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12 CFR Parts 207, 215, 223, *et al.*
Availability of Information, Public Observation of Meetings, Procedure, Practice for Hearings, and Post-Employment Restrictions for Senior Examiners; Savings and Loan Holding Companies; Interim Final Rule

FEDERAL RESERVE SYSTEM

12 CFR Parts 207, 215, 223, 228, 238, 239, 261, 261b, 262, 263, and 264a

[Regulations G, O, W, BB, LL, MM; Docket No. R- 1429]

RIN 7100 AD–80

Availability of Information, Public Observation of Meetings, Procedure, Practice for Hearings, and Post-Employment Restrictions for Senior Examiners; Savings and Loan Holding Companies

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Interim final rule; request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (''Board'') is publishing an interim final rule with a request for public comment that sets forth regulations for savings and loan holding companies (''SLHCs''). On July 21, 2011, the responsibility for supervision and regulation of SLHCs transferred from the Office of Thrift Supervision (''OTS'') to the Board pursuant to section 312 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act''). This interim final rule provides for the corresponding transfer from the OTS to the Board of the regulations necessary for the Board to administer the statutes governing SLHCs. Technical changes to other regulations have also been made to account for the transfer of authority over SLHCs to the Board.

DATES: This interim final rule is effective September 13, 2011. Comments must be received by November 1, 2011.

ADDRESSES: You may submit comments, identified by Docket No. R–1429 and RIN No. 7100 AD 80, by using any of the methods below. Please submit your comments using only one method.

- *Agency Web Site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: regs.comments@*federalreserve.gov. Include docket number in the subject line of the message.
- *Facsimile:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Street, NW.) between 9 a.m. and 5 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: *Regulation LL:* Amanda K. Allexon, Senior Counsel, (202) 452–3818, or Paul F. Hannah, Counsel, (202) 452–2810, Legal Division; *Regulation MM:* C. Tate Wilson, Attorney, (202) 452–3696, Christine E. Graham, Senior Attorney, (202) 452–3005, Legal Division; Both Regulations: Kevin Bertsch, Associate Director, (202) 452–5265, Kirk Odegard, Assistant Director, (202) 530–6225, or Mike Sexton, Assistant Director, (202) 452–3009, Division of Banking Supervision and Regulation; Board of Governors of the Federal Reserve System, 20th Street and Constitution Ave., NW., Washington, DC 20551. *All other regulatory amendments:* Amanda K. Allexon, Senior Counsel, (202) 452–3818, or Paul F. Hannah, Counsel, (202) 452–2810, Legal Division. For the hearing impaired *only,* Telecommunication Device for the Deaf (TDD), (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Background

Title III of the Dodd-Frank Act transferred from OTS to the Board the responsibility for supervision of SLHCs and their non-depository subsidiaries. The Dodd-Frank Act also transferred supervisory functions related to Federal savings associations and state savings associations to the Office of the Comptroller of the Currency (''OCC'') and the Federal Deposit Insurance Corporation (''FDIC''), respectively.

Specifically, section 312 of the Dodd-Frank Act provides that all functions of the OTS and the Director of the OTS (including rulemaking authority and authority to issue orders) with respect to the supervision of SLHCs and their non-depository subsidiaries transfer to the Board on July 21, 2011.[1] Section 316 of the Dodd-Frank Act provides that all orders, resolutions, determinations, agreements, and regulations, interpretive rules, other interpretations, guidelines, and other advisory materials issued, made, prescribed, or allowed to become effective by the OTS on or before the transfer date with respect to SLHCs and their non-depository subsidiaries will remain in effect and shall be enforceable until modified, terminated, set aside, or superseded in accordance with applicable law by the Board, by any court of competent jurisdiction, or by operation of law. The Dodd-Frank Act includes parallel provisions applicable to the OCC and the FDIC with respect to Federal savings associations and state savings associations, respectively.

Given the extensive transfer of authority to multiple agencies, section 316 of the Dodd-Frank Act required the Board, OCC, and FDIC to identify and publish in the **Federal Register** separate lists of the current OTS regulations that each agency will continue to enforce after the transfer date.[2] On July 21, 2011, the Board issued a notice of intent pursuant to this requirement. The notice of intent outlines all OTS regulations applicable to SLHCs and their non-depository subsidiaries that the Board has currently identified that it intends to enforce after the transfer date. The notice of intent also advised that the Board would issue an interim final rule to effectuate the transition of OTS regulations to the Board.

II. Overview of Interim Final Rule

The interim final rule has three components: (1) New Regulation LL (Part 238), which sets forth regulations generally governing SLHCs; (2) new Regulation MM (Part 239), which sets forth regulations governing SLHCs in mutual form; and (3) technical amendments to current Board regulations necessary to accommodate the transfer of supervisory authority for SLHCs from the OTS to the Board.

The Board is seeking comment on all aspects of this interim final rule. The Board requests specific comment with respect to whether all regulations relating to the supervision of SLHCs are included in this rulemaking. Alternatively, does this rulemaking carry over regulatory provisions that currently do not apply to SLHCs or their non-depository subsidiaries?

Regulation LL. In drafting new Regulation LL, the Board has sought to collect all current OTS regulations applicable to SLHCs (other than regulations pertaining uniquely to SLHCs in mutual form) and transfer them into a single part of Chapter 2 of Title 12 for ease of locating. Generally,

[1] 12 U.S.C. 5412. Section 312 also transfers to the Board all rulemaking authority under section 11 of the Home Owners' Loan Act relating to transactions with affiliates and extensions of credit to insiders and section 5(q) relating to tying arrangements. 12 U.S.C. 1461 *et seq.*

[2] 12 U.S.C. 5414(c).

the structure of the new Regulation LL closely follows that of the Board's Regulation Y, which houses regulations directly related to bank holding companies (''BHCs''), in order to provide an overall structure to rules that were previously found in disparate locations.[3] In many instances, this process has involved copying the current OTS regulations into the new Regulation LL with only technical modifications to account for the shift in supervisory responsibility from the OTS to the Board. In other situations, where the requirements or criteria found in the OTS rules were the same as those found in the Board's rules, Regulation LL attempts to conform the language and format used in the rule to that used by the Board.

The Board also made several substantive changes to the OTS regulations as they were incorporated into Regulation LL. Additionally, the Board added or modified regulations to reflect substantive changes introduced by the Dodd-Frank Act. These modifications are discussed separately below.

Application Processing

Throughout the new regulations, the Board has replaced the OTS procedures with respect to the processing of applications and filings for those of the Board to the extent possible. These changes do not alter the thresholds for filing an application or notice, or the standards for the Board's review of an application, but are intended to promote uniformity and consistency in the Board's processing of applications across the range of institutions. The Board will carryover the OTS applications forms, with technical changes, for the time being. SLHCs can find all application and notice forms on the Board's public Web site. This Web site also contains general information about the most common filings, publication requirements, and the Board's electronic application submission system.[4]

Among other things, migration to the Board's procedures for applications processing includes elimination of requirements in OTS rules for prefiling meetings and submission of draft business plans, and formal procedures for determining an application to be complete. The Board's application processing procedures contemplate both the collection and review of submitted information within specified time periods. Because an application to the Board in most instances is acted on within the standard 30 to 60 day processing periods, the Board expects that following the Board's applications procedures will result in applications processing that is at least as expeditious as processing under the OTS procedures.

Control Determinations

Regulation LL modifies the regulations previously used by the OTS for purposes of determining when a company or natural person acquires control of a savings association or SLHC under the Home Owner's Loan Act (''HOLA'')[5] or the Change in Bank Control Act (''CBCA'').[6] In light of the similarity between the statutes governing BHCs and SLHCs, the Board has decided to use its established rules and processes with respect to control determinations under HOLA and the CBCA to ensure consistency between equivalent statutes administered by the same agency.

The definition of control found in HOLA is virtually identical to that found in the Bank Holding Company Act (''BHC Act'').[7] Specifically, both statutes have a similar three-prong test for determining when a company controls a bank or savings association. A company[8] has control over either a bank or savings association if the company:

(1) Directly or indirectly or acting in concert with one or more persons, owns, controls, or has the power to vote 25 percent or more of the voting securities of a company;

(2) Controls in any manner the election of a majority of the board;

(3) Directly or indirectly exercises a controlling influence over management or policies, after reasonable notice and opportunity for hearing.

Because of this similarity, Regulation LL includes provisions interpreting the definition of control under HOLA in the same manner as that term is interpreted under the BHC Act, adopts procedures for reviewing control determination that are identical for SLHCs and BHCs, and conforms the filing requirements under the CBCA for SLHCs to those for BHCs. As a result, OTS regulations relating to control determinations and rebuttals under HOLA, including the rebuttable control factors and process in section 574.4, the certification of ownership in section 574.5, and the rebuttal agreement in section 574.100, are not included in the proposed regulation.

Beginning on the date of approval of this interim final rule, the Board will review investments and relationships with SLHCs by companies using the current practices and policies applicable to BHCs to the extent possible. Overall, the indicia of control used by the Board under the BHC Act to determine whether a company has a controlling influence over the management or policies of a banking organization (which for Board purposes, will now include savings associations and SLHCs) are similar to the control factors found in OTS regulations.[9] However, the OTS rules weigh these factors somewhat differently and use a different review process designed to be more mechanical.

First, the Board does not limit its review of companies with the potential to have a controlling influence to the two largest shareholders. The Board reviews all investors based on all of the facts and circumstances to determine if a controlling influence is present.

Second, the Board does not have a separate application process for rebutting control under the BHC Act and Regulation LL does not include such a process. Under OTS rules, investors that triggered a control factor in section 574.4 could submit an application to the OTS requesting a determination that they have successfully rebutted control under HOLA. This application resulted in a rebuttal agreement between the investor and the OTS in the form found in section 574.100.

Board practice is to consider potential control relationships for all investors in connection with applications submitted under section 3 of the BHC Act.[10] Accordingly, the Board intends to review potential control relationships for all investors in connection with applications submitted to the Board under section 10(e) or 10(o) of HOLA.[11] In situations where investors believe no application is required, the Board

[3] 12 CFR part 225 (Regulation Y).

[4] *See* Application Filing Information at *http://www.federalreserve.gov/generalinfo/applications/afi/*.

[5] 12 U.S.C. 1461 *et seq.*

[6] 12 U.S.C. 1817(j).

[7] 12 U.S.C. 1841(a) and 1467a(a)(2).

[8] Unlike the BHC Act, HOLA's definition of control applies to persons, not just companies. Additionally, an acquirer will be deemed to control a company under HOLA if they have contributed more than 25 percent of the capital of the company. 12 U.S.C. 1467a(a)(2)(B).

[9] The Board discussed these indicia in a 2008 policy statement on noncontrolling equity investments. *See http://www.federalreserve.gov/newsevents/press/bcreg/2020080922c.htm.* The policy statement outlines in greater detail the Board's views on certain indicia of control, such as the size of the voting and total equity investment, director and officer interlocks, business relationships, and actions (whether or not they are based in contract) that may influence or interfere with the major policies and operations of the banking organization.

[10] 12 U.S.C. 1842.

[11] 12 U.S.C. 1467a(e) and 1467a(o).

encourages investors to consult with staff at the appropriate Reserve Bank or the Board to determine what type of review is appropriate to confirm that the Board concurs that no BHC Act or HOLA filing is necessary. As with OTS practice, the Board often obtains a series of commitments from investors seeking non-control determinations.

The CBCA applies a somewhat different definition of control to the acquisition of both banks and savings associations and their holding companies by individuals or companies. The CBCA applies only to acquisitions of control of a holding company through the purchase or other disposition of the company's voting stock, and an acquiror is deemed to control the company if the acquiror would have the power, directly or indirectly, to direct the management or policies of an insured bank or to vote 25 percent or more of any class of voting securities of an insured bank.[12]

A significant difference between OTS and Board regulations relating to the CBCA is the ability to use passivity commitments or rebuttal agreements to avoid filing a CBCA notice. Unlike the OTS, the Board does not allow investors to avoid required filings under the CBCA. The CBCA requires only a notice and background review by the Board and, unlike the BHC Act or HOLA, does not impose any ongoing activity restrictions or other requirements on the filer. For example, the Board may determine that a company does not have control for purposes of the BHC Act (or in the future, for purposes of HOLA) and rely on passivity commitments to support its determination, but that company would continue to be required to file a notice under the CBCA if the size of the investment triggers a filing under that Act.

The Board does not anticipate revisiting ownership structures previously approved by the OTS. The Board would apply its rules only to new investments and would only reconsider the particular structures of past investments approved by the OTS if the company proposes a material transaction, such as an additional expansionary investment, significant recapitalization, or significant modification of business plan.

Financial Holding Company Activities

Section 606(b) of the Dodd-Frank Act amends HOLA by inserting a new requirement that conditions the ability of SLHCs that are not exempt from HOLA's restrictions on activities (''Covered SLHCs'') to engage in certain activities.[13] Pursuant to this new requirement, a Covered SLHC may engage in activities that are permissible only for a financial holding company under section 4(k) of the BHC Act (''4(k) Activities'') if the Covered SLHC meets all of the criteria to qualify as a financial holding company, and complies with all of the requirements applicable to a financial holding company as if the Covered SLHC was a bank holding company.[14]

Section 4(l) of the BHC Act, as amended by section 606(a) of the Dodd-Frank Act, provides for the following requirements for an institution to qualify as a financial holding company: (1) All depository institution subsidiaries and the holding company itself must be well-managed and well-capitalized; (2) the holding company must file an election to engage in activities available only to financial holding companies and certify that it meets the above requirements; and (3) all depository institution subsidiaries must have a CRA rating of ''satisfactory'' or better.[15] Under section 606(b), these new conditions on the ability of Covered SLHCs to engage in 4(k) Activities took effect on the transfer date.

Prior to the Dodd-Frank Act, the authority for SLHCs to engage in 4(k) Activities was based on subparagraphs 10(c)(9)(A) and (B) of HOLA, which were added to the statute by the Gramm-Leach-Bliley Act of 1999.[16] These provisions provide that, after May 4, 1999, no new or existing SLHC could conduct activities except for (i) those listed in subsection 10(c)(1)(C) or 10(c)(2) of HOLA [17] or (ii) 4(k) Activities. The OTS interpreted this reference to 4(k) Activities to be an affirmative grant of authority to all Covered SLHCs to engage in 4(k) Activities. Because there was no specific statutory requirement to do otherwise, the OTS permitted Covered SLHCs to engage in 4(k) Activities without having to satisfy any of the financial holding company-related criteria in the BHC Act.[18] As a result, the OTS imposed only limited filing requirements on Covered SLHCs with respect to 4(k) Activities.[19]

In light of Section 606(b) of the Dodd-Frank Act, the Board believes that subsection 10(c)(2)(H) is the only grant of authority in HOLA for Covered SLHCs to engage in 4(k) Activities.[20] Specifically, subparagraphs 10(c)(9)(A) and (B) do not grant separate authority to engage in 4(k) Activities without having to comply with the standards applicable to financial holding companies. As a result, the Board has concluded that the statute requires Covered SLHCs that wish to engage in 4(k) Activities after the transfer date to file a declaration with the Board to elect to be treated as a financial holding company and a certification that the financial holding company criteria are satisfied for the purpose of engaging in 4(k) Activities.

Accordingly, in subpart G of Regulation LL, the Board has adopted regulations outlining the processes under which a Covered SLHC may elect to be treated as a financial holding company. These regulations are similar to those found in the Board's Regulation Y for BHCs. Subpart G also establishes a process under which Covered SLHCs currently engaged in 4(k) Activities may come into conformance with these new requirements.

After the transfer date, HOLA will continue to permit SLHCs to engage in activities other than those implicated by section 606(b) of the Dodd-Frank Act. In particular, Covered SLHCs conducting certain 4(k) Activities may not be subject to financial holding company requirements if the activities are permissible pursuant to HOLA provisions other than those impacted by section 606(b).

Section 4(c)(8) and 4(k)(4)(F) Activities

Sections 4(c)(8) and 4(k)(4)(F) of the BHC Act permit BHCs and financial holding companies, respectively, to conduct activities the Board has determined by rule or order to be ''closely related to banking'' (''section 4(c)(8) Activities'').[21] HOLA also

[12] 12 U.S.C. 1817(j)(1) and (j)(8)(B).

[13] 12 U.S.C. 1467a(c)(2)(H). HOLA provides an exemption from activities restrictions for certain SLHCs that only controlled, or were in the process of acquiring, one savings association at the time the Gramm-Leach-Bliley Act of 1999 was passed and that meet certain other criteria. Subsections 10(c)(3) and 10(c)(9)(C) of HOLA operate together to establish this exemption. Section 606(b) does not modify the operative provisions of either of these subsections and therefore should not be interpreted to modify the exemption. *See* 12 U.S.C. 1467a(c)(3); 12 U.S.C. 1467a(c)(9).

[14] *Id.*

[15] 12 U.S.C. 1843(l).

[16] 12 U.S.C. 1467a(c)(9)(A)–(B).

[17] 12 U.S.C. 1467(a)(c)(1)(C)–(2).

[18] *See* Notice of Proposed Rulemaking, Authority for Certain Savings and Loan Holding Companies to Engage in Financial Activities, 66 **Federal Register** 56488 (November 8, 2001).

[19] Prior to the transfer date, in order to engage in 4(k) Activities, SLHCs generally were not required to make any pre- or post-notice filings with the OTS. *See Id.*

[20] In this context, subparagraphs 10(c)(9)(A) and (B) of HOLA now should be read to act as limitations on the activities that an entity that acquires and holds savings associations may engage in.

[21] 12 U.S.C. 1843(c)(8) and 4(k)(4)(F).

permits all SLHCs to conduct these activities.[22] Under OTS practice, the OTS has not required a filing to engage in section 4(c)(8) Activities.[23] After the transfer date, Covered SLHCs that only conduct section 4(c)(8) Activities will not need to submit the declaration described above. However, any SLHC that begins a new section 4(c)(8) Activity after the transfer date and has not made a declaration and submitted the appropriate post-notice will need to comply with relevant filing requirements in subpart F of this rule.

Insurance Agency Activities

HOLA also allows SLHCs to engage in insurance and escrow activities (''insurance agency activities'').[24] These activities fall within the scope of 4(k) Activities. However, because HOLA provides an explicit grant of authority to conduct insurance agency activities, the restrictions on 4(k) Activities will not apply to Covered SLHCs with respect to insurance agency activities. Accordingly, after the transfer date, Covered SLHCs do not have to submit a declaration and adhere to the financial holding company limitations in order to engage exclusively in this set of activities.

''1987 List'' Activities

Additionally, HOLA permits SLHCs to engage in activities that multiple SLHCs were authorized, by regulation, to directly engage in on March 5, 1987.[25] The OTS identified the activities that satisfy this section of HOLA in their regulations (''1987 List'').[26] Some of the activities on the 1987 List, such as real estate development, are not permissible for BHCs or financial holding companies. The Dodd-Frank Act does not modify or condition the ability of SLHCs to engage in these activities. Therefore, the activities identified by the OTS on the 1987 List remain permissible for Covered SLHCs, subject to the requirements in subpart F of Regulation LL. After the transfer date, Covered SLHCs do not have to submit a declaration and adhere to the financial holding company limitations in order to engage exclusively in this set of activities.

Dividends by Subsidiary Savings Associations

Section 10(f) of HOLA provides that a subsidiary savings association of an SLHC must file a notice at least 30 days prior to declaring a dividend.[27] Prior to July 21, 2011, these notices were filed with the OTS. However, section 369(8)(K) of the Dodd-Frank Act provides that such notices are to be filed with the Board after the transfer date.

Subpart K of the interim final rule implements section 10(f) of HOLA. This subpart is substantially similar to portions of the OTS capital distribution regulation, which governed dividends by subsidiary savings associations of SLHCs as well as other savings association capital distributions. Subpart K of the interim final rule includes only the portions of the OTS capital distribution regulation that implement section 10(f) of HOLA.

In processing notices pursuant to subpart K, the Board will work closely with the regulator(s) of a savings association that submits a dividend notice. The Board expects for example that on receiving a dividend notice pursuant to subpart K, a copy of the notice will immediately be sent to the savings association's regulator(s) with a request for comment.

