waived dividends in determining an appropriate exchange ratio in the event of a full conversion to stock form.

(e) *Restrictions on issuance of stock to insiders.* A subsidiary of a mutual holding company that is not a savings association or subsidiary holding company may issue stock to any insider, associate of an insider or tax-qualified or non-tax-qualified employee stock benefit plan of the mutual holding company or any subsidiary of the mutual holding company, provided that such persons or plans pro-

vide written notice to the appropriate Reserve Bank at least 30 days prior to the stock issuance, and the Reserve Bank or the Board does not object to the subsequent stock issuance. Subsidiary holding companies may issue stock to such persons only in accordance with section 239.24.

(f) *Applicability of rules governing savings and loan holding companies.* Except as expressly provided in this part, mutual holding companies shall be subject to the provisions of 12 U.S.C. 1467a and 3201 *et seq.* and the provisions of parts 207, 228, and 238 of this chapter.

(g) *Separate vote for charitable organization contribution.* In a mutual holding company stock issuance, a separate vote of a majority of the outstanding shares of common stock held by stockholders other than the mutual holding company or subsidiary holding company must approve any charitable organization contribution.

4-765.6

SECTION 239.9—Conversion or Liquidation of Mutual Holding Companies

(a) *Conversion.*

(1) *Generally.* A mutual holding company may convert to the stock form in accordance with the rules and regulations set forth in subpart E of this part.

(2) Exchange of subsidiary savings association or subsidiary holding company stock. Any stock issued by a subsidiary savings association, or by a subsidiary holding company pursuant to section 239.24, of a mutual holding company to persons other than the parent mutual holding company may be exchanged for the stock issued by the successor to parent mutual holding company in connection with the conversion of the parent mutual holding company to stock form. The parent mutual holding company and the subsidiary holding company must demonstrate to the satisfaction of the Board that the basis for the exchange is fair and reasonable.

(3) If a subsidiary holding company or sub-

subsidiary savings association has issued shares to an entity other than the mutual holding company, the conversion of the mutual holding company to stock form may not be consummated unless a majority of the shares issued to entities other than the mutual holding company vote in favor of the conversion. This requirement applies in addition to any otherwise required account holder or shareholder votes.

(b) *Involuntary liquidation.*

(1) The Board may file a petition with the federal bankruptcy courts requesting the liquidation of a mutual holding company pursuant to 12 U.S.C. 1467a(o)(9) and title 11, United States Code, upon the occurrence of any of the following events:

(i) The default of the resulting association, any acquiree association, or any subsidiary savings association of the mutual holding company that was in the mutual form when acquired by the mutual holding company;

(ii) The default of the parent mutual holding company or its subsidiary holding company; or

(iii) Foreclosure on any pledge by the mutual holding company of subsidiary savings association stock or subsidiary holding company stock.

(2) Except as provided in paragraph (b)(3) of this section, the net proceeds of any liquidation of any mutual holding company shall be transferred to the members of the mutual holding company and, if applicable, the stock holders of the subsidiary holding company in accordance with the charter of the mutual holding company and, if applicable, the charter of the subsidiary holding company.

(3) If the FDIC incurs a loss as a result of the default of any subsidiary savings association of a mutual holding company and that mutual holding company is liquidated pursuant to paragraph (b)(1) of this section, the FDIC shall succeed to the membership interests of the depositors of such savings association in the mutual holding company to the extent of the FDIC's loss.

(c) *Voluntary liquidation.* The provisions of

section 239.16 shall apply to mutual holding companies.

4-765.7

SECTION 239.10—Procedural Requirements

(a) *Proxies and proxy statements.*

(1) *Solicitation of proxies.* The provisions of sections 239.56 and 239.57(a) through (d) and (f) through (h) shall apply to all solicitations of proxies by any person in connection with any membership vote required by this part. Proxy materials must be in the form specified by the Board and contain the information specified in sections 239.57(b) and 239.57(d), to the extent such information is relevant to the action that members are being asked to approve, with such additions, deletions, and other modifications as are required under this part, or as are necessary or appropriate under the disclosure standard set forth in section 239.57(f). File proxies and proxy statements in accordance with section 239.55(c) and address them to the appropriate Reserve Bank. For purposes of this paragraph, the term *conversion*, as it appears in the provisions of part subpart E of this part, refers to *the reorganization, the stock issuance, or other corporate action*, as appropriate.

(2) *Additional proxy disclosure requirements.* In addition to the requirements in paragraph (a) of this section, all proxies requesting accountholder approval of a mutual holding company reorganization shall address in detail:

- (i) The reasons for the reorganization, including the relative advantages and disadvantages of undertaking the transaction proposed instead of a standard conversion;
- (ii) Whether management believes the reorganization is in the best interests of the association and its accountholders and the basis of that belief;
- (iii) The fiduciary duties owed to accountholders by the association's officers and directors and why the reorganization is in accord with those duties and

is otherwise equitable to the accountholders and the association;

- (iv) Any compensation agreements that will be entered into by management in connection with the reorganization; and
- (v) Whether the mutual holding company intends to waive dividends, the implications to accountholders, and the reasons such waivers are consistent with the fiduciary duties of the directors of the mutual holding company.

(3) *Nonconforming minority stock issuances.* Subsidiary holding companies proposing non-conforming minority stock issuances pursuant to section 239.24(c)(6)(ii) must include in the proxy materials to accountholders seeking approval of a proposed reorganization an additional disclosure statement that serves as a cover sheet that clearly addresses:

- (i) The consequences to accountholders of voting to approve a reorganization in which their subscription rights are prioritized differently and potentially eliminated; and
- (ii) Any intent by the mutual holding company to waive dividends, and the implications to accountholders.

(4) *Use of "running" proxies.* Unless otherwise prohibited, a mutual holding company may make use of any proxy conferring general authority to vote on any and all matters at any meeting of members, provided that the member granting such proxy has been furnished a proxy statement regarding the matters and the member does not grant a later-dated proxy to vote at the meeting at which the matter will be considered or attend such meeting and vote in person, and further provided that "running" proxies or similar proxies may not be used to vote for a mutual holding company reorganization, mutual-to-stock conversion undertaken by a mutual holding company, dividend waiver, or any other material transaction. Subject to the limitations set forth in this paragraph, any proxy conferring on the board of directors or officers of a mutual savings association general authority to cast a member's votes on any and all matters presented to the members shall be deemed to cover the member's votes as a member of the mutual

holding company and such authority shall be conferred on the board of directors or officers of a mutual holding company.

(b) *Applications under this part.* Except as provided in paragraph (c) of this section, any application, notice or certification required to be filed with the Board under this part must be filed in accordance with section 238.14 of this chapter. The Board will review any filing made under this part in accordance with section 238.14 of this chapter.

(c) *Reorganization Notices and stock issuance applications.*

(1) *Contents.* Each Reorganization Notice submitted to the appropriate Reserve Bank pursuant to section 239.3(a) and each application for approval of the issuance of stock submitted to the appropriate Reserve Bank pursuant to section 239.24(a) shall be in the form and contain the information specified by the Board.

(2) *Filing instructions.* Any Reorganization Notice submitted under section 239.3(a) must be filed in accordance with section 238.14 of this chapter. Any stock issuance application submitted pursuant to section 239.24(a) shall be filed in accordance with section 239.55.

(3) *Public notice, public comment, and meetings.* Mutual holding company reorganizations are subject to applicable public notice, public comment, and meeting requirements under the Bank Merger Act regulations at section 238.11(e) of this chapter and the Savings and Loan Holding Company Act regulations at section 238.14 of this chapter.

(d) *Amendments.* Any mutual holding company may amend any notice or application submitted pursuant to this part or file additional information with respect thereto upon request of the Board or upon the mutual holding company's own initiative.

(e) *Time-frames.* All Reorganization Notices and applications filed pursuant to this part must be processed in accordance with the processing procedures at section 238.14 of this chapter. Any related approvals requested in connection with Reorganization Notices or applications for approval of stock issuances (in-

cluding, without limitation, requests for approval to transfer assets to resulting associations, to acquire acquiree associations, and to organize resulting associations or interim associations, and requests for approval of charters, bylaws, and stock forms) shall be processed pursuant to the procedures specified in this section in conjunction with the Reorganization Notice or stock issuance application to which they pertain, rather than pursuant to any inconsistent procedures specified elsewhere in this chapter. The approval standards for all such related applications, however, shall remain unchanged. The review by the Board of any materials used in connection with the issuance of stock under section 239.24 must not be subject to the applications processing time-frames set forth in sections 238.14(f) and (g) of this chapter.

(f) *Disclosure.* The rules governing disclosure of any notice or application submitted pursuant to this part, or any public comment submitted pursuant to paragraph (c) of this section, shall be the same as set forth in section 238.14(b) of this chapter for notices, applications, and public comments filed under section 238.14 of this chapter.

(g) *Appeals.* Any party aggrieved by a final action by the Board which approves or disapproves any application or notice pursuant to this part may obtain review of such action in accordance with 12 U.S.C. 1467a(j).

(h) *Federal preemption.* This part preempts state law with regard to the creation and regulation of mutual holding companies.

4-765.8

SECTION 239.11—Subsidiary Holding Companies

(a) *Subsidiary holding companies.* A mutual holding company may establish a subsidiary holding company as a direct subsidiary to hold 100 percent of the stock of its subsidiary savings association. The formation and operation of the subsidiary holding company may not be utilized as a means to evade or frustrate the purposes of this part. The subsidiary holding company may be established either at the time of the initial mutual holding company

reorganization or at a subsequent date, subject to the approval of the Board.

(b) *Stock issuances.* Sections 239.24 and 239.25 apply to issuance of stock by a subsidiary holding company. In the case of a stock issuance by a subsidiary holding company, the aggregate amount of outstanding common stock of the association owned or controlled by persons other than the subsidiary holding company's mutual holding company parent at the close of the proposed issuance shall be less than 50 percent of the subsidiary holding company's total outstanding common stock.

(c) *Charters and bylaws for subsidiary holding companies.* The charter and bylaws of a subsidiary holding company shall be in the form set forth in Appendices B and D, respectively.

4-765.9

SECTION 239.12—Communication between Members of a Mutual Holding Company

(a) *Right of communication with other members.* A member of a mutual holding company has the right to communicate, as prescribed in paragraph (b) of this section, with other members of the mutual holding company regarding any matter related to the mutual holding company's affairs, except for "improper" communications, as defined in paragraph (c) of this section. The mutual holding company may not defeat that right by redeeming a savings member's savings account in the subsidiary savings association.

(b) *Member communication procedures.* If a member of a mutual holding company desires to communicate with other members, the following procedures shall be followed:

- (1) The member shall give the mutual holding company a written request to communicate;
- (2) If the proposed communication is in connection with a meeting of the mutual holding company's members, the request shall be given at least thirty days before the annual meeting or 10 days before a special meeting;
- (3) The request shall contain—

- (i) The member's full name and address;
 - (ii) The nature and extent of the member's interest in the mutual holding company at the time the information is given;
 - (iii) A copy of the proposed communication; and
 - (iv) If the communication is in connection with a meeting of the members, the date of the meeting;
- (4) The mutual holding company shall reply to the request within either—
- (i) Fourteen days;
 - (ii) Ten days, if the communication is in connection with the annual meeting; or
 - (iii) Three days, if the communication is in connection with a special meeting;
- (5) The reply shall provide either—
- (i) The number of the mutual holding company's members and the estimated reasonable cost to the mutual holding company of mailing to them the proposed communication; or
 - (ii) Notification that the mutual holding company has determined not to mail the communication because it is "improper", as defined in paragraph (c) of this section;
- (6) After receiving the amount of the estimated costs of mailing and sufficient copies of the communication, the mutual holding company shall mail the communication to all members, by a class of mail specified by the requesting member, either—
- (i) Within fourteen days;
 - (ii) Within seven days, if the communication is in connection with the annual meeting;
 - (iii) As soon as practicable before the meeting, if the communication is in connection with a special meeting; or
 - (iv) On a later date specified by the member;
- (7) If the mutual holding company refuses to mail the proposed communication, it shall return the requesting member's materials together with a written statement of the specific reasons for refusal, and shall simultaneously send to the appropriate Reserve Bank a copy of each of the requesting member's materials, the mutual holding company's written statement, and any other

relevant material. The materials shall be sent within:

- (i) Fourteen days,
- (ii) Ten days if the communication is in connection with the annual meeting, or
- (iii) Three days, if the communication is in connection with a special meeting, after the mutual holding company receives the request for communication.

(c) *Improper communication.* A communication is an “improper communication” if it contains material which:

- (1) At the time and in the light of the circumstances under which it is made:
 - (i) Is false or misleading with respect to any material fact; or
 - (ii) Omits a material fact necessary to make the statements therein not false or misleading, or necessary to correct a statement in an earlier communication on the same subject which has become false or misleading;
- (2) Relates to a personal claim or a personal grievance, or is solicitous of personal gain or business advantage by or on behalf of any party;
- (3) Relates to any matter, including a general economic, political, racial, religious, social, or similar cause, that is not significantly related to the business of the mutual holding company or is not within the control of the mutual holding company; or
- (4) Directly or indirectly and without expressed factual foundation:
 - (i) Impugns character, integrity, or personal reputation,
 - (ii) Makes charges concerning improper, illegal, or immoral conduct, or
 - (iii) Makes statements impugning the stability and soundness of the mutual holding company.

4-765.91

SECTION 239.13—Charters

(a) *Charters.* The charter of a mutual holding company shall be in the form set forth in Appendix A of this part and may be amended pursuant to this paragraph. The Board may amend the form of charter set forth in Appendix A to this part.

(b) *Corporate title.* The corporate title of each mutual holding company shall include the term “mutual” or the abbreviation “M.H.C.”

(c) *Availability of charter.* A mutual holding company shall make available to its members at all times in the offices of each subsidiary savings association from which the mutual holding company draws members a true copy of its charter, including any amendments, and shall deliver such a copy to any member upon request.

4-765.92

SECTION 239.14—Charter Amendments

(a) *General.* In order to adopt a charter amendment, a mutual holding company must comply with the following requirements:

(1) *Board of directors approval.* The board of directors of the mutual holding company must adopt a resolution proposing the charter amendment that states the text of such amendment;

(2) *Form of filing.*

(i) *Application requirement.* If the proposed charter amendment would render more difficult or discourage a merger, proxy contest, the assumption of control by a mutual account holder of the mutual holding company, or the removal of incumbent management; or involve a significant issue of law or policy; then, the mutual holding shall submit the charter amendment to the appropriate Reserve Bank for approval. Applications submitted under this paragraph are subject to the processing procedures at section 238.14 of this chapter.

(ii) *Notice requirement.* If the proposed charter amendment does not implicate paragraph (a)(2)(i) of this section and is permissible under all applicable laws, rules and regulations, the mutual holding company shall submit the proposed amendment to the appropriate Reserve Bank at least 30 days prior to the effective date of the proposed charter amendment.

(b) *Approval.* Any charter amendment filed pursuant to paragraph (a)(2)(ii) of this section

shall automatically be approved 30 days from the date of filing of such amendment with the appropriate Reserve Bank, provided that the mutual holding company follows the requirements of its charter in adopting such amendment, unless the Reserve Bank or the Board notifies the mutual holding company prior to the expiration of such 30-day period that such amendment is rejected or is deemed to be filed under the provisions of paragraph (a)(2)(i) of this section. Notwithstanding anything in paragraph (a) of this section to the contrary, the following charter amendments, including the adoption of the Federal mutual holding company charter as set forth in Appendix A, shall be effective and deemed approved at the time of adoption, if adopted without change and filed with Board, within 30 days after adoption, provided the mutual holding company follows the requirements of its charter in adopting such amendments.

(1) *Title change.*

(i) Subject to section 239.13 and this paragraph (b), a mutual holding company may amend its charter by substituting a new corporate title in section 1 of its charter.

(ii) Prior to changing its corporate title, a mutual holding company must file with the Board a written notice indicating the intended change. The Board shall provide to the mutual holding company a timely written acknowledgment stating when the notice was received. If, within 30 days of receipt of notice, the Board does not notify the mutual holding company of its objection to the corporate title change on the grounds that the title misrepresents the nature of the institution or the services it offers, the mutual holding company may change its title by amending its charter in accordance with section 239.14(b) or section 239.22 and the amendment provisions of its charter.

(2) *Maximum number of votes.* A mutual holding company may amend section 5 of its charter by substituting the maximum number of votes per member to any number from 1 to 1000.

(c) *Reissuance of charter.* A mutual holding company that has amended its charter may

apply to have its charter, including the amendments, reissued by the Board. Such request for reissuance should be filed with the appropriate Reserve Bank.

4-765.93

SECTION 239.15—Bylaws

(a) *General.* A mutual holding company shall operate under bylaws that contain provisions that comply with all requirements specified by the Board, the provisions of this section, the mutual holding company's charter, and all other applicable laws, rules, and regulations provided that, a bylaw provision inconsistent with the provisions of this section may be adopted with the approval of the Board. Bylaws may be adopted, amended or repealed by a majority of the votes cast by the members at a legal meeting or a majority of the mutual holding company's board of directors. Throughout this section, the term "trustee" may be substituted for the term "director" as relevant.

(b) The following requirements are applicable to mutual holding companies:

(1) *Annual meetings of members.* A mutual holding company shall provide for and conduct an annual meeting of its members for the election of directors and at which any other business of the mutual holding company may be conducted. Such meeting shall be held, as designated by its board of directors, at a location within the state that constitutes the principal place of business of the subsidiary savings association, or at any other convenient place the board of directors may designate, and at a date and time within 150 days after the end of the mutual holding company's fiscal year. At each annual meeting, the officers shall make a full report of the financial condition of the mutual holding company and of its progress for the preceding year and shall outline a program for the succeeding year.

(2) *Special meetings of members.* Procedures for calling any special meeting of the members and for conducting such a meeting shall be set forth in the bylaws. The subject matter of such special meeting must be established in the notice for such meeting.

The board of directors of the mutual holding company or the holders of 10 percent or more of the voting capital shall be entitled to call a special meeting. For purposes of this section, “voting capital” means FDIC-insured deposits as of the voting record date.

(3) *Notice of meeting of members.* Notice specifying the date, time, and place of the annual or any special meeting and adequately describing any business to be conducted shall be published for two successive weeks immediately prior to the week in which such meeting shall convene in a newspaper of general circulation in the city or county in which the principal place of business of the subsidiary savings association is located, or mailed postage prepaid at least 15 days and not more than 45 days prior to the date on which such meeting shall convene to each of its members of record at the last address appearing on the books of the mutual holding company. A similar notice shall be posted in a conspicuous place in each of the offices of the subsidiary savings association during the 14 days immediately preceding the date on which such meeting shall convene. The bylaws may permit a member to waive in writing any right to receive personal delivery of the notice. When any meeting is adjourned for 30 days or more, notice of the adjournment and reconvening of the meeting shall be given as in the case of the original meeting.

(4) *Fixing of record date.* For the purpose of determining members entitled to notice of or to vote at any meeting of members or any adjournment thereof, or in order to make a determination of members for any other proper purpose, the bylaws shall provide for the fixing of a record date and a method for determining from the books of the subsidiary savings association the members entitled to vote. Such date shall be not more than 60 days or fewer than 10 days prior to the date on which the action, requiring such determination of members, is to be taken. The same determination shall apply to any adjourned meeting.

(5) *Member quorum.* Any number of members present and voting, represented in per-

son or by proxy, at a regular or special meeting of the members shall constitute a quorum. A majority of all votes cast at any meeting of the members shall determine any question, unless otherwise required by regulation. At any adjourned meeting, any business may be transacted that might have been transacted at the meeting as originally called. Members present at a duly constituted meeting may continue to transact business until adjournment.

(6) *Voting by proxy.* Procedures shall be established for voting at any annual or special meeting of the members by proxy pursuant to the rules and regulations of the Board, including the placing of such proxies on file with the secretary of the mutual holding company, for verification, prior to the convening of such meeting. Proxies may be given telephonically or electronically as long as the holder uses a procedure for verifying the identity of the member. All proxies with a term greater than eleven months or solicited at the expense of the subsidiary savings association must run to the board of directors as a whole, or to a committee appointed by a majority of such board.

(7) *Communications between members.* Provisions relating to communications between members shall be consistent with section 239.12. No member, however, shall have the right to inspect or copy any portion of any books or records of a mutual holding company containing:

- (i) A list of depositors in or borrowers from the subsidiary savings association;
- (ii) Their addresses;
- (iii) Individual deposit or loan balances or records; or
- (iv) Any data from which such information could be reasonably constructed.

(8) *Number of directors, membership.* The bylaws shall set forth a specific number of directors, not a range. The number of directors shall be not fewer than five nor more than fifteen, unless a higher or lower number has been authorized by the Board. Each director of the mutual holding company shall be a member of the mutual holding company. Directors may be elected for periods of one to three years and until their

successors are elected and qualified, but if a staggered board is chosen, provision shall be made for the election of approximately one-third or one-half of the board each year, as appropriate.

(9) *Meetings of the board.* The board of directors shall determine the place, frequency, time, procedure for notice, which shall be at least 24 hours unless waived by the directors, and waiver of notice for all regular and special meetings. The meetings shall be under the direction of a chairman, appointed annually by the board; or in the absence of the chairman, the meetings shall be under the direction of the president. The board also may permit telephonic participation at meetings. The bylaws may provide for action to be taken without a meeting if unanimous written consent is obtained for such action. A majority of the authorized directors shall constitute a quorum for the transaction of business. The act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the board.

(10) *Officers, employees, and agents.*

(i) The bylaws shall contain provisions regarding the officers of the mutual holding company, their functions, duties, and powers. The officers of the mutual holding company shall consist of a president, one or more vice presidents, a secretary, and a treasurer or comptroller, each of whom shall be elected annually by the board of directors. Such other officers and assistant officers and agents as may be deemed necessary may be elected or appointed by the board of directors or chosen in such other manner as may be prescribed in the bylaws. Any two or more offices may be held by the same person, except the offices of president and secretary.

(ii) All officers and agents of the mutual holding company, as between themselves and the mutual holding company, shall have such authority and perform such duties in the management of the mutual holding company as may be provided in the bylaws, or as may be determined by resolution of the board of directors not inconsistent with the bylaws. In the ab-

sence of any such provision, officers shall have such powers and duties as generally pertain to their respective offices. Any officer may be removed by the board of directors with or without cause, but such removal, other than for cause, shall be without prejudice to the contractual rights, if any, of the officer so removed.

(iii) Any indemnification provision must provide that any indemnification is subject to applicable Federal law, rules, and regulations.

(11) *Vacancies, resignation or removal of directors.* Members of the mutual holding company shall elect directors by ballot: Provided, that in the event of a vacancy on the board, the board of directors may, by their affirmative vote, fill such vacancy, even if the remaining directors constitute less than a quorum. A director elected to fill a vacancy shall be elected to serve only until the next election of directors by the members. The bylaws shall set out the procedure for the resignation of a director, which shall be by written notice or by any other procedure established in the bylaws. Directors may be removed only for cause as defined in section 239.41, by a vote of the holders of a majority of the shares then entitled to vote at an election of directors.

(12) *Powers of the board.* The board of directors shall have the power:

(i) By resolution, to appoint from among its members and remove an executive committee and one or more other committees, which committee[s] shall have and may exercise all the powers of the board between the meetings or the board; but no such committee shall have the authority of the board to amend the charter or bylaws, adopt a plan of merger, consolidation, dissolution, or provide for the disposition of all or substantially all the property and assets of the mutual holding company. Such committee shall not operate to relieve the board, or any member thereof, of any responsibility imposed by law;

(ii) To fix the compensation of directors, officers, and employees; and to remove

any officer or employee at any time with or without cause;

(iii) To exercise any and all of the powers of the mutual holding company not expressly reserved by the charter to the members.

(13) *Nominations for directors.* The bylaws shall provide that nominations for directors may be made at the annual meeting by any member and shall be voted upon, except, however, the bylaws may require that nominations by a member must be submitted to the secretary and then prominently posted in the principal place of business, at least 10 days prior to the date of the annual meeting. However, if such provision is made for prior submission of nominations by a member, then the bylaws must provide for a nominating committee, which, except in the case of a nominee substituted as a result of death or other incapacity, must submit nominations to the secretary and have such nominations similarly posted at least 15 days prior to the date of the annual meeting.

(14) *New business.* The bylaws shall provide procedures for the introduction of new business at the annual meeting. Those provisions may require that such new business be stated in writing and filed with the secretary prior to the annual meeting at least 30 days prior to the date of the annual meeting.

(15) *Amendment.* Bylaws may include any provision for their amendment that would be consistent with applicable law, rules, and regulations and adequately addresses its subject and purpose.

(i) Amendments shall be effective:

(A) After approval by a majority vote of the authorized board, or by a majority of the vote cast by the members of the mutual holding company at a legal meeting; and

(B) After receipt of any applicable regulatory approval.

(ii) When a mutual holding company fails to meet its quorum requirement, solely due to vacancies on the board, the bylaws may be amended by an affirmative vote of a majority of the sitting board.

(16) *Miscellaneous.* The bylaws may also address the subject of age limitations for directors or officers as long as they are consistent with applicable Federal law, rules or regulations, and any other subjects necessary or appropriate for effective operation of the mutual holding company.

(c) *Form of filing.*

(1) *Application requirement.*

(i) Any bylaw amendment shall be submitted to the appropriate Reserve Bank for approval if it would:

(A) Render more difficult or discourage a merger, proxy contest, the assumption of control by a mutual account holder of the mutual holding company, or the removal of incumbent management;

(B) Involve a significant issue of law or policy, including indemnification, conflicts of interest, and limitations on director or officer liability; or

(C) Be inconsistent with the requirements of this section or with applicable laws, rules, regulations, or the mutual holding company's charter.

(ii) Applications submitted under paragraph (c)(1)(i) of this section are subject to the processing procedures at section 238.14 of this chapter.

(iii) For purposes of this paragraph (c), bylaw provisions that adopt the language of the model bylaws contained in Appendix C to this part, if adopted without change, and filed with Board within 30 days after adoption, are effective upon adoption. The Board may amend the model bylaws provided in Appendix C to this part.

