

Board of Governors of the Federal Reserve System

Regulation LL Savings and Loan Holding Companies

12 CFR 238; as amended effective April 1, 2024



Regulation LL

Savings and Loan Holding Companies

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AUTHORITY: 5 U.S.C. 552, 559; 12 U.S.C. 1462, 1462a, 1463, 1464, 1467, 1467a, 1468, 1813, 1817, 1829e, 1831i, 1972, 3201-3208; 15 U.S.C. 78f.

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SUBPART A—GENERAL PROVISIONS

SECTION 238.1—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) of the Home Owners' Loan Act (HOLA); section 7(j)(13) of the Federal Deposit Insurance Act, as amended by the Change in Bank Control Act

of 1978 (12 U.S.C. 1817(j)(13)) (Bank Control Act); sections 8(b), 19, and 32 of the Federal Deposit Insurance Act (12 U.S.C. 1818(b), 1829, and 1831i); and section 914 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 U.S.C. 1831i) and the Depository Institution Management Interlocks Act (12 U.S.C. 3201 *et seq.*).

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

- (1) Regulate the acquisition of control of savings associations by companies and individuals;
- (2) Define and regulate the activities in which savings and loan holding companies may engage;
- (3) Set forth the procedures for securing approval for these transactions and activities; and
- (4) Set forth the procedures under which directors and executive officers may be appointed or employed by savings and loan holding companies in certain circumstances.

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SECTION 238.2—Definitions

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

(a) *Affiliate* means any person or company which controls, is controlled by or is under common control with a person, savings association or company.

(b) *Bank* means any national bank, state bank, state-chartered savings bank, cooperative bank, or industrial bank, the deposits of which are insured by the Deposit Insurance Fund.

(c) *Bank holding company* has the meaning found in the Board's Regulation Y (12 CFR 225.2(c)).

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

- (1) The Federal Deposit Insurance Corpora-

* Appendix A does not appear in the Code of Federal Regulations. It was published in the *Federal Register* at 83 Fed. Reg. 58,724, 58,734-39 (November 21, 2018).

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.

(e) A person shall be deemed to have *control* of:

(1) A savings association if the person directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, or holds with power to vote, or holds proxies representing, more than 25 percent of the voting shares of such savings association, or controls in any manner the election of a majority of the directors of such association;

(2) Any other company if the person directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, or holds with power to vote, or holds proxies representing, more than 25 percent of the voting shares or rights of such other company, or controls in any manner the election or appointment of a majority of the directors or trustees of such other company, or is a general partner in or has contributed more than 25 percent of the capital of such other company;

(3) A trust if the person is a trustee thereof;

(4) A company if the Board determines, after reasonable notice and opportunity for hearing, that such person directly or indirectly exercises a controlling influence over the management or policies of such association or other company; or

(5) Voting securities or assets owned, controlled, or held, directly or indirectly:

- (i) By the company, or by any subsidiary of the company;
- (ii) That the company has power to vote or to dispose of;
- (iii) In a fiduciary capacity for the benefit of the company or any of its subsidiaries;

(iv) In a fiduciary capacity (including by pension and profit-sharing trusts) for the benefit of the shareholders, members, or employees (or individuals serving in similar capacities) of the company or any of its subsidiaries; or

(v) According to the standards under section 238.9 of this part.

(f) *Director* means any director of a corporation or any individual who performs similar functions in respect of any company, including a trustee under a trust.

(g) *Management official* means any president, chief executive officer, chief operating officer, vice president, director, partner, or trustee, or any other person who performs or has a representative or nominee performing similar policymaking functions, including executive officers of principal business units or divisions or subsidiaries who perform policymaking functions, for a savings association or a company, whether or not incorporated.

(h) *Multiple savings and loan holding company* means any savings and loan holding company which directly or indirectly controls two or more savings associations.

(i) *Officer* means the chairman of the board, president, vice president, treasurer, secretary, or comptroller of any company, or any other person who participates in its major policy decisions.

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

(k) *Qualified thrift lender* means a financial institution that meets the appropriate qualified thrift lender test set forth in 12 U.S.C. 1467a(m).

(l) *Savings association* means a Federal savings and loan association or a Federal savings bank chartered under section 5 of the Home Owners' Loan Act, a building and loan, savings and loan or homestead association or a cooperative bank (other than a cooperative bank described in 12 U.S.C. 1813(a)(2)) the deposits of which are insured by the Federal

Deposit Insurance Corporation, and any corporation (other than a bank) the deposits of which are insured by the Federal Deposit Insurance Corporation that the Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation jointly determine to be operating in substantially the same manner as a savings association, and shall include any savings bank or any cooperative bank which is deemed by the Office of the Comptroller of the Currency to be a savings association under 12 U.S.C. 1467a(1).

(m) *Savings and loan holding company* means any company (including a savings association) that directly or indirectly controls a savings association, but does not include:

(1) Any company by virtue of its ownership or control of voting stock of a savings association acquired in connection with the underwriting of securities if such stock is held only for such period of time (not exceeding 120 days unless extended by the Board) as will permit the sale thereof on a reasonable basis;

(2) Any trust (other than a pension, profit-sharing, stockholders', voting, or business trust) which controls a savings association if such trust by its terms must terminate within 25 years or not later than 21 years and 10 months after the death of individuals living on the effective date of the trust, and:

- (i) Was in existence and in control of a savings association on June 26, 1967, or
- (ii) Is a testamentary trust;

(3) A bank holding company that is registered under, and subject to, the Bank Holding Company Act of 1956, or any company directly or indirectly controlled by such company (other than a savings association);

(4) A company that controls a savings association that functions solely in a trust or fiduciary capacity as provided in section 2(c)(2)(D) of the Bank Holding Company Act; or

(5) A company described in section 10(c)(9)(C) of HOLA solely by virtue of such company's control of an intermediate holding company established under section 10A of the Home Owners' Loan Act.

(n) *Shareholder*.

(1) *Controlling shareholder* means a person

that owns or control, directly or indirectly, more than 25 percent of any class of voting securities of a savings association or other company.

(2) *Principal shareholder* means a person that owns or controls, directly or indirectly, 10 percent or more of any class of voting securities of a savings association or other company, or any person that the Board determines has the power, directly or indirectly, to exercise a controlling influence over the management or policies of a savings association or other company.

(o) *Stock* means common or preferred stock, general or limited partnership shares or interests, or similar interests.

(p) *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.

(q) *Uninsured institution* means any financial institution the deposits of which are not insured by the Federal Deposit Insurance Corporation.

(r) (1) *Voting securities* means shares of common or preferred stock, general or limited partnership shares or interests, or similar interests if the shares or interest, by statute, charter, or in any manner, entitle the holder:

- (i) To vote for or to select directors, trustees, or partners (or persons exercising similar functions of the issuing company); or
- (ii) To vote on or to direct the conduct of the operations or other significant policies of the issuing company.

(2) *Nonvoting securities*. Common shares, preferred shares, limited partnership interests, limited liability company interests, or similar interests are not *voting securities* if:

- (i) Any voting rights associated with the securities are limited solely to the type customarily provided by statute with regard to matters that would significantly and adversely affect the rights or preference of the security, such as the issuance of additional amounts or classes of senior securities, the modification of the terms

of the security, the dissolution of the issuing company, or the payment of dividends by the issuing company when preferred dividends are in arrears;

(ii) The securities represent an essentially passive investment or financing device and do not otherwise provide the holder with control over the issuing company; and

(iii) The securities do not entitle the holder, by statute, charter, or in any manner, to select or to vote for the selection of directors, trustees, or partners (or persons exercising similar functions) of the issuing company; except that limited partnership interests or membership interests in limited liability companies are not voting securities due to voting rights that are limited solely to voting for the removal of a general partner or managing member (or persons exercising similar functions at the company) for cause, to replace a general partner or managing member (or persons exercising similar functions at the company) due to incapacitation or following the removal of such person, or to continue or dissolve the company after removal of the general partner or managing member (or persons exercising similar functions at the company).

(3) *Class of voting shares.* Shares of stock issued by a single issuer are deemed to be the same class of voting shares, regardless of differences in dividend rights or liquidation preference, if the shares are voted together as a single class on all matters for which the shares have voting rights other than matters described in paragraph (r)(2)(i) of this section that affect solely the rights or preferences of the shares.

(s) *Well capitalized.*

(1) A savings and loan holding company is well capitalized if:

(i) Each of the savings and loan holding company's depository institutions is well capitalized; and

(ii) The savings and loan holding company is not subject to any written agreement, order, capital directive, or prompt corrective action directive issued by the

Board to meet and maintain a specific capital level for any capital measure.

(2) In the case of a savings association, "well capitalized" takes the meaning provided in section 225.2(r)(2) of this chapter.

(t) *Well managed.* The term "well managed" takes the meaning provided in section 225.2(s) of this chapter except that a "satisfactory rating for management" refers to a management rating, if such rating is given, or otherwise a risk-management rating, if such rating is given.

(u) *Depository institution.* For purposes of this part, the term "depository institution" has the same meaning as in section 3(c) of Federal Deposit Insurance Act (12 U.S.C. 1813(c)).

(v) *Applicable accounting standards* means GAAP, international financial reporting standards, or such other accounting standards that a company uses in the ordinary course of its business in preparing its consolidated financial statements.

(w) *Average cross-jurisdictional activity* means the average of cross-jurisdictional activity for the four most recent calendar quarters or, if the banking organization has not reported cross-jurisdictional activity for each of the four most recent calendar quarters, the cross-jurisdictional activity for the most recent calendar quarter or average of the most recent calendar quarters, as applicable.

(x) *Average off-balance sheet exposure* means the average of off-balance sheet exposure for the four most recent calendar quarters or, if the banking organization has not reported total exposure and total consolidated assets for each of the four most recent calendar quarters, the off-balance sheet exposure for the most recent calendar quarter or average of the most recent quarters, as applicable.

(y) *Average total consolidated assets* means the average of total consolidated assets for the four most recent calendar quarters or, if the banking organization has not reported total consolidated assets for each of the four most recent calendar quarters, the total consolidated assets for the most recent calendar quarter or

average of the most recent calendar quarters, as applicable.

(z) *Average total nonbank assets* means the average of total nonbank assets for the four most recent calendar quarters or, if the banking organization has not reported total nonbank assets for each of the four most recent calendar quarters, the total nonbank assets for the most recent calendar quarter or average of the most recent calendar quarters, as applicable.

(aa) *Average weighted short-term wholesale funding* means the average of weighted short-term wholesale funding for each of the four most recent calendar quarters or, if the banking organization has not reported weighted short-term wholesale funding for each of the four most recent calendar quarters, the weighted short-term wholesale funding for the most recent quarter or average of the most recent calendar quarters, as applicable.

(bb) *Banking organization*. Banking organization means a covered savings and loan holding company that is:

- (1) Incorporated in or organized under the laws of the United States or any State; and
- (2) Not a consolidated subsidiary of a covered savings and loan holding company that is incorporated in or organized under the laws of the United States or any State.

(cc) *Category II savings and loan holding company* means a covered savings and loan holding company identified as a Category II banking organization pursuant to section 238.10.

(dd) *Category III savings and loan holding company* means a covered savings and loan holding company identified as a Category III banking organization pursuant to section 238.10.

(ee) *Category IV savings and loan holding company* means a covered savings and loan holding company identified as a Category IV banking organization pursuant to section 238.10.

(ff) *Covered savings and loan holding company* means a savings and loan holding company other than:

(1) A top-tier savings and loan holding company that is:

- (i) A grandfathered unitary savings and loan holding company as defined in section 10(c)(9)(C) of the Home Owners' Loan Act (12 U.S.C. 1461 *et seq.*); and
- (ii) As of June 30 of the previous calendar year, derived 50 percent or more of its total consolidated assets or 50 percent of its total revenues on an enterprise-wide basis (as calculated under GAAP) from activities that are not financial in nature under section 4(k) of the Bank Holding Company Act (12 U.S.C. 1843(k));

(2) A top-tier depository institution holding company that is an insurance underwriting company; or

(3) (i) A top-tier depository institution holding company that, as of June 30 of the previous calendar year, held 25 percent or more of its total consolidated assets in subsidiaries that are insurance underwriting companies (other than assets associated with insurance for credit risk); and (ii) For purposes of paragraph (ff)(3)(i) of this section, the company must calculate its total consolidated assets in accordance with GAAP, or if the company does not calculate its total consolidated assets under GAAP for any regulatory purpose (including compliance with applicable securities laws), the company may estimate its total consolidated assets, subject to review and adjustment by the Board of Governors of the Federal Reserve System.

(gg) *Cross-jurisdictional activity*. The cross-jurisdictional activity of a banking organization is equal to the cross-jurisdictional activity of the banking organization as reported on the FR Y-15.

(hh) *Foreign banking organization* has the same meaning as in section 211.21(o) of this chapter.

(ii) *FR Y-9C* means the Consolidated Financial Statements for Holding Companies reporting form.

(jj) *FR Y-9LP* means the Parent Company

Only Financial Statements of Large Holding Companies.

(kk) *FR Y-15* means the Systemic Risk Report.

(ll) *GAAP* means generally accepted accounting principles as used in the United States.

(mm) *Off-balance sheet exposure*. The off-balance sheet exposure of a banking organization is equal to:

- (1) The total exposure of the banking organization, as reported by the banking organization on the FR Y-15; *minus*
- (2) The total consolidated assets of the banking organization for the same calendar quarter.

(nn) *State* means any state, commonwealth, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, or the United States Virgin Islands.

(oo) *Total consolidated assets*. Total consolidated assets of a banking organization are equal to its total consolidated assets calculated based on the average of the balances as of the close of business for each day for the calendar quarter or an average of the balances as of the close of business on each Wednesday during the calendar quarter, as reported on the FR Y-9C.

(pp) *Total nonbank assets*. Total nonbank assets of a banking organization is equal to the total nonbank assets of such banking organization, as reported on the FR Y-9LP.

(qq) *U.S. government agency* means an agency or instrumentality of the United States whose obligations are fully and explicitly guaranteed as to the timely payment of principal and interest by the full faith and credit of the United States.

(rr) *U.S. government-sponsored enterprise* means an entity originally established or chartered by the U.S. government to serve public purposes specified by the U.S. Congress, but whose obligations are not explicitly guaranteed by the full faith and credit of the United States.

(ss) *Weighted short-term wholesale funding* is equal to the weighted short-term wholesale funding of a banking organization, as reported on the FR Y-15.

(tt) *Voting percentage*. For purposes of this part, the percentage of a class of a company's voting securities controlled by a person is the greater of:

- (1) The quotient, expressed as a percentage, of the number of shares of the class of voting securities controlled by the person, divided by the number of shares of the class of voting securities that are issued and outstanding, both as adjusted by section 238.9 of this part; and
- (2) The quotient, expressed as a percentage, of the number of votes that may be cast by the person on the voting securities controlled by the person, divided by the total votes that are legally entitled to be cast by the issued and outstanding shares of the class of voting securities, both as adjusted by section 238.9 of this part.

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SECTION 238.3—Administration

(a) *Delegation of authority*. Designated Board members and officers and the Federal Reserve Banks are authorized by the Board to exercise various functions prescribed in this regulation, in the Board's Rules Regarding Delegation of Authority (12 CFR part 265), the Board's Rules of Procedure (12 CFR part 262), and in Board orders.

(b) *Appropriate Federal Reserve Bank*. In administering this regulation, unless a different Federal Reserve Bank is designated by the Board, the appropriate Federal Reserve Bank is as follows:

- (1) For a savings and loan holding company (or a company applying to become a savings and loan holding company): the Reserve Bank of the Federal Reserve district in which the company's banking operations are principally conducted, as measured by total domestic deposits in its subsidiary savings association on the date it became (or will become) a savings and loan holding company;

(2) For an individual or company submitting a notice under subpart D of this part: The Reserve Bank of the Federal Reserve district in which the banking operations of the savings and loan holding company to be acquired are principally conducted, as measured by total domestic deposits on the date the notice is filed.

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SECTION 238.4—Records, Reports, and Inspections

(a) *Records.* Each savings and loan holding company shall maintain such books and records as may be prescribed by the Board. Each savings and loan holding company and its non-depository affiliates shall maintain accurate and complete records of all business transactions. Such records shall support and be readily reconcilable to any regulatory reports submitted to the Board and financial reports prepared in accordance with GAAP. The records shall be maintained in the United States and be readily accessible for examination and other supervisory purposes within 5 business days upon request by the Board, at a location acceptable to the Board.

(b) *Reports.* Each savings and loan holding company and each subsidiary thereof, other than a savings association, shall file with the Board such reports as may be required by the Board. Such reports shall be made under oath or otherwise, and shall be in such form and for such periods, as the Board may prescribe. Each report shall contain information concerning the operations of such savings and loan holding company and its subsidiaries as the Board may require.

(c) *Registration statement.*

(1) *Filing of registration statement.* Not later than 90 days after becoming a savings and loan holding company, each savings and loan holding company shall register with the Board by furnishing information in the manner and form prescribed by the Board.

(2) *Date of registration.* The date of registration of a savings and loan holding com-

pany shall be the date on which its registration statement is received by the Board.

(3) *Extension of time for registration.* For timely and good cause shown, the Board may extend the time within which a savings and loan holding company shall register.

(d) *Release from registration.* The Board may at any time, upon its own motion or upon application, release a registered savings and loan holding company from any registration theretofore made by such company, if the Board shall determine that such company no longer has control of any savings association or no longer qualifies as a savings and loan holding company.

(e) *Examinations.* Each savings and loan holding company and each subsidiary thereof shall be subject to such examinations as the Board may prescribe. The Board shall, to the extent deemed feasible, use for the purposes of this section reports filed with or examinations made by other Federal agencies or the appropriate State supervisory authority.

(f) *Appointment of agent.* The Board may require any savings and loan holding company, or persons connected therewith if it is not a corporation, to execute and file a prescribed form of irrevocable appointment of agent for service of process.

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SECTION 238.5—Audit of Savings Association Holding Companies

(a) *General.* The Board may require, at any time, an independent audit of the financial statements of, or the application of procedures agreed upon by the Board to a savings and loan holding company, or nondepository affiliate by qualified independent public accountants when needed for any safety and soundness reason identified by the Board.

(b) *Audits required for safety and soundness purposes.*

(1) The Board requires an independent audit for safety and soundness purposes if, as of the beginning of its fiscal year, a savings and loan holding company controls savings

association subsidiary(ies) with aggregate consolidated assets of \$500 million or more.

(2) Except as provided in paragraph (b)(3) of this section, with regard to a savings and loan holding company's fiscal year beginning in the calendar years 2020 or 2021, the applicability of the requirement in paragraph (b)(1) of this section shall be determined based on the lesser of:

- (i) The aggregate consolidated assets of the savings and loan holding company as of December 31, 2019; and
- (ii) The aggregate consolidated assets of the savings and loan holding company as of the end of its fiscal year ending in calendar year 2020.

(3) The relief provided under paragraph (b)(2) of this section does not apply to a savings and loan holding company if the Board determines that permitting the savings and loan holding company to determine its assets in accordance with that paragraph would not be commensurate with the risk profile of the savings and loan holding company. When making this determination, the Board will consider all relevant factors, including the extent of asset growth of the savings and loan holding company since December 31, 2019; the causes of such growth, including whether growth occurred as a result of mergers or acquisitions; whether such growth is likely to be temporary or permanent; whether the savings and loan holding company has become involved in any additional activities since December 31, 2019; the asset size of any parent companies; and the type of assets held by the savings and loan holding company. In making a determination pursuant to this paragraph (b)(3), the Board will apply notice and response procedures in the same manner and to the same extent as the notice and response procedures in 12 CFR 263.202.

(c) *Procedures.*

(1) When the Board requires an independent audit because such an audit is needed for safety and soundness purposes, the Board shall determine whether the audit was conducted and filed in a manner satisfactory to the Board.

(2) When the Board requires the application of procedures agreed upon by the Board for safety and soundness purposes, the Board shall identify the procedures to be performed. The Board shall also determine whether the agreed upon procedures were conducted and filed in a manner satisfactory to the Board.

(d) *Qualifications for independent public accountants.* The audit shall be conducted by an independent public accountant who:

- (1) Is registered or licensed to practice as a public accountant, and is in good standing, under the laws of the state or other political subdivision of the United States in which the savings association's or holding company's principal office is located;
- (2) Agrees in the engagement letter to provide the Board with access to and copies of any work papers, policies, and procedures relating to the services performed;
- (3) (i) Is in compliance with the American Institute of Certified Public Accountants' (AICPA) Code of Professional Conduct; and
 - (ii) Meets the independence requirements and interpretations of the Securities and Exchange Commission and its staff; and
- (4) Has received, or is enrolled in, a peer review program that meets guidelines acceptable to the Board.

(e) *Voluntary audits.* When a savings and loan holding company or nondepository affiliate obtains an independent audit voluntarily, it must be performed by an independent public accountant who satisfies the requirements of paragraphs (d)(1), (d)(2), and (d)(3)(i) of this section.

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SECTION 238.6—Penalties for Violations

(a) *Criminal and civil penalties.*

(1) Section 10 of the HOLA provides criminal penalties for willful violation, and civil penalties for violation, by any company or individual, of HOLA or any regulation or order issued under it, or for making

a false entry in any book, report, or statement of a savings and loan holding company.

(2) Civil money penalty assessments for violations of HOLA shall be made in accordance with subpart C of the Board's Rules of Practice for Hearings (12 CFR part 263, subpart C). For any willful violation of the Bank Control Act or any regulation or order issued under it, the Board may assess a civil penalty as provided in 12 U.S.C. 1817(j)(15).

(b) *Cease-and-desist proceedings.* For any violation of HOLA, the Bank Control Act, this regulation, or any order or notice issued thereunder, the Board may institute a cease-and-desist proceeding in accordance with the Financial Institutions Supervisory Act of 1966, as amended (12 U.S.C. 1818(b) *et seq.*).

4-750.6

SECTION 238.7—Tying Restriction Exception

(a) *Safe harbor for combined-balance discounts.* A savings and loan holding company or any savings association or any affiliate of either may vary the consideration for any product or package of products based on a customer's maintaining a combined minimum balance in certain products specified by the company varying the consideration (eligible products), if:

(1) That company (if it is a savings association) or a savings association affiliate of that company (if it is not a savings association) offers deposits, and all such deposits are eligible products; and

(2) Balances in deposits count at least as much as non-deposit products toward the minimum balance.

(b) *Limitations on exception.* This exception shall terminate upon a finding by the Board that the arrangement is resulting in anti-competitive practices. The eligibility of a savings and loan holding company or savings association or affiliate of either to operate under this exception shall terminate upon a find-

ing by the Board that its exercise of this authority is resulting in anti-competitive practices.

4-750.7

SECTION 238.8—Safe and Sound Operations, and Small Bank Holding Company Policy Statement

(a) *Savings and loan holding company policy and operations.*

(1) A savings and loan holding company shall serve as a source of financial and managerial strength to its subsidiary savings associations and shall not conduct its operations in an unsafe or unsound manner.

(2) Whenever the Board believes an activity of a savings and loan holding company or control of a nonbank subsidiary (other than a nonbank subsidiary of a savings association) constitutes a serious risk to the financial safety, soundness, or stability of a subsidiary savings association of the savings and loan holding company and is inconsistent with sound banking principles or the purposes of HOLA or the Financial Institutions Supervisory Act of 1966, as amended (12 U.S.C. 1818(b) *et seq.*), the Board may require the savings and loan holding company to terminate the activity or to terminate control of the subsidiary, as provided in section 10(g)(5) of the HOLA.

(b) The Board's Small Bank Holding Company Policy Statement (12 CFR part 225, appendix C) (Policy Statement) applies to savings and loan holding companies as if they were bank holding companies. To qualify or rely on the Policy Statement, savings and loan holding companies must meet all qualifying requirements in the Policy Statement as if they were a bank holding company. For purposes of applying the Policy Statement, the term "nonbank subsidiary" as used in the Policy Statement refers to a subsidiary of a savings and loan holding company other than a savings association or a subsidiary of a savings association.

(c) The Board may exclude any savings and loan holding company, regardless of asset size, from the Policy Statement under para-

graph (b) of this section if the Board determines that such action is warranted for supervisory purposes.

4-750.8

SECTION 238.9—Control over Securities

(a) *Contingent rights, convertible securities, options, and warrants.*

(1) A person that controls a security, option, warrant, or other financial instrument that is convertible into, exercisable for, exchangeable for, or otherwise may become a security controls each security that could be acquired as a result of such conversion, exercise, exchange, or similar occurrence.

(2) If a financial instrument of the type described in paragraph (a)(1) of this section is convertible into, exercisable for, exchangeable for, or otherwise may become a number of securities that varies according to a formula, rate, or other variable metric, the number of securities controlled under paragraph (a)(1) of this section is the maximum number of securities that the financial instrument could be converted into, be exercised for, be exchanged for, or otherwise become under the formula, rate, or other variable metric.

(3) Notwithstanding paragraph (a)(1) of this section, a person does not control voting securities due to controlling a financial instrument if the financial instrument:

- (i) By its terms is not convertible into, is not exercisable for, is not exchangeable for, and may not otherwise become voting securities in the hands of the person or an affiliate of the person; and
- (ii) By its terms is only convertible into, exercisable for, exchangeable for, or may otherwise become voting securities in the hands of a transferee after a transfer:

- (A) In a widespread public distribution;
- (B) To the issuing company;
- (C) In transfers in which no transferee (or group of associated transferees) would receive 2 percent or more of the outstanding securities of any class of

voting securities of the issuing company; or

(D) To a transferee that would control more than 50 percent of every class of voting securities of the issuing company without any transfer from the person.

(4) Notwithstanding paragraph (a)(1) of this section, a person that has agreed to acquire securities or other financial instruments pursuant to a securities purchase agreement does not control such securities or financial instruments until the person acquires the securities or financial instruments.

(5) Notwithstanding paragraph (a)(1) of this section, a right that provides a person the ability to acquire securities in future issuances or to convert nonvoting securities into voting securities does not cause the person to control the securities that could be acquired under the right, so long as the right does not allow the person to acquire a higher percentage of the class of securities than the person controlled immediately prior to the future acquisition.

(6) Notwithstanding paragraph (a)(1) of this section, a preferred security that would be a nonvoting security but for a right to vote on directors that activates only after six or more quarters of unpaid dividends is not considered to be a voting security until the security holder is entitled to exercise the voting right.

(7) For purposes of determining the percentage of a class of voting securities of a company controlled by a person that controls a financial instrument of the type described in paragraph (a)(1) of this section:

- (i) The securities controlled by the person under paragraphs (a)(1) through (6) of this section are deemed to be issued and outstanding; and
- (ii) Any securities controlled by anyone other than the person under paragraphs (a)(1) through (6) of this section are not deemed to be issued and outstanding, unless by the terms of the financial instruments the securities controlled by the other persons must be issued and outstanding in order for the securities of the person to be issued and outstanding.

(b) *Restriction on securities.* A person that enters into an agreement or understanding with a second person under which the rights of the second person are restricted in any manner with respect to securities that are controlled by the second person, controls the securities of the second person, unless the restriction is:

- (1) A requirement that the second person offer the securities for sale to the first person for a reasonable period of time prior to transferring the securities to a third party;
- (2) A requirement that, if the second person agrees to sell the securities, the second person provide the first person with the opportunity to participate in the sale of the securities by the second person;
- (3) A requirement under which the second person agrees to sell its securities to a third party if a majority of security holders agrees to sell their securities to the third party;
- (4) Incident to a *bona fide* loan transaction in which the securities serve as collateral;
- (5) A short-term and revocable proxy;
- (6) A restriction on transferability that continues only for a reasonable amount of time necessary to complete an acquisition by the first person of the securities from the second person, including the time necessary to obtain required approval from an appropriate government authority with respect to the acquisition;
- (7) A requirement that the second person vote the securities in favor of a specific acquisition of control of the issuing company, or against competing transactions, if the restriction continues only for a reasonable amount of time necessary to complete the transaction, including the time necessary to obtain required approval from an appropriate government authority with respect to an acquisition or merger; or
- (8) An agreement among security holders of the issuing company intended to preserve the tax status or tax benefits of the company, such as qualification of the issuing company as a Subchapter S corporation, as defined in 26 U.S.C. 1361(a)(1) or any successor statute, or prevention of events that could impair deferred tax assets, such as net

operating loss carryforwards, as described in 26 U.S.C. 382 or any successor statute.

(c) *Securities held by senior management officials or controlling equity holders of a company.* A company that controls 5 percent or more of any class of voting securities of another company controls all securities issued by the second company that are controlled by senior management officials, directors, or controlling shareholders of the first company, or by immediate family members of such persons, unless the first company controls less than 15 percent of each class of voting securities of the second company and the senior management officials, directors, and controlling shareholders of the first company, and immediate family members of such persons, control 50 percent or more of each class of voting securities of the second company.

(d) *Reservation of authority.* Notwithstanding paragraphs (a) through (c) of this section, the Board may determine that securities are or are not controlled by a company based on the facts and circumstances presented.

4-750.9

SECTION 238.10—Categorization of Banking Organizations

(a) *General.* A banking organization with average total consolidated assets of \$100 billion or more must determine its category among the three categories described in paragraphs (b) through (d) of this section at least quarterly.

(b) *Category II.*

(1) A banking organization is a Category II banking organization if the banking organization has:

- (i) \$700 billion or more in average total consolidated assets; or
- (ii) (A) \$75 billion or more in average cross-jurisdictional activity; and
(B) \$100 billion or more in average total consolidated assets.

(2) After meeting the criteria in paragraph (b)(1) of this section, a banking organization continues to be a Category II banking organization until the banking organization has:

- (i) (A) Less than \$700 billion in total consolidated assets for each of the four most recent calendar quarters; and
 - (B) Less than \$75 billion in cross-jurisdictional activity for each of the four most recent calendar quarters; or
 - (ii) Less than \$100 billion in total consolidated assets for each of the four most recent calendar quarters.
- (c) *Category III.*
- (1) A banking organization is a Category III banking organization if the banking organization:
 - (i) Has:
 - (A) \$250 billion or more in average total consolidated assets; or
 - (B) \$100 billion or more in average total consolidated assets and at least:
 - (1) \$75 billion in average total nonbank assets;
 - (2) \$75 billion in average weighted short-term wholesale funding; or
 - (3) \$75 billion in average off-balance sheet exposure; and
 - (ii) Is not a Category II banking organization.
 - (2) After meeting the criteria in paragraph (c)(1) of this section, a banking organization continues to be a Category III banking organization until the banking organization:
 - (i) Has:
 - (A) Less than \$250 billion in total consolidated assets for each of the four most recent calendar quarters;
 - (B) Less than \$75 billion in total nonbank assets for each of the four most recent calendar quarters;
 - (C) Less than \$75 billion in weighted short-term wholesale funding for each of the four most recent calendar quarters; and
 - (D) Less than \$75 billion in off-balance sheet exposure for each of the four most recent calendar quarters; or
 - (ii) Has less than \$100 billion in total consolidated assets for each of the four most recent calendar quarters; or
 - (iii) Meets the criteria in paragraph (b)(1) of this section to be a Category II banking organization.
- (d) *Category IV.*
- (1) A banking organization with average total consolidated assets of \$100 billion or more is a Category IV banking organization if the banking organization:
 - (i) Is not a Category II banking organization; and
 - (ii) Is not a Category III banking organization.
 - (2) After meeting the criteria in paragraph (d)(1) of this section, a banking organization continues to be a Category IV banking organization until the banking organization:
 - (i) Has less than \$100 billion in total consolidated assets for each of the four most recent calendar quarters;
 - (ii) Meets the criteria in paragraph (b)(1) of this section to be a Category II banking organization; or
 - (iii) Meets the criteria in paragraph (c)(1) of this section to be a Category III banking organization.

4-751**SUBPART B—ACQUISITIONS OF SAVINGS ASSOCIATION SECURITIES OR ASSETS****SECTION 238.11—Transactions Requiring Board Approval**

The following transactions require the Board's prior approval under section 10 of HOLA except as exempted under section 238.12:

- (a) *Formation of savings and loan holding company.* Any action that causes a savings association or other company to become a savings and loan holding company.
- (b) *Acquisition of subsidiary savings association.* Any action that causes a savings association to become a subsidiary of a savings and loan holding company.
- (c) *Acquisition of control of savings association or savings and loan holding company securities.*
 - (1) The acquisition by a savings and loan holding company of direct or indirect ownership or control of any voting securities of a savings association or savings and loan holding company, that is not a subsidiary, if the acquisition results in the company's control of more than 5 percent of the outstanding shares of any class of voting securities.

rities of the savings association or savings and loan holding company.

(2) An acquisition includes the purchase of additional securities through the exercise of preemptive rights, but does not include securities received in a stock dividend or stock split that does not alter the savings and loan holding company's proportional share of any class of voting securities.

(3) In the case of a multiple savings and loan holding company, acquisition of direct or indirect ownership or control of any voting securities of a savings association or savings and loan holding company, that is not a subsidiary, if the acquisition results in the company's control of more than 5 percent of the outstanding shares of any class of voting securities of the savings association or savings and loan holding company that is engaged in any business activity other than those specified in section 238.51 of this part.

(d) *Acquisition of savings association or savings and loan holding company assets.* The acquisition by a savings and loan holding company or by a subsidiary thereof (other than a savings association) of all or substantially all of the assets of a savings association, or savings and loan holding company.

(e) *Merger of savings and loan holding companies.* The merger or consolidation of savings and loan holding companies, and the acquisition of a savings association through a merger or consolidation.

(f) *Acquisition of control by certain individuals.* The acquisition, by a director or officer of a savings and loan holding company, or by any individual who owns, controls, or holds the power to vote (or holds proxies representing) more than 25 percent of the voting shares of such savings and loan holding company, of control of any savings association that is not a subsidiary of such savings and loan holding company.

4-751.1

SECTION 238.12—Transactions Not Requiring Board Approval

(a) The requirements of section 238.11(a), (b), (d), (e) and (f) do not apply to:

(1) Control of a savings association acquired by devise under the terms of a will creating a trust which is excluded from the definition of savings and loan holding company;

(2) Control of a savings association acquired in connection with a reorganization that involves solely the acquisition of control of that association by a newly formed company that is controlled by the same acquirors that controlled the savings association for the immediately preceding three years, and entails no other transactions, such as an assumption of the acquirors' debt by the newly formed company: Provided, that the acquirors have filed the designated form with the appropriate Reserve Bank and have provided all additional information requested by the Board or Reserve Bank, and the Board nor the appropriate Reserve Bank object to the acquisition within 30 days of the filing date;

(3) Control of a savings association acquired by a bank holding company that is registered under and subject to, the Bank Holding Company Act of 1956, or any company controlled by such bank holding company;

(4) Control of a savings association acquired solely as a result of a pledge or hypothecation of stock to secure a loan contracted for in good faith or the liquidation of a loan contracted for in good faith, in either case where such loan was made in the ordinary course of the business of the lender: *Provided, further,* That acquisition of control pursuant to such pledge, hypothecation or liquidation is reported to the Board within 30 days, and *Provided, further,* That the acquiror shall not retain such control for more than one year from the date on which such control was acquired; however, the Board may, upon application by an acquiror, extend such one-year period from year to year, for an additional period of time not exceeding three years, if the Board finds such extension is warranted and would not be detrimental to the public interest;

(5) Control of a savings association acquired through a percentage increase in stock ownership following a *pro rata* stock

dividend or stock split, if the proportional interests of the recipients remain substantially the same;

(6) Acquisitions of up to twenty-five percent (25%) of a class of stock by a tax-qualified employee stock benefit plan; and
 (7) Acquisitions of up to 15 percent of the voting stock of any savings association by a savings and loan holding company (other than a bank holding company) in connection with a qualified stock issuance if such acquisition is approved by the Board pursuant to subpart E.

(b) The requirements of section 238.11(c) do not apply to voting shares of a savings association or of a savings and loan holding company—

(1) Held as a *bona fide* fiduciary (whether with or without the sole discretion to vote such shares);

(2) Held temporarily pursuant to an underwriting commitment in the normal course of an underwriting business;

(3) Held in an account solely for trading purposes or over which no control is held other than control of voting rights acquired in the normal course of a proxy solicitation;

(4) Acquired in securing or collecting a debt previously contracted in good faith, for two years after the date of acquisition or for such additional time (not exceeding three years) as the Board may permit if, in the Board's judgment, such an extension would not be detrimental to the public interest;

(5) Acquired under section 13(k)(1)(A)(i) of the Federal Deposit Insurance Act (or section 408(m) of the National Housing Act as in effect immediately prior to the enactment of the Financial Institutions Reform, Recovery and Enforcement Act of 1989);

(6) Held by any insurance companies as defined in section 2(a)(17) of the Investment Company Act of 1940: *Provided*, That all shares held by all insurance company affiliates of such savings association or savings and loan holding company may not, in the aggregate, exceed five percent of all outstanding shares or of the voting power of the savings association or savings and loan holding company, and such shares are

not acquired or retained with a view to acquiring, exercising, or transferring control of the savings association or savings and loan holding company; and

(7) Acquired pursuant to a qualified stock issuance if such a purchase is approved pursuant to subpart E of this part.

(c) The aggregate amount of shares held under paragraph (b) of this section (other than pursuant to paragraphs (b)(1) through (4) and (b)(6)) may not exceed 15 percent of all outstanding shares or the voting power of a savings association or savings and loan holding company.

(d) *Acquisitions involving savings association mergers and internal corporate reorganizations.* The requirements of section 238.11 do not apply to:

(1) *Certain transactions subject to the Bank Merger Act.* The acquisition by a savings and loan holding company of shares of a savings association or company controlling a savings association or the merger of a company controlling a savings association with the savings and loan holding company, if the transaction is part of the merger or consolidation of the savings association with a subsidiary savings association (other than a nonoperating subsidiary savings association) of the acquiring savings and loan holding company, or is part of the purchase of substantially all of the assets of the savings association by a subsidiary savings association (other than a nonoperating subsidiary savings association) of the acquiring savings and loan holding company, and if:

(i) The savings association merger, consolidation, or asset purchase occurs simultaneously with the acquisition of the shares of the savings association or savings and loan holding company or the merger of holding companies, and the savings association is not operated by the acquiring savings and loan holding company as a separate entity other than as the survivor of the merger, consolidation, or asset purchase;

(ii) The transaction requires the prior approval of a federal supervisory agency under the Bank Merger Act (12 U.S.C. 1828(c));

(iii) The transaction does not involve the acquisition of any company that would require prior notice or approval under section 10(c) of the HOLA;

(iv) The transaction does not involve a depository institution organized in mutual form, a savings and loan holding company organized in mutual form, a subsidiary holding company of a savings and loan holding company organized in mutual form, or a bank holding company organized in mutual form;

(v) The transaction will not have a material adverse impact on the financial condition of the acquiring savings and loan holding company;

(vi) At least 10 days prior to the transaction, the acquiring savings and loan holding company has provided to the Reserve Bank written notice of the transaction that contains:

(A) A copy of the filing made to the appropriate federal banking agency under the Bank Merger Act; and

(B) A description of the holding company's involvement in the transaction, the purchase price, and the source of funding for the purchase price; and

(vii) Prior to expiration of the period provided in paragraph (d)(1)(vi) of this section, neither the Board nor the Reserve Bank has informed the savings and loan holding company that an application under section 238.11 is required.