Regulation MM. Regulation MM organizes the current OTS regulations specific to SLHCs in mutual form (''MHCs'') and their subsidiary holding companies into a single part of the Board's regulations.[28] Previously, regulations governing MHCs were largely found in parts 575 and 563b of the OTS rules. In many cases, Regulation MM mirrors the current OTS rules with only technical modifications to account for the shift in supervisory responsibility from the OTS to the Board.[29]

Regulation MM also reflects several substantive changes to OTS regulations. Some of the changes are necessary to take into account statutory changes made by the Dodd-Frank Act, and others are intended to promote consistent treatment of BHCs and SLHCs. The substantive changes are discussed below.

Application Processing

As discussed above, throughout the new regulations, the Board has replaced the OTS procedures with respect to the processing of applications and filings with those of the Board to the extent possible. In general, the Board has conformed the processing period for applications and forms filed by MHCs, subsidiary holding companies of MHCs, and any other entities that are required to make a filing pursuant to Regulation MM with the standard processing periods currently applicable to BHCs. The Board's changes do not alter the thresholds for filing an application or notice or the regulatory standards of review of any filing. The changes are intended to promote uniformity and consistency in the Board's processing of applications across the range of filings to the Board.

The Board is aware that certain conversion applications filed by MHCs with the OTS pursuant to part 563b were processed by the OTS according to a special six-to-eight week review period, notwithstanding the application of the processing periods previously found in subpart E of part 516. The Board understands this special review period was developed because the review period in part 516 made it highly unlikely an applicant would receive approval of a conversion application prior to the relevant financial statements' stale date under applicable federal securities law.

The Board will process applications filed by MHCs to convert to stock form under the procedures set forth in section 238.14 in Regulation LL. The Board's standard 30- or 60-day processing periods are generally consistent with past OTS practice of processing conversion applications within six-to-eight weeks.[30] However, section 238.14 allows the Board to extend the processing period for a specified period, and the Board may determine to extend the review period of a conversion application beyond 60 calendar days.

[22] 12 U.S.C. 1467a(c)(2)(F)(i) (permitting activities listed in Section 4(c) of the BHC Act); 12 U.S.C. 1467a(c)(9) (permitting activities listed in Section 4(k) of the BHC Act).

[23] OTS has taken this view because Section 4(c)(8) Activities are a subset of 4(k) Activities, for which no OTS filing has been required.

[24] 12 U.S.C. 1467a(c)(2)(B).

[25] 12 U.S.C. 1467a(c)(2)(F)(2).

[26] 12 CFR 584.2–1, which can now be found in section 238.53 of the Board's rules.

[27] 12 U.S.C. 1467a(f).

[28] The definition of ''mutual holding company'' in section 10(o)(10)(A) of HOLA defines an MHC to be ''a corporation organized as a holding company under [section 10(o)].'' Thus, the provisions of Regulation MM do not apply to an MHC that is not organized under section 10(o) of HOLA. MHCs that own a bank (that have not elected to be treated as a saving association pursuant to section 10(l) of HOLA) remain subject to the BHC Act and related regulations.

[29] The Board notes that, in many cases, the former OTS regulations applied directly to savings associations and were indirectly applied to MHCs and their subsidiary holding companies by cross reference. After the transfer date, the Board is the primary federal regulator of SLHCs (including MHCs and their subsidiary holding companies) and the FDIC and OCC are the primary federal regulators of savings associations. As a result, the Board has transferred the provisions that applied indirectly to MHCs through cross references into Regulation MM and revised them as necessary to apply directly to MHCs and their subsidiary holding companies.

[30] Section 239.55 applies the processing period from section 238.14 in Regulation LL to conversion applications. This processing period is consistent with the processing period that has been applied to past conversion applications submitted by BHCs in mutual form applying to convert to stock form.

Waiver of Dividends

Section 625 of the Dodd-Frank Act amended section 10(o) of HOLA to set forth the conditions under which an MHC may waive its right to receive dividends declared by a subsidiary of the MHC. Dividend waivers are permissible if:

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

(2) The MHC gives written notice to the Board of its intent to waive its right to receive dividends (''Dividend Waiver Notice'') not later than 30 days before the date of the proposed date of payment of the dividend, and the Board does not object to the waiver.[31]

With respect to dividend waivers under (2) above, the Dodd-Frank Act's amendment to section 10(o) of HOLA distinguishes between those MHCs that waived dividends prior to December 1, 2009 (''Grandfathered MHCs'') and those that did not (''non-Grandfathered MHCs'').

For Grandfathered MHCs, new section 10(o)(11) of HOLA provides that the Board may not object to a waiver of dividends if: (1) The waiver would not be detrimental to the safe and sound operation of the savings association; and (2) the MHC's board of directors expressly determines that a waiver of dividends by the MHC is consistent with the fiduciary duties of the board of directors to the MHC's mutual members. The Grandfathered MHC must provide the Dividend Waiver Notice to the Board and include a copy of the resolution of the MHC's board of directors, in such form and substance as the Board may determine, which concludes that the proposed dividend waiver is consistent with the fiduciary duties of the board of directors to the mutual members of the MHC.[32]

Section 239.8(d) of Regulation MM implements the statutory framework for dividend waivers. To address the concern with respect to the inherent conflict of interest created by the waiver of dividends, section 239.8(d)(3) requires that the resolution of the MHC's board of directors contain certain elements designed to disclose and mitigate this conflict of interest. First, the board resolution must describe the conflict of interest that exists because of an MHC director's ownership of stock in the subsidiary declaring dividends and any actions the MHC and board of directors have taken to eliminate the conflict of interest, such as the directors waiving their right to receive dividends. Second, the resolution must contain an affirmation that a majority of the mutual members eligible to vote have, within the 12 months prior to the declaration date of the dividend, voted to approve the waiver of dividends. Any proxy statement used in connection with the member vote must include disclosure of any MHC director's ownership of stock in the subsidiary. The Board requests comment concerning the substance of the board resolution and whether any additional provisions should be required to ensure that the fiduciary duties of the directors have been satisfied.

HOLA is silent with respect to the standards the Board should consider when reviewing a Dividend Waiver Notice filed by non-Grandfathered MHCs, and does not limit the Board's ability to deny such waivers. Consistent with the view that dividend waiver requests raise inherent conflict of interest issues, section 239.8(d)(4) would apply to non-Grandfathered MHCs all requirements applicable to Grandfathered MHCs' requests to waive dividends and would impose additional conditions that must be satisfied by non-Grandfathered MHCs before the Board will approve a request to waive dividends. These conditions are designed to highlight for the mutual members the conflict of interest inherent in dividend waivers where MHC directors own shares of the subsidiary issuing dividends. The conditions also are designed to employ certain accounting practices to ensure that the mutual members' financial interests in the MHC are protected in the event the MHC converts to stock form or is forced to liquidate.

Specifically, non-Grandfathered MHCs must submit a copy of the non-Grandfathered MHC's board resolution pursuant to paragraph 239.8(d)(2) and must also satisfy each of the conditions provided in paragraph 239.8(d)(4).

Non-Grandfathered MHCs need only satisfy one of the two conditions provided in paragraph 239.8(d)(4)(v). Paragraph 239.8(d)(4)(v)(A) requires a majority of the board of directors of the non-Grandfathered MHC to approve the waiver of dividends. Any director with direct or indirect ownership, control, or the power to vote shares of the subsidiary declaring the dividend, or who otherwise directly or indirectly benefits through an associate from the waiver of dividends, must abstain from the board vote. Regardless of the number of director abstentions, a majority of the entire board of directors must approve the waiver of dividends– not just a majority of the directors who vote. For example, if a non-Grandfathered MHC's board of directors has a total of nine members and four directors must abstain from the vote, all five voting directors must approve the waiver of dividends.

If unable to comply with the procedures described above, Non-Grandfathered MHCs may instead comply with subparagraph 239.8(d)(4)(v)(B) under which each officer or director of the MHC or its affiliates, associate of such officer or director, and any tax-qualified or non-tax-qualified employee stock benefit plan in which such officer or director participates that holds any share of the stock in the class of stock to which the waiver would apply waives their rights to dividends. The Board notes that for the purpose of subparagraph 239.8(d)(4)(v)(B) the tax-qualified or non-tax-qualified employee stock benefit plans in which an officer or director of the MHC or its affiliates may participate that hold any share of the stock in the class of stock to which the waiver would apply may include plans other than those offered or sponsored by the MHC or its affiliates.

Non-Grandfathered MHCs should include in the Dividend Waiver Notice submitted to the Board pursuant to paragraph 239.8(d)(1)(ii) a description of the non-Grandfathered MHC's compliance with each of the requirements listed in paragraph 239.8(d)(4). Each of the requirements in paragraph 239.8(d)(4) should be addressed individually in the Dividend Waiver Notice.

The Board requests comment on whether the conditions sufficiently address concerns regarding the inherent conflict of interest with dividend waivers. The Board also requests comment with respect to the conditions that require specific accounting of waived dividends.

Offering Circulars, Forms of Proxy, and Proxy Statements

The Board has revised the process for review of offering circulars, forms of proxy, and proxy statements used in connection with MHC transactions. Under part 563b of the OTS regulations, the OTS declared effective offering circulars and approved forms of proxy and proxy statements. MHCs and their subsidiary holding companies were not permitted to conduct a securities offering or solicit proxies until the OTS declared effective or approved these documents, as relevant.

The Board will continue to require MHCs and their subsidiary holding

[31] 12 U.S.C. 1467a(o)(11)(B).

[32] 12 U.S.C. 1467a(o)(11)(C).

companies to file offering circulars on Form OC and proxy statements on Form PS in the context of an application to the Board. The Board will closely review these documents in its review of an application as a whole and may comment on the adequacy, completeness, or accuracy of information in any of these documents. However, consistent with the Board's current practice with respect to bank holding companies and state member banks, the Board will not declare offering circulars effective and will not approve proxies or proxy statements. The Board may require an applicant make certain changes to any offering circular, form of proxy, or proxy statement.

MHCs and subsidiary holding companies of MHCs must continue to abide by all applicable federal and state securities laws, rules, and regulations. For instance, the Board expects that all securities offering documents and proxy materials provided in the context of a securities offering will be governed by regulations and policies of the Securities and Exchange Commission (''SEC''), a state securities regulator as relevant, and the Board. For forms of proxy and proxy statements provided to mutual members and not filed with the SEC, the Board requires that all documents comply with all applicable Board regulations and policies.

The Board requests comment regarding its review of offering circulars, forms of proxy, and proxy statements. The Board requests specific comment on whether there are circumstances in which an MHC or subsidiary holding company's offering circular would not be reviewed or declared effective by the SEC or approved by a state securities regulator. The Board also requests comment on whether it should continue to require MHCs and subsidiary holding companies of MHCs to file proxy statements on Form PS for proxies sent to shareholders, or if the Board should require only that MHCs and their subsidiary holding companies file proxy statements that conform to state and federal securities laws, rules, and regulations.

The Board also requests specific comment on whether MHCs or subsidiary holding companies should be allowed to submit securities materials on the appropriate SEC forms, as opposed to on Form PS or Form OC, if the securities materials are subject to SEC review.

Stock Repurchases

The Board has extended the prior notice period for stock repurchases by a resulting stock holding company within the first year of conversion from mutual to stock form. Under the interim final rule, a resulting stock holding company will be required to provide 30 days prior notice to the Board before engaging in a stock repurchase, which can be extended by the Board for an additional 60 days. Under section 563b.515 of the OTS regulations, resulting stock holding companies were required to provide a 10-day prior notice.

In addition, the Board expects that stock repurchases within a short period of time after conversion would generally constitute a material change from the business plan considered in connection with the conversion. In this case, the resulting stock holding company would be required to obtain prior approval from the Board before the material change to the business plan could be considered effective.

Technical Amendments. The Board has made technical amendments to Board rules to facilitate supervision of SLHCs. These amendments include revisions to the interagency rules implementing requirements relating to the Community Reinvestment Act, as well as the procedural and administrative rules of the Board including those relating to the Freedom of Information Act. In general, the amendments add SLHCs to the institutions covered by the rule and create mirrored provisions to accommodate transactions under HOLA.

In addition, the Board made technical amendments to implement section 312(b)(2)(A) of the Dodd Frank Act,[33] which transfers to the Board all rulemaking authority under section 11 of HOLA relating to transactions with affiliates and extensions of credit to executive officers, directors, and principal shareholders.[34] These amendments include revisions to parts 215 (Insider Transactions)[35] and part 223 (Transactions with Affiliates)[36] of Board regulations.

III. Section-by-Section Analysis.

Regulation LL

1. Subpart A General Provisions

A. 238.1 Authority, Purpose and Scope

This section sets forth the authority, purpose, and scope for the interim final rule.

B. 238.2 Definitions

This section combines definitions from parts 574 and 583 of the OTS regulations in one location. Several definitions that were not used in the text of the rules were eliminated or moved to locations that correspond with placement in Regulation Y. Other definitions were modified or changed to those used in Regulation Y.

Specifically, the definition of ''bank holding company,'' ''person,'' ''shareholder,'' ''stock,'' ''voting securities'' (including voting and nonvoting shares) were modified to reflect the definitions in Regulation Y. The definition of ''savings association'' was modified to eliminate the inclusion of SLHCs within the definition. The definition of ''savings and loan holding company'' was modified to reflect two new exceptions to HOLA included in the Dodd-Frank Act. Section 10(a)(1)(D) of HOLA, as amended by section 604 of the Dodd-Frank Act, now excludes from the definition of ''savings and loan holding company'' 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 BHC Act, as well as a company, described in section 10(c)(9)(C) of HOLA that would be a SLHC solely by virtue of such company's control of an intermediate holding company established under section 10A of HOLA.

This section also includes definitions of ''well managed'' and ''well capitalized'' for SLHCs. ''Well managed'' takes the meaning provided in section 225.2(s) of Regulation Y for BHCs, except that it clarifies that a ''satisfactory rating for management'' may mean either a management or risk-management rating, whichever rating is given. The definition of well-capitalized for SLHCs differs from the similar standard for BHCs because SLHCs are not currently subject to regulatory capital requirements. Instead, a SLHC will be considered well-capitalized if (i) all of its subsidiary savings associations and other subsidiary depository institutions are well capitalized, and (iii) the SLHC is not subject to any outstanding formal administrative order or enforcement actions relating to capital.

As discussed in the Board's Notice of Intent issued on April 15, 2011, the Board, together with the other Federal banking agencies, is reviewing consolidated capital requirements for all depository institutions and their holding companies pursuant to section 171 of the Dodd-Frank Act and the Basel Committee on Banking Supervision's ''Basel III: A global regulatory framework for more resilient banks and banking systems'' report (''Basel III''). It is expected that the Basel III notice of proposed rulemaking also would

[33] 12 U.S.C. 5412.

[34] 12 U.S.C. 1468.

[35] 12 CFR part 215 (Regulation O).

[36] 12 CFR part 223 (Regulation W).

address any proposed application of Basel III-based requirements to SLHCs. When the rule-making process is complete, this definition will be changed to be more closely aligned to the definition of well-capitalized for BHCs.

C. 238.3 Administration

Section 238.3 includes two paragraphs that clarify some administrative processes of the Board that are specifically relevant to the provisions in these regulations. Paragraph (a) specifies that the Board has delegated certain functions to designated Board members and officers as well as the Federal Reserve Banks. These delegations can be found in parts 262 and 265 of the Board's rules, and in Board orders. In connection with the issuance of this interim final rule, the Board has approved an order extending to SLHCs many of the delegations in part 265 and in previous Board orders that are currently applicable to BHCs.

In administering this regulation, the Board often relies on appropriate Reserve Banks to take certain actions, including on applications. Paragraph (b) clarifies the factors used in determining the appropriate Reserve Bank for a particular SLHC or for companies and individuals filing under the CBCA. If the standard delegation could impede the ability of the Federal Reserve to perform its functions under law, would not result in an efficient allocation of supervisory resources, or would not otherwise be appropriate, the Board may designate another appropriate Reserve Bank.

D. 238.4 Records, Reports, and Inspections

This section combines provisions that apply to SLHCs from sections 562.1, 562.2, and 584.1 of the OTS rules which establish basic records and reporting requirements. Minor changes have been made to these provisions to reflect similar provisions in Regulation Y.

All reports required by the Board can be found on the Board's public Web site.[37] As discussed in the Board's Notice of Intent issued on February 3, 2011, the Board anticipates transitioning SLHCs to the Board's reporting forms. The Board has considered the comments received on that Notice and will be issuing a revised proposal for comment shortly. Until such time as that proposal is finalized, SLHCs must still submit all current reports on the schedule prescribed by the OTS. As noted above, the Board will carryover the OTS applications forms, with technical changes, for the time being.

This section also includes the registration and deregistration process provided for in HOLA. This interim final rule expands the deregistration process to include situations where a company no longer qualifies as a SLHC, in addition to when a company no longer controls a savings association. This change is to accommodate exemptions added to the definition of ''savings and loan holding company'' by the Dodd-Frank Act that are discussed in detail above.

E. 238.5 Audit of Savings Association Holding Companies

This section contains the provisions of section 562.4 of the OTS rules. These provisions require an independent audit for safety and soundness purposes for SLHCs that control a savings association(s) with aggregate consolidated assets of $500 million or more.

F. 238.6 Penalties for Violations

Section 238.6 of Regulation LL puts SLHCs on notice that section 10 of HOLA provides for criminal and civil penalties for violations by any company or individual of HOLA or any regulation or order issued under it, as well as for making a false entry in any book, report, or statement of an SLHC. This section also specifies that the Board may institute a cease-and-desist order for any violation of HOLA, the CBCA or this regulation. The Board has provisions for BHCs in section 225.6 of Regulation Y.

G. 238.7 Tying Restriction Exception

Section 312(b)(2) of the Dodd-Frank Act[38] gives the Board rule-writing authority with respect to section 5(q) of HOLA, which contains tying restrictions for savings associations.[39] This section of the interim final rule contains the provisions previously found in section 563.36 of the OTS rules. Although the requirements for savings associations are comparable to those applicable to banks under the Board's Regulation Y, this section also applies these restrictions reciprocally to SLHCs. BHCs are not subject to equivalent restrictions under current Board rules. In the future, the Board will evaluate if these rules should be conformed. Additionally, following the transfer date, the Board has authority under section 5(q) to grant exceptions to these restrictions, after consultation with the OCC and the FDIC, so long as any exception conforms to section 106 of the Bank Holding Company Amendments of 1970.[40]

H. 238.8 Safe and Sound Operations

This section of the interim final rule states that a SLHC must serve as a source of financial and managerial strength to its subsidiary savings associations and may not conduct its operations in an unsafe and unsound manner. Although these are long standing prudential standards applied by the Board, section 38A of the Federal Deposit Insurance Act (''FDI Act''), as amended by section 616(d) of the Dodd-Frank Act, now requires all SLHCs to serve as a source of strength to their subsidiary depository institutions.[41]

Additionally, this section of the interim final rule specifies that if the Board believes that an activity of the SLHC or a nonbank subsidiary constitutes a serious risk to the financial safety, soundness, or stability of a subsidiary savings association and is inconsistent with the principles of sound banking, the purposes of HOLA or other applicable statutes, the Board may require the SLHC to terminate the activity or divest control of the nonbanking subsidiary. This obligation is established in section 10(g)(5) of HOLA[42] and BHCs are subject to equivalent obligations under the BHC Act and Regulation Y.

2. Subpart B Acquisitions of Savings Association Securities or Assets

A. 238.11 Transactions Requiring Board Approval

This section specifies certain acquisition transactions involving savings associations and SLHCs that require the prior approval of the Board under section 10(e) of HOLA.[43] These prior approval requirements were previously found in section 574.3(a) and section 584.4 of the OTS regulations. As discussed above, although OTS regulations integrated the concepts of prior approval under HOLA and the CBCA with respect to companies, the prior approval requirements found in subpart B only relate to the requirements of HOLA.

B. 238.12 Transactions Not Requiring Board Approval

Section 238.12 of Regulation LL outlines certain acquisition transactions involving savings associations or SLHCs that do not require the prior approval of the Board. These exclusions from prior notice requirements were previously

[37] *See* Reporting Forms at: *http://www.federalreserve.gov/reportforms/default.cfm.*

[38] 12 U.S.C. 5412.

[39] 12 U.S.C. 1464.

[40] 12 U.S.C. 1972(1).