(2) *Filing requirement.* If the proposed bylaw amendment does not implicate paragraph (c)(1) or (c)(3) of this section, then the mutual holding company shall submit the amendment to the appropriate Reserve Bank at least 30 days prior to the date the bylaw amendment is to be adopted by the mutual holding company.

(3) *Corporate governance procedures.* A mutual holding company may elect to follow the corporate governance procedures of the laws of the state where the main office

of the institution is located, provided that such procedures may be elected only to the extent not inconsistent with applicable Federal statutes, regulations, and safety and soundness, and such procedures are not of the type described in paragraph (c)(1)(i) of this section. If this election is selected, a mutual holding company shall designate in its bylaws the provision or provisions from the body of law selected for its corporate governance procedures, and shall file a copy of such bylaws, which are effective upon adoption, within 30 days after adoption. The submission shall indicate, where not obvious, why the bylaw provisions do not require an application under paragraph (c)(1)(i) of this section.

(d) *Effectiveness.* Any bylaw amendment filed pursuant to paragraph (c)(2) of this section shall automatically be effective 30 days from the date of filing of such amendment, provided that the mutual holding company follows the requirements of its charter and bylaws in adopting such amendment, unless the Board notifies the mutual holding company prior to the expiration of the 30-day period that such amendment is rejected or that such amendment requires an application to be filed pursuant to paragraph (c)(1) of this section.

(e) *Availability of bylaws.* A mutual holding company shall make available to its members at all times in the offices of each subsidiary savings association from which the mutual holding company draws members a true copy of its bylaws, including any amendments, and shall deliver such a copy to any member upon request.

4-765.94

SECTION 239.16—Voluntary Dissolution

(a) A mutual holding company's board of directors may propose a plan for dissolution of the mutual holding company. All references in this section to mutual holding company shall also apply to a subsidiary holding company organized under this part. The plan may provide for either:

(1) Transfer of all the mutual holding company's assets to another mutual holding

company or home-financing institutions under Federal charter either for cash sufficient to pay all obligations of the mutual holding company and retire all outstanding accounts or in exchange for that mutual holding company's payment of all the mutual holding company's outstanding obligations and issuance of share accounts or other evidence of interest to the mutual holding company's members on a pro rata basis; or

(2) Dissolution in a manner proposed by the directors which they consider best for all concerned.

(b) The plan, and a statement of reasons for proposing dissolution and for proposing the plan, shall be submitted to the appropriate Reserve Bank for approval. The Board will approve the plan if the Board believes dissolution is advisable and the plan is best for all concerned. If the Board considers the plan inadvisable, the Board may either make recommendations to the mutual holding company concerning the plan or disapprove it. When the plan is approved by the mutual holding company's board of directors and by the Board, it shall be submitted to the mutual holding company's members at a duly called meeting and, when approved by a majority of votes cast at that meeting, shall become effective. After dissolution in accordance with the plan, a certificate evidencing dissolution, supported by such evidence as the Board may require, shall immediately be filed with the Board. When the Board receives such evidence satisfactory to the Board, it will terminate the corporate existence of the dissolved mutual holding company and the mutual holding company's charter shall thereby be canceled.

4-766

SUBPART C—SUBSIDIARY HOLDING COMPANIES

SECTION 239.20—Scope

This subpart applies only to a subsidiary holding company of a mutual holding company.

4-766.1**SECTION 239.21—Charters**

(a) *Charters.* The charter of a subsidiary holding company of a mutual holding company shall be in the form set forth in Appendix B of this part and may be amended pursuant to section 239.22. The Board may amend the form of charter provided in Appendix B.

(b) *Optional charter provision limiting minority stock ownership.*

(1) A subsidiary holding company that engages in its initial minority stock issuance after October 1, 2008 may, before it conducts its initial minority stock issuance, at the time it conducts its initial minority stock issuance, or, subject to the condition below, at any time during the five years following a minority stock issuance that such subsidiary holding company conducts in accordance with the purchase priorities set forth in subpart E of this part, include in its charter the provision set forth in paragraph (b)(2) of this section. For purposes of the charter provision set forth in paragraph (b)(2), the definitions set forth at section 239.22(b)(8) apply. This charter provision expires a maximum of five years from the date of the minority stock issuance. The subsidiary holding company may adopt the charter provision set forth in paragraph (b)(2) of this section after a minority stock issuance only if it provided, in the offering materials related to its previous minority stock issuance or issuances, full disclosure of the possibility that the subsidiary holding company might adopt such a charter provision.

(2) *Beneficial ownership limitation.* No person may directly or indirectly offer to acquire or acquire the beneficial ownership of more than 10 percent of the outstanding stock of any class of voting stock of the subsidiary holding company held by persons other than the subsidiary holding company's mutual holding company parent. This limitation expires on [insert date within five years of minority stock issuance] and does not apply to a transaction in which an underwriter purchases stock in connection with a public offering, or the purchase of stock by an employee stock

ownership plan or other tax-qualified employee stock benefit plan which is exempt from the approval requirements under section 238.12(a)(7) of this chapter.

(c) In the event a person acquires stock in violation of this section, all stock beneficially owned in excess of 10 percent shall be considered "excess stock" and shall not be counted as stock entitled to vote and shall not be voted by any person or counted as voting stock in connection with any matters submitted to the stockholders for a vote.

4-766.2**SECTION 239.22—Charter Amendments**

(a) *General.* In order to adopt a charter amendment, a subsidiary holding company must comply with the following requirements:

(1) *Board of directors approval.* The board of directors of the subsidiary holding company must adopt a resolution proposing the charter amendment that states the text of such amendment.

(2) *Form of filing.*

(i) *Application requirement.* If the proposed charter amendment would render more difficult or discourage a merger, tender offer, or proxy contest, the assumption of control by a holder of a block of the subsidiary holding company's stock, the removal of incumbent management, or involve a significant issue of law or policy, the subsidiary holding company shall file the proposed amendment with and shall obtain the prior approval of the Board pursuant to section 238.14 of this chapter; and

(ii) *Notice requirement.* If the proposed charter amendment does not implicate paragraph (a)(2)(i) of this section and such amendment is permissible under all applicable laws, rules or regulations, the subsidiary holding company shall submit the proposed amendments to the appropriate Reserve Bank, at least 30 days prior to the date the proposed charter amendment is to be mailed for consideration by the subsidiary holding company's shareholders.

(b) *Approval.* Any charter amendment filed pursuant to paragraph (a)(2)(ii) of this section shall automatically be approved 30 days from the date of filing of such amendment, provided that the subsidiary holding company follows the requirements of its charter in adopting such amendment, unless the Board notifies the mutual holding company prior to the expiration of such 30-day period that such amendment is rejected or is deemed to be filed under the provisions of paragraph (a)(2)(i) of this section. In addition, the following charter amendments, including the adoption of the charter as set forth in Appendix B of this part, shall be approved at the time of adoption, if adopted without change and filed with the Board within 30 days after adoption, provided the subsidiary holding company follows the requirements of its charter in adopting such amendments.

(1) *Title change.* Prior to changing its corporate title, a subsidiary holding company must file with the appropriate Reserve Bank a written notice indicating the intended change. The Reserve Bank shall provide to the subsidiary holding company a timely written acknowledgment stating when the notice was received. If, within 30 days of receipt of notice, the Reserve Bank or the Board does not notify the subsidiary holding company of its objection on the grounds that the title misrepresents the nature of the institution or the services it offers, the subsidiary holding company may change its title by amending section 1 of its charter in accordance with this section and the amendment provisions of its charter.

(2) *Home office.* A subsidiary holding company may amend its charter by substituting a new domicile in section 2 of its charter.

(3) *Number of shares of stock and par value.* A subsidiary holding company may amend Section 5 of its charter to change the number of authorized shares of stock, the number of shares within each class of stock, and the par or stated value of such shares.

(4) *Capital stock.* A subsidiary holding company may amend its charter by revising Section 5 to read as follows:

Section 5. Capital stock. The total number of shares of all classes of capital stock that

the subsidiary holding company has the authority to issue is _____, of which _____ shall be common stock of par [or if no par value is specified the stated] value of _____ per share and of which [list the number of each class of preferred and the par or if no par value is specified the stated value per share of each such class]. The shares may be issued from time to time as authorized by the board of directors without further approval of shareholders, except as otherwise provided in this Section 5 or to the extent that such approval is required by governing law, rule, or regulation. The consideration for the issuance of the shares shall be paid in full before their issuance and shall not be less than the par [or stated] value. Neither promissory notes nor future services shall constitute payment or part payment for the issuance of shares of the subsidiary holding company. The consideration for the shares shall be cash, tangible or intangible property (to the extent direct investment in such property would be permitted), labor, or services actually performed for the subsidiary holding company, or any combination of the foregoing. In the absence of actual fraud in the transaction, the value of such property, labor, or services, as determined by the board of directors of the subsidiary holding company, shall be conclusive. Upon payment of such consideration, such shares shall be deemed to be fully paid and nonassessable. In the case of a stock dividend, that part of the retained earnings of the subsidiary holding company that is transferred to common stock or paid-in capital accounts upon the issuance of shares as a stock dividend shall be deemed to be the consideration for their issuance.

Except for shares issued in the initial organization of the subsidiary holding company, no shares of capital stock (including shares issuable upon conversion, exchange, or exercise of other securities) shall be issued, directly or indirectly, to officers, directors, or controlling persons of the association or subsidiary holding company other than as part of a general public offering or as qualifying shares to a director, unless their issuance or the plan under which they

would be issued has been approved by a majority of the total votes eligible to be cast at a legal meeting.

Nothing contained in this Section 5 (or in any supplementary sections hereto) shall entitle the holders of any class of a series of capital stock to vote as a separate class or series or to more than one vote per share, except as to the cumulation of votes for the election of directors, unless the charter otherwise provides that there shall be no such cumulative voting: *Provided*, That this restriction on voting separately by class or series shall not apply:

(i) To any provision which would authorize the holders of preferred stock, voting as a class or series, to elect some members of the board of directors, less than a majority thereof, in the event of default in the payment of dividends on any class or series of preferred stock;

(ii) To any provision that would require the holders of preferred stock, voting as a class or series, to approve the merger or consolidation of the subsidiary holding company with another corporation or the sale, lease, or conveyance (other than by mortgage or pledge) of properties or business in exchange for securities of a corporation other than the subsidiary holding company if the preferred stock is exchanged for securities of such other corporation: *Provided*, That no provision may require such approval for transactions undertaken with the assistance or pursuant to the direction of the Board or the Federal Deposit Insurance Corporation;

(iii) To any amendment which would adversely change the specific terms of any class or series of capital stock as set forth in this Section 5 (or in any supplementary sections hereto), including any amendment which would create or enlarge any class or series ranking prior thereto in rights and preferences. An amendment which increases the number of authorized shares of any class or series of capital stock, or substitutes the surviving subsidiary holding company in a merger or consolidation for the subsidiary

holding company, shall not be considered to be such an adverse change.

A description of the different classes and series (if any) of the subsidiary holding company's capital stock and a statement of the designations, and the relative rights, preferences, and limitations of the shares of each class of and series (if any) of capital stock are as follows:

A. *Common stock*. Except as provided in this Section 5 (or in any supplementary sections thereto) the holders of the common stock shall exclusively possess all voting power. Each holder of shares of the common stock shall be entitled to one vote for each share held by each holder, except as to the cumulation of votes for the election of directors, unless the charter otherwise provides that there shall be no such cumulative voting.

Whenever there shall have been paid, or declared and set aside for payment, to the holders of the outstanding shares of any class of stock having preference over the common stock as to the payment of dividends, the full amount of dividends and of sinking fund, retirement fund, or other retirement payments, if any, to which such holders are respectively entitled in preference to the common stock, then dividends may be paid on the common stock and on any class or series of stock entitled to participate therewith as to dividends out of any assets legally available for the payment of dividends.

In the event of any liquidation, dissolution, or winding up of the subsidiary holding company, the holders of the common stock (and the holders of any class or series of stock entitled to participate with the common stock in the distribution of assets) shall be entitled to receive, in cash or in kind, the assets of the subsidiary holding company available for distribution remaining after:

(i) Payment or provision for payment of the subsidiary holding company's debts and liabilities;

(ii) distributions or provision for distributions in settlement of its liquidation account; and

(iii) distributions or provision for distributions to holders of any class or series of stock having preference over the common stock in the liquidation, dissolution, or winding up of the subsidiary holding company. Each share of common stock shall have the same relative rights as and be identical in all respects with all the other shares of common stock.

B. *Preferred stock.* The subsidiary holding company may provide in supplementary sections to its charter for one or more classes of preferred stock, which shall be separately identified. The shares of any class may be divided into and issued in series, with each series separately designated so as to distinguish the shares thereof from the shares of all other series and classes. The terms of each series shall be set forth in a supplementary section to the charter. All shares of the same class shall be identical except as to the following relative rights and preferences, as to which there may be variations between different series:

(a) The distinctive serial designation and the number of shares constituting such series;

(b) The dividend rate or the amount of dividends to be paid on the shares of such series, whether dividends shall be cumulative and, if so, from which date(s), the payment date(s) for dividends, and the participating or other special rights, if any, with respect to dividends;

(c) The voting powers, full or limited, if any, of shares of such series;

(d) Whether the shares of such series shall be redeemable and, if so, the price(s) at which, and the terms and conditions on which, such shares may be redeemed;

(e) The amount(s) payable upon the shares of such series in the event of voluntary or involuntary liquidation, dissolution, or winding up of the subsidiary holding company;

(f) Whether the shares of such series shall be entitled to the benefit of a sinking or retirement fund to be

applied to the purchase or redemption of such shares, and if so entitled, the amount of such fund and the manner of its application, including the price(s) at which such shares may be redeemed or purchased through the application of such fund;

(g) Whether the shares of such series shall be convertible into, or exchangeable for, shares of any other class or classes of stock of the subsidiary holding company and, if so, the conversion price(s) or the rate(s) of exchange, and the adjustments thereof, if any, at which such conversion or exchange may be made, and any other terms and conditions of such conversion or exchange.

(h) The price or other consideration for which the shares of such series shall be issued; and

(i) Whether the shares of such series which are redeemed or converted shall have the status of authorized but unissued shares of serial preferred stock and whether such shares may be reissued as shares of the same or any other series of serial preferred stock.

Each share of each series of serial preferred stock shall have the same relative rights as and be identical in all respects with all the other shares of the same series.

The board of directors shall have authority to divide, by the adoption of supplementary charter sections, any authorized class of preferred stock into series, and, within the limitations set forth in this section and the remainder of this charter, fix and determine the relative rights and preferences of the shares of any series so established.

Prior to the issuance of any preferred shares of a series established by a supplementary charter section adopted by the board of directors, the subsidiary holding company shall file with the appropriate Reserve Bank a dated copy of that supplementary section of this charter established and designating the series and fixing and de-

termining the relative rights and preferences thereof.

(5) *Limitations on subsequent issuances.* A subsidiary holding company may amend its charter to require shareholder approval of the issuance or reservation of common stock or securities convertible into common stock under circumstances which would require shareholder approval under the rules of the New York or American Stock Exchange if the shares were then listed on the New York or American Stock Exchange.

(6) *Cumulative voting.* A subsidiary holding company may amend its charter by substituting the following sentence for the second sentence in the third paragraph of Section 5: “Each holder of shares of common stock shall be entitled to one vote for each share held by such holder and there shall be no right to cumulate votes in an election of directors.”

(7) [Reserved]

(8) *Anti-takeover provisions following mutual to stock conversion.* Notwithstanding the law of the state in which the subsidiary holding company is located, a subsidiary holding company may amend its charter by renumbering existing sections as appropriate and adding a new section 8 as follows:

Section 8. Certain Provisions Applicable for Five Years. Notwithstanding anything contained in the subsidiary holding company’s charter or bylaws to the contrary, for a period of [specify number of years up to five] years from the date of completion of the conversion of the subsidiary holding company from mutual to stock form, the following provisions shall apply:

A. *Beneficial Ownership Limitation.* No person shall directly or indirectly offer to acquire or acquire the beneficial ownership of more than 10 percent of any class of an equity security of the subsidiary holding company. This limitation shall not apply to a transaction in which the subsidiary holding company forms a holding company without change in the respective beneficial ownership interests of its stockholders other than pursuant to the exercise of any dissenter and appraisal rights, the purchase of shares by underwriters in connection with a public

offering, or the purchase of shares by a tax-qualified employee stock benefit plan which is exempt from the approval requirements under section 238.12(a) of this chapter.

In the event shares are acquired in violation of this section 8, all shares beneficially owned by any person in excess of 10 percent shall be considered “excess shares” and shall not be counted as shares entitled to vote and shall not be voted by any person or counted as voting shares in connection with any matters submitted to the stockholders for a vote.

For purposes of this section 8, the following definitions apply:

(1) The term “person” includes an individual, a group acting in concert, a corporation, a partnership, an association, a joint stock company, a trust, an unincorporated organization or similar company, a syndicate or any other group formed for the purpose of acquiring, holding or disposing of the equity securities of the subsidiary holding company.

(2) The term “offer” includes every offer to buy or otherwise acquire, solicitation of an offer to sell, tender offer for, or request or invitation for tenders of, a security or interest in a security for value.

(3) The term “acquire” includes every type of acquisition, whether effected by purchase, exchange, operation of law or otherwise.

(4) The term “acting in concert” means (a) knowing participation in a joint activity or conscious parallel action towards a common goal whether or not pursuant to an express agreement, or (b) a combination or pooling of voting or other interests in the securities of an issuer for a common purpose pursuant to any contract, understanding, relationship, agreement or other arrangements, whether written or otherwise.

B. *Cumulative Voting Limitation.* Stockholders shall not be permitted to cumulate their votes for election of directors.

C. *Call for Special Meetings.* Special

meetings of stockholders relating to changes in control of the subsidiary holding company or amendments to its charter shall be called only upon direction of the board of directors.

(c) *Anti-takeover provisions.* The Board may grant approval to a charter amendment not listed in paragraph (b) of this section regarding the acquisition by any person or persons of its equity securities provided that the subsidiary holding company shall file as part of its application for approval an opinion, acceptable to the Board, of counsel independent from the subsidiary holding company that the proposed charter provision would be permitted to be adopted by a corporation chartered by the state in which the principal office of the subsidiary holding company is located. Any such provision must be consistent with applicable statutes, regulations, and Board policies. Further, any such provision that would have the effect of rendering more difficult a change in control of the subsidiary holding company and would require for any corporate action (other than the removal of directors) the affirmative vote of a larger percentage of shareholders than is required by this part, shall not be effective unless adopted by a percentage of shareholder vote at least equal to the highest percentage that would be required to take any action under such provision.

(d) *Reissuance of charter.* A subsidiary holding company that has amended its charter may apply to have its charter, including the amendments, reissued by the Board. Such requests for reissuance should be filed with the appropriate Reserve Bank, and contain signatures required by the charter in Appendix B to this part, together with such supporting documents as needed to demonstrate that the amendments were properly adopted.

4-766.3

SECTION 239.23—Bylaws

(a) *General.* At its first organizational meeting, the board of directors of a subsidiary holding company shall adopt a set of bylaws for the administration and regulation of its affairs. Bylaws may be adopted, amended or

repealed by either a majority of the votes cast by the shareholders at a legal meeting or a majority of the board of directors. The bylaws shall contain sufficient provisions to govern the subsidiary holding company in accordance with the requirements of sections 239.26, 239.27, 239.28, and 239.29 and shall not contain any provision that is inconsistent with those sections or with applicable laws, rules, regulations or the subsidiary holding company's charter, except that a bylaw provision inconsistent with sections 239.26, 239.27, 239.28, and 239.29 may be adopted with the approval of the Board.

(b) *Form of filing.*

(1) *Application requirement.*

(i) Any bylaw amendment shall be submitted to the appropriate Reserve Bank for approval if it would:

- (A) Render more difficult or discourage a merger, tender offer, or proxy contest, the assumption of control by a holder of a large block of the subsidiary holding company's stock, or the removal of incumbent management; or
- (B) Be inconsistent with sections 239.26, 239.27, 239.28, and 239.29, with applicable laws, rules, regulations or the subsidiary holding company's charter or involve a significant issue of law or policy, including indemnification, conflicts of interest, and limitations on director or officer liability.

(ii) Applications submitted under paragraph (b)(1)(i) of this section are subject to the processing procedures under section 238.14 of this chapter;

(iii) For purposes of this paragraph (b), bylaw provisions that adopt the language of the model bylaws contained in Appendix D to this part, if adopted without change and filed with Board within 30 days after adoption, are effective upon adoption. The Board may amend the model bylaws provided in Appendix D.

(2) *Filing requirement.* If the proposed bylaw amendment does not implicate paragraph (b)(1) or (b)(3) of this section and is permissible under all applicable laws, rules, or regulations, the subsidiary holding company shall submit the amendment to the

appropriate Reserve Bank at least 30 days prior to the date the bylaw amendment is to be adopted by the subsidiary holding company.

(3) *Corporate governance procedures.* A subsidiary holding company may elect to follow the corporate governance procedures of: The laws of the state where the main office of the subsidiary holding company is located; Delaware General Corporation law; or The Model Business Corporation Act, provided that such procedures may be elected to the extent not inconsistent with applicable Federal statutes and regulations and safety and soundness, and such procedures are not of the type described in paragraph (b)(1)(i) of this section. If this election is selected, a subsidiary holding company shall designate in its bylaws the provision or provisions from the body or bodies of law selected for its corporate governance procedures, and shall file a copy of such bylaws, which are effective upon adoption, within 30 days after adoption. The submission shall indicate, where not obvious, why the bylaw provisions do not require an application under paragraph (b)(1)(i) of this section.

(c) *Effectiveness.* Any bylaw amendment filed pursuant to paragraph (b)(2) of this section shall automatically be effective 30 days from the date of filing of such amendment, provided that the subsidiary holding company follows the requirements of its charter and bylaws in adopting such amendment, unless the Board notifies the subsidiary holding company prior to the expiration of such 30-day period that such amendment is rejected or requires an application to be filed pursuant to paragraph (b)(1) of this section.

(d) *Effect of subsequent charter or bylaw change.* Notwithstanding any subsequent change to its charter or bylaws, the authority of a subsidiary holding company to engage in any transaction shall be determined only by the subsidiary holding company's charter or bylaws then in effect, unless otherwise provided by Federal law or regulation.

4-766.4

SECTION 239.24—Issuances of Stock by Subsidiary Holding Companies of Mutual Holding Companies

(a) *Requirements.* No subsidiary holding company of a mutual holding company may issue stock to persons other than its mutual holding company parent in connection with a mutual holding company reorganization, or at any time subsequent to the subsidiary holding company's acquisition by the mutual holding company, unless the subsidiary holding company obtains advance approval of each such issuance from the Board. Approval of a mutual holding company reorganization filed pursuant to section 239.3(a) shall be deemed to constitute approval of any stock issuance specifically applied for pursuant to this section in connection with the reorganization, unless otherwise specified by the Board. The Board shall approve any proposed issuance that meets each of the criteria set forth below in paragraphs (a)(1) through (a)(7) of this section.

(1) The proposed issuance is to be made pursuant to a Stock Issuance Plan that contains all the provisions required by section 239.25.

(2) The Stock Issuance Plan is consistent with the terms of the subsidiary holding company's charter (or any proposed amendments thereto), including terms governing the type and amount of stock that may be issued.

(3) The Stock Issuance Plan would provide the subsidiary holding company, its mutual holding company parent, and any subsidiary savings associations of the subsidiary holding company with fully sufficient capital and would not be inequitable or detrimental to the subsidiary holding company or its mutual holding company parent or to members of the mutual holding company parent.

(4) The proposed price or price range of the stock to be issued is reasonable. The Board shall review the reasonableness of the proposed price or price range.

(5) The aggregate amount of outstanding common stock of the subsidiary holding company owned or controlled by persons other than the subsidiary holding company's

mutual holding company parent at the close of the proposed issuance shall be less than 50 percent of the subsidiary holding company's total outstanding common stock, unless the subsidiary holding company was a stock holding company when acquired by the mutual holding company, in which case the foregoing restriction shall not apply. Any amount of preferred stock may be issued by any subsidiary holding company of a mutual holding company to persons other than the subsidiary holding company's mutual holding company, consistent with any other applicable laws and regulations.

(6) The subsidiary holding company furnishes the information required by the Board in connection with the proposed issuance.

(7) The proposed stock issuance meets the convenience and needs standard of section 239.55(g).

(8) The proposed issuance complies with all other applicable laws and regulations.

(9) Unless otherwise determined by the Board, the limitations on the minimum and maximum amounts of the estimated price range required by section 239.59(c) shall apply.

(b) *Related approvals.* Approval by the Board of any stock issuance pursuant to this section shall also be deemed to constitute:

(1) Approval of the form of stock certificate proposed to be utilized in connection with the stock issuance, provided such form was included in the application materials filed pursuant to this section; and

(2) Approval of any charter or bylaw amendment required to authorize issuance of the stock, provided such amendment was proposed in the application materials filed pursuant to this section.

(c) *Offering restrictions.*

(1) No representations may be made in any manner in connection with the offer or sale of any stock issued pursuant to this section that the price, price range or any other pricing information related to such stock issuance has been approved by the Board or that the stock has been approved or disapproved by the Board or that the Board has endorsed the accuracy or adequacy of any

securities offering documents disseminated in connection with such stock.

(2) The sale of minority stock of the subsidiary holding company to be made under the minority stock issuance plan, including any sale in a public offering or direct community marketing, shall be completed as promptly as possible and within 45 calendar days after the last day of the subscription period, unless extended by the Board.

(3) In the offer, sale, or purchase of stock issued pursuant to this section, no person shall:

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

(ii) 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

(iii) Engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon a purchaser or seller.

(4) Prior to the completion of a stock issuance pursuant to this section, no person shall transfer, or enter into any agreement or understanding to transfer, the legal or beneficial ownership of the stock to be issued to any other person.

(5) Prior to the completion of a stock issuance pursuant to this section, no person shall make any offer, or any announcement of any offer, to purchase any stock to be issued, or knowingly acquire any stock in the issuance, in excess of the maximum purchase limitations established in the Stock Issuance Plan.