(2) *Internal corporate reorganizations.*

(i) Subject to paragraph (d)(2)(ii) of this section, any of the following transactions performed in the United States by a savings and loan holding company:

(A) The merger of holding companies that are subsidiaries of the savings and loan holding company;

(B) The formation of a subsidiary holding company;¹

(C) The transfer of control or ownership of a subsidiary savings association or a subsidiary holding company between one subsidiary holding company

and another subsidiary holding company or the savings and loan holding company.

(ii) A transaction described in paragraph (d)(2)(i) of this section qualifies for this exception if—

(A) The transaction represents solely a corporate reorganization involving companies and insured depository institutions that, both preceding and following the transaction, are lawfully controlled and operated by the savings and loan holding company;

(B) The transaction does not involve the acquisition of additional voting shares of an insured depository institution that, prior to the transaction, was less than majority owned by the savings and loan holding company;

(C) The transaction does not involve a savings and loan holding company organized in mutual form, a subsidiary holding company of a savings and loan holding company organized in mutual form, or a bank holding company organized in mutual form; and

(D) The transaction will not have a material adverse impact on the financial condition of the holding company.

4-751.2

SECTION 238.13—Prohibited Acquisitions

(a) No savings and loan holding company may, directly or indirectly, or through one or more subsidiaries or through one or more transactions, acquire control of an uninsured institution or retain, for more than one year after the date any savings association subsidiary becomes uninsured, control of such association.

(b) *Control of mutual savings association.* No savings and loan holding company or any subsidiary thereof, or any director, officer, or employee of a savings and loan holding company or subsidiary thereof, or person owning, controlling, or holding with power to vote, or holding proxies representing, more than 25 percent of the voting shares of such holding company or subsidiary, may hold, solicit, or

¹ In the case of a transaction that results in the formation or designation of a new savings and loan holding company, the new savings and loan holding company must complete the registration requirements described in section 238.11.

exercise any proxies in respect of any voting rights in a mutual savings association.

4-751.3

SECTION 238.14—Procedural Requirements

(a) *Filing application.* An application for the Board's prior approval under section 238.11 shall be governed by the provisions of this section and shall be filed with the appropriate Reserve Bank on the designated form.

(b) *Request for confidential treatment.* An applicant may request confidential treatment for portions of its application pursuant to 12 CFR 261.15.

(c) *Public notice.*

(1) *Newspaper publication.*

(i) *Location of publication.* In the case of each application, the applicant shall publish a notice in a newspaper of general circulation, in the form and at the locations specified in section 262.3 of the Rules of Procedure (12 CFR 262.3) in this chapter;

(ii) *Contents of notice.* A newspaper notice under this paragraph shall provide an opportunity for interested persons to comment on the proposal for a period of at least 30 calendar days;

(iii) *Timing of publication.* Each newspaper notice published in connection with a proposal under this paragraph shall be published no more than 15 calendar days before and no later than 7 calendar days following the date that an application is filed with the appropriate Reserve Bank.

(2) *Federal Register Notice.*

(i) *Publication by Board.* Upon receipt of an application, the Board shall promptly publish notice of the proposal in the *Federal Register* and shall provide an opportunity for interested persons to comment on the proposal for a period of no more than 30 days;

(ii) *Request for advance publication.* An applicant may request that, during the 15-day period prior to filing an application, the Board publish notice of a proposal in the *Federal Register*. A request for ad-

vance *Federal Register* Notice publication shall be made in writing to the appropriate Reserve Bank and shall contain the identifying information prescribed by the Board for *Federal Register* Notice publication.

(3) *Waiver or shortening of notice.* The Board may waive or shorten the required notice periods under this section if the Board determines that an emergency exists requiring expeditious action on the proposal, or if the Board finds that immediate action is necessary to prevent the probable failure of an insured depository institution.

(d) *Public comment.*

(1) *Timely comments.* Interested persons may submit information and comments regarding a proposal filed under this subpart. A comment shall be considered timely for purposes of this subpart if the comment, together with all supplemental information, is submitted in writing in accordance with the Board's Rules of Procedure and received by the Board or the appropriate Reserve Bank prior to the expiration of the latest public comment period provided in paragraph (c) of this section.

(2) *Extension of comment period.*

(i) *In general.* The Board may, in its discretion, extend the public comment period regarding any proposal submitted under this subpart.

(ii) *Requests in connection with obtaining application or notice.* In the event that an interested person has requested a copy of a notice or application submitted under this subpart, the Board may, in its discretion and based on the facts and circumstances, grant such person an extension of the comment period for up to 15 calendar days.

(iii) *Joint requests by interested person and applicant.* The Board will grant a joint request by an interested person and the applicant for an extension of the comment period for a reasonable period for a purpose related to the statutory factors the Board must consider under this subpart.

(3) *Substantive comment.* A comment will be considered substantive for purposes of

this subpart unless it involves individual complaints, or raises frivolous, previously-considered or wholly unsubstantiated claims or irrelevant issues.

(e) *Hearings.* The Board may order a formal or informal hearing or other proceeding on the application, as provided in section 262.3(i)(2) of this chapter. Any request for a hearing (other than from the primary supervisor) shall comply with section 262.3(e) in this chapter.

(f) *Accepting application for processing.* Within 7 calendar days after the Reserve Bank receives an application under this section, the Reserve Bank shall accept it for processing as of the date the application was filed or return the application if it is substantially incomplete. Upon accepting an application, the Reserve Bank shall immediately send copies to the Board and to the primary banking supervisor of the savings association to be acquired and to the Attorney General, and shall request from the Attorney General a report on the competitive factors involved. The Reserve Bank or the Board may request additional information necessary to complete the record of an application at any time after accepting the application for processing.

(g) *Action on applications.*

(1) *Action under delegated authority.* Except as provided in paragraph (g)(4) of this section, unless the Reserve Bank, upon notice to the applicant, refers the application to the Board for decision because action under delegated authority is not appropriate, the Reserve Bank shall approve an application under this section:

(i) Not earlier than the third business day following the close of the public comment period; and

(ii) Not later than the later of the fifth business day following the close of the public comment period or the 30th calendar day after the acceptance date for the application.

(2) *Board action.* The Board shall act on an application under this section that is referred to it for decision within 60 calendar days after the acceptance date for the application, unless the Board notifies the applicant that the 60-day period is being ex-

tended for a specified period and states the reasons for the extension. The Board may, at any time, request additional information that it believes is necessary for its decision.

(3) *Approval through failure to act.*

(i) *Ninety-one day rule.* An application shall be deemed approved if the Board fails to act on the application within 91 calendar days after the date of submission to the Board of the complete record on the application. For this purpose, the Board acts when it issues an order stating that the Board has approved or denied the application or notice, reflecting the votes of the members of the Board, and indicating that a statement of the reasons for the decision will follow promptly.

(ii) *Complete record.* For the purpose of computing the commencement of the 91-day period, the record is complete on the latest of:

(A) The date of receipt by the Board of an application that has been accepted by the Reserve Bank;

(B) The last day provided in any notice for receipt of comments and hearing requests on the application or notice;

(C) The date of receipt by the Board of the last relevant material regarding the application that is needed for the Board's decision, if the material is received from a source outside of the Federal Reserve System; or

(D) The date of completion of any hearing or other proceeding.

(4) *Expedited reorganization.*

(i) *In general.* The Board or the appropriate Reserve Bank shall act on an application of a reorganization that meets the requirements of section 238.15(f):

(A) Not earlier than the third business day following the close of the public comment period; and

(B) Not later than the fifth business day following the close of the public comment period, except that the Board may extend the period for action under this paragraph (g)(4) for up to 5 business days.

(ii) *Acceptance of notice in event expedited procedure not available.* In the

event that the Board or the Reserve Bank determines that an application filed pursuant to 238.15(f) does not meet one or more of the requirements of section 238.15(f), paragraph (g)(4) of this section shall not apply and the Board or Reserve Bank will act on the application according to the other provisions of paragraph (g) of this section.

4-751.4

SECTION 238.15—Factors Considered in Acting on Applications

(a) *Generally.* The Board may not approve any application under this subpart if:

(1) The transaction would result in a monopoly or would further any combination or conspiracy to monopolize, or to attempt to monopolize, the savings and loan business in any part of the United States;

(2) The effect of the transaction may be substantially to lessen competition in any section of the country, tend to create a monopoly, or in any other manner be in restraint of trade, unless the Board finds that the transaction's anti-competitive effects are clearly outweighed by its probable effect in meeting the convenience and needs of the community;

(3) The applicant has failed to provide the Board with adequate assurances that it will make available such information on its operations or activities, and the operations or activities of any affiliate of the applicant, that the Board deems appropriate to determine and enforce compliance with HOLA and other applicable federal banking statutes, and any regulations thereunder; or

(4) In the case of an application involving a foreign banking organization, the foreign banking organization is not subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in its home country, as provided in section 211.24(c)(1)(ii) of the Board's Regulation K (12 CFR 211.24(c)(1)(ii)).

(5) In the case of an application by a savings and loan holding company to acquire an insured depository institution, section

10(e)(2)(E) of HOLA prohibits the Board from approving the transaction.

(b) *Other factors.* In deciding applications under this subpart, the Board also considers the following factors with respect to the acquiror, its subsidiaries, any savings associations or banks related to the acquiror through common ownership or management, and the savings association or associations to be acquired:

(1) *Financial condition.* Their financial condition and future prospects, including whether current and projected capital positions and levels of indebtedness conform to standards and policies established by the Board.

(2) *Managerial resources.* The competence, experience, and integrity of the officers, directors, and principal shareholders of the acquiror, its subsidiaries, and the savings association and savings and loan holding companies concerned; their record of compliance with laws and regulations; and the record of the applicant and its affiliates of fulfilling any commitments to, and any conditions imposed by, the Board in connection with prior applications.

(3) *Convenience and needs of community.* In the case of an application required under section 238.11(c), (d), or (e), (or an application by a savings and loan holding company under section 238.11(b)), the convenience and needs of the communities to be served, including the record of performance under the Community Reinvestment Act of 1977 (12 U.S.C. 2901 *et seq.*) and regulations issued thereunder, including the Board's Regulation BB (12 CFR part 228).

(c) *Presumptive disqualifiers.*

(1) *Integrity factors.* The following factors shall give rise to a rebuttable presumption that an acquiror may fail to satisfy the managerial resources and future prospects tests of paragraph (b) of this section:

(i) During the 10-year period immediately preceding filing of the application or notice, criminal, civil or administrative judgments, consents or orders, and any indictments, formal investigations, examinations, or civil or administrative proceedings (excluding routine or customary audits, inspections and investigations)

that terminated in any agreements, undertakings, consents or orders, issued against, entered into by, or involving the acquiror or affiliates of the acquiror by any federal or state court, any department, agency, or commission of the U.S. Government, any state or municipality, any Federal Home Loan Bank, any self-regulatory trade or professional organization, or any foreign government or governmental entity, which involve:

- (A) Fraud, moral turpitude, dishonesty, breach of trust or fiduciary duties, organized crime or racketeering;
- (B) Violation of securities or commodities laws or regulations;
- (C) Violation of depository institution laws or regulations;
- (D) Violation of housing authority laws or regulations; or
- (E) Violation of the rules, regulations, codes of conduct or ethics of a self-regulatory trade or professional organization;

(ii) Denial, or withdrawal after receipt of formal or informal notice of an intent to deny, by the acquiror or affiliates of the acquiror, of

- (A) Any application relating to the organization of a financial institution,
- (B) An application to acquire any financial institution or holding company thereof under HOLA or the Bank Holding Company Act or otherwise,
- (C) A notice relating to a change in control of any of the foregoing under the CIC Act; or
- (D) An application or notice under a state holding company or change in control statute;

(iii) The acquiror or affiliates of the acquiror were placed in receivership or conservatorship during the preceding 10 years, or any management official of the acquiror was a management official or director (other than an official or director serving at the request of the Board, the Federal Deposit Insurance Corporation, the Resolution Trust Corporation, the former Federal Savings and Loan Insurance Corporation, or their predecessors) or principal shareholder of a company or

savings association that was placed into receivership, conservatorship, or a management consignment program, or was liquidated during his or her tenure or control or within two years thereafter;

(iv) Felony conviction of the acquiror, an affiliate of the acquiror or a management official of the acquiror or an affiliate of the acquiror;

(v) Knowingly making any written or oral statement to the Board or any predecessor agency (or its delegate) in connection with an application, notice or other filing under this part that is false or misleading with respect to a material fact or omits to state a material fact with respect to information furnished or requested in connection with such an application, notice or other filing;

(vi) Acquisition and retention at the time of submission of an application or notice, of stock in the savings association by the acquiror in violation of this part or its predecessor regulations.

(2) *Financial factors.* The following shall give rise to a rebuttable presumption that an acquiror may fail to satisfy the financial-resources and future-prospects tests of paragraph (c) of this section:

- (i) Liability for amounts of debt which, in the opinion of the Board, create excessive risks of default and pressure on the savings association to be acquired; or
- (ii) Failure to furnish a business plan or furnishing a business plan projecting activities which are inconsistent with economical home financing.

(d) *Competitive factor.* Before approving any such acquisition, except a transaction under section 13(k) of the Federal Deposit Insurance Act, the Board shall consider any report rendered by the Attorney General within 30 days of such request under section 238.14(f) on the competitive factors involved.

(e) *Expedited reorganizations.* An application by a savings association solely for the purpose of obtaining approval for the creation of a savings and loan holding company by such savings association shall be eligible for expedited processing under section 238.14(g)(4) if it satisfies the following criteria:

(1) The holding company shall not be capitalized initially in an amount exceeding the amount the savings association is permitted to pay in dividends to its holding company as of the date of the reorganization pursuant to applicable regulations or, in the absence thereof, pursuant to the then current policy guidelines;

(2) The creation of the savings and loan holding company by the association is the sole transaction contained in the application, and there are no other transactions requiring approval incident to the creation of the holding company (other than the creation of an interim association that will disappear upon consummation of the reorganization and the merger of the savings association with such interim association to effect the reorganization), and the holding company is not also seeking any regulatory waivers, regulatory forbearances, or resolution of legal or supervisory issues;

(3) The board of directors and executive officers of the holding company are composed of persons who, at the time of acquisition, are executive officers and directors of the association;

(4) The acquisition raises no significant issues of law or policy;

(5) Prior to consummation of the reorganization transaction, the holding company shall enter into any dividend limitation, regulatory capital maintenance, or pre-nuptial agreement required by Board regulations, or in the absence thereof, required pursuant to policy guidelines issued by the Board; and

(f) *Conditional approvals.* The Board may impose conditions on any approval, including conditions to address competitive, financial, managerial, safety and soundness, convenience and needs, compliance or other concerns, to ensure that approval is consistent with the relevant statutory factors and other provisions of HOLA.

(g) No acquisition shall be approved by the Board pursuant to section 238.11 which would result in the formation by any company, through one or more subsidiaries or through one or more transactions, of a multiple savings and loan holding company controlling

savings associations in more than one state where the acquisition causes a savings association to become an affiliate of another savings association with which it was not previously affiliated unless:

(1) Such company, or a savings association subsidiary of such company, is authorized to acquire control of a savings association subsidiary, or to operate a home or branch office, in the additional state or states pursuant to section 13(k) of the Federal Deposit Insurance Act, 12 U.S.C. 1823(k) (or section 408(m) of the National Housing Act as in effect immediately prior to enactment of the Financial Institutions Reform, Recovery and Enforcement Act of 1989);

(2) Such company controls a savings association subsidiary which operated a home or branch office in the additional state or states as of March 5, 1987; or

(3) The statute laws of the state in which the savings association, control of which is to be acquired, is located are such that a savings association chartered by such state could be acquired by a savings association chartered by the state where the acquiring savings association or savings and loan holding company is located (or by a holding company that controls such a state chartered savings association), and such statute laws specifically authorize such an acquisition by language to that effect and not merely by implication.

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SUBPART C—CONTROL PROCEEDINGS

SECTION 238.21—Control Proceedings

(a) *Preliminary determination of control.*

(1) The Board in its sole discretion may issue a preliminary determination of control under the procedures set forth in this section in any case in which the Board determines, based on consideration of the facts and circumstances presented, that a first company has the power to exercise a controlling influence over the management or policies of a second company.

(2) If the Board makes a preliminary determination of control under this section, the

Board shall send notice to the first company containing a statement of the facts upon which the preliminary determination is based.

(b) *Response to preliminary determination of control.*

(1) Within 30 calendar days after issuance by the Board of a preliminary determination of control or such longer period permitted by the Board in its discretion, the first company against whom the preliminary determination has been made shall:

(i) Consent to the preliminary determination of control and either:

(A) Submit for the Board's approval a specific plan for the prompt termination of the control relationship; or

(B) File an application or notice under this part, as applicable; or

(ii) Contest the preliminary determination by filing a response, setting forth the facts and circumstances in support of its position that no control exists, and, if desired, requesting a hearing or other proceeding.

(2) If the first company fails to respond to the preliminary determination of control within 30 days or such longer period permitted by the Board in its discretion, the first company will be deemed to have waived its right to present additional information to the Board or to request a hearing or other proceeding regarding the preliminary determination of control.

(c) *Hearing and final determination.*

(1) The Board shall order a hearing or other appropriate proceeding upon the petition of a first company that contests a preliminary determination of control if the Board finds that material facts are in dispute. The Board may, in its discretion, order a hearing or other appropriate proceeding without a petition for such a proceeding by the first company.

(2) At a hearing or other proceeding, any applicable presumptions established under this subpart shall be considered in accordance with the Federal Rules of Evidence and the Board's Rules of Practice for Formal Hearings (12 CFR part 263).

(3) After considering the submissions of

the first company and other evidence, including the record of any hearing or other proceeding, the Board will issue a final order determining whether the first company has the power to exercise a controlling influence over the management or policies of the second company. If a controlling influence is found, the Board may direct the first company to terminate the control relationship or to file an application or notice for the Board's approval to retain the control relationship.

(d) *Submission of evidence.*

(1) In connection with contesting a preliminary determination of control under paragraph (b)(1)(ii) of this section, a first company may submit to the Board evidence or any other relevant information related to its control of a second company.

(2) Evidence or other relevant information submitted to the Board pursuant to paragraph (d)(1) of this section must be in writing and may include a description of all current and proposed relationships between the first company and the second company, including relationships of the type that are identified under any of the rebuttable presumptions in sections 238.22 and 238.23 of this part, copies of any formal agreements related to such relationships, and a discussion regarding why the Board should not determine the first company to control the second company.

(e) *Definitions.* For purposes of this subpart:

(1) *Board of directors* means the board of directors of a company or a set of individuals exercising similar functions at a company.

(2) *Director representative* means any individual that represents the interests of a first company through service on the board of directors of a second company. For purposes of this paragraph (e)(2), examples of persons who are directors of a second company and generally would be considered director representatives of a first company include:

(i) A current officer, employee, or director of the first company;

(ii) An individual who was an officer,

- employee, or director of the first company within the prior two years; and
- (iii) An individual who was nominated or proposed to be a director of the second company by the first company.
- (iv) A director representative does not include a nonvoting observer.
- (3) *First company* means the company whose potential control of a second company is the subject of determination by the Board under this subpart.
- (4) *Investment adviser* means a company that:
- (i) Is registered as an investment adviser with the Securities and Exchange Commission under the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 *et seq.*);
- (ii) Is registered as a commodity trading advisor with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*);
- (iii) Is a foreign equivalent of an investment adviser or commodity trading advisor, as described in paragraph (e)(4)(i) or (ii) of this section; or
- (iv) Engages in any of the activities set forth in 12 CFR 225.28(b)(6)(i) through (iv).
- (5) *Limiting contractual right* means a contractual right of the first company that would allow the first company to restrict significantly, directly or indirectly, the discretion of the second company, including its senior management officials and directors, over operational and policy decisions of the second company.
- (i) Examples of limiting contractual rights may include, but are not limited to, a right that allows the first company to restrict or to exert significant influence over decisions related to:
- (A) Activities in which the second company may engage, including a prohibition on entering into new lines of business, making substantial changes to or discontinuing existing lines of business, or entering into a contractual arrangement with a third party that imposes significant financial obligations on the second company;
- (B) How the second company directs the proceeds of the first company's investment;
- (C) Hiring, firing, or compensating one or more senior management officials of the second company, or modifying the second company's policies or budget concerning the salary, compensation, employment, or benefits plan for its employees;
- (D) The second company's ability to merge or consolidate, or its ability to acquire, sell, lease, transfer, spin-off, recapitalize, liquidate, dissolve, or dispose of subsidiaries or assets;
- (E) The second company's ability to make investments or expenditures;
- (F) The second company achieving or maintaining a financial target or limit, including, for example, a debt-to-equity ratio, a fixed charges ratio, a net worth requirement, a liquidity target, a working capital target, or a classified assets or nonperforming loans limit;
- (G) The second company's payment of dividends on any class of securities, redemption of senior instruments, or voluntary prepayment of indebtedness;
- (H) The second company's ability to authorize or issue additional junior equity or debt securities, or amend the terms of any equity or debt securities issued by the second company;
- (I) The second company's ability to engage in a public offering or to list or de-list securities on an exchange, other than a right that allows the securities of the first company to have the same status as other securities of the same class;
- (J) The second company's ability to amend its articles of incorporation or by-laws, other than in a way that is solely defensive for the first company;
- (K) The removal or selection of any independent accountant, auditor, investment adviser, or investment banker employed by the second company; or
- (L) The second company's ability to significantly alter accounting methods and policies, or its regulatory, tax, or liability status (e.g., converting from a

stock corporation to a limited liability company); and

(ii) A limiting contractual right does not include a contractual right that would not allow the first company to significantly restrict, directly or indirectly, the discretion of the second company over operational and policy decisions of the second company. Examples of contractual rights that are not limiting contractual rights may include:

(A) A right that allows the first company to restrict or to exert significant influence over decisions relating to the second company's ability to issue securities senior to securities owned by the first company;

(B) A requirement that the first company receive financial reports or other information of the type ordinarily available to common stockholders;

(C) A requirement that the second company maintain its corporate existence;

(D) A requirement that the second company consult with the first company on a reasonable periodic basis;

(E) A requirement that the second company provide notices of the occurrence of material events affecting the second company;

(F) A requirement that the second company comply with applicable statutory and regulatory requirements;

(G) A market standard requirement that the first company receive similar contractual rights as those held by other investors in the second company;

(H) A requirement that the first company be able to purchase additional securities issued by the second company in order to maintain the first company's percentage ownership in the second company;

(I) A requirement that the second company ensure that any security holder who intends to sell its securities of the second company provide other security holders of the second company or the second company itself the opportunity

to purchase the securities before the securities can be sold to a third party; or

(J) A requirement that the second company take reasonable steps to ensure the preservation of tax status or tax benefits, such as status of the second company as a Subchapter S corporation or the protection of the value of net operating loss carry-forwards.

(6) *Second company* means the company whose potential control by a first company is the subject of determination by the Board under this subpart.

(7) *Senior management official* means any person who participates or has the authority to participate (other than in the capacity as a director) in major policymaking functions of a company.

(f) *Reservation of authority*. Nothing in this subpart shall limit the authority of the Board to take any supervisory or enforcement action otherwise permitted by law, including an action to address unsafe or unsound practices or conditions, or violations of law.

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SECTION 238.22—Rebuttable Presumptions of Control of a Company

(a) *General*.

(1) In any proceeding under section 238.21(b) or (c) of this part, a first company is presumed to control a second company in the situations described in paragraphs (b) through (h) of this section. The Board also may find that a first company controls a second company based on other facts and circumstances.

(2) For purposes of the presumptions in this section, any company that is a subsidiary of the first company and also a subsidiary of the second company is considered to be a subsidiary of the first company and not a subsidiary of the second company.

(b) *Management contract or similar agreement*. The first company enters into any agreement, understanding, or management contract (other than to serve as investment adviser) with the second company, under

which the first company directs or exercises significant influence or discretion over the general management, overall operations, or core business or policy decisions of the second company. Examples of such agreements include where the first company is a managing member, trustee, or general partner of the second company, or exercises similar powers and functions.

(c) *Ownership or control of 5 percent or more of voting securities.* The first company controls 5 percent or more of the outstanding securities of any class of voting securities of the second company, and:

- (1) (i) Director representatives of the first company or any of its subsidiaries comprise 25 percent or more of the board of directors of the second company or any of its subsidiaries; or
- (ii) Director representatives of the first company or any of its subsidiaries are able to make or block the making of major operational or policy decisions of the second company or any of its subsidiaries;
- (2) Two or more employees or directors of the first company or any of its subsidiaries serve as senior management officials of the second company or any of its subsidiaries;
- (3) An employee or director of the first company or any of its subsidiaries serves as the chief executive officer, or serves in a similar capacity, of the second company or any of its subsidiaries;
- (4) The first company or any of its subsidiaries enters into transactions or has business relationships with the second company or any of its subsidiaries that generate in the aggregate 10 percent or more of the total annual revenues or expenses of the second company, each on a consolidated basis; or
- (5) The first company or any of its subsidiaries has any limiting contractual right with respect to the second company or any of its subsidiaries, unless such limiting contractual right is part of an agreement to merge with or make a controlling investment in the second company that is reasonably expected to close within one year and such limiting contractual right is designed to ensure that

the second company continues to operate in the ordinary course until the merger or investment is consummated or such limiting contractual right requires the second company to take an action necessary for the merger or investment to be consummated.

(d) *Ownership or control of 10 percent or more of voting securities.* The first company controls 10 percent or more of the outstanding securities of any class of voting securities of the second company, and:

- (1) The first company or any of its subsidiaries propose a number of director representatives to the board of directors of the second company or any of its subsidiaries in opposition to nominees proposed by the management or board of directors of the second company or any of its subsidiaries that, together with any director representatives of the first company or any of its subsidiaries on the board of directors of the second company or any of its subsidiaries, would comprise 25 percent or more of the board of directors of the second company or any of its subsidiaries;
- (2) Director representatives of the first company and its subsidiaries comprise more than 25 percent of any committee of the board of directors of the second company or any of its subsidiaries that can take action that binds the second company or any of its subsidiaries; or
- (3) The first company or any of its subsidiaries enters into transactions or has business relationships with the second company or any of its subsidiaries that:
 - (i) Are not on market terms; or
 - (ii) Generate in the aggregate 5 percent or more of the total annual revenues or expenses of the second company, each on a consolidated basis.

(e) *Ownership or control of 15 percent or more of voting securities.* The first company controls 15 percent or more of the outstanding securities of any class of voting securities of the second company, and:

- (1) A director representative of the first company or any of its subsidiaries serves as the chair of the board of directors of the second company or any of its subsidiaries;
- (2) One or more employees or directors of

the first company or any of its subsidiaries serves as a senior management official of the second company or any of its subsidiaries; or

(3) The first company or any of its subsidiaries enters into transactions or has business relationships with the second company or any of its subsidiaries that generate in the aggregate 2 percent or more of the total annual revenues or expenses of the second company, each on a consolidated basis.

(f) *Accounting consolidation.* The first company consolidates the second company on its financial statements prepared under U.S. generally accepted accounting principles.

(g) *Control of an investment fund.*

(1) The first company serves as an investment adviser to the second company, the second company is an investment fund, and the first company, directly or indirectly, or acting through one or more other persons, controls 5 percent or more of the outstanding securities of any class of voting securities of the second company.

(2) The presumption of control in paragraph (g)(1) of this section does not apply if the first company organized and sponsored the second company within the preceding 12 months.

(h) *Divestiture of control.*

(1) The first company controlled the second company under section 238.2(e)(1) or (2) of this part at any time during the prior two years and the first company controls 15 percent or more of the outstanding securities of any class of voting securities of the second company.

(2) Notwithstanding paragraph (h)(1) of this section, a first company will not be presumed to control a second company under this paragraph if 50 percent or more of the outstanding securities of each class of voting securities of the second company is controlled by a person that is not a senior management official or director of the first company, or by a company that is not an affiliate of the first company.

(i) *Securities held in a fiduciary capacity.* For purposes of the presumptions of control in this section, the first company does not control

securities of the second company that the first company holds in a fiduciary capacity, except that if the second company is a depository institution or a depository institution holding company, this paragraph (i) only applies to securities held in a fiduciary capacity without sole discretionary authority to exercise the voting rights of the securities.

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SECTION 238.23—Rebuttable Presumption of Noncontrol of a Company

(a) In any proceeding under section 238.21(b) or (c) of this part, a first company is presumed not to control a second company if:

(1) The first company controls less than 10 percent of the outstanding securities of each class of voting securities of the second company; and

(2) The first company is not presumed to control the second company under section 238.22 of this part.

(b) In any proceeding under this subpart, or judicial proceeding under the Home Owners' Loan Act, other than a proceeding in which the Board has made a preliminary determination that a first company has the power to exercise a controlling influence over the management or policies of a second company, a first company may not be held to have had control over a second company at any given time, unless the first company, at the time in question, controlled 5 percent or more of the outstanding securities of any class of voting securities of the second company, or had already been found to have control on the basis of the existence of a controlling influence relationship.

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SUBPART D—CHANGE IN BANK CONTROL

SECTION 238.31—Transactions Requiring Prior Notice

(a) *Prior notice requirement.* Any person acting directly or indirectly, or through or in concert with one or more persons, shall give

the Board 60 days' written notice, as specified in section 238.33 of this subpart, before acquiring control of a savings and loan holding company, unless the acquisition is exempt under section 238.32.

(b) *Definitions.* For purposes of this subpart:

(1) *Acquisition* includes a purchase, assignment, transfer, or pledge of voting securities, or an increase in percentage ownership of a savings and loan holding company resulting from a redemption of voting securities.

(2) *Acting in concert* includes knowing participation in a joint activity or parallel action towards a common goal of acquiring control of a savings and loan holding company whether or not pursuant to an express agreement.

(3) *Immediate family* includes a person's father, mother, stepfather, stepmother, brother, sister, stepbrother, stepsister, son, daughter, stepson, stepdaughter, grandparent, grandson, granddaughter, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, the spouse of any of the foregoing, and the person's spouse.

(c) *Acquisitions requiring prior notice.*

(1) *Acquisition of control.* The acquisition of voting securities of a savings and loan holding company constitutes the acquisition of control under the Bank Control Act, requiring prior notice to the Board, if, immediately after the transaction, the acquiring person (or persons acting in concert) will own, control, or hold with power to vote 25 percent or more of any class of voting securities of the institution.

(2) *Rebuttable presumption of control.* The Board presumes that an acquisition of voting securities of a savings and loan holding company constitutes the acquisition of control under the Bank Control Act, requiring prior notice to the Board, if, immediately after the transaction, the acquiring person (or persons acting in concert) will own, control, or hold with power to vote 10 percent or more of any class of voting securities of the institution, and if:

(i) The institution has registered securi-

ties under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78I); or

(ii) No other person will own, control, or hold the power to vote a greater percentage of that class of voting securities immediately after the transaction.²

(d) *Rebuttable presumption of concerted action.* The following persons shall be presumed to be acting in concert for purposes of this subpart:

(1) A company and any principal shareholder, partner, trustee, or management official of the company, if both the company and the person own voting securities of the savings and loan holding company;

(2) An individual and the individual's immediate family;

(3) Companies under common control;

(4) Persons that are parties to any agreement, contract, understanding, relationship, or other arrangement, whether written or otherwise, regarding the acquisition, voting, or transfer of control of voting securities of a savings and loan holding company, other than through a revocable proxy as described in section 238.32(a)(5) of this subpart;

(5) Persons that have made, or propose to make, a joint filing under sections 13 or 14 of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78n), and the rules promulgated thereunder by the Securities and Exchange Commission; and

(6) A person and any trust for which the person serves as trustee.

(e) *Acquisitions of loans in default.* The Board presumes an acquisition of a loan in default that is secured by voting securities of a savings and loan holding company to be an acquisition of the underlying securities for purposes of this section.

(f) *Other transactions.* Transactions other than those set forth in paragraph (c) of this section resulting in a person's control of less than 25 percent of a class of voting securities of a savings and loan holding company are not

² If two or more persons, not acting in concert, each propose to acquire simultaneously equal percentages of 10 percent or more of a class of voting securities of the savings and loan holding company, each person must file prior notice to the Board.

deemed by the Board to constitute control for purposes of the Bank Control Act.

(g) *Rebuttal of presumptions.* Prior notice to the Board is not required for any acquisition of voting securities under the presumption of control set forth in this section, if the Board finds that the acquisition will not result in control. The Board shall afford any person seeking to rebut a presumption in this section an opportunity to present views in writing or, if appropriate, orally before its designated representatives at an informal conference.

4-753.1

SECTION 238.32—Transactions Not Requiring Prior Notice

(a) *Exempt transactions.* The following transactions do not require notice to the Board under this subpart:

(1) *Existing control relationships.* The acquisition of additional voting securities of a savings and loan holding company by a person who:

(i) Continuously since March 9, 1979 (or since the institution commenced business, if later), held power to vote 25 percent or more of any class of voting securities of the institution; or

(ii) Is presumed, under section 238.31(c)(2), to have controlled the institution continuously since March 9, 1979, if the aggregate amount of voting securities held does not exceed 25 percent or more of any class of voting securities of the institution or, in other cases, where the Board determines that the person has controlled the institution continuously since March 9, 1979;

(2) *Increase of previously authorized acquisitions.* Unless the Board or the Reserve Bank otherwise provides in writing, the acquisition of additional shares of a class of voting securities of a savings and loan holding company by any person (or persons acting in concert) who has lawfully acquired and maintained control of the institution (for purposes of section 238.31(c)), after complying with the procedures and receiving approval to acquire voting securities of the institution under this subpart, or in con-

nection with an application approved under section 10(e) of HOLA (12 U.S.C. 1467a(e) and section 238.11 or section 18(c) of the Federal Deposit Insurance Act (Bank Merger Act, 12 U.S.C. 1828(c));

(3) *Acquisitions subject to approval under HOLA or Bank Merger Act.* Any acquisition of voting securities subject to approval under section 10(e) of HOLA (12 U.S.C. 1467a(e) and section 238.11), or section 18(c) of the Federal Deposit Insurance Act (Bank Merger Act, 12 U.S.C. 1828(c));

(4) *Transactions exempt under HOLA.* Any transaction described in sections 10(a)(3)(A) or 10(e)(1)(B)(ii) of HOLA by a person described in those provisions;

(5) *Proxy solicitation.* The acquisition of the power to vote securities of a savings and loan holding company through receipt of a revocable proxy in connection with a proxy solicitation for the purposes of conducting business at a regular or special meeting of the institution, if the proxy terminates within a reasonable period after the meeting;

(6) *Stock dividends.* The receipt of voting securities of a savings and loan holding company through a stock dividend or stock split if the proportional interest of the recipient in the institution remains substantially the same; and

(7) *Acquisition of foreign banking organization.* The acquisition of voting securities of a qualifying foreign banking organization. (This exemption does not extend to the reports and information required under paragraphs 9, 10, and 12 of the Bank Control Act (12 U.S.C. 1817(j) (9), (10), and (12)) and section 238.34.)

(b) *Prior notice exemption.*

(1) The following acquisitions of voting securities of a savings and loan holding company, which would otherwise require prior notice under this subpart, are not subject to the prior notice requirements if the acquiring person notifies the appropriate Reserve Bank within 90 calendar days after the acquisition and provides any relevant information requested by the Reserve Bank:

(i) Acquisition of voting securities through inheritance;

- (ii) Acquisition of voting securities as a bona fide gift; and
 - (iii) Acquisition of voting securities in satisfaction of a debt previously contracted (DPC) in good faith.
- (2) The following acquisitions of voting securities of a savings and loan holding company, which would otherwise require prior notice under this subpart, are not subject to the prior notice requirements if the acquiring person does not reasonably have advance knowledge of the transaction, and provides the written notice required under section 238.33 to the appropriate Reserve Bank within 90 calendar days after the transaction occurs:
- (i) Acquisition of voting securities resulting from a redemption of voting securities by the issuing savings and loan holding company; and
 - (ii) Acquisition of voting securities as a result of actions (including the sale of securities) by any third party that is not within the control of the acquiror.
- (3) Nothing in paragraphs (b)(1) or (b)(2) of this section limits the authority of the Board to disapprove a notice pursuant to section 238.33(h).

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SECTION 238.33—Procedures for Filing, Processing, Publishing, and Acting on Notices

(a) *Filing notice.*

- (1) A notice required under this subpart shall be filed with the appropriate Reserve Bank and shall contain all the information required by paragraph 6 of the Bank Control Act (12 U.S.C. 1817(j)(6)), or prescribed in the designated Board form.
- (2) The Board may waive any of the informational requirements of the notice if the Board determines that it is in the public interest.
- (3) A notificant shall notify the appropriate Reserve Bank or the Board immediately of any material changes in a notice submitted to the Reserve Bank, including changes in financial or other conditions.
- (4) When the acquiring person is an indi-

vidual, or group of individuals acting in concert, the requirement to provide personal financial data may be satisfied by a current statement of assets and liabilities and an income summary, as required in the designated Board form, together with a statement of any material changes since the date of the statement or summary. The Reserve Bank or the Board, nevertheless, may request additional information, if appropriate.

(b) *Acceptance of notice.* The 60-day notice period specified in section 238.31 of this subpart begins on the date of receipt of a complete notice. The Reserve Bank shall notify the person or persons submitting a notice under this subpart in writing of the date the notice is or was complete and thereby accepted for processing. The Reserve Bank or the Board may request additional relevant information at any time after the date of acceptance.

(c) *Publication.*

(1) *Newspaper announcement.* Any person(s) filing a notice under this subpart shall publish, in a form prescribed by the Board, an announcement soliciting public comment on the proposed acquisition. The announcement shall be published in a newspaper of general circulation in the community in which the head office of the savings and loan holding company is located and in the community in which the head office of each of its subsidiary savings associations is located. The announcement shall be published no earlier than 15 calendar days before the filing of the notice with the appropriate Reserve Bank and no later than 10 calendar days after the filing date; and the publisher's affidavit of a publication shall be provided to the appropriate Reserve Bank.

(2) *Contents of newspaper announcement.* The newspaper announcement shall state:

- (i) The name of each person identified in the notice as a proposed acquiror of the savings and loan holding company;
- (ii) The name of the savings and loan holding company to be acquired, including the name of each of the savings and loan holding company's subsidiary savings association; and

(iii) A statement that interested persons may submit comments on the notice to the Board or the appropriate Reserve Bank for a period of 20 days, or such shorter period as may be provided, pursuant to paragraph (c)(5) of this section.