[41] 12 U.S.C. 1831o–1.

[42] 12 U.S.C. 1467a(g)(5).

[43] 12 U.S.C. 1467a(e).

found at sections 574.4(c) and 584.4(c) of the OTS rules and only include minor modifications. Because there is a separate regulatory provision relating to CBCA, this section does not include the exceptions from prior notice for CBCA filings that were also included in section 574.4(c). Those provisions can now be found in subpart D.

Section 10(e) of HOLA requires SLHCs to request prior approval to acquire a savings association through merger. The Bank Merger Act [44] also requires savings associations to seek prior approval to acquire another savings association by merger. As a result, when a savings association owned by a SLHC acquired another savings association by merger, the OTS required both the SLHC and the savings association to submit requests for prior approval under the appropriate statute. This requirement did not lead to unnecessary duplication because the same agency and staff processed both requests concurrently. However, now that SLHCs and savings associations will be regulated and supervised by separate agencies, the Board has considered whether SLHCs should be required to submit an application under HOLA for certain merger and reorganization transactions. The Board has determined that SLHCs should be provided exceptions similar to those provided to BHCs in Regulation Y. As a result, paragraph (d) sets forth regulations governing the conditions under which certain transactions subject to the Bank Merger Act and internal corporate reorganizations would not require the Board's approval under section 238.11 of subpart B.

Paragraph (d) of this section is intended to reduce regulatory burden in certain circumstances by eliminating the requirement to file an application if the core of the proposal is a merger subject to the Bank Merger Act. The Board recognizes that, in such circumstances, no regulatory purpose would be served by requiring an application to provide essentially the same information for a minor part of the proposal. The Board retains jurisdiction over these transactions, however, because it recognizes that a proposal may have an effect on financial, managerial, and other resources of the parent holding company, which would not be reviewed by the primary regulator of the transaction under the Bank Merger Act. Alternatively, a proposal may raise other issues regarding factors over which the Board has primary or exclusive jurisdiction under HOLA. Accordingly, paragraph (d) provides that the Board or Reserve Bank may inform the holding company that an application is required if the proposal presents issues unique to the Board's jurisdiction. Paragraph (d) also makes clear that transactions involving holding companies organized in mutual form, subsidiary holding companies of SLHCs organized in mutual form, or depository institutions organized in mutual form do not qualify for waivers of the Board's approval requirements under section 238.11 of subpart B.

Additionally, paragraph (d) of this section provides an exemption for certain transactions performed in the United States that constitute an internal corporate reorganization by an SLHC. The transaction must be solely a reorganization involving holding companies and insured depository institutions that both, preceding and following the transaction, are lawfully controlled by the same top-tier holding company. In addition, the companies and insured depository institutions must not have acquired additional voting securities, and they must have complied with the other requirements in paragraph (d) of this section.

Paragraph (d) of this section is substantially similar to section 225.12 of subpart B of the Board's Regulation Y. References to SLHCs have generally been substituted for references to BHCs, and references to savings associations have generally been substituted for references to banks. In addition, consistent with the overall approach taken in this interim final rule, the Board has substituted its procedures for those of the OTS with respect to filing and informational requirements. The Board also will process requests submitted pursuant to this section in the same manner as it processes requests submitted under section 225.12 of Regulation Y.

C. 238.13 Prohibited Acquisitions

This section of the interim final rule contains provisions from sections 584.8(d) and 584.9 of the OTS rules, which prohibit certain types of transactions by an SLHC related to uninsured savings associations and mutual savings associations. The remaining provisions of section 584.9 have been integrated into Regulation LL at other locations.

D. 238.14 Procedural Requirements

As discussed above, the Board has replaced OTS processing requirements for applications and notices with those currently used by the Board for similar transactions. As a result, section 238.13 of the interim final rule replaces part 516 and section 574.6 of the OTS rules. The requirements in this section are similar to those found in sections 225.15 and 225.16 of the Board's Regulation Y with respect to applications submitted by BHCs.

Paragraph (a) of this section indicates that applications required under section 238.11 must be filed with the appropriate Reserve Bank on the designated form. As noted above, investors can find all application and notice forms on the Board's public Web site, as well as additional information about the applications process and the Board's electronic application submission system.[45]

Paragraph (b) of this section notes that applicants may request confidential treatment for portions of their application under the Board's Freedom of Information Act regulations found at part 261.

Paragraph (c) specifies the public notice requirements for applications required under this subpart. Generally, the newspaper publication requirement is the same as that previously found in the OTS rules. However, the Board also publishes notices of proposed acquisitions in the **Federal Register** and provides interested persons the opportunity to comment on the proposal for a period no longer than 30 days. This paragraph also permits advance publication as well as waiver or shortening of these notice requirements in the case of a failure or if the Board determines that an emergency exists that requires expeditious action.

Paragraph (d) outlines the Board's rules with regard to public comment, including determining when a comment is timely, when a comment is of substance, and when the comment period may be extended.

Paragraph (e) specifies that the Board may order a formal or informal hearing or other proceeding on an application and that any requests for a hearing must comply with the requirements of part 262 of the Board's rules.

Paragraph (f) of this section requires the Reserve Bank to accept applications submitted under this subpart for processing within 7 calendar days of filing. Substantially incomplete applications will be returned. The paragraph also indicates that a copy of each application will be sent to the Board and the primary bank supervisor for the savings association to be acquired.

Paragraph (g) outlines the processing timeline for applications submitted under this subpart. Except as otherwise

[44] 12 U.S.C. 1828.

[45] *See* Application Filing Information at *http://www.federalreserve.gov/generalinfo/applications/afi/*.

provided, Reserve Banks may act on applications under delegated authority not earlier than the third business day following the close of the public comment period, and not later than the fifth business day following the close of the public comment period or the 30th day after the acceptance of the application. The Board must act on an application within 60 calendar days after the acceptance of the application unless the Board extends the processing time for a specified period and states the reasons for the extension. Both the Board and the Reserve Bank may request additional information throughout the processing period if necessary. An application will be deemed approved if the Board fails to act on an application within 91 calendar days after the submission to the Board of the complete record. This paragraph defines when the Board considers a record on an application to be complete. Finally, this paragraph creates an expedited process for certain reorganizations.

E. 238.15 Factors Considered in Acting on Applications

This section includes the factors that the Board will use to review applications submitted under this subpart. To the extent that the factors for review under section 10(e) of HOLA are the same as those found in section 3 of the BHC Act, the language in this section has been conformed to that found in Regulation Y. This section does preserve the presumptive disqualifier related to the integrity and financial factors that were found in section 574.7 of the OTS rules.

3. Subpart C Control Proceedings

As discussed in detail above, Regulation LL modifies the regulations previously used by the OTS for purposes of determining when a company or natural person acquires control of a savings association or SLHC under HOLA. The OTS regulations relating to control determinations and rebuttals under HOLA, including the rebuttable control factors and process in section 574.4, the certification of ownership in section 574.5, and the rebuttal agreement in 574.100, will not be enforced by the Board. In its place, Regulation LL adopts provisions equivalent to those found in subpart D of Regulation Y. These provisions establish the process under which the Board may issue a preliminary determination of control and the presumptions the Board will use in any such proceeding.

4. Subpart D Change in Bank Control

Consistent with its views expressed above, the Board has concluded that it is appropriate to use its own rules and processes with respect to application of the CBCA to ensure consistency between equivalent statutes administered by the same agency. As a result, Regulation LL conforms OTS regulations relating to control determinations and rebuttals under the CBCA with those currently found in Regulation Y and that are applicable to BHCs and state member banks.

Accordingly, subpart D of the interim final rule is substantially similar to the current subpart B of Regulation Y with technical and conforming changes. For example, references to BHCs and state member banks have been replaced where appropriate with references to SLHCs. In addition, section 238.32(a)(4) and (5), the exemptions have been modified to refer to the appropriate provisions of HOLA.

5. Subpart E Qualified Stock Issuances

Sections 10(a)(4) and (o) of HOLA pertain to certain issuances of new voting shares to an unaffiliated SLHC by an undercapitalized savings association or by its parent SLHC.[46] The statute provides that the acquiring SLHC will not be deemed to control the issuer so long as the acquirer will not after the acquisition own or control more than 15 percent of the issuer, certain other conditions are met, and the appropriate federal banking agency for the acquiring SLHC approves the acquisition.

The OTS implementing regulation with respect to qualified stock issuances is located at part 574.8. Subpart E of the Regulation LL interim final rule is substantially similar to 574.8, with appropriate adjustments to reflect the transfer of supervisory authority for SLHCs from OTS to the Board, and the use of Board applications processing procedures instead of OTS applications processing procedures.

6. Subpart F Savings and Loan Holding Company Activities and Acquisitions

This subpart of this interim final rule contains provisions that were previously found at section 584.2 through 584.2–2 of the OTS regulation, which outline the nonbanking activities permissible for SLHCs and require prior approval in order to engage in these activities in certain situations. Regulation LL makes appropriate adjustments to reflect the transfer of supervisory authority for SLHCs from OTS to the Board as well as the use of Board applications processing procedures. Additionally, the Board will note that, in the near future, the Board may propose modifying these application and notice processes in order to better align them with those required by BHCs in order to engage in identical nonbanking activities.

7. Subpart G Financial Holding Company Activities

As discussed separately above, section 606(b) of the Dodd-Frank Act amends HOLA to require SLHCs that wish to engage in financial holding company activities to be well-capitalized and well-managed at both the holding company and savings association level.[47] Additionally, HOLA, as amended, requires SLHCs seeking to engage in financial holding company activities to otherwise comply with other financial holding company obligations, such as providing a notice to the Board after commencing a financial holding company activity or consummating an acquisition of a company engaged in 4(k) Activities. Subpart G of the interim final rule implements these requirements. Subpart G does not apply to SLHCs described in section 10(c)(9)(C) of HOLA.[48]

A. 238.64 Election Required

This section of the interim rule specifies that SLHCs seeking to engage in 4(k) Activities must file an election to be treated as a financial holding company and have that election be deemed effective by the Federal Reserve. No Covered SLHC may commence a 4(k) Activity or consummate the acquisition of shares of a company engaged in 4(k) Activities unless it has filed an effective election to be treated as a financial holding company. This section also explains that if a Covered SLHC engages only in activities otherwise permissible under HOLA, no election is required.

B. 238.65 Election Procedures

This section outlines the process that an SLHC should follow to make an effective election, including the content of the declaration. This section rule specifies that the declaration should contain the following:

- A statement that the Covered SLHC elects to be treated as a financial holding company in order to engage in activities permissible for a financial holding company;
- The name and head office address of the Covered SLHC and of each

[46] 12 U.S.C. 1467a(a)(4) and 1467a(o).

[47] 12 U.S.C. 1467a(c)(2).

[48] 12 U.S.C. 1467a(c)(9)(C). These SLHCs are referred to as ''grandfathered unitary savings and loan holding companies.''

depository institution controlled by the Covered SLHC;

- A certification that the Covered SLHC and each depository institution controlled by the Covered SLHC is well capitalized as of the date the Covered SLHC submits its declaration;
- A certification that the Covered SLHC and each depository institution controlled by the Covered SLHC are well managed as of the date the Covered SLHC submits its declaration.

An election filed by a Covered SLHC to be treated as a financial holding company is effective on the 31st calendar day after the date that a complete declaration is filed with the appropriate Reserve Bank, unless the Board notifies the SLHC prior to that time that the election is ineffective. The Board or the appropriate Reserve Bank may notify an SLHC that its election is effective prior to the 31st day after the date that a complete declaration is filed with the appropriate Reserve Bank. Such notification must be in writing. An election by a SLHC shall not be effective if, during the 31 day period, the Board finds that, as of the date the declaration was filed with the appropriate Reserve Bank: (i) any insured depository institution controlled by the SLHC (except institutions excluded under paragraph (d) of section 238.65, including under certain circumstances savings associations acquired during the 12-month period preceding the filing of the election) 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 (ii) the SLHC or any depository institution controlled by the SLHC is not both well capitalized and well managed.

Special Rules for the OTS Transfer Date

This section also contains special rules applicable to SLHCs that are engaged in 4(k) Activities on the transfer date. Prior to the Dodd-Frank Act, Covered SLHCs were not required to file with the OTS to engage in 4(k) Activities. However, given that the amendment to HOLA establishing these additional requirements was effective on the transfer date, the Board expects all Covered SLHCs wishing to continue 4(k) Activities to provide a declaration as described above, along with a description of the 4(k) Activities conducted by the SLHC, to the Board by December 31, 2011. These elections will be effective on the 61st day after the date a complete declaration and description of 4(k) Activities is filed with the appropriate Reserve Bank, unless the Board notifies the SLHC prior to that time that the election is ineffective.

This section also creates a special process for those Covered SLHCs engaged in 4(k) Activities on the transfer date that are not able to file a declaration that can be declared effective. These Covered SLHCs are required to file an alternate declaration with the Board by December 31, 2011 that includes (i) a list of the 4(k) Activities they engage in, (ii) a description of why the SLHC cannot file a declaration that can be declared effective, and (iii) a description of how the Covered SLHC will achieve compliance prior to June 30, 2012.

Covered SLHCs that are not able to file a declaration that can be declared effective are subject to the same notice, remediation agreement, divestiture and other provisions that apply to financial holding companies that fail to meet the requirements of section 4(l) of the BHC Act. These rules are stated in section 4(m) of the BHC Act and the Board's implementing regulations, and are referred to below. However, in exercising its discretion under these processes, the Board will take into account the fact that previously Covered SLHCs were not subject to the new requirements implemented pursuant to section 606(b) of the Dodd-Frank Act and this rule. The Board intends to review the individual circumstances of Covered SLHCs and apply reasonable deadlines in light of those circumstances.

C. 238.66 Ongoing Requirements

This section outlines the ongoing obligations of a Covered SLHC that has made an effective election and the consequences of failing to meet the applicable requirements. In general, a Covered SLHC that has made an effective election to be treated as a financial holding company is subject to the requirements applicable to a financial holding company under sections 4(l) and 4(m) of the BHC Act and the regulations thereunder and section 804(c) of the Community Reinvestment Act of 1977 [49] as if the Covered SLHC was a BHC. The language in this section imposes the notice, approval and other requirements of Regulation Y to these Covered SLHCs, specifically the provisions of sections 225.83 through 225.89. Certain provisions, as discussed below, will also be applied to Covered SLHCs themselves as a result of section 606(a) of the Dodd-Frank Act.

Notification Requirements

In general, a SLHC that has made an effective election to be treated as a financial holding company may conduct the activities listed in section 225.86 of Regulation Y subject to the notice, approval, and any other requirements described in sections 225.85 through 225.89 of Regulation Y. Section 225.83(a) of the Board's existing regulations provides that the Board will notify a financial holding company if the Board finds that the company controls any depository institution that is not well capitalized or well managed. After the transfer date, consistent with section 606(a) of the Dodd-Frank Act, the Board intends to also notify a financial holding company if the Board finds that the company itself is not well capitalized or well managed. Similarly, after the transfer date, the Board intends to notify Covered SLHCs if their depository institutions or the Covered SLHC itself is not well capitalized or well managed.

In addition, in recognition of the fact that a company may know that one of its depository institution subsidiaries has ceased to be well capitalized or well managed before its regulators will have access to such data, the Board's current regulations provide that a financial holding company must notify the Board in writing within 15 calendar days of becoming aware that any depository institution controlled by the company has ceased to be well capitalized or well managed.[50] Consistent with section 606(a) of the Dodd-Frank Act, the Board intends to require that a Covered SLHC must also provide such notification when the company has ceased to be well capitalized or well managed. Accordingly, for Covered SLHCs that file the declaration described above and thereafter cease to meet the well-capitalized and well-managed requirements of section 4(l), the Board intends to apply a similar 15-day notice requirement in a rule.

Remediation Requirements

Pursuant to section 4(m) of the BHC Act and the Board's existing regulations for BHCs, within 45 days (plus any additional time that the Board may grant) after receiving a notice of noncompliance from the Board, a company must execute an agreement with the Board to comply with applicable capital and management requirements.[51] Until the Board determines that all deficiencies have been corrected, a company may not engage in any additional activity or

[49] 12 U.S.C. 2903(c).

[50] 12 CFR 225.83(b)(1).

[51] 12 U.S.C. 1843(m)(2); 12 CFR 225.83(c).

acquire control or shares of any company under section 4(k) of the BHC Act without prior approval from the Board.[52] If the conditions giving rise to a notice of noncompliance are not corrected within 180 days (or such longer period permitted by the Board), the Board may order the company to divest its subsidiary depository institutions.[53] A company may comply by instead ceasing to engage in activities that are permissible only for financial holding companies.[54]

As required by section 606(b) of the Dodd-Frank Act, the Board intends to apply these processes analogously to Covered SLHCs. After the transfer date, consistent with section 606(a) of the Dodd-Frank Act, the Board further intends that a financial holding company or a Covered SLHC that itself fails to remain well capitalized or well managed will also be subject to these analogous remedial measures.

8. Subpart H Notice of Change of Director or Senior Executive Officer

Subpart H sets forth regulations governing the filing of notices with respect to the service of individuals as directors or senior executive officers of SLHCs in troubled condition. These regulations implement section 32 of the FDI Act.[55]

Subpart H of the interim final rule is substantially similar to subpart H of part 563, the OTS regulation implementing section 32. References to the Board or Reserve Bank have been substituted for references in the OTS regulations to OTS. In addition, consistent with the overall approach taken in this interim final rule, the Board has substituted its procedures for those of the OTS with respect to the filing and informational requirements.

Subpart H of the interim final rule also provides for appeals and for informal hearings to be requested in the event of disapproval of a notice. These provisions are modeled on the appeals and hearing provisions of the Board's regulations implementing the section 32 requirements with respect to BHCs and state member banks.[56] The OTS regulation does not provide for hearings or appeals.

9. Subpart I Prohibited Service at Savings and Loan Holding Companies

Subpart I of the interim final rule sets forth regulations to implement section 19 of the FDI Act[57] with respect to SLHCs. Section 19 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 an SLHC. Section 19 also permits the Board to provide exemptions, by regulation or order, from the application of the prohibition. Subpart I is substantially similar to the existing OTS prohibited service regulations[58] except that references to the Board or Reserve Bank have been substituted for references in the OTS.

10. Subpart J Management Official Interlocks

Subpart J sets forth regulations restricting management officials from serving simultaneously with two nonaffiliated depository organizations where the management interlock would likely have an anti-competitive effect unless the service is permitted by statute or an exemption applies. These regulations implement the Depository Institution Management Interlocks Act (''Interlocks Act'').[59]

Subpart J of the interim final rule is substantially similar to subpart F of part 563, the OTS regulation implementing the Interlocks Act but makes appropriate adjustments to reflect the transfer of supervisory authority for SLHCs from OTS to the Board.

11. Subpart K Dividends by Subsidiary Savings Associations

Section 10(f) of HOLA provides that a subsidiary savings association of an SLHC must file a notice at least 30 days prior to declaring a dividend.[60] Prior to July 21, 2011, these notices were filed with the OTS. However, section 369(8)(K) of the Dodd-Frank Act provides that such notices are to be filed with the Board after the transfer date.

Subpart K of the interim final rule implements section 10(f) of HOLA. This subpart is substantially similar to portions of the OTS capital distribution regulation, which governed dividends by subsidiary savings associations of SLHCs as well as other savings association capital distributions. Subpart K of the interim final rule includes only the portions of the OTS capital distribution regulation that implement section 10(f) of HOLA. Consistent with the general approach of the interim final rule, subpart K substitutes references to OTS with references to the Board, and Board procedures for OTS procedures.

12. Subpart L Investigative Proceedings and Formal Examination Proceedings

This section contains the provisions previously found in part 512 of the OTS regulations relating to investigative and formal examination proceedings. The Board does not have similar rules but has followed similar practices for some time. In the future, the Board will consider extending these rules to BHCs and other supervised entities.

The following chart summarizes where particular parts and sections of the OTS rules have been placed within Regulation LL.

COMPARISON CHART

Regulation LL	Previous location in OTS regulations
Subpart A—General Provisions	
238.1—Authority, purpose and scope	
238.2—Definitions	§ 574.2, part 583.
238.3—Administration	
238.4—Records, reports, and inspections	§§ 562.1, 562.2, 584.1.
238.5—Audit of savings association holding companies	§ 562.4.
238.6—Penalties for violations	
238.7—Tying restriction exception	§ 563.36.
238.8—Safe and sound operations	

[52] 12 CFR 225.83(d).