(6) All stock issuances pursuant to this section must:

(i) Comply with section 239.59 and, to the extent applicable, the form or forms specified by the Board; and

(ii) Provide that the offering be structured in a manner similar to a standard conversion under subpart E of this part, including the stock purchase priorities accorded members of the issuing subsidiary holding company's mutual holding company, unless the subsidiary holding company would qualify for a supervisory

conversion if it were to undertake a conversion under subpart E of this part; or demonstrates to the satisfaction of the Board that a non-conforming issuance would be more beneficial to the savings association and subsidiary holding company compared to a conforming offering, considering, in the aggregate, the effect of each on the savings association and subsidiary holding company's financial and managerial resources and future prospects, the effect of the issuance upon the savings association and subsidiary holding company, the insurance risk to the Deposit Insurance Fund, and the convenience and needs of the community to be served.

(7) Notwithstanding the restrictions in paragraph (c)(6)(ii) of this section, a subsidiary holding company of a mutual holding company may issue stock as part of a stock benefit plan to any insider, associate of an insider, or tax qualified or non-tax qualified employee stock benefit plan of the mutual holding company or subsidiary of the mutual holding company without including the purchase priorities of subpart E of this part.

(8) As part of a reorganization, a reasonable amount of shares or proceeds may be contributed to a charitable organization that complies with sections 239.64(b) to 239.64(f), provided such contribution does not result in any taxes on excess business holdings under section 4943 of the Internal Revenue Code (26 U.S.C. 4943).

(d) *Procedural and substantive requirements.* The procedural and substantive requirements of subpart E of this part shall apply to all mutual holding company stock issuances and subsidiary holding company stock issuances under this section, unless clearly inapplicable, as determined by the Board. For purposes of this paragraph, the term *conversion* as it appears in the provisions of subpart E of this part shall refer to the stock issuance, and the term *mutual holding company* shall refer to the subsidiary holding company undertaking the stock issuance.

4-766.5

SECTION 239.25—Contents of Stock Issuance Plans

(a) *Mandatory provisions.* Each of the provisions mandatory for all stock issuance plans under this paragraph (a) shall be deemed regulatory requirements. Each Stock Issuance Plan shall contain a complete description of all significant terms of the proposed stock issuance (including the information specified in section 239.65(f) to the extent known), shall attach and incorporate the proposed form of stock certificate, the proposed stock order form, and any agreements or other documents defining the rights of the stockholders, and shall:

(1) Provide that the stock shall be sold at a total price equal to the estimated pro forma market value of such stock, based upon an independent valuation;

(2) Provide that the aggregate amount of outstanding common stock of the subsidiary holding company owned or controlled by persons other than the subsidiary holding company's mutual holding company parent at the close of the proposed issuance shall be less than fifty percent of the subsidiary holding company's total outstanding common stock (This provision may be omitted if the proposed issuance will be conducted by a subsidiary holding company that was in the stock form when acquired by its mutual holding company parent);

(3) Provide that all employee stock ownership plans or other tax-qualified employee stock benefit plans (collectively, ESOPs) must not encompass, in the aggregate, more than either 4.9 percent of the outstanding shares of the subsidiary holding company's common stock or 4.9 percent of the subsidiary holding company's stockholders' equity at the close of the proposed issuance;

(4) Provide that all ESOPs and management recognition plans (MRPs) must not encompass, in the aggregate, more than either 4.9 percent of the outstanding shares of the subsidiary holding company's common stock or 4.9 percent of the subsidiary holding company's stockholders' equity at the close of the proposed issuance. However, if the subsidiary holding company's tangible capital equals at least ten percent at the

time of implementation of the plan, the Board may permit such ESOPs and MRPs to encompass, in the aggregate, up to 5.88 percent of the outstanding common stock or stockholders' equity at the close of the proposed issuance;

(5) Provide that all MRPs must not encompass, in the aggregate, more than either 1.47 percent of the common stock of the subsidiary holding company or 1.47 percent of the subsidiary holding company's stockholders' equity at the close of the proposed issuance. However, if the subsidiary holding company's tangible capital is at least ten percent at the time of implementation of the plan, the Board may permit MRPs to encompass, in the aggregate, up to 1.96 percent of the outstanding shares of the subsidiary holding company's common stock or 1.96 percent of the savings subsidiary holding company's stockholders' equity at the close of the proposed issuance;

(6) Provide that all stock option plans (Option Plans) must not encompass, in the aggregate, more than either 4.9 percent of the subsidiary holding company's outstanding common stock at the close of the proposed issuance or 4.9 percent of the subsidiary holding company's stockholders' equity at the close of the proposed issuance;

(7) Provide that an ESOP, a MRP or an Option Plan modified or adopted no earlier than one year after the close of: the proposed issuance, or any subsequent issuance that is made in substantial conformity with the purchase priorities section 239.59(a) set forth in subpart E of this part, may exceed the percentage limitations contained in paragraphs (a)(3) through (6) of this section (plan expansion), subject to the following two requirements. First, all common stock awarded in connection with any plan expansion must be acquired for such awards in the secondary market. Second, such acquisitions must begin no earlier than when such plan expansion is permitted to be made;

(8) (i) Provide that the aggregate amount of common stock that may be encompassed under all Option Plans and MRPs, or acquired by all insiders of the subsidiary holding company and subsidiary savings association and associates of insiders of

the subsidiary holding company and subsidiary savings association, must not exceed the following percentages of common stock or stockholders' equity of the subsidiary holding company, held by persons other than the subsidiary holding company's mutual holding company parent at the close of the proposed issuance:

Institution size	Officer and director purchases (percent)
\$50,000,000 or less	35
\$50,000,001-100,000,000	34
\$100,000,001-150,000,000	33
\$150,000,001-200,000,000	32
\$200,000,001-250,000,000	31
\$250,000,001-300,000,000	30
\$300,000,001-350,000,000	29
\$350,000,001-400,000,000	28
\$400,000,001-450,000,000	27
\$450,000,001-500,000,000	26
Over \$500,000,000	25

(ii) The percentage limitations contained in paragraph 8(i) of this section may be exceeded provided that all stock acquired by insiders and associates of insiders or awarded under all MRPs and Option Plans in excess of those limitations is acquired in the secondary market. If acquired for such awards on the secondary market, such acquisitions must begin no earlier than one year after the close of the proposed issuance or any subsequent issuance that is made in substantial conformity with the purchase priorities set forth in subpart E of this part. (iii) In calculating the number of shares held by insiders and their associates under this provision, shares awarded but not delivered under an ESOP, MRP, or Option Plan that are attributable to such persons shall not be counted as being acquired by such persons.

(9) Provide that the amount of common stock that may be encompassed under all Option Plans and MRPs must not exceed, in the aggregate, 25 percent of the outstanding common stock held by persons other than the subsidiary holding company's mutual holding company parent at the close of the proposed issuance;

(10) Provide that the issuance shall be conducted in compliance with, to the extent applicable, the forms required by the Board;

(11) Provide that the sales price of the shares of stock to be sold in the issuance shall be a uniform price determined in accordance with section 239.24;

(12) Provide that, if at the close of the stock issuance the subsidiary holding company has more than thirty-five shareholders of any class of stock, the subsidiary holding company shall promptly register that class of stock pursuant to the Securities Exchange Act of 1934, as amended (15 U.S.C. 78a-78jj), and undertake not to deregister such stock for a period of three years thereafter;

(13) Provide that, if at the close of the stock issuance the subsidiary holding company has more than one hundred shareholders of any class of stock, the subsidiary holding company shall use its best efforts to:

(i) Encourage and assist a market maker to establish and maintain a market for that class of stock; and

(ii) List that class of stock on a national or regional securities exchange or on the NASDAQ quotation system;

(14) Provide that, for a period of three years following the proposed issuance, no insider of the subsidiary holding company or his or her associates shall purchase, without the prior written approval of the Board, any stock of the subsidiary holding company except from a broker dealer registered with the Securities and Exchange Commission, except that the foregoing restriction shall not apply to:

(i) Negotiated transactions involving more than one percent of the outstanding stock in the class of stock; or

(ii) Purchases of stock made by and held by any tax-qualified or non-tax-qualified employee stock benefit plan of the subsidiary holding company even if such stock is attributable to insiders of the subsidiary holding company and subsidiary savings association or their associates;

(15) Provide that stock purchased by insiders of the subsidiary holding company and subsidiary savings association and their associates in the proposed issuance shall not be sold for a period of at least one year

following the date of purchase, except in the case of death of the insider or associate;

(16) Provide that, in connection with stock subject to restriction on sale for a period of time:

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

(ii) Appropriate instructions shall be issued to the subsidiary holding company's transfer agent with respect to applicable restrictions on transfer of such stock; and

(iii) Any shares issued as a stock dividend, stock split, or otherwise with respect to any such restricted stock shall be subject to the same restrictions as apply to the restricted stock;

(17) Provide that the subsidiary holding company will not offer or sell any of the stock proposed to be issued to any person whose purchase would be financed by funds loaned, directly or indirectly, to the person by the subsidiary holding company;

(18) Provide that, if necessary, the subsidiary holding company's charter will be amended to authorize issuance of the stock and attach and incorporate by reference the text of any such amendment;

(19) Provide that the expenses incurred in connection with the issuance shall be reasonable;

(20) Provide that the Stock Issuance Plan, if proposed as part of a Reorganization Plan, may be amended or terminated in the same manner as the Reorganization Plan. Otherwise, the Stock Issuance Plan shall provide that it may be substantively amended by the board of directors of the issuing subsidiary holding company as a result of comments from regulatory authorities or otherwise prior to approval of the Plan by the Board, and at any time thereafter with the concurrence of the Board; and that the Stock Issuance Plan may be terminated by the board of directors at any time prior to approval of the Plan by the Board, and at any time thereafter with the concurrence of the Board;

(21) Provide that, unless an extension is granted by the Board, the Stock Issuance Plan shall be terminated if not completed

within 90 days of the date of such approval; or

(22) Provide that the subsidiary holding company may make scheduled discretionary contributions to a tax-qualified employee stock benefit plan provided such contributions do not cause the subsidiary holding company to fail to meet any of its regulatory capital requirements.

(b) *Optional provisions.* A Stock Issuance Plan may:

(1) Provide that, in the event the proposed stock issuance is part of a Reorganization Plan, the stock offering may be commenced concurrently with or at any time after the mailing to the members of the reorganizing association and any acquiree association of any proxy statement(s). The offering may be closed before the required membership vote(s), provided the offer and sale of the stock shall be conditioned upon the approval of the Reorganization Plan and Stock Issuance Plan by the members of the reorganizing association and any acquiree association;

(2) Provide that any insignificant residue of stock of the subsidiary holding company not sold in the offering may be sold in such other manner as provided in the Stock Issuance Plan, with the Board's approval;

(3) Provide that the subsidiary holding company may issue and sell, in lieu of shares of its stock, units of securities consisting of stock and long-term warrants or other equity securities, in which event any reference in the provisions of this section and in section 239.24 to stock shall apply to such units of equity securities unless the context otherwise requires; or

(4) Provide that the subsidiary holding company may reserve shares representing up to ten percent of the proposed offering for issuance in connection with an employee stock benefit plan.

(c) *Applicability of provisions of section 239.63(a)(1) to minority stock issuances.* Notwithstanding section 239.24(d), section 239.63(a)(1)(ii) do not apply to minority stock issuances, because the permissible sizes of ESOPs, MRPs, and Option Plans in minority stock issuances are subject to each of the re-

quirements set forth at paragraphs (a)(3) through (a)(9) of this section. Section 239.63(a)(4) through (a)(14), apply for one year after the subsidiary holding company engages in a minority stock issuance that is conducted in accordance with the purchase priorities set forth in subpart E of this part. In addition to the shareholder vote requirement for Option Plans and MRPs set forth at section 239.63(a)(1)(vi), any Option Plans and MRPs put to a shareholder vote after a minority stock issuance that is conducted in accordance with the purchase priorities set forth in subpart E of this part must be approved by a majority of the votes cast by stockholders other than the mutual holding company.

4-766.6

SECTION 239.26—Shareholders

(a) *Shareholder meetings.* An annual meeting of the shareholders of the subsidiary holding company for the election of directors and for the transaction of any other business of the subsidiary holding company shall be held annually within 150 days after the end of the subsidiary holding company's fiscal year. Unless otherwise provided in the subsidiary holding company's charter, special meetings of the shareholders may be called by the board of directors or on the request of the holders of 10 percent or more of the shares entitled to vote at the meeting, or by such other persons as may be specified in the bylaws of the subsidiary holding company. All annual and special meetings of shareholders shall be held at such place as the board of directors may determine in the state in which the subsidiary savings association has its principal place of business, or at any other convenient place the board of directors may designate.

(b) *Notice of shareholder meetings.* Written notice stating the place, day, and hour of the meeting and the purpose or purposes for which the meeting is called shall be delivered not fewer than 20 nor more than 50 days before the date of the meeting, either personally or by mail, by or at the direction of the chairman of the board, the president, the secretary, or the directors, or other natural persons calling the meeting, to each shareholder

of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the mail, addressed to the shareholder at the address appearing on the stock transfer books or records of the subsidiary holding company as of the record date prescribed in paragraph (c) of this section, with postage thereon prepaid. When any shareholders' meeting, either annual or special, is adjourned for 30 days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Notwithstanding anything in this section, however, a subsidiary holding company that is wholly owned shall not be subject to the shareholder notice requirement.

(c) *Fixing of record date.* For the purpose of determining shareholders entitled to notice of or to vote at any meeting of shareholders or any adjournment thereof, or shareholders entitled to receive payment of any dividend, or in order to make a determination of shareholders for any other proper purpose, the board of directors shall fix in advance a date as the record date for any such determination of shareholders. Such date in any case shall be not more than 60 days and, in case of a meeting of shareholders, not less than 10 days prior to the date on which the particular action, requiring such determination of shareholders, is to be taken. When a determination of shareholders entitled to vote at any meeting of shareholders has been made as provided in this section, such determination shall apply to any adjournment thereof.

(d) *Voting lists.*

(1) At least 20 days before each meeting of the shareholders, the officer or agent having charge of the stock transfer books for the shares of the subsidiary holding company shall make a complete list of the stockholders of record entitled to vote at such meeting, or any adjournments thereof, arranged in alphabetical order, with the address and the number of shares held by each. This list of shareholders shall be kept on file at the home office of the subsidiary holding company and shall be subject to inspection by any shareholder of record or the stockholder's agent during the entire time of the meeting. The original stock transfer book

shall constitute prima facie evidence of the stockholders entitled to examine such list or transfer books or to vote at any meeting of stockholders. Notwithstanding anything in this section, however, a subsidiary holding company that is wholly owned shall not be subject to the voting list requirements.

(2) In lieu of making the shareholders list available for inspection by any shareholders as provided in paragraph (d)(1) of this section, the board of directors may perform such acts as required by paragraphs (a) and (b) of Rule 14a-7 of the General Rules and Regulations under the Securities and Exchange Act of 1934 (17 CFR 240.14a-7) as may be duly requested in writing, with respect to any matter which may be properly considered at a meeting of shareholders, by any shareholder who is entitled to vote on such matter and who shall defray the reasonable expenses to be incurred by the subsidiary holding company in performance of the act or acts required.

(e) *Shareholder quorum.* A majority of the outstanding shares of the subsidiary holding company entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of shareholders. The shareholders present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough shareholders to leave less than a quorum. If a quorum is present, the affirmative vote of the majority of the shares represented at the meeting and entitled to vote on the subject matter shall be the act of the stockholders, unless the vote of a greater number of stockholders voting together or voting by classes is required by law or the charter. Directors, however, are elected by a plurality of the votes cast at an election of directors.

(f) *Shareholder voting.*

(1) *Proxies.* Unless otherwise provided in the subsidiary holding company's charter, at all meetings of shareholders, a shareholder may vote in person or by proxy executed in writing by the shareholder or by a duly authorized attorney in fact. Proxies may be given telephonically or electronically as long as the holder uses a procedure for verifying the identity of the shareholder. A

proxy may designate as holder a corporation, partnership or company, or other person. Proxies solicited on behalf of the management shall be voted as directed by the shareholder or, in the absence of such direction, as determined by a majority of the board of directors. No proxy shall be valid more than eleven months from the date of its execution except for a proxy coupled with an interest.

(2) *Shares controlled by subsidiary holding company.* Neither treasury shares of its own stock held by the subsidiary holding company nor shares held by another corporation, if a majority of the shares entitled to vote for the election of directors of such other corporation are held by the subsidiary holding company, shall be voted at any meeting or counted in determining the total number of outstanding shares at any given time for purposes of any meeting.

(g) *Nominations and new business submitted by shareholders.* Nominations for directors and new business submitted by shareholders shall be voted upon at the annual meeting if such nominations or new business are submitted in writing and delivered to the secretary of the subsidiary holding company at least five days prior to the date of the annual meeting. Ballots bearing the names of all the natural persons nominated shall be provided for use at the annual meeting.

(h) *Informal action by stockholders.* If the bylaws of the subsidiary holding company so provide, any action required to be taken at a meeting of the stockholders, or any other action that may be taken at a meeting of the stockholders, may be taken without a meeting if consent in writing has been given by all the stockholders entitled to vote with respect to the subject matter.

4-766.7

SECTION 239.27—Board of Directors

(a) *General powers and duties.* The business and affairs of the subsidiary holding company shall be under the direction of its board of directors. The board of directors shall annually elect a chairman of the board from among its

members and shall designate the chairman of the board, when present, to preside at its meeting. Directors need not be stockholders unless the bylaws so require.

(b) *Number and term.* The bylaws shall set forth a specific number of directors, not a range. The number of directors shall be not fewer than five nor more than fifteen, unless a higher or lower number has been authorized by the Board. Directors shall be elected for a term of one to three years and until their successors are elected and qualified. If a staggered board is chosen, the directors shall be divided into two or three classes as nearly equal in number as possible and one class shall be elected by ballot annually. In the case of a converting or newly chartered subsidiary holding company where all directors shall be elected at the first election of directors, if a staggered board is chosen, the terms shall be staggered in length from one to three years.

(c) *Regular meetings.* A regular meeting of the board of directors shall be held immediately after, and at the same place as, the annual meeting of shareholders. The board of directors shall determine the place, frequency, time and procedure for notice of regular meetings.

(d) *Quorum.* A majority of the number of directors shall constitute a quorum for the transaction of business at any meeting of the board of directors. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless a greater number is prescribed by regulation of the Board.

(e) *Vacancies.* Any vacancy occurring in the board of directors may be filled by the affirmative vote of a majority of the remaining directors although less than a quorum of the board of directors. A director elected to fill a vacancy shall be elected to serve only until the next election of directors by the shareholders. Any directorship to be filled by reason of an increase in the number of directors may be filled by election by the board of directors for a term of office continuing only until the next election of directors by the shareholders.

(f) *Removal or resignation of directors.*

(1) At a meeting of shareholders called expressly for that purpose, any director may be removed only for cause, as defined in section 239.41, by a vote of the holders of a majority of the shares then entitled to vote at an election of directors. Subsidiary holding companies may provide for procedures regarding resignations in the bylaws.

(2) If less than the entire board is to be removed, no one of the directors may be removed if the votes cast against the removal would be sufficient to elect a director if then cumulatively voted at an election of the class of directors of which such director is a part.

(3) Whenever the holders of the shares of any class are entitled to elect one or more directors by the provisions of the charter or supplemental sections thereto, the provisions of this section shall apply, in respect to the removal of a director or directors so elected, to the vote of the holders of the outstanding shares of that class and not to the vote of the outstanding shares as a whole.

(g) *Executive and other committees.* The board of directors, by resolution adopted by a majority of the full board, may designate from among its members an executive committee and one or more other committees each of which, to the extent provided in the resolution or bylaws of the subsidiary holding company, shall have and may exercise all of the authority of the board of directors, except no committee shall have the authority of the board of directors with reference to: the declaration of dividends; the amendment of the charter or bylaws of the subsidiary holding company; recommending to the stockholders a plan of merger, consolidation, or conversion; the sale, lease, or other disposition of all, or substantially all, of the property and assets of the subsidiary holding company otherwise than in the usual and regular course of its business; a voluntary dissolution of the subsidiary holding company; a revocation of any of the foregoing; or the approval of a transaction in which any member of the executive committee, directly or indirectly, has any material beneficial interest. The designation of any committee and the delegation of authority thereto shall

not operate to relieve the board of directors, or any director, of any responsibility imposed by law or regulation.

(h) *Notice of special meetings.* Written notice of at least 24 hours regarding any special meeting of the board of directors or of any committee designated thereby shall be given to each director in accordance with the bylaws, although such notice may be waived by the director. The attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any meeting need be specified in the notice or waiver of notice of such meeting. The bylaws may provide for telephonic participation at a meeting.

(i) *Action without a meeting.* Any action required or permitted to be taken by the board of directors at a meeting may be taken without a meeting if a consent in writing, setting forth the actions so taken, shall be signed by all of the directors.

(j) *Presumption of assent.* A director of the subsidiary holding company who is present at a meeting of the board of directors at which action on any subsidiary holding company matter is taken shall be presumed to have assented to the action taken unless his or her dissent or abstention shall be entered in the minutes of the meeting or unless a written dissent to such action shall be filed with the individual acting as the secretary of the meeting before the adjournment thereof or shall be forwarded by registered mail to the secretary of the subsidiary holding company within five days after the date on which a copy of the minutes of the meeting is received. Such right to dissent shall not apply to a director who voted in favor of such action.

(k) *Age limitation on directors.* A subsidiary holding company may provide a bylaw on age limitation for directors. Bylaws on age limitations must comply with all Federal laws, rules and regulations.

4-766.8**SECTION 239.28—Officers**

(a) *Positions.* The officers of the subsidiary holding company shall be a president, one or more vice presidents, a secretary, and a treasurer or comptroller, each of whom shall be elected by the board of directors. The board of directors may also designate the chairman of the board as an officer. The offices of the secretary and treasurer or comptroller may be held by the same individual and the vice president may also be either the secretary or the treasurer or comptroller. The board of directors may designate one or more vice presidents as executive vice president or senior vice president. The board of directors may also elect or authorize the appointment of such other officers as the business of the subsidiary holding company may require. The officers shall have such authority and perform such duties as the board of directors may from time to time authorize or determine. In the absence of action by the board of directors, the officers shall have such powers and duties as generally pertain to their respective offices.

(b) *Removal.* Any officer may be removed by the board of directors whenever in its judgment the best interests of the subsidiary holding company will be served thereby; but such removal, other than for cause, shall be without prejudice to the contractual rights, if any, of the individual so removed. Employment contracts shall conform with section 239.41.

(c) *Age limitation on officers.* A subsidiary holding company may provide a bylaw on age limitation for officers. Bylaws on age limitations must comply with all Federal laws, rules, and regulations.

4-766.9**SECTION 239.29—Certificates for Shares and Their Transfer**

(a) *Certificates for shares.* Certificates representing shares of capital stock of the subsidiary holding company shall be in such form as shall be determined by the board of directors and approved by the Board. The certificates shall be signed by the chief executive officer

or by any other officer of the subsidiary holding company authorized by the board of directors, attested by the secretary or an assistant secretary, and sealed with the corporate seal or a facsimile thereof. The signatures of such officers upon a certificate may be facsimiles if the certificate is manually signed on behalf of a transfer agent or a registrar other than the subsidiary holding company itself or one of its employees. Each certificate for shares of capital stock shall be consecutively numbered or otherwise identified. The name and address of the person to whom the shares are issued, with the number of shares and date of issue, shall be entered on the stock transfer books of the subsidiary holding company. All certificates surrendered to the subsidiary holding company for transfer shall be cancelled and no new certificate shall be issued until the former certificate for a like number of shares shall have been surrendered and cancelled, except that in the case of a lost or destroyed certificate a new certificate may be issued upon such terms and indemnity to the subsidiary holding company as the board of directors may prescribe.

(b) *Transfer of shares.* Transfer of shares of capital stock of the subsidiary holding company shall be made only on its stock transfer books. Authority for such transfer shall be given only by the holder of record or by a legal representative, who shall furnish proper evidence of such authority, or by an attorney authorized by a duly executed power of attorney and filed with the subsidiary holding company. The transfer shall be made only on surrender for cancellation of the certificate for the shares. The person in whose name shares of capital stock stand on the books of the subsidiary holding company shall be deemed by the subsidiary holding company to be the owner for all purposes.

4-766.91**SECTION 239.30—Annual Reports; Books and Records**

(a) *Annual reports to stockholders.* A subsidiary holding company not wholly-owned by a holding company shall, within 130 days after the end of its fiscal year, mail to each of its

stockholders entitled to vote at its annual meeting an annual report containing financial statements that satisfy the requirements of rule 14a-3 under the Securities Exchange Act of 1934. (17 CFR 240.14a-3). Concurrently with such mailing a certification of such mailing signed by the chairman of the board, the president or a vice president of the subsidiary holding company, together with a copy of the report, shall be transmitted by the subsidiary holding company to the appropriate Reserve Bank.

(b) *Books and records.*

(1) Each subsidiary holding company shall keep correct and complete books and records of account; shall keep minutes of the proceedings of its stockholders, board of directors, and committees of directors; and shall keep at its home office or at the office of its transfer agent or registrar, a record of its stockholders, giving the names and addresses of all stockholders, and the number, class and series, if any, of the shares held by each.

(2) Any stockholder or group of stockholders of a subsidiary holding company, holding of record the number of voting shares of such subsidiary holding company specified below, upon making written demand stating a proper purpose, shall have the right to examine, in person or by agent or attorney, at any reasonable time or times, nonconfidential portions of its books and records of account, minutes and record of stockholders and to make extracts therefrom. Such right of examination is limited to a stockholder or group of stockholders holding of record:

- (i) Voting shares having a cost of not less than \$100,000 or constituting not less than one percent of the total outstanding voting shares, provided in either case such stockholder or group of stockholders have held of record such voting shares for a period of at least six months before making such written demand, or
- (ii) Not less than five percent of the total outstanding voting shares.

No stockholder or group of stockholders of a subsidiary holding company shall have any other right under this section or com-

mon law to examine its books and records of account, minutes and record of stockholders, except as provided in its bylaws with respect to inspection of a list of stockholders.