(3) *Federal Register announcement.* The Board shall, upon filing of a notice under this subpart, publish announcement in the *Federal Register* of receipt of the notice. The *Federal Register* announcement shall contain the information required under paragraphs (c)(2)(i) and (c)(2)(ii) of this section and a statement that interested persons may submit comments on the proposed acquisition for a period of 15 calendar days, or such shorter period as may be provided, pursuant to paragraph (c)(5) of this section. The Board may waive publication in the *Federal Register* if the Board determines that such action is appropriate.

(4) *Delay of publication.* The Board may permit delay in the publication required under paragraphs (c)(1) and (c)(3) of this section if the Board determines, for good cause shown, that it is in the public interest to grant such delay. Requests for delay of publication may be submitted to the appropriate Reserve Bank.

(5) *Shortening or waiving notice.* The Board may shorten or waive the public comment or newspaper publication requirements of this paragraph, or act on a notice before the expiration of a public comment period, if it determines in writing that an emergency exists, or that disclosure of the notice, solicitation of public comment, or delay until expiration of the public comment period would seriously threaten the safety or soundness of the savings and loan holding company to be acquired.

(6) *Consideration of public comments.* In acting upon a notice filed under this subpart, the Board shall consider all public comments received in writing within the period specified in the newspaper or *Federal Register* announcement, whichever is later. At the Board's option, comments received after this period may, but need not, be considered.

(7) *Standing.* No person (other than the acquiring person) who submits comments or

information on a notice filed under this subpart shall thereby become a party to the proceeding or acquire any standing or right to participate in the Board's consideration of the notice or to appeal or otherwise contest the notice or the Board's action regarding the notice.

(d) *Time period for Board action.*

(1) *Consummation of acquisition.*

(i) The notificant(s) may consummate the proposed acquisition 60 days after submission to the Reserve Bank of a complete notice under paragraph (a) of this section, unless within that period the Board disapproves the proposed acquisition or extends the 60-day period, as provided under paragraph (d)(2) of this section.

(ii) The notificant(s) may consummate the proposed transaction before the expiration of the 60-day period if the Board notifies the notificant(s) in writing of the Board's intention not to disapprove the acquisition.

(2) *Extensions of time period.*

(i) The Board may extend the 60-day period in paragraph (d)(1) of this section for an additional 30 days by notifying the acquiring person(s).

(ii) The Board may further extend the period during which it may disapprove a notice for two additional periods of not more than 45 days each, if the Board determines that:

(A) Any acquiring person has not furnished all the information required under paragraph (a) of this section;

(B) Any material information submitted is substantially inaccurate;

(C) The Board is unable to complete the investigation of an acquiring person because of inadequate cooperation or delay by that person; or

(D) Additional time is needed to investigate and determine that no acquiring person has a record of failing to comply with the requirements of the Bank Secrecy Act, subchapter II of Chapter 53 of Title 31, United States Code.

(iii) If the Board extends the time period

under this paragraph, it shall notify the acquiring person(s) of the reasons therefor and shall include a statement of the information, if any, deemed incomplete or inaccurate.

(e) *Advice to bank supervisory agencies.* The Reserve Bank shall send a copy of any notice to the Comptroller of the Currency and the Federal Deposit Insurance Corporation.

(f) *Investigation and report.*

(1) After receiving a notice under this subpart, the Board or the appropriate Reserve Bank shall conduct an investigation of the competence, experience, integrity, and financial ability of each person by and for whom an acquisition is to be made. The Board shall also make an independent determination of the accuracy and completeness of any information required to be contained in a notice under paragraph (a) of this section. In investigating any notice accepted under this subpart, the Board or Reserve Bank may solicit information or views from any person, including any savings and loan holding company involved in the notice, and any appropriate state, federal, or foreign governmental authority.

(2) The Board or the appropriate Reserve Bank shall prepare a written report of its investigation, which shall contain, at a minimum, a summary of the results of the investigation.

(g) *Factors considered in acting on notices.* In reviewing a notice filed under this subpart, the Board shall consider the information in the record, the views and recommendations of the appropriate bank supervisor, and any other relevant information obtained during any investigation of the notice.

(h) *Disapproval and hearing.*

(1) *Disapproval of notice.* The Board may disapprove an acquisition if it finds adverse effects with respect to any of the factors set forth in paragraph 7 of the Bank Control Act (12 U.S.C. 1817(j)(7)) (i.e., competitive, financial, managerial, banking, or incompleteness of information).

(2) *Disapproval notification.* Within three days after its decision to issue a notice of intent to disapprove any proposed acquisi-

tion, the Board shall notify the acquiring person in writing of the reasons for the action.

(3) *Hearing.* Within 10 calendar days of receipt of the notice of the Board's intent to disapprove, the acquiring person may submit a written request for a hearing. Any hearing conducted under this paragraph shall be in accordance with the Rules of Practice for Formal Hearings (12 CFR part 263). At the conclusion of the hearing, the Board shall, by order, approve or disapprove the proposed acquisition on the basis of the record of the hearing. If the acquiring person does not request a hearing, the notice of intent to disapprove becomes final and unappealable.

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SUBPART E—QUALIFIED STOCK ISSUANCES

SECTION 238.41—Qualified Stock Issuances by Undercapitalized Savings Associations or Holding Companies

(a) *Acquisitions by savings and loan holding companies.* No savings and loan holding company shall be deemed to control a savings association solely by reason of the purchase by such savings and loan holding company of shares issued by such savings association, or issued by any savings and loan holding company (other than a bank holding company) which controls such savings association, in connection with a qualified stock issuance if prior approval of such acquisition is granted by the Board under this subpart, unless the acquiring savings and loan holding company, directly or indirectly, or acting in concert with 1 or more other persons, or through one or more subsidiaries, owns, controls, or holds with power to vote, or holds proxies representing, more than 15 percent of the voting shares of such savings association or holding company.

(b) *Qualification.* For purposes of this section, any issuance of shares of stock shall be treated as a qualified stock issuance if the following conditions are met:

(1) The shares of stock are issued by—

(i) An undercapitalized savings association, which for purposes of this paragraph (b)(1)(i) shall mean any savings association—

(A) The assets of which exceed the liabilities of such association; and

(B) Which does not comply with one or more of the capital standards in effect under section 5(t) of HOLA; or

(ii) A savings and loan holding company which is not a bank holding company but which controls an undercapitalized savings association if, at the time of issuance, the savings and loan holding company is legally obligated to contribute the net proceeds from the issuance of such stock to the capital of an undercapitalized savings association subsidiary of such holding company.

(2) All shares of stock issued consist of previously unissued stock or treasury shares.

(3) All shares of stock issued are purchased by a savings and loan holding company that is registered, as of the date of purchase, with the Board in accordance with the provisions of section 10(b) of the HOLA and the Board's regulations promulgated thereunder.

(4) Subject to paragraph (c) of this section, the Board approves the purchase of the shares of stock by the acquiring savings and loan holding company.

(5) The entire consideration for the stock issued is paid in cash by the acquiring savings and loan holding company.

(6) At the time of the stock issuance, each savings association subsidiary of the acquiring savings and loan holding company (other than an association acquired in a transaction pursuant to section 13(c) or 13(k) of the Federal Deposit Insurance Act, or section 408(m) of the National Housing Act, as in effect immediately prior to enactment of the Financial Institutions Reform, Recovery and Enforcement Act of 1989) has capital (after deducting any subordinated debt, intangible assets, and deferred, unamortized gains or losses) of not less than 6½ percent of the total assets of such savings association.

(7) Immediately after the stock issuance,

the acquiring savings and loan holding company holds not more than 15 percent of the outstanding voting stock of the issuing undercapitalized savings association or savings and loan holding company.

(8) Not more than one of the directors of the issuing association or company is an officer, director, employee, or other representative of the acquiring company or any of its affiliates.

(9) Transactions between the savings association or savings and loan holding company that issues the shares pursuant to this section and the acquiring company and any of its affiliates shall be subject to the provisions of section 11 of HOLA and the Board's regulations promulgated thereunder.

(c) *Approval of acquisitions.*

(1) *Criteria.* The Board, in deciding whether to approve or deny an application filed on the basis that it is a qualified stock issuance, shall apply the application criteria set forth in section 238.15(a), (b), and (c).

(2) *Additional capital commitments not required.* The Board shall not disapprove any application for the purchase of stock in connection with a qualified stock issuance on the grounds that the acquiring savings and loan holding company has failed to undertake to make subsequent additional capital contributions to maintain the capital of the undercapitalized savings association at or above the minimum level required by the Board or any other Federal agency having jurisdiction.

(3) *Other conditions.* The Board shall impose such conditions on any approval of an application for the purchase of stock in connection with a qualified stock issuance as the Board determines to be appropriate, including—

(i) A requirement that any savings association subsidiary of the acquiring savings and loan holding company limit dividends paid to such holding company for such period of time as the Board may require; and

(ii) Such other conditions as the Board deems necessary or appropriate to prevent evasions of this section.

(4) Application deemed approved if not disapproved within 90 days.

(i) An application for approval of a purchase of stock in connection with a qualified stock issuance shall be deemed to have been approved by the Board if such application has not been disapproved by the Board before the end of the 90-day period beginning on the date of submission to the Board of the complete record on the application as defined in section 238.14(g)(3)(ii).

(d) *No limitation on class of stock issued.* The shares of stock issued in connection with a qualified stock issuance may be shares of any class.

(e) *Application form.* A savings and loan holding company making application to acquire a qualified stock issuance pursuant to this subpart shall submit the appropriate form to the appropriate Reserve Bank.

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SUBPART F—SAVINGS AND LOAN HOLDING COMPANY ACTIVITIES AND ACQUISITIONS

SECTION 238.51—Prohibited Activities

(a) *Evasion of law or regulation.* No savings and loan holding company or subsidiary thereof which is not a savings association shall, for or on behalf of a subsidiary savings association, engage in any activity or render any services for the purpose or with the effect of evading any law or regulation applicable to such savings association.

(b) *Unrelated business activity.* No savings and loan holding company or subsidiary thereof that is not a savings association shall commence any business activity at any time, or continue any business activity after the end of the two-year period beginning on the date on which such company received approval to become a savings and loan holding company that is subject to the limitations of this paragraph (b), except (in either case) the following:

(1) Furnishing or performing management

services for a savings association subsidiary of such company;

(2) Conducting an insurance agency or an escrow business;

(3) Holding, managing, or liquidating assets owned by or acquired from a subsidiary savings association of such company;

(4) Holding or managing properties used or occupied by a subsidiary savings association of such company;

(5) Acting as trustee under deed of trust;

(6) Any other activity:

(i) That the Board of Governors of the Federal Reserve System has permitted for bank holding companies pursuant to regulations promulgated under section 4(c) of the Bank Holding Company Act; or

(ii) Is set forth in section 238.53, subject to the limitations therein; or

(7) (i) In the case of a savings and loan holding company, purchasing, holding, or disposing of stock acquired in connection with a qualified stock issuance if prior approval for the acquisition of such stock by such savings and loan holding company is granted by the Board pursuant to section 238.41.

(ii) Notwithstanding the provisions of this paragraph (b), any savings and loan holding company that, between March 5, 1987 and August 10, 1987, received approval pursuant to 12 U.S.C. 1730a(e), as then in effect, to acquire control of a savings association shall not continue any business activity other than those activities set forth in this paragraph (b) after August 10, 1987.

(c) *Treatment of certain holding companies.* If a director or officer of a savings and loan holding company, or an individual who owns, controls, or holds with the power to vote (or proxies representing) more than 25 percent of the voting shares of a savings and loan holding company, directly or indirectly controls more than one savings association, any savings and loan holding company controlled by such individual shall be subject to the activities limitations contained in paragraph (b) of this section, to the same extent such limitations apply to multiple savings and loan hold-

ing companies pursuant to sections 238.51, 238.52, 238.53, and 238.54.

4-755.1

SECTION 238.52—Exempt Savings and Loan Holding Companies and Grandfathered Activities

(a) *Exempt savings and loan holding companies.*

(1) The following savings and loan holding companies are exempt from the limitations of section 238.51(b):

(i) Any savings and loan holding company (or subsidiary of such company) that controls only one savings association, if the savings association subsidiary of such company is a qualified thrift lender as defined in section 238.2(k).

(ii) Any savings and loan holding company (or subsidiary thereof) that controls more than one savings association if all, or all but one of the savings association subsidiaries of such company were acquired pursuant to an acquisition under section 13(c) or 13(k) of the Federal Deposit Insurance Act, or section 408(m) of the National Housing Act, as in effect immediately prior to the date of enactment of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, and all of the savings association subsidiaries of such company are qualified thrift lenders as defined in section 238.2(k).

(2) Any savings and loan holding company whose subsidiary savings association(s) fails to qualify as a qualified thrift lender pursuant to 12 U.S.C. 1467a(m) may not commence, or continue, any service or activity other than those permitted under section 238.51(b) of this part, except that, the Board may allow, for good cause shown, such company (or subsidiary of such company which is not a savings association) up to 3 years to comply with the limitations set forth in section 238.51(b) of this part: *Provided*, That effective August 9, 1990, any company that controls a savings association that should have become or ceases to be a qualified thrift lender, except a sav-

ings association that requalified as a qualified thrift lender pursuant to section 10(m)(3)(D) of the Home Owners' Loan Act, shall within one year after the date on which the savings association fails to qualify as a qualified thrift lender, register as and be deemed to be a bank holding company, subject to all of the provisions of the Bank Holding Company Act, section 8 of the Federal Deposit Insurance Act, and other statutes applicable to bank holding companies in the same manner and to the same extent as if the company were a bank holding company and the savings association were a bank, as those terms are defined in the Bank Holding Company Act.

(b) *Grandfathered activities for certain savings and loan holding companies.* Notwithstanding section 238.51(b) and subject to paragraph (c) of this section, any savings and loan holding company that received approval prior to March 5, 1987 to acquire control of a savings association may engage, directly or indirectly or through any subsidiary (other than a subsidiary savings association of such company) in any activity in which it was lawfully engaged on March 5, 1987, *provided*, that:

(1) The holding company does not, after August 10, 1987, acquire control of a bank or an additional savings association, other than a savings association acquired pursuant to section 13(c) or 13(k) of the Federal Deposit Insurance Act, or section 406(f) or 408(m) of the National Housing Act, as in effect immediately prior to the date of enactment of the Financial Institutions Reform, Recovery and Enforcement Act of 1989;

(2) Any savings association subsidiary of the holding company continues to qualify as a domestic building and loan association under section 7701(a)(19) of the Internal Revenue Code of 1986 after August 10, 1987;

(3) The holding company does not engage in any business activity other than those permitted under section 238.51(b) or in which it was engaged on March 5, 1987;

(4) Any savings association subsidiary of the holding company does not increase the

number of locations from which such savings association conducts business after March 5, 1987, other than an increase due to a transaction under section 13(c) or 13(k) of the Federal Deposit Insurance Act, or under section 408(m) of the National Housing Act, as in effect immediately prior to the date of enactment of the Financial Institutions Reform, Recovery and Enforcement Act of 1989; and

(5) Any savings association subsidiary of the holding company does not permit any overdraft (including an intra-day overdraft) or incur any such overdraft in its account at a Federal Reserve bank, on behalf of an affiliate, unless such overdraft results from an inadvertent computer or accounting error that is beyond the control of both the savings association subsidiary and the affiliate.

(c) *Termination by the Board of grandfathered activities.* Notwithstanding the provisions of paragraph (b) of this section, the Board may, after opportunity for hearing, terminate any activity engaged in under paragraph (b) of this section upon determination that such action is necessary:

- (1) To prevent conflicts of interest;
- (2) To prevent unsafe or unsound practices; or
- (3) To protect the public interest.

(d) *Foreign holding company.* Any savings and loan holding company organized under the laws of a foreign country as of June 1, 1984 (including any subsidiary thereof that is not a savings association) that controlled a single savings association on August 10, 1987, shall not be subject to the restrictions set forth in section 238.51(b) with respect to any activities of such holding company that are conducted exclusively in a foreign country.

4-755.2

SECTION 238.53—Prescribed Services and Activities of Savings and Loan Holding Companies

(a) *General.* For the purpose of section 238.51(b)(6)(ii), the activities set forth in paragraph (b) of this section are, and were as of March 5, 1987, permissible services and

activities for savings and loan holding companies or subsidiaries thereof that are neither savings associations nor service corporation subsidiaries of subsidiary savings associations. Services and activities of service corporation subsidiaries of savings and loan holding company subsidiary savings associations are prescribed by paragraph (d) of this section.

(b) *Prescribed services and activities.* Subject to the provisions of paragraph (c) of this section, a savings and loan holding company subject to restrictions on its activities pursuant to section 238.51(b), or a subsidiary thereof which is neither a savings association nor a service corporation of a subsidiary savings association, may furnish or perform the following services and engage in the following activities to the extent that it has legal power to do so:

(1) Originating, purchasing, selling and servicing any of the following:

(i) Loans, and participation interests in loans, on a prudent basis and secured by real estate, including brokerage and warehousing of such real estate loans, except that such a company or subsidiary shall not invest in a loan secured by real estate as to which a subsidiary savings association of such company has a security interest;

(ii) Manufactured home chattel paper (written evidence of both a monetary obligation and a security interest of first priority in one or more manufactured homes, and any equipment installed or to be installed therein), including brokerage and warehousing of such chattel paper;

(iii) Loans, with or without security, for the altering, repairing, improving, equipping or furnishing of any residential real estate;

(iv) Educational loans; and

(v) Consumer loans, as defined in section 160.3 of this title, *Provided*, That, no subsidiary savings association of such holding company or service corporation of such savings association shall engage directly or indirectly, in any transaction with any affiliate involving the purchase or sale, in whole or in part, of any consumer loan.

(2) Subject to the provisions of 12 U.S.C. 1468, furnishing or performing clerical accounting and internal audit services primarily for its affiliates;

(3) Subject to the provisions of 12 U.S.C. 1468, furnishing or performing the following services primarily for its affiliates, and for any savings association and service corporation subsidiary thereof, and for other multiple holding companies and affiliates thereof:

- (i) Data processing;
- (ii) Credit information, appraisals, construction loan inspections, and abstracting;
- (iii) Development and administration of personnel benefit programs, including life insurance, health insurance, and pension or retirement plans;
- (iv) Research, studies, and surveys;
- (v) Purchase of office supplies, furniture and equipment;
- (vi) Development and operation of storage facilities for microfilm or other duplicate records; and
- (vii) Advertising and other services to procure and retain both savings accounts and loans;

(4) Acquisition of unimproved real estate lots, and acquisition of other unimproved real estate for the purpose of prompt development and subdivision, for:

- (i) Construction of improvements,
- (ii) Resale to others for such construction, or
- (iii) Use as mobile home sites;

(5) Development, subdivision and construction of improvements on real estate acquired pursuant to paragraph (b)(4) of this section, for sale or rental;

(6) Acquisition of improved real estate and mobile homes to be held for rental;

(7) Acquisition of improved real estate for remodeling, rehabilitation, modernization, renovation, or demolition and rebuilding for sale or for rental;

(8) Maintenance and management of improved real estate;

(9) Underwriting or reinsuring contract of credit life or credit health and accident insurance in connection with extensions of credit by the savings and loan holding com-

pany or any of its subsidiaries, or extensions of credit by any savings association or service corporation subsidiary thereof, or any other savings and loan holding company or subsidiary thereof;

(10) Preparation of State and Federal tax returns for accountholders of or borrowers from (including immediate family members of such accountholders or borrowers but not including an accountholder or borrower which is a corporation operated for profit) an affiliated savings association;

(11) Purchase and sale of gold coins minted and issued by the United States Treasury pursuant to Public Law 99-185, 99 Stat. 1177 (1985), and activities reasonably incident thereto; and

(12) Any services or activities approved by order of the former Federal Savings and Loan Insurance Corporation prior to March 5, 1987, pursuant to its authority under section 408(c)(2)(F) of the National Housing Act, as in effect at the time.

(c) *Procedures for commencing services or activities.* A notice to engage in or acquire a company engaged in a service or activity prescribed by paragraph (b) of this section (other than purchase or sale of a government debt security) shall be filed by a savings and loan holding company (including a company seeking to become a savings and loan holding company) with the appropriate Reserve Bank in accordance with this paragraph and the Board's Rules of Procedure (12 CFR 262.3).

(1) *Engaging de novo in services or activities.* A savings and loan holding company seeking to commence or to engage de novo in a service or activity pursuant to this section, either directly or through a subsidiary, shall file a notice containing a description of the activities to be conducted and the identity of the company that will conduct the activity.

(2) *Acquiring company engaged in services or activities.* A savings and loan holding company seeking to acquire or control voting securities or assets of a company engaged in a service or activity pursuant to this section, shall file a notice containing the following:

- (i) A description of the proposal, includ-

ing a description of each proposed service or activity;

(ii) The identity of any entity involved in the proposal, and, if the notificant proposes to conduct the service or activity through an existing subsidiary, a description of the existing activities of the subsidiary;

(iii) If the savings and loan holding company has consolidated assets of \$150 million or more:

(A) Parent company and consolidated *pro forma* balance sheets for the acquiring savings and loan holding company as of the most recent quarter showing credit and debit adjustments that reflect the proposed transaction;

(B) Consolidated *pro forma* risk-based capital and leverage ratio calculations for the acquiring savings and loan holding company as of the most recent quarter (or, in the case of a qualifying community banking organization (as defined in section 217.12 of this chapter) that is subject to the community bank leverage ratio framework (as defined in section 217.12 of this chapter), consolidated *pro forma* leverage ratio calculations for the acquiring savings and loan holding company as of the most recent quarter); and

(C) A description of the purchase price and the terms and sources of funding for the transaction;

(iv) If the savings and loan holding company has consolidated assets of less than \$150 million:

(A) A *pro forma* parent-only balance sheet as of the most recent quarter showing credit and debit adjustments that reflect the proposed transaction; and

(B) A description of the purchase price and the terms and sources of funding for the transaction and, if the transaction is debt funded, one-year income statement and cash flow projections for the parent company, and the sources and schedule for retiring any debt incurred in the transaction;

(v) (A) For each insured depository institution (that is not a qualifying commu-

nity banking organization (as defined in section 217.12 of this chapter) that is subject to the community bank leverage ratio framework (as defined in section 217.12 of this chapter)) whose tier 1 capital, total capital, total assets or risk-weighted assets change as a result of the transaction, the total risk-weighted assets, total assets, tier 1 capital, and total capital of the institution on a *pro forma* basis; and

(B) For each insured depository institution that is a qualifying community banking organization (as defined in section 217.12 of this chapter) that is subject to the community bank leverage ratio framework (as defined in section 217.12 of this chapter), whose tier 1 capital (as defined in section 217.2 of this chapter and calculated in accordance with section 217.12(b) of this chapter) or total assets change as a result of the transaction, the total assets and tier 1 capital of the institution on a *pro forma* basis;

(vi) A description of the management expertise, internal controls and risk management systems that will be utilized in the conduct of the proposed service or activity; and

(vii) A copy of the purchase agreements, and balance sheet and income statements for the most recent quarter and year-end for any company to be acquired.

(3) (i) Except as provided in paragraph (c)(3)(ii) of this section, from December 2, 2020, until December 31, 2021, the determination of whether a savings and loan holding company must comply with the filing requirements in paragraph (c)(2)(iii) or (iv) of this section shall be made based on the lesser of:

(A) The consolidated assets of the savings and loan holding company as of December 31, 2019; and

(B) The consolidated assets of the savings and loan holding company as of the end of the most recent calendar quarter.

(ii) The relief provided under paragraph (c)(3)(i) of this section does not apply to a savings and loan holding company if

the Board determines that permitting the savings and loan holding company to determine its assets in accordance with that paragraph would not be commensurate with the risk profile of the savings and loan holding company. When making this determination, the Board will consider all relevant factors, including the extent of asset growth of the savings and loan holding company since December 31, 2019; the causes of such growth, including whether growth occurred as a result of mergers or acquisitions; whether such growth is likely to be temporary or permanent; whether the savings and loan holding company has become involved in any additional activities since December 31, 2019; the asset size of any parent companies; and the type of assets held by the savings and loan holding company. In making a determination pursuant to this paragraph (c)(3)(ii), the Board will apply notice and response procedures in the same manner and to the same extent as the notice and response procedures in 12 CFR 263.202.

(d) *Notice provided to Board.* The Reserve Bank shall immediately send to the Board a copy of any notice received under paragraphs (c)(1) or (c)(2) of this section.

(e) *Notice to public.*

(1) The Reserve Bank shall notify the Board for publication in the *Federal Register* immediately upon receipt by the Reserve Bank of:

(i) A notice under paragraph (c) of this section or

(ii) A written request that notice of a proposal under paragraph (c) of this section be published in the *Federal Register*. Such a request may request that *Federal Register* publication occur up to 15 calendar days prior to submission of a notice under this subpart.

(2) The *Federal Register* notice published under this paragraph (e) shall invite public comment on the proposal, generally for a period of 15 days.

(f) *Action on notices.*

(1) *Reserve Bank action.*

(i) *In general.* Within 30 calendar days after receipt by the Reserve Bank of a notice filed pursuant to paragraphs (c)(1) or (c)(2) of this section, the Reserve Banks shall:

(A) Approve the notice; or

(B) Refer the notice to the Board for decision because action under delegated authority is not appropriate.

(ii) *Return of incomplete notice.* Within 7 calendar days of receipt, the Reserve Bank may return any notice as informationally incomplete that does not contain all of the information required by this section. The return of such a notice shall be deemed action on the notice.

(iii) *Notice of action.* The Reserve Bank shall promptly notify the savings and loan holding company of any action or referral under this paragraph.

(iv) *Close of public comment period.* The Reserve Bank shall not approve any notice under this paragraph (e)(1) of this section prior to the third business day after the close of the public comment period, unless an emergency exists that requires expedited or immediate action.

(2) *Board action; internal schedule.* The Board seeks to act on every notice referred to it for decision within 60 days of the date that the notice is filed with the Reserve Bank. If the Board is unable to act within this period, the Board shall notify the notificant and explain the reasons and the date by which the Board expects to act.

(3) (i) *Required time limit for System action.* The Board or the Reserve Bank shall act on any notice under this section within 60 days after the submission of a complete notice.

(ii) *Extension of required period for action.* The Board may extend the 60-day period required for Board action under paragraph (e)(3)(i) of this section for an additional 30 days upon notice to the notificant.

(4) *Requests for additional information.* The Board or the Reserve Bank may modify the information requirements under this section or at any time request any additional information that either believes is

needed for a decision on any notice under this section.

(5) *Tolling of period.* The Board or the Reserve Bank may at any time extend or toll the time period for action on a notice for any period with the consent of the notificant.

(g) *Modification or termination of service or activity.* The Board may require a savings and loan holding company or subsidiary thereof which has commenced a service or activity pursuant to this section to modify or terminate, in whole or in part, such service or activity as the Board finds necessary in order to ensure compliance with the provisions and purposes of this part and of section 10 of the Home Owners' Loan Act, as amended, or to prevent evasions thereof.

(h) *Alterations.* Except as may be otherwise provided in a resolution by or on behalf of the Board in a particular case, a service or activity commenced pursuant to this section shall not be altered in any material respect from that described in the notice filed under paragraph (c)(1) of this section, unless before making such alteration notice of intent to do so is filed in compliance with the appropriate procedures of said paragraph (c)(1) of this section.

(i) *Service corporation subsidiaries of savings associations.* The Board hereby approves without application the furnishing or performing of such services or engaging in such activities as permitted by the OTS pursuant to section 545.74 of this title, as in effect on March 5, 1987, if such service or activity is conducted by a service corporation subsidiary of a subsidiary savings association of a savings and loan holding company and if such service corporation has legal power to do so.

4-755.3

SECTION 238.54—Permissible Bank Holding Company Activities of Savings and Loan Holding Companies

(a) *General.* For purposes of section 238.51(b)(6)(i), the services and activities permissible for bank holding companies pursuant to regulations that the Board has promulgated

pursuant to section 4(c) of the Bank Holding Company Act are permissible for savings and loan holding companies, or subsidiaries thereof that are neither savings associations nor service corporation subsidiaries of subsidiary savings associations: *Provided*, That no savings and loan holding company shall commence any activity described in this paragraph (a) without the prior approval of this Board pursuant to paragraph (b) of this section, unless—

(1) The holding company received a rating of satisfactory or above prior to January 1, 2008, or thereafter, either received a composite rating of “1” or “2” or be considered satisfactory under the applicable rating system in its most recent examination, and is not in a troubled condition as defined in section 238.72, and the holding company does not propose to commence the activity by an acquisition (in whole or in part) of a going concern; or

(2) The activity is permissible under authority other than section 10(c)(2)(F)(i) of the HOLA without prior notice or approval. Where an activity is within the scope of both section 238.53 and this section, the procedures of section 238.53 shall govern.

(b) *Procedures for applications.* Applications to commence any activity prescribed under paragraph (a) of this section shall be filed with the appropriate Reserve Bank on the designated form. The Board must act upon such application according to the procedures of section 238.53(d), (e), and (f).

(c) *Factors considered in acting on applications.* In evaluating an application filed under paragraph (b) of this section, the Board shall consider whether the performance by the applicant of the activity can reasonably be expected to produce benefits to the public (such as greater convenience, increased competition, or gains in efficiency) that outweigh possible adverse effects (such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound financial practices). This consideration includes an evaluation of the financial and managerial resources of the applicant, including its subsidiaries, and of any company to be acquired,

and the effect of the proposed transaction on those resources.

4-756

SUBPART G—FINANCIAL HOLDING COMPANY ACTIVITIES

SECTION 238.61—Scope

Section 10(c)(2)(H) of the HOLA (12 U.S.C. 1467a(c)(2)(H)) permits a savings and loan holding company to engage in activities that are permissible for a financial holding company if the savings and holding company meets the criteria to qualify as a financial holding company and complies with all of the requirements applicable to a financial holding company under sections 4(l) and 4(m) of the BHC Act as if the savings and loan holding company was a bank holding company. This subpart provides the requirements and restrictions for a savings and holding company to be treated as a financial holding company for the purpose of engaging in financial holding company activities. This subpart does not apply to savings and loan holding companies described in section 10(c)(9)(C) of the HOLA (12 U.S.C. 1467a(c)(9)(C)).

4-756.1

SECTION 238.62—Definitions

For the purposes of this subpart:

(a) Financial holding company activities refers to activities permissible under section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)) and section 225.86 of this chapter.

(b) [Reserved]

4-756.2

SECTION 238.63—Requirements to Engage in Financial Holding Company Activities

(a) *In general.* In order for a savings and loan holding company to engage in financial holding company activities:

(1) The savings and loan holding company and all depository institutions controlled by

the savings and loan holding company must be and remain well capitalized;

(2) The savings and loan holding company and all depository institutions controlled by the savings and loan company must be and remain well managed; and

(3) The savings and loan holding company must have made an effective election to be treated as a financial holding company.

4-756.3

SECTION 238.64—Election Required

(a) *In general.* Except as provided below, a savings and loan holding company that wishes to engage in financial holding company activities must have an effective election to be treated as a financial holding company.

(b) *Activities performed under separate HOLA authority.* A savings and loan holding company that conducts only the following activities is not required to elect to be treated as a financial holding company:

(1) *BHC Act section 4(c)(8) activities.* Activities permissible under section 10(c)(2)(F)(i) of the HOLA (12 U.S.C. 1467a(c)(2)(F)(i)).

(2) *Insurance agency or escrow business activities.* Activities permissible under section 10(c)(2)(B) of the HOLA (12 U.S.C. 1467a(c)(2)(B)).

(3) *“1987 List” activities.* Activities permissible under section 10(c)(2)(F)(ii) of the HOLA (12 U.S.C. 1467a(c)(2)(F)(ii)).

(c) *Existing requirements apply.* A savings and loan holding company that has not made an effective election to be treated as a financial holding company and that conducts the activities described in paragraphs (b)(1) through (3) of this section remains subject to any rules and requirements applicable to the conduct of such activities.

4-756.4

SECTION 238.65—Election Procedures

(a) *Filing requirement.* A savings and loan holding company may elect to be treated as a financial holding company by filing a written declaration with the appropriate Reserve Bank.

A declaration by a savings and loan holding company is considered to be filed on the date that all information required by paragraph (b) of this section is received by the appropriate Reserve Bank.

(b) *Contents of declaration.* To be deemed complete, a declaration must:

- (1) State that the savings and loan holding company elects to be treated as a financial holding company in order to engage in financial holding company activities;
- (2) Provide the name and head office address of the savings and loan holding company and of each depository institution controlled by the savings and loan holding company;
- (3) Certify that the savings and loan holding company and each depository institution controlled by the savings and loan holding company is well capitalized as of the date the savings and loan holding company submits its declaration;
- (4) Certify that the savings and loan holding company and each savings association controlled by the savings and loan holding company is well managed as of the date the savings and loan holding company submits its declaration;

(c) *Effectiveness of election.* An election by a savings and loan holding company to be treated as a financial holding company shall not be effective if, during the period provided in paragraph (d) of this section, the Board finds that, as of the date the declaration was filed with the appropriate Reserve Bank:

- (1) Any insured depository institution controlled by the savings and loan holding company (except an institution excluded under paragraph (d) of this section) has not achieved at least a rating of “satisfactory record of meeting community credit needs” under the Community Reinvestment Act at the savings association’s most recent examination; or
- (2) Any depository institution controlled by the bank holding company is not both well capitalized and well managed.

(d) *Consideration of the CRA performance of a recently acquired savings association.* Except as provided in paragraph (f) of this sec-

tion, a savings association will be excluded for purposes of the review of the Community Reinvestment Act rating provisions of paragraph (c)(1) of this section if:

- (1) The savings and loan holding company acquired the savings association during the 12-month period preceding the filing of an election under paragraph (a) of this section;
- (2) The savings and loan holding company has submitted an affirmative plan to the appropriate Federal banking agency for the savings association to take actions necessary for the institution to achieve at least a rating of “satisfactory record of meeting community credit needs” under the Community Reinvestment Act at the next examination of the savings association; and
- (3) The appropriate Federal banking agency for the savings association has accepted the plan described in paragraph (d)(2) of this section.

(e) *Effective date of election.*

- (1) *In general.* An election filed by a savings and loan holding company under paragraph (a) of this section is effective on the 31st calendar day after the date that a complete declaration was filed with the appropriate Reserve Bank, unless the Board notifies the savings and loan holding company prior to that time that the election is ineffective.
- (2) *Earlier notification that an election is effective.* The Board or the appropriate Reserve Bank may notify a savings and loan holding company that its election to be treated as a financial holding company is effective prior to the 31st day after the date that a complete declaration was filed with the appropriate Reserve Bank. Such a notification must be in writing.
- (3) *Special effective date rules for the OTS transfer date.*

(i) *Deadline for filing declaration.* For savings and loan holding companies that meet the requirements of section 238.63 and that are engaged in financial holding company activities pursuant to existing authority as of July 21, 2011, an election under paragraph (a) must be filed with the appropriate Reserve Bank by December 31, 2011. The election must be ac-

accompanied by a description of the financial holding company activities conducted by the savings and loan holding company.

(ii) *Effective date of election.* An election filed under paragraph (e)(3)(i) of this section is effective on the 61st calendar day after the date that a complete declaration was filed with the appropriate Reserve Bank, unless the Board notifies the savings and loan holding company prior to that time that the election is ineffective.

(iii) *Earlier notification that an election is effective.* The Board or the appropriate Reserve Bank may notify a savings and loan holding company that its election under paragraph (e)(3)(i) of this section to be treated as a financial holding company is effective prior to the 61st day after the date that a complete declaration was filed with the appropriate Reserve Bank. Such notification must be in writing.

(iv) *Filings by savings and loan holding companies that do not meet requirements.*

(A) For savings and loan holding companies that are engaged in financial holding company activities as of July 21, 2011 but do not meet the requirements of section 238.63, a declaration must be filed with the appropriate Reserve Bank by December 31, 2011, specifying:

(1) The name and head office address of the savings and loan holding company and of each depository institution controlled by the savings and loan holding company;

(2) The financial holding company activities that the savings and loan holding company is engaged in;

(3) The requirements of section 238.63 that the savings and loan holding company does not meet; and

(4) A description of how the savings and loan holding company will achieve compliance with section 238.63 prior to June 30, 2012.

(B) A savings and loan holding company covered by this subparagraph will be subject to:

(1) The notice, remediation agree-

ment, divestiture, and any other requirements described in section 225.83 of this chapter; or

(2) The activities limitations and any other requirements described in section 225.84 of this chapter, depending on which requirements of section 238.63 the savings and loan holding company does not meet.

(f) *Requests to be treated as a financial holding company submitted as part of an application to become a savings and loan holding company.* A company that is not a savings and loan holding company and has applied for the Board's approval to become a savings and loan holding company under section 10(e) of the HOLA (12 U.S.C. 1467a(e)) may as part of that application submit a request to be treated as a financial holding company. Such requests shall be made and reviewed by the Board as described in section 225.82(f) of this chapter.

(g) *Board's authority to exercise supervisory authority over a savings and loan holding company treated as a financial holding company.* An effective election to be treated as a financial holding company does not in any way limit the Board's statutory authority under the HOLA, the Federal Deposit Insurance Act, or any other relevant Federal statute to take appropriate action, including imposing supervisory limitations, restrictions, or prohibitions on the activities and acquisitions of a savings and loan holding company that has elected to be treated as a financial holding company, or enforcing compliance with applicable law.

4-756.5

SECTION 238.66—Ongoing Requirements

(a) *In general.* A savings and loan holding company with an effective election to be treated as a financial holding company is subject to the same requirements applicable to a financial holding company, under sections 4(l) and 4(m) of the Bank Holding Company Act and section 804(c) of the Community Reinvestment Act of 1977 (12 U.S.C. 2903(c)) as

if the savings and loan holding company was a bank holding company.

(b) *Consequences of failing to continue to meet applicable capital and management requirements.* A savings and loan holding company with an effective election to be treated as a financial holding company that fails to meet applicable capital and management requirements at section 238.63 is subject to the notice, remediation agreement, divestiture, and any other requirements described in section 225.83 of this chapter.

(c) *Consequences of failing to continue to maintain a satisfactory or better rating under the Community Reinvestment Act at all insured depository institution subsidiaries.* A savings and loan holding company with an effective election to be treated as a financial holding company that fails to maintain a satisfactory or better rating under the Community Reinvestment Act at all insured deposit institution subsidiaries is subject to the activities limitations and any other requirements described in section 225.84 of this chapter.

(d) *Notice and approval requirements for conducting financial holding company activities; permissible activities.* A savings and loan holding company with an effective election to be treated as a financial holding company may conduct the activities listed in section 225.86 of this chapter subject to the notice, approval, and any other requirements described in sections 225.85 through 225.89 of this chapter.