[53] 12 CFR 225.83(e)(1).

[54] 12 CFR 225.83(e)(2)

[55] 12 U.S.C. 1831i.

[56] 12 CFR 225.73(d) and (e).

[57] 12 U.S.C. 1829.

[58] 12 CFR part 585.

[59] 12 U.S.C. 3201 *et seq.*

[60] 12 U.S.C. 1467(f).

COMPARISON CHART—Continued

Regulation LL	Previous location in OTS regulations
Subpart B—Acquisitions of Savings Association Securities or Assets	
238.11—Transactions requiring Board approval	§§ 574.3(a), 584.4.
238.12—Transactions not requiring Board approval	§§ 574.3(c), 584.4(c).
238.13—Prohibited acquisitions	§§ 584.8(d), 584.9.
238.14—Procedural requirements	§§ 516, 574.6.
238.15—Factors considered in acting on acquisition proposals	§ 547.7.
Subpart C—Control Proceedings	
238.21—Control proceedings	§ 574.4.
Subpart D—Change in Bank Control	
238.31—Transactions requiring prior notice	§ 574.3(a)–(b).
238.32—Transactions not requiring prior notice	§ 574.3(c)–(d).
238.33—Procedures for filing, processing, publishing, and acting on notices	§§ 516, 574.6.
Subpart E—Qualified Stock Issuances	
238.41—Qualified stock issuances by undercapitalized savings associations or holding companies	§ 547.8.
Subpart F—Savings and Loan Holding Company Activities and Acquisitions	
238.51—Prohibited activities	§ 584.2.
238.52—Exempt savings and loan holding companies and grandfathered activities	§ 584.2a.
238.53—Prescribed services and activities of savings and loan holding companies	§ 584.2–1.
238.54—Permissible bank holding company activities of savings and loan holding companies	§ 584.2–2.
Subpart G—Financial Holding Company Activities	
238.61—Scope	
238.62—Definitions	
238.63—Requirements to engage in financial holding company activities	
238.64—Election required	
238.65—Election procedures	
238.66—Ongoing requirements	
Subpart H—Notice of Change of Director or Senior Executive Officer	
238.71—Purpose	§ 563.550.
238.72—Definitions	§ 563.555.
238.73—Prior notice requirements	§ 563.560.
238.74—Filing and processing procedures	§§ 563.565, 563.570, 563.575.
238.75—Standards for review	§ 563.580.
238.76—Waiting period	§ 563.585.
238.77—Waiver of prior notice requirement	§ 563.590.
Subpart I—Prohibited Service at Savings and Loan Holding Companies	
238.81—Purpose	§ 585.10.
238.82—Definitions	§ 585.20.
238.83—Prohibited actions	§ 585.30.
238.84—Covered convictions or agreements to enter into pre-trial diversions or similar programs	§ 585.40.
238.85—Adjudications and offenses not covered	§ 585.50.
238.86—Exemptions	§ 585.100.
238.87—Filing procedures	§ 585.110.
238.88—Factors for review	§ 585.120.
238.89—Board action	§ 585.130.
Subpart J—Management Official Interlocks	
238.91—Authority, purpose, and scope	§ 563f.1.
238.92—Definitions	§ 563f.2.
238.93—Prohibitions	§ 563f.3.
238.94—Interlocking relationships permitted by statute	§ 563f.4.
238.95—Small market share exemption	§ 563f.5.
238.96—General exemption	§ 563f.6.
238.97—Change in circumstances	§ 563f.7.
238.98—Enforcement	§ 563f.8.
238.99—Interlocking relationships permitted pursuant to Federal Deposit Insurance Act	§ 563f.9.

COMPARISON CHART—Continued

Regulation LL	Previous location in OTS regulations
Subpart K—Dividends by Subsidiary Savings Associations	
238.101—Purpose	§ 563.140.
238.102—Definitions	§ 563.141.
238.103—Filing requirement	§§ 563.143, 563.144, 563.145.
238.104—Board action and criteria for review	§ 563.146.
Subpart L—Investigative Proceedings and Formal Examination Proceedings	
238.111—Scope of part	§ 512.1.
238.112—Definitions	§ 512.2.
238.113—Confidentiality of proceedings	§ 512.3.
238.114—Transcripts	§ 512.4.
238.115—Rights of Witnesses	§ 512.5.
238.116—Obstruction of proceedings	§ 512.6.
238.117—Subpoenas	§ 512.7.

Regulation MM Mutual Holding Companies

1. Subpart A General Provisions

A. 239.1 Authority, Purpose and Scope

This section sets forth the authority, purpose and scope of the interim final rule.

B. 239.2 Definitions

This section combines needed definitions from parts 563b, 574, 575, and 583 of OTS regulations in one location. The Board has modified certain definitions to cross reference like definitions in Regulation LL and has revised the style and format of section 239.2 to conform to the Board's Regulation Y.[61]

For instance, in Regulation LL, the Board has conformed the rules relating to control determinations and rebuttals in the CBCA and the rules relating to control determinations and rebuttals under HOLA to the rules found in Regulation Y for the CBCA and the BHC Act, respectively. As a result, for purposes of Regulation MM the Board has defined ''acting in concert'' and ''control'' by reference to those terms in Regulation LL. In addition, in Regulation LL the Board modified the definition of ''savings and loan holding company'' to reflect two new exceptions to HOLA added by the Dodd-Frank Act; in Regulation MM, the Board defined that term by cross reference to the definition in Regulation LL.

As in Regulation LL, the definition of ''person'' was modified to reflect the definition in Regulation Y, and the definition of ''savings association'' was modified to eliminate the inclusion of SLHCs within the definition.

[61] 12 CFR part 225.

2. Subpart B Mutual Holding Companies

Subpart B contains many of the regulatory requirements specific to MHCs, including provisions concerning a mutual savings association reorganizing to mutual holding company form, mutual member membership rights, operating restrictions, procedural requirements, charters, bylaws, and voluntary dissolution.[62] Many of the sections in this subpart were taken directly from the OTS regulations in 12 CFR Part 575 and modified as necessary to reflect changes in nomenclature and other non-substantive changes. Substantive changes are described below.

A. 239.3 Mutual Holding Company Reorganizations

This section sets forth the process by which a mutual savings association may reorganize to become a holding company. These provisions were previously contained in section 575.3 of the OTS regulations and have been modified to delete unnecessary provisions specific to savings associations and to reflect the change in supervisory authority.

As discussed above, the Board has generally replaced OTS processing requirements for applications and notices with those currently used by the Board for similar transactions. These revised processing requirements are found in section 238.14 of Regulation LL. In order to align the processing of reorganization notices with other notices filed by SLHCs, section 239.3 provides that reorganization notices will be processed in accordance with the procedural requirements set forth in section 238.14. As noted above, the Board will carryover the OTS applications forms, with technical changes, for the time being. All application and notice forms can be found on the Board's public Web site.

[62] 12 CFR part 239, subpart B. As noted elsewhere, Regulation MM does not apply to bank holding companies in mutual form.

In addition, in light of the fact that the Board is not the primary federal supervisor of savings associations, paragraph (b) of section 239.3 provides that the appropriate Reserve Bank will furnish notice and a copy of the reorganization notice to the primary federal supervisor of the mutual savings association. The primary supervisor will have 30 calendar days from the date of the letter giving notice in which to submit its views and recommendations to the Board.

B. 239.4 Grounds for Disapproval of Reorganizations

This section sets forth the grounds under which the Board will disapprove of reorganizations. These provisions were previously found at section 575.4 of the OTS regulations and have been revised to delete unnecessary provisions specific to savings associations and to reflect the change in supervisory authority.

Similar to section 575.4 of the OTS regulations, section 239.4 provides that the Board will disapprove a reorganization to capitalize an MHC in an amount in excess of a nominal amount if the relevant savings association would fail to be ''adequately capitalized.'' Section 239.4 clarifies that, for the purpose of considering an application to reorganize to holding company form, ''adequately capitalized'' will be calculated under the regulatory capital requirements applicable to the savings association.

C. 239.5 Membership Rights

This section sets forth the minimum rights of members of MHCs that were previously found in section 575.5 of OTS regulations.

D. 239.6 Contents of Reorganization Plan

This section sets forth the required contents of a mutual savings association's plan to reorganize to an MHC structure. These provisions were contained in section 575.6 of the OTS regulations and have been revised to delete unnecessary provisions specific to savings associations.

E. 239.7 Acquisition and Disposition of Savings Associations, Savings and Loan Holding Companies, and Other Corporations by Mutual Holding Companies

This section governs the acquisition and disposal of savings associations, SLHCs, and other corporations by MHCs. It contains the provisions of section 575.10 of the OTS regulations and has been revised to delete unnecessary provisions specific to savings associations and to reflect the change in supervisory authority.

F. 239.8 Operating Restrictions

This section establishes limitations on activities and transactions by MHCs. These provisions were found in section 575.11 of OTS regulations and have been revised as discussed below.

Paragraph (a) sets forth the activities restrictions applicable to MHCs and is updated to cross reference the procedural requirements of subparts F and G of Regulation LL relating to activities restrictions for SLHCs.

The Board revised the dividend waiver provision in paragraph (d) to implement an amendment to HOLA made by the Dodd-Frank Act, new section 10(o)(11). Section 10(o)(11)(B) of HOLA states that an MHC may waive the right to receive a dividend declared by a subsidiary of the MHC if (1) no insider of the MHC, associate of an insider, or tax-qualified or non-tax-qualified employee stock benefit plan of the MHC holds any share of the stock in the class of stock to which the waiver would apply, or (2) the MHC gives written notice to the Board of the MHC's intent to waive the right to receive dividends, not later than 30 days before the date of the proposed date of payment of the dividend, and the Board does not object to the waiver.[63] Section 10(o)(11)(D) provides that the Board may not object to a waiver of dividends under section 10(o)(11)(B) by an MHC if (1) the waiver would not be detrimental to the safe and sound operation of the savings association, (2) the MHC's board of directors expressly determines that a waiver of the dividend by the MHC is consistent with the fiduciary duties of the board of directors to the mutual members of the MHC, and (3) the MHC has waived dividends from a subsidiary prior to December 1, 2009. MHCs that meet all of these conditions may waive their right to receive dividends from a subsidiary after providing the Dividend Waiver Notice to the Board. The Dividend Waiver Notice must include a copy of the resolution of the MHC's board of directors, in such form and substance as the Board may determine, together with any supporting materials relied upon by the MHC's board of directors, concluding that the proposed dividend waiver is consistent with the fiduciary duties of the board of directors to the mutual members of the MHC.[64]

Paragraph (d)(1) sets forth the statutory standard in section 10(o)(11)(B) of HOLA. It provides that an MHC may waive the right to receive any dividend declared by a subsidiary of the MHC, if (i) no insider of the MHC, associate of an insider, or tax-qualified or non-tax-qualified employee stock benefit plan of the MHC holds any share of the stock in the class of stock to which the waiver would apply; or (ii) the MHC gives written notice to the Board of the intent of the MHC to waive the right to receive dividends, not later than 30 days before the date of the proposed date of payment of the dividend, and the Board does not object to the waiver.

Paragraph (d)(2) sets forth the requirements for the form and substance of notice of waiver and resolution of the MHC's board of directors to be provided under paragraph (d)(1)(ii), above. Under paragraph (d)(2), the notice of waiver must include a copy of the resolution of the board of directors of the MHC together with any supporting materials relied upon by the board of directors of the MHC, concluding that the proposed dividend waiver is consistent with the fiduciary duties of the board of directors to the mutual members of the MHC. The resolution must include:

- A description of the conflict of interest that exists because of an MHC director's ownership of stock in the subsidiary declaring dividends and any actions the MHC and board of directors have taken to eliminate the conflict of interest, such as waiver by the directors of their right to receive dividends;
- A finding by the MHC's board of directors that the waiver of dividends is consistent with the board of directors' fiduciary duties despite any conflict of interest;
- If the MHC has pledged the stock of a subsidiary holding company or subsidiary savings association as collateral for a loan made to the MHC, or is subject to any other loan agreement, an affirmation that the MHC is able to meet the terms of the loan agreement; and
- An affirmation that a majority of the mutual members of the MHC eligible to vote have, within the 12 months prior to the declaration date of the dividend by the subsidiary of the MHC, approved a waiver of dividends by the MHC, and any proxy statement used in connection with the member vote contained—
  - A detailed description of the proposed waiver of dividends by the MHC and the reasons the board of directors requested the waiver of dividends;
  - The disclosure of any MHC director's ownership of stock in the subsidiary declaring dividends and any actions the MHC and board of directors have taken to eliminate the conflict of interest, such as the directors waiving their right to receive dividends; and
  - A provision providing that the proxy concerning the waiver of dividends given by the mutual members may be used for no more than 12 months from the date it is given.

Paragraph (d)(3) implements the statutory conditions under which the Board may not object to a dividend waiver filed by a Grandfathered MHC. It provides that the Board may not object to a waiver of dividends under paragraph (d)(1)(ii) if:

- The waiver would not be detrimental to the safe and sound operation of the savings association;
- The board of directors of the MHC expressly determines that a waiver of the dividend by the MHC is consistent with the fiduciary duties of the board of directors to the mutual members of the MHC; and
- The MHC has, prior to December 1, 2009—
  - Reorganized into an MHC under section 10(o) of HOLA;
  - Issued minority stock either from its subsidiary stock holding company or its subsidiary stock savings association; and
  - Waived dividends it had a right to receive from the subsidiary stock savings association.

In addition to the Dividend Waiver Notice, Grandfathered MHCs must file a copy of the board resolution concluding that the proposed dividend waiver is consistent with the MHC board's fiduciary duties to the mutual members.

[63] 12 U.S.C. 1467a(o)(11)(B).

[64] 12 U.S.C. 1467a(o)(11)(C).

The required form and substance of the board resolution is discussed in more detail above.

Paragraph (d)(4) sets forth the conditions the Board will consider when it reviews a dividend waiver notice filed under paragraph (d)(1)(ii) by a non-Grandfathered MHC. An MHC must satisfy each condition provided in paragraph (d)(4). The conditions are:

- The savings association currently operates in a manner consistent with the safe and sound operation of a savings association, and the waiver is not detrimental to the safe and sound operation of the savings association;
- If the MHC has pledged the stock of a subsidiary holding company or subsidiary savings association as collateral for a loan made to the MHC, or is subject to any other loan agreement, an affirmation that the MHC is able to meet the terms of the loan agreement;
- Within the 12 months prior to the declaration date of the dividend by the subsidiary of the MHC, a majority of the mutual members of the MHC has approved the waiver of dividends by the MHC. Any proxy statement used in connection with the member vote must contain—
  - A detailed description of the proposed waiver of dividends by the MHC and the reasons the board of directors requested the waiver of dividends;
  - The disclosure of any MHC director's ownership of stock in the subsidiary declaring dividends and any actions the MHC and board of directors have taken to eliminate the conflict of interest, such as the directors waiving their right to receive dividends; and
  - A provision providing that the proxy concerning the waiver of dividends given by the mutual members may be used for no more than 12 months from the date it is given;
- The board of directors of the MHC expressly determines that the waiver of dividends is consistent with the board of directors' fiduciary duties despite any conflict of interest;
- A majority of the entire board of directors of the MHC approves the waiver of dividends and any director with direct or indirect ownership, control, or the power to vote shares of the subsidiary declaring the dividend, or who otherwise directly or indirectly benefits through an associate from the waiver of dividends, has abstained from the board vote; or each officer or director of the MHC or its affiliates, associate of such officer or director, and any tax-qualified or non-tax-qualified employee stock benefit plan in which such officer or director participates that holds any share of the stock in the class of stock to which the waiver would apply waives the right to receive any dividend declared by a subsidiary of the MHC;
- The Board does not object to the amount of dividends declared by a subsidiary of the MHC. In reviewing whether a declaration by a subsidiary of the MHC is appropriate, the Board may consider, among other factors, the reasonableness of the entire dividend distribution declared if the waiver is not approved;
- The waived dividends are excluded from the capital accounts of the subsidiary holding company or savings association, as applicable, for purposes of calculating any future dividend payments;
- The MHC appropriately accounts for all waived dividends in a manner that permits the Board to consider the waived dividends in evaluating the proposed exchange ratio in the event of a full conversion of the MHC to stock form; and
- The MHC complies with such other conditions as the Board may require to prevent conflicts of interest or actions detrimental to the safe and sound operation of the savings association.

Paragraph (d)(5) provides that the Board will consider waived dividends in determining an appropriate exchange ratio in the event of a full conversion to stock form pursuant to subpart E of Regulation MM. However, consistent with section 10(o)(11)(E)(ii) of HOLA, paragraph (d)(5) clarifies that in the case of a savings association that has reorganized into an MHC, has issued minority stock from a subsidiary stock holding company or a subsidiary stock savings association of the MHC, and has waived dividends it had a right to receive from a subsidiary savings association before December 1, 2009, the Board will not consider waived dividends in determining an appropriate exchange ratio in the event of a full conversion to stock form.

Paragraph (f), which concerns compliance with community reinvestment requirements, has been revised to cross reference the Board's Regulation BB. The interim final rule revises Regulation BB to apply to SLHCs.

The Board has stricken the OTS requirement that MHCs provide 10-day after-the-fact notice of pledges of stock of subsidiary savings association or subsidiary holding companies. While the Board recognizes that stock pledges may pose safety and soundness concerns, the Board believes these concerns are adequately addressed through the regular supervisory process.

G. 239.9 Conversion or Liquidation of Mutual Holding Companies

This section governs the conversion or liquidation of MHCs. These procedures were previously contained in section 575.12 of the OTS regulations and have been revised to delete unnecessary provisions specific to savings associations and to reflect the change in supervisory authority.

H. 239.10 Procedural Requirements

This section provides certain procedural requirements applicable to MHCs. It contains provisions previously found in section 575.13 and has been revised to reflect the Board's revised procedures for reviewing forms of proxy and proxy statements and to applications procedures.

As discussed above, whereas the OTS previously reviewed and approved forms of proxy and proxy statements before they could be used, the Board will review these materials in connection with transactions but will not authorize or approve them.

Paragraph (a) provides that sections 239.56 and 239.57(a)–(d) and (f)–(h) will apply to all solicitations of proxies by any person in connection with any membership vote required by this part. In addition, proxy materials required by Regulation MM must be in the form specified by the Board and contain information specified in section 239.57(b) and (d) (sections setting forth the requirements for proxy materials with respect to conversions of MHCs to stock form), to the extent such information is relevant to the action that members are being asked to approve, with any additions, deletions, and other modifications as are required under Regulation MM with respect to that action.

In order to align the processing of notices and applications filed by MHCs and subsidiary holding companies under part 239 with other notices filed by SLHCs, paragraph (f) provides that the rules of section 238.14 governing disclosure of any notice, application submitted under this section, or public comment submitted under paragraph (c), will be the same as set forth in section 238.14.

The provisions of this section have also been revised to delete unnecessary provisions specific to savings associations and to reflect the change in supervisory authority.

I. 239.11 Subsidiary Holding Companies

This section provides for the formation of and requirements for stock issuances by subsidiary holding

companies of MHCs. It contains certain provisions from section 575.14, as revised to delete unnecessary provisions specific to savings associations and to reflect the change in supervisory authority. The provisions of section 575.14 concerning the model charter, charter amendments, bylaws, and annual reports and books and records are found in sections 239.21, 239.22, 239.23, and 239.30, respectively.

J. 239.12 Communication Between Members of a Mutual Holding Company

This section sets forth the rights of mutual members to communicate with one another and sets forth the procedures for communication. These provisions were contained in section 544.8 (previously incorporated by reference by section 575.9) and have been revised to delete unnecessary provisions specific to savings associations and to reflect the change in supervisory authority.

K. 239.13 Charters

This section sets forth the requirements for MHC charters. It contains the provisions from section 575.9 concerning charters, as revised to delete unnecessary provisions specific to savings associations and to reflect the change in supervisory authority. The model charter previously set forth in section 575.9(a)(1) is now in Appendix A.