(3) The right to examination authorized by paragraph (b)(2) of this section and the right to inspect the list of stockholders provided by a subsidiary holding company's bylaws may be denied to any stockholder or group of stockholders upon the refusal of any such stockholder or group of stockholders to furnish such subsidiary holding company, its transfer agent or registrar an affidavit that such examination or inspection is not desired for any purpose which is in the interest of a business or object other than the business of the subsidiary holding company, that such stockholder has not within the five years preceding the date of the affidavit sold or offered for sale, and does not now intend to sell or offer for sale, any list of stockholders of the subsidiary holding company or of any other corporation, and that such stockholder has not within said five-year period aided or abetted any other person in procuring any list of stockholders for purposes of selling or offering for sale such list.

(4) Notwithstanding any provision of this section or common law, no stockholder or group of stockholders shall have the right to obtain, inspect or copy any portion of any books or records of a subsidiary holding company containing:

- (i) A list of depositors in or borrowers from such subsidiary holding company;
- (ii) Their addresses;
- (iii) Individual deposit or loan balances or records; or
- (iv) Any data from which such information could be reasonably constructed.

4-766.92

**SECTION 239.31—Indemnification;
Employment Contracts**

(a) *Restrictions on indemnification.* The provisions of section 239.40 shall apply to subsidiary holding companies.

(b) *Restrictions on employment contracts.* The

provisions of section 239.41 and any policies of the Board thereunder shall apply to subsidiary holding companies.

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**SUBPART D—INDEMNIFICATION;
EMPLOYMENT CONTRACTS**

**SECTION 239.40—Indemnification of
Directors, Officers, and Employees**

A mutual holding company shall indemnify its directors, officers, and employees in accordance with the following requirements:

(a) *Definitions and rules of construction.*

(1) *Definitions for purposes of this section.*

(i) *Action* means any judicial or administrative proceeding, or threatened proceeding, whether civil, criminal, or otherwise, including any appeal or other proceeding for review;

(ii) *Court* includes, without limitation, any court to which or in which any appeal or any proceeding for review is brought.

(iii) *Final judgment* means a judgment, decree, or order which is not appealable or as to which the period for appeal has expired with no appeal taken.

(iv) *Settlement* includes entry of a judgment by consent or confession or a plea of guilty or *nolo contendere*.

(2) References in this section to any individual or other person, including any mutual holding company, shall include legal representatives, successors, and assigns thereof.

(b) *General.* Subject to paragraphs (c) and (g) of this section, a mutual holding company shall indemnify any person against whom an action is brought or threatened because that person is or was a director, officer, or employee of the mutual holding company, for:

(1) Any amount for which that person becomes liable under a judgment if such action; and

(2) Reasonable costs and expenses, including reasonable attorney's fees, actually paid or incurred by that person in defending or settling such action, or in enforcing his or her rights under this section if he or she

attains a favorable judgment in such enforcement action.

(c) *Requirements.* Indemnification shall be made to such period under paragraph (b) of this section only if:

(1) Final judgment on the merits is in his or her favor; or

(2) In case of:

(i) Settlement,

(ii) Final judgment against him or her, or

(iii) Final judgment in his or her favor, other than on the merits, if a majority of the disinterested directors of the mutual holding company determine that he or she was acting in good faith within the scope of his or her employment or authority as he or she could reasonably have perceived it under the circumstances and for a purpose he or she could reasonably have believed under the circumstances was in the best interests of the mutual holding company or its members.

However, no indemnification shall be made unless the mutual holding company gives the Board at least 60 days' notice of its intention to make such indemnification. Such notice shall state the facts on which the action arose, the terms of any settlement, and any disposition of the action by a court. Such notice, a copy thereof, and a certified copy of the resolution containing the required determination by the board of directors shall be sent to the appropriate Reserve Bank, who shall promptly acknowledge receipt thereof. The notice period shall run from the date of such receipt. No such indemnification shall be made if the Board advises the mutual holding company in writing, within such notice period, of its objection to the indemnification.

(d) *Insurance.* A mutual holding company may obtain insurance to protect it and its directors, officers, and employees from potential losses arising from claims against any of them for alleged wrongful acts, or wrongful acts, committed in their capacity as directors, officers, or employees. However, no mutual holding company may obtain insurance which provides for payment of losses of any individual incurred as a consequence of his or her willful or criminal misconduct.

(e) *Payment of expenses.* If a majority of the directors of a mutual holding company concludes that, in connection with an action, any person ultimately may become entitled to indemnification under this section, the directors may authorize payment of reasonable costs and expenses, including reasonable attorneys' fees, arising from the defense or settlement of such action. Nothing in this paragraph shall prevent the directors of a mutual holding company from imposing such conditions on a payment of expenses as they deem warranted and in the interests of the mutual holding company. Before making advance payment of expenses under this paragraph, the mutual holding company shall obtain an agreement that the mutual holding company will be repaid if the person on whose behalf payment is made is later determined not to be entitled to such indemnification.

(f) *Exclusiveness of provisions.* No mutual holding company shall indemnify any person referred to in paragraph (b) of this section or obtain insurance referred to in paragraph (d) of the section other than in accordance with this section. However, a mutual holding company which has a bylaw in effect relating to indemnification of its personnel shall be governed solely by that bylaw, except that its authority to obtain insurance shall be governed by paragraph (d) of this section.

(g) The indemnification provided for in paragraph (b) of this section is subject to and qualified by 12 U.S.C. 1821(k).

tice. The making of such an employment contract would be an unsafe or unsound practice if such contract could lead to material financial loss or damage to the mutual holding company or could interfere materially with the exercise by the members of its board of directors of their duty or discretion provided by law, charter, bylaw or regulation as to the employment or termination of employment of an officer or employee of the mutual holding company. This may occur, depending upon the circumstances of the case, where an employment contract provides for an excessive term.

(b) *Required provisions.* Each employment contract shall provide that:

(1) The mutual holding company's board of directors may terminate the officer or employee's employment at any time, but any termination by the mutual holding company's board of directors other than termination for cause, shall not prejudice the officer or employee's right to compensation or other benefits under the contract. The officer or employee shall have no right to receive compensation or other benefits for any period after termination for cause. Termination for cause shall include termination because of the officer or employee's personal dishonesty, incompetence, willful misconduct, breach of fiduciary duty involving personal profit, intentional failure to perform stated duties, willful violation of any law, rule, or regulation (other than traffic violations or similar offenses) or final cease-and-desist order, or material breach of any provision of the contract.

(2) If the officer or employee is suspended and/or temporarily prohibited from participating in the conduct of the mutual holding company's affairs by a notice served under section 8 (e)(3) or (g)(1) of Federal Deposit Insurance Act (12 U.S.C. 1818 (e)(3) and (g)(1)) the mutual holding company's obligations under the contract shall be suspended as of the date of service unless stayed by appropriate proceedings. If the charges in the notice are dismissed, the mutual holding company may in its discretion:

(i) Pay the officer or employee all or

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SECTION 239.41—Employment Contracts

(a) *General.* A mutual holding company may enter into an employment contract with its officers and other employees only in accordance with the requirements of this section. All employment contracts shall be in writing and shall be approved specifically by the respective mutual holding company's board of directors. A mutual holding company shall not enter into an employment contract with any of its officers or other employees if such contract would constitute an unsafe or unsound prac-

part of the compensation withheld while its contract obligations were suspended, and

(ii) Reinstate (in whole or in part) any of its obligations which were suspended.

(3) If the officer or employee is removed and/or permanently prohibited from participating in the conduct of the mutual holding company's affairs by an order issued under section 8 (e)(4) or (g)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1818 (e)(4) or (g)(1)), all obligations of the mutual holding company under the contract shall terminate as of the effective date of the order, but vested rights of the contracting parties shall not be affected.

(4) If the subsidiary savings association is in default (as defined in section 3(x)(1) of the Federal Deposit Insurance Act), all obligations under the contract shall terminate as of the date of default, but this paragraph (b) shall not affect any vested rights of the contracting parties: *Provided*, that this paragraph (b) need not be included in an employment contract if prior written approval is secured from the Board.

(5) If the mutual holding company is subject to bankruptcy proceedings under title 11 of the United States Code, all obligations of the mutual holding company under the contract shall terminate as of the date that the petition is filed, but vested rights of the contracting parties shall not be affected: *Provided*, that this paragraph (b) need not be included in an employment contract if prior written approval is secured from the Board.

(6) All obligations under the contract shall be terminated, except to the extent determined that continuation of the contract is necessary to the continued operation of the mutual holding company—

(i) By the Board, at the time the Federal Deposit Insurance Corporation enters into an agreement to provide assistance to or on behalf of the subsidiary savings association under the authority contained in 13(c) of the Federal Deposit Insurance Act; or

(ii) By the Board, at the time the Board approves a supervisory merger to resolve problems related to operation of the mu-

tual holding company or when the mutual holding company is determined by the Board to be in an unsafe or unsound condition.

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SUBPART E—CONVERSIONS FROM MUTUAL TO STOCK FORM

SECTION 239.50—Purpose and Scope

(a) *General*. This subpart governs how a mutual holding company may convert from the mutual to the stock form of ownership. This subpart supersedes all inconsistent charter and bylaw provisions of mutual holding companies converting to stock form.

(b) *Prescribed forms*. A mutual holding company must use the forms prescribed under this subpart and provide such information as the Board may require under the forms by regulation or otherwise. The forms required under this subpart include: Form AC (Application for Conversion); Form PS (Proxy Statement); Form OC (Offering Circular); and Form OF (Order Form).

(c) *Waivers*. The Board may waive any requirement of this subpart or a provision in any prescribed form. To obtain a waiver, a mutual holding company must file a written request with the Board that:

(1) Specifies the requirement(s) or provision(s) that the mutual holding company wants the Board to waive;

(2) Demonstrates that the waiver is equitable; is not detrimental to the mutual holding company, mutual members, or other mutual holding companies or savings associations; and is not contrary to the public interest; and

(3) Includes an opinion of counsel demonstrating that applicable law does not conflict with the waiver of the requirement or provision.

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SECTION 239.51—Acquiring Another Insured Stock Depository Institution as Part of a Conversion

When a mutual holding company converts to stock form, the subsidiary savings association may acquire for cash or stock another insured depository institution that is already in the stock form of ownership.

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SECTION 239.52—Definitions

The following definitions apply to this subpart and the forms prescribed under this subpart:

(a) *Association members* or *members* are persons who, under applicable law, are eligible to vote at the meeting on conversion.

(b) *Eligibility record date* is the date for determining eligible account holders. The eligibility record date must be at least one year before the date that the board of directors adopts the plan of conversion.

(c) *Eligible account holders* are any persons holding qualifying deposits on the eligibility record date.

(d) *IRS* is the United States Internal Revenue Service.

(e) *Local community* includes:

- (1) Every county, parish, or similar governmental subdivision in which the mutual holding company has a home or branch office;
- (2) Each county's, parish's, or subdivision's metropolitan statistical area;
- (3) All zip code areas in the mutual holding company's Community Reinvestment Act assessment area; and
- (4) Any other area or category the mutual holding company sets out in its plan of conversion, as approved by the Board.

(f) *Mutual holding company* has the same meaning in this subpart as that term is given in subpart A. For purposes of this subpart, references to mutual holding company shall also include a resulting stock holding company, where applicable.

(g) *Offer*, *offer to sell*, or *offer for sale* is an attempt or offer to dispose of, or a solicitation of an offer to buy, a security or interest in a security for value. Preliminary negotiations or agreements with an underwriter, or among un-

derwriters who are or will be in privity of contract with the mutual holding company or resulting stock holding company, are not offers, offers to sell, or offers for sale.

(h) *Proxy soliciting material* includes a proxy statement, form of proxy, or other written or oral communication regarding the conversion.

(i) *Purchase* or *buy* includes every contract to acquire a security or interest in a security for value.

(j) *Qualifying deposit* is the total balance in an account holder's savings accounts at the close of business on the eligibility or supplemental eligibility record date. The mutual holding company's plan of conversion may provide that only savings accounts with total deposit balances of \$50 or more will qualify.

(k) *Resulting stock holding company* means the stock savings and loan holding company that is issuing stock in connection with conversion of a mutual holding company pursuant to this subpart.

(l) *Sale* or *sell* includes every contract to dispose of a security or interest in a security for value. An exchange of securities in a merger or acquisition approved by the Board is not a sale.

(m) *Solicitation* and *solicit* is a request for a proxy, whether or not accompanied by or included in a form of proxy; a request to execute, not execute, or revoke a proxy; or the furnishing of a form of proxy or other communication reasonably calculated to cause the members to procure, withhold, or revoke a proxy. Solicitation or solicit does not include providing a form of proxy at the unsolicited request of a member, the acts required to mail communications for members, or ministerial acts performed on behalf of a person soliciting a proxy.

(n) *Subscription offering* is the offering of shares through nontransferable subscription rights to:

- (1) Eligible account holders under section 239.59(h);
- (2) Tax-qualified employee stock ownership plans under section 239.59(m);

(3) Supplemental eligible account holders under section 239.59(h); and

(4) Other voting members under section 239.59(j).

(o) *Supplemental eligibility record date* is the date for determining supplemental eligible account holders. The supplemental eligibility record date is the last day of the calendar quarter before the Board approves the conversion and will occur only if the Board has not approved the conversion within 15 months of the eligibility record date.

(p) *Supplemental eligible account holders* are any persons, except officers, directors, and their associates of the mutual holding company or subsidiary savings association, holding qualifying deposits on the supplemental eligibility record date.

(q) *Underwriter* is any person who purchases any securities from the mutual holding company or resulting stock holding company with a view to distributing the securities, offers or sells securities for the mutual stock holding company or resulting stock holding company in connection with the securities' distribution, or participates or has a direct or indirect participation in the direct or indirect underwriting of any such undertaking. Underwriter does not include a person whose interest is limited to a usual and customary distributor's or seller's commission from an underwriter or dealer.

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SECTION 239.53—Prior to Conversion

(a) *Pre-filing meeting and consultation.*

(1) The mutual holding company's board, or a subcommittee of the board, may meet with the staff of the appropriate Reserve Bank or Board staff before the mutual holding company's board of directors votes on the plan of conversion. At that meeting the mutual holding company may provide the Reserve Bank or Board staff with a written strategic plan that outlines the objectives of the proposed conversion and the intended use of the conversion proceeds.

(2) The mutual holding company should also consult with the Board or appropriate Reserve Bank before it files its application

for conversion. The Reserve Bank or Board will discuss the information that the mutual holding company must include in the application for conversion, general issues that the mutual holding company may confront in the conversion process, and any other pertinent issues.

(b) *Business plan.*

(1) Prior to filing an application for conversion, the mutual holding company must adopt a business plan reflecting the mutual holding company's intended plans for deployment of the proposed conversion proceeds. The business plan is required, under section 239.55(b), to be included in the mutual holding company's conversion application. At a minimum, the business plan must address:

(i) The subsidiary savings association's projected operations and activities for three years following the conversion. The business plan must describe how the conversion proceeds will be deployed at the savings association (and holding company, if applicable), what opportunities are available to reasonably achieve the planned deployment of conversion proceeds in the relevant proposed market areas, and how its deployment will provide a reasonable return on investment commensurate with investment risk, investor expectations, and industry norms, by the final year of the business plan. The business plan must include three years of projected financial statements. The business plan must provide that the subsidiary savings associations receive at least 50 percent of the net conversion proceeds. The Board may require that a larger percentage of proceeds be contributed to the subsidiary savings associations.

(ii) The mutual holding company's plan for deploying conversion proceeds to meet credit and lending needs in the proposed market areas. The Board strongly discourages business plans that provide for a substantial investment in mortgage securities or other securities, except as an interim measure to facilitate orderly, prudent deployment of proceeds during the

three years following the conversion, or as part of a properly managed leverage strategy.

(iii) The risks associated with the plan for deployment of conversion proceeds, and the effect of this plan on management resources, staffing, and facilities.

(iv) The expertise of the mutual holding company and saving association subsidiary's management and board of directors, or that the mutual holding company has planned for adequate staffing and controls to prudently manage the growth, expansion, new investment, and other operations and activities proposed in its business plan.

(2) The mutual holding company may not project returns of capital or special dividends in any part of the business plan. A newly converted company may not plan on stock repurchases in the first year of the business plan.

(c) *Management and board review of business plan.*

(1) The chief executive officer and members of the board of directors of the mutual holding company must review, and at least two-thirds of the board of directors must approve, the business plan.

(2) The chief executive officer and at least two-thirds of the board of directors of the mutual holding company must certify that the business plan accurately reflects the intended plans for deployment of conversion proceeds, and that any new initiatives reflected in the business plan are reasonably achievable. The mutual holding company must submit these certifications with its business plan, as part of the conversion application under paragraph (b) of this section.

(d) *Board review of the business plan.*

(1) The Board will review the business plan to determine whether it demonstrates a safe and sound deployment of conversion proceeds, as part of its review of the conversion application. In making its determination, the Board will consider how the mutual holding company has addressed the applicable factors of paragraph (b) of this section. No single factor will be determina-

tive. The Board will review every case on its merits.

(2) The mutual holding company must file its business plan with the appropriate Reserve Bank. The Board or appropriate Reserve Bank may request additional information, if necessary, to support its determination under paragraph (d)(1) of this section. The mutual holding company must file its business plan as a confidential exhibit to the Form AC.

(3) If the Board approves the application for conversion and the mutual holding company completes the conversion, the resulting stock holding company must operate within the parameters of the business plan. The Board must approve any material deviation from the business plan in writing prior to such material deviation.

(e) *Disclosure of business plan.*

(1) The mutual holding company may discuss information about the conversion with individuals that it authorizes to prepare documents for the conversion.

(2) Except as permitted under paragraph (e)(1) of this section, the mutual holding company must keep all information about the conversion confidential until the board of directors adopts the plan of conversion.

(3) If the mutual holding company violates this section, the Board may require it to take remedial action. For example, the Board may require the mutual holding company to take any or all of the following actions:

(i) Publicly announce that the mutual holding company is considering a conversion;

(ii) Set an eligibility record date acceptable to the Board;

(iii) Limit the subscription rights of any person who violates or aids in a violation of this section; or

(iv) Take any other action to ensure that the conversion is fair and equitable.

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SECTION 239.54—Plan of Conversion

(a) *Adoption by the board of directors.* Prior to filing an application for conversion, the

board of directors of the mutual holding company must adopt a plan of conversion that conforms to sections 239.59 through 239.62 and 239.63(b). The board of directors must adopt the plan by at least a two-thirds vote. The plan of conversion is required, under section 239.55(b), to be included in the conversion application.

(b) *Contents of the plan of conversion.* The mutual holding company must include the information included in sections 239.59 through 239.62 and 239.63(b) in the plan of conversion. The Board may require the mutual holding company to delete or revise any provision in the plan of conversion if the Board determines the provision is inequitable; is detrimental to the mutual holding company, the account holders, other mutual holding companies, or other savings associations; or is contrary to public interest.

(c) *Notice of board of directors' approval of the plan of conversion.*

(1) *Notice.* The mutual holding company must promptly notify its members that the board of directors adopted a plan of conversion and that a copy of the plan is available for the members' inspection in the mutual holding company's home office and in each of the subsidiary savings association's branch offices. The mutual holding company must mail a letter to each member or publish a notice in the local newspaper in every local community where the savings association has an office. The mutual holding company may also issue a press release. The Board may require broader publication, if necessary, to ensure adequate notice to the members.

(2) *Contents of notice.* The mutual holding company may include any of the following statements and descriptions in the letter, notice, or press release.

(i) The board of directors adopted a proposed plan to convert from mutual to stock form.

(ii) The mutual holding company will send its members a proxy statement with detailed information on the proposed conversion before the mutual holding company convenes a members' meeting to vote on the conversion.

(iii) The members will have an opportunity to approve or disapprove the proposed conversion at a meeting. At least a majority of the eligible votes must approve the conversion.

(iv) The mutual holding company will not vote existing proxies to approve or disapprove the conversion. The mutual holding company will solicit new proxies for voting on the proposed conversion.

(v) The Board must approve the conversion before the conversion will be effective. The members will have an opportunity to file written comments, including objections and materials supporting the objections, with the Board.

(vi) The IRS must issue a favorable tax ruling, or a tax expert must issue an appropriate tax opinion, on the tax consequences of the conversion before the Board will approve the conversion. The ruling or opinion must indicate the conversion will be a tax-free reorganization.

(vii) The Board might not approve the conversion, and the IRS or a tax expert might not issue a favorable tax ruling or tax opinion.

(viii) Savings account holders will continue to hold accounts in the savings association with the same dollar amounts, rates of return, and general terms as existing deposits. The FDIC will continue to insure the accounts.

(ix) The mutual holding company's conversion will not affect borrowers' loans, including the amount, rate, maturity, security, and other contractual terms.

(x) The savings association's business of accepting deposits and making loans will continue without interruption.

(xi) The current management and staff will continue to conduct current services for depositors and borrowers under current policies and in existing offices.

(xii) The subsidiary savings association may continue to be a member of the Federal Home Loan Bank System.

(xiii) The mutual holding company may substantively amend the proposed plan of conversion before the members' meeting.

(xiv) The mutual holding company may terminate the proposed conversion.

(xv) After the Board approves the proposed conversion, the mutual holding company will send proxy materials providing additional information. After the mutual holding company sends proxy materials, members may telephone or write to the mutual holding company with additional questions.

(xvi) The proposed record date for determining the eligible account holders who are entitled to receive subscription rights to purchase the shares.

(xvii) A brief description of the circumstances under which supplemental eligible account holders will receive subscription rights to purchase the shares.

(xviii) A brief description of how voting members may participate in the conversion.

(xix) A brief description of how directors, officers, and employees will participate in the conversion.

(xx) A brief description of the proposed plan of conversion.

(xxi) The par value (if any) and approximate number of shares that will be issued and sold in the conversion.

(3) *Other requirements.*

(i) The mutual holding company may not solicit proxies, provide financial statements, describe the benefits of conversion, or estimate the value of the shares upon conversion in the letter, notice, or press release.

(ii) If the mutual holding company responds to inquiries about the conversion, it may address only the matters listed in paragraph (c)(2) of this section.

(d) *Amending a plan of conversion.* The mutual holding company may amend its plan of conversion before it solicits proxies. After the mutual holding company solicits proxies, it may amend the plan of conversion only if the Board concurs.

238.14 of this chapter. The Board will review any filing made under this subpart in accordance with section 238.14 of this chapter.

(b) *Requirements.*

(1) The application for conversion must include all of the following information.

(i) A plan of conversion meeting the requirements of section 239.54(b).

(ii) Pricing materials meeting the requirements paragraph (g)(2) of this section.

(iii) Proxy soliciting materials under section 239.57(d), including:

(A) A preliminary proxy statement with signed financial statements;

(B) A form of proxy meeting the requirements of section 239.57(b); and

(C) Any additional proxy soliciting materials, including press releases, personal solicitation instructions, radio or television scripts that the mutual holding company plans to use or furnish to the members, and a legal opinion indicating that any marketing materials comply with all applicable securities laws.

(iv) An offering circular described in section 239.58(a).

(v) The documents and information required by Form AC. The mutual holding company may obtain Form AC from the appropriate Reserve Bank and the Board's Web site (<http://www.federalreserve.gov>).

(vi) Where indicated, written consents, signed and dated, of any accountant, attorney, investment banker, appraiser, or other professional who prepared, reviewed, passed upon, or certified any statement, report, or valuation for use. See Form AC, instruction B(7).

(vii) The business plan, submitted as a separately bound, confidential exhibit. See paragraph (c) of this section.

(viii) Any additional information the Board requests.

(2) The Board will not accept for filing, and will return, any application for conversion that is improperly executed, materially deficient, substantially incomplete, or that provides for unreasonable conversion expenses.

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SECTION 239.55—Filing Requirements

(a) *Applications under this subpart.* Any filing with the Board required under this subpart must be filed in accordance with section

- (c) *Filing an application for conversion.*
- (1) The mutual holding company must file the application for conversion on Form AC with the appropriate Reserve Bank.
 - (2) Upon receipt of an application under this subpart, the Reserve Bank will promptly furnish notice and a copy of the application to the primary federal supervisor of any subsidiary savings association. The primary supervisor will have 30 calendar days from the date of the letter giving notice in which to submit its views and recommendations to the Board.
- (d) *Confidential treatment of portions of an application for conversion.*
- (1) The Board makes all filings under this subpart available to the public, but may keep portions of the application for conversion confidential under paragraph (d)(2) of this section.
 - (2) The mutual holding company may request the Board keep portions of the application confidential. To do so, the mutual holding company must separately bind and clearly designate as “confidential” any portion of the application for conversion that the mutual holding company deems confidential. The mutual holding company must provide a written statement specifying the grounds supporting the request for confidentiality. The Board will not treat as confidential the portion of the application describing how the mutual holding company plans to meet the Community Reinvestment Act (CRA) objectives. The CRA portion of the application may not incorporate by reference information contained in the confidential portion of the application.
 - (3) The Board will determine whether confidential information must be made available to the public under 5 U.S.C. 552 and part 261 of this chapter. The Board will advise the mutual holding company before it makes information the mutual holding company designated as “confidential” available to the public.
- (e) *Amending an application for conversion.* To amend an application for conversion, the mutual holding company must:
- (1) File an amendment with an appropriate facing sheet;
 - (2) Number each amendment consecutively;
 - (3) Respond to all issues raised by the Board; and
 - (4) Demonstrate that the amendment conforms to all applicable regulations.
- (f) *Notice of filing of application and comment process.*
- (1) *Public notice of an application for conversion.*
 - (i) The mutual holding company must publish a public notice of the application for conversion in accordance with the procedures in section 238.14 of this chapter. The mutual holding company must simultaneously prominently post the notice in its home office and in all of the branch offices of its subsidiary savings associations.
 - (ii) Promptly after publication, the mutual holding company must file a copy of any public notice and an affidavit of publication from each publisher with the appropriate Reserve Bank.
 - (iii) If the Board does not accept the application for conversion under section 239.55(g) and requires the mutual holding company to file a new application, the mutual holding company must publish and post a new notice and allow an additional 30 days for comment.
 - (2) *Public comments.* Commenters may submit comments on the application in accordance with the procedures in section 238.14 of this chapter. A commenter must file any comments with the appropriate Reserve Bank.
- (g) *Board review of the application for conversion.*
- (1) *Board action on a conversion application.* The Board may approve an application for conversion only if:
 - (i) The conversion complies with this subpart;
 - (ii) The mutual holding company will meet all applicable regulatory capital requirements after the conversion; and
 - (iii) The conversion will not result in a taxable reorganization under the Internal Revenue Code of 1986, as amended.
 - (2) *Board review of appraisal.* The Board will review the appraisal required by para-

graph (b)(1)(ii) of this section in determining whether to approve the application. The Board will review the appraisal under the following requirements.