4-757

SUBPART H—NOTICE OF CHANGE OF DIRECTOR OR SENIOR EXECUTIVE OFFICER

SECTION 238.71—Purpose

This subpart implements 12 U.S.C. 1831i, which requires certain savings and loan holding companies to notify the Board before appointing or employing directors and senior executive officers.

4-757.1

SECTION 238.72—Definitions

The following definitions apply to this subpart:

(a) *Director* means an individual who serves on the board of directors of a savings and loan holding company. This term does not include an advisory director who:

- (1) Is not elected by the shareholders;
- (2) Is not authorized to vote on any matters before the board of directors or any committee of the board of directors;
- (3) Provides only general policy advice to the board of directors or any committee of the board of directors; and
- (4) Has not been identified by the Board or Reserve Bank in writing as an individual who performs the functions of a director, or who exercises significant influence over, or participates in, major policymaking decisions of the board of directors.

(b) *Senior executive officer* means an individual who holds the title or performs the function of one or more of the following positions (without regard to title, salary, or compensation): president, chief executive officer, chief operating officer, chief financial officer, chief lending officer, or chief investment officer. *Senior executive officer* also includes any other person identified by the Board or Reserve Bank in writing as an individual who exercises significant influence over, or participates in, major policymaking decisions, whether or not hired as an employee.

(c) *Troubled condition* means:

- (1) A savings and loan holding company that has an unsatisfactory rating under the applicable holding company rating system, or that is informed in writing by the Board or Reserve Bank that it has an adverse effect on its subsidiary savings association.
- (2) A savings and loan holding company that is subject to a capital directive, a cease-and-desist order, a consent order, a formal written agreement, or a prompt corrective action directive relating to the safety and soundness or financial viability of the savings association, unless otherwise informed in writing by the Board or Reserve Bank; or

(3) A savings and loan holding company that is informed in writing by the Board or Reserve Bank that it is in troubled condition based on information available to the Board or Reserve Bank.

4-757.2

SECTION 238.73—Prior Notice Requirements

(a) *Savings and loan holding company.* Except as provided under section 238.78, a savings and loan holding company must give the Board 30 days' written notice, as specified in section 238.74, before adding or replacing any member of its board of directors, employing any person as a senior executive officer, or changing the responsibilities of any senior executive officer so that the person would assume a different senior executive position if the savings and loan holding company is in troubled condition.

(b) *Notice by individual.* An individual seeking election to the board of directors of a savings and loan holding company described in paragraph (a) of this section that has not been nominated by management, must either provide the prior notice required under paragraph (a) of this section or follow the process under section 238.78(b).

4-757.3

SECTION 238.74—Filing and Processing Procedures

(a) *Filing notice.*

(1) *Content.* The notice required in section 238.73 shall be filed with the appropriate Reserve Bank and shall contain:

(i) The information required by paragraph 6(A) of the Change in Bank Control Act (12 U.S.C. 1817(j)(6)(A)) as may be prescribed in the designated Board form;

(ii) Additional information consistent with the Federal Financial Institutions Examination Council's Joint Statement of Guidelines on Conducting Background Checks and Change in Control Investiga-

tions, as set forth in the designated Board form; and

(iii) Such other information as may be required by the Board or Reserve Bank.

(2) *Modification.* The Reserve Bank may modify or accept other information in place of the requirements of this section for a notice filed under this subpart.

(3) *Acceptance and processing of notice.* The 30-day notice period specified in section 238.73 shall begin on the date all information required to be submitted by the notificant pursuant to this section is received by the appropriate Reserve Bank. The Reserve Bank shall notify the savings and loan holding company or individual submitting the notice of the date on which all required information is received and the notice is accepted for processing, and of the date on which the 30-day notice period will expire. The Board or Reserve Bank may extend the 30-day notice period for an additional period of not more than 60 days by notifying the savings and loan holding company or individual filing the notice that the period has been extended and stating the reason for not processing the notice within the 30-day notice period.

(b) [Reserved]

4-757.4

SECTION 238.75—Standards for Review

(a) *Notice of disapproval.* The Board or Reserve Bank will disapprove a notice if, pursuant to the standard set forth in 12 U.S.C. 1831i(e), the Board or Reserve Bank finds that the competence, experience, character, or integrity of the proposed individual indicates that it would not be in the best interests of the depositors of the savings and loan holding company or of the public to permit the individual to be employed by, or associated with, the savings and loan holding company. If the Board or Reserve Bank disapproves a notice, it will issue a written notice that explains why the Board or Reserve Bank disapproved the notice. The Board or Reserve Bank will send the notice to the savings and loan holding company and the individual.

(b) *Appeal of a notice of disapproval.*

(1) A disapproved individual or a regulated institution that has submitted a notice that is disapproved under this section may appeal the disapproval to the Board within 15 days of the effective date of the notice of disapproval. An appeal shall be in writing and explain the reasons for the appeal and include all facts, documents, and arguments that the appealing party wishes to be considered in the appeal, and state whether the appealing party is requesting an informal hearing.

(2) Written notice of the final decision of the Board shall be sent to the appealing party within 60 days of the receipt of an appeal, unless the appealing party's request for an informal hearing is granted.

(3) The disapproved individual may not serve as a director or senior executive officer of the state member bank or bank holding company while the appeal is pending.

(c) *Informal hearing.*

(1) An individual or regulated institution whose notice under this section has been disapproved may request an informal hearing on the notice. A request for an informal hearing shall be in writing and shall be submitted within 15 days of a notice of disapproval. The Board may, in its sole discretion, order an informal hearing if the Board finds that oral argument is appropriate or necessary to resolve disputes regarding material issues of fact.

(2) An informal hearing shall be held within 30 days of a request, if granted, unless the requesting party agrees to a later date.

(3) Written notice of the final decision of the Board shall be given to the individual and the regulated institution within 60 days of the conclusion of any informal hearing ordered by the Board, unless the requesting party agrees to a later date.

4-757.5**SECTION 238.76—Waiting Period**

(a) *At expiration of period.* A proposed director or senior executive officer may begin service at the end of the 30-day period and any

extension as provided under section 238.74 unless the Board or Reserve Bank notifies you that it has disapproved the notice before the end of the period.

(b) *Prior to expiration of period.* A proposed director or senior executive officer may begin service before the end of the 30-day period and any extension as provided under section 238.74 of this section, if the Board or the Reserve Bank notifies in writing the savings and loan holding company or individual submitting the notice of the Board's or Reserve Bank's intention not to disapprove the notice.

4-757.6**SECTION 238.77—Waiver of Prior Notice Requirement**

(a) *Waiver request.* An individual may serve as a director or senior executive officer before filing a notice under this subpart if the Board or Reserve Bank finds that:

- (1) Delay would threaten the safety or soundness of the savings and loan holding company;
- (2) Delay would not be in the public interest; or
- (3) Other extraordinary circumstances exist that justify waiver of prior notice.

(b) *Automatic waiver.* An individual may serve as a director upon election to the board of directors before filing a notice under this subpart, if the individual:

- (1) Is not proposed by the management of the savings and loan holding company;
- (2) Is elected as a new member of the board of directors at a meeting of the savings and loan holding company; and
- (3) Provides to the appropriate Reserve Bank all the information required in section 238.74 within two (2) business days after the individual's election.

(c) *Subsequent Board or Reserve Bank action.* The Board or Reserve Bank may disapprove a notice within 30 days after the Board or Reserve Bank issues a waiver under paragraph (a) of this section or within 30 days after the election of an individual who has filed a notice and is serving pursuant to an automatic waiver under paragraph (b) of this section.

4-758
**SUBPART I—PROHIBITED SERVICE
 AT SAVINGS AND LOAN HOLDING
 COMPANIES**

SECTION 238.81—Purpose

This subpart implements section 19(e)(1) of the Federal Deposit Insurance Act (FDIA), which prohibits persons who have been convicted of certain criminal offenses or who have agreed to enter into a pre-trial diversion or similar program in connection with a prosecution for such criminal offenses from occupying various positions with a savings and loan holding company. This part also implements section 19(e)(2) of the FDIA, which permits the Board to provide exemptions, by regulation or order, from the application of the prohibition. This subpart provides an exemption for savings and loan holding company employees whose activities and responsibilities are limited solely to agriculture, forestry, retail merchandising, manufacturing, or public utilities operations, and a temporary exemption for certain persons who held positions with respect to a savings and loan holding company as of October 13, 2006. The subpart also describes procedures for applying to the Board for an exemption.

4-758.1

SECTION 238.82—Definitions

The following definitions apply to this subpart:

(a) *Institution-affiliated party* is defined at 12 U.S.C. 1813(u), except that the phrase “savings and loan holding company” is substituted for “insured depository institution” each place that it appears in that definition.

(b) *Enforcement Counsel* means any individual who files a notice of appearance to serve as counsel on behalf of the Board in the proceeding.

(c) *Person* means an individual and does not include a corporation, firm or other business entity.

(d) *Savings and loan holding company* is defined at section 238.2(m), but excludes a sub-

sidary of a savings and loan holding company that is not itself a savings and loan holding company.

4-758.2

SECTION 238.83—Prohibited Actions

(a) *Person*. If a person was convicted of a criminal offense described in section 238.84, or agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such a criminal offense, he or she may not:

(1) Become, or continue as, an institution-affiliated party with respect to any savings and loan holding company.

(2) Own or control, directly or indirectly, any savings and loan holding company. A person will own or control a savings and loan holding company if he or she owns or controls that company under subpart D of this part.

(3) Otherwise participate, directly or indirectly, in the conduct of the affairs of any savings and loan holding company.

(b) *Savings and loan holding company*. A savings and loan holding company may not permit any person described in paragraph (a) of this section to engage in any conduct or to continue any relationship prohibited under that paragraph.

4-758.3

SECTION 238.84—Covered Convictions or Agreements to Enter into Pre-Trial Diversions or Similar Programs

(a) *Covered convictions and agreements*. Except as described in section 238.85, this subpart covers:

(1) Any conviction of a criminal offense involving dishonesty, breach of trust, or money laundering. Convictions do not cover arrests, pending cases not brought to trial, acquittals, convictions reversed on appeal, pardoned convictions, or expunged convictions.

(2) Any agreement to enter into a pretrial diversion or similar program in connection with a prosecution for a criminal offense

involving dishonesty, breach of trust or money laundering. A pretrial diversion or similar program is a program involving a suspension or eventual dismissal of charges or of a criminal prosecution based upon an agreement for treatment, rehabilitation, restitution, or other non-criminal or non-punitive alternative.

(b) *Dishonesty or breach of trust.* A determination whether a criminal offense involves dishonesty or breach of trust is based on the statutory elements of the crime.

(1) “Dishonesty” means directly or indirectly to cheat or defraud, to cheat or defraud for monetary gain or its equivalent, or to wrongfully take property belonging to another in violation of any criminal statute. Dishonesty includes acts involving a want of integrity, lack of probity, or a disposition to distort, cheat, or act deceitfully or fraudulently, and may include crimes which federal, state or local laws define as dishonest.

(2) “Breach of trust” means a wrongful act, use, misappropriation, or omission with respect to any property or fund which has been committed to a person in a fiduciary or official capacity, or the misuse of one’s official or fiduciary position to engage in a wrongful act, use, misappropriation, or omission.

4-758.4

SECTION 238.85—Adjudications and Offenses Not Covered

(a) *Youthful offender or juvenile delinquent.* This subpart does not cover any adjudication by a court against a person as:

- (1) A youthful offender under any youthful offender law; or
- (2) A juvenile delinquent by a court with jurisdiction over minors as defined by state law.

(b) *De minimis criminal offense.* This subpart does not cover *de minimis* criminal offenses. A criminal offense is *de minimis* if:

- (1) The person has only one conviction or pretrial diversion or similar program of record;

(2) The offense was punishable by imprisonment for a term of less than one year, a fine of less than \$1,000, or both, and the person did not serve time in jail.

(3) The conviction or program was entered at least five years before the date the person first held a position described in section 238.83(a); and

(4) The offense did not involve an insured depository institution, insured credit union, or other banking organization (including a savings and loan holding company, bank holding company, or financial holding company).

(5) The person must disclose the conviction or pretrial diversion or similar program to all insured depository institutions and other banking organizations the affairs of which he or she participates.

(6) The person must be covered by a fidelity bond to the same extent as others in similar positions with the savings and loan holding company.

4-758.5

SECTION 238.86—Exemptions

(a) *Employees.* An employee of a savings and loan holding company is exempt from the prohibition in section 238.83, if all of the following conditions are met:

- (1) The employee’s responsibilities and activities are limited solely to agriculture, forestry, retail merchandising, manufacturing, or public utilities operations.
- (2) The savings and loan holding company maintains a list of all policymaking positions and reviews this list annually.
- (3) The employee’s position does not appear on the savings and loan holding company’s list of policymaking positions, and the employee does not, in fact, exercise any policymaking function with the savings and loan holding company.
- (4) The employee:
 - (i) Is not an institution-affiliated party of the savings and loan holding company other than by virtue of the employment described in paragraph (a) of this section.
 - (ii) Does not own or control, directly or

indirectly, the savings and loan holding company; and

(iii) Does not participate, directly or indirectly, in the conduct of the affairs of the savings and loan holding company.

(b) *Temporary exemption.*

(1) Any prohibited person who was an institution affiliated party with respect to a savings and loan holding company, who owned or controlled, directly or indirectly a savings and loan holding company, or who otherwise participated directly or indirectly in the conduct of the affairs of a savings and loan holding company on October 13, 2006, may continue to hold the position with the savings and loan holding company.

(2) This exemption expires on December 31, 2012, unless the savings and loan holding company or the person files an application seeking a case-by-case exemption for the person under section 238.87 by that date. If the savings and loan holding company or the person files such an application, the temporary exemption expires on:

(i) The date of issuance of a Board approval of the application under section 238.89(a);

(ii) The expiration of the 20-day period for filing a request for hearing under section 238.90(a) provided there is no timely request for hearing following the issuance by the Board of a denial of the application under that section;

(iii) The date that the Board denies a timely request for hearing under section 238.90(b) following the issuance of a Board denial of the application under section 238.89(b);

(iv) The date that the Board issues a decision under section 238.90(d); or

(v) The date an applicant withdraws the application.

4-758.6

SECTION 238.87—Filing Procedures

(a) *Who may file.*

(1) A savings and loan holding company or a person who was convicted of a criminal offense described in section 238.84 or who has agreed to enter into a pre-trial diversion

or similar program in connection with a prosecution for such a criminal offense may file an application with the Board seeking an exemption from the prohibitions in this subpart.

(2) A savings and loan holding company or a person may seek an exemption only for a designated position (or positions) with respect to a named savings and loan holding company.

(3) A savings and loan holding company or a person may not file an application less than one year after the latter of the date of a denial of the same exemption under section 238.89(b), section 238.90(a) or section 238.90(d).

(b) *Prohibition pending Board action.* Unless a savings and loan holding company or a person is exempt under section 238.86(b), the prohibitions in section 238.83 continue to apply pending Board action on the application.

4-758.7

SECTION 238.88—Factors for Review

(a) *Board review.*

(1) In determining whether to approve an exemption application filed under section 238.87, the Board will consider the extent to which the position that is the subject of the application enables a person to:

(i) Participate in the major policymaking functions of the savings and loan holding company; or

(ii) Threaten the safety and soundness of any insured depository institution that is controlled by the savings and loan holding company, the interests of its depositors, or the public confidence in the insured depository institution.

(2) The Board will also consider whether the applicant has demonstrated the person's fitness to hold the described position. Some positions may be approved without an extensive review of a person's fitness because the position does not enable a person to take the actions described in paragraph (a)(1) of this section.

(b) *Factors.* In making the determinations un-

der paragraph (a) of this section, the Board will consider the following factors:

- (1) The position;
- (2) The amount of influence and control a person holding the position will be able to exercise over the affairs and operations of the savings and loan holding company and the insured depository institution;
- (3) The ability of the management of the savings and loan holding company to supervise and control the activities of a person holding the position;
- (4) The level of ownership that the person will have at the savings and loan holding company;
- (5) The specific nature and circumstances of the criminal offense. The question whether a person who was convicted of a crime or who agreed to enter into a pretrial diversion or similar program for a crime was guilty of that crime is not relevant;
- (6) Evidence of rehabilitation; and
- (7) Any other relevant factor.

4-758.8

SECTION 238.89—Board Action

(a) *Approval.* The Board will notify an applicant if an application under this subpart is approved. An approval by the Board may include such conditions as the Board determines to be appropriate.

(b) *Denial.* If Board denies an application, the Board will notify an applicant promptly.

4-758.9

SECTION 238.90—Hearings

(a) *Hearing requests.* Within 20 days of the date of issuance of a denial of an application filed under this subpart, a savings and loan holding company or a person whose application the Board has denied may file a written request demonstrating good cause for a hearing on the denial.

(b) *Board review of hearing request.* The Board will review the hearing request to determine if the savings and loan holding company or person has demonstrated good cause for a hearing on the application. Within 30

days after the filing of a timely request for a hearing, the Board will notify the savings and loan holding company or person in writing of its decision to grant or deny the hearing request. If the Board grants the request for a hearing, it will order a hearing to be commenced within 60 days of the issuance of the notification. Upon the request of a party, the Board may at its discretion order a later hearing date.

(c) *Hearing procedures.* The following procedures apply to hearings under this subpart.

(1) The hearing shall be held in Washington, DC, or at another designated place, before a presiding officer designated by the Board.

(2) An applicant may elect in writing to have the matter determined on the basis of written submissions, rather than an oral hearing.

(3) The parties to the hearing are Enforcement Counsel and the applicant.

(4) The provisions of sections 263.2, 263.4, 263.6 through 263.12, and 263.16 of this chapter apply to the hearing.

(5) Discovery is not permitted.

(6) A party may introduce relevant and material documents and make oral argument at the hearing.

(7) At the discretion of the presiding officer, witnesses may be presented within specified time limits, provided that a list of witnesses is furnished to the presiding officer and to all other parties prior to the hearing. Witnesses must be sworn, unless otherwise directed by the presiding officer. The presiding officer may ask questions of any witness. Each party may cross-examine any witness presented by the opposing party. The Board will furnish a transcript of the proceedings upon an applicant's request and upon the payment of the costs of the transcript.

(8) The presiding officer has the power to administer oaths and affirmations, to take or cause to be taken depositions of unavailable witnesses, and to issue, revoke, quash, or modify subpoenas and subpoenas *duces tecum*. If the presentation of witnesses is permitted, the presiding officer may require the attendance of witnesses from any state,

territory, or other place subject to the jurisdiction of the United States at any location where the proceeding is being conducted. Witness fees are paid in accordance with section 263.14 of this chapter.

(9) Upon the request of a party, the record will remain open for five business days following the hearing for additional submissions to the record.

(10) Enforcement Counsel has the burden of proving a *prima facie* case that a person is prohibited from a position under section 19(e) of the FDIA. The applicant has the burden of proof on all other matters.

(11) The presiding officer must make recommendations to the Board, where possible, within 20 days after the last day for the parties to submit additions to the record.

(12) The presiding officer must forward his or her recommendation to the Board who shall promptly certify the entire record, including the presiding officer's recommendations. The Board's certification will close the record.

(d) *Decision.* After the certification of the record, the Board will notify the parties of its decision by issuing an order approving or denying the application.

(1) An approval order will require fidelity bond coverage for the position to the same extent as similar positions with the savings and loan holding company. The approval order may include such other conditions as may be appropriate.

(2) A denial order will include a summary of the relevant factors under section 238.88(b).

by generally prohibiting a management official from serving two nonaffiliated depository organizations in situations where the management interlock likely would have an anticompetitive effect.

(c) *Scope.* This subpart applies to management officials of savings and loan holding companies, and their affiliates.

4-759.1

SECTION 238.92—Definitions

For purposes of this subpart, the following definitions apply:

(a) *Affiliate.*

(1) The term *affiliate* has the meaning given in section 202 of the Interlocks Act (12 U.S.C. 3201). For purposes of that section 202, shares held by an individual include shares held by members of his or her immediate family. "Immediate family" means spouse, mother, father, child, grandchild, sister, brother, or any of their spouses, whether or not any of their shares are held in trust.

(2) For purposes of section 202(3)(B) of the Interlocks Act (12 U.S.C. 3201(3)(B)), an affiliate relationship involving a savings and loan holding company based on common ownership does not exist if the Board determines, after giving the affected persons the opportunity to respond, that the asserted affiliation was established in order to avoid the prohibitions of the Interlocks Act and does not represent a true commonality of interest between the depository organizations. In making this determination, the Board considers, among other things, whether a person, including members of his or her immediate family, whose shares are necessary to constitute the group owns a nominal percentage of the shares of one of the organizations and the percentage is substantially disproportionate to that person's ownership of shares in the other organization.

(b) *Area median income* means:

(1) The median family income for the metropolitan statistical area (MSA), if a depository organization is located in an MSA; or

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SUBPART J—MANAGEMENT OFFICIAL INTERLOCKS

SECTION 238.91—Authority, Purpose, and Scope

(a) *Authority.* This subpart is issued under the provisions of the Depository Institution Management Interlocks Act (Interlocks Act) (12 U.S.C. 3201 *et seq.*), as amended.

(b) *Purpose.* The purpose of the Interlocks Act and this subpart is to foster competition

(2) The statewide nonmetropolitan median family income, if a depository organization is located outside an MSA.

(c) *Community* means a city, town, or village, and contiguous or adjacent cities, towns, or villages.

(d) *Contiguous or adjacent cities, towns, or villages* means cities, towns, or villages whose borders touch each other or whose borders are within 10 road miles of each other at their closest points. The property line of an office located in an unincorporated city, town, or village is the boundary line of that city, town, or village for the purpose of this definition.

(e) *Depository holding company* means a bank holding company or a savings and loan holding company (as more fully defined in section 202 of the Interlocks Act (12 U.S.C. 3201)) having its principal office located in the United States.

(f) *Depository institution* means a commercial bank (including a private bank), a savings bank, a trust company, a savings and loan association, a building and loan association, a homestead association, a cooperative bank, an industrial bank, or a credit union, chartered under the laws of the United States and having a principal office located in the United States. Additionally, a United States office, including a branch or agency, of a foreign commercial bank is a depository institution.

(g) *Depository institution affiliate* means a depository institution that is an affiliate of a depository organization.

(h) *Depository organization* means a depository institution or a depository holding company.

(i) *Low- and moderate-income areas* means census tracts (or, if an area is not in a census tract, block numbering areas delineated by the United States Bureau of the Census) where the median family income is less than 100 percent of the area median income.

(j) *Management official*.

- (1) The term *management official* means:
- (i) A director;
 - (ii) An advisory or honorary director of a

depository institution with total assets of \$100 million or more;

(iii) A senior executive officer as that term is defined in section 225.71(c) of this chapter;

(iv) A branch manager;

(v) A trustee of a depository organization under the control of trustees; and

(vi) Any person who has a representative or nominee serving in any of the capacities in this paragraph (j)(1).

(2) The term *management official* does not include:

(i) A person whose management functions relate exclusively to the business of retail merchandising or manufacturing;

(ii) A person whose management functions relate principally to the business outside the United States of a foreign commercial bank; or

(iii) A person described in the provisos of section 202(4) of the Interlocks Act (12 U.S.C. 3201(4)) (referring to an officer of a State-chartered savings bank, cooperative bank, or trust company that neither makes real estate mortgage loans nor accepts savings).

(k) *Office* means a principal or branch office of a depository institution located in the United States. *Office* does not include a representative office of a foreign commercial bank, an electronic terminal, or a loan production office.

(l) *Person* means a natural person, corporation, or other business entity.

(m) *Relevant metropolitan statistical area (RMSA)* means an MSA, a primary MSA, or a consolidated MSA that is not comprised of designated Primary MSAs to the extent that these terms are defined and applied by the Office of Management and Budget.

(n) *Representative or nominee* means a natural person who serves as a management official and has an obligation to act on behalf of another person with respect to management responsibilities. The Board will find that a person has an obligation to act on behalf of another person only if the first person has an agreement, express or implied, to act on behalf of the second person with respect to man-

agement responsibilities. The Board will determine, after giving the affected persons an opportunity to respond, whether a person is a representative or nominee.

(o) *Savings association* means:

- (1) Any Federal savings association (as defined in section 3(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(2)));
- (2) Any state savings association (as defined in section 3(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(3))) the deposits of which are insured by the Federal Deposit Insurance Corporation; and
- (3) Any corporation (other than a bank as defined in section 3(a)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(a)(1))) the deposits of which are insured by the Federal Deposit Insurance Corporation, that the Board of Directors of the Federal Deposit Insurance Corporation and the Comptroller of the Currency jointly determine to be operating in substantially the same manner as a savings association.

(p) *Total assets*.

- (1) The term *total assets* means assets measured on a consolidated basis and reported in the most recent fiscal year-end Consolidated Report of Condition and Income.
- (2) The term *total assets* does not include:
 - (i) Assets of a diversified savings and loan holding company as defined by section 10(a)(1)(F) of the Home Owners' Loan Act (12 U.S.C. 1467a(a)(1)(F)) other than the assets of its depository institution affiliate;
 - (ii) Assets of a bank holding company that is exempt from the prohibitions of section 4 of the Bank Holding Company Act of 1956 pursuant to an order issued under section 4(d) of that Act (12 U.S.C. 1843(d)) other than the assets of its depository institution affiliate; or
 - (iii) Assets of offices of a foreign commercial bank other than the assets of its United States branch or agency.

(3) *Temporary relief for 2020 and 2021*. Notwithstanding paragraph (p)(1) of this section, from December 2, 2020, through December 31, 2021, for purposes of this subpart J, the term total assets, with respect to a depository organization, means the

lesser of assets of the depository organization reported on a consolidated basis as of December 31, 2019, and assets reported on a consolidated basis as of the end of the most recent fiscal year. The relief provided under this paragraph (p)(3) does not apply to a depository organization if the Board determines that permitting the depository organization to determine its assets in accordance with that paragraph would not be commensurate with the risk profile of the depository organization. When making this determination, the Board will consider all relevant factors, including the extent of asset growth of the depository organization since December 31, 2019; the causes of such growth, including whether growth occurred as a result of mergers or acquisitions; whether such growth is likely to be temporary or permanent; whether the depository organization has become involved in any additional activities since December 31, 2019; the asset size of any parent companies; and the type of assets held by the depository organization. In making a determination pursuant to this paragraph (p)(3), the Board will apply notice and response procedures in the same manner and to the same extent as the notice and response procedures in 12 CFR 263.202.

(q) *United States* means the United States of America, any State or territory of the United States of America, the District of Columbia, Puerto Rico, Guam, American Samoa, and the Virgin Islands.

4-759.2

SECTION 238.93—Prohibitions

(a) *Community*. A management official of a depository organization may not serve at the same time as a management official of an unaffiliated depository organization if the depository organizations in question (or a depository institution affiliate thereof) have offices in the same community.

(b) *RMSA*. A management official of a depository organization may not serve at the same time as a management official of an unaffiliated depository organization if the de-

pository organizations in question (or a depository institution affiliate thereof) have offices in the same RMSA and each depository organization has total assets of \$50 million or more.

(c) *Major assets.* A management official of a depository organization with total assets exceeding \$10 billion (or any affiliate of such an organization) may not serve at the same time as a management official of an unaffiliated depository organization with total assets exceeding \$10 billion (or any affiliate of such an organization), regardless of the location of the two depository organizations. The Board will adjust these thresholds, as necessary, based on the year-to-year change in the average of the Consumer Price Index for the Urban Wage Earners and Clerical Workers, not seasonally adjusted, with rounding to the nearest \$100 million. The Board will announce the revised thresholds by publishing a final rule without notice and comment in the *Federal Register*.

4-759.3

SECTION 238.94—Interlocking Relationships Permitted by Statute

The prohibitions of section 238.93 do not apply in the case of any one or more of the following organizations or to a subsidiary thereof:

- (a) A depository organization that has been placed formally in liquidation, or which is in the hands of a receiver, conservator, or other official exercising a similar function;
- (b) A corporation operating under section 25 or section 25A of the Federal Reserve Act (12 U.S.C. 601 *et seq.* and 12 U.S.C. 611 *et seq.*, respectively) (Edge Corporations and Agreement Corporations);
- (c) A credit union being served by a management official of another credit union;
- (d) A depository organization that does not do business within the United States except as an incident to its activities outside the United States;
- (e) A State-chartered savings and loan guaranty corporation;

(f) A Federal Home Loan Bank or any other bank organized solely to serve depository institutions (a bankers' bank) or solely for the purpose of providing securities clearing services and services related thereto for depository institutions and securities companies;

(g) A depository organization that is closed or is in danger of closing as determined by the appropriate Federal depository institutions regulatory agency and is acquired by another depository organization. This exemption lasts for five years, beginning on the date the depository organization is acquired;

(h) (1) A diversified savings and loan holding company (as defined in section 10(a)(1)(F) of the Home Owners' Loan Act (12 U.S.C. 1467a(a)(1)(F)) with respect to the service of a director of such company who also is a director of an unaffiliated depository organization if:

- (i) Both the diversified savings and loan holding company and the unaffiliated depository organization notify their appropriate Federal depository institutions regulatory agency at least 60 days before the dual service is proposed to begin; and
- (ii) The appropriate regulatory agency does not disapprove the dual service before the end of the 60-day period.

(2) The Board may disapprove a notice of proposed service if it finds that:

- (i) The service cannot be structured or limited so as to preclude an anticompetitive effect in financial services in any part of the United States;
- (ii) The service would lead to substantial conflicts of interest or unsafe or unsound practices; or
- (iii) The notificant failed to furnish all the information required by the Board.

(3) The Board may require that any interlock permitted under this paragraph (h) be terminated if a change in circumstances occurs with respect to one of the interlocked depository organizations that would have provided a basis for disapproval of the interlock during the notice period; and

- (i) Any savings association or any savings and loan holding company (as defined in section 10(a)(1)(D) of the Home Owners' Loan Act) which has issued

stock in connection with a qualified stock issuance pursuant to section 10(q) of such Act, except that this paragraph (i) shall apply only with regard to service by a single management official of such savings association or holding company, or any subsidiary of such savings association or holding company, by a single management official of the savings and loan holding company which purchased the stock issued in connection with such qualified stock issuance, and shall apply only when the Board has determined that such service is consistent with the purposes of the Interlocks Act and the Home Owners' Loan Act.

4-759.4

SECTION 238.95—Small Market Share Exemption

(a) *Exemption.* A management interlock that is prohibited by section 238.93 is permissible, if:

- (1) The interlock is not prohibited by section 238.93(c); and
- (2) The depository organizations (and their depository institution affiliates) hold, in the aggregate, no more than 20 percent of the deposits in each RMSA or community in which both depository organizations (or their depository institution affiliates) have offices. The amount of deposits shall be determined by reference to the most recent annual Summary of Deposits published by the FDIC for the RMSA or community.

(b) *Confirmation and records.* Each depository organization must maintain records sufficient to support its determination of eligibility for the exemption under paragraph (a) of this section, and must reconfirm that determination on an annual basis.

4-759.5

SECTION 238.96—General Exemption

(a) *Exemption.* The Board may by agency order exempt an interlock from the prohibitions in section 238.93 if the Board finds that the interlock would not result in a monopoly or

substantial lessening of competition and would not present safety and soundness concerns. A depository organization may apply to the Board for an exemption.

(b) *Presumptions.* In reviewing an application for an exemption under this section, the Board will apply a rebuttable presumption that an interlock will not result in a monopoly or substantial lessening of competition if the depository organization seeking to add a management official:

- (1) Primarily serves low- and moderate-income areas;
- (2) Is controlled or managed by persons who are members of a minority group, or women;
- (3) Is a depository institution that has been chartered for less than two years; or
- (4) Is deemed to be in “troubled condition” as defined in section 238.72.

(c) *Duration.* Unless a shorter expiration period is provided in the Board approval, an exemption permitted by paragraph (a) of this section may continue so long as it does not result in a monopoly or substantial lessening of competition, or is unsafe or unsound. If the Board grants an interlock exemption in reliance upon a presumption under paragraph (b) of this section, the interlock may continue for three years, unless otherwise provided by the Board in writing.

4-759.6

SECTION 238.97—Change in Circumstances

(a) *Termination.* A management official shall terminate his or her service or apply for an exemption if a change in circumstances causes the service to become prohibited. A change in circumstances may include an increase in asset size of an organization, a change in the delineation of the RMSA or community, the establishment of an office, an increase in the aggregate deposits of the depository organization, or an acquisition, merger, consolidation, or reorganization of the ownership structure of a depository organization that causes a previously permissible interlock to become prohibited.

(b) *Transition period.* A management official described in paragraph (a) of this section may continue to serve the depository organization involved in the interlock for 15 months following the date of the change in circumstances. The Board may shorten this period under appropriate circumstances.

HOLA which requires savings associations with holding companies to provide the Board not less than 30 days' notice of a proposed declaration of a dividend. This subpart applies to all declarations of dividends by a subsidiary savings association of a savings and loan holding company.

4-759.7**SECTION 238.98—Enforcement**

Except as provided in this section, the Board administers and enforces the Interlocks Act with respect to savings and loan holding companies and its affiliates, and may refer any case of a prohibited interlocking relationship involving these entities to the Attorney General of the United States to enforce compliance with the Interlocks Act and this part. If an affiliate of a savings and loan holding company is subject to the primary regulation of another Federal depository organization supervisory agency, then the Board does not administer and enforce the Interlocks Act with respect to that affiliate.

4-759.8**SECTION 238.99—Interlocking Relationships Permitted Pursuant to Federal Deposit Insurance Act**

A management official or prospective management official of a depository organization may enter into an otherwise prohibited interlocking relationship with another depository organization for a period of up to 10 years if such relationship is approved by the Federal Deposit Insurance Corporation pursuant to section 13(k)(1)(A)(v) of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1823(k)(1)(A)(v)).

4-760**SUBPART K—DIVIDENDS BY SUBSIDIARY SAVINGS ASSOCIATIONS****SECTION 238.101—Authority and Purpose**

This subpart implements section 10(f) of

4-760.1**SECTION 238.102—Definitions**

The following definitions apply to this subpart:

(a) *Appropriate Federal banking agency* has the same meaning as in 12 U.S.C. 1813(q) and includes, with respect to agreements entered into and conditions imposed prior to July 21, 2011, the Office of Thrift Supervision.

(b) *Dividend* means:

- (1) A distribution of cash or other property to owners of a savings association made on account of their ownership, but not any dividend consisting only of shares or rights to purchase shares; or
- (2) Any transaction that the Board determines, by order or regulation, to be in substance a dividend.

(c) *Shares* means common and preferred stock, and any options, warrants, or other rights for the acquisition of such stock. The term “share” also includes convertible securities upon their conversion into common or preferred stock. The term does not include convertible debt securities prior to their conversion into common or preferred stock or other securities that are not equity securities at the time of a dividend.

4-760.11**SECTION 238.103—Filing Requirement**

(a) *Filing.* A subsidiary savings association of a savings and loan holding company must file a notice with the appropriate Reserve Bank on the designated form at least 30 days before the proposed declaration of a dividend by its board of directors.

(b) *Schedules.* A notice may include a sched-

ule proposing dividends over a specified period, not to exceed 12 months.

whether it may permit the dividend notwithstanding the prohibition, condition, or enforcement action.

4-760.111

SECTION 238.104—Board Action and Criteria for Review

(a) *Board action.*

(1) A subsidiary savings association of a savings and loan holding company may declare a proposed dividend after the end of a 30-day review period commencing on the date of submission to the Federal Reserve System of the complete record on the notice, unless the Board or Reserve Bank disapproves the notice before the end of the period.

(2) A subsidiary savings association of a savings and loan holding company may declare a proposed dividend before the end of the 30-day period if the Board or Reserve Bank notifies the applicant in writing of the Board's or Reserve Bank's intention not to disapprove the notice.

(b) *Criteria.* The Board or Reserve Bank may disapprove a notice, in whole or in part, if the Board or Reserve Bank makes any of the following determinations.

(1) Following the dividend the subsidiary savings association will be undercapitalized, significantly undercapitalized, or critically undercapitalized as set forth in applicable regulations under 12 U.S.C. 1831o.

(2) The proposed dividend raises safety or soundness concerns.

(3) The proposed dividend violates a prohibition contained in any statute, regulation, enforcement action, or agreement between the subsidiary savings association or any savings and loan holding company of which it is a subsidiary and an appropriate Federal banking agency, a condition imposed on the subsidiary savings association or any savings and loan holding company of which it is a subsidiary in an application or notice approved by an appropriate Federal banking agency, or any formal or informal enforcement action involving the subsidiary savings association or any savings and loan holding company of which it is a subsidiary. If so, the Board will determine

4-760.127

SUBPART M—RISK COMMITTEE REQUIREMENT FOR COVERED SAVINGS AND LOAN HOLDING COMPANIES WITH TOTAL CONSOLIDATED ASSETS OF \$50 BILLION OR MORE AND LESS THAN \$100 BILLION

SECTION 238.118—Applicability

(a) *General applicability.* A covered savings and loan bank holding company must comply with the risk-committee requirements set forth in this subpart beginning on the first day of the ninth quarter following the date on which its average total consolidated assets equal or exceed \$50 billion.

(b) *Cessation of requirements.* A covered savings and loan holding company will remain subject to the requirements of this subpart until the earlier of the date on which:

(1) Its total consolidated assets are below \$50 billion for each of four consecutive calendar quarters; and

(2) It becomes subject to the requirements of subpart N of this part.

4-760.128

SECTION 238.119—Risk Committee Requirement for Covered Savings and Loan Holding Companies with Total Consolidated Assets of \$50 Billion or More

(a) *Risk committee.*

(1) *General.* A covered savings and loan holding company subject to this subpart must maintain a risk committee that approves and periodically reviews the risk-management policies of the covered savings and loan holding company's global operations and oversees the operation of the company's global risk-management framework.

(2) *Risk-management framework.* The covered savings and loan holding company's

global risk-management framework must be commensurate with its structure, risk profile, complexity, activities, and size and must include:

- (i) Policies and procedures establishing risk-management governance, risk-management procedures, and risk-control infrastructure for its global operations; and
- (ii) Processes and systems for implementing and monitoring compliance with such policies and procedures, including:
 - (A) Processes and systems for identifying and reporting risks and risk-management deficiencies, including regarding emerging risks, and ensuring effective and timely implementation of actions to address emerging risks and risk-management deficiencies for its global operations;
 - (B) Processes and systems for establishing managerial and employee responsibility for risk management;
 - (C) Processes and systems for ensuring the independence of the risk-management function; and
 - (D) Processes and systems to integrate risk management and associated controls with management goals and its compensation structure for its global operations.