L. 239.14 Charter Amendments

This section contains provisions governing amendments to MHC charters. It contains the provisions from section 544.2 governing MHC charter amendments (previously incorporated by reference by section 575.9(a)(2)), as revised to delete unnecessary provisions specific to savings associations and to reflect the change in supervisory authority.

M. 239.15 Bylaws

This section sets forth the requirements for MHC bylaws. It contains the provisions of section 544.5 governing MHC bylaws (previously incorporated by reference by section 575.9(a)(4)), as revised to delete unnecessary provisions specific to savings associations. The Board deleted the prior reference in the OTS regulations to the model bylaws for mutual savings associations in the OTS Applications Processing Handbook and instead inserted the model MHC bylaws in Appendix C. The model MHC bylaws have been revised to delete unnecessary provisions specific to savings associations and to reflect the change in supervisory authority.

N. 239.16 Voluntary Dissolution

This section sets forth the processes for the dissolution of an MHC or a subsidiary holding company. It contains the provisions of section 546.4 providing for voluntary dissolution, previously incorporated by reference by section 575.12(c), and has been revised to delete unnecessary provisions specific to savings associations and to reflect the change in supervisory authority. Specifically, the section does not incorporate the provisions of paragraph (a) of section 546.4 of the OTS regulations, providing that the plan of dissolution may provide for appointment of the FDIC as receiver, because this provision was specific to savings associations.

3. Subpart C Subsidiary Holding Companies

In organizing Regulation MM, the Board placed most of the regulatory requirements applicable to subsidiary holding companies of MHCs in one subpart, subpart C.[65] Except as noted below, these provisions are substantively the same as those that applied to subsidiary holding companies of MHCs under OTS regulations. The provisions have been revised to delete unnecessary provisions specific to savings associations and to reflect the change in supervisory authority.

A. 239.20 Scope

The Board added this section in order to clarify that this subpart applies only to subsidiary holding companies of MHCs.

B. 239.21 Charters

This section sets forth the required elements of a subsidiary holding company's charter. These provisions were contained in section 575.14(c)(1) and (3) of the OTS regulations, as revised to delete unnecessary provisions specific to savings associations and to reflect the change in supervisory authority. In order to streamline the regulatory text, the Board moved the model charter previously set forth in section 575.14(c)(1) to Appendix B.

C. 239.22 Charter Amendments

This section contains the provisions governing amendments to subsidiary holding company charters that were contained in section 552.4 (previously incorporated by reference by section 575.14(c)(2)).

[65] Certain requirements are found in section 239.11, described above.

D. 239.23 Bylaws

This section sets forth requirements for a subsidiary holding company's bylaws that were contained in section 552.5 (previously incorporated by reference by section 575.14(c)(4)). In addition, to streamline the rule text, the Board deleted the prior reference in the OTS regulations to the model bylaws for federal savings associations contained in the OTS Applications Processing Handbook and instead inserted the model subsidiary holding company bylaws in Appendix D, as revised to delete unnecessary provisions specific to savings associations.

E. 239.24 Issuances of Stock by Subsidiary Holding Companies of Mutual Holding Companies

This section contains requirements for the issuances of stock by subsidiary holding companies. These provisions were previously contained in section 575.7.

F. 239.25 Contents of Stock Issuance Plans

This section sets forth the required contents of stock issuance plans. These provisions were previously contained in section 575.8.

G. 239.26 Shareholders

This section governs the procedures for shareholder meetings. It contains provisions of section 552.6 (section 575.14(c)(4) incorporated by reference the requirements of section 552.5, which in turn required that the bylaws comply with section 552.6, among others).

H. 239.27 Board of Directors

This section sets forth the requirements for the constitution and meetings of a subsidiary holding company's board of directors. These provisions were contained in section 552.6–1 (section 575.14(c)(4) incorporated by reference the requirements of section 552.5, which in turn required that the bylaws comply with section 552.6–1, among others).

I. 239.28 Officers

This section sets forth the requirements for a subsidiary holding company's officers. These provisions were contained in section 552.6–2 (section 575.14(c)(4) incorporated by reference the requirements of section 552.5, which in turn required that the bylaws comply with section 552.6–2, among others).

J. 239.29 Certificates for Shares and Their Transfer

This section sets forth the requirements for share certificates and transfer procedures. These provisions were contained in section 552.6–3 (section 575.14(c)(4) incorporated by reference the requirements of section 552.5, which in turn required that the bylaws comply with section 552.6–3, among others).

K. 239.30 Annual Reports; Books And Records

This section contains the requirements for annual reports and books and records of a subsidiary holding company. These provisions were contained in section 552.10 and 552.11 (previously incorporated by reference by section 575.14(c)(5)).

L. 239.31 Indemnification; Employment Contracts

This section clarifies that regulations governing indemnification of directors, officers, and employees, and restrictions on employment contracts set forth in sections 239.40 and 239.41 (discussed below) apply to subsidiary holding companies of MHCs.

4. Subpart D Indemnification; Employment Contracts

Subpart D contains provisions concerning indemnification of directors, officers, and employees of MHCs and their subsidiary holding companies, and restrictions on employment contracts.[66]

A. 239.40 Indemnification of Directors, Officers and Employees

Section 239.40 contains provisions of section 545.121, which previously applied to MHCs and their subsidiary holding companies through a cross reference in section 575.11(f). These provisions have been revised to reflect nomenclature changes and the change in supervisory authority.

B. 239.41 Employment Contracts

Section 239.41 contains provisions of section 563.39, which previously applied to MHCs and their subsidiary holding companies through a cross reference in section 575.11(g). Paragraph (b)(5) provides a specific requirement for employment contracts. Under this section, unless prior written approval is secured from the Board, each employment contract between an MHC or subsidiary holding company and its officers or other employees must provide that all obligations of the MHC or subsidiary holding company under the contract shall terminate if the MHC or subsidiary holding company is subject to bankruptcy proceedings under title 11 of the United States Code but vested rights of the contracting parties shall not be affected.

5. Subpart E Conversions From Mutual to Stock Form

Subpart E contains provisions concerning the conversion of an MHC to stock form.[67] The Board based subpart E on part 563b of OTS regulations. Part 563b governed the conversion of mutual savings associations to stock form. By cross reference, section 575.12 of the OTS regulations applied part 563b to MHC conversions to stock form. Subpart E revises the provisions of part 563b such that they now apply to MHCs directly. The Board also revised the general format of subpart E to be consistent with the format of other Board regulations.

A. 239.50 Purpose and Scope

This section sets forth the purpose and scope of subpart E of the interim final rule.

B. 239.51 Acquiring Another Insured Stock Depository Institution as Part of a Conversion

This section provides that an MHC may acquire another insured depository institution as part of a conversion, as previously provided in section 563b.25. The acquisition must also comply with the rules governing acquisitions of savings association securities set forth in subpart B of Regulation LL.

C. 239.52 Definitions

This section contains many of the definitions previously found in section 563b.25 of the OTS regulations. The Board defined several terms in section 239.2 that were previously defined in section 563b.25 and has therefore included fewer definitions in subpart E as a result. In addition, the Board added the term ''resulting stock holding company'' to describe the stock holding company that is issuing stock in connection with the conversion of an MHC.

D. 239.53 Prior to Conversion

This section imposes certain pre-filing requirements on MHCs. Paragraph (a), previously section 563b.100, concerns pre-filing meetings between an MHC's board of directors and the Reserve Bank or Board. The Board revised this provision to make these pre-filing meetings voluntary, instead of mandatory. The Board does, however, encourage pre-filing communication—which may include a pre-filing meeting—between an MHC, its board of directors, and the appropriate Reserve Bank to discuss the contemplated conversion, including the MHC board of directors' overall strategic plan and plans for the use of the offering proceeds.

Paragraphs (b) through (e) of this section contain the provisions of sections 563b.105, 563b.110, 563b.115, and 563b.120 of the OTS regulations, as revised to reflect the change in supervisory authority.

E. 239.54 Plan of Conversion

This section sets forth the necessary requirements and procedure for a plan of conversion. It contains the provisions of sections 563b.125, 563b.130, 563b.135, and 563b.140 of the OTS regulations.

F. 239.55 Filing Requirements

This section contains the filing requirements previously set forth in sections 563b.150, 563b.155, 563b.160, 563b.165, 563b.180, 563b.185, 563b.200, and 563b.205 of the OTS regulations.

As noted above, the Board has replaced OTS processing requirements for applications and notices with those currently used by the Board for similar transactions. Thus, paragraph (f) provides the applicant must publish public notice of the application in accordance with section 238.14. Commenters must submit comments on the application in accordance with the procedures in that section.

In addition, paragraph (c) provides that the appropriate Reserve Bank will furnish notice and a copy of the application to the primary federal supervisor of any subsidiary savings association. The primary supervisor will have 30 calendar days from the date of the letter giving notice in which to submit its views and recommendations to the Board.

G. 239.56 Vote by Members

This section contains the provisions governing the member vote on a plan of conversion. These provisions were contained in sections 563b.225, 563b.230, 563b.235, and 563b.240 of the OTS regulations and have been revised to reflect nomenclature changes and the change in supervisory authority. As noted below, section 239.57 provides that the Board will review forms of proxy and proxy statements in its review of the conversion application, but it will not approve these materials. Section 239.56 reflects this change.

[66] 12 CFR part 239, subpart D.

[67] 12 CFR part 239, subpart E.

H. 239.57 Proxy Solicitation

This section contains provisions governing the content and solicitation of proxies. These provisions were previously found in sections 563.250, 563.255, 563b.260, 563b.265, 563b.270, 563b.275, 563b.280, 563b.285, 563b.290, and 563b.295 of the OTS regulations.

Consistent with the Board's current practice with respect to bank holding company and state member bank filings, section 239.57 provides that the Board will review proxy materials in its review of a conversion application as a whole and may require changes to ensure that the disclosure is adequate, complete, and accurate. However, section 239.57 does not continue past OTS practice of approving forms of proxy and proxy statements. As a result, in paragraph (d) the Board revised the requirement from section 563b.270 that the MHC mail proxy solicitation material to its members within ten days after OTS authorizes the solicitation to require distribution no later than ten days after the Board approves the conversion.

I. 239.58 Offering Circular

This section contains the offering circular requirements related to an MHC's conversion to stock form. These provisions were contained in 563b.300, 563b.305, and 563b.310 of the OTS regulations and have been revised to reflect nomenclature changes and the change in supervisory authority.

As discussed above, the Board will continue to require MHCs and their subsidiary holding companies to file offering circulars with the Board on Form OC in connection with applications, and will require that MHCs and their subsidiary holding companies continue to abide by all applicable federal and state securities laws, rules, and regulations. The Board will not, however, declare effective offering circulars used by MHCs in conversions to stock form or by subsidiary holding companies of MHCs in initial or subsequent issuances of stock, or in any other context. As a result, in paragraph (b) the Board has revised the requirement from section 563b.305 that the MHC distribute the offering circular within ten days after OTS declared it effective to require distribution no later than ten days after the Board approves the conversion.

J. 239.59 Offers and Sales of Stock

This section contains provisions governing the offering, pricing, purchase limitations, and timing restrictions of an offering of stock in connection with a conversion. These provisions were contained in sections 563b.320, 563b.325, 563b.330, 563b.335, 563b.340, 563b.345, 563b.350, 563b.360, 563b.365, 563b.370, 563b.375, 563b.380, 563b.385, 563b.390, and 563b.395 of the OTS regulations and have been revised to reflect nomenclature changes and the change in supervisory authority. Because the Board is not declaring offering circulars effective, the section provides that the offer may commence after the Board approves the conversion, subject to compliance with SEC requirements.

K. 239.60 Completion of the Offering

This section governs the time period for an offering under a conversion. It contains provisions of sections 563b.400 and 563b.405 of the OTS regulations.

L. 239.61 Completion of the Conversion

This section sets forth requirements for the execution of the conversion and the voting and liquidation rights following conversion. It contains provisions of sections 563b.420, 563b.425, 563b.435, 563b.440, and 563b.445 of the OTS regulations.

M. 239.62 Liquidation Accounts

This section governs the creation and maintenance of a liquidation account by a resulting stock company. It contains provisions of sections 563b.450, 563b.455, 563b.460, 563b.465, 563b.470, 563b.475, and 563b.480 of the OTS regulations.

N. 239.63 Post-conversion

This section contains provisions of sections 563b.420, 563b.425, 563b.435, 563b.440, and 563b.445 of the OTS regulations. As discussed above, the Board has extended the prior notice period for stock repurchases by the resulting stock holding company within the first year of conversion from requiring 10 days prior notice to requiring 30 days prior notice, which can be extended by the Board for an additional 60 days. The Board believes that particular scrutiny of stock repurchases is warranted because of the potential for conflicts of interest that could arise when directors, management, and other insiders of the resulting stock holding company also are or may become shareholders of that resulting stock holding company.

O. 239.64 Contributions to Charitable Organizations

This section governs the formation of and donation to charitable organizations in connection with a conversion. It contains provisions of sections 563.15, 563b.550, 563b.555, 563b.560, 563b.565, 563b.570, and 563b.575 of the OTS regulations, as revised to reflect nomenclature changes and the change in supervisory authority.

P. 239.65 Voluntary Supervisory Conversions

This section governs supervisory conversions by MHCs. It contains provisions of sections 563b.600, 563b.605, 563b.610, 563b.625, 563b.650, 563b.660, 563b.680, and 563b.690 of the OTS regulations.

Paragraph (d) clarifies that an MHC may be eligible for a voluntary supervisory conversion based on either the MHC or subsidiary savings association's capital levels. These capital levels are measured based on the regulatory capital requirements applicable to the relevant institution.

Q. 239.66 Board Review of the Voluntary Supervisory Conversion Application

This section governs review by the Board of a voluntary supervisory conversion application. These provisions were contained in sections 563b.670 and 563b.675 of the OTS regulations and have been revised to reflect nomenclature changes and the change in supervisory authority. Paragraph (b) clarifies that the Board may condition approval of a voluntary supervisory conversion on actions to be taken by either the MHC or the resulting stock holding company.

Comparison Chart

The following chart summarizes where particular parts and sections of the OTS rules have been placed within Regulation MM.

Regulation MM	Previous location in OTS regulations
SUBPART A—General Provisions	
239.1—Authority, Purpose and Scope	§ 575.1
239.2—Definitions	§§ 563b, 574, 575, and 583

Regulation MM	Previous location in OTS regulations
SUBPART B—Mutual Holding Companies	
239.3—Mutual holding company reorganizations	§ 575.3
239.4—Grounds for disapproval of reorganizations	§ 575.4
239.5—Membership rights	§ 575.5
239.6—Contents of Reorganization Plan	§ 575.6
239.7—Acquisition and disposition of savings associations, savings and loan holding companies, and other corporations by mutual holding companies.	§ 575.10
239.8—Operating restrictions	§ 575.11
239.9—Conversion or liquidation of mutual holding companies	§ 575.12
239.10—Procedural requirements	§ 575.13
239.11—Subsidiary holding companies	§ 575.14
239.12—Communication between members of a mutual holding company	§ 575.9
239.13—Charters	§ 575.9
239.14—Charter amendments	§ 575.9
239.15—Bylaws	§ 575.9
239.16—Voluntary dissolution	§ 575.12(c)
SUBPART C—Subsidiary Holding Companies	
239.20—Scope	
239.21—Charters	§ 575.14(c)(1), (3)
239.22—Charter amendments	§ 575.14(c)(2)
239.23—Bylaws	§ 575.14(c)(4)
239.24—Issuances of stock by subsidiary holding companies of mutual holding companies	§ 575.7
239.25—Contents of Stock Issuance Plans	§ 575.8
239.26—Shareholders	§ 575.14(c)(4)
239.27—Board of directors	§ 575.14(c)(4)
239.28—Officers	§ 575.14(c)(4)
239.29—Certificates for shares and their transfer	§ 575.14(c)(4)
239.30—Annual reports; books and records	§ 575.14(c)(5)
239.31—Indemnification; employment contracts	
SUBPART D—Indemnification; Employment Contracts	
239.40—Indemnification of directors, officers and employees	§ 575.11(f)
239.41—Employment contracts	§ 575.11(g)
SUBPART E—Conversions from Mutual to Stock Form—§ 575.12	
239.50—Purpose and scope	§ 575.12 (§ 563b.5)
239.51—Acquiring another insured stock depository institution as part of a conversion	§ 575.12 (§ 563b.20)
239.52—Definitions	§ 575.12 (§ 563b.25)
239.53—Prior to conversion.	
239.54—Plan of conversion	§ 575.12 (§§ 563b.125, 563b.130, 563b.135, 563b.140)
239.55—Filing requirements	§ 575.12 (§§ 563b.150, 563b.155, 563b.160, 563b.165, 563b.180, 563b.185, 563b.200, 563b.205)
239.56—Vote by members	§ 575.12 (§§ 563b.225, 563b.230, 563b.235, 563b.240)
239.57—Proxy solicitation	§ 575.12 (§§ 563.250, 563.255, 563b.260, 563b.265, 563b.270, 563b.275, 563b.280, 563b.285, 563b.290, 563b.295)
239.58—Offering circular	§ 575.12 (§§ 563b.300, 563b.305, 563b.310)
239.59—Offers and sales of stock	§ 575.12 (§§ 563b.320, 563b.325, 563b.330, 563b.335, 563b.340, 563b.345, 563b.350, 563b.360, 563b.365, 563b.370, 563b.375, 563b.380, 563b.385, 563b.390, 563b.395)
239.60—Completion of the offering	§ 575.12 (§§ 563b.400, 563b.405)
239.61—Completion of the conversion	§ 575.12 (§§ 563b.420, 563b.425, 563b.435, 563b.440, 563b.445)
239.62—Liquidation account	§ 575.12 (§§ 563b.450, 563b.455, 563b.460, 563b.465, 563b.470, 563b.475, 563b.480)
239.63—Post-conversion	§ 575.12 (§§ 563b.500, 563b.505, 563b.510, 563b.515, 563b.520, 563b.525, 563b.530)

Regulation MM	Previous location in OTS regulations
239.64—Contributions to charitable organizations	§ 575.12 (§§ 563.15, 563b.550, 563b.555, 563b.560, 563b.565, 563b.570, 563b.575)
239.65—Voluntary supervisory conversions	§ 575.12 (§§ 563b.600, 563b.605, 563b.610, 563b.625, 563b.650, 563b.660, 563b.680, 563b.690)
239.66—Board review of the voluntary supervisory conversion application	§ 575.12 (§§ 563b.670, 563b.675)

Technical Amendments

The Board has made a number of technical amendments to Board rules to facilitate supervision of SLHCs. These amendments include revisions to the interagency rules implementing the Community Reinvestment Act, including Regulation G[68] and Regulation BB.[69] Previously, these requirements were located in parts 533 and 563e of the OTS regulations. These technical changes also include revisions to the Board procedural rules, including part 261 (Availability of Information), 261B (Public Observation of Meetings), part 262 (Rules of Procedure), part 263 (Rules of Practice for Hearings), and part 264A (Post-Employment Restrictions for Senior Examiners). In general, these amendments add SLHCs to the types of institutions covered by the rule and create mirrored provisions to accommodate transactions under HOLA.

In addition, the Board made technical amendments to implement section 312(b)(2)(A) of the Dodd-Frank Act,[70] which transfers to the Board all rulemaking authority under section 11 of HOLA relating to transactions with affiliates and extensions of credit to executive officers, directors, and principal shareholders.[71] These amendments include revisions to parts 215 (Insider Transactions) and part 223 (Transactions with Affiliates) of Board regulations.

With respect to transactions with affiliates, the Board has added a new subpart I to the Board's Regulation W.[72] Savings associations have been subject to most of the provisions of Regulation W pursuant to section 563.41 of OTS regulations. New subpart I contains the provisions of section 563.41, other than paragraphs (c)(3) and (4), and is revised to reflect nomenclature changes. The Board has decided not to adopt the recordkeeping and notice requirements previously set forth in section 563.41(c)(3) and (4). When adopting amendments to Regulation W, the Board considered, and decided against, imposing recordkeeping requirements on institutions subject to Regulation W. At that time, the Board concluded, and continues to believe, that the primary supervisors of the insured depository institutions are the appropriate authorities to determine the recordkeeping requirements of their institutions. The Board also believes that the requirement for a savings association under section 563.41(b)(4) to provide notice to its primary supervisory in certain circumstances does not need to be incorporated into Regulation W because the OCC may require such notice in its general capacity as the primary supervisor of the institution.