(i) Independent persons experienced and expert in corporate appraisal, and acceptable to the Board, must prepare the appraisal report.

(ii) An affiliate of the appraiser may serve as an underwriter or selling agent, if the mutual holding company ensures that the appraiser is separate from the underwriter or selling agent affiliate and the underwriter or selling agent affiliate does not make recommendations or affect the appraisal.

(iii) The appraiser may not receive any fee in connection with the conversion other than for appraisal services.

(iv) The appraisal report must include a complete and detailed description of the elements of the appraisal, a justification for the appraisal methodology, and sufficient support for the conclusions.

(v) If the appraisal is based on a capitalization of the pro forma income, it must indicate the basis for determining the income to be derived from the sale of shares, and demonstrate that the earnings multiple used is appropriate, including future earnings growth assumptions.

(vi) If the appraisal is based on a comparison of the shares with outstanding shares of existing stock associations, the existing stock associations must be reasonably comparable in size, market area, competitive conditions, risk profile, profit history, and expected future earnings.

(vii) The Board may decline to process the application for conversion and deem it materially deficient or substantially incomplete if the initial appraisal report is materially deficient or substantially incomplete.

(viii) The mutual holding company may not represent or imply that the Board has approved the appraisal.

(3) *Board review of compliance record.* The Board will review the compliance record of the subsidiary savings association under the regulations applicable to the savings association and the business plan to determine

how the conversion will affect the convenience and needs of its communities.

(i) Based on this review, the Board may approve the application, deny the application, or approve the application on the condition that the resulting stock holding company will improve the CRA performance or will address the particular credit or lending needs of the communities that it will serve.

(ii) The Board may deny the application if the business plan does not demonstrate that the proposed use of conversion proceeds will help the resulting stock holding company to meet the credit and lending needs of the communities that the resulting stock holding company will serve.

(4) The Board may request that the mutual holding company amend the application if further explanation is necessary, material is missing, or material must be corrected.

(5) The Board will deny the application if the application does not meet the requirements of this subpart, unless the Board waives the requirement under section 239.50(c).

(h) *Judicial review.*

(1) Any person aggrieved by the Board's final action on the application for conversion may ask the court of appeals of the United States for the circuit in which the principal office or residence of such person is located, or the U.S. Court of Appeals for the District of Columbia Circuit, to review the action under 12 U.S.C. 1467a(j), which provisions shall apply in all respects as if such final action were an order, subject to paragraph (h)(2) of this section.

(2) To obtain court review of the action, the aggrieved person must file a written petition requesting that the court modify, terminate, or set aside the final Board action. The aggrieved person must file the petition with the court within the later of 30 days after the Board publishes notice of its final action in the *Federal Register* or 30 days after the mutual holding company mails the proxy statement to its members under section 239.56(c).

4-768.6**SECTION 239.56—Vote by Members****(a) Mutual member approval of the plan of conversion.**

(1) After the Board approves the plan of conversion, the mutual holding company must submit the plan of conversion to its members for approval. The mutual holding company must obtain this approval at a meeting of its members.

(2) The members must approve the plan of conversion by a majority of the total outstanding votes.

(3) The members may vote in person or by proxy.

(4) The mutual holding company may notify eligible account holders or supplemental eligible account holders who are not voting members of the proposed conversion. The mutual holding company may include only the information in section 239.54(c) in the notice.

(b) Eligibility to vote for the plan of conversion. The mutual holding company determines members' eligibility to vote by setting a voting record date. The mutual holding company must set a voting record date that is not more than 60 days nor less than 20 days before the meeting.

(c) Notifying members of the meeting.

(1) The mutual holding company must notify the members of the meeting to consider the conversion by sending the members a proxy statement.

(2) The mutual holding company must notify its members 20 to 45 days before the meeting.

(3) The mutual holding company must also notify each beneficial holder of an account at any subsidiary savings association held in a fiduciary capacity:

(i) If the subsidiary savings association is a federal association and the name of the beneficial holder is disclosed on the records of the subsidiary savings association; or

(ii) If the subsidiary savings association is a state-chartered association and the beneficial holder possesses voting rights under state law.

(d) Submissions to the Board after the members' meeting.

(1) Promptly after the members' meeting, the mutual holding company must file all of the following information with the appropriate Reserve Bank:

(i) A certified copy of each adopted resolution on the conversion.

(ii) The total votes eligible to be cast.

(iii) The total votes represented in person or by proxy.

(iv) The total votes cast in favor of and against each matter.

(v) The percentage of votes necessary to approve each matter.

(vi) An opinion of counsel that the mutual holding company conducted the members' meeting in compliance with all applicable state or federal laws and regulations.

(2) Promptly after completion of the conversion, the mutual holding company must submit to the appropriate Reserve Bank an opinion of counsel that the mutual holding company has complied with all laws applicable to the conversion.

4-768.7**SECTION 239.57—Proxy Solicitation****(a) Applicability of proxy solicitation provisions.**

(1) The mutual holding company must comply with these proxy solicitation provisions when the mutual holding company provides proxy solicitation material to members for the meeting to vote on the plan of conversion.

(2) Members of the mutual holding company must comply with these proxy solicitation provisions when they provide proxy solicitation materials to members for the meeting to vote on the conversion, pursuant to paragraph (f) of this section except where:

(i) The member solicits 50 people or fewer and does not solicit proxies on behalf of the mutual holding company; or

(ii) The member solicits proxies through newspaper advertisements after the board of directors adopts the plan of conver-

sion. Any newspaper advertisements may include only the following information:

- (A) The name of the mutual holding company;
- (B) The reason for the advertisement;
- (C) The proposal or proposals to be voted upon;
- (D) Where a member may obtain a copy of the proxy solicitation material; and
- (E) A request for the members of the mutual holding company to vote at the meeting.

(b) *Form of proxy.* The form of proxy must include all of the following:

- (1) A statement in bold face type stating that management is soliciting the proxy.
- (2) Blank spaces where the member must date and sign the proxy.
- (3) Clear and impartial identification of each matter or group of related matters that members will vote upon. It must include any proposed charitable contribution as an item to be voted on separately.
- (4) The phrase "Revocable Proxy" in bold face type (at least 18 point).
- (5) A description of any charter or state law requirement that restricts or conditions votes by proxy.
- (6) An acknowledgment that the member received a proxy statement before he or she signed the form of proxy.
- (7) The date, time, and the place of the meeting, when available.
- (8) A way for the member to specify by ballot whether he or she approves or disapproves of each matter that members will vote upon.
- (9) A statement that management will vote the proxy in accordance with the member's specifications.
- (10) A statement in bold face type indicating how management will vote the proxy if the member does not specify a choice for a matter.

(c) *Permissible use of proxies.*

- (1) The mutual holding company may not use previously executed proxies for the plan of conversion vote. If members consider the plan of conversion at an annual meeting, the mutual holding company may vote

proxies obtained through other proxy solicitations only on matters not related to the plan of conversion.

(2) The mutual holding company may vote a proxy obtained under this subpart on matters that are incidental to the conduct of the meeting. The mutual holding company or its management may not vote a proxy obtained under this subpart at any meeting other than the meeting (or any adjournment of the meeting) to vote on the plan of conversion.

(d) *Proxy statement requirements.*

(1) *Content requirements.* The mutual holding company must prepare the proxy statement in compliance with this subpart and Form PS. The mutual holding company may obtain Form PS from the appropriate Reserve Bank and the Board's Web site (<http://www.federalreserve.gov>).

(2) *Other requirements.*

(i) The Board will review the proxy solicitation material in its review of the application for conversion.

(ii) The mutual holding company must provide a written proxy statement to the members before or at the same time the mutual holding company provides any other soliciting material. The mutual holding company must mail proxy solicitation material to the members no later than ten days after the Board approves the conversion.

(e) *Filing revised proxy materials.*

(1) The mutual holding company must file revised proxy materials as an amendment to the application for conversion.

(2) To revise the proxy solicitation materials, the mutual holding company must file:

(i) Revised proxy materials as required by Form PS;

(ii) Revised form of proxy, if applicable; and

(iii) Any additional proxy solicitation material subject to paragraph (d) of this section.

(3) The mutual holding company must clearly indicate changes from the prior filing.

(4) The mutual holding company must file a definitive copy of all proxy solicitation

material, in the form in which the mutual holding company furnishes the material to the members. The mutual holding company must file no later than the date that it sends or gives the proxy solicitation material to the members. The mutual holding company must indicate the date that it plans to release the materials.

(5) Unless the Board requests the mutual holding company to do so, the mutual holding company does not have to file copies of replies to inquiries from the members or copies of communications that merely request members to sign and return proxy forms.

(f) *Mailing proxy solicitation material.*

(1) The mutual holding company must mail the member's proxy solicitation material if:

- (i) The board of directors adopted a plan of conversion;
- (ii) A member requests in writing that the mutual holding company mail the proxy solicitation material; and
- (iii) The member agrees to defray reasonable expenses of the mutual holding company.

(2) As soon as practicable after the mutual holding company receives a request under paragraph (f)(1) of this section, the mutual holding company must mail or otherwise furnish the following information to the member:

- (i) The approximate number of members that the mutual holding company solicited or will solicit, or the approximate number of members of any group of account holders that the member designates; and
- (ii) The estimated cost of mailing the proxy solicitation material for the member.

(3) The mutual holding company must mail proxy solicitation material to the designated members promptly after the member furnishes the materials, envelopes (or other containers), and postage (or payment for postage) to the mutual holding company.

(4) The mutual holding company is not responsible for the content of a member's proxy solicitation material.

(5) A member may furnish other members

its own proxy solicitation material, subject to the rules in this section.

(g) *Prohibited solicitations.*

(1) False or misleading statements.

(i) No one may use proxy solicitation material for the members' meeting if the material contains any statement which, considering the time and the circumstances of the statement:

(A) Is false or misleading with respect to any material fact;

(B) Omits any material fact that is necessary to make the statements not false or misleading; or

(C) Omits any material fact that is necessary to correct a statement in an earlier communication that has become false or misleading.

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

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

(i) An undated or post-dated proxy;

(ii) A proxy that states it will be dated after the date it is signed by a member;

(iii) A proxy that is not revocable at will by the member; or

(iv) A proxy that is part of another document or instrument.

(3) If a solicitation violates this section, the Board may require remedial measures, including:

(i) Correction of the violation by a retraction and a new solicitation;

(ii) Rescheduling the members' meeting; or

(iii) Any other actions necessary to ensure a fair vote.

(4) The Board may also bring an enforcement action against the violator for violations of this section.

(h) *Re-soliciting proxies.* If the mutual holding company amends its application for conversion, the Board may require it to re-solicit proxies for the members' meeting as a condition of approval of the amendment.

4-768.8**SECTION 239.58—Offering Circular****(a) Filing requirements.**

(1) The mutual holding company must prepare and file the offering circular with the appropriate Reserve Bank in compliance with this subpart and Form OC. The mutual holding company may obtain Form OC from the Reserve Bank and the Board's Web site (<http://www.federalreserve.gov>).

(2) The mutual holding company must condition the stock offering upon member approval of the plan of conversion.

(3) The Board will review the Form OC and may comment on the included disclosures and financial statements.

(4) The mutual holding company must file a revised offering circular, final offering circular, and any post-effective amendment to the final offering circular.

(5) The Board will not approve the adequacy or accuracy of the offering circular or the disclosures.

(b) Distribution of the offering circular.

(1) The mutual holding company may distribute a preliminary offering circular at the same time as or after the mutual holding company mails the proxy statement to its members.

(2) The mutual holding company must distribute the offering circular in accordance with this subpart and with all applicable securities laws.

(3) The mutual holding company must distribute the offering circular to persons listed in the plan of conversion no later than ten days after the Board approves the conversion.

(c) Post-effective amendments to the offering circular.

(1) The mutual holding company must file a post-effective amendment to the offering circular with the Board when a material event or change of circumstance occurs.

(2) After the Securities and Exchange Commission declares the post-effective amendment effective, the mutual holding company must immediately deliver the amendment to each person who subscribed for or ordered shares in the offering.

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

(4) The post-effective offering period must remain open no less than 10 days nor more than 20 days, unless the Board approves a longer rescission period.

4-768.9**SECTION 239.59—Offers and Sales of Stock**

(a) Purchase priorities. The mutual holding company must offer to sell the conversion shares in the following order:

(1) Eligible account holders.

(2) Tax-qualified employee stock ownership plans.

(3) Supplemental eligible account holders.

(4) Other voting members who have subscription rights.

(5) The community, the community and the general public, or the general public.

(b) Offering conversion shares.

(1) The mutual holding company may offer to sell the conversion shares if the Board approves the conversion, subject to compliance with requirements of the Securities and Exchange Commission.

(2) The offer may commence at the same time as the proxy solicitation of the members begins.

(c) Pricing conversion shares.

(1) The conversion shares must be sold at a uniform price per share and at a total price that is equal to the estimated pro forma market value of the shares after conversion.

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

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

(4) If the Board permits, the maximum price of conversion shares sold may be increased. The maximum price, as adjusted, must be no more than 15 percent above the

maximum price computed under paragraph (c)(2) of this section.

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

(6) The mutual holding company must include the estimated price in any preliminary offering circular.

(d) *Selling conversion shares.*

(1) The mutual holding company must distribute order forms to all eligible account holders, supplemental eligible account holders, and other voting members to enable them to subscribe for the conversion shares they are permitted under the plan of conversion. The mutual holding company may either send the order forms with the offering circular or after it distributes the offering circular.

(2) The mutual holding company may sell the conversion shares in a community offering, a public offering, or both. The mutual holding company may begin the community offering, the public offering, or both at any time during the subscription offering or upon conclusion of the subscription offering.

(3) The mutual holding company may pay underwriting commissions (including underwriting discounts). The Board may object to the payment of unreasonable commissions. The mutual holding company may reimburse an underwriter for accountable expenses in a subscription offering if the public offering is limited. If no public offering occurs, the mutual holding company may pay an underwriter a consulting fee. The Board may object to the payment of unreasonable consulting fees.

(4) If the mutual holding company conducts the community offering, the public offering, or both at the same time as the subscription offering, it must fill all subscription orders first.

(5) The mutual holding company must prepare the order form in compliance with this subpart and Form OF. The mutual holding company may obtain Form OF from the Reserve Bank and from the Board's Web site (<http://www.federalreserve.gov>).

(e) *Prohibited sales practices.*

(1) In connection with offers, sales, or pur-

chases of conversion shares under this subpart, the mutual holding company and its directors, officers, agents, or employees may not:

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

(ii) Obtain money or property by means of any untrue statement of a material fact or any omission of a material fact necessary to make the statements, in light of the circumstances under which they were made, not misleading; or

(iii) Engage in any act, transaction, practice, or course of business that operates or would operate as a fraud or deceit upon a purchaser or seller.

(2) During the conversion, no person may:

(i) Transfer, or enter into any agreement or understanding to transfer, the legal or beneficial ownership of subscription rights for the conversion shares or the underlying securities to the account of another;

(ii) Make any offer, or any announcement of an offer, to purchase any of the conversion shares from anyone but the mutual holding company; or

(iii) Knowingly acquire more than the maximum purchase allowable under the plan of conversion.

(3) The restrictions in paragraphs (e)(2)(i) and (e)(2)(ii) of this section do not apply to offers for more than 10 percent of any class of conversion shares by:

(i) An underwriter or a selling group, acting on behalf of the mutual holding company or resulting stock holding company, that makes the offer with a view toward public resale; or

(ii) One or more of the tax-qualified employee stock ownership plans so long as the plan or plans do not beneficially own more than 25 percent of any class of the equity securities in the aggregate.

(4) Any person that violates the restrictions in paragraphs (e)(2)(i) and (e)(2)(ii) of this section may face prosecution or other legal action.

(f) *Payment for conversion shares.*

(1) A subscriber may purchase conversion shares with cash, by a withdrawal from a

savings account, or a withdrawal from a certificate of deposit. If a subscriber purchases conversion shares by a withdrawal from a certificate of deposit, the mutual holding company or its subsidiary savings association may not assess a penalty for the withdrawal.

(2) The mutual holding company may not extend credit to any person to purchase the conversion shares.

(g) *Interest on payments for conversion shares.*

(1) The mutual holding company or its subsidiary savings association must pay interest from the date it receives a payment for conversion shares until the date it completes or terminates the conversion. The mutual holding company or its subsidiary savings association must pay interest at no less than the passbook rate for amounts paid in cash, check, or money order.

(2) If a subscriber withdraws money from a savings account to purchase conversion shares, the mutual holding company or its subsidiary savings association must pay interest on the payment until the mutual holding company completes or terminates the conversion as if the withdrawn amount remained in the account.

(3) If a depositor fails to maintain the applicable minimum balance requirement because he or she withdraws money from a certificate of deposit to purchase conversion shares, the mutual holding company or its subsidiary savings association may cancel the certificate and pay interest at no less than the passbook rate on any remaining balance.

(h) *Subscription rights for each eligible account holder and each supplemental eligible account holder.*

(1) The mutual holding company must give each eligible account holder subscription rights to purchase conversion shares in an amount equal to the greater of:

- (i) The maximum purchase limitation established for the community offering or the public offering under paragraph (p) of this section;
- (ii) One-tenth of one percent of the total stock offering; or

(iii) Fifteen times the following number: The total number of conversion shares that the mutual holding company will issue, multiplied by the following fraction: the numerator is the total qualifying deposit of the eligible account holder, and the denominator is the total qualifying deposits of all eligible account holders. The mutual holding company must round down the product of this multiplied fraction to the next whole number.

(2) The mutual holding company must give subscription rights to purchase shares to each supplemental eligible account holder in the same amount as described in paragraph (h)(1) of this section, except that the mutual holding company must compute the fraction described in paragraph (h)(1)(iii) of this section as follows: the numerator is the total qualifying deposit of the supplemental eligible account holder, and the denominator is the total qualifying deposits of all supplemental eligible account holders.

(i) *Officers, directors, and their associates as eligible account holders.* The officers, directors, and their associates of the mutual holding company and subsidiary savings association may be eligible account holders. However, if an officer, director, or his or her associate receives subscription rights based on increased deposits in the year before the eligibility record date, the mutual holding company must subordinate subscription rights for these deposits to subscription rights exercised by other eligible account holders.

(j) *Other voting members eligible to purchase conversion shares.*

(1) The mutual holding company must give rights to purchase the conversion shares in the conversion to voting members who are neither eligible account holders nor supplemental eligible account holders. The mutual holding company must allocate rights to each voting member that are equal to the greater of:

- (i) The maximum purchase limitation established for the community offering and the public offering under paragraph (p) of this section; or
- (ii) One-tenth of one percent of the total stock offering.

(2) The mutual holding company must subordinate the voting members' rights to the rights of eligible account holders, tax-qualified employee stock ownership plans, and supplemental eligible account holders.

(k) *Purchase limitations for officers, directors, and their associates.*

(1) When the mutual holding company converts, the officers, directors, and their associates of the mutual holding company and subsidiary savings association may not purchase, in the aggregate, more than the following percentage of the total stock offering:

Institution size	Officer and director purchases (percent)
\$50,000,000 or less	35
\$50,000,001-100,000,000	34
\$100,000,001-150,000,000	33
\$150,000,001-200,000,000	32
\$200,000,001-250,000,000	31
\$250,000,001-300,000,000	30
\$300,000,001-350,000,000	29
\$350,000,001-400,000,000	28
\$400,000,001-450,000,000	27
\$450,000,001-500,000,000	26
Over \$500,000,000	25

(2) The purchase limitations in this section do not apply to shares held in tax-qualified employee stock benefit plans that are attributable to the officers, directors, and their associates.

(l) *Allocating conversion shares in the event of oversubscription.*

(1) If the conversion shares are oversubscribed by the eligible account holders, the mutual holding company must allocate shares among the eligible account holders so that each, to the extent possible, may purchase 100 shares.

(2) If the conversion shares are oversubscribed by the supplemental eligible account holders, the mutual holding company must allocate shares among the supplemental eligible account holders so that each, to the extent possible, may purchase 100 shares.

(3) If a person is an eligible account holder and a supplemental eligible account holder, the mutual holding company must include the eligible account holder's allocation in determining the number of conversion shares that the mutual holding company

may allocate to the person as a supplemental eligible account holder.

(4) For conversion shares that the mutual holding company does not allocate under paragraphs (l)(1) and (l)(2) of this section, the mutual holding company must allocate the shares among the eligible or supplemental eligible account holders equitably, based on the amounts of qualifying deposits. The mutual holding company must describe this method of allocation in its plan of conversion.

(5) If shares remain after the mutual holding company has allocated shares as provided in paragraphs (l)(1) and (l)(2) of this section, and if the voting members oversubscribe, the mutual holding company must allocate the conversion shares among those members equitably. The mutual holding company must describe the method of allocation in its plan of conversion.

(m) *Employee stock ownership plan purchase of conversion shares.*

(1) The tax-qualified employee stock ownership plan of the mutual holding company may purchase up to 10 percent of the total offering of the conversion shares.

(2) If the Board approves a revised stock valuation range as described in paragraph (c)(5) of this section, and the final conversion stock valuation range exceeds the former maximum stock offering range, the mutual holding company may allocate conversion shares to the tax-qualified employee stock ownership plan, up to the 10 percent limit in paragraph (m)(1) of this section.

(3) If the tax-qualified employee stock ownership plan is not able to or chooses not to purchase stock in the offering, it may, with prior Board approval and appropriate disclosure in the offering circular, purchase stock in the open market, or purchase authorized but unissued conversion shares.

(4) The mutual holding company may include stock contributed to a charitable organization in the conversion in the calculation of the total offering of conversion shares under paragraphs (m)(1) and (m)(2) of this

section, unless the Board objects on supervisory grounds.

(n) *Purchase limitations.*

(1) The mutual holding company may limit the number of shares that any person, group of associated persons, or persons otherwise acting in concert, may subscribe to up to five percent of the total stock sold.

(2) If the mutual holding company sets a limit of five percent under paragraph (n)(1) of this section, it may modify that limit with Board approval to provide that any person, group of associated persons, or persons otherwise acting in concert subscribing for five percent, may purchase between five and ten percent as long as the aggregate amount that the subscribers purchase does not exceed 10 percent of the total stock offering.

(3) The mutual holding company may require persons exercising subscription rights to purchase a minimum number of conversion shares. The minimum number of shares must equal the lesser of the number of shares obtained by a \$500 subscription or 25 shares.

(4) In setting purchase limitations under this section, the mutual holding company may not aggregate conversion shares attributed to a person in the tax-qualified employee stock ownership plan with shares purchased directly by, or otherwise attributable to, that person.

(o) *Purchase preference for persons in the local community.*

(1) In the subscription offering, subject to the purchase priorities set forth in paragraph (a) of this section, the mutual holding company may give a purchase preference to eligible account holders, supplemental eligible account holders, and voting members residing in the local community.

(2) In the community offering, the mutual holding company must give a purchase preference to natural persons residing in the local community.

(p) *Conditions on community offerings and public offerings.*

(1) If the mutual holding company offers conversion shares in a community offering,

a public offering, or both, it must offer and sell the stock to achieve a widespread distribution of the stock.

(2) If the mutual holding company offers shares in a community offering, a public offering, or both, it must first fill orders for the stock up to a maximum of two percent of the conversion stock on a basis that will promote a widespread distribution of stock. The mutual holding company must allocate any remaining shares on an equal number of shares per order basis until it fills all orders.

4-768.91

SECTION 239.60—Completion of the Offering

(a) *Deadline for completing the sale of stock.*
The mutual holding company must complete all sales of the stock within 45 calendar days after the last day of the subscription period, unless the offering is extended under paragraph (b) of this section.

(b) *Offering period extension.*

(1) The mutual holding company must request, in writing, an extension of any offering period.

(2) The Board may grant extensions of time to sell the shares. The Board will not grant any single extension of more than 90 days.

(3) If the Board grants the request for an extension of time, the mutual holding company must provide a post-effective amendment to the offering circular under section 239.58(c) to each person who subscribed for or ordered stock. The amendment must indicate that the Board extended the offering period and that each person who subscribed for or ordered stock may increase, decrease, or rescind their subscription or order within the time remaining in the extension period.

4-768.92

SECTION 239.61—Completion of the Conversion

(a) *Completion of the conversion.*

(1) In the plan of conversion, the mutual holding company must set a date by which the conversion must be completed. This date must not be more than 24 months from the date that the members approve the plan of conversion. The date, once set, may not be extended by the mutual holding company or by the Board. The mutual holding company must terminate the conversion if it is not completed by that date.

(2) The conversion is complete on the date that the mutual holding company accepts the offers for stock of the resulting stock holding company.

(b) *Termination of the conversion.*

(1) The members may terminate the conversion by failing to approve the conversion at the members' meeting.

(2) The mutual holding company may terminate the conversion before the members' meeting.

(3) The mutual holding company may terminate the conversion after the members' meeting only if the Board concurs.

(c) *Voting rights for stockholders following conversion.* The resulting stock holding company must provide the stockholders with exclusive voting rights.

(d) *Rights of savings account holders.* The resulting stock holding company must provide a liquidation account for each eligible and supplemental eligible account holder under section 239.62(a)(1)-(3).

4-768.93

SECTION 239.62—Liquidation Accounts

(a) *Liquidation account.*

(1) A liquidation account represents the potential interest of eligible account holders and supplemental eligible account holders in the mutual holding company's net worth at the time of conversion. The resulting stock holding company must maintain a sub-account to reflect the interest of each account holder.

(2) Before the resulting stock holding company may provide a liquidation distribution to common stockholders, the resulting stock holding company must give a liquidation

distribution to those eligible account holders and supplemental eligible account holders who hold savings accounts from the time of conversion until liquidation.

(3) The resulting stock holding company may not record the liquidation account in the financial statements. The resulting stock holding company must disclose the liquidation account in the footnotes to the financial statements.