(3) *Corporate governance requirements.* The risk committee must:

- (i) Have a formal, written charter that is approved by the covered savings and loan holding company's board of directors;
- (ii) Be an independent committee of the board of directors that has, as its sole and exclusive function, responsibility for the risk-management policies of the covered savings and loan holding company's global operations and oversight of the operation of the company's global risk-management framework;
- (iii) Report directly to the covered savings and loan holding company's board of directors;
- (iv) Receive and review regular reports on a not less than a quarterly basis from the covered savings and loan holding company's chief risk officer provided

pursuant to paragraph (b)(3)(ii) of this section; and

(v) Meet at least quarterly, or more frequently as needed, and fully document and maintain records of its proceedings, including risk-management decisions.

(4) *Minimum member requirements.* The risk committee must:

(i) Include at least one member having experience in identifying, assessing, and managing risk exposures of large, complex financial firms; and

(ii) Be chaired by a director who:

(A) Is not an officer or employee of the covered savings and loan holding company and has not been an officer or employee of the covered savings and loan holding company during the previous three years;

(B) Is not a member of the immediate family, as defined in section 238.31(b)(3), of a person who is, or has been within the last three years, an executive officer of the covered savings and loan holding company, as defined in section 215.2(e)(1) of this chapter; and

(C) (1) Is an independent director under Item 407 of the Securities and Exchange Commission's Regulation S-K (17 CFR 229.407(a)), if the covered savings and loan holding company has an outstanding class of securities traded on an exchange registered with the U.S. Securities and Exchange Commission as a national securities exchange under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f) (national securities exchange); or

(2) Would qualify as an independent director under the listing standards of a national securities exchange, as demonstrated to the satisfaction of the Board, if the covered savings and loan holding company does not have an outstanding class of securities traded on a national securities exchange.

(b) *Chief risk officer.*

(1) *General.* A covered savings and loan

holding company subject to this subpart must appoint a chief risk officer with experience in identifying, assessing, and managing risk exposures of large, complex financial firms.

(2) *Responsibilities.*

(i) The chief risk officer is responsible for overseeing:

- (A) The establishment of risk limits on an enterprise-wide basis and the monitoring of compliance with such limits;
- (B) The implementation of and ongoing compliance with the policies and procedures set forth in paragraph (a)(2)(i) of this section and the development and implementation of the processes and systems set forth in paragraph (a)(2)(ii) of this section; and
- (C) The management of risks and risk controls within the parameters of the company's risk control framework, and monitoring and testing of the company's risk controls.

(ii) The chief risk officer is responsible for reporting risk-management deficiencies and emerging risks to the risk committee and resolving risk-management deficiencies in a timely manner.

(3) *Corporate governance requirements.*

- (i) The covered savings and loan holding company must ensure that the compensation and other incentives provided to the chief risk officer are consistent with providing an objective assessment of the risks taken by the company; and
- (ii) The chief risk officer must report directly to both the risk committee and chief executive officer of the company.

4-760.129

**SUBPART N—RISK COMMITTEE,
LIQUIDITY RISK MANAGEMENT,
AND LIQUIDITY BUFFER
REQUIREMENTS FOR COVERED
SAVINGS AND LOAN HOLDING
COMPANIES WITH TOTAL
CONSOLIDATED ASSETS OF \$100
BILLION OR MORE**

SECTION 238.120—Scope

This subpart applies to covered savings and

loan holding companies with average total consolidated assets of \$100 billion or more.

4-760.13

SECTION 238.121—Applicability

(a) *Applicability.*

(1) *Initial applicability.* A covered savings and loan holding company must comply with the risk-management and risk-committee requirements set forth in section 238.122 and the liquidity risk-management and liquidity stress test requirements set forth in sections 238.123 and 238.124 no later than the first day of the fifth quarter following the date on which its average total consolidated assets equal or exceed \$100 billion.

(2) *Changes in requirements following a change in category.* A covered savings and loan holding company with average total consolidated assets of \$100 billion or more that changes from one category of covered savings and loan holding company described in section 238.10(b) through (d) to another such category must comply with the requirements applicable to the new category no later than on the first day of the second calendar quarter following the change in the covered savings and loan holding company's category.

(b) *Cessation of requirements.* A covered savings and loan holding company is subject to the risk-management and risk committee requirements set forth in section 238.122 and the liquidity risk-management and liquidity stress test requirements set forth in sections 238.123 and 238.124 until its total consolidated assets are below \$100 billion for each of four consecutive calendar quarters.

4-760.131

**SECTION 238.122—Risk-Management
and Risk Committee Requirements**

(a) *Risk committee.*

(1) *General.* A covered savings and loan holding subject to this subpart must maintain a risk committee that approves and periodically reviews the risk-management

policies of the covered savings and loan holding company's global operations and oversees the operation of the covered savings and loan holding company's global risk-management framework. The risk committee's responsibilities include liquidity risk-management as set forth in section 238.123(b).

(2) *Risk-management framework.* The covered savings and loan holding company's global risk-management framework must be commensurate with its structure, risk profile, complexity, activities, and size and must include:

- (i) Policies and procedures establishing risk-management governance, risk-management procedures, and risk-control infrastructure for its global operations; and
- (ii) Processes and systems for implementing and monitoring compliance with such policies and procedures, including:
 - (A) Processes and systems for identifying and reporting risks and risk-management deficiencies, including regarding emerging risks, and ensuring effective and timely implementation of actions to address emerging risks and risk-management deficiencies for its global operations;
 - (B) Processes and systems for establishing managerial and employee responsibility for risk management;
 - (C) Processes and systems for ensuring the independence of the risk-management function; and
 - (D) Processes and systems to integrate risk management and associated controls with management goals and its compensation structure for its global operations.

(3) *Corporate governance requirements.* The risk committee must:

- (i) Have a formal, written charter that is approved by the covered savings and loan holding company's board of directors;
- (ii) Be an independent committee of the board of directors that has, as its sole and exclusive function, responsibility for the risk-management policies of the covered savings and loan holding company's

global operations and oversight of the operation of the covered savings and loan holding company's global risk-management framework;

(iii) Report directly to the covered savings and loan holding company's board of directors;

(iv) Receive and review regular reports on not less than a quarterly basis from the covered savings and loan holding company's chief risk officer provided pursuant to paragraph (b)(3)(ii) of this section; and

(v) Meet at least quarterly, or more frequently as needed, and fully document and maintain records of its proceedings, including risk-management decisions.

(4) *Minimum member requirements.* The risk committee must:

(i) Include at least one member having experience in identifying, assessing, and managing risk exposures of large, complex financial firms; and

(ii) Be chaired by a director who:

(A) Is not an officer or employee of the covered savings and loan holding company and has not been an officer or employee of the covered savings and loan holding company during the previous three years;

(B) Is not a member of the immediate family, as defined in section 238.31(b)(3), of a person who is, or has been within the last three years, an executive officer of the covered savings and loan holding company, as defined in section 215.2(e)(1) of this chapter; and

(C) (1) Is an independent director under Item 407 of the Securities and Exchange Commission's Regulation S-K (17 CFR 229.407(a)), if the covered savings and loan holding company has an outstanding class of securities traded on an exchange registered with the U.S. Securities and Exchange Commission as a national securities exchange under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f) (national securities exchange); or

(2) Would qualify as an independent

director under the listing standards of a national securities exchange, as demonstrated to the satisfaction of the Board, if the covered savings and loan holding company does not have an outstanding class of securities traded on a national securities exchange.

(b) *Chief risk officer.*

(1) *General.* A covered savings and loan holding company subject to this subpart must appoint a chief risk officer with experience in identifying, assessing, and managing risk exposures of large, complex financial firms.

(2) *Responsibilities.*

(i) The chief risk officer is responsible for overseeing:

(A) The establishment of risk limits on an enterprise-wide basis and the monitoring of compliance with such limits;

(B) The implementation of and ongoing compliance with the policies and procedures set forth in paragraph (a)(2)(i) of this section and the development and implementation of the processes and systems set forth in paragraph (a)(2)(ii) of this section; and

(C) The management of risks and risk controls within the parameters of the company's risk control framework, and monitoring and testing of the company's risk controls.

(ii) The chief risk officer is responsible for reporting risk-management deficiencies and emerging risks to the risk committee and resolving risk-management deficiencies in a timely manner.

(3) *Corporate governance requirements.*

(i) The covered savings and loan holding company must ensure that the compensation and other incentives provided to the chief risk officer are consistent with providing an objective assessment of the risks taken by the covered savings and loan holding company; and

(ii) The chief risk officer must report directly to both the risk committee and chief executive officer of the company.

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SECTION 238.123—Liquidity Risk-Management Requirements

(a) *Responsibilities of the board of directors.*

(1) *Liquidity risk tolerance.* The board of directors of a covered savings and loan holding company subject to this subpart must:

(i) Approve the acceptable level of liquidity risk that the covered savings and loan holding company may assume in connection with its operating strategies (liquidity risk tolerance) at least annually, taking into account the covered savings and loan holding company's capital structure, risk profile, complexity, activities, and size; and

(ii) Receive and review at least semiannually information provided by senior management to determine whether the covered savings and loan holding company is operating in accordance with its established liquidity risk tolerance.

(2) *Liquidity risk-management strategies, policies, and procedures.* The board of directors must approve and periodically review the liquidity risk-management strategies, policies, and procedures established by senior management pursuant to paragraph (c)(1) of this section.

(b) *Responsibilities of the risk committee.* The risk committee (or a designated subcommittee of such committee composed of members of the board of directors) must approve the contingency funding plan described in paragraph (f) of this section at least annually, and must approve any material revisions to the plan prior to the implementation of such revisions.

(c) *Responsibilities of senior management.*

(1) *Liquidity risk.*

(i) Senior management of a covered savings and loan holding company subject to this subpart must establish and implement strategies, policies, and procedures designed to effectively manage the risk that the covered savings and loan holding company's financial condition or safety and soundness would be adversely affected by its inability or the market's perception of its inability to meet its cash

and collateral obligations (liquidity risk). The board of directors must approve the strategies, policies, and procedures pursuant to paragraph (a)(2) of this section.

(ii) Senior management must oversee the development and implementation of liquidity risk measurement and reporting systems, including those required by this section and section 238.124.

(iii) Senior management must determine at least quarterly whether the covered savings and loan holding company is operating in accordance with such policies and procedures and whether the covered savings and loan holding company is in compliance with this section and section 238.124 (or more often, if changes in market conditions or the liquidity position, risk profile, or financial condition warrant), and establish procedures regarding the preparation of such information.

(2) *Liquidity risk tolerance.* Senior management must report to the board of directors or the risk committee regarding the covered savings and loan holding company's liquidity risk profile and liquidity risk tolerance at least quarterly (or more often, if changes in market conditions or the liquidity position, risk profile, or financial condition of the company warrant).

(3) *Business lines or products.*

(i) Senior management must approve new products and business lines and evaluate the liquidity costs, benefits, and risks of each new business line and each new product that could have a significant effect on the company's liquidity risk profile. The approval is required before the company implements the business line or offers the product. In determining whether to approve the new business line or product, senior management must consider whether the liquidity risk of the new business line or product (under both current and stressed conditions) is within the company's established liquidity risk tolerance.

(ii) Senior management must review at least annually significant business lines and products to determine whether any line or product creates or has created any unanticipated liquidity risk, and to deter-

mine whether the liquidity risk of each strategy or product is within the company's established liquidity risk tolerance.

(4) *Cash-flow projections.* Senior management must review the cash-flow projections produced under paragraph (e) of this section at least quarterly (or more often, if changes in market conditions or the liquidity position, risk profile, or financial condition of the covered savings and loan holding company warrant) to ensure that the liquidity risk is within the established liquidity risk tolerance.

(5) *Liquidity risk limits.* Senior management must establish liquidity risk limits as set forth in paragraph (g) of this section and review the company's compliance with those limits at least quarterly (or more often, if changes in market conditions or the liquidity position, risk profile, or financial condition of the company warrant).

(6) *Liquidity stress testing.* Senior management must:

(i) Approve the liquidity stress testing practices, methodologies, and assumptions required in section 238.124(a) at least quarterly, and whenever the covered savings and loan holding company materially revises its liquidity stress testing practices, methodologies or assumptions;

(ii) Review the liquidity stress testing results produced under section 238.124(a) at least quarterly;

(iii) Review the independent review of the liquidity stress tests under section 238.123(d) periodically; and

(iv) Approve the size and composition of the liquidity buffer established under section 238.124(b) at least quarterly.

(d) *Independent review function.*

(1) A covered savings and loan holding company subject to this subpart must establish and maintain a review function that is independent of management functions that execute funding to evaluate its liquidity risk management.

(2) The independent review function must:

(i) Regularly, but no less frequently than annually, review and evaluate the adequacy and effectiveness of the company's liquidity risk management processes,

including its liquidity stress test processes and assumptions;

(ii) Assess whether the company's liquidity risk-management function complies with applicable laws and regulations, and sound business practices; and

(iii) Report material liquidity risk management issues to the board of directors or the risk committee in writing for corrective action, to the extent permitted by applicable law.

(e) *Cash-flow projections.*

(1) A covered savings and loan holding company subject to this subpart must produce comprehensive cash-flow projections that project cash flows arising from assets, liabilities, and off-balance sheet exposures over, at a minimum, short- and long-term time horizons. The covered savings and loan holding company must update short-term cash-flow projections daily and must update longer-term cash-flow projections at least monthly.

(2) The covered savings and loan holding company must establish a methodology for making cash-flow projections that results in projections that:

(i) Include cash flows arising from contractual maturities, intercompany transactions, new business, funding renewals, customer options, and other potential events that may impact liquidity;

(ii) Include reasonable assumptions regarding the future behavior of assets, liabilities, and off-balance sheet exposures;

(iii) Identify and quantify discrete and cumulative cash flow mismatches over these time periods; and

(iv) Include sufficient detail to reflect the capital structure, risk profile, complexity, currency exposure, activities, and size of the covered savings and loan holding company and include analyses by business line, currency, or legal entity as appropriate.

(3) The covered savings and loan holding company must adequately document its methodology for making cash flow projections and the included assumptions and submit such documentation to the risk committee.

(f) *Contingency funding plan.*

(1) *General.* A covered savings and loan holding company subject to this subpart must establish and maintain a contingency funding plan that sets out the company's strategies for addressing liquidity needs during liquidity stress events. The contingency funding plan must be commensurate with the company's capital structure, risk profile, complexity, activities, size, and established liquidity risk tolerance. The company must update the contingency funding plan at least annually, and when changes to market and idiosyncratic conditions warrant.

(2) *Components of the contingency funding plan.*

(i) *Quantitative assessment.* The contingency funding plan must:

(A) Identify liquidity stress events that could have a significant impact on the covered savings and loan holding company's liquidity;

(B) Assess the level and nature of the impact on the covered savings and loan holding company's liquidity that may occur during identified liquidity stress events;

(C) Identify the circumstances in which the covered savings and loan holding company would implement its action plan described in paragraph (f)(2)(ii)(A) of this section, which circumstances must include failure to meet any minimum liquidity requirement imposed by the Board;

(D) Assess available funding sources and needs during the identified liquidity stress events;

(E) Identify alternative funding sources that may be used during the identified liquidity stress events; and

(F) Incorporate information generated by the liquidity stress testing required under section 238.124(a).

(ii) *Liquidity event management process.*

The contingency funding plan must include an event management process that sets out the covered savings and loan holding company's procedures for managing liquidity during identified liquidity stress events. The liquidity event management process must:

(A) Include an action plan that clearly describes the strategies the company will use to respond to liquidity shortfalls for identified liquidity stress events, including the methods that the company will use to access alternative funding sources;

(B) Identify a liquidity stress event management team that would execute the action plan described in paragraph (f)(2)(ii)(A) of this section;

(C) Specify the process, responsibilities, and triggers for invoking the contingency funding plan, describe the decision-making process during the identified liquidity stress events, and describe the process for executing contingency measures identified in the action plan; and

(D) Provide a mechanism that ensures effective reporting and communication within the covered savings and loan holding company and with outside parties, including the Board and other relevant supervisors, counterparties, and other stakeholders.

(iii) *Monitoring.* The contingency funding plan must include procedures for monitoring emerging liquidity stress events. The procedures must identify early warning indicators that are tailored to the company's capital structure, risk profile, complexity, activities, and size.

(iv) *Testing.* The covered savings and loan holding company must periodically test:

(A) The components of the contingency funding plan to assess the plan's reliability during liquidity stress events;

(B) The operational elements of the contingency funding plan, including operational simulations to test communications, coordination, and decision-making by relevant management; and

(C) The methods the covered savings and loan holding company will use to access alternative funding sources to determine whether these funding sources will be readily available when needed.

(g) *Liquidity risk limits.*

(1) *General.* A covered savings and loan holding company subject to this subpart must monitor sources of liquidity risk and establish limits on liquidity risk that are consistent with the company's established liquidity risk tolerance and that reflect the company's capital structure, risk profile, complexity, activities, and size.

(2) *Liquidity risk limits established by a Category II savings and loan holding company, or Category III savings and loan holding company.* If the covered savings and loan holding company is a Category II savings and loan holding company or Category III savings and loan holding company, liquidity risk limits established under paragraph (g)(1) of this section by must include limits on:

(i) Concentrations in sources of funding by instrument type, single counterparty, counterparty type, secured and unsecured funding, and as applicable, other forms of liquidity risk;

(ii) The amount of liabilities that mature within various time horizons; and

(iii) Off-balance sheet exposures and other exposures that could create funding needs during liquidity stress events.

(h) *Collateral, legal entity, and intraday liquidity risk monitoring.* A covered savings and loan holding company subject to this subpart must establish and maintain procedures for monitoring liquidity risk as set forth in this paragraph.

(1) *Collateral.* The covered savings and loan holding company must establish and maintain policies and procedures to monitor assets that have been, or are available to be, pledged as collateral in connection with transactions to which it or its affiliates are counterparties. These policies and procedures must provide that the covered savings and loan holding company:

(i) Calculates all of its collateral positions according to the frequency specified in paragraphs (h)(1)(i)(A) and (B) of this section or as directed by the Board, specifying the value of pledged assets relative to the amount of security required under the relevant contracts and

the value of unencumbered assets available to be pledged:

(A) If the covered savings and loan holding company is not a Category IV savings and loan holding company, on at least a weekly basis;

(B) If the covered savings and loan holding company is a Category IV savings and loan holding company, on at least a monthly basis;

(ii) Monitors the levels of unencumbered assets available to be pledged by legal entity, jurisdiction, and currency exposure;

(iii) Monitors shifts in the covered savings and loan holding company's funding patterns, such as shifts between intraday, overnight, and term pledging of collateral; and

(iv) Tracks operational and timing requirements associated with accessing collateral at its physical location (for example, the custodian or securities settlement system that holds the collateral).

(2) *Legal entities, currencies and business lines.* The covered savings and loan holding company must establish and maintain procedures for monitoring and controlling liquidity risk exposures and funding needs within and across significant legal entities, currencies, and business lines, taking into account legal and regulatory restrictions on the transfer of liquidity between legal entities.

(3) *Intraday exposures.* The covered savings and loan holding company must establish and maintain procedures for monitoring intraday liquidity risk exposures that are consistent with the covered savings and loan holding company's capital structure, risk profile, complexity, activities, and size. If the covered savings and loan holding company is a Category II savings and loan holding company or a Category III savings and loan holding company, these procedures must address how the management of the covered savings and loan holding company will:

(i) Monitor and measure expected daily gross liquidity inflows and outflows;

(ii) Manage and transfer collateral to obtain intraday credit;

(iii) Identify and prioritize time-specific obligations so that the covered savings and loan holding company can meet these obligations as expected and settle less critical obligations as soon as possible;

(iv) Manage the issuance of credit to customers where necessary; and

(v) Consider the amounts of collateral and liquidity needed to meet payment systems obligations when assessing the covered savings and loan holding company's overall liquidity needs.

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SECTION 238.124—Liquidity Stress Testing and Buffer Requirements

(a) *Liquidity stress testing requirement.*

(1) *General.* A covered savings and loan holding company subject to this subpart must conduct stress tests to assess the potential impact of the liquidity stress scenarios set forth in paragraph (a)(3) of this section on its cash flows, liquidity position, profitability, and solvency, taking into account its current liquidity condition, risks, exposures, strategies, and activities.

(i) The covered savings and loan holding company must take into consideration its balance sheet exposures, off-balance sheet exposures, size, risk profile, complexity, business lines, organizational structure, and other characteristics of the covered savings and loan holding company that affect its liquidity risk profile in conducting its stress test.

(ii) In conducting a liquidity stress test using the scenarios described in paragraphs (a)(3)(i) and (ii) of this section, the covered savings and loan holding company must address the potential direct adverse impact of associated market disruptions on the covered savings and loan holding company and incorporate the potential actions of other market participants experiencing liquidity stresses under the market disruptions that would

- adversely affect the covered savings and loan holding company.
- (2) *Frequency.* The covered savings and loan holding company must perform the liquidity stress tests required under paragraph (a)(1) of this section according to the frequency specified in paragraph (a)(2)(i) or (ii) of this section or as directed by the Board:
- (i) If the covered savings and loan holding company is not a Category IV savings and loan holding company, at least monthly; or
 - (ii) If the covered savings and loan holding company is a Category IV savings and loan holding company, at least quarterly.
- (3) *Stress scenarios.*
- (i) Each stress test conducted under paragraph (a)(1) of this section must include, at a minimum:
 - (A) A scenario reflecting adverse market conditions;
 - (B) A scenario reflecting an idiosyncratic stress event for the covered savings and loan holding company; and
 - (C) A scenario reflecting combined market and idiosyncratic stresses.
 - (ii) The covered savings and loan holding company must incorporate additional liquidity stress scenarios into its liquidity stress test, as appropriate, based on its financial condition, size, complexity, risk profile, scope of operations, or activities. The Board may require the covered savings and loan holding company to vary the underlying assumptions and stress scenarios.
- (4) *Planning horizon.* Each stress test conducted under paragraph (a)(1) of this section must include an overnight planning horizon, a 30-day planning horizon, a 90-day planning horizon, a one-year planning horizon, and any other planning horizons that are relevant to the covered savings and loan holding company's liquidity risk profile. For purposes of this section, a "planning horizon" is the period over which the relevant stressed projections extend. The covered savings and loan holding company must use the results of the stress test over the 30-day planning horizon to calculate the size of the liquidity buffer under paragraph (b) of this section.
- (5) *Requirements for assets used as cash-flow sources in a stress test.*
- (i) To the extent an asset is used as a cash flow source to offset projected funding needs during the planning horizon in a liquidity stress test, the fair market value of the asset must be discounted to reflect any credit risk and market volatility of the asset.
 - (ii) Assets used as cash-flow sources during a planning horizon must be diversified by collateral, counterparty, borrowing capacity, and other factors associated with the liquidity risk of the assets.
 - (iii) A line of credit does not qualify as a cash flow source for purposes of a stress test with a planning horizon of 30 days or less. A line of credit may qualify as a cash flow source for purposes of a stress test with a planning horizon that exceeds 30 days.
- (6) *Tailoring.* Stress testing must be tailored to, and provide sufficient detail to reflect, a covered savings and loan holding company's capital structure, risk profile, complexity, activities, and size.
- (7) *Governance.*
- (i) *Policies and procedures.* A covered savings and loan holding company subject to this subpart must establish and maintain policies and procedures governing its liquidity stress testing practices, methodologies, and assumptions that provide for the incorporation of the results of liquidity stress tests in future stress testing and for the enhancement of stress testing practices over time.
 - (ii) *Controls and oversight.* A covered savings and loan holding company subject to this subpart must establish and maintain a system of controls and oversight that is designed to ensure that its liquidity stress testing processes are effective in meeting the requirements of this section. The controls and oversight must ensure that each liquidity stress test appropriately incorporates conservative assumptions with respect to the stress scenario in paragraph (a)(3) of this section and other elements

of the stress test process, taking into consideration the covered savings and loan holding company's capital structure, risk profile, complexity, activities, size, business lines, legal entity or jurisdiction, and other relevant factors. The assumptions must be approved by the chief risk officer and be subject to the independent review under section 238.123(d).

(iii) *Management information systems.* The covered savings and loan holding company must maintain management information systems and data processes sufficient to enable it to effectively and reliably collect, sort, and aggregate data and other information related to liquidity stress testing.

(8) *Notice and response.* If the Board determines that a covered savings and loan holding company must conduct liquidity stress tests according to a frequency other than the frequency provided in paragraphs (a)(2)(i) and (ii) of this section, the Board will notify the covered savings and loan holding company before the change in frequency takes effect, and describe the basis for its determination. Within 14 calendar days of receipt of a notification under this paragraph, the covered savings and loan holding company may request in writing that the Board reconsider the requirement. The Board will respond in writing to the company's request for reconsideration prior to requiring that the company conduct liquidity stress tests according to a frequency other than the frequency provided in paragraphs (a)(2)(i) and (ii) of this section.

(b) *Liquidity buffer requirement.*

(1) A covered savings and loan holding company subject to this subpart must maintain a liquidity buffer that is sufficient to meet the projected net stressed cash-flow need over the 30-day planning horizon of a liquidity stress test conducted in accordance with paragraph (a) of this section under each scenario set forth in paragraph (a)(3)(i) through (ii) of this section.

(2) *Net stressed cash-flow need.* The net stressed cash-flow need for a covered savings and loan holding company is the difference between the amount of its cash-flow

need and the amount of its cash flow sources over the 30-day planning horizon.

(3) *Asset requirements.* The liquidity buffer must consist of highly liquid assets that are unencumbered, as defined in paragraph (b)(3)(ii) of this section:

(i) *Highly liquid asset.* A highly liquid asset includes:

- (A) Cash;
- (B) Assets that meet the criteria for high quality liquid assets as defined in 12 CFR 249.20; or
- (C) Any other asset that the covered savings and loan holding company demonstrates to the satisfaction of the Board:

(1) Has low credit risk and low market risk;

(2) Is traded in an active secondary two-way market that has committed market makers and independent *bona fide* offers to buy and sell so that a price reasonably related to the last sales price or current *bona fide* competitive bid and offer quotations can be determined within one day and settled at that price within a reasonable time period conforming with trade custom; and

(3) Is a type of asset that investors historically have purchased in periods of financial market distress during which market liquidity has been impaired.

(ii) *Unencumbered.* An asset is unencumbered if it:

- (A) Is free of legal, regulatory, contractual, or other restrictions on the ability of such company promptly to liquidate, sell or transfer the asset; and
- (B) Is either:

(1) Not pledged or used to secure or provide credit enhancement to any transaction; or

(2) Pledged to a central bank or a U.S. government-sponsored enterprise, to the extent potential credit secured by the asset is not currently extended by such central bank or U.S. government-sponsored enterprise or any of its consolidated subsidiaries.

(iii) *Calculating the amount of a highly liquid asset.* In calculating the amount of a highly liquid asset included in the liquidity buffer, the covered savings and loan holding company must discount the fair market value of the asset to reflect any credit risk and market price volatility of the asset.

(iv) *Operational requirements.* With respect to the liquidity buffer, the bank holding company must:

(A) Establish and implement policies and procedures that require highly liquid assets comprising the liquidity buffer to be under the control of the management function in the covered savings and loan holding company that is charged with managing liquidity risk; and

(B) Demonstrate the capability to monetize a highly liquid asset under each scenario required under section 238.124(a)(3).

(v) *Diversification.* The liquidity buffer must not contain significant concentrations of highly liquid assets by issuer, business sector, region, or other factor related to the covered savings and loan holding company's risk, except with respect to cash and securities issued or guaranteed by the United States, a U.S. government agency, or a U.S. government-sponsored enterprise.

Covered company means a covered savings and loan holding company (other than a foreign banking organization) subject to this subpart.

Planning horizon means the period of at least nine consecutive quarters, beginning on the first day of a stress test cycle over which the relevant projections extend.

Pre-provision net revenue means the sum of net interest income and noninterest income less expenses before adjusting for loss provisions.

Provision for credit losses means:

(1) With respect to a covered company that has adopted the current expected credit losses methodology under GAAP, the provision for credit losses, as would be reported by the covered company on the FR Y-9C in the current stress test cycle; and,

(2) With respect to a covered company that has not adopted the current expected credit losses methodology under GAAP, the provision for loan and lease losses as would be reported by the covered company on the FR Y-9C in the current stress test cycle.

Regulatory capital ratio means a capital ratio for which the Board has established minimum requirements for the covered savings and loan holding company by regulation or order, including, as applicable, the company's regulatory capital ratios calculated under 12 CFR part 217 and the deductions required under 12 CFR 248.12; except that the company shall not use the advanced approaches to calculate its regulatory capital ratios.

Scenarios are those sets of conditions that affect the U.S. economy or the financial condition of a covered company that the Board determines are appropriate for use in the supervisory stress tests, including, but not limited to, baseline and severely adverse scenarios.

Severely adverse scenario means a set of conditions that affect the U.S. economy or the financial condition of a covered company and that overall are significantly more severe than those associated with the baseline scenario and may include trading or other additional components.

Stress test cycle means the period beginning on January 1 of a calendar year and ending on December 31 of that year.

4-760.14

SUBPART O—SUPERVISORY STRESS TEST REQUIREMENTS FOR COVERED SAVINGS AND LOAN HOLDING COMPANIES

SECTION 238.130—Definitions

For purposes of this subpart, the following definitions apply:

Advanced approaches means the risk-weighted assets calculation methodologies at 12 CFR part 217, subpart E, as applicable.

Baseline scenario means a set of conditions that affect the U.S. economy or the financial condition of a covered company and that reflect the consensus views of the economic and financial outlook.

Subsidiary has the same meaning as in section 225.2(o) of this chapter.

4-760.141

SECTION 238.131—Applicability

(a) *Scope.*

(1) *Applicability.* Except as provided in paragraph (b) of this section, this subpart applies to any covered savings and loan holding company with average total consolidated assets of \$100 billion or more.

(2) *Ongoing applicability.* A covered savings and loan holding company (including any successor company) that is subject to any requirement in this subpart shall remain subject to any such requirement unless and until its total consolidated assets fall below \$100 billion for each of four consecutive quarters, effective on the as-of date of the fourth consecutive FR Y-9C.

(b) *Transitional arrangements.*

(1) A covered savings and loan holding company that becomes a covered company on or before September 30 of a calendar year must comply with the requirements of this subpart beginning on January 1 of the second calendar year after the covered savings and loan holding company becomes a covered company, unless that time is extended by the Board in writing.

(2) A covered savings and loan holding company that becomes a covered company after September 30 of a calendar year must comply with the requirements of this subpart beginning on January 1 of the third calendar year after the covered savings and loan holding company becomes a covered company, unless that time is extended by the Board in writing.

4-760.142

SECTION 238.132—Analysis Conducted by the Board

(a) *In general.*

(1) The Board will conduct an analysis of each covered company's capital, on a total consolidated basis, taking into account all relevant exposures and activities of that

covered company, to evaluate the ability of the covered company to absorb losses in specified economic and financial conditions.

(2) The analysis will include an assessment of the projected losses, net income, and *pro forma* capital levels and regulatory capital ratios and other capital ratios for the covered company and use such analytical techniques that the Board determines are appropriate to identify, measure, and monitor risks of the covered company.

(3) In conducting the analyses, the Board will coordinate with the appropriate primary financial regulatory agencies and the Federal Insurance Office, as appropriate.

(4) In conducting the analysis, the Board will not incorporate changes to a firm's business plan that are likely to have a material impact on the covered company's capital adequacy and funding profile in its projections of losses, net income, *pro forma* capital levels, and capital ratios.

(b) *Economic and financial scenarios related to the Board's analysis.* The Board will conduct its analysis using a minimum of two different scenarios, including a baseline scenario and a severely adverse scenario. The Board will notify covered companies of the scenarios that the Board will apply to conduct the analysis for each stress test cycle to which the covered company is subject by no later than February 15 of that year, except with respect to trading or any other components of the scenarios and any additional scenarios that the Board will apply to conduct the analysis, which will be communicated by no later than March 1 of that year.

(c) *Frequency of analysis conducted by the Board.*

(1) *General.* Except as provided in paragraph (c)(2) of this section, the Board will conduct its analysis of a covered company according to the frequency in Table 1 to section 238.132(c)(1).

Table 1 to section 238.132(c)(1)

If the covered company is a	Then the Board will conduct its analysis
Category II savings and loan holding company	Annually
Category III savings and loan holding company	Annually
Category IV savings and loan holding company	Biennially, occurring in each year ending in an even number

(2) *Change in frequency.*

(i) The Board may conduct a stress test of a covered company on a more or less frequent basis than would be required under paragraph (c)(1) of this section based on the company's financial condition, size, complexity, risk profile, scope of operations, or activities, or risks to the U.S. economy.

(ii) A Category IV savings and loan holding company may elect to have the Board conduct a stress test with respect to the company in a year ending in an odd number by providing notice to the Board and the appropriate Federal Reserve Bank by January 15 of that year.

(3) *Notice and response.*

(i) *Notification of change in frequency.* If the Board determines to change the frequency of the stress test under paragraph (c)(2), the Board will notify the company in writing and provide a discussion of the basis for its determination.

(ii) *Request for reconsideration and Board response.* Within 14 calendar days of receipt of a notification under paragraph (c)(2) of this section, a covered company may request in writing that the Board reconsider the requirement to conduct a stress test on a more or less frequent basis than would be required under paragraph (c)(1) of this section. A covered company's request for reconsideration must include an explanation as to why the request for reconsideration should be granted. The Board will respond in writing within 14 calendar days of receipt of the company's request.

4-760.143**SECTION 238.133—Data and Information Required to Be Submitted in Support of the Board's Analyses**

(a) *Regular submissions.* Each covered company must submit to the Board such data, on a consolidated basis, that the Board determines is necessary in order for the Board to derive the relevant *pro forma* estimates of the covered company over the planning horizon under the scenarios described in section 238.132(b).

(b) *Additional submissions required by the Board.* The Board may require a covered company to submit any other information on a consolidated basis that the Board deems necessary in order to:

(1) Ensure that the Board has sufficient information to conduct its analysis under this subpart; and

(2) Project a company's pre-provision net revenue, losses, provision for credit losses, and net income; and *pro forma* capital levels, regulatory capital ratios, and any other capital ratio specified by the Board under the scenarios described in section 238.132(b).

(c) *Confidential treatment of information submitted.* The confidentiality of information submitted to the Board under this subpart and related materials shall be determined in accordance with the Freedom of Information Act (5 U.S.C. 552(b)) and the Board's Rules Regarding Availability of Information (12 CFR part 261).

(d) *Capital action assumptions.* In conducting a stress test under this section, the Board will make the following assumptions regarding a covered company's capital actions over the planning horizon:

(1) The covered company will not pay any

dividends on any instruments that qualify as common equity tier 1 capital;

(2) The covered company will make payments on instruments that qualify as additional tier 1 capital or tier 2 capital equal to the stated dividend, interest, or principal due on such instrument;

(3) The covered company will not make a redemption or repurchase of any capital instrument that is eligible for inclusion in the numerator of a regulatory capital ratio; and

(4) The covered company will not make any issuances of common stock or preferred stock.

4-760.144

SECTION 238.134—Review of the Board’s Analysis; Publication of Summary Results

(a) *Review of results.* Based on the results of the analysis conducted under this subpart, the Board will conduct an evaluation to determine whether the covered company has the capital, on a total consolidated basis, necessary to absorb losses and continue its operation by maintaining ready access to funding, meeting its obligations to creditors and other counterparties, and continuing to serve as a credit intermediary under baseline and severely adverse scenarios, and any additional scenarios.

(b) *Publication of results by the Board.*

(1) The Board will publicly disclose a summary of the results of the Board’s analyses of a covered company by June 30 of the calendar year in which the stress test was conducted pursuant to section 238.132.

(2) The Board will notify companies of the date on which it expects to publicly disclose a summary of the Board’s analyses pursuant to paragraph (b)(1) of this section at least 14 calendar days prior to the expected disclosure date.

4-760.145

SECTION 238.135—Corporate Use of Stress Test Results

The board of directors and senior management

of each covered company must consider the results of the analysis conducted by the Board under this subpart, as appropriate:

(a) As part of the covered company’s capital plan and capital planning process, including when making changes to the covered company’s capital structure (including the level and composition of capital); and

(b) When assessing the covered company’s exposures, concentrations, and risk positions.

4-760.15

SUBPART P—COMPANY-RUN STRESS TEST REQUIREMENTS FOR SAVINGS AND LOAN HOLDING COMPANIES

SECTION 238.140—Authority and Purpose

(a) *Authority.* 12 U.S.C. 1467; 1467a, 1818, 5361, 5365.

(b) *Purpose.* This subpart establishes the requirement for a covered company to conduct stress tests. This subpart also establishes definitions of stress test and related terms, methodologies for conducting stress tests, and reporting and disclosure requirements.

4-760.151

SECTION 238.141—Definitions

For purposes of this subpart, the following definitions apply:

Advanced approaches means the risk-weighted assets calculation methodologies at 12 CFR part 217, subpart E, as applicable.

Baseline scenario means a set of conditions that affect the U.S. economy or the financial condition of a covered company and that reflect the consensus views of the economic and financial outlook.

Capital action means any issuance or redemption of a debt or equity capital instrument, any capital distribution, and any similar action that the Federal Reserve determines could impact a savings and loan holding company’s consolidated capital.

Covered company means:

- (1) A Category II savings and loan holding company;
- (2) A Category III savings and loan holding company; or
- (3) A savings and loan holding company with average total consolidated assets of greater than \$250 billion.

Planning horizon means the period of at least nine consecutive quarters, beginning on the first day of a stress test cycle over which the relevant projections extend.

Pre-provision net revenue means the sum of net interest income and non-interest income less expenses before adjusting for loss provisions.

Provision for credit losses means:

- (1) With respect to a covered company that has adopted the current expected credit losses methodology under GAAP, the provision for credit losses, as would be reported by the covered company on the FR Y-9C in the current stress test cycle; and
- (2) With respect to a covered company that has not adopted the current expected credit losses methodology under GAAP, the provision for loan and lease losses as would be reported by the covered company on the FR Y-9C in the current stress test cycle.

Regulatory capital ratio means a capital ratio for which the Board has established minimum requirements for the savings and loan holding company by regulation or order, including, as applicable, the company's regulatory capital ratios calculated under 12 CFR part 217 and the deductions required under 12 CFR 248.12; except that the company shall not use the advanced approaches to calculate its regulatory capital ratios.

Scenarios are those sets of conditions that affect the U.S. economy or the financial condition of a covered company that the Board determines are appropriate for use in the company-run stress tests, including, but not limited to, baseline and severely adverse scenarios.

Severely adverse scenario means a set of conditions that affect the U.S. economy or the financial condition of a covered company and that overall are significantly more severe than those associated with the baseline scenario and may include trading or other additional components.

Stress test means a process to assess the potential impact of scenarios on the consolidated earnings, losses, and capital of a covered company over the planning horizon, taking into account its current condition, risks, exposures, strategies, and activities.