With respect to extensions of credit to executive officers, directors, and principal shareholders, the Board has revised Regulation O to extend to savings associations all provisions applicable to state member banks.[73] Section 563.43 of the OTS regulations previously extended all of the provisions of Regulation O to savings associations.

IV. Request for Comments

The Board is seeking comment on all aspects of this interim final rule. The Board requests specific comment with respect to whether all regulations relating to the supervision of SLHCs are included in this rulemaking. Alternatively, does this rulemaking carry over regulatory provisions that currently do not apply to SLHCs or their non-depository subsidiaries?

V. Legal Authority

Rulemaking Authority

As noted, the Dodd-Frank Act explicitly provides for transfer of rulemaking authority for SLHCs from OTS to the Board effective July 21.[74] The Dodd-Frank Act also amends other statutes effective July 21, so as to provide the Board with rulemaking authority over SLHCs pursuant to HOLA,[75] the CBCA,[76] section 32 of the FDI Act (requiring notices by troubled institutions prior to appointment of a director or senior executive officer),[77] the Interlocks Act[78] and section 19 of the FDI Act (preventing service at SLHCs of individuals convicted of crimes of dishonesty).[79] The Board is issuing this interim final rule pursuant to this authority.

Authority To Issue Interim Final Rule Without Notice and Comment

The Administrative Procedures Act (''APA''), 5 U.S.C. 551 *et seq.,* generally requires public notice before promulgation of regulations.[80] The APA provides an exception for this requirement, however, when there is good cause because notice and public procedure is impracticable.[81] The Board finds that for this interim rule there is ''good cause'' to conclude that providing notice and an opportunity to comment would be impracticable and, therefore, is not required.

Because the authority to supervise SLHCs was transferred by operation of law effective on July 21, 2011, the Board has concluded that adopting this rule on an interim basis effective immediately, and subject to change as a result of comments received, would allow efficient and effective supervision and regulation of SLHCs immediately while also allowing the public an opportunity to comment.

Specifically, the OTS regulations often integrate requirements for savings associations with those of SLHCs. The Board does not believe that SLHCs should be obligated to independently determine which regulations remain applicable after transfer. The OTS regulations also contain references to the OTS as recipient of and decision maker with respect to SLHC applications. Absent immediate modification of these rules, the Board

[68] 12 CFR part 207 (Disclosure and Reporting of CRA-Related Amendments).

[69] 12 CFR part 228 (Community Reinvestment).

[70] 12 U.S.C. 5412.

[71] 12 U.S.C. 1468.

[72] 12 CFR part 223 (Transactions Between Member Banks and Their Affiliates).

[73] 12 CFR part 215 (Loans to Executive Officers, Directors, and Principal Shareholders of Member Banks).

[74] 12 U.S.C. 5412(b)(1)(A)(ii).

[75] 12 U.S.C. 1461 *et seq.*

[76] 12 U.S.C. 1817(j)(13).

[77] 12 U.S.C. 1831i.

[78] 12 U.S.C. 3207.

[79] 12 U.S.C. 1829(a).

[80] 5 U.S.C. 553(b).

[81] 5 U.S.C. 553(b)(B).

would lack procedures to receive and process applications and therefore would be unable to fully carry out this important portion of its supervisory responsibilities. Additionally, the Board must take immediate action to amend a number of its own administrative regulations to ensure the SLHCs and transactions under HOLA are appropriately accommodated.

In order to effectuate the Dodd-Frank Act, prevent a disruption of agency business, and ensure that SLHCs are aware of their obligations, and the expectations of the Board as the new supervisory authority, the Board is issuing this interim final rule. The Board is seeking comment from interested parties before final rules are issued.

VI. Regulatory Flexibility Act

In accordance with section 4 of the Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601 *et seq.,* the Board is publishing an initial regulatory flexibility analysis for the interim final rule. The RFA generally requires an agency to assess the impact a rule is expected to have on small entities.[82] The RFA requires an agency either to provide a regulatory flexibility analysis or to certify that the final rule will not have a significant economic impact on a substantial number of small entities. Based on this analysis and for the reasons stated below, the Board believes that this final rule will not have a significant economic impact on a substantial number of small entities. The Board recognizes that the final rule will affect some small business entities; however the Board does not expect that the final rule will have a significant economic impact on them, particularly in light of the information already required to be collected or disclosed under HOLA. Nevertheless, the Board is publishing an initial regulatory flexibility analysis and requesting public comment on the effect of the interim final rule on small entities. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

A. Reasons for the Interim Final Rule

Title III of the Dodd-Frank Act transfers from OTS to the Board the responsibility for supervision of SLHCs and their non-depository subsidiaries. Specifically, section 312 of the Dodd-Frank Act provides that all functions of the OTS and the Director of the OTS (including rulemaking authority and authority to issue orders) with respect to the supervision of SLHCs and their non-depository subsidiaries transferred to the Board on July 21, 2011.[83] The interim final rule is the mechanism for the corresponding transfer from OTS to the Board of the regulations necessary for the Board to administer the statutes governing SLHCs.

B. Statement of Objectives and Legal Basis

The **SUPPLEMENTARY INFORMATION** sets forth the objectives and the legal basis for the interim final rule. In summary, this interim final rule is the mechanism for the transfer from the OTS to the Board of the regulations necessary for the Board to administer the statutes governing SLHCs.

C. Description of Small Entities to Which the Final Rule Applies

The interim final rule would apply to any SLHC and its non-depository subsidiaries. The Board can identify through data from the National Information Center the approximate numbers of small SLHCs that would be subject to the interim final rule. Based on March 2011 data, approximately 124 small SLHCs would be subject to the interim final rule.

D. Projected Reporting, Recordkeeping and Other Compliance Requirements

The reporting and recordkeeping requirements of the interim final rule are described in the **SUPPLEMENTARY INFORMATION**.

The interim final rule is composed of new Regulation LL and new Regulation MM, into which the Board has sought to collect all current OTS regulations applicable to, respectively, SLHCs and SLHCs in mutual form and transfer them into a single part of Chapter 2 of Title 12 for ease of locating. The interim final rule also makes technical amendments to current Board regulations necessary to accommodate the transfer of supervisory authority for SLHCs from OTS to the Board. In light of the information already required to be collected or disclosed under HOLA, the Board does not expect that the costs associated with this interim final rule will place a significant burden on small entities.

E. Identification of Duplicative, Overlapping, or Conflicting Federal Regulations

The Board has not identified any federal statutes or regulations that would duplicate, overlap, or conflict with the interim final rule.

F. Significant Alternatives to the Interim Final Rule

As noted above, the interim final rule implements the statutory requirements of the Dodd-Frank Act. The Board has implemented these requirements to minimize burden while retaining benefits and protections to the banking system. The Board welcomes comment on any significant alternatives that would minimize the impact of the interim final rule on small entities.

The Board also welcomes further information and comment on any costs, compliance requirements, or changes in operating procedures arising from the application of the interim final rule to small business. The Board will carefully review any comments received on these issues during the public comment period.

VII. Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act (''PRA'') of 1995 (44 U.S.C. 3501–3521), the Board may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (''OMB'') control number. The Board reviewed the interim final rule under the authority delegated to the Board by OMB. In addition, as permitted by the PRA, the Board also proposes to extend for three years the current information collections listed below.

Regulation LL

Title of Information Collections

- Savings and Loan Holding Company Registration Statement (H(b)(10)),
- Savings Association Holding Company Report (H–(e) series),
- Interagency Bank Merger Act Application (FR 2070),
- Interagency Notice of Change in Control (FR 2081a),
- Notification by a Bank Holding Company to Acquire a Nonbank Company and/or Engage in Nonbanking Activities (FR Y–4),
- Filings Related to the Gramm-Leach-Bliley Act (FR 4010),
- Application to Become a Bank Holding Company and/or Acquire an Additional Bank or Bank Holding Company (FR Y–3),

[82] Under standards the U.S. Small Business Administration sets, an entity is considered ''small'' if it has $175 million or less in assets for banks and other depository institutions. U.S. Small Business Administration, Table of Small Business Size Standards Matched to North American Industry Classification System Codes, available at *http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf.*

[83] 12 U.S.C. 5412.

• Notice for Prior Approval to Become a Bank Holding Company (FR Y–3N),
• Interagency Notice of Change in Director or Senior Executive Officer (FR 2081b),
• Prohibited Service at Savings and Loan Holding Companies,
• Interagency Biographical or Financial Report (FR 2081c), and
• Notice or Application for Capital Distribution (OTS 1583).

Frequency of Response: Event-generated.

Affected Public: Savings and loan holding companies (''SLHCs'') and individuals

Abstract: The information collection requirements are found in sections 238.4, 238.11, 238.12, 238.14, 238.31, 238.33, 238.53, 238.54, 238.65, 238.73, 238.74, 238.86, 238.96, and 238.103 of the interim final rule. These requirements would implement regulations related to Section 312 of the Dodd-Frank Act, which transfered supervision of SLHCs from the OTS to the Board on July 21, 2011.

Section 238.4 sets forth the requirements for SLHCs to register with the Federal Reserve. The Federal Reserve will collect these data using the former OTS reporting form H(b)(10) (former OMB No. 1550–0020, current OMB No. 7100–0337). Sections 238.11 and 238.14 set forth the requirements for SLHCs to seek prior approval to form a holding company, acquire a subsidiary savings association, acquire control of a savings association or savings and loan holding company securities, acquire bank assets, merge SLHCs, and acquire control of an SLHC by certain individuals. The Federal Reserve will collect these data using former OTS reporting form H–(e) series (former OMB No. 1550–0015, current OMB No. 7100–0336) and Federal Reserve reporting form FR 2081a (OMB No. 7100–0134). Section 238.12 sets forth requirements for SLHCs involved in savings association mergers and internal corporate reorganizations to file information under the Bank Merger Act. The Federal Reserve will collect these data using Federal Reserve reporting form FR 2070 (OMB No. 7100–0171). Sections 238.31 and 238.33 set forth requirements for SLHCs to provide prior notice for changes in control of an SLHC. The Federal Reserve will collect these data using Federal Reserve reporting form FR 2081a (OMB No. 7100–0134). Sections 238.53 and 238.54 set forth requirements for SLHCs to engage in or acquire a company engaged in certain services or activities. The Federal Reserve will collect these data using Federal Reserve reporting form FR Y–4 (OMB No. 7100–0121). Section 238.65 sets forth requirements for SLHCs electing to be treated as a financial holding company, SLHCs that do not meet the requirements to be financial holding company engaging in financial holding company activities, and companies requesting to be treated as a financial holding company as part of an application to become an SLHC. The Federal Reserve will collect these data under the Federal Reserve's FR 4010 information collection, which is filed in a letter format (OMB No. 7100–0292), and the Federal Reserve's FR Y–3/3N reporting form (OMB No. 7100–0121). Sections 238.73 and 238.74 set forth requirements for SLHCs to provide prior notice to the Federal Reserve 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. The Federal Reserve will collect these data under the Federal Reserve's reporting form FR 2081b (OMB No. 7100–0134). Section 238.86 sets forth requirements for exemptions from prohibited services by individuals at SLHCs. The Federal Reserve will collect these data under a former OTS information collection that is filed in a letter format (former OMB No. 1550–0117, current OMB No. 7100–0338). Section 238.96 sets forth requirements for an SLHC to apply for an exemption to a management interlock. The Federal Reserve will collect these data under Federal Reserve reporting forms FR 2070, FR 2081c, FR Y–3/3N (OMB Nos. 7100–0171, 7100–0134, and 7100–0121). Section 238.103 sets forth filing requirements for subsidiary savings associations of SLHCs regarding dividend declarations. The Federal Reserve will collect these data under former OTS reporting form 1583 (former OMB No. 1550–0059, current OMB No. 7100–0339).

Estimated Burden

The hourly burden estimates associated with each information collection described above are not expected to change materially as the information to be collected is substantively similar to that which is currently being collected from SLHCs and those managing these entities. There are approximately 427 SLHCs as of June 30, 2011. For the existing Federal Reserve information collections mentioned above, the Federal Reserve will increase the respondent counts as appropriate to include SLHCs. For additional information on the current burden associated with any of these information collections, please see OMB's public Web site at: *http://www.reginfo.gov/public/do/PRAMain.* For copies of the current reporting forms, please see the Federal Reserve's public Web site at *http://www.federalreserve.gov/reportforms/default.cfm.*

Regulation MM

Title of Information Collections

• Mutual Holding Company Reorganization (MHC–1; OTS 1522),
• Minority Stock Issuance by a Savings Association Subsidiary of a Mutual Holding Company (MHC–2; OTS 1523),
• Mutual to Stock Applications (OTS Forms 1680, 1681, 1682, 1683),
• Holding Company Applications/Information Filing (H–(e) series),
• Interagency Notice of Change in Director or Senior Executive Officer (FR 2081b), and
• Interagency Biographical or Financial Report (FR 2081c).

Frequency of Response: Event-generated.

Affected Public: Mutual holding companies (MHCs) and individuals

Abstract: The information collection requirements are found in sections 239.1, 239.3, 239.4, 239.6 through 239.8, 239.10, 239.11, 239.15, 239.16, 239.22 through 239.25, 239.40, 239.50, 239.53 through 239.55, 239.57 through 239.60, and 239.63 through 239.65 of the interim final rule. These requirements would implement regulations related to section 312 of the Dodd-Frank Act, which transfers supervision of MHCs from the OTS to the Board on July 21, 2011.

Sections 239.1, 239.3, 239.4, 239.6 through 239.8, 239.10, 239.24, 239.25, and 239.63 sets forth the requirements for MHCs to reorganize and for subsidiary holding companies of MHCs to issue minority stock. The Federal Reserve will collect these data using former OTS reporting forms 1522 and 1523 (former OMB No. 1550–0072; current OMB No. 7100–0340). Sections 239.8, 239.10, 239.15, 239.57 through 239.60, and 239.63 through 239.65 set forth the requirements for materials related to proxy statements, meetings, bylaws, offering circulars, selling conversion shares of MHCs, conflicts of interest of directors, and voluntary supervision conversions. The Federal Reserve will collect these data using former OTS reporting forms 1680 through 1683 (formerly OMB No. 1550–0014, current OMB No. 7100–0335). Section 239.11 sets forth requirements for MHCs with respect to communicating with members. MHCs would provide this information using a letter. Section 239.16 sets forth

requirements for MHCs to propose dissolution. MHCs would provide this information in a letter format. Section 239.22 and 239.23 sets forth requirements for MHC charter and bylaw amendments.

This information would be submitted in a letter format. Section 239.40 sets forth requirements for MHCs to notify the Board about their intent to indemnify directors, officers, and employees. The Federal Reserve will collect these data using Federal Reserve reporting form FR 2081b (OMB No. 7100–0134). Section 239.50 sets forth requirements for MHCs to convert from the mutual to the stock form of ownership. The Federal Reserve will collect these data using former OTS reporting form H-(e) series (formerly OMB No. 1550–0015, current OMB No. 7100–0336) and Federal Reserve reporting form FR 2081c (OMB No. 7100–0134). Sections 239.53 through 239.55 set forth requirements for MHCs to provide a business plan prior to conversion from mutual to stock form, make certain certifications regarding the business plan, and notify its members and the public of the plan. The Federal Reserve will collect these data under Federal Reserve reporting form FR 2081c (OMB No. 7100–0134). Section 239.65 requires a plan of voluntary supervisory conversion and related application. The Federal Reserve will use former OTS reporting forms H-(e)1–S (formerly OMB No. 1550–0015, current OMB No. 7100–0336) to collect these data.

Estimated Burden

The hourly burden estimates associated with each information collection described above is not expected to change materially as the information to be collected is substantively similar to that which is currently being collected from MHCs and those managing these entities. There are approximately 100 MHCs as of June 30, 2011. For the existing Federal Reserve information collections mentioned above, the Federal Reserve will increase the respondent counts as appropriate to include MHCs. For additional information on the current burden associated with any of these information collections, please see OMB's public Web site at: *http://www.reginfo.gov/public/do/PRAMain.* For copies of the current reporting forms, please see the Federal Reserve's public Web site at *http://www.federalreserve.gov/reportforms/default.cfm.*

Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;

(b) The accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Solicitation of Comments on Use of Plain Language

Section 722 of the Gramm-Leach Bliley Act of 1999 requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000.[84] The Board invites comment on whether the interim final rule is clearly stated and effectively organized, and how the Board might make the text of the rule easier to understand.

List of Subjects

12 CFR Part 207

Banks, Banking, Community development, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements.

12 CFR Part 215

Credit, Penalties, Reporting and recordkeeping requirements.

12 CFR Part 223

Banks, Banking, Federal Reserve System.

12 CFR Part 228

Banks, banking, Community development, Credit, Investments, Reporting and recordkeeping requirements.

12 CFR Part 238

Administrative practice and procedure, Banks, Banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Holding companies, Securities.

12 CFR Part 239

Administrative practice and procedure, Banks, Banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

12 CFR Part 261

Confidential business information, Federal Reserve System, Freedom of information.

12 CFR Part 261b

Sunshine Act.

12 CFR Part 262

Administrative practice and procedure, Banks, banking, Federal Reserve System.

12 CFR Part 263

Administrative practice and procedure, Claims, Crime, Equal Access to Justice, Lawyers, Penalties.

12 CFR Part 264a

Conflicts of interest.

For the reasons stated in the preamble, the Board amends 12 CFR chapter II as follows:

PART 207—DISCLOSURE AND REPORTING OF CRA–RELATED AGREEMENTS (REGULATION G)

■ 1. The authority citation for part 207 continues to read as follows:

Authority: 12 U.S.C. 1831y.

■ 2. In § 207.1:

■ A. Redesignate paragraphs (b)(3) and (b)(4) as paragraphs (b)(4) and (b)(5) respectively;

■ B. Add new paragraph (b)(3); and

■ C. Revise newly redesignated paragraphs (b)(4) and (b)(5). The additions and revisions read as follows:

§ 207.1 Purpose and scope of this part.

(b)* * *

(3) Savings and loan holding companies;

(4) Affiliates of bank holding companies and savings and loan holding companies, other than banks, savings associations and subsidiaries of banks and savings associations; and

(5) Nongovernmental entities or persons that enter into covered agreements with any company listed in paragraph (b)(1) through (4) of this section.

* * * * *

PART 215—LOANS TO EXECUTIVE OFFICERS, DIRECTORS, AND PRINCIPAL SHAREHOLDERS OF MEMBER BANKS (REGULATION O)

■ 3. The authority citation for part 215 is revised to read as follows:

Authority: 12 U.S.C. 248(a), 375a(10), 375b(9) and (10), 1468, 1817(k), 5412; and Pub. L. 102–242, 105 Stat. 2236 (1991).

[84] 12 U.S.C. 4809.

■ 4. In § 215.1, revise paragraph (a) to read as follows:

§ 215.1 Authority, purpose and scope.

(a) *Authority.* This part is issued pursuant to sections 11(a), 22(g), and 22(h) of the Federal Reserve Act (12 U.S.C. 248(a), 375a, and 375b), 12 U.S.C. 1817(k), section 306 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (Pub. L. 102–242, 105 Stat. 2236 (1991)), section 11 of the Home Owners' Loan Act (12 U.S.C. 1468), and section 312(b)(2)(A) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5412).

* * * * *

■ 5. In § 215.9, revise paragraph (a)(1) to read as follows:

§ 215.9 Disclosure of credit from member banks to executive officers and principal shareholders.

(a) * * *

(1) *Principal shareholder of a member bank* means any person other than an insured bank, or a foreign bank as defined in 12 U.S.C. 3101(7), that, directly or indirectly, owns, controls, or has power to vote more than 10 percent of any class of voting securities of the member bank. The term includes a person that controls a principal shareholder (*e.g.,* a person that controls a bank holding company). Shares of a bank (including a foreign bank), bank holding company, savings and loan holding company or other company owned or controlled by a member of an individual's immediate family are presumed to be owned or controlled by the individual for the purposes of determining principal shareholder status.

* * * * *

■ 6. Section 215.12 is added to read as follows:

§ 215.12 Application to savings associations.