(4) The initial balance of the liquidation account is the net worth in the statement of financial condition included in the final offering circular.

(b) *Liquidation sub-accounts.*

(1) (i) The resulting stock holding company determines the initial sub-account balance for a savings account held by an eligible account holder by multiplying the initial balance of the liquidation account by the following fraction: The numerator is the qualifying deposit in the savings account on the eligibility record date. The denominator is total qualifying deposits of all eligible account holders on that date.

(ii) The resulting stock holding company determines the initial sub-account balance for a savings account held by a supplemental eligible account holder by multiplying the initial balance of the liquidation account by the following fraction: The numerator is the qualifying deposit in the savings account on the supplemental eligibility record date. The denominator is total qualifying deposits of all supplemental eligible account holders on that date.

(iii) If an account holder holds a savings account on the eligibility record date and a separate savings account on the supplemental eligibility record date, the resulting stock holding company must compute separate sub-accounts for the qualifying deposits in the savings account on each record date.

(2) The resulting stock holding company may not increase the initial sub-account balances. The resulting stock holding company must decrease the initial balance under sec-

tion 239.62(d) as depositors reduce or close their accounts.

(c) *Retention of voting rights based on liquidation sub-accounts.* Eligible account holders or supplemental eligible account holders do not retain any voting rights based on their liquidation sub-accounts.

(d) *Adjusting liquidation sub-accounts.*

(1) (i) The resulting stock holding company must reduce the balance of an eligible account holder's or supplemental eligible account holder's sub-account if the deposit balance in the account holder's savings account at the close of business on any annual closing date, which for purposes of this section is the fiscal year end, after the relevant eligibility record dates is less than:

(A) The deposit balance in the account holder's savings account at the close of business on any other annual closing date after the relevant eligibility record date; or

(B) The qualifying deposits in the account holder's savings account on the relevant eligibility record date.

(ii) The reduction must be proportionate to the reduction in the deposit balance.

(2) If the resulting stock holding company reduces the balance of a liquidation sub-account, the resulting stock holding company may not subsequently increase it if the deposit balance increases.

(3) The resulting stock holding company is not required to adjust the liquidation account and sub-account balances at each annual closing date if it maintains sufficient records to make the computations if a liquidation subsequently occurs.

(4) The resulting stock holding company must maintain the liquidation sub-account for each account holder as long as the account holder maintains an account with the same social security number or tax identification number, as applicable.

(5) If there is a complete liquidation, the resulting stock holding company must provide each account holder with a liquidation distribution in the amount of the sub-account balance.

(e) *Liquidation defined.*

(1) For purposes of this subpart, a liquidation is a sale of the assets and settlement of the liabilities with the intent to cease operations and close. Upon liquidation, the resulting stock holding company must return the charter to the governmental agency that issued it. The government agency must cancel the charter.

(2) A merger, consolidation, or similar combination or transaction with another depository institution, is not a liquidation. If the resulting stock holding company is involved in such a transaction, the surviving institution must assume the liquidation account.

(f) *Effect of liquidation on net worth.* The liquidation account does not affect the net worth.

4-768.94

SECTION 239.63—Post-Conversion

(a) *Management stock benefit plans.*

(1) During the 12 months after the conversion, the resulting stock holding company may implement a stock option plan (Option Plan), an employee stock ownership plan or other tax-qualified employee stock benefit plan (collectively, ESOP), and a management recognition plan (MRP), provided the resulting stock holding company meets all of the following requirements.

(i) The resulting stock holding company discloses the plans in the proxy statement and offering circular and indicates in the offering circular that there will be a separate shareholder vote on the Option Plan and the MRP at least six months after the conversion. No shareholder vote is required to implement the ESOP. The ESOP must be tax-qualified.

(ii) The Option Plan does not exceed more than ten percent of the number of shares that the resulting stock holding company issued in the conversion.

(iii) (A) The ESOP and MRP do not exceed, in the aggregate, more than ten percent of the number of shares that the resulting stock holding company issued in the conversion. If the resulting

stock holding company has tangible capital of ten percent or more following the conversion, the Board may permit the ESOP and MRP to represent, in the aggregate, up to 12 percent of the number of shares issued in the conversion; and

(B) The MRP does not exceed more than three percent of the number of shares that the resulting stock holding company issued in the conversion. If the resulting stock holding company has tangible capital of ten percent or more after the conversion, the Board may permit the MRP to represent up to four percent of the number of shares that the resulting stock holding company issued in the conversion.

(iv) No individual receives more than 25 percent of the shares under any plan.

(v) The directors who are not the officers do not receive more than five percent of the shares of the MRP or Option Plan individually, or 30 percent of any such plan in the aggregate.

(vi) The shareholders approve each of the Option Plan and the MRP by a majority of the total votes eligible to be cast at a duly called meeting before the resulting stock holding company establishes or implements the plan. The resulting stock holding company may not hold this meeting until six months after the conversion.

(vii) When the resulting stock holding company distributes proxies or related material to shareholders in connection with the vote on a plan, the resulting stock holding company states that the plan complies with Board regulations and that the Board does not endorse or approve the plan in any way. The resulting stock holding company may not make any written or oral representations to the contrary.

(viii) The resulting stock holding company does not grant stock options at less than the market price at the time of grant.

(ix) The resulting stock holding company does not fund the Option Plan or the MRP at the time of the conversion.

(x) The plan does not begin to vest ear-

lier than one year after shareholders approve the plan, and does not vest at a rate exceeding 20 percent per year.

(xi) The plan permits accelerated vesting only for disability or death, or if the resulting stock holding company undergoes a change of control.

(xii) The plan provides that the executive officers or directors must exercise or forfeit their options in the event the institution becomes critically undercapitalized under the applicable regulatory capital requirements, is subject to Board enforcement action, or receives a capital directive under section 263.83 of this chapter.

(xiii) The resulting stock holding company files a copy of the proposed Option Plan or MRP with the Board and certifies to the Board that the plan approved by the shareholders is the same plan that the resulting stock holding company filed with, and disclosed in, the proxy materials distributed to shareholders in connection with the vote on the plan.

(xiv) The resulting stock holding company files the plan and the certification with the Board within five calendar days after the shareholders approve the plan.

(2) The resulting stock holding company may provide dividend equivalent rights or dividend adjustment rights to allow for stock splits or other adjustments to the stock in the ESOP, MRP, and Option Plan.

(3) The restrictions in paragraph (a)(1) of this section do not apply to plans implemented more than 12 months after the conversion, provided that materials pertaining to any shareholder vote regarding such plans are not distributed within the 12 months after the conversion. If a plan adopted in conformity with paragraph (a)(1) of this section is amended more than 12 months following the conversion, the shareholders must ratify any material deviations to the requirements in paragraph (a)(1) of this section.

(b) *Restrictions on the sale of conversion shares by directors, officers, and their associates.*

(1) Directors and officers who purchase conversion shares may not sell the shares

for one year after the date of purchase, except that in the event of the death of the officer or director, the successor in interest may sell the shares.

(2) The resulting stock holding company must include notice of the restriction described in paragraph (b)(1) of this section on each certificate of stock that a director or officer purchases during the conversion or receives in connection with a stock dividend, stock split, or otherwise with respect to such restricted shares.

(3) The resulting stock holding company must instruct the stock transfer agent about the transfer restrictions in this section.

(4) For three years after the resulting stock holding company converts, the officers, directors, and their associates may purchase stock of the resulting stock holding company only from a broker or dealer registered with the Securities and Exchange Commission. However, the officers, directors, and their associates may engage in a negotiated transaction involving more than one percent of the outstanding stock, and may purchase stock through any of the management or employee stock benefit plans.

(c) *Repurchase of conversion shares.*

(1) The resulting stock holding company may not repurchase its shares in the first year after the conversion except:

(i) In extraordinary circumstances, the resulting stock holding company may make open market repurchases of up to five percent of the outstanding stock in the first year after the conversion if the resulting stock holding company files a notice under paragraph (d)(1) of this section and the Board does not disapprove the repurchase. The Board will not approve such repurchases unless the repurchase meets the standards in paragraph (d)(3) of this section, and the repurchase is consistent with paragraph (c)(3) of this section.

(ii) The resulting stock holding company may repurchase qualifying shares of a director or conduct a Board approved re-

purchase pursuant to an offer made to all shareholders of the stock holding company.

(iii) Repurchases to fund management recognition plans that have been ratified by shareholders do not count toward the repurchase limitations in this section. Repurchases in the first year to fund such plans require prior written notification to the Board.

(iv) Purchases to fund tax qualified employee stock benefit plans do not count toward the repurchase limitations in this section.

(2) After the first year, the resulting stock holding company may repurchase the shares, subject to all other applicable regulatory and supervisory restrictions and paragraph (c)(3) of this section.

(3) All stock repurchases are subject to the following restrictions.

(i) The resulting stock holding company may not repurchase the shares if the repurchase will reduce its applicable capital levels below the amount required for the liquidation account under section 239.62(a). The resulting stock holding company must comply with the capital distribution requirements of this subpart.

(ii) The restrictions on share repurchases apply to a charitable organization under section 239.64(b). The resulting stock holding company must aggregate purchases of shares by the charitable organization with the repurchases.

(d) *Board review of repurchase of conversion shares.*

(1) To repurchase stock in the first year following conversion, other than repurchases under paragraphs (c)(1)(iii) or (c)(1)(iv) of this section, the resulting stock holding company must file a written notice with the appropriate Reserve Bank. The resulting stock holding company must provide the following information:

- (i) The proposed repurchase program;
- (ii) The effect of the repurchases on the regulatory capital and other capital levels; and
- (iii) The purpose of the repurchases and, if applicable, an explanation of the ex-

traordinary circumstances necessitating the repurchases.

(2) The resulting stock holding company must file the notice with the appropriate Reserve Bank at least thirty days before the resulting stock holding company begins the repurchase program. The Board may extend its review of the notice for an additional sixty days.

(3) The resulting stock holding company may not repurchase the shares if the Board objects to the repurchase program. The Board will not object to the repurchase program if:

- (i) The repurchase program will not adversely affect the financial condition of the resulting savings association;
- (ii) The resulting stock holding company submits sufficient information to evaluate the proposed repurchases;
- (iii) The resulting stock holding company demonstrate extraordinary circumstances and a compelling and valid business purpose for the share repurchases; and
- (iv) The repurchase program would not be contrary to other applicable regulations.

(e) *Declaring and paying dividends following conversion.* The resulting stock holding company may declare or pay a dividend on its shares after it converts if:

- (1) The dividend will not reduce the regulatory capital below the amount required for the liquidation account under section 239.62(a);
- (2) The resulting stock holding company complies with all applicable regulatory capital requirements after it declares or pays dividends;
- (3) The resulting stock holding company complies with the capital distribution requirements under this subpart; and
- (4) The resulting stock holding company does not return any capital, other than ordinary dividends, to purchasers during the term of the business plan submitted with the conversion.

(f) *Eligibility to acquire shares after conversion.*

- (1) For three years after the resulting stock holding company converts, no person may,

directly or indirectly, acquire or offer to acquire the beneficial ownership of more than ten percent of any class of the equity securities without the Board's prior written approval. If a person violates this prohibition, the resulting stock holding company may not permit the person to vote shares in excess of ten percent, and may not count the shares in excess of ten percent in any shareholder vote.

(2) A person acquires beneficial ownership of more than ten percent of a class of shares when he or she holds any combination of the stock or revocable or irrevocable proxies under circumstances that give rise to a conclusive control determination or rebuttable control determination under sections 238.21(a) and (d) of this chapter. The Board will presume that a person has acquired shares if the acquiror entered into a binding written agreement for the transfer of shares. For purposes of this section, an offer is made when it is communicated. An offer does not include non-binding expressions of understanding or letters of intent regarding the terms of a potential acquisition.

(3) Notwithstanding the restrictions in this section:

- (i) Paragraphs (f)(1) and (f)(2) of this section do not apply to any offer with a view toward public resale made exclusively to the resulting stock holding company, to the underwriters, or to a selling group acting on behalf of the resulting savings association.
- (ii) Unless the Board objects in writing, any person may offer or announce an offer to acquire up to one percent of any class of shares. In computing the one percent limit, the person must include all of his or her acquisitions of the same class of shares during the prior 12 months.
- (iii) A corporation whose ownership is, or will be, substantially the same as the ownership may acquire or offer to acquire more than ten percent of the common stock, if it makes the offer or acquisition more than one year after the resulting stock holding company converts.
- (iv) One or more of the tax-qualified em-

ployee stock benefit plans may acquire the shares, if the plan or plans do not beneficially own more than 25 percent of any class of shares of the resulting savings association in the aggregate.

(v) An acquiror does not have to file a separate application to obtain Board approval under paragraph (f)(1) of this section, if the acquiror files an application under part 238 of this chapter that specifically addresses the criteria listed under paragraph (f)(4) of this section and the resulting stock holding company does not oppose the proposed acquisition.

(4) The Board may deny an application under paragraph (f)(1) of this section if the proposed acquisition:

- (i) Is contrary to the purposes of this subpart;
- (ii) Is manipulative or deceptive;
- (iii) Subverts the fairness of the conversion;
- (iv) Is likely to injure the resulting stock holding company;
- (v) Is inconsistent with the plan to meet the credit and lending needs of the proposed market area;
- (vi) Otherwise violates laws or regulations; or
- (vii) Does not prudently deploy the conversion proceeds.

(g) *Additional requirements that apply following conversion.* After conversion, the resulting stock holding company must:

- (1) Promptly register the shares under the Securities Exchange Act of 1934 (15 U.S.C. 78a-78jj, as amended). The resulting stock holding company may not deregister the shares for three years.
- (2) Encourage and assist a market maker to establish and to maintain a market for the shares. A market maker for a security is a dealer who:
 - (i) Regularly publishes bona fide competitive bid and offer quotations for the security in a recognized inter-dealer quotation system;
 - (ii) Furnishes bona fide competitive bid and offer quotations for the security on request; or
 - (iii) May effect transactions for the secu-

rity in reasonable quantities at quoted prices with other brokers or dealers.

(3) Use the best efforts to list the shares on a national or regional securities exchange or on the National Association of Securities Dealers Automated Quotation system.

(4) File all post-conversion reports that the Board requires.

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SECTION 239.64—Contributions to Charitable Organizations

(a) *Forming a charitable organization as part of a conversion.* When a mutual holding company converts to the stock form, it may form a charitable organization. Its contributions to the charitable organization are governed by the requirements of paragraphs (b) through (f) of this section.

(b) *Donating conversion shares or conversion proceeds to a charitable organization.* Some of the conversion shares or proceeds may be contributed to a charitable organization if:

- (1) The plan of conversion provides for the proposed contribution;
- (2) The members approve the proposed contribution; and
- (3) The IRS either has approved, or approves within two years after formation, the charitable organization as a tax-exempt charitable organization under the Internal Revenue Code.

(c) *Member approval of charitable contributions.* At the meeting to consider conversion of the mutual holding company, the members must separately approve by at least a majority of the total eligible votes, a contribution of conversion shares or proceeds. If the mutual holding company has a subsidiary holding company with minority shareholders, or if the subsidiary savings association has minority shareholders, and the mutual holding company is adding a charitable contribution as part of a second step stock conversion, it must also have the minority shareholders separately approve the charitable contribution by a majority of their total eligible votes.

(d) *Charitable organization contribution limits.* A reasonable amount of conversion shares

or proceeds may be contributed to a charitable organization, if the contribution will not exceed limits for charitable deductions under the Internal Revenue Code and the Board does not object on supervisory grounds. If the mutual holding company or resulting stock holding company is well-capitalized pursuant to section 238.62 of this chapter, the Board generally will not object if it contributes an aggregate amount of eight percent or less of the conversion shares or proceeds.

(e) *Charitable organization requirements.* The charitable organization's charter (or trust agreement) and gift instrument must provide that:

- (1) The charitable organization's primary purpose is to serve and make grants in the local community;
- (2) As long as the charitable organization controls shares, it must vote those shares in the same ratio as all other shares voted on each proposal considered by the shareholders;
- (3) For at least five years after its organization, one seat on the charitable organization's board of directors (or board of trustees) is reserved for an independent director (or trustee) from the local community. This director may not be the officer, director, or employee, or the affiliate's officer, director, or employee, and should have experience with local community charitable organizations and grant making; and
- (4) For at least five years after its organization, one seat on the charitable organization's board of directors (or board of trustees) is reserved for a director from the board of directors or the board of directors of an acquiror or resulting institution in the event of a merger or acquisition of the organization.
- (5) The Board may examine the charitable organization at the charitable organization's expense;
- (6) The charitable organization must comply with all supervisory directives that the Board imposes;
- (7) The charitable organization must annually provide the Board with a copy of the annual report that the charitable organization submitted to the IRS;

(8) The charitable organization must operate according to written policies adopted by its board of directors (or board of trustees), including a conflict of interest policy; and

(9) The charitable organization may not engage in self-dealing, and must comply with all laws necessary to maintain its tax-exempt status under the Internal Revenue Code.

(f) *Conflicts of interest involving the directors of the mutual holding company or resulting stock holding company.*

(1) An individual who is the director, officer, or employee, or a person who has the power to direct the management or policies, or otherwise owes a fiduciary duty to the mutual holding company or resulting stock holding company and who will serve as an officer, director, or employee of the charitable organization, is subject to the following obligations:

- (i) The individual must not advance their own personal or business interests, or those of others with whom the individual has a personal or business relationship, at the expense of the mutual holding company or resulting stock holding company;
- (ii) If the individual has an interest in a matter or transaction before the board of directors, the individual must:

(A) Disclose to the board all material nonprivileged information relevant to the board's decision on the matter or transaction, including the existence, nature and extent of the individual's interests, and the facts known to the individual as to the matter or transaction under consideration;

(B) Refrain from participating in the board's discussion of the matter or transaction; and

(C) Recuse themselves from voting on the matter or transaction (if the individual is a director). See Form AC, which provides further information or operating plans and conflict of interest plans. The mutual holding company may obtain Form AC from the appropriate Reserve Bank and the Board's Web site at <http://www.federalreserve.gov>.

(2) Before the board of directors may adopt a plan of conversion that includes a charitable organization, the mutual holding company must identify the directors that will serve on the charitable organization's board. These directors may not participate in the board's discussions concerning contributions to the charitable organization, and may not vote on the matter.

(3) The stock certificates of shares contributed to the charitable organization or that the charitable organization otherwise acquires must bear the following legend: "The board of directors must consider the shares that this stock certificate represents as voted in the same ratio as all other shares voted on each proposal considered by the shareholders, as long as the shares are controlled by the charitable organization."

(4) As long as the charitable organization controls shares, the resulting stock holding company must consider those shares as voted in the same ratio as all of the shares voted on each proposal considered by the shareholders.

(5) After the stock offering is complete, the resulting stock holding company must submit an executed copy of the following documents to the appropriate Reserve Bank: the charitable organization's charter and by-laws (or trust agreement), operating plan (within six months after the stock offering), conflict of interest policy, and the gift instrument for the contributions of either stock or cash to the charitable organization.

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SECTION 239.65—Voluntary Supervisory Conversions

(a) *Voluntary supervisory conversion.*

(1) The mutual holding company must comply with this section and section 239.66 to engage in a voluntary supervisory conversion. This subpart applies to all voluntary supervisory conversions under sections 10(o)(7) and 10(p) of the Home Owners' Loan Act (12 U.S.C. 1467a(o) and (p)).

(2) Sections 239.50 through 239.64 also ap-

ply to a voluntary supervisory conversion, unless a requirement is clearly inapplicable.

(b) *Conducting a voluntary supervisory conversion.* In conducting a voluntary supervisory conversion, the mutual holding company may:

- (1) Sell its shares to the public;
- (2) Convert into stock form by merging into a state-chartered corporation; or
- (3) Sell its shares directly to an acquiror, who may be an individual, company, depository institution, or depository institution holding company.

(c) *Member rights in a voluntary supervisory conversion.* Members of the mutual holding company 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 association, unless the Board provides otherwise. The members may have interests in a liquidation account, if one is established.

(d) *Eligibility for a voluntary supervisory conversion.* A mutual holding company may be eligible to engage in a voluntary supervisory conversion if:

- (1) Either the mutual holding company or its subsidiary savings association is significantly undercapitalized under applicable regulatory capital requirements (or the mutual holding company or its subsidiary savings association is undercapitalized under applicable regulatory capital requirements and a standard conversion that would make it adequately capitalized is not feasible) and will be a viable entity following the conversion;
- (2) Severe financial conditions threaten stability of the mutual holding company, and a conversion is likely to improve its financial condition.

(e) A mutual holding company or its subsidiary savings association will be a viable entity following the conversion if it satisfies all of the following:

- (1) It will be adequately capitalized as a result of the conversion;
- (2) It, the proposed conversion, and its acquiror(s) comply with applicable supervisory policies;
- (3) The transaction is in the best interest of

the mutual holding company and its subsidiary savings associations, and the best interest of the Deposit Insurance Fund and the public; and

(4) The transaction will not injure or be detrimental to the mutual holding company and its subsidiary savings associations, the Deposit Insurance Fund, or the public interest.

(f) *Plan of voluntary supervisory conversion.* A majority of the board of directors of the mutual holding company must approve a plan of voluntary supervisory conversion. The mutual holding company must include all of the following information in the plan of voluntary supervisory conversion.

(1) The name and address of the mutual holding company.

(2) The name, address, date and place of birth, and social security number or tax identification number, as applicable, of each proposed purchaser of conversion shares and a description of that purchaser's relationship to the mutual holding company.

(3) The title, per-unit par value, number, and per-unit and aggregate offering price of shares that the mutual holding company will issue.

(4) The number and percentage of shares that each investor will purchase.

(5) The aggregate number and percentage of shares that each director, officer, and any affiliates or associates of the director or officer will purchase.

(6) A description of any liquidation account.

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

(g) *Voluntary supervisory conversion application.* The mutual holding company must include all of the following information and documents in a voluntary supervisory conversion application to the Board under this subpart:

(1) *Eligibility.*

(i) Evidence establishing that the mutual holding company meets the eligibility requirements under paragraph (d) of this section.

(ii) An opinion of qualified, independent

counsel or an independent, certified public accountant regarding the tax consequences of the conversion, or an IRS ruling indicating that the transaction qualifies as a tax-free reorganization.

(2) *Plan of conversion.* A plan of voluntary supervisory conversion that complies with paragraph (e) of this section.

(3) *Business plan.* A business plan that complies with section 239.53(b), when required by the Board.

(4) *Financial data.*

(i) The most recent audited financial statements and Thrift Financial Report. The mutual holding company must explain how its current capital levels or the capital levels of its subsidiary savings associations make it eligible to engage in a voluntary supervisory conversion under paragraph (d) of this section.

(ii) A description of the estimated conversion expenses.

(iii) Evidence supporting the value of any non-cash asset contributions. Appraisals must be acceptable to the Board and the non-cash asset must meet all other Board policy guidelines.

(iv) Pro forma financial statements that reflect the effects of the transaction. The mutual holding company must identify the tangible, core, and risk-based capital levels and show the adjustments necessary to compute the capital levels. The mutual holding company must prepare the pro forma statements in conformance with Board regulations and policy.

(5) *Proposed documents.*

(i) The proposed charter and bylaws.

(ii) The proposed stock certificate form.

(6) *Agreements.*

(i) A copy of any agreements between the mutual holding company and proposed purchasers.

(ii) A copy and description of all existing and proposed employment contracts. The mutual holding company must describe 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 or associates.

(7) *Related applications.*

(i) All filings required under the securities offering rules of subpart E of this part.

(ii) Any required Holding Company Act application or Control Act notice under part 238 of this chapter.

(iii) A subordinated debt application, if applicable.

(iv) Applications for permission to organize a stock savings and loan holding company and for approval of a merger.

(v) 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 Board, copies of the applications and related documents.

(8) *Waiver request.* A description of any of the features of the application that do not conform to the requirements of this subpart, including any request for waiver of any of these requirements.

(h) *Offers and sales of stock.* If the mutual holding company converts under this subpart, the conversion shares must be offered and sold in compliance with section 239.59.

(i) *Post-conversion acquisition of shares.* For three years after the completion of a voluntary supervisory conversion, neither the resulting stock holding company nor the principal shareholder(s) may acquire shares from minority shareholders without the Board's prior approval.

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SECTION 239.66—Board Review of the Voluntary Supervisory Conversion Application

(a) *Board review of a voluntary supervisory conversion application.* The Board will generally approve the application to engage in a voluntary supervisory conversion unless it determines:

(1) The mutual holding company does not meet the eligibility requirements for a voluntary supervisory conversion under sections 239.65(d) or because 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) The transaction is detrimental to or would cause potential injury to the mutual holding company, its subsidiary savings association, or the Deposit Insurance Fund or is contrary to the public interest;

(3) The mutual holding company or the acquiror, or the controlling parties or directors and officers of the mutual holding company or the acquiror, have engaged in unsafe or unsound practices in connection with the voluntary supervisory conversion; or

(4) The mutual holding company fails to justify an employment contract incidental to the conversion, or the employment contract will be an unsafe or unsound practice or represent a sale of control. In a voluntary supervisory conversion, the Board generally will not approve employment contracts of more than one year for the existing management.

(b) *Conditions the Board may impose on an approval.*

(1) The Board will condition approval of a voluntary supervisory conversion application on all of the following.

(i) The conversion stock sale must be complete within three months after the Board approves the application. The Board may grant an extension for good cause.

(ii) The mutual holding company and the resulting stock holding company must comply with all filing requirements of subpart E of this part.

(iii) The mutual holding company must submit an opinion of independent legal counsel indicating that the sale of the shares complies with all applicable state securities law requirements.

(iv) The mutual holding company and the resulting stock holding company must

comply with all applicable laws, rules, and regulations.

(v) The mutual holding company and the resulting stock holding company must satisfy any other requirements or conditions the Board may impose.

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

(i) The mutual holding company and the resulting stock holding company must satisfy any conditions and restrictions the Board imposes to prevent unsafe or unsound practices, to protect the Deposit Insurance Fund and the public interest, and to prevent potential injury or detriment to the mutual holding company before and after the conversion. The Board may impose these conditions and restrictions on the mutual holding company and the resulting stock holding company (before and after the conversion), the acquiror, controlling parties, or directors and officers of the mutual holding company or the acquiror; or

(ii) The mutual holding company or the resulting stock holding company must infuse a larger amount of capital, if necessary, for safety and soundness reasons.

subject to the Constitution and the laws of the United States as they are now in effect, or as they may hereafter be amended, and subject to all lawful and applicable rules, regulations, and orders of the Federal Reserve Board (“Board”).