Stress test cycle means the period beginning on January 1 of a calendar year and ending on December 31 of that year.

4-760.152

SECTION 238.142—Applicability

(a) *Scope.*

(1) *Applicability.* Except as provided in paragraphs (a)(3) and (b) of this section, this subpart applies to any covered company, which includes:

- (i) Any Category II savings and loan holding company;
- (ii) Any Category III savings and loan holding company; and
- (iii) Any savings and loan holding company with average total consolidated assets of greater than \$250 billion.

(2) *Ongoing applicability.* A savings and loan holding company (including any successor company) that is subject to any requirement in this subpart shall remain subject to any such requirement unless and until the savings and loan holding company:

- (i) Is not a Category II savings and loan holding company;
- (ii) Is not a Category III savings and loan holding company; and
- (iii) Has \$250 billion or less in total consolidated assets in each of four consecutive calendar quarters.

(3) *Insurance savings and loan holding companies.* Notwithstanding any other provision of this paragraph (a), this subpart does not apply to a covered company that is subject to part 217, subpart J, of this chapter.

(b) *Transitional arrangements.*

(1) A savings and loan holding company that is subject to minimum capital requirements and that becomes a covered company on or before September 30 of a calendar year must comply with the requirements of this subpart beginning on January 1 of the

second calendar year after the savings and loan holding company becomes a covered company, unless that time is extended by the Board in writing.

(2) A savings and loan holding company that is subject to minimum capital requirements and that becomes a covered company after September 30 of a calendar year must comply with the requirements of this subpart beginning on January 1 of the third calendar year after the savings and loan holding company becomes a covered company, unless that time is extended by the Board in writing.

4-760.153

SECTION 238.143—Stress Test

(a) *Stress test requirement.*

(1) *In general.* A covered company must conduct a stress test as required under this subpart.

(2) *Frequency.*

(i) *General.* Except as provided in paragraph (a)(2)(ii) of this section, a covered company must conduct a stress test according to the frequency in Table 1 of section 238.143(a)(2)(i).

Table 1 of section 238.143(a)(2)(i)

If the covered company is a	Then the stress test must be conducted
Category II savings and loan holding company	Annually, by April 5 of each calendar year based on data as of December 31 of the preceding calendar year, unless the time or the as-of date is extended by the Board in writing.
Category III savings and loan holding company	Biennially, by April 5 of each calendar year ending in an even number, based on data as of December 31 of the preceding calendar year, unless the time or the as-of date is extended by the Board in writing.
Savings and loan holding company that is not: (A) A Category II savings and loan holding company; or (B) A Category III savings and loan holding company.	Periodically, as determined by rule or order.

(ii) *Change in frequency.* The Board may require a covered company to conduct a stress test on a more or less frequent basis than would be required under paragraphs (a)(2)(i) of this section based on the company’s financial condition, size, complexity, risk profile, scope of operations, or activities, or risks to the U.S. economy.

(3) *Notice and response.*

(i) *Notification of change in frequency.* If the Board requires a covered company to change the frequency of the stress test under paragraph (a)(2)(ii) of this section, the Board will notify the company in writing and provide a discussion of the basis for its determination.

(ii) *Request for reconsideration and Board response.* Within 14 calendar days of receipt of a notification under this paragraph (a)(3), a covered company may

request in writing that the Board reconsider the requirement to conduct a stress test on a more or less frequent basis than would be required under paragraph (a)(2)(i) of this section. A covered company’s request for reconsideration must include an explanation as to why the request for reconsideration should be granted. The Board will respond in writing within 14 calendar days of receipt of the company’s request.

(b) *Scenarios provided by the Board.*

(1) *In general.* In conducting a stress test under this section, a covered company must, at a minimum, use the scenarios provided by the Board. Except as provided in paragraphs (b)(2) and (3) of this section, the Board will provide a description of the scenarios to each covered company no later than February 15 of the calendar year in

which the stress test is performed pursuant to this section.

(2) *Additional components.*

(i) The Board may require a covered company with significant trading activity, as determined by the Board and specified in the Capital Assessments and Stress Testing report (FR Y-14), to include a trading and counterparty component in its severely adverse scenario in the stress test required by this section. The data used in this component must be as-of a date selected by the Board between October 1 of the previous calendar year and March 1 of the calendar year in which the stress test is performed pursuant to this section, and the Board will communicate the as-of date and a description of the component to the company no later than March 1 of the calendar year in which the stress test is performed pursuant to this section.

(ii) The Board may require a covered company to include one or more additional components in its severely adverse scenario in the stress test required by this section based on the company's financial condition, size, complexity, risk profile, scope of operations, or activities, or risks to the U.S. economy.

(3) *Additional scenarios.* The Board may require a covered company to use one or more additional scenarios in the stress test required by this section based on the company's financial condition, size, complexity, risk profile, scope of operations, or activities, or risks to the U.S. economy.

(4) *Notice and response.*

(i) *Notification of additional component.* If the Board requires a covered company to include one or more additional components in its severely adverse scenario under paragraph (b)(2) of this section or to use one or more additional scenarios under paragraph (b)(3) of this section, the Board will notify the company in writing and include a discussion of the basis for its determination. The Board will provide such notification no later than December 31 of the preceding calendar year. The notification will include a general description of the additional component(s)

or additional scenario(s) and the basis for requiring the company to include the additional component(s) or additional scenario(s).

(ii) *Request for reconsideration and Board response.* Within 14 calendar days of receipt of a notification under this paragraph, the covered company may request in writing that the Board reconsider the requirement that the company include the additional component(s) or additional scenario(s), including an explanation as to why the request for reconsideration should be granted. The Board will respond in writing within 14 calendar days of receipt of the company's request.

(iii) *Description of component.* The Board will provide the covered company with a description of any additional component(s) or additional scenario(s) by March 1 of the calendar year in which the stress test is performed pursuant to this section.

4-760.154

SECTION 238.144—Methodologies and Practices

(a) *Potential impact on capital.* In conducting a stress test under section 238.143, for each quarter of the planning horizon, a covered company must estimate the following for each scenario required to be used:

(1) Losses, pre-provision net revenue, provision for credit losses, and net income; and
 (2) The potential impact on *pro forma* regulatory capital levels and *pro forma* capital ratios (including regulatory capital ratios and any other capital ratios specified by the Board), and in so doing must:

(i) Incorporate the effects of any capital actions over the planning horizon and maintenance of an allowance for credit losses appropriate for credit exposures throughout the planning horizon; and

(ii) Exclude the impacts of changes to a firm's business plan that are likely to have a material impact on the covered company's capital adequacy and funding profile.

(b) *Assumptions regarding capital actions.* In

conducting a stress test under section 238.143, a covered company is required to make the following assumptions regarding its capital actions over the planning horizon:

- (1) The covered company will not pay any dividends on any instruments that qualify as common equity tier 1 capital;
- (2) The covered company will make payments on instruments that qualify as additional tier 1 capital or tier 2 capital equal to the stated dividend, interest, or principal due on such instrument;
- (3) The covered company will not make a redemption or repurchase of any capital instrument that is eligible for inclusion in the numerator of a regulatory capital ratio; and
- (4) The covered company will not make any issuances of common stock or preferred stock.

(c) *Controls and oversight of stress testing processes.*

(1) *In general.* The senior management of a covered company must establish and maintain a system of controls, oversight, and documentation, including policies and procedures, that are designed to ensure that its stress testing processes are effective in meeting the requirements in this subpart. These policies and procedures must, at a minimum, describe the covered company's stress testing practices and methodologies, and processes for validating and updating the company's stress test practices and methodologies consistent with applicable laws and regulations.

(2) *Oversight of stress testing processes.* The board of directors, or a committee thereof, of a covered company must review and approve the policies and procedures of the stress testing processes as frequently as economic conditions or the condition of the covered company may warrant, but no less than each year a stress test is conducted. The board of directors and senior management of the covered company must receive a summary of the results of any stress test conducted under this subpart.

(3) *Role of stress testing results.* The board of directors and senior management of each covered company must consider the results

of the analysis it conducts under this subpart, as appropriate:

- (i) As part of the covered company's capital plan and capital planning process, including when making changes to the covered company's capital structure (including the level and composition of capital); and
- (ii) When assessing the covered company's exposures, concentrations, and risk positions.

4-760.155

SECTION 238.145—Reports of Stress Test Results

(a) *Reports to the Board of stress test results.* A covered company must report the results of the stress test required under section 238.143 to the Board in the manner and form prescribed by the Board. Such results must be submitted by April 5 of the calendar year in which the stress test is performed pursuant to section 238.143, unless that time is extended by the Board in writing.

(b) *Confidential treatment of information submitted.* The confidentiality of information submitted to the Board under this subpart and related materials shall be determined in accordance with applicable exemptions under the Freedom of Information Act (5 U.S.C. 552(b)) and the Board's Rules Regarding Availability of Information (12 CFR part 261).

4-760.156

SECTION 238.146—Disclosure of Stress Test Results

(a) *Public disclosure of results.*

(1) *In general.*

- (i) A covered company that is subject to a supervisory stress test under 12 CFR 238.132 must publicly disclose a summary of the results of the stress test required under section 238.143 within the period that is 15 calendar days after the Board publicly discloses the results of its supervisory stress test of the covered company pursuant to section 238.134, un-

less that time is extended by the Board in writing; and

(ii) A covered company that is not subject to a supervisory stress test under section 238.132 must publicly disclose a summary of the results of the stress test required under section 238.143 in the period beginning on June 15 and ending on June 30 in the year in which the stress test is conducted, unless that time is extended by the Board in writing.

(2) *Disclosure method.* The summary required under this section may be disclosed on the website of a covered company, or in any other forum that is reasonably accessible to the public.

(b) *Summary of results.* The summary results must, at a minimum, contain the following information regarding the severely adverse scenario:

(1) A description of the types of risks included in the stress test;

(2) A general description of the methodologies used in the stress test, including those employed to estimate losses, revenues, provision for credit losses, and changes in capital positions over the planning horizon;

(3) Estimates of—

(i) Pre-provision net revenue and other revenue;

(ii) Provision for credit losses, realized losses or gains on available-for-sale and held-to-maturity securities, trading and counterparty losses, and other losses or gains;

(iii) Net income before taxes;

(iv) Loan losses (dollar amount and as a percentage of average portfolio balance) in the aggregate and by subportfolio, including: Domestic closed-end first-lien mortgages; domestic junior lien mortgages and home equity lines of credit; commercial and industrial loans; commercial real estate loans; credit card exposures; other consumer loans; and all other loans; and

(v) *Pro forma* regulatory capital ratios and any other capital ratios specified by the Board; and

(4) An explanation of the most significant

causes for the changes in regulatory capital ratios; and

(5) With respect to any depository institution subsidiary that is subject to stress testing requirements pursuant to 12 U.S.C. 5365(i)(2), 12 CFR part 46 (OCC), or 12 CFR part 325, subpart C (FDIC), changes over the planning horizon in regulatory capital ratios and any other capital ratios specified by the Board and an explanation of the most significant causes for the changes in regulatory capital ratios.

(c) *Content of results.*

(1) The following disclosures required under paragraph (b) of this section must be on a cumulative basis over the planning horizon:

(i) Pre-provision net revenue and other revenue;

(ii) Provision for credit losses, realized losses or gains on available-for-sale and held-to-maturity securities, trading and counterparty losses, and other losses or gains;

(iii) Net income before taxes; and

(iv) Loan losses in the aggregate and by subportfolio.

(2) The disclosure of *pro forma* regulatory capital ratios and any other capital ratios specified by the Board that is required under paragraph (b) of this section must include the beginning value, ending value, and minimum value of each ratio over the planning horizon.

4-760.16

SUBPART Q—SINGLE COUNTERPARTY CREDIT LIMITS FOR COVERED SAVINGS AND LOAN HOLDING COMPANIES

SECTION 238.150—Applicability and General Provisions

(a) *In general.* This subpart establishes single counterparty credit limits for a covered company. For purposes of this subpart, covered company means: (i) A Category II savings and loan holding company; or (ii) A Category III savings and loan holding company.

(b) *Credit exposure limits.*

(1) Section 238.152 establishes credit exposure limits for a covered company.

(2) A covered company is required to calculate its aggregate net credit exposure, gross credit exposure, and net credit exposure to a counterparty using the methods in this subpart.

(c) *Applicability of this subpart.*

(1) A covered company that becomes subject to this subpart must comply with the requirements of this subpart beginning on the first day of the ninth calendar quarter after it becomes a covered company, unless that time is accelerated or extended by the Board in writing.

(d) *Cessation of requirements.* Any company that becomes a covered company will remain subject to the requirements of this subpart unless and until it is not a Category II savings and loan holding company or a Category III savings and loan holding company.

4-760.161

SECTION 238.151—Definitions

Unless defined in this section, terms that are set forth in section 238.2 and used in this subpart have the definitions assigned in section 238.2. For purposes of this subpart:

(a) *Adjusted market value* means:

(1) With respect to the value of cash, securities, or other eligible collateral transferred by the covered company to a counterparty, the sum of:

- (i) The market value of the cash, securities, or other eligible collateral; and
- (ii) The product of the market value of the securities or other eligible collateral multiplied by the applicable collateral haircut in Table 1 to section 217.132 of this chapter; and

(2) With respect to cash, securities, or other eligible collateral received by the covered company from a counterparty:

- (i) The market value of the cash, securities, or other eligible collateral; *minus*
- (ii) The market value of the securities or other eligible collateral multiplied by the applicable collateral haircut in Table 1 to section 217.132 of this chapter.

(3) Prior to calculating the adjusted market value pursuant to paragraphs (a)(1) and (2) of this section, with regard to a transaction that meets the definition of “repo-style transaction” in section 217.2 of this chapter, the covered company would first multiply the applicable collateral haircuts in Table 1 to section 217.132 of this chapter by the square root of $\frac{1}{2}$.

(b) *Affiliate* means, with respect to a company:

(1) Any subsidiary of the company and any other company that is consolidated with the company under applicable accounting standards; or

(2) For a company that is not subject to principles or standards referenced in paragraph (b)(1) of this section, any subsidiary of the company and any other company that would be consolidated with the company, if consolidation would have occurred if such principles or standards had applied.

(c) *Aggregate net credit exposure* means the sum of all net credit exposures of a covered company and all of its subsidiaries to a single counterparty as calculated under this subpart.

(d) *Bank-eligible investments* means investment securities that a national bank is permitted to purchase, sell, deal in, underwrite, and hold under 12 U.S.C. 24 (Seventh) and 12 CFR part 1.

(e) *Counterparty* means, with respect to a credit transaction:

(1) With respect to a natural person, the natural person, and, if the credit exposure of the covered company to such natural person exceeds 5 percent of the covered company’s tier 1 capital, the natural person and members of the person’s immediate family collectively;

(2) With respect to any company that is not a subsidiary of the covered company, the company and its affiliates collectively;

(3) With respect to a State, the State and all of its agencies, instrumentalities, and political subdivisions (including any municipalities) collectively;

(4) With respect to a foreign sovereign entity that is not assigned a zero percent risk weight under the standardized approach in

12 CFR part 217, subpart D, the foreign sovereign entity and all of its agencies and instrumentalities (but not including any political subdivision) collectively; and

(5) With respect to a political subdivision of a foreign sovereign entity such as a state, province, or municipality, any political subdivision of the foreign sovereign entity and all of such political subdivision's agencies and instrumentalities, collectively.¹

(f) *Covered company* is defined in section 238.150(a)

(g) *Credit derivative* has the same meaning as in section 217.2 of this chapter.

(h) *Credit transaction* means, with respect to a counterparty:

(1) Any extension of credit to the counterparty, including loans, deposits, and lines of credit, but excluding uncommitted lines of credit;

(2) Any repurchase agreement or reverse repurchase agreement with the counterparty;

(3) Any securities lending or securities borrowing transaction with the counterparty;

(4) Any guarantee, acceptance, or letter of credit (including any endorsement, confirmed letter of credit, or standby letter of credit) issued on behalf of the counterparty;

(5) Any purchase of securities issued by or other investment in the counterparty;

(6) Any credit exposure to the counterparty in connection with a derivative transaction between the covered company and the counterparty;

(7) Any credit exposure to the counterparty in connection with a credit derivative or equity derivative between the covered company and a third party, the reference asset of which is an obligation or equity security of, or equity investment in, the counterparty; and

(8) Any transaction that is the functional equivalent of the above, and any other similar transaction that the Board, by regulation or order, determines to be a credit transaction for purposes of this subpart.

¹ In addition, under section 238.156, under certain circumstances, a covered company is required to aggregate its net credit exposure to one or more counterparties for all purposes under this subpart.

(i) *Depository institution* has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)).

(j) *Derivative transaction* means any transaction that is a contract, agreement, swap, warrant, note, or option that is based, in whole or in part, on the value of, any interest in, or any quantitative measure or the occurrence of any event relating to, one or more commodities, securities, currencies, interest or other rates, indices, or other assets.

(k) *Eligible collateral* means collateral in which, notwithstanding the prior security interest of any custodial agent, the covered company has a perfected, first priority security interest (or the legal equivalent thereof, if outside of the United States), with the exception of cash on deposit, and is in the form of:

(1) Cash on deposit with the covered company or a subsidiary of the covered company (including cash in foreign currency or U.S. dollars held for the covered company by a custodian or trustee, whether inside or outside of the United States);

(2) Debt securities (other than mortgage- or asset-backed securities and securitization securities, unless those securities are issued by a U.S. government-sponsored enterprise) that are bank-eligible investments and that are investment grade, except for any debt securities issued by the covered company or any subsidiary of the covered company;

(3) Equity securities that are publicly traded, except for any equity securities issued by the covered company or any subsidiary of the covered company;

(4) Convertible bonds that are publicly traded, except for any convertible bonds issued by the covered company or any subsidiary of the covered company; or

(5) Gold bullion.

(l) *Eligible credit derivative* means a single-name credit derivative or a standard, non-tranched index credit derivative, provided that:

(1) The contract meets the requirements of an eligible guarantee and has been confirmed by the protection purchaser and the protection provider;

(2) Any assignment of the contract has been confirmed by all relevant parties;

(3) If the credit derivative is a credit default swap, the contract includes the following credit events:

- (i) Failure to pay any amount due under the terms of the reference exposure, subject to any applicable minimal payment threshold that is consistent with standard market practice and with a grace period that is closely in line with the grace period of the reference exposure; and
- (ii) Receivership, insolvency, liquidation, conservatorship, or inability of the reference exposure issuer to pay its debts, or its failure or admission in writing of its inability generally to pay its debts as they become due, and similar events;

(4) The terms and conditions dictating the manner in which the contract is to be settled are incorporated into the contract;

(5) If the contract allows for cash settlement, the contract incorporates a robust valuation process to estimate loss reliably and specifies a reasonable period for obtaining post-credit event valuations of the reference exposure;

(6) If the contract requires the protection purchaser to transfer an exposure to the protection provider at settlement, the terms of at least one of the exposures that is permitted to be transferred under the contract provide that any required consent to transfer may not be unreasonably withheld; and

(7) If the credit derivative is a credit default swap, the contract clearly identifies the parties responsible for determining whether a credit event has occurred, specifies that this determination is not the sole responsibility of the protection provider, and gives the protection purchaser the right to notify the protection provider of the occurrence of a credit event.

(m) *Eligible equity derivative* means an equity derivative, provided that:

- (1) The derivative contract has been confirmed by all relevant parties;
- (2) Any assignment of the derivative contract has been confirmed by all relevant parties; and
- (3) The terms and conditions dictating the

manner in which the derivative contract is to be settled are incorporated into the contract.

(n) *Eligible guarantee* has the same meaning as in section 217.2 of this chapter.

(o) *Eligible guarantor* has the same meaning as in section 217.2 of this chapter.

(p) *Equity derivative* has the same meaning as “equity derivative contract” in section 217.2 of this chapter.

(q) *Exempt counterparty* means an entity that is identified as exempt from the requirements of this subpart under section 238.157, or that is otherwise excluded from this subpart, including any sovereign entity assigned a zero percent risk weight under the standardized approach in 12 CFR part 217, subpart D.

(r) *Financial entity* means:

- (1) (i) A bank holding company or an affiliate thereof; a savings and loan holding company; a U.S. intermediate holding company established or designated pursuant to 12 CFR 252.153; or a nonbank financial company supervised by the Board;

- (ii) A depository institution as defined in section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)); an organization that is organized under the laws of a foreign country and that engages directly in the business of banking outside the United States; a federal credit union or state credit union as defined in section 2 of the Federal Credit Union Act (12 U.S.C. 1752(1) and (6)); a national association, state member bank, or state non-member bank that is not a depository institution; an institution that functions solely in a trust or fiduciary capacity as described in section 2(c)(2)(D) of the Bank Holding Company Act (12 U.S.C. 1841(c)(2)(D)); an industrial loan company, an industrial bank, or other similar institution described in section 2(c)(2)(H) of the Bank Holding Company Act (12 U.S.C. 1841(c)(2)(H));

- (iii) An entity that is state-licensed or registered as:

- (A) A credit or lending entity, includ-

ing a finance company; money lender; installment lender; consumer lender or lending company; mortgage lender, broker, or bank; motor vehicle title pledge lender; payday or deferred deposit lender; premium finance company; commercial finance or lending company; or commercial mortgage company; except entities registered or licensed solely on account of financing the entity's direct sales of goods or services to customers;

(B) A money services business, including a check casher; money transmitter; currency dealer or exchange; or money order or traveler's check issuer;

(iv) Any person registered with the Commodity Futures Trading Commission as a swap dealer or major swap participant pursuant to the Commodity Exchange Act of 1936 (7 U.S.C. 1 *et seq.*), or an entity that is registered with the U.S. Securities and Exchange Commission as a security-based swap dealer or a major security-based swap participant pursuant to the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*);

(v) A securities holding company as defined in section 618 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 1850a); a broker or dealer as defined in sections 3(a)(4) and 3(a)(5) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4)-(5)); an investment adviser as defined in section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)); an investment company registered with the U.S. Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*); or a company that has elected to be regulated as a business development company pursuant to section 54(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-53(a));

(vi) A private fund as defined in section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)); an entity that would be an investment company under section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a-3) but for section 3(c)(5)(C); or an entity that is deemed

not to be an investment company under section 3 of the Investment Company Act of 1940 pursuant to Investment Company Act Rule 3a-7 (17 CFR 270.3a-7) of the U.S. Securities and Exchange Commission;

(vii) A commodity pool, a commodity pool operator, or a commodity trading advisor as defined, respectively, in sections 1a(10), 1a(11), and 1a(12) of the Commodity Exchange Act of 1936 (7 U.S.C. 1a(10), 1a(11), and 1a(12)); a floor broker, a floor trader, or introducing broker as defined, respectively, in sections 1a(22), 1a(23) and 1a(31) of the Commodity Exchange Act of 1936 (7 U.S.C. 1a(22), 1a(23), and 1a(31)); or a futures commission merchant as defined in section 1a(28) of the Commodity Exchange Act of 1936 (7 U.S.C. 1a(28));

(viii) An employee benefit plan as defined in paragraphs (3) and (32) of section 3 of the Employee Retirement Income and Security Act of 1974 (29 U.S.C. 1002);

(ix) An entity that is organized as an insurance company, primarily engaged in writing insurance or reinsuring risks underwritten by insurance companies, or is subject to supervision as such by a State insurance regulator or foreign insurance regulator;

(x) Any designated financial market utility, as defined in section 803 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5462); and

(xi) An entity that would be a financial entity described in paragraphs (r)(1)(i) through (x) of this section, if it were organized under the laws of the United States or any State thereof; and

(2) Provided that, for purposes of this subpart, "financial entity" does not include any counterparty that is a foreign sovereign entity or multilateral development bank.

(s) *Foreign sovereign entity* means a sovereign entity other than the United States government and the entity's agencies, departments, ministries, and central bank collectively.

(t) *Gross credit exposure* means, with respect to any credit transaction, the credit exposure of the covered company before adjusting, pursuant to section 238.154, for the effect of any eligible collateral, eligible guarantee, eligible credit derivative, eligible equity derivative, other eligible hedge, and any unused portion of certain extensions of credit.

(u) *Immediate family* means the spouse of an individual, the individual's minor children, and any of the individual's children (including adults) residing in the individual's home.

(v) *Intraday credit exposure* means credit exposure of a covered company to a counterparty that by its terms is to be repaid, sold, or terminated by the end of its business day in the United States.

(w) *Investment grade* has the same meaning as in section 217.2 of this chapter.

(x) *Multilateral development bank* has the same meaning as in section 217.2 of this chapter.

(y) *Net credit exposure* means, with respect to any credit transaction, the gross credit exposure of a covered company and all of its subsidiaries calculated under section 238.153, as adjusted in accordance with section 238.154.

(z) *Qualifying central counterparty* has the same meaning as in section 217.2 of this chapter.

(aa) *Qualifying master netting agreement* has the same meaning as in section 217.2 of this chapter.

(bb) *Securities financing transaction* means any repurchase agreement, reverse repurchase agreement, securities borrowing transaction, or securities lending transaction.

(cc) *Short sale* means any sale of a security which the seller does not own or any sale which is consummated by the delivery of a security borrowed by, or for the account of, the seller.

(dd) *Sovereign entity* means a central national government (including the U.S. government) or an agency, department, ministry, or central bank, but not including any political subdivision such as a state, province, or municipality.

(ee) *Subsidiary*. A company is a subsidiary of another company if:

(1) The company is consolidated by the other company under applicable accounting standards; or

(2) For a company that is not subject to principles or standards referenced in paragraph (ee)(1) of this section, consolidation would have occurred if such principles or standards had applied.

(ff) *Tier 1 capital* means common equity tier 1 capital and additional tier 1 capital, as defined in 12 CFR part 217 and as reported by the covered savings and loan holding company on the most recent FR Y-9C report on a consolidated basis.

(gg) *Total consolidated assets*. A company's total consolidated assets are determined based on:

(1) The average of the company's total consolidated assets in the four most recent consecutive quarters as reported quarterly on the FR Y-9C; or

(2) If the company has not filed an FR Y-9C for each of the four most recent consecutive quarters, the average of the company's total consolidated assets, as reported on the company's FR Y-9C, for the most recent quarter or consecutive quarters, as applicable.

4-760.162

SECTION 238.152—Credit Exposure Limits

General limit on aggregate net credit exposure. No covered company may have an aggregate net credit exposure to any counterparty that exceeds 25 percent of the tier 1 capital of the covered company.

4-760.163

SECTION 238.153—Gross Credit Exposure

(a) *Calculation of gross credit exposure*. The amount of gross credit exposure of a covered company to a counterparty with respect to a credit transaction is, in the case of:

(1) A deposit of the covered company held

by the counterparty, loan by a covered company to the counterparty, and lease in which the covered company is the lessor and the counterparty is the lessee, equal to the amount owed by the counterparty to the covered company under the transaction.

(2) A debt security or debt investment held by the covered company that is issued by the counterparty, equal to:

(i) The market value of the securities, for trading and available-for-sale securities; and

(ii) The amortized purchase price of the securities or investments, for securities or investments held to maturity.

(3) An equity security held by the covered company that is issued by the counterparty, equity investment in a counterparty, and other direct investments in a counterparty, equal to the market value.

(4) A securities financing transaction must be valued using any of the methods that the covered company is authorized to use under 12 CFR part 217, subparts D and E to value such transactions:

(i) (A) As calculated for each transaction, in the case of a securities financing transaction between the covered company and the counterparty that is not subject to a bilateral netting agreement or does not meet the definition of “repo-style transaction” in section 217.2 of this chapter; or

(B) As calculated for a netting set, in the case of a securities financing transaction between the covered company and the counterparty that is subject to a bilateral netting agreement with that counterparty and meets the definition of “repo-style transaction” in section 217.2 of this chapter;

(ii) For purposes of paragraph (a)(4)(i) of this section, the covered company must:

(A) Assign a value of zero to any security received from the counterparty that does not meet the definition of “eligible collateral” in section 238.151; and

(B) Include the value of securities that are eligible collateral received by the covered company from the counterparty (including any exempt

counterparty), calculated in accordance with paragraphs (a)(4)(i) through (iv) of this section, when calculating its gross credit exposure to the issuer of those securities;

(iii) Notwithstanding paragraphs (a)(4)(i) and (ii) of this section and with respect to each credit transaction, a covered company’s gross credit exposure to a collateral issuer under this paragraph (a)(4) is limited to the covered company’s gross credit exposure to the counterparty on the credit transaction; and

(iv) In cases where the covered company receives eligible collateral from a counterparty in addition to the cash or securities received from that counterparty, the counterparty may reduce its gross credit exposure to that counterparty in accordance with section 238.154(b).

(5) A committed credit line extended by a covered company to a counterparty, equal to the face amount of the committed credit line.

(6) A guarantee or letter of credit issued by a covered company on behalf of a counterparty, equal to the maximum potential loss to the covered company on the transaction.

(7) A derivative transaction must be valued using any of the methods that the covered company is authorized to use under 12 CFR part 217, subparts D and E to value such transactions:

(i) (A) As calculated for each transaction, in the case of a derivative transaction between the covered company and the counterparty, including an equity derivative but excluding a credit derivative described in paragraph (a)(8) of this section, that is not subject to a qualifying master netting agreement; or (B) As calculated for a netting set, in the case of a derivative transaction between the covered company and the counterparty, including an equity derivative but excluding a credit derivative described in paragraph (a)(8) of this section, that is subject to a qualifying master netting agreement.

(ii) In cases where a covered company is required to recognize an exposure to an

eligible guarantor pursuant to section 238.154(d), the covered company must exclude the relevant derivative transaction when calculating its gross exposure to the original counterparty under this section.

(8) A credit derivative between the covered company and a third party where the covered company is the protection provider and the reference asset is an obligation or debt security of the counterparty, equal to the maximum potential loss to the covered company on the transaction.

(b) *Investments in and exposures to securitization vehicles, investment funds, and other special purpose vehicles that are not subsidiaries.* Notwithstanding paragraph (a) of this section, a covered company must calculate pursuant to section 238.155 its gross credit exposure due to any investment in the debt or equity of, and any credit derivative or equity derivative between the covered company and a third party where the covered company is the protection provider and the reference asset is an obligation or equity security of, or equity investment in, a securitization vehicle, investment fund, and other special purpose vehicle that is not a subsidiary of the covered company.

(c) *Attribution rule.* Notwithstanding any other requirement in this subpart, a covered company must treat any transaction with any natural person or entity as a credit transaction with another party, to the extent that the proceeds of the transaction are used for the benefit of, or transferred to, the other party.

4-760.164

SECTION 238.154—Net Credit Exposure

(a) *In general.* For purposes of this subpart, a covered company must calculate its net credit exposure to a counterparty by adjusting its gross credit exposure to that counterparty in accordance with the rules set forth in this section.

(b) *Eligible collateral.*

(1) In computing its net credit exposure to a counterparty for any credit transaction other than a securities financing transaction, a covered company must reduce its gross

credit exposure on the transaction by the adjusted market value of any eligible collateral.

(2) A covered company that reduces its gross credit exposure to a counterparty as required under paragraph (b)(1) of this section must include the adjusted market value of the eligible collateral, when calculating its gross credit exposure to the collateral issuer.

(3) Notwithstanding paragraph (b)(2) of this section, a covered company's gross credit exposure to a collateral issuer under this paragraph (b) is limited to:

- (i) Its gross credit exposure to the counterparty on the credit transaction, or
- (ii) In the case of an exempt counterparty, the gross credit exposure that would have been attributable to that exempt counterparty on the credit transaction if valued in accordance with section 238.153(a).

(c) *Eligible guarantees.*

(1) In calculating net credit exposure to a counterparty for any credit transaction, a covered company must reduce its gross credit exposure to the counterparty by the amount of any eligible guarantee from an eligible guarantor that covers the transaction.

(2) A covered company that reduces its gross credit exposure to a counterparty as required under paragraph (c)(1) of this section must include the amount of eligible guarantees when calculating its gross credit exposure to the eligible guarantor.

(3) Notwithstanding paragraph (c)(2) of this section, a covered company's gross credit exposure to an eligible guarantor with respect to an eligible guarantee under this paragraph (c) is limited to:

- (i) Its gross credit exposure to the counterparty on the credit transaction prior to recognition of the eligible guarantee, or
- (ii) In the case of an exempt counterparty, the gross credit exposure that would have been attributable to that exempt counterparty on the credit transaction prior to recognition of the eligible

guarantee if valued in accordance with section 238.153(a).

(d) *Eligible credit and equity derivatives.*

(1) In calculating net credit exposure to a counterparty for a credit transaction under this section, a covered company must reduce its gross credit exposure to the counterparty by:

(i) In the case of any eligible credit derivative from an eligible guarantor, the notional amount of the eligible credit derivative; or

(ii) In the case of any eligible equity derivative from an eligible guarantor, the gross credit exposure amount to the counterparty (calculated in accordance with section 238.153(a)(7)).

(2) (i) A covered company that reduces its gross credit exposure to a counterparty as provided under paragraph (d)(1) of this section must include, when calculating its net credit exposure to the eligible guarantor, including in instances where the underlying credit transaction would not be subject to the credit limits of section 238.152 (for example, due to an exempt counterparty), either

(A) In the case of any eligible credit derivative from an eligible guarantor, the notional amount of the eligible credit derivative; or

(B) In the case of any eligible equity derivative from an eligible guarantor, the gross credit exposure amount to the counterparty (calculated in accordance with section 238.153(a)(7)).

(ii) Notwithstanding paragraph (d)(2)(i) of this section, in cases where the eligible credit derivative or eligible equity derivative is used to hedge covered positions that are subject to the Board's market risk rule (12 CFR part 217, subpart F) and the counterparty on the hedged transaction is not a financial entity, the amount of credit exposure that a company must recognize to the eligible guarantor is the amount that would be calculated pursuant to section 238.153(a).

(3) Notwithstanding paragraph (d)(2) of this section, a covered company's gross credit exposure to an eligible guarantor with re-

spect to an eligible credit derivative or an eligible equity derivative this paragraph (d) is limited to:

(i) Its gross credit exposure to the counterparty on the credit transaction prior to recognition of the eligible credit derivative or the eligible equity derivative, or

(ii) In the case of an exempt counterparty, the gross credit exposure that would have been attributable to that exempt counterparty on the credit transaction prior to recognition of the eligible credit derivative or the eligible equity derivative if valued in accordance with section 238.153(a).

(e) *Other eligible hedges.* In calculating net credit exposure to a counterparty for a credit transaction under this section, a covered company may reduce its gross credit exposure to the counterparty by the face amount of a short sale of the counterparty's debt security or equity security, provided that:

(1) The instrument in which the covered company has a short position is junior to, or *pari passu* with, the instrument in which the covered company has the long position; and

(2) The instrument in which the covered company has a short position and the instrument in which the covered company has the long position are either both treated as trading or available-for-sale exposures or both treated as held-to-maturity exposures.

(f) *Unused portion of certain extensions of credit.*

(1) In computing its net credit exposure to a counterparty for a committed credit line or revolving credit facility under this section, a covered company may reduce its gross credit exposure by the amount of the unused portion of the credit extension to the extent that the covered company does not have any legal obligation to advance additional funds under the extension of credit and the used portion of the credit extension has been fully secured by eligible collateral.

(2) To the extent that the used portion of a credit extension has been secured by eligible collateral, the covered company may reduce its gross credit exposure by the ad-

justed market value of any eligible collateral received from the counterparty, even if the used portion has not been fully secured by eligible collateral.

(3) To qualify for the reduction in net credit exposure under this paragraph, the credit contract must specify that any used portion of the credit extension must be fully secured by the adjusted market value of any eligible collateral.

(g) *Credit transactions involving exempt counterparties.*

(1) A covered company's credit transactions with an exempt counterparty are not subject to the requirements of this subpart, including but not limited to section 238.152.

(2) Notwithstanding paragraph (g)(1) of this section, in cases where a covered company has a credit transaction with an exempt counterparty and the covered company has obtained eligible collateral from that exempt counterparty or an eligible guarantee or eligible credit or equity derivative from an eligible guarantor, the covered company must include (for purposes of this subpart) such exposure to the issuer of such eligible collateral or the eligible guarantor, as calculated in accordance with the rules set forth in this section, when calculating its gross credit exposure to that issuer of eligible collateral or eligible guarantor.

(h) *Currency mismatch adjustments.* For purposes of calculating its net credit exposure to a counterparty under this section, a covered company must apply, as applicable:

(1) When reducing its gross credit exposure to a counterparty resulting from any credit transaction due to any eligible collateral and calculating its gross credit exposure to an issuer of eligible collateral, pursuant to paragraph (b) of this section, the currency mismatch adjustment approach of section 217.37(c)(3)(ii) of this chapter; and

(2) When reducing its gross credit exposure to a counterparty resulting from any credit transaction due to any eligible guarantee, eligible equity derivative, or eligible credit derivative from an eligible guarantor and calculating its gross credit exposure to an eligible guarantor, pursuant to paragraphs (c) and (d) of this section, the currency

mismatch adjustment approach of section 217.36(f) of this chapter.

(i) *Maturity mismatch adjustments.* For purposes of calculating its net credit exposure to a counterparty under this section, a covered company must apply, as applicable, the maturity mismatch adjustment approach of section 217.36(d) of this chapter:

(1) When reducing its gross credit exposure to a counterparty resulting from any credit transaction due to any eligible collateral or any eligible guarantees, eligible equity derivatives, or eligible credit derivatives from an eligible guarantor, pursuant to paragraphs (b) through (d) of this section, and

(2) In calculating its gross credit exposure to an issuer of eligible collateral, pursuant to paragraph (b) of this section, or to an eligible guarantor, pursuant to paragraphs (c) and (d) of this section; provided that

(3) The eligible collateral, eligible guarantee, eligible equity derivative, or eligible credit derivative subject to paragraph (i)(1) of this section:

(i) Has a shorter maturity than the credit transaction;

(ii) Has an original maturity equal to or greater than one year;

(iii) Has a residual maturity of not less than three months; and

(iv) The adjustment approach is otherwise applicable.

4-760.165

SECTION 238.155—Investments in and Exposures to Securitization Vehicles, Investment Funds, and Other Special Purpose Vehicles That Are Not Subsidiaries of the Covered Company

(a) *In general.*

(1) For purposes of this section, the following definitions apply:

(i) *SPV* means a securitization vehicle, investment fund, or other special purpose vehicle that is not a subsidiary of the covered company.