The requirements of this part apply to savings associations, as defined in 12 CFR 238.2(l) (including any subsidiary of a savings association), in the same manner and to the same extent as if the savings association were a member bank; provided that a savings association's unimpaired capital and unimpaired surplus will be determined under regulatory capital rules applicable to that savings association.

PART 223—TRANSACTIONS BETWEEN MEMBER BANKS AND THEIR AFFILIATES (REGULATION W)

■ 7. The authority citation for part 223 is revised to read as follows:

Authority: 12 U.S.C. 371c(b)(1)(E), (b)(2)(A), and (f), 371c–1(e), 1828(j), 1468(a), and section 312(b)(2)(A) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5412).

■ 8. In § 223.1, revise paragraph (a) to read as follows:

§ 223.1 Authority, purpose and scope.

(a) *Authority.* The Board of Governors of the Federal Reserve System (Board) has issued this part (Regulation W) under the authority of sections 23A(f) and 23B(e) of the Federal Reserve Act (FRA) (12 U.S.C. 371c(f), 371c–1(e)) section 11 of the Home Owners' Loan Act (12 U.S.C. 1468), and section 312(b)(2)(A) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5412).

* * * * *

■ 9. Add Subpart I to read as follows:

Subpart I—Savings Associations—Transactions with Affiliates

§ 223.72 Transactions with affiliates.

(a) *Scope.* (1) This subpart implements section 11(a) of the Home Owners' Loan Act (12 U.S.C. 1468(a)). Section 11(a) applies sections 23A and 23B of the FRA (12 U.S.C. 371c and 371c1) to every savings association in the same manner and to the same extent as if the association were a member bank; prohibits certain types of transactions with affiliates; and authorizes the Board to impose additional restrictions on a savings association's transactions with affiliates.

(2) For the purposes of this subpart, ''savings association'' is defined at section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813), and also includes any savings bank or any cooperative bank that is a savings association under 12 U.S.C. 1467a(l). A non-affiliate subsidiary of a savings association is treated as part of the savings association. For purposes of this subpart, a ''non-affiliate subsidiary'' is a subsidiary of a savings association other than a subsidiary described at 12 CFR 223.2(b)(1)(i), and (b)(1)(iii) through (v).

(b) *Sections 23A and 23B of the FRA.* A savings association must comply with sections 23A and 23B of the Federal Reserve Act and this part as if it were a member bank, except as described in the following chart.

Provision of Regulation W	Application
(1) 12 CFR 223.2(a)(8)—''Affiliate'' includes a financial subsidiary.	Does not apply. Savings association subsidiaries do not meet the statutory definition of financial subsidiary.
(2) 12 CFR 223.2(a)(12)—Determination that ''affiliate'' includes other types of companies.	Read to include the following statement: ''Affiliate also includes any company that the Board determines, by order or regulation, to present a risk to the safety and soundness of the savings association.''
(3) 12 CFR 223.2(b)(1)(ii)—''Affiliate'' includes a subsidiary that is a financial subsidiary.	Does not apply. Savings association subsidiaries do not meet the statutory definition of financial subsidiary.
(4) 12 CFR 223.3(d)—Definition of ''capital stock and surplus.''	''Capital stock and surplus'' for a savings association has the same meaning as under the regulatory capital requirements applicable to that savings association.
(5) 12 CFR 223.3(h)(1)—Section 23A covered transactions include an extension of credit to the affiliate.	Read to incorporate paragraph (c)(1) of this section, which prohibits loans or extensions of credit to an affiliate, unless the affiliate is engaged only in the activities described at 12 U.S.C. 1467a(c)(2)(F)(i), as defined in Regulation LL at 12 CFR 238.54.
(6) 12 CFR 223.3(h)(2)—Section 23A covered transactions include a purchase of or investment in securities issued by an affiliate.	Read to incorporate paragraph (c)(2) of this section, which prohibits purchases and investments in securities issued by an affiliate, other than with respect to shares of a subsidiary.
(7) 12 CFR 223.3(k)—Definition of ''depository institution.''	Read to include the following statement: ''For the purposes of this definition, a non-affiliate subsidiary of a savings association is treated as part of the depository institution.''
(8) 12 CFR 223.3(p)—Definition of ''financial subsidiary.''	Does not apply. Savings association subsidiaries do not meet the statutory definition of financial subsidiary.
(9) 12 CFR 223.3(w)—Definition of ''member bank.''	Read to include the following statement: ''Member bank also includes a savings association. For purposes of this definition, a non-affiliate subsidiary of a savings association is treated as part of the savings association.''
(10) 12 CFR 223.3(aa)—Definition of ''operating subsidiary.''	Does not apply.

Provision of Regulation W	Application
(11) 12 CFR 223.31—Application of section 23A to an acquisition of an affiliate that becomes an operating subsidiary.	Read to refer to ''a non-affiliate subsidiary'' instead of ''operating subsidiary.''
(12) 12 CFR 223.32—Rules that apply to financial subsidiaries of a bank.	Does not apply. Savings association subsidiaries do not meet the statutory definition of financial subsidiary.
(13) 12 CFR 223.42(f)(2)—Exemption for purchasing certain marketable securities.	Read to refer to ''Thrift Financial Report'' instead of ''Call Report.'' References to ''state member bank'' are unchanged.
(14) 12 CFR 223.42(g)(2)—Exemption for purchasing municipal securities.	Read to refer to ''Thrift Financial Report'' instead of ''Call Report.'' References to ''state member bank'' are unchanged.
(15) 12 CFR 223.61—Application of sections 23A and 23B to U.S. branches and agencies of foreign banks.	Does not apply to savings associations or their subsidiaries.

(c) *Additional prohibitions and restrictions.* A savings association must comply with the additional prohibitions and restrictions in this paragraph (c). Except as described in paragraph (b) of this section, the definitions in this part apply to these additional prohibitions and restrictions.

(1) *Loans and extensions of credit.* (i) A savings association may not make a loan or other extension of credit to an affiliate, unless the affiliate is solely engaged in the activities described at 12 U.S.C. 1467a(c)(2)(F)(i), as defined in § 238.54 of Regulation LL (12 CFR 238.54). A loan or extension of credit to a third party is not prohibited merely because proceeds of the transaction are used for the benefit of, or are transferred to, an affiliate.

(ii) If the Board determines that a particular transaction is, in substance, a loan or extension of credit to an affiliate that is engaged in activities other than those described at 12 U.S.C. 1467a(c)(2)(F)(i), as defined in § 238.54 of Regulation LL (12 CFR 238.54), or the Board has other supervisory concerns concerning the transaction, the Board may inform the savings association that the transaction is prohibited under this paragraph (c)(1), and require the savings association to divest the loan, unwind the transaction, or take other appropriate action.

(2) *Purchases or investments in securities.* A savings association may not purchase or invest in securities issued by any affiliate other than with respect to shares of a subsidiary. For the purposes of this paragraph (c)(2), subsidiary includes a bank and a savings association.

PART 228—COMMUNITY REINVESTMENT (REGULATION BB)

■ 10. The authority citation for part 228 continues to read as follows:

Authority: 12 U.S.C. 24, 36, 92a, 93a, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1816, 1820(d)(9), 1823(j), 1828(o), 1831, 1831o, 1831p–1, 1831r–1, 1831w, 1831x, 1835a, 1882, 2901–2907, 3105, 3106a(1), 3108(a), 3310, 3331–3351, and 3906–3909, 5101 *et seq.,* 15 U.S.C. 78b, 78l(b), 78l(g), 78l(i), 78o–4(c)(5), 78q, 78q–1, 78w, 1681s, 1681w, 6801 and 6805; 31 U.S.C. 5318, 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

■ 11. In § 228.11:

■ A. Revise paragraphs (a)(2), (a)(3)(iii), and (a)(3)(iv); and

■ B. Add paragraph (a)(3)(v) to read as follows:

§ 228.11 Authority, purposes, and scope.

(a) * * *

(2) To conduct examinations of bank holding companies and their subsidiaries (12 U.S.C. 1844) and savings and loan holding companies and their subsidiaries (12 U.S.C. 1467a); and

(3) * * *

(iii) Formations of, acquisitions of banks by, and mergers of, bank holding companies (12 U.S.C. 1842);

(iv) The acquisition of savings associations by bank holding companies (12 U.S.C. 1843); and

(v) Formations of, acquisitions of savings associations by, conversions of, and mergers of, savings and loan holding companies (12 U.S.C. 1467a).

* * * * *

■ 12. In § 228.29:

■ A. Revise paragraphs (a)(2)(ii) and (a)(2)(iii);

■ B. Add paragraphs (a)(2)(iv) and (a)(2)(v); and

■ C. Revise paragraphs (c) and (d).

The additions and revisions read as follows:

§ 228.29 Effect of CRA performance on applications.

(a) * * *

(2) * * *

(ii) To acquire ownership or control of shares or all or substantially all of the assets of a bank, to cause a bank to become a subsidiary of a bank holding company, or to merge or consolidate a bank holding company with any other bank holding company in a transaction that requires approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842);

(iii) To own, control or operate a savings association in a transaction that requires approval under section 4 of the Bank Holding Company Act (12 U.S.C. 1843);

(iv) To become a savings and loan holding company in a transaction that requires approval under section 10 of the Home Owners' Loan Act (12 U.S.C. 1467a); and

(v) To acquire ownership or control of shares or all or substantially all of the assets of a savings association, to cause a savings association to become a subsidiary of a savings and loan holding company, or to merge or consolidate a savings and loan holding company with any other savings and loan holding company in a transaction that requires approval under section 10 of the Home Owners' Loan Act (12 U.S.C. 1467a).

* * * * *

(c) *Denial or conditional approval of application.* A bank or savings association's record of performance may be the basis for denying or conditioning approval of an application listed in paragraph (a) of this section.

(d) *Definitions.* For purposes of paragraphs (a)(2)(i), (ii), and (iii) of this section, ''bank,'' ''bank holding company,'' ''subsidiary,'' and ''savings association'' have the meanings given to those terms in section 2 of the Bank Holding Company Act (12 U.S.C. 1841). For purposes of paragraphs (a)(2)(iv) and (v) of this section, ''savings and loan holding company'' and ''subsidiary'' has the meaning given to that term in section 10 of the Home Owners' Loan Act (12 U.S.C. 1467a).

■ 13. Add new part 238 to read as follows:

PART 238—SAVINGS AND LOAN HOLDING COMPANIES (REGULATION LL)

Subpart A—General Provisions

Sec.
238.1 Authority, purpose and scope.
238.2 Definitions.

238.3 Administration.
238.4 Records, reports, and inspections.
238.5 Audit of savings association holding companies.
238.6 Penalties for violations.
238.7 Tying restriction exception.
238.8 Safe and sound operations.

Subpart B—Acquisitions of Savings Association Securities or Assets

Sec.
238.11 Transactions requiring Board approval.
238.12 Transactions not requiring Board approval.
238.13 Prohibited acquisitions.
238.14 Procedural requirements.
238.15 Factors considered in acting on applications.

Subpart C—Control Proceedings

Sec.
238.21 Control proceedings.

Subpart D—Change in Bank Control

Sec.
238.31 Transactions requiring prior notice.
238.32 Transactions not requiring prior notice.
238.33 Procedures for filing, processing, publishing, and acting on notices.

Subpart E—Qualified Stock Issuances

Sec.
238.41 Qualified stock issuances by undercapitalized savings associations or holding companies.

Subpart F—Savings and Loan Holding Company Activities and Acquisitions

Sec.
238.51 Prohibited activities.
238.52 Exempt savings and loan holding companies and grandfathered activities.
238.53 Prescribed services and activities of savings and loan holding companies.
238.54 Permissible bank holding company activities of savings and loan holding companies.

Subpart G—Financial Holding Company Activities

Sec.
238.61 Scope.
238.62 Definitions.
238.63 Requirements to engage in financial holding company activities.
238.64 Election required.
238.65 Election procedures.
238.66 Ongoing requirements.

Subpart H—Notice of Change of Director or Senior Executive Officer

Sec.
238.71 Purpose.
238.72 Definitions.
238.73 Prior notice requirement.
238.74 Filing and processing procedures.
238.75 Standards for review.
238.76 Waiting period.
238.77 Waiver of prior notice requirement.

Subpart I—Prohibited Service at Savings and Loan Holding Companies

Sec.
238.81 Purpose.
238.82 Definitions.
238.83 Prohibited actions.
238.84 Covered convictions or agreements to enter into pre-trial diversions or similar programs.
238.85 Adjudications and offenses not covered.
238.86 Exemptions.
238.87 Filing procedures.
238.88 Factors for review.
238.89 Board action.
239.90 Hearings.

Subpart J—Management Official Interlocks

Sec.
238.91 Authority, purpose, and scope.
238.92 Definitions.
238.93 Prohibitions.
238.94 Interlocking relationships permitted by statute.
238.95 Small market share exemption.
238.96 General exemption.
238.97 Change in circumstances.
238.98 Enforcement.
238.99 Interlocking relationships permitted pursuant to Federal Deposit Insurance Act.

Subpart K—Dividends by Subsidiary Savings Associations

Sec.
238.101 Authority and purpose.
238.102 Definitions.
238.103 Filing requirement.
238.104 Board action and criteria for review.

Subpart L—Investigative Proceedings and Formal Examination Proceedings

Sec.
238.111 Scope.
238.112 Definitions.
238.113 Confidentiality of proceedings.
238.114 Transcripts.
238.115 Rights of witnesses.
238.116 Obstruction of the proceedings.
238.117 Subpoenas.

Authority: 5 U.S.C. 552, 559; 12 U.S.C. 1462, 1462a, 1463, 1464, 1467, 1467a, 1468, 1813, 1817, 1829e, 1831i, 1972; 15 U.S.C. 78 *l.*

Subpart A—General Provisions

§ 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.

§ 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 Corporation, 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; or

(4) A savings association or any other 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.

(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 shares.* Preferred shares, limited partnership shares or interests, or similar interests are not *voting securities* if:

(i) Any voting rights associated with the shares or interest 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 or other interest, such as the issuance of additional amounts or classes of senior securities, the modification of the terms of the security or interest, the dissolution of the issuing company, or the payment of dividends by the issuing company when preferred dividends are in arrears;

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

(iii) The shares or interest 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.

(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 § 225.2(r)(2) of this chapter.

(t) *Well managed.* The term ''well managed'' takes the meaning provided in § 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)).

§ 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.

§ 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 company 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.

§ 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.* 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.

(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.

§ 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.*).

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

§ 238.8 Safe and sound operations.

(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.

Subpart B—Acquisitions of Saving Association Securities or Assets

§ 238.11 Transactions requiring Board approval.

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

§ 238.12 Transactions not requiring Board approval.

(a) The requirements of § 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 § 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 § 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 § 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

[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.

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.

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

§ 238.14 Procedural requirements.

(a) *Filing application.* An application for the Board's prior approval under § 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 § 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 advance **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 § 262.3(i)(2) of this chapter. Any request for a hearing (other than from the primary supervisor) shall comply with § 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 extended 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 § 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 § 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.

§ 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 § 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 § 238.11(c), (d), or (e), (or an application by a savings and loan holding company under § 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 § 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 § 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 prenuptial 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 § 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.

Subpart C—Control Proceedings

§ 238.21 Control proceedings.

(a) *Preliminary determination of control.* (1) The Board may issue a preliminary determination of control under the procedures set forth in this section in any case in which:

(i) Any of the presumptions of control set forth in paragraph (d) of this section is present; or

(ii) It otherwise appears that a company has the power to exercise a controlling influence over the management or policies of a savings association or other company.

(2) If the Board makes a preliminary determination of control under this section, the Board shall send notice to the controlling company containing a statement of the facts upon which the preliminary determination is based.

(b) *Response to preliminary determination of control.* Within 30 calendar days of issuance by the Board of a preliminary determination of control or such longer period permitted by the Board, the company against whom the determination has been made shall:

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

(2) File an application under this regulation to retain the control relationship; or

(3) 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.

(c) *Hearing and final determination.* (1) The Board shall order a formal hearing or other appropriate proceeding upon the request of a company that contests a preliminary determination that the company has the power to exercise a controlling influence over the management or policies of a savings association or other company, if the Board finds that material facts are in dispute. The Board may also in its discretion order a formal hearing or other proceeding with respect to a preliminary determination that the company controls voting securities of the savings association or other company under the presumptions in paragraph (d)(1) of this section.

(2) At a hearing or other proceeding, any applicable presumptions established by paragraph (d) of this section 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 company and other evidence, including the record of any hearing or other proceeding, the Board shall issue a final order determining whether the company controls voting securities, or has the power to exercise a controlling influence over the management or policies, of the savings association or other company. If a control relationship is found, the Board may direct the company to terminate the control relationship or to file an application for the Board's approval to retain the control relationship under subpart B of this part.

(d) *Rebuttable presumptions of control.* The following rebuttable presumptions shall be used in any proceeding under this section:

(1) *Control of voting securities*— (i) *Securities convertible into voting securities.* A company that owns, controls, or holds securities that are immediately convertible, at the option of the holder or owner, into voting securities of a bank or other company, controls the voting securities.

(ii) *Option or restriction on voting securities.* A company that enters into an agreement or understanding under which the rights of a holder of voting securities of a savings association or other company are restricted in any manner controls the securities. This presumption does not apply where the agreement or understanding:

(A) Is a mutual agreement among shareholders granting to each other a right of first refusal with respect to their shares;

(B) Is incident to a *bona fide* loan transaction; or

(C) Relates to restrictions on transferability and continues only for the time necessary to obtain approval from the appropriate Federal supervisory authority with respect to acquisition by the company of the securities.

(2) *Control over company* — (i) *Management agreement.* A company that enters into any agreement or understanding with a savings association or other company (other than an investment advisory agreement), such as a management contract, under which the first company or any of its subsidiaries directs or exercises significant influence over the general management or overall operations of the savings association or other company controls the savings association or other company.

(ii) *Shares controlled by company and associated individuals.* A company that, together with its management officials or principal shareholders (including members of the immediate families of either), owns, controls, or holds with power to vote 25 percent or more of the outstanding shares of any class of voting securities of a savings association or other company controls the savings association or other company, if the first company owns, controls, or holds with power to vote more than 5 percent of the outstanding shares of any class of voting securities of the savings association or other company.

(iii) *Common management officials.* A company that has one or more management officials in common with a savings association or other company controls the savings association or other company, if the first company owns, controls or holds with power to vote more than 5 percent of the outstanding shares of any class of voting securities of the savings association or other company, and no other person controls as much as 5 percent of the outstanding shares of any class of voting securities of the savings association or other company.

(e) *Presumption of non-control*— (1) In any proceeding under this section, there is a presumption that any company that directly or indirectly owns, controls, or has power to vote less than 5 percent of the outstanding shares of any class of voting securities of a savings association or other company does not have control over that savings association or other company.

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

Subpart D—Change in Bank Control

§ 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 § 238.33 of this subpart, before acquiring control of a savings and loan holding company, unless the acquisition is exempt under § 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 securities under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l); 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 § 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 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.

§ 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 § 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 § 238.31(c)), after complying with the procedures and receiving approval to acquire voting securities of the institution under this subpart, or in connection with an application approved under section 10(e) of HOLA (12 U.S.C. 1467a(e) and § 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 § 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 § 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 § 238.33 to the appropriate

[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.

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 § 238.33(h).

§ 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 individual, 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 § 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 acquisition, 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.

Subpart E—Qualified Stock Issuances

§ 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 § 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 § 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.

Subpart F—Savings and Loan Holding Company Activities and Acquisitions

§ 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 § 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 § 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 holding companies pursuant to §§ 238.51, 238.52, 238.53, and 238.54.

§ 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 § 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 § 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 § 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 § 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 § 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 savings 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 § 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 § 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 § 238.51(b) with respect to any activities of such holding company that are conducted exclusively in a foreign country.

§ 238.53 Prescribed services and activities of savings and loan holding companies.

(a) *General.* For the purpose of § 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 § 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 § 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 company 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, including 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; 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) For each insured depository institution 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

(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.

(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 § 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.

§ 238.54 Permissible bank holding company activities of savings and loan holding companies.

(a) *General.* For purposes of § 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 a composite rating of ''1'' or ''2'' thereafter, in its most recent examination, and is not in a troubled condition as defined in § 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 § 238.53 and this section, the procedures of § 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 § 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.