Section 4: Capital. The Mutual Holding Company shall have no capital stock.

Section 5: Members. [The content of this section 5 shall be identical to the content of the parallel section in the charter of the reorganizing association, with the following exceptions:

(A) Any provisions conferring membership rights upon borrowers of the reorganizing association shall be eliminated and replaced with provisions grandfathering those rights in accordance with 12 CFR 239.5; and (B) appropriate changes shall be made to indicate that membership rights in the mutual holding company derive from deposit accounts in and, to the extent of any grandfather provisions, borrowings from the resulting association. Set forth below is an example of how section 5 should appear in the charter of a mutual holding company formed by a reorganizing association whose charter conforms to the model charter prescribed for federal mutual savings associations for calendar year 1989. Additional changes to this section 5 may be required whenever a mutual holding company reorganization involves an acquiree association, or a mutual holding company makes a post-reorganization acquisition of a mutual savings association, so as to preserve the membership rights of the members of the acquired association consistent with 12 CFR 239.5.]

All holders of the savings, demand, or other authorized accounts of _____ [insert the name of the resulting association] (the “Association”) are members of the Mutual Holding Company. With respect to all questions requiring action by the members of the Mutual Holding Company, each holder of an account in the Association shall be permitted to cast one vote for each \$100, or fraction thereof, of the withdrawal value of the member’s account. In addition, borrowers from the Association as of _____ [insert the date of the reorganization or any earlier date as of which new borrowings ceased to result in membership rights] shall be entitled to one vote for

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APPENDIX A—Mutual Holding Company Model Charter

FEDERAL MUTUAL HOLDING COMPANY CHARTER

Section 1: Corporate title. The name of the mutual holding company is _____ (the “Mutual Holding Company”).

Section 2: Duration. The duration of the Mutual Holding Company is perpetual.

Section 3: Purpose and powers. The purpose of the Mutual Holding Company is to pursue any or all of the lawful objectives of a federal mutual savings and loan holding company chartered under section 10(o) of the Home Owners’ Loan Act, 12 U.S.C. 1467a(o), and to exercise all of the express, implied, and incidental powers conferred thereby and all acts amendatory thereof and supplemental thereto,

the period of time during which such borrowings are in existence. [The foregoing sentence should be included only if the charter of the reorganizing association confers voting rights on any borrowers.] No member, however, shall cast more than one thousand votes. All accounts shall be nonassessable.

Section 6. Directors. The Mutual Holding Company shall be under the direction of a board of directors. The authorized number of directors shall not be fewer than five nor more than fifteen, as fixed in the Mutual Holding Company's bylaws, except that the number of directors may be decreased to a number less than five or increased to a number greater than fifteen with the prior approval of the Board.

Section 7: Capital, surplus, and distribution of earnings. [The content of this section 7 shall be identical to the content of the parallel section in the charter of the reorganizing association, except for changes made to indicate that distribution rights in the mutual holding company derive from deposit accounts in the resulting association, any changes required to provide that the Board shall be the approving authority in instances where the charter requires regulatory approval of distributions, and any other changes necessary to accommodate the mutual holding company format. Set forth below is an example of how section 7 should appear in the charter of a mutual holding company formed by a reorganizing association whose charter conforms to the model charter prescribed for federal mutual savings associations for calendar year 1989. Additional changes to this section 7 may be required whenever a mutual holding company reorganization involves an acquiree association, or a mutual holding company makes a post-reorganization acquisition of a mutual savings association, so as to preserve the membership rights of the members of the acquired association consistent with 12 CFR 239.5].

The Mutual Holding Company shall distribute net earnings to account holders of the Association on such basis and in accordance with such terms and conditions as may from time to time be authorized by the Board, provided that the Mutual Holding Company may establish minimum account balance requirements

for account holders to be eligible for distributions of earnings.

All holders of accounts of the Association shall be entitled to equal distribution of the assets of the Mutual Holding Company, pro rata to the value of their accounts in the Association, in the event of voluntary or involuntary liquidation, dissolution, or winding up of the Mutual Holding Company.

Section 8. Amendment. Adoption of any preapproved charter amendment shall be effective after such preapproved amendment has been approved by the members at a legal meeting. Any other amendment, addition, change, or repeal of this charter must be approved by the Board prior to approval by the members at a legal meeting and shall be effective upon filing with the Board in accordance with regulatory procedures.

Attest:_____

Secretary of the Association

By:_____

President or Chief Executive Officer of the Association

By:_____

Secretary of the Board of Governors of the Federal Reserve System

Effective Date:_____

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APPENDIX B—Subsidiary Holding Company of a Mutual Holding Company Model Charter

FEDERAL MHC SUBSIDIARY HOLDING COMPANY CHARTER

Section 1. Corporate title. The full corporate title of the mutual holding company ("MHC") subsidiary holding company is XXX.

Section 2. Domicile. The domicile of the MHC subsidiary holding company shall be in the city of_____, in the State of_____.

Section 3. Duration. The duration of the MHC subsidiary holding company is perpetual.

Section 4. Purpose and powers. The purpose of the MHC subsidiary holding company is to pursue any or all of the lawful objectives of a federal mutual holding company chartered under section 10(o) of the Home Owners' Loan Act, 12 U.S.C. 1467a(o), and to exercise all

of the express, implied, and incidental powers conferred thereby and by all acts amendatory thereof and supplemental thereto, subject to the Constitution and laws of the United States as they are now in effect, or as they may hereafter be amended, and subject to all lawful and applicable rules, regulations, and orders of the Board of Governors of the Federal Reserve System ("Board").

Section 5. Capital stock. The total number of shares of all classes of the capital stock that the MHC subsidiary holding company has the authority to issue is_____, all of which shall be common stock of par [or if no par is specified then shares shall have a stated] value of_____ per share. The shares may be issued from time to time as authorized by the board of directors without the approval of its shareholders, except as otherwise provided in this section 5 or to the extent that such approval is required by governing law, rule, or regulation. The consideration for the issuance of the shares shall be paid in full before their issuance and shall not be less than the par [or stated] value. Neither promissory notes nor future services shall constitute payment or part payment for the issuance of shares of the MHC subsidiary holding company. The consideration for the shares shall be cash, tangible or intangible property (to the extent direct investment in such property would be permitted to the MHC subsidiary holding company), labor, or services actually performed for the MHC subsidiary holding company, or any combination of the foregoing. In the absence of actual fraud in the transaction, the value of such property, labor, or services, as determined by the board of directors of the MHC subsidiary holding company, shall be conclusive. Upon payment of such consideration, such shares shall be deemed to be fully paid and nonassessable. In the case of a stock dividend, that part of the retained earnings of the MHC subsidiary holding company that is transferred to common stock or paid-in capital accounts upon the issuance of shares as a stock dividend shall be deemed to be the consideration for their issuance.

Except for shares issued in the initial organization of the MHC subsidiary holding company, no shares of capital stock (including shares issuable upon conversion, exchange, or

exercise of other securities) shall be issued, directly or indirectly, to officers, directors, or controlling persons (except for shares issued to the parent mutual holding company) of the MHC subsidiary holding company other than as part of a general public offering or as qualifying shares to a director, unless the issuance or the plan under which they would be issued has been approved by a majority of the total votes eligible to be cast at a legal meeting.

The holders of the common stock shall exclusively possess all voting power. Each holder of shares of common stock shall be entitled to one vote for each share held by such holder, except as to the cumulation of votes for the election of directors, unless the charter provides that there shall be no such cumulative voting. Subject to any provision for a liquidation account, in the event of any liquidation, dissolution, or winding up of the MHC subsidiary holding company, the holders of the common stock shall be entitled, after payment or provision for payment of all debts and liabilities of the MHC subsidiary holding company, to receive the remaining assets of the MHC subsidiary holding company available for distribution, in cash or in kind. Each share of common stock shall have the same relative rights as and be identical in all respects with all the other shares of common stock.

Section 6. Preemptive rights. Holders of the capital stock of the MHC subsidiary holding company shall not be entitled to preemptive rights with respect to any shares of the MHC subsidiary holding company which may be issued.

Section 7. Directors. The MHC subsidiary holding company shall be under the direction of a board of directors. The authorized number of directors, as stated in the MHC subsidiary holding company's bylaws, shall not be fewer than five nor more than fifteen except when a greater or lesser number is approved by the Board, or his or her delegate.

Section 8. Amendment of charter. Except as provided in Section 5, no amendment, addition, alteration, change or repeal of this charter shall be made, unless such is proposed by the board of directors of the MHC subsidiary holding company, approved by the shareholders by a majority of the votes eligible to be

cast at a legal meeting, unless a higher vote is otherwise required, and approved or preapproved by the Board.

Attest: _____

Secretary of the Subsidiary Holding Company

By: _____

President or Chief Executive Officer of the Subsidiary Holding Company

By: _____

Secretary of the Board of Governors of the Federal Reserve System

Effective Date: _____

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APPENDIX C—Mutual Holding Company Model Bylaws

MODEL BYLAWS FOR MUTUAL HOLDING COMPANIES

The term “trustees” may be substituted for the term “directors.”

1. Annual meeting of members. The annual meeting of the members of the mutual holding company for the election of directors and for the transaction of any other business of the mutual holding company shall be held, as designated by the board of directors, at a location within the state that constitutes the principal place of business of the mutual holding company, or at any other convenient place the board of directors may designate, at (insert date and time within 150 days after the end of the mutual holding company’s fiscal year, if not a legal holiday, or if a legal holiday then on the next succeeding day not a legal holiday). At each annual meeting, the officers shall make a full report of the financial condition of the mutual holding company and of its progress for the preceding year and shall outline a program for the succeeding year.

2. Special meetings of members. Special meetings of the members of the mutual holding company may be called at any time by the president or the board of directors and shall be called by the president, a vice president, or the secretary upon the written request of members of record, holding in the aggregate at least one-tenth of the voting capital of the mutual holding company.

Such written request shall state the purpose of the meeting and shall be delivered at the principal place of business of the mutual holding company addressed to the president. For purposes of this section, “voting capital” means FDIC-insured deposits as of the voting record date. Annual and special meetings shall be conducted in accordance with the most current edition of Robert’s Rules of Order or any other set of written procedures agreed to by the board of directors.

3. Notice of meeting of members. Notice of each meeting shall be either published once a week for the two successive calendar weeks (in each instance on any day of the week) immediately prior to the week in which such meeting shall convene, in a newspaper printed in the English language and of general circulation in the city or county in which the principal place of business of the mutual holding company is located, or mailed postage prepaid at least (insert number no less than 15) days and not more than (insert number not more than 45) days prior to the date on which such meeting shall convene, to each of its members of record at the last address appearing on the books of the mutual holding company. Such notice shall state the name of the mutual holding company, the place of the meeting, the date and time when it shall convene, and the matters to be considered. A similar notice shall be posted in a conspicuous place in each of the offices of the mutual holding company during the 14 days immediately preceding the date on which such meeting shall convene. If any member, in person or by authorized attorney, shall waive in writing notice of any meeting of members, notice thereof need not be given to such member. When any meeting is adjourned for 30 days or more, notice of the adjournment and reconvening of the meeting shall be given as in the case of the original meeting.

4. Fixing of record date. For the purpose of determining members entitled to notice of or to vote at any meeting of members or any adjournment thereof, or in order to make a determination of members for any other proper purpose, the board of directors

shall fix in advance a record date for any such determination of members. Such date shall be not more than 60 days nor fewer than 10 days prior to the date on which the action, requiring such determination of members, is to be taken. The member entitled to participate in any such action shall be the member of record on the books of the mutual holding company on such record date. The number of votes which each member shall be entitled to cast at any meeting of the members shall be determined from the books of the mutual holding company as of such record date. Any member of such record date who ceases to be a member prior to such meeting shall not be entitled to vote at that meeting. The same determination shall apply to any adjourned meeting.

5. Member quorum. Any number of members present and voting, represented in person or by proxy, at a regular or special meeting of the members shall constitute a quorum. A majority of all votes cast at any meeting of the members shall determine any question, unless otherwise required by regulation. Directors, however, are elected by a plurality of the votes cast at an election of directors. At any adjourned meeting any business may be transacted which might have been transacted at the meeting as originally called. Members present at a duly constituted meeting may continue to transact business until adjournment.

6. Voting by proxy. Voting at any annual or special meeting of the members may be by proxy pursuant to the rules and regulations of the Board of Governors of the Federal Reserve System (Board), provided, that no proxies shall be voted at any meeting unless such proxies shall have been placed on file with the secretary of the mutual holding company, for verification, prior to the convening of such meeting. Proxies may be given telephonically or electronically as long as the holder uses a procedure for verifying the identity of the member. All proxies with a term greater than eleven months or solicited at the expense of the mutual holding company must run to the board of directors as a whole, or to a committee appointed by a majority of such

board. Accounts held by an administrator, executor, guardian, conservator or receiver may be voted in person or by proxy by such person. Accounts held by a trustee may be voted by such trustee either in person or by proxy, in accordance with the terms of the trust agreement, but no trustee shall be entitled to vote accounts without a transfer of such accounts into the trustee name. Accounts held in trust in an IRA or Keogh Account, however, may be voted by the mutual holding company if no other instructions are received. Joint accounts shall be entitled to no more than 1000 votes, and any owner may cast all the votes unless the mutual holding company has otherwise been notified in writing.

7. Communication between members. Communication between members shall be subject to any applicable rules or regulations of the Board. No member, however, shall have the right to inspect or copy any portion of any books or records of a mutual holding company containing: (i) a list of depositors in or borrowers from such mutual holding company; (ii) their addresses; (iii) individual deposit or loan balances or records; or (iv) any data from which such information could reasonably be constructed.

8. Number of directors, membership. The number of directors shall be _____ [not fewer than five nor more than fifteen], except where authorized by the Board. Each director shall be a member of the mutual holding company. Directors shall be elected for periods of one to three years and until their successors are elected and qualified, but if a staggered board is chosen, provision shall be made for the election of approximately one-third or one-half of the board each year, as appropriate.

9. Meetings of the board. The board of directors shall meet regularly without notice at the principal place of business of the mutual holding company at least once each month at an hour and date fixed by resolution of the board, provided that the place of meeting may be changed by the directors. Special meetings of the board may be held at any place specified in a notice of such meeting and shall be called by the secretary upon the written request of the chairman or

of three directors. All special meetings shall be held upon at least 24 hours written notice to each director unless notice is waived in writing before or after such meeting. Such notice shall state the place, date, time, and purposes of such meeting. A majority of the authorized directors shall constitute a quorum for the transaction of business. The act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the board. Action may be taken without a meeting if unanimous written consent is obtained for such action. The board may also permit telephonic participation at meetings. The meetings shall be under the direction of a chairman, appointed annually by the board, or in the absence of the chairman, the meetings shall be under the direction of the president.

10. Officers, employees, and agents. Annually at the meeting of the board of directors of the mutual holding company following the annual meeting of the members of the mutual holding company, the board shall elect a president, one or more vice presidents, a secretary, and a treasurer or comptroller: Provided, that the offices of president and secretary may not be held by the same person and a vice president may also be the treasurer or comptroller. The board may appoint such additional officers, employees, and agents as it may from time to time determine. The term of office of all officers shall be one year or until their respective successors are elected and qualified. Any officer may be removed at any time by the board with or without cause, but such removal, other than for cause, shall be without prejudice to the contractual rights, if any, of the person so removed. In the absence of designation from time to time of powers and duties by the board, the officers shall have such powers and duties as generally pertain to their respective offices. Any indemnification by the mutual holding company of the mutual holding company's personnel is subject to any applicable rules or regulations of the Board.

11. Vacancies, resignation or removal of directors. Members of the mutual holding company shall elect directors by ballot: Provided, that in the event of a vacancy on the

board between meetings of members, the board of directors may, by their affirmative vote, fill such vacancy, even if the remaining directors constitute less than a quorum. A director elected to fill a vacancy shall be elected to serve only until the next election of directors by the members. Any director may resign at any time by sending a written notice of such resignation to the mutual holding company delivered to the secretary. Unless otherwise specified therein such resignation shall take effect upon receipt by the secretary. More than three consecutive absences from regular meetings of the board, unless excused by resolution of the board, shall automatically constitute a resignation, effective when such resignation is accepted by the board. At a meeting of members called expressly for that purpose, directors or the entire board may be removed, only with cause, by a vote of the holders of a majority of the shares then entitled to vote at an election of directors.

12. Powers of the board. The board of directors shall have the power: (a) By resolution, to appoint from among its members and remove an executive committee, which committee shall have and may exercise the powers of the board between the meetings of the board, but no such committee shall have the authority of the board to amend the charter or bylaws, adopt a plan of merger, consolidation, dissolution, or provide for the disposition of all or substantially all the property and assets of the mutual holding company. Such committee shall not operate to relieve the board, or any member thereof, of any responsibility imposed by law; (b) To appoint and remove by resolution the members of such other committees as may be deemed necessary and prescribe the duties thereof; (c) To fix the compensation of directors, officers, and employees; and to remove any officer or employee at any time with or without cause; (d) To limit payments on capital which may be accepted; and (e) To exercise any and all of the powers of the mutual holding company not expressly reserved by the charter to the members.

13. Execution of instruments, generally. All documents and instruments or writings of

any nature shall be signed, executed, verified, acknowledged, and delivered by such officers, agents, or employees of the mutual holding company or any one of them and in such manner as from time to time may be determined by resolution of the board. All notes, drafts, acceptances, checks, endorsements, and all evidences of indebtedness of the mutual holding company whatsoever shall be signed by such officer or officers or such agent or agents of the mutual holding company and in such manner as the board may from time to time determine. Endorsements for deposit to the credit of the mutual holding company in any of its duly authorized depositories shall be made in such manner as the board may from time to time determine. Proxies to vote with respect to shares or accounts of other mutual holding companies or stock of other corporations owned by, or standing in the name of, the mutual holding company may be executed and delivered from time to time on behalf of the mutual holding company by the president or a vice president and the secretary or an assistant secretary of the mutual holding company or by any other persons so authorized by the board.

14. Nominating committee. The chairman, at least 30 days prior to the date of each annual meeting, shall appoint a nominating committee of three individuals who are members of the mutual holding company. Such committee shall make nominations for directors in writing and deliver to the secretary such written nominations at least 15 days prior to the date of the annual meeting, which nominations shall then be posted in a prominent place in the principal place of business for the 15-day period prior to the date of the annual meeting, except in the case of a nominee substituted as a result of death or other incapacity. Provided such committee is appointed and makes such nominations, no nominations for directors except those made by the nominating committee shall be voted upon at the annual meeting unless other nominations by members are made in writing and delivered to the secretary of the mutual holding company at least 10 days prior to the date of the annual meeting, which nominations

shall then be posted in a prominent place in the principal place of business for the 10-day period prior to the date of the annual meeting, except in the case of a nominee substituted as a result of death or other incapacity. Ballots bearing the names of all individuals nominated by the nominating committee and by other members prior to the annual meeting shall be provided for use by the members at the annual meeting. If at any time the chairman shall fail to appoint such nominating committee, or the nominating committee shall fail or refuse to act at least 15 days prior to the annual meeting, nominations for directors may be made at the annual meeting by any member and shall be voted upon.

15. New business. Any new business to be taken up at the annual meeting, including any proposal to increase or decrease the number of directors of the mutual holding company, shall be stated in writing and filed with the secretary of the mutual holding company at least 30 days before the date of the annual meeting, and all business so stated, proposed, and filed shall be considered at the annual meeting; but no other proposal shall be acted upon at the annual meeting. Any member may make any other proposal at the annual meeting and the same may be discussed and considered; but unless stated in writing and filed with the secretary 30 days before the meeting, such proposal shall be laid over for action at an adjourned, special, or regular meeting of the members taking place at least 30 days thereafter. This provision shall not prevent the consideration and approval or disapproval at the annual meeting of the reports of officers and committees, but in connection with such reports no new business shall be acted upon at such annual meeting unless stated and filed as herein provided.

16. Seal. The seal shall be two concentric circles between which shall be the name of the mutual holding company. The year of incorporation, the word "Incorporated" or an emblem may appear in the center.

17. Amendment. Adoption of any bylaw amendment pursuant to section 239.15 of the Board's regulations, as long as consistent with applicable law, rules and regula-

tions, and which adequately addresses the subject and purpose of the stated by law section, shall be effective after (i) approval of the amendment by a majority vote of the authorized board, or by a vote of the members of the mutual holding company at a legal meeting; and (ii) receipt of any applicable regulatory approval. When a mutual holding company fails to meet its quorum requirement solely due to vacancies on the board, the bylaws may be amended by an affirmative vote of a majority of the sitting board.

18. Age limitations. [Bylaws on age limitations must comply with all Federal laws, such as the Age Discrimination in Employment Act and the Employee Retirement Income Security Act.]

(a) *Directors.* No individual _____ years of age shall be eligible for election, reelection, appointment, or reappointment to the board of the mutual holding company. No director shall serve as such beyond the annual meeting of the mutual holding company immediately following the director becoming _____ (fill in age used above), except that a director serving on _____ (fill in bylaw adoption date) may complete the term as director. This age limitation does not apply to an advisory director.

(b) *Officers.* No individual _____ years of age shall be eligible for election, reelection, appointment, or reappointment as an officer of the mutual holding company. No officer shall serve beyond the annual meeting of the mutual holding company immediately following the officer becoming _____ (fill in age used above), except that an officer serving on _____ (fill in bylaw adoption date) may complete the term. However, an officer shall, at the option of the board, retire at age _____ if the officer has served in an executive or high policy-making post for at least two years immediately prior to retirement and is immediately entitled to nonforfeitable annual retirement benefits of at least _____.

Model Bylaws

MHC Subsidiary Holding Company Bylaws

Article I—Home Office

The home office of the Subsidiary Holding Company shall be at _____ [set forth the full address] in the County of _____, in the State of _____.

Article II—Shareholders

Section 1. Place of Meetings. All annual and special meetings of shareholders shall be held at the home office of the Subsidiary Holding Company or at such other convenient place as the board of directors may determine.

Section 2. Annual Meeting. A meeting of the shareholders of the Subsidiary Holding Company for the election of directors and for the transaction of any other business of the Subsidiary Holding Company shall be held annually within 150 days after the end of the Subsidiary Holding Company's fiscal year on the _____ of _____ if not a legal holiday, and if a legal holiday, then on the next day following which is not a legal holiday, at _____, or at such other date and time within such 150-day period as the board of directors may determine.

Section 3. Special Meetings. Special meetings of the shareholders for any purpose or purposes, unless otherwise prescribed by the regulations of the Board of Governors of the Federal Reserve System ("Board"), may be called at any time by the chairman of the board, the president, or a majority of the board of directors, and shall be called by the chairman of the board, the president, or the secretary upon the written request of the holders of not less than one-tenth of all of the outstanding capital stock of the Subsidiary Holding Company entitled to vote at the meeting. Such written request shall state the purpose or purposes of the meeting and shall be delivered to the home office of the Subsidiary Holding Company addressed to the chairman of the board, the president, or the secretary.

Section 4. Conduct of Meetings. Annual and special meetings shall be conducted in accor-

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APPENDIX D—Subsidiary Holding Company of a Mutual Holding Company

dance with the most current edition of Robert's Rules of Order unless otherwise prescribed by regulations of the Board or these bylaws or the board of directors adopts another written procedure for the conduct of meetings. The board of directors shall designate, when present, either the chairman of the board or president to preside at such meetings.

Section 5. Notice of Meetings. Written notice stating the place, day, and hour of the meeting and the purpose(s) for which the meeting is called shall be delivered not fewer than 20 nor more than 50 days before the date of the meeting, either personally or by mail, by or at the direction of the chairman of the board, the president, or the secretary, or the directors calling the meeting, to each shareholder of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the mail, addressed to the shareholder at the address as it appears on the stock transfer books or records of the Subsidiary Holding Company as of the record date prescribed in section 6 of this article II with postage prepaid. When any shareholders' meeting, either annual or special, is adjourned for 30 days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. It shall not be necessary to give any notice of the time and place of any meeting adjourned for less than 30 days or of the business to be transacted at the meeting, other than an announcement at the meeting at which such adjournment is taken.

Section 6. Fixing of Record Date. For the purpose of determining shareholders entitled to notice of or to vote at any meeting of shareholders or any adjournment, or shareholders entitled to receive payment of any dividend, or in order to make a determination of shareholders for any other proper purpose, the board of directors shall fix in advance a date as the record date for any such determination of shareholders. Such date in any case shall be not more than 60 days and, in case of a meeting of shareholders, not fewer than 10 days prior to the date on which the particular action, requiring such determination of shareholders, is to be taken. When a determination of shareholders entitled to vote at any meeting of shareholders has been made as provided in

this section, such determination shall apply to any adjournment.

Section 7. Voting Lists. At least 20 days before each meeting of the shareholders, the officer or agent having charge of the stock transfer books for shares of the Subsidiary Holding Company shall make a complete list of the shareholders of record entitled to vote at such meeting, or any adjournment thereof, arranged in alphabetical order, with the address and the number of shares held by each. This list of shareholders shall be kept on file at the home office of the Subsidiary Holding Company and shall be subject to inspection by any shareholder of record or the shareholder's agent at any time during usual business hours for a period of 20 days prior to such meeting. Such list shall also be produced and kept open at the time and place of the meeting and shall be subject to inspection by any shareholder of record or any shareholder's agent during the entire time of the meeting. The original stock transfer book shall constitute prima facie evidence of the shareholders entitled to examine such list or transfer books or to vote at any meeting of shareholders. In lieu of making the shareholder list available for inspection by shareholders as provided in the preceding paragraph, the board of directors may elect to follow the procedures prescribed in section 239.26(d) of the Board's regulations as now or hereafter in effect.