(ii) *SPV exposure* means an investment in the debt or equity of an SPV, or a credit derivative or equity derivative between the covered company and a third

- party where the covered company is the protection provider and the reference asset is an obligation or equity security of, or equity investment in, an SPV.
- (2) (i) A covered company must determine whether the amount of its gross credit exposure to an issuer of assets in an SPV, due to an SPV exposure, is equal to or greater than 0.25 percent of the covered company's tier 1 capital using one of the following two methods:
- (A) The sum of all of the issuer's assets (with each asset valued in accordance with section 238.153(a)) in the SPV; or
 - (B) The application of the look-through approach described in paragraph (b) of this section.
- (ii) With respect to the determination required under paragraph (a)(2)(i) of this section, a covered company must use the same method to calculate gross credit exposure to each issuer of assets in a particular SPV.
- (iii) In making a determination under paragraph (a)(2)(i) of this section, the covered company must consider only the credit exposure to the issuer arising from the covered company's SPV exposure.
- (iv) For purposes of this paragraph (a)(2), a covered company that is unable to identify each issuer of assets in an SPV must attribute to a single unknown counterparty the amount of its gross credit exposure to all unidentified issuers and calculate such gross credit exposure using one method in either paragraph (a)(2)(i)(A) or (a)(2)(i)(B) of this section.
- (3) (i) If a covered company determines pursuant to paragraph (a)(2) of this section that the amount of its gross credit exposure to an issuer of assets in an SPV is less than 0.25 percent of the covered company's tier 1 capital, the amount of the covered company's gross credit exposure to that issuer may be attributed to either that issuer of assets or the SPV:
- (A) If attributed to the issuer of assets, the issuer of assets must be identified as a counterparty, and the gross credit exposure calculated under paragraph (a)(2)(i)(A) of this section to that issuer of assets must be aggregated with any other gross credit exposures (valued in accordance with section 238.153) to that same counterparty; and
 - (B) If attributed to the SPV, the covered company's gross credit exposure is equal to the covered company's SPV exposure, valued in accordance with section 238.153(a).
- (ii) If a covered company determines pursuant to paragraph (a)(2) of this section that the amount of its gross credit exposure to an issuer of assets in an SPV is equal to or greater than 0.25 percent of the covered company's tier 1 capital or the covered company is unable to determine that the amount of the gross credit exposure is less than 0.25 percent of the covered company's tier 1 capital:
- (A) The covered company must calculate the amount of its gross credit exposure to the issuer of assets in the SPV using the look-through approach in paragraph (b) of this section;
 - (B) The issuer of assets in the SPV must be identified as a counterparty, and the gross credit exposure calculated in accordance with paragraph (b) of this section must be aggregated with any other gross credit exposures (valued in accordance with section 238.153) to that same counterparty; and
 - (C) When applying the look-through approach in paragraph (b) of this section, a covered company that is unable to identify each issuer of assets in an SPV must attribute to a single unknown counterparty the amount of its gross credit exposure, calculated in accordance with paragraph (b) of this section, to all unidentified issuers.
- (iii) For purposes of this section, a covered company must aggregate all gross credit exposures to unknown counterparties for all SPVs as if the exposures related to a single unknown counterparty; this single unknown counterparty is subject to the limits of section 238.152 as if it were a single counterparty.

(b) *Look-through approach.* A covered company that is required to calculate the amount of its gross credit exposure with respect to an issuer of assets in accordance with this paragraph (b) must calculate the amount as follows:

(1) Where all investors in the SPV rank *pari passu*, the amount of the gross credit exposure to the issuer of assets is equal to the covered company's pro rata share of the SPV multiplied by the value of the underlying asset in the SPV, valued in accordance with section 238.153(a); and

(2) Where all investors in the SPV do not rank *pari passu*, the amount of the gross credit exposure to the issuer of assets is equal to:

(i) The pro rata share of the covered company's investment in the tranche of the SPV; multiplied by

(ii) The lesser of:

(A) The market value of the tranche in which the covered company has invested, except in the case of a debt security that is held to maturity, in which case the tranche must be valued at the amortized purchase price of the securities; and

(B) The value of each underlying asset attributed to the issuer in the SPV, each as calculated pursuant to section 238.153(a).

(c) *Exposures to third parties.*

(1) Notwithstanding any other requirement in this section, a covered company must recognize, for purposes of this subpart, a gross credit exposure to each third party that has a contractual obligation to provide credit or liquidity support to an SPV whose failure or material financial distress would cause a loss in the value of the covered company's SPV exposure.

(2) The amount of any gross credit exposure that is required to be recognized to a third party under paragraph (c)(1) of this section is equal to the covered company's SPV exposure, up to the maximum contractual obligation of that third party to the SPV, valued in accordance with section 238.153(a). (This gross credit exposure is in addition to the covered company's gross

credit exposure to the SPV or the issuers of assets of the SPV, calculated in accordance with paragraphs (a) and (b) of this section.)

(3) A covered company must aggregate the gross credit exposure to a third party recognized in accordance with paragraphs (c)(1) and (2) of this section with its other gross credit exposures to that third party (that are unrelated to the SPV) for purposes of compliance with the limits of section 238.152.

4-760.166

SECTION 238.156—Aggregation of Exposures to More than One Counterparty Due to Economic Interdependence or Control Relationships

(a) *In general.*

(1) If a covered company has an aggregate net credit exposure to any counterparty that exceeds 5 percent of its tier 1 capital, the covered company must assess its relationship with the counterparty under paragraph (b)(2) of this section to determine whether the counterparty is economically interdependent with one or more other counterparties of the covered company and under paragraph (c)(1) of this section to determine whether the counterparty is connected by a control relationship with one or more other counterparties.

(2) If, pursuant to an assessment required under paragraph (a)(1) of this section, the covered company determines that one or more of the factors of paragraph (b)(2) or (c)(1) of this section are met with respect to one or more counterparties, or the Board determines pursuant to paragraph (d) of this section that one or more other counterparties of a covered company are economically interdependent or that one or more other counterparties of a covered company are connected by a control relationship, the covered company must aggregate its net credit exposure to the counterparties for all purposes under this subpart, including, but not limited to, section 238.152.

(3) In connection with any request pursuant to paragraph (b)(3) or (c)(2) of this section,

the Board may require the covered company to provide additional information.

(b) *Aggregation of exposures to more than one counterparty due to economic interdependence.*

(1) For purposes of this paragraph, two counterparties are economically interdependent if the failure, default, insolvency, or material financial distress of one counterparty would cause the failure, default, insolvency, or material financial distress of the other counterparty, taking into account the factors in paragraph (b)(2) of this section.

(2) A covered company must assess whether the financial distress of one counterparty (counterparty A) would prevent the ability of the other counterparty (counterparty B) to fully and timely repay counterparty B's liabilities and whether the insolvency or default of counterparty A is likely to be associated with the insolvency or default of counterparty B and, therefore, these counterparties are economically interdependent, by evaluating the following:

- (i) Whether 50 percent or more of one counterparty's gross revenue is derived from, or gross expenditures are directed to, transactions with the other counterparty;
- (ii) Whether counterparty A has fully or partly guaranteed the credit exposure of counterparty B, or is liable by other means, in an amount that is 50 percent or more of the covered company's net credit exposure to counterparty A;
- (iii) Whether 25 percent or more of one counterparty's production or output is sold to the other counterparty, which cannot easily be replaced by other customers;
- (iv) Whether the expected source of funds to repay the loans of both counterparties is the same and neither counterparty has another independent source of income from which the loans may be serviced and fully repaid;¹ and
- (v) Whether two or more counterparties

rely on the same source for the majority of their funding and, in the event of the common provider's default, an alternative provider cannot be found.

(3) (i) Notwithstanding paragraph (b)(2) of this section, if a covered company determines that one or more of the factors in paragraph (b)(2) is met, the covered company may request in writing a determination from the Board that those counterparties are not economically interdependent and that the covered company is not required to aggregate those counterparties.

(ii) Upon a request by a covered company pursuant to paragraph (b)(3) of this section, the Board may grant temporary relief to the covered company and not require the covered company to aggregate one counterparty with another counterparty provided that the counterparty could promptly modify its business relationships, such as by reducing its reliance on the other counterparty, to address any economic interdependence concerns, and provided that such relief is in the public interest and is consistent with the purpose of this subpart.

(c) *Aggregation of exposures to more than one counterparty due to certain control relationships.*

(1) For purposes of this subpart, one counterparty (counterparty A) is deemed to control the other counterparty (counterparty B) if:

- (i) Counterparty A owns, controls, or holds with the power to vote 25 percent or more of any class of voting securities of counterparty B; or
- (ii) Counterparty A controls in any manner the election of a majority of the directors, trustees, or general partners (or individuals exercising similar functions) of counterparty B.

(2) (i) Notwithstanding paragraph (c)(1) of this section, if a covered company determines that one or more of the factors in paragraph (c)(1) is met, the covered company may request in writing a determination from the Board that counterparty A does not control counterparty B and that

¹ An employer will not be treated as a source of repayment under this paragraph because of wages and salaries paid to an employee.

the covered company is not required to aggregate those counterparties.

(ii) Upon a request by a covered company pursuant to paragraph (c)(2) of this section, the Board may grant temporary relief to the covered company and not require the covered company to aggregate counterparty A with counterparty B provided that, taking into account the specific facts and circumstances, such indicia of control does not result in the entities being connected by control relationships for purposes of this subpart, and provided that such relief is in the public interest and is consistent with the purpose of this subpart.

(d) *Board determinations for aggregation of counterparties due to economic interdependence or control relationships.* The Board may determine, after notice to the covered company and opportunity for hearing, that one or more counterparties of a covered company are:

(1) Economically interdependent for purposes of this subpart, considering the factors in paragraph (b)(2) of this section, as well as any other indicia of economic interdependence that the Board determines in its discretion to be relevant; or

(2) Connected by control relationships for purposes of this subpart, considering the factors in paragraph (c)(1) of this section and whether counterparty A:

(i) Controls the power to vote 25 percent or more of any class of voting securities of Counterparty B pursuant to a voting agreement;

(ii) Has significant influence on the appointment or dismissal of counterparty B's administrative, management, or governing body, or the fact that a majority of members of such body have been appointed solely as a result of the exercise of counterparty A's voting rights; or

(iii) Has the power to exercise a controlling influence over the management or policies of counterparty B.

(e) *Board determinations for aggregation of counterparties to prevent evasion.* Notwithstanding paragraphs (b) and (c) of this section, a covered company must aggregate its expo-

sure to a counterparty with the covered company's exposures to another counterparty if the Board determines in writing after notice and opportunity for hearing, that the exposures to the two counterparties must be aggregated to prevent evasions of the purposes of this subpart, including, but not limited to section 238.156.

4-760.167

SECTION 238.157—Exemptions

(a) *Exempted exposure categories.* The following categories of credit transactions are exempt from the limits on credit exposure under this subpart:

(1) Any direct claim on, and the portion of a claim that is directly and fully guaranteed as to principal and interest by, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, only while operating under the conservatorship or receivership of the Federal Housing Finance Agency, and any additional obligation issued by a U.S. government-sponsored entity as determined by the Board;

(2) Intraday credit exposure to a counterparty;

(3) Any trade exposure to a qualifying central counterparty related to the covered company's clearing activity, including potential future exposure arising from transactions cleared by the qualifying central counterparty and prefunded default fund contributions;

(4) Any credit transaction with the Bank for International Settlements, the International Monetary Fund, the International Bank for Reconstruction and Development, the International Finance Corporation, the International Development Association, the Multilateral Investment Guarantee Agency, or the International Centre for Settlement of Investment Disputes;

(5) Any credit transaction with the European Commission or the European Central Bank; and

(6) Any transaction that the Board exempts if the Board finds that such exemption is in

the public interest and is consistent with the purpose of this subpart.

(b) *Exemption for Federal Home Loan Banks.* For purposes of this subpart, a covered company does not include any Federal Home Loan Bank.

(c) *Additional exemptions by the Board.* The Board may, by regulation or order, exempt transactions, in whole or in part, from the definition of the term “credit exposure,” if the Board finds that the exemption is in the public interest.

4-760.168

SECTION 238.158—Compliance

(a) *Scope of compliance.*

(1) Using all available data, including any data required to be maintained or reported to the Federal Reserve under this subpart, a covered company must comply with the requirements of this subpart on a daily basis at the end of each business day.

(2) A covered company must report its compliance to the Federal Reserve as of the end of the quarter, unless the Board determines and notifies that company in writing that more frequent reporting is required.

(3) In reporting its compliance, a covered company must calculate and include in its gross credit exposure to an issuer of eligible collateral or eligible guarantor the amounts of eligible collateral, eligible guarantees, eligible equity derivatives, and eligible credit derivatives that were provided to the covered company in connection with credit transactions with exempt counterparties, valued in accordance with and as required by section 238.154(b) through (d) and section 238.154 (g).

(b) *Qualifying master netting agreement.* With respect to any qualifying master netting agreement, a covered company must establish and maintain procedures that meet or exceed the requirements of section 217.3(d) of this chapter to monitor possible changes in relevant law and to ensure that the agreement continues to satisfy these requirements.

(c) *Noncompliance.*

(1) Except as otherwise provided in this section, if a covered company is not in compliance with this subpart with respect to a counterparty solely due to the circumstances listed in paragraphs (c)(2)(i) through (v) of this section, the covered company will not be subject to enforcement actions for a period of 90 days (or, with prior notice to the company, such shorter or longer period determined by the Board, in its sole discretion, to be appropriate to preserve the safety and soundness of the covered company), if the covered company uses reasonable efforts to return to compliance with this subpart during this period. The covered company may not engage in any additional credit transactions with such a counterparty in contravention of this rule during the period of noncompliance, except as provided in paragraph (c)(2) of this section.

(2) A covered company may request a special temporary credit exposure limit exemption from the Board. The Board may grant approval for such exemption in cases where the Board determines that such credit transactions are necessary or appropriate to preserve the safety and soundness of the covered company. In acting on a request for an exemption, the Board will consider the following:

- (i) A decrease in the covered company’s capital stock and surplus;
- (ii) The merger of the covered company with another covered company;
- (iii) A merger of two counterparties; or
- (iv) An unforeseen and abrupt change in the status of a counterparty as a result of which the covered company’s credit exposure to the counterparty becomes limited by the requirements of this section; or
- (v) Any other factor(s) the Board determines, in its discretion, is appropriate.

(d) *Other measures.* The Board may impose supervisory oversight and additional reporting measures that it determines are appropriate to monitor compliance with this subpart. Covered companies must furnish, in the manner and form prescribed by the Board, such informa-

tion to monitor compliance with this subpart and the limits therein as the Board may require.

4-760.17

SUBPART R—COMPANY-RUN STRESS TEST REQUIREMENTS FOR FOREIGN SAVINGS AND LOAN HOLDING COMPANIES WITH TOTAL CONSOLIDATED ASSETS OVER \$250 BILLION

SECTION 238.160—Definitions

For purposes of this subpart, the following definitions apply:

(a) *Foreign savings and loan holding company* means a savings and loan holding company as defined in section 10 of the Home Owners' Loan Act (12 U.S.C. 1467a(a)) that is incorporated or organized under the laws of a country other than the United States.

(b) *Pre-provision net revenue* means revenue less expenses before adjusting for total loan loss provisions.

(c) *Stress test cycle* has the same meaning as in subpart O of this part.

(d) *Total loan loss provisions* means the amount needed to make reserves adequate to absorb estimated credit losses, based upon management's evaluation of the loans and leases that the company has the intent and ability to hold for the foreseeable future or until maturity or payoff, as determined under applicable accounting standards.

4-760.171

SECTION 238.161—Applicability

(a) *Applicability for foreign savings and loan holding companies with total consolidated assets of more than \$250 billion.*

(1) *General.* A foreign savings and loan holding company must comply with the stress test requirements set forth in this section beginning on the first day of the ninth quarter following the date on which its average total consolidated assets exceed \$250 billion.

(2) *Cessation of requirements.* A foreign savings and loan holding company will remain subject to requirements of this subpart until the date on which the foreign savings and loan holding company's total consolidated assets are below \$250 billion for each of four most recent calendar quarters.

(b) [Reserved]

4-760.172

SECTION 238.162—Capital Stress Testing Requirements

(a) *In general.*

(1) A foreign savings and loan holding company subject to this subpart must:

(i) Be subject on a consolidated basis to a capital stress testing regime by its home-country supervisor that meets the requirements of paragraph (a)(2) of this section; and

(ii) Conduct such stress tests or be subject to a supervisory stress test and meet any minimum standards set by its home-country supervisor with respect to the stress tests.

(2) The capital stress testing regime of a foreign savings and loan holding company's home-country supervisor must include:

(i) A supervisory capital stress test conducted by the relevant home-country supervisor or an evaluation and review by the home-country supervisor of an internal capital adequacy stress test conducted by the foreign savings and loan holding company, conducted on at least a biennial basis; and

(ii) Requirements for governance and controls of stress testing practices by relevant management and the board of directors (or equivalent thereof).

(b) *Additional standards.*

(1) Unless the Board otherwise determines in writing, a foreign savings and loan holding company that does not meet each of the requirements in paragraphs (a)(1) and (2) of this section must:

(i) Conduct an annual stress test of its U.S. subsidiaries to determine whether those subsidiaries have the capital neces-

sary to absorb losses as a result of adverse economic conditions; and

(ii) Report on at least a biennial basis a summary of the results of the stress test to the Board that includes a description of the types of risks included in the stress test, a description of the conditions or scenarios used in the stress test, a summary description of the methodologies used in the stress test, estimates of aggregate losses, pre-provision net revenue, total loan loss provisions, net income before taxes and *pro forma* regulatory capital ratios required to be computed by the home-country supervisor of the foreign savings and loan holding company and any other relevant capital ratios, and an explanation of the most significant causes for any changes in regulatory capital ratios.

(2) An enterprise-wide stress test that is approved by the Board may meet the stress test requirement of paragraph (b)(1)(ii) of this section.

4-760.18

SUBPART S—CAPITAL PLANNING AND STRESS CAPITAL BUFFER REQUIREMENT

SECTION 238.170—Capital Planning and Stress Capital Buffer Requirement

(a) *Purpose.* This section establishes capital planning and prior notice and approval requirements for capital distributions by certain savings and loan holding companies. This section also establishes the Board's process for determining the stress capital buffer requirement applicable to these savings and loan holding companies.

(b) *Scope and reservation of authority.*

(1) *Applicability.* Except as provided in section 238.170(c), this section applies to:

(i) Any top-tier covered savings and loan holding company domiciled in the United States with average total consolidated assets of \$100 billion or more (\$100 billion asset threshold); and

(ii) Any other covered savings and loan holding company domiciled in the United

States that is made subject to this section, in whole or in part, by order of the Board.

(2) *Average total consolidated assets.* For purposes of this section, average total consolidated assets means the average of the total consolidated assets as reported by a covered savings and loan holding company on its Consolidated Financial Statements for Holding Companies (FR Y-9C) for the four most recent consecutive quarters. If the covered savings and loan holding company has not filed the FR Y-9C for each of the four most recent consecutive quarters, average total consolidated assets means the average of the company's total consolidated assets, as reported on the company's FR Y-9C, for the most recent quarter or consecutive quarters, as applicable. Average total consolidated assets are measured on the as-of date of the most recent FR Y-9C used in the calculation of the average.

(3) *Ongoing applicability.* A covered savings and loan holding company (including any successor covered savings and loan holding company) that is subject to any requirement in this section shall remain subject to such requirements unless and until its total consolidated assets fall below \$100 billion for each of four consecutive quarters, as reported on the FR Y-9C and effective on the as-of date of the fourth consecutive FR Y-9C.

(4) *Reservation of authority.* Nothing in this section shall limit the authority of the Federal Reserve to issue or enforce a capital directive or take any other supervisory or enforcement action, including an action to address unsafe or unsound practices or conditions or violations of law.

(5) *Application of this section by order.* The Board may apply this section, in whole or in part, to a covered savings and loan holding company by order based on the institution's size, level of complexity, risk profile, scope of operations, or financial condition.

(c) *Transition periods for certain covered savings and loan holding companies.*

(1) A covered savings and loan holding company that meets the \$100 billion asset threshold (as measured under paragraph (b)

of this section) on or before September 30 of a calendar year must comply with the requirements of this section beginning on January 1 of the next calendar year, unless that time is extended by the Board in writing. Notwithstanding the previous sentence, the Board will not provide a covered savings and loan holding company with notice of its stress capital buffer requirement until the first year in which the Board conducts an analysis of the covered savings and loan company pursuant to 12 CFR 238.132.

(2) A covered savings and loan holding company that meets the \$100 billion asset threshold after September 30 of a calendar year must comply with the requirements of this section beginning on January 1 of the second calendar year after the covered savings and loan holding company meets the \$100 billion asset threshold, unless that time is extended by the Board in writing. Notwithstanding the previous sentence, the Board will not provide a covered savings and loan holding company with notice of its stress capital buffer requirement until the first year in which the Board conducts an analysis of the covered savings and loan holding company pursuant to 12 CFR 238.132.

(3) The Board, or the appropriate Reserve Bank with the concurrence of the Board, may require a covered savings and loan holding company described in paragraph (c)(1) or (2) of this section to comply with any or all of the requirements of this section if the Board, or appropriate Reserve Bank with concurrence of the Board, determines that the requirement is appropriate on a different date based on the company's risk profile, scope of operation, or financial condition and provides prior notice to the company of the determination.

(d) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Advanced approaches* means the risk-weighted assets calculation methodologies at 12 CFR part 217, subpart E, as applicable.

(2) *Average total nonbank assets* means the average of the total nonbank assets, calculated in accordance with the instructions to

the FR Y-9LP, for the four most recent calendar quarters or, if the covered savings and loan holding company has not filed the FR Y-9LP for each of the four most recent calendar quarters, for the most recent quarter or quarters, as applicable.

(3) *Capital action* means any issuance of a debt or equity capital instrument, any capital distribution, and any similar action that the Federal Reserve determines could impact a covered savings and loan holding company's consolidated capital.

(4) *Capital distribution* means a redemption or repurchase of any debt or equity capital instrument, a payment of common or preferred stock dividends, a payment that may be temporarily or permanently suspended by the issuer on any instrument that is eligible for inclusion in the numerator of any minimum regulatory capital ratio, and any similar transaction that the Federal Reserve determines to be in substance a distribution of capital.

(5) *Capital plan* means a written presentation of a covered savings and loan holding company's capital planning strategies and capital adequacy process that includes the mandatory elements set forth in paragraph (e)(2) of this section.

(6) *Capital plan cycle* means the period beginning on January 1 of a calendar year and ending on December 31 of that year.

(7) *Capital policy* means a covered savings and loan holding company's written principles and guidelines used for capital planning, capital issuance, capital usage and distributions, including internal capital goals; the quantitative or qualitative guidelines for capital distributions; the strategies for addressing potential capital shortfalls; and the internal governance procedures around capital policy principles and guidelines.

(8) *Category IV savings and loan holding company* means a covered savings and loan holding company identified as a Category IV banking organization pursuant to 12 CFR 238.10.

(9) *Common equity tier 1 capital* has the same meaning as under 12 CFR part 217.

(10) *Effective capital distribution limitations* means any limitations on capital distributions established by the Board by order

or regulation, including pursuant to 12 CFR 217.11, provided that, for any limitations based on risk-weighted assets, such limitations must be calculated using the standardized approach, as set forth in 12 CFR part 217, subpart D.

(11) *Final planned capital distributions* means the planned capital distributions included in a capital plan that include the adjustments made pursuant to paragraph (h) of this section, if any.

(12) *Internal baseline scenario* means a scenario that reflects the covered savings and loan holding company's expectation of the economic and financial outlook, including expectations related to the covered saving and loan holding company's capital adequacy and financial condition.

(13) *Internal stress scenario* means a scenario designed by a covered savings and loan holding company that stresses the specific vulnerabilities of the covered savings and loan holding company's risk profile and operations, including those related to the covered savings and loan holding company's capital adequacy and financial condition.

(14) *Planning horizon* means the period of at least nine consecutive quarters, beginning with the quarter preceding the quarter in which the covered savings and loan holding company submits its capital plan, over which the relevant projections extend.

(15) *Regulatory capital ratio* means a capital ratio for which the Board has established minimum requirements for the covered savings and loan holding company by regulation or order, including, as applicable, the covered savings and loan holding company's regulatory capital ratios calculated under 12 CFR part 217 and the deductions required under 12 CFR 248.12; except that the covered savings and loan holding company shall not use the advanced approaches to calculate its regulatory capital ratios.

(16) *Severely adverse scenario* means a set of conditions that affect the U.S. economy or the financial condition of a covered company and that overall are significantly more severe than those associated with the baseline scenario and may include trading or other additional components.

(17) *Stress capital buffer requirement* means the amount calculated under paragraph (f) of this section.

(18) *Supervisory stress test* means a stress test conducted using a severely adverse scenario and the assumptions contained in 12 CFR part 238, subpart O.

(e) *Capital planning requirements and procedures.*

(1) *Annual capital planning.*

(i) A covered savings and loan holding company must develop and maintain a capital plan.

(ii) A covered savings and loan holding company must submit its complete capital plan to the Board and the appropriate Reserve Bank by April 5 of each calendar year, or such later date as directed by the Board or by the appropriate Reserve Bank with concurrence of the Board.

(iii) The covered savings and loan holding company's board of directors or a designated committee thereof must at least annually and prior to submission of the capital plan under paragraph (e)(1)(ii) of this section:

(A) Review the robustness of the covered savings and loan holding company's process for assessing capital adequacy;

(B) Ensure that any deficiencies in the covered savings and loan holding company's process for assessing capital adequacy are appropriately remedied; and

(C) Approve the covered savings and loan holding company's capital plan.

(2) *Mandatory elements of capital plan.* A capital plan must contain at least the following elements:

(i) An assessment of the expected uses and sources of capital over the planning horizon that reflects the covered savings and loan holding company's size, complexity, risk profile, and scope of operations, assuming both expected and stressful conditions, including:

(A) Estimates of projected revenues, losses, reserves, and *pro forma* capital levels, including regulatory capital ratios, and any additional capital measures deemed relevant by the covered

savings and loan holding company, over the planning horizon under a range of scenarios, including:

(1) If the covered savings and loan holding company is a Category IV savings and loan holding company, the Internal baseline scenario and at least one Internal stress scenario, as well as any additional scenarios, based on financial conditions or the macroeconomic outlook, or based on the covered savings and loan holding company's financial condition, size, complexity, risk profile, or activities, or risks to the U.S. economy, that the Federal Reserve may provide the covered savings and loan holding company after giving notice to the covered savings and loan holding company; or

(2) If the covered savings and loan holding company is not a Category IV savings and loan holding company, any scenarios provided by the Federal Reserve, the Internal baseline scenario, and at least one Internal stress scenario;

(B) A discussion of the results of any stress test required by law or regulation, and an explanation of how the capital plan takes these results into account; and

(C) A description of all planned capital actions over the planning horizon. Planned capital actions must be consistent with effective capital distribution limitations, except as may be adjusted pursuant to paragraph (h) of this section. In determining whether a covered savings and loan holding company's planned capital distributions are consistent with effective capital distribution limitations, a covered savings and loan holding company must assume that any countercyclical capital buffer amount currently applicable to the covered savings and loan holding company remains at the same level, except that the covered savings and loan holding company must reflect any increases or decreases in the countercyclical capital buffer amount that have been an-

nounced by the Board at the times indicated by the Board's announcement for when such increases or decreases will take effect.

(ii) A detailed description of the covered savings and loan holding company's process for assessing capital adequacy, including:

(A) A discussion of how the covered savings and loan holding company will, under expected and stressful conditions, maintain capital commensurate with its risks, maintain capital above the regulatory capital ratios, and serve as a source of strength to its subsidiary depository institutions;

(B) A discussion of how the covered savings and loan holding company will, under expected and stressful conditions, maintain sufficient capital to continue its operations by maintaining ready access to funding, meeting its obligations to creditors and other counterparties, and continuing to serve as a credit intermediary;

(iii) The covered savings and loan holding company's capital policy; and

(iv) A discussion of any expected changes to the covered savings and loan holding company's business plan that are likely to have a material impact on the covered savings and loan holding company's capital adequacy or liquidity.

(3) *Data collection.* Upon the request of the Board or appropriate Reserve Bank, the covered savings and loan holding company shall provide the Federal Reserve with information regarding:

(i) The covered savings and loan holding company's financial condition, including its capital;

(ii) The covered savings and loan holding company's structure;

(iii) Amount and risk characteristics of the covered savings and loan holding company's on- and off-balance sheet exposures, including exposures within the covered savings and loan holding company's trading account, other trading-related exposures (such as counterparty-credit risk exposures) or other items sensitive to changes in market factors, including, as

appropriate, information about the sensitivity of positions to changes in market rates and prices;

(iv) The covered savings and loan holding company's relevant policies and procedures, including risk management policies and procedures;

(v) The covered savings and loan holding company's liquidity profile and management;

(vi) The loss, revenue, and expense estimation models used by the covered savings and loan holding company for stress scenario analysis, including supporting documentation regarding each model's development and validation; and

(vii) Any other relevant qualitative or quantitative information requested by the Board or by the appropriate Reserve Bank to facilitate review of the covered savings and loan holding company's capital plan under this section.

(4) *Resubmission of a capital plan.*

(i) A covered savings and loan holding company must update and resubmit its capital plan to the appropriate Reserve Bank within 30 calendar days of the occurrence of one of the following events:

(A) The covered savings and loan holding company determines there has been or will be a material change in the covered savings and loan holding company's risk profile, financial condition, or corporate structure since the covered savings and loan holding company last submitted the capital plan to the Board and the appropriate Reserve Bank under this section; or

(B) The Board, or the appropriate Reserve Bank with concurrence of the Board, directs the covered savings and loan holding company in writing to revise and resubmit its capital plan for any of the following reasons:

(1) The capital plan is incomplete or the capital plan, or the covered savings and loan holding company's internal capital adequacy process, contains material weaknesses;

(2) There has been, or will likely be, a material change in the covered savings and loan holding company's

risk profile (including a material change in its business strategy or any risk exposure), financial condition, or corporate structure;

(3) The Internal stress scenario(s) are not appropriate for the covered savings and loan holding company's business model and portfolios, or changes in financial markets or the macroeconomic outlook that could have a material impact on a covered savings and loan holding company's risk profile and financial condition require the use of updated scenarios; or

(ii) The Board, or the appropriate Reserve Bank with concurrence of the Board, may extend the 30-day period in paragraph (e)(4)(i) of this section for up to an additional 60 calendar days, or such longer period as the Board or the appropriate Reserve Bank, with concurrence of the Board, determines appropriate.

(iii) Any updated capital plan must satisfy all the requirements of this section; however, a covered savings and loan holding company may continue to rely on information submitted as part of a previously submitted capital plan to the extent that the information remains accurate and appropriate.

(5) *Confidential treatment of information submitted.* The confidentiality of information submitted to the Board under this section and related materials shall be determined in accordance with applicable exemptions under the Freedom of Information Act (5 U.S.C. 552(b)) and the Board's Rules Regarding Availability of Information (12 CFR part 261).

(f) *Calculation of the stress capital buffer requirement.*

(1) *General.* The Board will determine the stress capital buffer requirement that applies under 12 CFR 217.11 pursuant to paragraph (f) of this section. For each covered savings and loan holding company that is not a Category IV savings and loan holding company, the Board will calculate the covered savings and loan holding company's stress capital buffer requirement annually. For

each Category IV savings and loan holding company, the Board will calculate the covered savings and loan holding company's stress capital buffer requirement biennially, occurring in each calendar year ending in an even number, and will adjust the covered savings and loan holding company's stress capital buffer requirement biennially, occurring in each calendar year ending in an odd number. Notwithstanding the previous sentence, the Board will calculate the stress capital buffer requirement of a Category IV savings and loan holding company in a year ending in an odd number with respect to which that company makes an election pursuant to 12 CFR 238.132(c)(2)(ii).

(2) *Stress capital buffer requirement calculation.* A covered savings and loan holding company's stress capital buffer requirement is equal to the greater of:

- (i) The following calculation:
 - (A) The ratio of a covered savings and loan holding company's common equity tier 1 capital to risk-weighted assets, as calculated under 12 CFR part 217, subpart D, as of the final quarter of the previous capital plan cycle, unless otherwise determined by the Board; *minus*
 - (B) The lowest projected ratio of the covered savings and loan holding company's common equity tier 1 capital to risk-weighted assets, as calculated under 12 CFR part 217, subpart D, in any quarter of the planning horizon under a supervisory stress test; *plus*
 - (C) The ratio of:
 - (1) The sum of the covered savings and loan holding company's planned common stock dividends (expressed as a dollar amount) for each of the fourth through seventh quarters of the planning horizon; to
 - (2) The risk-weighted assets of the covered savings and loan holding company in the quarter in which the covered savings and loan holding company had its lowest projected ratio of common equity tier 1 capital to risk-weighted assets, as calculated under 12 CFR part 217, subpart D,

in any quarter of the planning horizon under a supervisory stress test; and

(ii) 2.5 percent.

(3) *Recalculation of stress capital buffer requirement.* If a covered savings and loan holding company resubmits its capital plan pursuant to paragraph (e)(4) of this section, the Board may recalculate the covered savings and loan holding company's stress capital buffer requirement. The Board will provide notice of whether the covered savings and loan holding company's stress capital buffer requirement will be recalculated within 75 calendar days after the date on which the capital plan is resubmitted, unless the Board provides notice to the company that it is extending the time period.

(4) *Adjustment of stress capital buffer requirement.* In each calendar year in which the Board does not calculate a Category IV savings and loan holding company's stress capital buffer requirement pursuant to paragraph (f)(1) of this section, the Board will adjust the Category IV savings and loan holding company's stress capital buffer requirement to be equal to the result of the calculation set forth in paragraph (f)(2) of this section, using the same values that were used to calculate the stress capital buffer requirement most recently provided to the covered savings and loan holding company, except that the value used in paragraph (f)(2)(i)(C)(1) of the calculation will be equal to the covered savings and loan holding company's planned common stock dividends (expressed as a dollar amount) for each of the fourth through seventh quarters of the planning horizon as set forth in the capital plan submitted by the covered savings and loan holding company in the calendar year in which the Board adjusts the covered savings and loan holding company's stress capital buffer requirement.

(g) *Review of capital plans by the Federal Reserve.* The Board, or the appropriate Reserve Bank with concurrence of the Board, will consider the following factors in reviewing a covered savings and loan holding company's capital plan:

- (1) The comprehensiveness of the capital plan, including the extent to which the analysis underlying the capital plan captures and addresses potential risks stemming from activities across the covered savings and loan holding company and the covered savings and loan holding company's capital policy;
- (2) The reasonableness of the covered savings and loan holding company's capital plan, the assumptions and analysis underlying the capital plan, and the robustness of its capital adequacy process;
- (3) Relevant supervisory information about the covered savings and loan holding company and its subsidiaries;
- (4) The covered savings and loan holding company's regulatory and financial reports, as well as supporting data that would allow for an analysis of the covered savings and loan holding company's loss, revenue, and reserve projections;
- (5) The results of any stress tests conducted by the covered savings and loan holding company or the Federal Reserve; and
- (6) Other information requested or required by the Board or the appropriate Reserve Bank, as well as any other information relevant, or related, to the savings and loan holding company's capital adequacy.

(h) *Federal Reserve notice of stress capital buffer requirement; final planned capital distributions.*

- (1) *Notice.* The Board will provide a covered savings and loan holding company with notice of its stress capital buffer requirement and an explanation of the results of the supervisory stress test. Unless otherwise determined by the Board, notice will be provided by June 30 of the calendar year in which the capital plan was submitted pursuant to paragraph (e)(1)(ii) of this section or within 90 calendar days of receiving notice that the Board will recalculate the covered savings and loan holding company's stress capital buffer requirement pursuant to paragraph (f)(3) of this section.
- (2) *Response to notice.*
 - (i) *Request for reconsideration of stress capital buffer requirement.* A covered savings and loan holding company may

request reconsideration of a stress capital buffer requirement provided under paragraph (h)(1) of this section. To request reconsideration of a stress capital buffer requirement, a covered savings and loan holding company must submit to the Board a request pursuant to paragraph (i) of this section.

(ii) *Adjustments to planned capital distributions.* Within two business days of receipt of notice of a stress capital buffer requirement under paragraph (h)(1) or (i)(5) of this section, as applicable, a covered savings and loan holding company must:

(A) Determine whether the planned capital distributions for the fourth through seventh quarters of the planning horizon under the Internal baseline scenario would be consistent with effective capital distribution limitations assuming the stress capital buffer requirement provided by the Board under paragraph (h)(1) or (i)(5) of this section, as applicable, in place of any stress capital buffer requirement in effect; and

(I) If the planned capital distributions for the fourth through seventh quarters of the planning horizon under the Internal baseline scenario would not be consistent with effective capital distribution limitations assuming the stress capital buffer requirement provided by the Board under paragraph (h)(1) or (i)(5) of this section, as applicable, in place of any stress capital buffer requirement in effect, the covered savings and loan holding company must adjust its planned capital distributions such that its planned capital distributions would be consistent with effective capital distribution limitations assuming the stress capital buffer requirement provided by the Board under paragraph (h)(1) or (i)(5) of this section, as applicable, in place of any stress capital buffer requirement in effect; or

(2) If the planned capital distributions for the fourth through seventh

quarters of the planning horizon under the Internal baseline scenario would be consistent with effective capital distribution limitations assuming the stress capital buffer requirement provided by the Board under paragraph (h)(1) or (i)(5) of this section, as applicable, in place of any stress capital buffer requirement in effect, the covered savings and loan holding company may adjust its planned capital distributions. A covered savings and loan holding company may not adjust its planned capital distributions to be inconsistent with the effective capital distribution limitations assuming the stress capital buffer requirement provided by the Board under paragraph (h)(1) or (i)(5) of this section, as applicable; and

(B) Notify the Board of any adjustments made to planned capital distributions for the fourth through seventh quarters of the planning horizon under the Internal baseline scenario.

(3) *Final planned capital distributions.* The Board will consider the planned capital distributions, including any adjustments made pursuant to paragraph (h)(2)(ii) of this section, to be the covered savings and loan holding company's final planned capital distributions on the later of:

- (i) The expiration of the time for requesting reconsideration under paragraph (i) of this section; and
- (ii) The expiration of the time for adjusting planned capital distributions pursuant to paragraph (h)(2)(ii) of this section.

(4) *Effective date of final stress capital buffer requirement.*

(i) The Board will provide a savings and loan holding company with its final stress capital buffer requirement and confirmation of the covered savings and loan holding company's final planned capital distributions by August 31 of the calendar year that a capital plan was submitted pursuant to paragraph (e)(1)(ii) of this section, unless otherwise determined by the Board. A stress capital buffer requirement will not be considered final so as to

be agency action subject to judicial review under 5 U.S.C. 704 during the pendency of a request for reconsideration made pursuant to paragraph (i) of this section or before the time for requesting reconsideration has expired.

(ii) Unless otherwise determined by the Board, a covered savings and loan holding company's final planned capital distributions and final stress capital buffer requirement shall:

(A) Be effective on October 1 of the calendar year in which a capital plan was submitted pursuant to paragraph (e)(1)(ii) of this section; and

(B) Remain in effect until superseded.

(5) *Publication.* With respect to any covered savings and loan holding company subject to this section, the Board may disclose publicly any or all of the following:

- (i) The stress capital buffer requirement provided to a covered savings and loan holding company under paragraph (h)(1) or (i)(5) of this section;
- (ii) Adjustments made pursuant to paragraph (h)(2)(ii);
- (iii) A summary of the results of the supervisory stress test; and
- (iv) Other information.

(i) *Administrative remedies; request for reconsideration.* The following requirements and procedures apply to any request under this paragraph (i):

(1) *General.* To request reconsideration of a stress capital buffer requirement, provided under paragraph (h) of this section, a covered savings and loan holding company must submit a written request for reconsideration.

(2) *Timing of request.* A request for reconsideration of a stress capital buffer requirement, provided under paragraph (h) of this section, must be received within 15 calendar days of receipt of a notice of a covered savings and loan holding company's stress capital buffer requirement.

(3) *Contents of request.*

(i) A request for reconsideration must include a detailed explanation of why reconsideration should be granted (that is, why a stress capital buffer requirement

should be reconsidered). With respect to any information that was not previously provided to the Federal Reserve in the covered savings and loan holding company's capital plan, the request should include an explanation of why the information should be considered.

(ii) A request for reconsideration may include a request for an informal hearing on the covered savings and loan holding company's request for reconsideration.

(4) *Hearing.*

(i) The Board may, in its sole discretion, order an informal hearing if the Board finds that a hearing is appropriate or necessary to resolve disputes regarding material issues of fact.

(ii) An informal hearing shall be held within 30 calendar days of a request, if granted, provided that the Board may extend this period upon notice to the requesting party.

(5) *Response to request.* Within 30 calendar days of receipt of the covered savings and loan holding company's request for reconsideration of its stress capital buffer requirement submitted under paragraph (i)(2) of this section or within 30 days of the conclusion of an informal hearing conducted under paragraph (i)(4) of this section, the Board will notify the company of its decision to affirm or modify the covered savings and loan holding company's stress capital buffer requirement, provided that the Board may extend this period upon notice to the covered savings and loan holding company.

(6) *Distributions during the pendency of a request for reconsideration.* During the pendency of the Board's decision under paragraph (i)(5) of this section, the covered savings and loan holding company may make capital distributions that are consistent with effective distribution limitations, unless prior approval is required under paragraph (j)(1) of this section.

(j) *Approval requirements for certain capital actions.*

(1) *Circumstances requiring approval—Resubmission of a capital plan.* Unless it receives prior approval pursuant to para-

graph (j)(3) of this section, a covered savings and loan holding company may not make a capital distribution (excluding any capital distribution arising from the issuance of a capital instrument eligible for inclusion in the numerator of a regulatory capital ratio) if the capital distribution would occur after the occurrence of an event requiring resubmission under paragraph (e)(4)(i)(A) or (B) of this section.

(2) *Contents of request.* A request for a capital distribution under this section must contain the following information:

(i) The covered savings and loan holding company's capital plan or a discussion of changes to the covered savings and loan holding company's capital plan since it was last submitted to the Federal Reserve;

(ii) The purpose of the transaction;

(iii) A description of the capital distribution, including for redemptions or repurchases of securities, the gross consideration to be paid and the terms and sources of funding for the transaction, and for dividends, the amount of the dividend(s); and

(iv) Any additional information requested by the Board or the appropriate Reserve Bank (which may include, among other things, an assessment of the covered savings and loan holding company's capital adequacy under a severely adverse scenario, a revised capital plan, and supporting data).

(3) *Approval of certain capital distributions.*

(i) The Board, or the appropriate Reserve Bank with concurrence of the Board, will act on a request for prior approval of a capital distribution within 30 calendar days after the receipt of all the information required under paragraph (j)(2) of this section.

(ii) In acting on a request for prior approval of a capital distribution, the Board, or appropriate Reserve Bank with concurrence of the Board, will apply the considerations and principles in paragraph (g) of this section, as appropriate. In addition, the Board, or the appropriate Reserve Bank with concurrence of the

Board, may disapprove the transaction if the covered savings and loan holding company does not provide all of the information required to be submitted under paragraph (j)(2) of this section.

(4) *Disapproval and hearing.*

(i) The Board, or the appropriate Reserve Bank with concurrence of the Board, will notify the covered savings and loan holding company in writing of the reasons for a decision to disapprove any proposed capital distribution. Within 15 calendar days after receipt of a disapproval by the Board, the covered savings and loan holding company may submit a written request for a hearing.

(ii) The Board may, in its sole discretion, order an informal hearing if the Board finds that a hearing is appropriate or necessary to resolve disputes regarding material issues of fact. An informal hearing shall be held within 30 calendar days of a request, if granted, provided that the Board may extend this period upon notice to the requesting party.

(iii) Written notice of the final decision of the Board shall be given to the covered savings and loan holding company within 60 calendar days of the conclusion of any informal hearing ordered by the Board, provided that the Board may extend this period upon notice to the requesting party.

(iv) While the Board's decision is pending and until such time as the Board, or the appropriate Reserve Bank with concurrence of the Board, approves the capital distribution at issue, the covered savings and loan holding company may not make such capital distribution.

(k) *Post notice requirement.* A covered savings and loan holding company must notify the Board and the appropriate Reserve Bank within 15 days of making a capital distribution if:

- (1) The capital distribution was approved pursuant to paragraph (j)(3) of this section; or
- (2) The dollar amount of the capital distribution will exceed the dollar amount of the covered savings and loan holding compa-

ny's final planned capital distributions, as measured on an aggregate basis beginning in the fourth quarter of the planning horizon through the quarter at issue.

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APPENDIX A—Text of Large Financial Institution Rating System

A. Overview

Each large financial institution (LFI) is expected to ensure that the consolidated organization (or the combined U.S. operations in the case of foreign banking organizations), including its critical operations and banking offices, remain safe and sound and in compliance with laws and regulations, including those related to consumer protection.¹ The LFI rating system provides a supervisory evaluation of whether a covered firm possesses sufficient financial and operational strength and resilience to maintain safe-and-sound operations through a range of conditions, including stressful ones.² The LFI rating system applies to bank holding companies with total consolidated assets of \$100 billion or more; all non-insurance, non-commercial savings and loan holding companies with total consolidated as-

¹ See SR letter 12-17/CA letter 12-14, "Consolidated Supervisory Framework for Large Financial Institutions," at www.federalreserve.gov/bankinforeg/srletters/sr1217.htm.

Hereinafter, when "safe and sound" or "safety and soundness" is used in this framework, related expectations apply to the consolidated organization and the firm's critical operations and banking offices.

"Critical operations" are a firm's operations, including associated services, functions and support, the failure or discontinuance of which, in the view of the firm or the Federal Reserve, would pose a threat to the financial stability of the United States.

"Banking offices" are defined as U.S. depository institution subsidiaries, as well as the U.S. branches and agencies of foreign banking organizations.

² "Financial strength and resilience" is defined as maintaining effective capital and liquidity governance and planning processes, and sufficiency of related positions, to provide for the continuity of the consolidated organization (including its critical operations and banking offices) through a range of conditions.

"Operational strength and resilience" is defined as maintaining effective governance and controls to provide for the continuity of the consolidated organization (including its critical operations and banking offices) and to promote compliance with laws and regulations, including those related to consumer protection, through a range of conditions. References to "financial or operational" weaknesses or deficiencies implicate a firm's financial or operational strength and resilience.

sets of \$100 billion or more; and U.S. intermediate holding companies of foreign banking organizations with combined U.S. assets of \$50 billion or more established pursuant to the Federal Reserve's Regulation YY.³

The LFI rating system is designed to:

- Fully align with the Federal Reserve's current supervisory programs and practices, which are based upon the LFI supervision framework's core objectives of reducing the probability of LFIs failing or experiencing material distress and reducing the risk to U.S. financial stability;
- Enhance the clarity and consistency of supervisory assessments and communications of supervisory findings and implications; and
- Provide transparency related to the supervisory consequences of a given rating.

The LFI rating system is comprised of three components:

- *Capital Planning and Positions:* An evaluation of (i) the effectiveness of a firm's governance and planning processes used to determine the amount of capital necessary to cover risks and exposures, and to support activities through a range of conditions and events; and (ii) the sufficiency of a firm's capital positions to comply with applicable regulatory requirements and to support the firm's ability to continue to serve as a financial intermediary through a range of conditions.
- *Liquidity Risk Management and Positions:* An evaluation of (i) the effectiveness of a firm's governance and risk management processes used to determine the amount of liquidity necessary to cover risks and exposures, and to support activities through a range of conditions; and (ii) the sufficiency of a firm's liquidity positions to comply

³Total consolidated assets will be calculated based on the average of the firm's total consolidated assets in the four most recent quarters as reported on the firm's quarterly financial reports filed with the Federal Reserve. A firm will continue to be rated under the LFI rating system until it has less than \$95 billion in total consolidated assets, based on the average total consolidated assets as reported on the firm's four most recent quarterly financial reports filed with the Federal Reserve. As noted in the proposal, the Federal Reserve may determine to apply the RFI rating system or another applicable rating system in certain limited circumstances.

with applicable regulatory requirements and to support the firm's ongoing obligations through a range of conditions.

- *Governance and Controls:* An evaluation of the effectiveness of a firm's (i) board of directors,⁴ (ii) management of business lines and independent risk management and controls,⁵ and (iii) recovery planning (only for domestic firms that are subject to the Board's Large Institution Supervision Coordinating Committee (LISCC) Framework).⁶ This rating assesses a firm's effectiveness in aligning strategic business objectives with the firm's risk appetite and risk management capabilities; maintaining effective and independent risk management and control functions, including internal audit; promoting compliance with laws and regulations, including those related to consumer protection; and otherwise planning for the ongoing resiliency of the firm.⁷

B. Assignment of the LFI Component Ratings

Each LFI component rating is assigned along a four-level scale:

- *Broadly Meets Expectations:* A firm's practices and capabilities broadly meet supervisory expectations, and the firm possesses sufficient financial and operational strength and resilience to maintain safe-and-sound operations through a range of conditions.

⁴References to "board" or "board of directors" in this framework includes the equivalent to a board of directors, as appropriate, as well as committees of the board of directors or the equivalent thereof, as appropriate.

At this time, recovery planning expectations only apply to domestic bank holding companies subject to the Federal Reserve's LISCC supervisory framework. Should the Federal Reserve expand the scope of recovery planning expectations to encompass additional firms, this rating will reflect such expectations for the broader set of firms.

⁵The evaluation of the effectiveness of management of business lines would include management of critical operations.

⁶There are eight domestic firms in the LISCC portfolio: (1) Bank of America Corporation; (2) Bank of New York Mellon Corporation; (3) Citigroup, Inc.; (4) Goldman Sachs Group, Inc.; (5) JP Morgan Chase & Co.; (6) Morgan Stanley; (7) State Street Corporation; and (8) Wells Fargo & Company. In this guidance, these eight firms may collectively be referred to as "domestic LISCC firms."

⁷"Risk appetite" is defined as the aggregate level and types of risk the board and senior management are willing to assume to achieve the firm's strategic business objectives, consistent with applicable capital, liquidity, and other requirements and constraints.

The firm may be subject to identified supervisory issues requiring corrective action. These issues are unlikely to present a threat to the firm's ability to maintain safe-and-sound operations through a range of conditions.

- *Conditionally Meets Expectations*: Certain, material financial or operational weaknesses in a firm's practices or capabilities may place the firm's prospects for remaining safe and sound through a range of conditions at risk if not resolved in a timely manner during the normal course of business.

The Federal Reserve does not intend for a firm to be assigned a "Conditionally Meets Expectations" rating for a prolonged period, and will work with the firm to develop an appropriate timeframe to fully resolve the issues leading to the rating assignment and merit upgrade to a "Broadly Meets Expectations" rating.

A firm is assigned a "Conditionally Meets Expectations" rating—as opposed to a "Deficient" rating—when it has the ability to resolve these issues through measures that do not require a material change to the firm's business model or financial profile, or its governance, risk management or internal control structures or practices. Failure to resolve the issues in a timely manner would most likely result in the firm's downgrade to a "Deficient" rating, since the inability to resolve the issues would indicate that the firm does not possess sufficient financial or operational capabilities to maintain its safety and soundness through a range of conditions.

It is recognized that completion and validation of remediation activities for select supervisory issues—such as those involving information technology modifications—may require an extended time horizon. In all instances, appropriate and effective risk mitigation techniques must be utilized in the interim to maintain safe-and-sound operations under a range of conditions until remediation activities are completed, validated, and fully operational.

- *Deficient-1*: Financial or operational deficiencies in a firm's practices or capabilities put the firm's prospects for remaining safe and sound through a range of conditions at

significant risk. The firm is unable to remediate these deficiencies in the normal course of business, and remediation would typically require the firm to make a material change to its business model or financial profile, or its practices or capabilities.

A firm's failure to resolve the issues in a timely manner that gave rise to a "Conditionally Meets Expectations" rating would most likely result in its downgrade to a "Deficient" rating.

A firm with a "Deficient-1" rating is required to take timely corrective action to correct financial or operational deficiencies and to restore and maintain its safety and soundness and compliance with laws and regulations, including those related to consumer protection. There is a strong presumption that a firm with a "Deficient-1" rating will be subject to an informal or formal enforcement action, and this rating assignment could be a barrier for a firm seeking Federal Reserve approval to engage in new or expansionary activities.

- *Deficient-2*: Financial or operational deficiencies in a firm's practices or capabilities present a threat to the firm's safety and soundness, or have already put the firm in an unsafe and unsound condition.

A firm with a "Deficient-2" rating is required to immediately implement comprehensive corrective measures, and demonstrate the sufficiency of contingency planning in the event of further deterioration. There is a strong presumption that a firm with a "Deficient-2" rating will be subject to a formal enforcement action, and the Federal Reserve would be unlikely to approve any proposal from a firm with this rating to engage in new or expansionary activities.

The Federal Reserve will take into account a number of individual elements of a firm's practices, capabilities and performance when making each component rating assignment. The weighting of an individual element in assigning a component rating will depend on its impact on the firm's safety, soundness and resilience as provided for in the LFI rating system definitions. For example, for purposes of the Governance and Controls rating, a limited number of significant deficiencies—or

even just one significant deficiency—noted for management of a single material business line could be viewed as sufficiently important to warrant a “Deficient-1” for the Governance and Controls component rating, even if the firm meets supervisory expectations under the Governance and Controls component in all other respects.

Under the LFI rating system, a firm must be rated “Broadly Meets Expectations” or “Conditionally Meets Expectations” for each of the three component ratings (Capital, Liquidity, Governance and Controls) to be considered “well managed” in accordance with various statutes and regulations.⁸ A “well managed” firm has sufficient financial and operational strength and resilience to maintain safe-and-sound operations through a range of conditions, including stressful ones.

C. LFI Rating Components

The LFI rating system is comprised of three component ratings:⁹

1. Capital Planning and Positions Component Rating

The Capital Planning and Positions component rating evaluates (i) the effectiveness of a firm’s governance and planning processes used to determine the amount of capital necessary to cover risks and exposures, and to support activities through a range of conditions; and (ii) the sufficiency of a firm’s capital positions to comply with applicable regulatory requirements and to support the firm’s ability to continue to serve as a financial intermediary through a range of conditions.

In developing this rating, the Federal Reserve evaluates:

- *Capital Planning*: The extent to which a firm maintains sound capital planning practices through effective governance and oversight; effective risk management and

controls; maintenance of updated capital policies and contingency plans for addressing potential shortfalls; and incorporation of appropriately stressful conditions into capital planning and projections of capital positions; and

- *Capital Positions*: The extent to which a firm’s capital is sufficient to comply with regulatory requirements, and to support its ability to meet its obligations to depositors, creditors, and other counterparties and continue to serve as a financial intermediary through a range of conditions.

Definitions for the Capital Planning and Positions Component Rating

Broadly Meets Expectations

A firm’s capital planning and positions broadly meet supervisory expectations and support maintenance of safe-and-sound operations. Specifically:

- The firm is capable of producing sound assessments of capital adequacy through a range of conditions; *and*
- The firm’s current and projected capital positions comply with regulatory requirements, and support its ability to absorb current and potential losses, to meet obligations, and to continue to serve as a financial intermediary through a range of conditions.

A firm rated “Broadly Meets Expectations” may be subject to identified supervisory issues requiring corrective action. However, these issues are unlikely to present a threat to the firm’s ability to maintain safe-and-sound operations through a range of potentially stressful conditions.

A firm that does not meet the capital planning and position expectations associated with a “Broadly Meets Expectations” rating will be rated “Conditionally Meets Expectations,” “Deficient-1,” or “Deficient-2,” and subject to potential consequences as outlined below.

Conditionally Meets Expectations

Certain, material financial or operational weaknesses in a firm’s capital planning or positions may place the firm’s prospects for remaining safe and sound through a range of

⁸ 12 U.S.C. 1841 *et seq.* and 12 U.S.C. 1461 *et seq.* *See, e.g.,* 12 CFR 225.4(b)(6), 225.14, 225.22(a), 225.23, 225.85, and 225.86; 12 CFR 211.9(b), 211.10(a)(14), and 211.34; and 12 CFR 223.41

⁹ There may be instances where deficiencies or supervisory issues may be relevant to the Federal Reserve’s assessment of more than one component area. As such, the LFI rating will reflect these deficiencies or issues within multiple rating components when necessary to provide a comprehensive supervisory assessment.

conditions at risk if not resolved in a timely manner during the normal course of business.

Specifically, if left unresolved, these weaknesses:

- May threaten the firm’s ability to produce sound assessments of capital adequacy through a range of conditions; and/or
- May result in the firm’s projected capital positions being insufficient to absorb potential losses, comply with regulatory requirements, and support the firm’s ability to meet current and prospective obligations and to continue to serve as a financial intermediary through a range of conditions.

The Federal Reserve does not intend for a firm to be rated “Conditionally Meets Expectations” for a prolonged period. The firm has the ability to resolve these issues through measures that do not require a material change to the firm’s business model or financial profile, or its governance, risk management, or internal control structures or practices. The Federal Reserve will work with the firm to develop an appropriate timeframe during which the firm would be required to resolve each supervisory issue leading to the “Conditionally Meets Expectations” rating.

The Federal Reserve will closely monitor the firm’s remediation and mitigation activities; in most instances, the firm will either:

- (i) Resolve the issues in a timely manner and, if no new material supervisory issues arise, be upgraded to a “Broadly Meets Expectations” rating because the firm’s capital planning practices and related positions would broadly meet supervisory expectations; or
- (ii) Fail to resolve the issues in a timely manner and be downgraded to a “Deficient-1” rating, because the inability to resolve the issues would indicate that the firm does not possess sufficient financial or operational capabilities to maintain its safety and soundness through a range of conditions.

It is possible that a firm may be close to completing resolution of the supervisory issues leading to the “Conditionally Meets Expectations” rating, but new issues are identified that, taken alone, would be consistent with a “Conditionally Meets Expectations” rating. In this event, the firm may continue to

be rated “Conditionally Meets Expectations,” provided the new issues do not reflect a pattern of deeper or prolonged capital planning or position weaknesses consistent with a “Deficient” rating.

A “Conditionally Meets Expectations” rating may be assigned to a firm that meets the above definition regardless of its prior rating. A firm previously rated “Deficient-1” may be upgraded to “Conditionally Meets Expectations” if the firm’s remediation and mitigation activities are sufficiently advanced so that the firm’s prospects for remaining safe and sound are no longer at significant risk, even if the firm has outstanding supervisory issues or is subject to an active enforcement action.

Deficient-1

Financial or operational deficiencies in a firm’s capital planning or positions put the firm’s prospects for remaining safe and sound through a range of conditions at significant risk. The firm is unable to remediate these deficiencies in the normal course of business, and remediation would typically require a material change to the firm’s business model or financial profile, or its capital planning practices.

Specifically, although the firm’s current condition is not considered to be materially threatened:

- Deficiencies in the firm’s capital planning processes are not effectively mitigated. These deficiencies limit the firm’s ability to effectively assess capital adequacy through a range of conditions; and/or
- The firm’s projected capital positions may be insufficient to absorb potential losses and to support its ability to meet current and prospective obligations and serve as a financial intermediary through a range of conditions.

Supervisory issues that place the firm’s safety and soundness at significant risk, and where resolution is likely to require steps that clearly go beyond the normal course of business—such as issues requiring a material change to the firm’s business model or financial profile, or its governance, risk management or internal control structures or prac-

tices—would generally warrant assignment of a “Deficient-1” rating.

A “Deficient-1” rating may be assigned to a firm regardless of its prior rating. A firm previously rated “Broadly Meets Expectations” may be downgraded to “Deficient-1” when supervisory issues are identified that place the firm’s prospects for maintaining safe-and-sound operations through a range of potentially stressful conditions at significant risk. A firm previously rated “Conditionally Meets Expectations” may be downgraded to “Deficient-1” when the firm’s inability to resolve supervisory issues in a timely manner indicates that the firm does not possess sufficient financial or operational capabilities to maintain its safety and soundness through a range of conditions.

To address these financial or operational deficiencies, the firm is required to take timely corrective action to restore and maintain its capital planning and positions consistent with supervisory expectations. There is a strong presumption that a firm rated “Deficient-1” will be subject to an informal or formal enforcement action by the Federal Reserve.

A firm rated “Deficient-1” for any rating component would not be considered “well managed,” which would subject the firm to various consequences. A “Deficient-1” rating could be a barrier for a firm seeking Federal Reserve approval of a proposal to engage in new or expansionary activities, unless the firm can demonstrate that (i) it is making meaningful, sustained progress in resolving identified deficiencies and issues; (ii) the proposed new or expansionary activities would not present a risk of exacerbating current deficiencies or issues or lead to new concerns; and (iii) the proposed activities would not distract the firm from remediating current deficiencies or issues.

Deficient-2

Financial or operational deficiencies in a firm’s capital planning or positions present a threat to the firm’s safety and soundness, or have already put the firm in an unsafe and unsound condition.

Specifically, as a result of these deficiencies:

- The firm’s capital planning processes are insufficient to effectively assess the firm’s capital adequacy through a range of conditions; and/or
- The firm’s current or projected capital positions are insufficient to absorb current or potential losses, and to support the firm’s ability to meet current and prospective obligations and serve as a financial intermediary through a range of conditions.

To address these deficiencies, the firm is required to immediately (i) implement comprehensive corrective measures sufficient to restore and maintain appropriate capital planning capabilities and adequate capital positions; and (ii) demonstrate the sufficiency, credibility and readiness of contingency planning in the event of further deterioration of the firm’s financial or operational strength or resiliency. There is a strong presumption that a firm rated “Deficient-2” will be subject to a formal enforcement action by the Federal Reserve.

A firm rated “Deficient-2” for any rating component would not be considered “well managed,” which would subject the firm to various consequences. The Federal Reserve would be unlikely to approve any proposal from a firm rated “Deficient-2” to engage in new or expansionary activities.

2. Liquidity Risk Management and Positions Component Rating

The Liquidity Risk Management and Positions component rating evaluates (i) the effectiveness of a firm’s governance and risk management processes used to determine the amount of liquidity necessary to cover risks and exposures, and to support activities through a range of conditions; and (ii) the sufficiency of a firm’s liquidity positions to comply with applicable regulatory requirements and to support the firm’s ongoing obligations through a range of conditions.

In developing this rating, the Federal Reserve evaluates:

- *Liquidity Risk Management:* The extent to which a firm maintains sound liquidity risk management practices through effective governance and oversight; effective risk management and controls; maintenance of updated liquidity policies and contingency

- plans for addressing potential shortfalls; and incorporation of appropriately stressful conditions into liquidity planning and projections of liquidity positions; and
- *Liquidity Positions*: The extent to which a firm's liquidity is sufficient to comply with regulatory requirements, and to support its ability to meet current and prospective obligations to depositors, creditors and other counterparties through a range of conditions.

Definitions for the Liquidity Risk Management and Positions Component Rating

Broadly Meets Expectations

A firm's liquidity risk management and positions broadly meet supervisory expectations and support maintenance of safe-and-sound operations. Specifically:

- The firm is capable of producing sound assessments of liquidity adequacy through a range of conditions; and
- The firm's current and projected liquidity positions comply with regulatory requirements, and support its ability to meet current and prospective obligations and to continue to serve as a financial intermediary through a range of conditions.

A firm rated "Broadly Meets Expectations" may be subject to identified supervisory issues requiring corrective action. However, these issues are unlikely to present a threat to the firm's ability to maintain safe-and-sound operations through a range of potentially stressful conditions.

A firm that does not meet the liquidity risk management and position expectations associated with a "Broadly Meets Expectations" rating will be rated "Conditionally Meets Expectations," "Deficient-1," or "Deficient-2," and subject to potential consequences as outlined below.

Conditionally Meets Expectations

Certain, material financial or operational weaknesses in a firm's liquidity risk management or positions may place the firm's prospects for remaining safe and sound through a

range of conditions at risk if not resolved in a timely manner during the normal course of business.

Specifically, if left unresolved, these weaknesses:

- May threaten the firm's ability to produce sound assessments of liquidity adequacy through a range of conditions; and/or
- May result in the firm's projected liquidity positions being insufficient to comply with regulatory requirements, and support its ability to meet current and prospective obligations and to continue to serve as a financial intermediary through a range of conditions.

The Federal Reserve does not intend for a firm to be rated "Conditionally Meets Expectations" for a prolonged period. The firm has the ability to resolve these issues through measures that do not require a material change to the firm's business model or financial profile, or its governance, risk management or internal control structures or practices. The Federal Reserve will work with the firm to develop an appropriate timeframe during which the firm would be required to resolve each supervisory issue leading to the "Conditionally Meets Expectations" rating.

The Federal Reserve will closely monitor the firm's remediation and mitigation activities; in most instances, the firm will either:

- Resolve the issues in a timely manner and, if no new material supervisory issues arise, and be upgraded to a "Broadly Meets Expectations" rating because the firm's liquidity risk management practices and related positions would broadly meet supervisory expectations; or
- Fail to resolve the issues in a timely manner and be downgraded to a "Deficient-1" rating, because the firm's inability to resolve those issues would indicate that the firm does not possess sufficient financial or operational capabilities to maintain its safety and soundness through a range of conditions.

It is possible that a firm may be close to completing resolution of the supervisory issues leading to the "Conditionally Meets Expectations" rating, but new issues are identified that, taken alone, would be consistent

with a “Conditionally Meets Expectations” rating. In this event, the firm may continue to be rated “Conditionally Meets Expectations,” provided the new issues do not reflect a pattern of deeper or prolonged liquidity risk management and positions weaknesses consistent with a “Deficient” rating.

A “Conditionally Meets Expectations” rating may be assigned to a firm that meets the above definition regardless of its prior rating. A firm previously rated “Deficient-1” may be upgraded to “Conditionally Meets Expectations” if the firm’s remediation and mitigation activities are sufficiently advanced so that the firm’s prospects for remaining safe and sound are no longer at significant risk, even if the firm has outstanding supervisory issues or is subject to an active enforcement action.

Deficient-1

Financial or operational deficiencies in a firm’s liquidity risk management or positions put the firm’s prospects for remaining safe and sound through a range of conditions at significant risk. The firm is unable to remediate these deficiencies in the normal course of business, and remediation would typically require a material change to the firm’s business model or financial profile, or its liquidity risk management practices.

Specifically, although the firm’s current condition is not considered to be materially threatened:

- Deficiencies in the firm’s liquidity risk management processes are not effectively mitigated. These deficiencies limit the firm’s ability to effectively assess liquidity adequacy through a range of conditions; and/or
- The firm’s projected liquidity positions may be insufficient to support its ability to meet prospective obligations and serve as a financial intermediary through a range of conditions.

Supervisory issues that place the firm’s safety and soundness at significant risk, and where resolution is likely to require steps that clearly go beyond the normal course of business—such as issues requiring a material change to the firm’s business model or financial profile, or its governance, risk manage-

ment or internal control structures or practices—would generally warrant assignment of a “Deficient-1” rating.

A “Deficient-1” rating may be assigned to a firm regardless of its prior rating. A firm previously rated “Broadly Meets Expectations” may be downgraded to “Deficient-1” when supervisory issues are identified that place the firm’s prospects for maintaining safe-and-sound operations through a range of potentially stressful conditions at significant risk. A firm previously rated “Conditionally Meets Expectations” may be downgraded to “Deficient-1” when the firm’s inability to resolve supervisory issues in a timely manner indicates that the firm does not possess sufficient financial or operational capabilities to maintain its safety and soundness through a range of conditions.

To address these financial or operational deficiencies, the firm is required to take timely corrective action to restore and maintain its liquidity risk management and positions consistent with supervisory expectations. There is a strong presumption that a firm rated “Deficient-1” will be subject to an informal or formal enforcement action by the Federal Reserve.

A firm rated “Deficient-1” for any rating component would not be considered “well managed,” which would subject the firm to various consequences. A “Deficient-1” rating could be a barrier for a firm seeking Federal Reserve approval of a proposal to engage in new or expansionary activities, unless the firm can demonstrate that (i) it is making meaningful, sustained progress in resolving identified deficiencies and issues; (ii) the proposed new or expansionary activities would not present a risk of exacerbating current deficiencies or issues or lead to new concerns; and (iii) the proposed activities would not distract the firm from remediating current deficiencies or issues.

Deficient-2

Financial or operational deficiencies in a firm’s liquidity risk management or positions present a threat to the firm’s safety and soundness, or have already put the firm in an unsafe and unsound condition.

Specifically, as a result of these deficiencies:

- The firm’s liquidity risk management processes are insufficient to effectively assess the firm’s liquidity adequacy through a range of conditions; and/or
- The firm’s current or projected liquidity positions are insufficient to support the firm’s ability to meet current and prospective obligations and serve as a financial intermediary through a range of conditions.

To address these deficiencies, the firm is required to immediately (i) implement comprehensive corrective measures sufficient to restore and maintain appropriate liquidity risk management capabilities and adequate liquidity positions; and (ii) demonstrate the sufficiency, credibility and readiness of contingency planning in the event of further deterioration of the firm’s financial or operational strength or resiliency. There is a strong presumption that a firm rated “Deficient-2” will be subject to a formal enforcement action by the Federal Reserve.

A firm rated “Deficient-2” for any rating component would not be considered “well managed,” which would subject the firm to various consequences. The Federal Reserve would be unlikely to approve any proposal from a firm rated “Deficient-2” to engage in new or expansionary activities.

3. Governance and Controls Component Rating

The Governance and Controls component rating evaluates the effectiveness of a firm’s (i) board of directors, (ii) management of business lines and independent risk management and controls, and (iii) recovery planning (for domestic LISCC firms only). This rating assesses a firm’s effectiveness in aligning strategic business objectives with the firm’s risk appetite and risk management capabilities; maintaining effective and independent risk management and control functions, including internal audit; promoting compliance with laws and regulations, including those related to consumer protection; and otherwise providing for the ongoing resiliency of the firm.

In developing this rating, the Federal Reserve evaluates:

- *Effectiveness of the Board of Directors*: The extent to which the board exhibits attributes that are consistent with those of effective boards in carrying out its core roles and responsibilities, including: (i) Setting a clear, aligned, and consistent direction regarding the firm’s strategy and risk appetite; (ii) directing senior management regarding the board’s information; (iii) overseeing and holding senior management accountable, (iv) supporting the independence and stature of independent risk management and internal audit; and (v) maintaining a capable board composition and governance structure.
- *Management of Business Lines and Independent Risk Management and Controls*:
The extent to which:
 - o Senior management effectively and prudently manages the day-to-day operations of the firm and provides for ongoing resiliency; implements the firm’s strategy and risk appetite; maintains an effective risk management framework and system of internal controls; and promotes prudent risk taking behaviors and business practices, including compliance with laws and regulations, including those related to consumer protection.
 - o Business line management executes business line activities consistent with the firm’s strategy and risk appetite; identifies and manages risks; and ensures an effective system of internal controls for its operations.
 - o Independent risk management effectively evaluates whether the firm’s risk appetite appropriately captures material risks and is consistent with the firm’s risk management capacity; establishes and monitors risk limits that are consistent with the firm’s risk appetite; identifies and measures the firm’s risks; and aggregates, assesses and reports on the firm’s risk profile and positions. Additionally, the firm demonstrates that its internal controls are appropriate and tested for effectiveness. Finally, internal audit effectively and independently assesses the firm’s risk management framework and internal control systems, and reports findings to senior manage-

ment and the firm's audit committee.

- *Recovery Planning (domestic LISCC firms only)*: The extent to which recovery planning processes effectively identify options that provide a reasonable chance of a firm being able to remedy financial weakness and restore market confidence without extraordinary official sector support.

Definitions for the Governance and Controls Component Rating

Broadly Meets Expectations

A firm's governance and controls broadly meet supervisory expectations and support maintenance of safe-and-sound operations.

Specifically, the firm's practices and capabilities are sufficient to align strategic business objectives with its risk appetite and risk management capabilities,¹⁰ maintain effective and independent risk management and control functions, including internal audit; promote compliance with laws and regulations (including those related to consumer protection); and otherwise provide for the firm's ongoing financial and operational resiliency through a range of conditions.

A firm rated "Broadly Meets Expectations" may be subject to identified supervisory issues requiring corrective action. However, these issues are unlikely to present a threat to the firm's ability to maintain safe-and-sound operations through a range of potentially stressful conditions.

A firm that does not meet supervisory expectations associated with a "Broadly Meets Expectations" rating will be rated "Conditionally Meets Expectations," "Deficient-1," or "Deficient-2," and subject to potential consequences, as outlined below.

Conditionally Meets Expectations

Certain, material financial or operational weaknesses in a firm's governance and controls practices may place the firm's prospects for remaining safe and sound through a range

¹⁰ References to risk management capabilities includes risk management of business lines and independent risk management and control functions, including internal audit.

of conditions at risk if not resolved in a timely manner during the normal course of business.

Specifically, if left unresolved, these weaknesses may threaten the firm's ability to align strategic business objectives with the firm's risk appetite and risk management capabilities; maintain effective and independent risk management and control functions, including internal audit; promote compliance with laws and regulations (including those related to consumer protection); or otherwise provide for the firm's ongoing resiliency through a range of conditions.

The Federal Reserve does not intend for a firm to be rated "Conditionally Meets Expectations" for a prolonged period. The firm has the ability to resolve these issues through measures that do not require a material change to the firm's business model or financial profile, or its governance, risk management or internal control structures or practices. The Federal Reserve will work with the firm to develop an appropriate timeframe during which the firm would be required to resolve each supervisory issue leading to the "Conditionally Meets Expectations" rating.

The Federal Reserve will closely monitor the firm's remediation and mitigation activities; in most instances, the firm will either:

- Resolve the issues in a timely manner and, if no new material supervisory issues arise, and be upgraded to a "Broadly Meets Expectations" rating because the firm's governance and controls would broadly meet supervisory expectations; or
- Fail to resolve the issues in a timely manner and be downgraded to a "Deficient-1" rating, because the firm's inability to resolve those issues would indicate that the firm does not possess sufficient financial or operational capabilities to maintain its safety and soundness through a range of conditions.

It is possible that a firm may be close to completing resolution of the supervisory issues leading to the "Conditionally Meets Expectations" rating, but new issues are identified that, taken alone, would be consistent with a "Conditionally Meets Expectations" rating. In this event, the firm may continue to be rated "Conditionally Meets Expectations,"

provided the new issues do not reflect a pattern of deeper or prolonged governance and controls weaknesses consistent with a “Deficient” rating.

A “Conditionally Meets Expectations” rating may be assigned to a firm that meets the above definition regardless of its prior rating. A firm previously rated “Deficient” may be upgraded to “Conditionally Meets Expectations” if the firm’s remediation and mitigation activities are sufficiently advanced so that the firm’s prospects for remaining safe and sound are no longer at significant risk, even if the firm has outstanding supervisory issues or is subject to an active enforcement action.

Deficient-1

Financial or operational deficiencies in a firm’s governance and controls put the firm’s prospects for remaining safe and sound through a range of conditions at significant risk. The firm is unable to remediate these deficiencies in the normal course of business, and remediation would typically require a material change to the firm’s business model or financial profile, or its governance, risk management or internal control structures or practices.

Specifically, although the firm’s current condition is not considered to be materially threatened, these deficiencies limit the firm’s ability to align strategic business objectives with its risk appetite and risk management capabilities; maintain effective and independent risk management and control functions, including internal audit; promote compliance with laws and regulations (including those related to consumer protection); or otherwise provide for the firm’s ongoing resiliency through a range of conditions.

A “Deficient-1” rating may be assigned to a firm regardless of its prior rating. A firm previously rated “Broadly Meets Expectations” may be downgraded to “Deficient-1” when supervisory issues are identified that place the firm’s prospects for maintaining safe-and-sound operations through a range of potentially stressful conditions at significant risk. A firm previously rated “Conditionally Meets Expectations” may be downgraded to “Deficient-1” when the firm’s inability to resolve supervisory issues in a timely manner

indicates that the firm does not possess sufficient financial or operational capabilities to maintain its safety and soundness through a range of conditions.

To address these financial or operational deficiencies, the firm is required to take timely corrective action to restore and maintain its governance and controls consistent with supervisory expectations. There is a strong presumption that a firm rated “Deficient-1” will be subject to an informal or formal enforcement action by the Federal Reserve.

A firm rated “Deficient-1” for any rating component would not be considered “well managed,” which would subject the firm to various consequences. A “Deficient-1” rating could be a barrier for a firm seeking Federal Reserve approval of a proposal to engage in new or expansionary activities, unless the firm can demonstrate that (i) it is making meaningful, sustained progress in resolving identified deficiencies and issues; (ii) the proposed new or expansionary activities would not present a risk of exacerbating current deficiencies or issues or lead to new concerns; and (iii) the proposed activities would not distract the firm from remediating current deficiencies or issues.

Deficient-2

Financial or operational deficiencies in governance or controls present a threat to the firm’s safety and soundness, or have already put the firm in an unsafe and unsound condition. Specifically, as a result of these deficiencies, the firm is unable to align strategic business objectives with its risk appetite and risk management capabilities; maintain effective and independent risk management and control functions, including internal audit; promote compliance with laws and regulations (including those related to consumer protection); or otherwise provide for the firm’s ongoing resiliency.

To address these deficiencies, the firm is required to immediately (i) implement comprehensive corrective measures sufficient to restore and maintain appropriate governance and control capabilities; and (ii) demonstrate the sufficiency, credibility, and readiness of contingency planning in the event of further deterioration of the firm’s financial or opera-

tional strength or resiliency. There is a strong presumption that a firm rated “Deficient-2” will be subject to a formal enforcement action by the Federal Reserve.

A firm rated “Deficient-2” for any rating component would not be considered “well

managed,” which would subject the firm to various consequences. The Federal Reserve would be unlikely to approve any proposal from a firm rated “Deficient-2” to engage in new or expansionary activities.