Section 8. Quorum. A majority of the outstanding shares of the Subsidiary Holding Company entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of shareholders. If less than a majority of the outstanding shares is represented at a meeting, a majority of the shares so represented may adjourn the meeting from time to time without further notice. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally notified. The shareholders present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough shareholders to constitute less than a quorum. If a quorum is present, the affirmative vote of the majority of the shares represented at the meeting and entitled to vote on

the subject matter shall be the act of the shareholders, unless the vote of a greater number of shareholders voting together or voting by classes is required by law or the charter. Directors, however, are elected by a plurality of the votes cast at an election of directors.

Section 9. Proxies. At all meetings of shareholders, a shareholder may vote by proxy executed in writing by the shareholder or by his or her duly authorized attorney in fact. Proxies may be given telephonically or electronically as long as the holder uses a procedure for verifying the identity of the shareholder. Proxies solicited on behalf of the management shall be voted as directed by the shareholder or, in the absence of such direction, as determined by a majority of the board of directors. No proxy shall be valid more than eleven months from the date of its execution except for a proxy coupled with an interest.

Section 10. Voting of Shares in the Name of Two or More Persons. When ownership stands in the name of two or more persons, in the absence of written directions to the Subsidiary Holding Company to the contrary, at any meeting of the shareholders of the Subsidiary Holding Company any one or more of such shareholders may cast, in person or by proxy, all votes to which such ownership is entitled. In the event an attempt is made to cast conflicting votes, in person or by proxy, by the several persons in whose names shares of stock stand, the vote or votes to which those persons are entitled shall be cast as directed by a majority of those holding such and present in person or by proxy at such meeting, but no votes shall be cast for such stock if a majority cannot agree.

Section 11. Voting of Shares by Certain Holders. Shares standing in the name of another corporation may be voted by any officer, agent, or proxy as the bylaws of such corporation may prescribe, or, in the absence of such provision, as the board of directors of such corporation may determine. Shares held by an administrator, executor, guardian, or conservator may be voted by him or her, either in person or by proxy, without a transfer of such shares into his or her name. Shares standing in the name of a trustee may be voted by him or her, either in person or by

proxy, but no trustee shall be entitled to vote shares held by him or her without a transfer of such shares into his or her name. Shares held in trust in an IRA or Keogh Account, however, may be voted by the Subsidiary Holding Company if no other instructions are received. Shares standing in the name of a receiver may be voted by such receiver, and shares held by or under the control of a receiver may be voted by such receiver without the transfer into his or her name if authority to do so is contained in an appropriate order of the court or other public authority by which such receiver was appointed. A shareholder whose shares are pledged shall be entitled to vote such shares until the shares have been transferred into the name of the pledgee, and thereafter the pledgee shall be entitled to vote the shares so transferred. Neither treasury shares of its own stock held by the Subsidiary Holding Company nor shares held by another corporation, if a majority of the shares entitled to vote for the election of directors of such other corporation are held by the Subsidiary Holding Company, shall be voted at any meeting or counted in determining the total number of outstanding shares at any given time for purposes of any meeting. [If charter authorizes cumulative voting, the following Section 12 shall apply, otherwise renumber Sections 13-16 as Sections 12-15.]

Section 12. Cumulative Voting. Every shareholder entitled to vote at an election for directors shall have the right to vote, in person or by proxy, the number of shares owned by the shareholder for as many persons as there are directors to be elected and for whose election the shareholder has a right to vote, or to cumulate the votes by giving one candidate as many votes as the number of such directors to be elected multiplied by the number of shares shall equal or by distributing such votes on the same principle among any number of candidates.

Section 13. Inspectors of Election. In advance of any meeting of shareholders, the board of directors may appoint any individual other than nominees for office as inspectors of election to act at such meeting or any adjournment. The number of inspectors shall be either one or three. Any such appointment shall not be altered at the meeting. If inspectors of

election are not so appointed, the chairman of the board or the president may, or on the request of not fewer than 10 percent of the votes represented at the meeting shall, make such appointment at the meeting. If appointed at the meeting, the majority of the votes present shall determine whether one or three inspectors are to be appointed. In case any individual appointed as inspector fails to appear or fails or refuses to act, the vacancy may be filled by appointment by the board of directors in advance of the meeting or at the meeting by the chairman of the board or the president. Unless otherwise prescribed by regulations of the Board, the duties of such inspectors shall include: determining the number of shares and the voting power of each share, the shares represented at the meeting, the existence of a quorum, and the authenticity, validity and effect of proxies; receiving votes, ballots, or consents; hearing and determining all challenges and questions in any way arising in connection with the rights to vote; counting and tabulating all votes or consents; determining the result; and such acts as may be proper to conduct the election or vote with fairness to all shareholders.

Section 14. Nominating Committee. The board of directors shall act as a nominating committee for selecting the management nominees for election as directors. Except in the case of a nominee substituted as a result of the death or other incapacity of a management nominee, the nominating committee shall deliver written nominations to the secretary at least 20 days prior to the date of the annual meeting. Upon delivery, such nominations shall be posted in a conspicuous place in each office of the Subsidiary Holding Company. No nominations for directors except those made by the nominating committee shall be voted upon at the annual meeting unless other nominations by shareholders are made in writing and delivered to the secretary of the Subsidiary Holding Company at least five days prior to the date of the annual meeting. Upon delivery, such nominations shall be posted in a conspicuous place in each office of the Subsidiary Holding Company. Ballots bearing the names of all persons nominated by the nominating committee and by shareholders shall be provided for use at the annual meeting. However, if the nominat-

ing committee shall fail or refuse to act at least 20 days prior to the annual meeting, nominations for directors may be made at the annual meeting by any shareholder entitled to vote and shall be voted upon.

Section 15. New Business. Any new business to be taken up at the annual meeting shall be stated in writing and filed with the secretary of the Subsidiary Holding Company at least five days before the date of the annual meeting, and all business so stated, proposed, and filed shall be considered at the annual meeting; but no other proposal shall be acted upon at the annual meeting. Any shareholder may make any other proposal at the annual meeting and the same may be discussed and considered, but unless stated in writing and filed with the secretary at least five days before the meeting, such proposal shall be laid over for action at an adjourned, special, or annual meeting of the shareholders taking place 30 days or more thereafter. This provision shall not prevent the consideration and approval or disapproval at the annual meeting of reports of officers, directors, and committees; but in connection with such reports, no new business shall be acted upon at such annual meeting unless stated and filed as herein provided.

Section 16. Informal Action by Shareholders. Any action required to be taken at a meeting of the shareholders, or any other action which may be taken at a meeting of shareholders, may be taken without a meeting if consent in writing, setting forth the action so taken, shall be given by all of the shareholders entitled to vote with respect to the subject matter.

Article III—Board of Directors

Section 1. General Powers. The business and affairs of the Subsidiary Holding Company shall be under the direction of its board of directors. The board of directors shall annually elect a chairman of the board and a president from among its members and shall designate, when present, either the chairman of the board or the president to preside at its meetings.

Section 2. Number and Term. The board of directors shall consist of _____ [not fewer than five nor more than fifteen] members, and shall be divided into three classes as nearly equal in number as possible. The members of

each class shall be elected for a term of three years and until their successors are elected and qualified. One class shall be elected by ballot annually.

Section 3. Regular Meetings. A regular meeting of the board of directors shall be held without other notice than this bylaw following the annual meeting of shareholders. The board of directors may provide, by resolution, the time and place, for the holding of additional regular meetings without other notice than such resolution. Directors may participate in a meeting by means of a conference telephone or similar communications device through which all individuals participating can hear each other at the same time. Participation by such means shall constitute presence in person for all purposes.

Section 4. Qualification. Each director shall at all times be the beneficial owner of not less than 100 shares of capital stock of the Subsidiary Holding Company unless the Subsidiary Holding Company is a wholly owned subsidiary of a holding company.

Section 5. Special Meetings. Special meetings of the board of directors may be called by or at the request of the chairman of the board, the president, or one-third of the directors. The persons authorized to call special meetings of the board of directors may fix any place, within the Subsidiary Holding Company's normal lending territory, as the place for holding any special meeting of the board of directors called by such persons. Members of the board of directors may participate in special meetings by means of conference telephone or similar communications equipment by which all persons participating in the meeting can hear each other. Such participation shall constitute presence in person for all purposes.

Section 6. Notice. Written notice of any special meeting shall be given to each director at least 24 hours prior thereto when delivered personally or by telegram or at least five days prior thereto when delivered by mail at the address at which the director is most likely to be reached. Such notice shall be deemed to be delivered when deposited in the mail so addressed, with postage prepaid if mailed, when delivered to the telegraph company if sent by telegram, or when the Subsidiary Holding

Company receives notice of delivery if electronically transmitted. Any director may waive notice of any meeting by a writing filed with the secretary. The attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any meeting of the board of directors need be specified in the notice of waiver of notice of such meeting.

Section 7. Quorum. A majority of the number of directors fixed by section 2 of this article III shall constitute a quorum for the transaction of business at any meeting of the board of directors; but if less than such majority is present at a meeting, a majority of the directors present may adjourn the meeting from time to time. Notice of any adjourned meeting shall be given in the same manner as prescribed by section 5 of this article III.

Section 8. Manner of Acting. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless a greater number is prescribed by regulation of the Board or by these bylaws.

Section 9. Action Without a Meeting. Any action required or permitted to be taken by the board of directors at a meeting may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the directors.

Section 10. Resignation. Any director may resign at any time by sending a written notice of such resignation to the home office of the Subsidiary Holding Company addressed to the chairman of the board or the president. Unless otherwise specified, such resignation shall take effect upon receipt by the chairman of the board or the president. More than three consecutive absences from regular meetings of the board of directors, unless excused by resolution of the board of directors, shall automatically constitute a resignation, effective when such resignation is accepted by the board of directors.

Section 11. Vacancies. Any vacancy occurring on the board of directors may be filled by the affirmative vote of a majority of the remain-

ing directors although less than a quorum of the board of directors. A director elected to fill a vacancy shall be elected to serve only until the next election of directors by the shareholders. Any directorship to be filled by reason of an increase in the number of directors may be filled by election by the board of directors for a term of office continuing only until the next election of directors by the shareholders.

Section 12. Compensation. Directors, as such, may receive a stated salary for their services. By resolution of the board of directors, a reasonable fixed sum, and reasonable expenses of attendance, if any, may be allowed for attendance at each regular or special meeting of the board of directors. Members of either standing or special committees may be allowed such compensation for attendance at committee meetings as the board of directors may determine.

Section 13. Presumption of Assent. A director of the Subsidiary Holding Company who is present at a meeting of the board of directors at which action on any Subsidiary Holding Company matter is taken shall be presumed to have assented to the action taken unless his or her dissent or abstention shall be entered in the minutes of the meeting or unless he or she shall file a written dissent to such action with the individual acting as the secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the secretary of the Subsidiary Holding Company within five days after the date a copy of the minutes of the meeting is received. Such right to dissent shall not apply to a director who voted in favor of such action.

Section 14. Removal of Directors. At a meeting of shareholders called expressly for that purpose, any director may be removed only for cause by a vote of the holders of a majority of the shares then entitled to vote at an election of directors. If less than the entire board is to be removed, no one of the directors may be removed if the votes cast against the removal would be sufficient to elect a director if then cumulatively voted at an election of the class of directors of which such director is a part. [If cumulative voting has been deleted, the preceding sentence should be deleted.] Whenever the holders of the

shares of any class are entitled to elect one or more directors by the provisions of the charter or supplemental sections thereto, the provisions of this section shall apply, in respect to the removal of a director or directors so elected, to the vote of the holders of the outstanding shares of that class and not to the vote of the outstanding shares as a whole.

Article IV—Executive and Other Committees

Section 1. Appointment. The board of directors, by resolution adopted by a majority of the full board, may designate the chief executive officer and two or more of the other directors to constitute an executive committee. The designation of any committee pursuant to this Article IV and the delegation of authority shall not operate to relieve the board of directors, or any director, of any responsibility imposed by law or regulation.

Section 2. Authority. The executive committee, when the board of directors is not in session, shall have and may exercise all of the authority of the board of directors except to the extent, if any, that such authority shall be limited by the resolution appointing the executive committee; and except also that the executive committee shall not have the authority of the board of directors with reference to: the declaration of dividends; the amendment of the charter or bylaws of the Subsidiary Holding Company, or recommending to the shareholders a plan of merger, consolidation, or conversion; the sale, lease, or other disposition of all or substantially all of the property and assets of the Subsidiary Holding Company otherwise than in the usual and regular course of its business; a voluntary dissolution of the Subsidiary Holding Company; a revocation of any of the foregoing; or the approval of a transaction in which any member of the executive committee, directly or indirectly, has any material beneficial interest.

Section 3. Tenure. Subject to the provisions of section 8 of this article IV, each member of the executive committee shall hold office until the next regular annual meeting of the board of directors following his or her designation and until a successor is designated as a member of the executive committee.

Section 4. Meetings. Regular meetings of the executive committee may be held without notice at such times and places as the executive committee may fix from time to time by resolution. Special meetings of the executive committee may be called by any member thereof upon not less than one day's notice stating the place, date, and hour of the meeting, which notice may be written or oral. Any member of the executive committee may waive notice of any meeting and no notice of any meeting need be given to any member thereof who attends in person. The notice of a meeting of the executive committee need not state the business proposed to be transacted at the meeting.

Section 5. Quorum. A majority of the members of the executive committee shall constitute a quorum for the transaction of business at any meeting thereof, and action of the executive committee must be authorized by the affirmative vote of a majority of the members present at a meeting at which a quorum is present.

Section 6. Action Without a Meeting. Any action required or permitted to be taken by the executive committee at a meeting may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the members of the executive committee.

Section 7. Vacancies. Any vacancy in the executive committee may be filled by a resolution adopted by a majority of the full board of directors.

Section 8. Resignations and Removal. Any member of the executive committee may be removed at any time with or without cause by resolution adopted by a majority of the full board of directors. Any member of the executive committee may resign from the executive committee at any time by giving written notice to the president or secretary of the Subsidiary Holding Company. Unless otherwise specified, such resignation shall take effect upon its receipt; the acceptance of such resignation shall not be necessary to make it effective. No notice of any meeting need be given to any member thereof who attends in person. The notice of a meeting of the executive committee need not state the business proposed to be transacted at the meeting.

Section 9. Procedure. The executive committee shall elect a presiding officer from its members and may fix its own rules of procedure, which shall not be inconsistent with these bylaws. It shall keep regular minutes of its proceedings and report the same to the board of directors for its information at the meeting held next after the proceedings shall have occurred.

Section 10. Other Committees. The board of directors may by resolution establish an audit, loan, or other committee composed of directors as they may determine to be necessary or appropriate for the conduct of the business of the Subsidiary Holding Company and may prescribe the duties, constitution, and procedures thereof.

Article V—Officers

Section 1. Positions. The officers of the Subsidiary Holding Company shall be a president, one or more vice presidents, a secretary, and a treasurer or comptroller, each of whom shall be elected by the board of directors. The board of directors may also designate the chairman of the board as an officer. The offices of the secretary and treasurer or comptroller may be held by the same individual and a vice president may also be either the secretary or the treasurer or comptroller. The board of directors may designate one or more vice presidents as executive vice president or senior vice president. The board of directors may also elect or authorize the appointment of such other officers as the business of the Subsidiary Holding Company may require. The officers shall have such authority and perform such duties as the board of directors may from time to time authorize or determine. In the absence of action by the board of directors, the officers shall have such powers and duties as generally pertain to their respective offices.

Section 2. Election and Term of Office. The officers of the Subsidiary Holding Company shall be elected annually at the first meeting of the board of directors held after each annual meeting of the shareholders. If the election of officers is not held at such meeting, such election shall be held as soon thereafter as possible. Each officer shall hold office until

a successor has been duly elected and qualified or until the officer's death, resignation, or removal in the manner hereinafter provided. Election or appointment of an officer, employee, or agent shall not of itself create contractual rights. The board of directors may authorize the Subsidiary Holding Company to enter into an employment contract with any officer in accordance with regulations of the Board; but no such contract shall impair the right of the board of directors to remove any officer at any time in accordance with section 3 of this article V.

Section 3. Removal. Any officer may be removed by the board of directors whenever in its judgment the best interests of the Subsidiary Holding Company will be served thereby, but such removal, other than for cause, shall be without prejudice to the contractual rights, if any, of the officer so removed.

Section 4. Vacancies. A vacancy in any office because of death, resignation, removal, disqualification, or otherwise may be filled by the board of directors for the unexpired portion of the term.

Section 5. Remuneration. The remuneration of the officers shall be fixed from time to time by the board of directors.

Article VI—Contracts, Loans, Checks, and Deposits

Section 1. Contracts. To the extent permitted by regulations of the Board, and except as otherwise prescribed by these bylaws with respect to certificates for shares, the board of directors may authorize any officer, employee, or agent of the Subsidiary Holding Company to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Subsidiary Holding Company. Such authority may be general or confined to specific instances.

Section 2. Loans. No loans shall be contracted on behalf of the Subsidiary Holding Company and no evidence of indebtedness shall be issued in its name unless authorized by the board of directors. Such authority may be general or confined to specific instances.

Section 3. Checks; Drafts. etc. All checks, drafts, or other orders for the payment of money, notes, or other evidences of indebted-

ness issued in the name of the Subsidiary Holding Company shall be signed by one or more officers, employees or agents of the Subsidiary Holding Company in such manner as shall from time to time be determined by the board of directors.

Section 4. Deposits. All funds of the Subsidiary Holding Company not otherwise employed shall be deposited from time to time to the credit of the Subsidiary Holding Company in any duly authorized depositories as the board of directors may select.

Article VII—Certificates for Shares and Their Transfer

Section 1. Certificates for Shares. Certificates representing shares of capital stock of the Subsidiary Holding Company shall be in such form as shall be determined by the board of directors and approved by the Board. Such certificates shall be signed by the chief executive officer or by any other officer of the Subsidiary Holding Company authorized by the board of directors, attested by the secretary or an assistant secretary, and sealed with the corporate seal or a facsimile thereof. The signatures of such officers upon a certificate may be facsimiles if the certificate is manually signed on behalf of a transfer agent or a registrar other than the Subsidiary Holding Company itself or one of its employees. Each certificate for shares of capital stock shall be consecutively numbered or otherwise identified. The name and address of the person to whom the shares are issued, with the number of shares and date of issue, shall be entered on the stock transfer books of the Subsidiary Holding Company. All certificates surrendered to the Subsidiary Holding Company for transfer shall be canceled and no new certificate shall be issued until the former certificate for a like number of shares has been surrendered and canceled, except that in the case of a lost or destroyed certificate, a new certificate may be issued upon such terms and indemnity to the Subsidiary Holding Company as the board of directors may prescribe.

Section 2. Transfer of Shares. Transfer of shares of capital stock of the Subsidiary Holding Company shall be made only on its stock transfer books. Authority for such transfer

shall be given only by the holder of record or by his or her legal representative, who shall furnish proper evidence of such authority, or by his or her attorney authorized by a duly executed power of attorney and filed with the Subsidiary Holding Company. Such transfer shall be made only on surrender for cancellation of the certificate for such shares. The person in whose name shares of capital stock stand on the books of the Subsidiary Holding Company shall be deemed by the Subsidiary Holding Company to be the owner for all purposes.

Article VIII—Fiscal Year

The fiscal year of the Subsidiary Holding Company shall end on the _____ of _____ each year. The appointment of accountants shall be subject to annual ratification by the shareholders.

Article IX—Dividends

Subject to the terms of the Subsidiary Holding Company's charter and the regulations and orders of the Board, the board of directors may, from time to time, declare, and the Subsidiary

Holding Company may pay, dividends on its outstanding shares of capital stock.

Article X—Corporate Seal

The board of directors shall provide a Subsidiary Holding Company seal, which shall be two concentric circles between which shall be the name of the Subsidiary Holding Company. The year of incorporation or an emblem may appear in the center.

Article XI—Amendments

These bylaws may be amended in a manner consistent with regulations of the Board and shall be effective after: (i) approval of the amendment by a majority vote of the authorized board of directors, or by a majority vote of the votes cast by the shareholders of the Subsidiary Holding Company at any legal meeting, and (ii) receipt of any applicable regulatory approval. When a Subsidiary Holding Company fails to meet its quorum requirements, solely due to vacancies on the board, then the affirmative vote of a majority of the sitting board will be required to amend the bylaws.

Statutory Authority for Regulation MM

4-774

HOME OWNERS' LOAN ACT

See section 10(g) at 4-763.

SECTION 10—Regulation of Holding Companies

* * * * *

(o) *Mutual holding companies.*

(1) *In general.* A savings association operating in mutual form may reorganize so as to become a holding company by—

(A) chartering an interim savings association, the stock of which is to be wholly owned, except as otherwise provided in this section, by the mutual association; and

(B) transferring the substantial part of its assets and liabilities, including all of its insured liabilities, to the interim savings association.

(2) *Directors and certain account holders' approval of plan required.* A reorganization is not authorized under this subsection unless—

(A) a plan providing for such reorganization has been approved by a majority of the board of directors of the mutual savings association; and

(B) in the case of an association in which holders of accounts and obligors exercise voting rights, such plan has been submitted to and approved by a majority of such individuals at a meeting held at the call of the directors in accordance with the procedures prescribed by the association's charter and bylaws.

(3) *Notice to the Director; disapproval period.*

(A) *Notice required.* At least 60 days prior to taking any action described in paragraph (1), a savings association seeking to establish a mutual holding company shall provide written notice to the Director. The notice shall contain such relevant information as the Director shall

require by regulation or by specific request in connection with any particular notice.

(B) *Transaction allowed if not disapproved.* Unless the Director within such 60-day notice period disapproves the proposed holding company formation, or extends for another 30 days the period during which such disapproval may be issued, the savings association providing such notice may proceed with the transaction, if the requirements of paragraph (2) have been met.

(C) *Grounds for disapproval.* The Director may disapprove any proposed holding company formation only if—

(i) such disapproval is necessary to prevent unsafe or unsound practices;

(ii) the financial or management resources of the savings association involved warrant disapproval;

(iii) the savings association fails to furnish the information required under subparagraph (A); or

(iv) the savings association fails to comply with the requirement of paragraph (2).

(D) *Retention of capital assets.* In connection with the transaction described in paragraph (1), a savings association may, subject to the approval of the Director, retain capital assets at the holding company level to the extent that such capital exceeds the association's capital requirement established by the Director pursuant to subsections (s) and (t) of section 1464 of this title.

(4) *Ownership.*

(A) *In general.* Persons having ownership rights in the mutual association pursuant to section 1464 (b)(1)(B) of this title or State law shall have the same ownership rights with respect to the mutual holding company.

(B) *Holders of certain accounts.* Holders of savings, demand or other accounts of—

(i) a savings association chartered as

part of a transaction described in paragraph (1); or

(ii) a mutual savings association acquired pursuant to paragraph (5)(B), shall have the same ownership rights with respect to the mutual holding company as persons described in subparagraph (A) of this paragraph.

(5) *Permitted activities.* A mutual holding company may engage only in the following activities:

(A) Investing in the stock of a savings association.

(B) Acquiring a mutual association through the merger of such association into a savings association subsidiary of such holding company or an interim savings association subsidiary of such holding company.

(C) Subject to paragraph (6), merging with or acquiring another holding company, one of whose subsidiaries is a savings association.

(D) Investing in a corporation the capital stock of which is available for purchase by a savings association under Federal law or under the law of any State where the subsidiary savings association or associations have their home offices.

(E) Engaging in the activities described in subsection (c)(2) or (c)(9)(A)(ii) of this section.

(6) *Limitations on certain activities of acquired holding companies.*

(A) *New activities.* If a mutual holding company acquires or merges with another holding company under paragraph (5)(C), the holding company acquired or the holding company resulting from such merger or acquisition may only invest in assets and engage in activities which are authorized under paragraph (5).

(B) *Grace period for divesting prohibited assets or discontinuing prohibited activities.* Not later than 2 years following a merger or acquisition described in paragraph (5)(C), the acquired holding company or the holding company resulting from such merger or acquisition shall—

(i) dispose of any asset which is an asset in which a mutual holding com-

pany may not invest under paragraph (5); and

(ii) cease any activity which is an activity in which a mutual holding company may not engage under paragraph (5).

(7) *Regulation.* A mutual holding company shall be chartered by the Director and shall be subject to such regulations as the Director may prescribe. Unless the context otherwise requires, a mutual holding company shall be subject to the other requirements of this section regarding regulation of holding companies.

(8) *Capital improvement.*

(A) *Pledge of stock of savings association subsidiary.* This section shall not prohibit a mutual holding company from pledging all or a portion of the stock of a savings association chartered as part of a transaction described in paragraph (1) to raise capital for such savings association.

(B) *Issuance of nonvoting shares.* This section shall not prohibit a savings association chartered as part of a transaction described in paragraph (1) from issuing any nonvoting shares or less than 50 percent of the voting shares of such association to any person other than the mutual holding company.

(9) *Insolvency and liquidation.*

(A) *In general.* Notwithstanding any provision of law, upon—

(i) the default of any savings association—

(I) the stock of which is owned by any mutual holding company; and

(II) which was chartered in a transaction described in paragraph (1);

(ii) the default of a mutual holding company; or

(iii) a foreclosure on a pledge by a mutual holding company described in paragraph (8)(A), a trustee shall be appointed receiver of such mutual holding company and such trustee shall have the authority to liquidate the assets of, and satisfy the liabilities of, such mutual holding company pursuant to title 11.

(B) *Distribution of net proceeds.* Except as provided in subparagraph (C), the net

proceeds of any liquidation of any mutual holding company pursuant to subparagraph (A) shall be transferred to persons who hold ownership interests in such mutual holding company.

(C) *Recovery by Corporation.* If the Corporation incurs a loss as a result of the default of any savings association subsidiary of a mutual holding company which is liquidated pursuant to subparagraph (A), the Corporation shall succeed to the ownership interests of the depositors of such savings association in the mutual holding company, to the extent of the Corporation's loss.

(10) *Definitions.* For purposes of this subsection—

(A) *Mutual holding company.* The term “mutual holding company” means a corporation organized as a holding company under this subsection.

(B) *Mutual association.* The term “mutual association” means a savings association which is operating in mutual form.

(C) *Default.* The term “default” means an adjudication or other official determination of a court of competent jurisdiction or other public authority pursuant to which a conservator, receiver, or other legal custodian is appointed.

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[12 USC 1467a.]