Subpart G—Financial Holding Company Activities

§ 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)).

§ 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 § 225.86 of this chapter.

(b) [Reserved]

§ 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.

§ 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.

§ 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 section, 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 § 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 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 § 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 despoitory 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 § 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 § 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 agreement, divestiture, and any other requirements described in § 225.83 of this chapter; or

(*2*) The activities limitations and any other requirements described in § 225.84 of this chapter, depending on which requirements of § 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 § 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.

§ 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 § 238.63 is subject to the notice, remediation agreement, divestiture, and any other requirements described in § 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 § 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 § 225.86 of this chapter subject to the notice, approval, and any other requirements described in §§ 225.85 through 225.89 of this chapter.

Subpart H—Notice of Change of Director or Senior Executive Officer

§ 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.

§ 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.

§ 238.73 Prior notice requirements.

(a) *Savings and loan holding company.* Except as provided under § 238.78, a savings and loan holding company must give the Board 30 days' written notice, as specified in § 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 § 238.78(b).

§ 238.74 Filing and processing procedures.

(a) *Filing notice*—(1) *Content.* The notice required in § 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 Investigations, 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]

§ 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.

§ 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 § 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.

§ 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 § 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.

Subpart I—Prohibited Service at Savings and Loan Holding Companies

§ 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.

§ 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 § 238.2(m), but excludes a subsidiary of a savings and loan holding company that is not itself a savings and loan holding company.

§ 238.83 Prohibited actions.

(a) *Person.* If a person was convicted of a criminal offense described in § 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.

§ 238.84 Covered convictions or agreements to enter into pre-trial diversions or similar programs.

(a) *Covered convictions and agreements.* Except as described in § 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.

§ 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 § 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.

§ 238.86 Exemptions.

(a) *Employees.* An employee of a savings and loan holding company is exempt from the prohibition in § 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 § 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 § 238.89(a);

(ii) The expiration of the 20-day period for filing a request for hearing under § 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 § 238.90(b) following the issuance of a Board denial of the application under § 238.89(b);

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

(v) The date an applicant withdraws the application.

§ 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 § 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 § 238.89(b), § 238.90(a) or § 238.90(d).

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

§ 238.88 Factors for review.

(a) *Board review.* (1) In determining whether to approve an exemption application filed under § 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 under 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.

§ 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.

§ 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 §§ 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 § 238.88(b).

Subpart J—Management Official Interlocks

§ 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 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.

§ 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

(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 § 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 management 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.

(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.

§ 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 depository 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 $2.5 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 $1.5 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**.

§ 238.94 Interlocking relationships permitted by statute.

The prohibitions of § 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.

§ 238.95 Small market share exemption.

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

(1) The interlock is not prohibited by § 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.

§ 238.96 General exemption.

(a) *Exemption.* The Board may by agency order exempt an interlock from the prohibitions in § 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 § 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.

§ 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.

§ 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.

§ 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)).

Subpart K—Dividends by Subsidiary Savings Associations

§ 238.101 Authority and purpose.

This subpart implements section 10(f) of 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.

§ 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.

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

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

Subpart L—Investigative Proceedings and Formal Examination Proceedings

§ 238.111 Scope.

This part prescribes rules of practice and procedure applicable to the conduct of investigative proceedings under section 10(g)(2) of the Home Owners' Loan Act, as amended, 12 U.S.C. 1467a(g)(2) (''HOLA'') and to the conduct of formal examination proceedings with respect to savings and loan holding companies and their affiliates under section 5(d)(1)(B) of the HOLA, as amended, 12 U.S.C. 1464(d)(1)(B) or section 7(j)(15) of the Federal Deposit Insurance Act, as amended, 12 U.S.C. 1817(j)(15) (''FDIA''), section 8(n) of the FDIA, 12 U.S.C. 1818(n), or section 10(c) of the FDIA, 12 U.S.C. 1820(c). This part does not apply to adjudicatory proceedings as to which hearings are required by statute, the rules for which are contained in part 262 of this chapter.

§ 238.112 Definitions.

As used in this part:

(a) *Investigative proceeding* means an investigation conducted under section 10(g)(2) of the HOLA;

(b) *Formal examination proceeding* means the administration of oaths and affirmations, taking and preserving of testimony, requiring the production of books, papers, correspondence, memoranda, and all other records, the issuance of subpoenas, and all related activities in connection with examination of savings and loan holding companies and their affiliates conducted pursuant to section 5(d)(1)(B) of the HOLA, section 7(j)(15) of the FDIA, section 8(n) of the FDIA or section 10(c) of the FDIA; and

(c) *Designated representative* means the person or persons empowered by the Board to conduct an investigative proceeding or a formal examination proceeding.

§ 238.113 Confidentiality of proceedings.

All formal examination proceedings shall be private and, unless otherwise ordered by the Board, all investigative proceedings shall also be private. Unless otherwise ordered or permitted by the Board, or required by law, and except as provided in §§ 238.114 and 238.115, the entire record of any investigative proceeding or formal examination proceeding, including the resolution of the Board or its delegate(s) authorizing the proceeding, the transcript of such proceeding, and all documents and information obtained by the designated

representative(s) during the course of said proceedings shall be confidential.

§ 238.114 Transcripts.

Transcripts or other recordings, if any, of investigative proceedings or formal examination proceedings shall be prepared solely by an official reporter or by any other person or means authorized by the designated representative. A person who has submitted documentary evidence or given testimony in an investigative proceeding or formal examination proceeding may procure a copy of his own documentary evidence or transcript of his own testimony upon payment of the cost thereof; *provided,* that a person seeking a transcript of his own testimony must file a written request with the Board stating the reason he desires to procure such transcript, and the Board may for good cause deny such request. In any event, any witness (or his counsel) shall have the right to inspect the transcript of the witness' own testimony.

§ 238.115 Rights of witnesses.

(a) Any person who is compelled or requested to furnish documentary evidence or give testimony at an investigative proceeding or formal examination proceeding shall have the right to examine, upon request, the Board resolution authorizing such proceeding. Copies of such resolution shall be furnished, for their retention, to such persons only with the written approval of the Board.

(b) Any witness at an investigative proceeding or formal examination proceeding may be accompanied and advised by an attorney personally representing that witness.

(1) Such attorney shall be a member in good standing of the bar of the highest court of any state, Commonwealth, possession, territory, or the District of Columbia, who has not been suspended or debarred from practice by the bar of any such political entity or before the Board in accordance with the provisions of part 263 of this chapter and has not been excluded from the particular investigative proceeding or formal examination proceeding in accordance with paragraph (b)(3) of this section.

(2) Such attorney may advise the witness before, during, and after the taking of his testimony and may briefly question the witness, on the record, at the conclusion of his testimony, for the sole purpose of clarifying any of the answers the witness has given. During the taking of the testimony of a witness, such attorney may make summary notes solely for his use in representing his client. All witnesses shall be sequestered, and, unless permitted in the discretion of the designated representative, no witness or accompanying attorney may be permitted to be present during the taking of testimony of any other witness called in such proceeding. Neither attorney(s) for the association(s) that are the subjects of the investigative proceedings or formal examination proceedings, nor attorneys for any other interested persons, shall have any right to be present during the testimony of any witness not personally being represented by such attorney.

(3) The Board, for good cause, may exclude a particular attorney from further participation in any investigation in which the Board has found the attorney to have engaged in dilatory, obstructionist, egregious, contemptuous or contumacious conduct. The person conducting an investigation may report to the Board instances of apparently dilatory, obstructionist, egregious, contemptuous or contumacious conduct on the part of an attorney. After due notice to the attorney, the Board may take such action as the circumstances warrant based upon a written record evidencing the conduct of the attorney in that investigation or such other or additional written or oral presentation as the Board may permit or direct.

§ 238.116 Obstruction of proceedings.

The designated representative shall report to the Board any instances where any witness or counsel has engaged in dilatory, obstructionist, or contumacious conduct or has otherwise violated any provision of this part during the course of an investigative proceeding or formal examination proceeding; and the Board may take such action as the circumstances warrant, including the exclusion of counsel from further participation in such proceeding.

§ 238.117 Subpoenas.

(a) *Service.* Service of a subpoena in connection with any investigative proceeding or formal examination proceeding shall be effected in the following manner:

(1) *Service upon a natural person.* Service of a subpoena upon a natural person may be effected by handing it to such person; by leaving it at his office with the person in charge thereof, or, if there is no one in charge, by leaving it in a conspicuous place therein; by leaving it at his dwelling place or usual place of abode with some person of suitable age and discretion then residing therein; by mailing it to him by registered or certified mail or by an express delivery service at his last known address; or by any method whereby actual notice is given to him.

(2) *Service upon other persons.* When the person to be served is not a natural person, service of the subpoena may be effected by handing the subpoena to a registered agent for service, or to any officer, director, or agent in charge of any office of such person; by mailing it to any such representative by registered or certified mail or by an express delivery service at his last known address; or by any method whereby actual notice is given to such person.

(b) *Motions to quash.* Any person to whom a subpoena is directed may, prior to the time specified therein for compliance, but in no event more than 10 days after the date of service of such subpoena, apply to the Board or its designee to quash or modify such subpoena, accompanying such application with a statement of the reasons therefore. The Board or its designee, as appropriate, may:

(1) Deny the application;

(2) Quash or revoke the subpoena;

(3) Modify the subpoena; or

(4) Condition the granting of the application on such terms as the Board or its designee determines to be just, reasonable, and proper.

(c) *Attendance of witnesses.* Subpoenas issued in connection with an investigative proceeding or formal examination proceeding may require the attendance and/or testimony of witnesses from any State or territory of the United States and the production by such witnesses of documentary or other tangible evidence at any designated place where the proceeding is being (or is to be) conducted. Foreign nationals are subject to such subpoenas if such service is made upon a duly authorized agent located in the United States.

(d) *Witness fees and mileage.* Witnesses summoned in any proceeding under this part shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States. Such fees and mileage need not be tendered when the subpoena is issued on behalf of the Board by any of its designated representatives.

■ 14. Add new part 239 to read as follows:

PART 239—MUTUAL HOLDING COMPANIES (REGULATION MM)

Subpart A—General Provisions

Sec.

239.1 Authority, purpose, and scope.
239.2 Definitions.

Subpart B—Mutual Holding Companies

Sec.

239.3 Mutual holding company reorganizations.
239.4 Grounds for disapproval of reorganizations.
239.5 Membership rights.
239.6 Contents of Reorganization Plans.
239.7 Acquisition and disposition of savings associations, savings and loan holding companies, and other corporations by mutual holding companies.
239.8 Operating restrictions.
239.9 Conversion or liquidation of mutual holding companies.
239.10 Procedural requirements.
239.11 Subsidiary holding companies.
239.12 Communication between members of a mutual holding company.
239.13 Charters.
239.14 Charter amendments.
239.15 Bylaws.
239.16 Voluntary dissolution.

Subpart C—Subsidiary Holding Companies

Sec.
239.20 Scope.
239.21 Charters.
239.22 Charter amendments.
239.23 Bylaws.
239.24 Issuances of stock by subsidiary holding companies of mutual holding companies.
239.25 Contents of Stock Issuance Plans.
239.26 Shareholders.
239.27 Board of directors.
239.28 Officers.
239.29 Certificates for shares and their transfer.
239.30 Annual reports; books and records.
239.31 Indemnification; employment contracts.

Subpart D—Indemnification; Employment Contracts

Sec.
239.40 Indemnification of directors, officers and employees.
239.41 Employment contracts.

Subpart E—Conversions from Mutual to Stock Form

Sec.
239.50 Purpose and scope.
239.51 Acquiring another insured stock depository institution as part of a conversion.
239.52 Definitions.
239.53 Prior to conversion.
239.54 Plan of conversion.
239.55 Filing requirements.
239.56 Vote by members.
239.57 Proxy solicitation.
239.58 Offering circular.
239.59 Offers and sales of stock.
239.60 Completion of the offering.
239.61 Completion of the conversion.
239.62 Liquidation account.
239.63 Post-conversion.
239.64 Contributions to charitable organizations.
239.65 Voluntary supervisory conversions.
239.66 Board review of the voluntary supervisory conversion application.
Appendix A to Part 239—Mutual Holding Company Model Charter
Appendix B to Part 239—Subsidiary Holding Company of a Mutual Holding Company Model Charter
Appendix C to Part 239—Mutual Holding Company Model Bylaws
Appendix D to Part 239—Subsidiary Holding Company of a Mutual Holding Company Model Bylaws

Authority: 12 U.S.C. 1462, 1462a, 1464, 1467a, 1828, and 2901.

Subpart A—General Provisions

§ 239.1 Authority, purpose, and scope.

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

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

(1) Regulate the reorganization of mutual savings associations to mutual holding companies and the creation of subsidiary holding companies of mutual holding companies;

(2) Define and regulate the operations of mutual holding companies and subsidiary holding companies of mutual holding companies; and

(3) Set forth the procedures for securing approval for these transactions.

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

§ 239.2 Definitions.

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

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

(1) Is acquired by a mutual holding company as part of, and concurrently with, a mutual holding company reorganization; and

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

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

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

(d) *Associate* of a person is:

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

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

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

(i) Who lives in the same home as the person; or

(ii) Who is a director or senior officer of the mutual holding company, subsidiary holding company, or other subsidiary.

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

(1) The Federal Deposit Insurance Corporation, the Resolution Trust Corporation, or any Federal Home Loan Bank, or

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

(i) The United States or any State,

(ii) An officer of the United States or any State in his or her official capacity, or

(iii) An instrumentality of the United States or any State.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) The transferability and voting of any stock or other indicia of participation in another entity, or

(2) Achievement of a common or shared objective, such as to collectively manage or control another entity.

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

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

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

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

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

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

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

(cc) *United States Treasury Time Deposit Open Account* means a non-interest-bearing account maintained in the name of the United States Treasury which may not be withdrawn prior to the expiration of 30 days' written notice from the United States Treasury, or such other period of notice as the Treasury may require. Such accounts are not savings accounts or savings deposits.

Subpart B—Mutual Holding Companies

§ 239.3 Mutual holding company reorganizations.

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

(1) A Reorganization Plan is approved by a majority of the board of directors of the reorganizing association and any acquiree association;

(2) A Reorganization Notice is filed with the Board pursuant to § 238.14 of this chapter;

(3) The Reorganization Plan is submitted to the members of the reorganizing association and any acquiree association pursuant and is approved by a majority of the total votes of the members of each association eligible to be cast at a meeting held at the call of each association's directors in accordance with the procedures prescribed by each association's charter and bylaws; and

(4) All necessary regulatory approvals have been obtained and all conditions imposed by the Board have been satisfied.

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

§ 239.4 Grounds for disapproval of reorganizations.

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

(1) Disapproval is necessary to prevent unsafe or unsound practices;

(2) The financial or managerial resources of the reorganizing association

or any acquiree association warrant disapproval;

(3) The proposed capitalization of the mutual holding company fails to meet the requirements of paragraph (b) of this section;

(4) A stock issuance is proposed in connection with the reorganization pursuant to § 239.24 that fails to meet the standards established by that section;

(5) The reorganizing association or any acquiree association fails to furnish the information required to be included in the Reorganization Notice or any other information requested by the Board in connection with the proposed reorganization; or

(6) The proposed reorganization would violate any provision of law, including (without limitation) § 239.3(a) and (c) (regarding board of directors and membership approval) or § 239.5(a) (regarding continuity of membership rights).

(b) *Capitalization.* (1) The Board shall disapprove a proposal by a reorganizing association or any acquiree association to capitalize a mutual holding company in an amount in excess of a nominal amount if immediately following the reorganization, the resulting association or the acquiree association would fail to be ''adequately capitalized'' under the regulatory capital requirements applicable to the savings association.

(2) Proposals by reorganizing associations and acquiree associations to capitalize mutual holding companies shall also comply with any applicable statutes, and with regulations or written policies of the Comptroller of the Currency or the Federal Deposit Insurance Corporation, as applicable, governing capital distributions by savings associations in effect at the time of the reorganization.

(c) *Presumptive disqualifiers* —

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

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

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

(1) The reorganization shall be consummated within one year of the date of the expiration of the Board's review period under § 238.14 of this chapter;

(2) The mutual holding company shall not be capitalized in an amount in excess of what is permissible under § 239.4(b);

(3) No request for regulatory waivers or forbearances shall be deemed granted;

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

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

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

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

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

§ 239.5 Membership rights.

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

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

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

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

(4) Confer upon the borrowers of any acquiree association or any association that is in the mutual form when acquired by the mutual holding company who are borrowers at the time of the acquisition the same membership rights in the mutual holding company as were conferred upon them by the charter of the acquired association immediately prior to acquisition, but shall not confer any membership rights in connection with any borrowings

made after the acquisition, *provided that* if the acquired association is merged into another association from which the mutual holding company draws members, the borrowers of the acquired association shall instead receive the same grandfathered membership rights as the borrowers of the association into which the acquired association is merged received at the time that association became a subsidiary of the mutual holding company.

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

§ 239.6 Contents of Reorganization Plans.

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

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

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

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

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

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

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

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

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

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

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

§ 239.7 Acquisition and disposition of savings associations, savings and loan holding companies, and other corporations by mutual holding companies.

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

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

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

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

(iii) The necessary approvals are obtained from the Board, including approval pursuant to § 238.11 of this chapter, and any other approvals required to form an interim association, to amend the charter and bylaws of the association being acquired, and/or to amend the charter and bylaws of the mutual holding company consistent with § 239.6(a); and

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

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

(4) *Stock holding companies.* A mutual holding company may not acquire control of a savings and loan holding company in the stock form that is not a subsidiary holding company,

unless the necessary approvals are obtained from the Board, including approval pursuant to § 238.11 of this chapter. The acquired holding company may be held as a subsidiary of the mutual holding company or merged into the mutual holding company.

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

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

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

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

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

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

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

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

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

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

(3) A mutual holding company may, subject to applicable laws and regulations, transfer any stock acquired pursuant to paragraph (a)(5) of this section.

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

§ 239.8 Operating restrictions.

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

(b) *Pledging stock.* (1) No mutual holding company may pledge the stock of its resulting association, an acquiree association, or any subsidiary savings association that was in the mutual form when acquired by the mutual holding company (or its parent mutual holding company), unless the proceeds of the loan secured by the pledge are infused into the association whose stock is pledged. No mutual holding company may pledge the stock of its subsidiary holding company unless the proceeds of the loan secured by the pledge are infused into any subsidiary savings association of the subsidiary holding company that is a resulting association, an acquiree association, or a subsidiary savings association that was in the mutual form when acquired by the subsidiary holding company (or its parent mutual holding company). In the event the subsidiary holding company has more than one subsidiary savings association, the loan proceeds shall, unless otherwise approved by the Board, be infused in equal amounts to each subsidiary savings association. Any amount of the stock of such association or subsidiary holding company may be pledged for these purposes. Nothing in this paragraph shall be deemed to prohibit:

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

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

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

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

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

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

(ii) Is part of a general repurchase made on a pro rata basis pursuant to an offer approved by the Board and made to all stockholders of the association or subsidiary holding company (except that the parent mutual holding company may be excluded from the repurchase with the Board's approval);

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

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

(2) No mutual holding company may purchase shares of its subsidiary savings association or subsidiary holding company within one year after a stock

issuance, except if the purchase complies with § 239.63. For purposes of this section, the reference in § 239.63 to five percent refers to minority shareholders.

(d) *Restrictions on waiver of dividends.* (1) A mutual holding company may waive the right to receive any dividend declared by a subsidiary of the mutual holding company, if—

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

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

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

The resolution shall include:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) Within the 12 months prior to the declaration date of the dividend by the subsidiary of the mutual holding company, a majority of the mutual members of the mutual holding company has approved the waiver of dividends by the mutual holding company. Any proxy statement used in connection with the member vote must contain—

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

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

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

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

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

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

(vi) The Board does not object to the amount of dividends declared by a subsidiary of the mutual holding company. In reviewing whether a declaration by a subsidiary of the mutual holding company is appropriate, the Board may consider, among other factors, the reasonableness of the entire dividend distribution declared if the waiver is not approved;

(vii) The waived dividends are excluded from the capital accounts of the subsidiary holding company or savings association, as applicable, for

purposes of calculating any future dividend payments;

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

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

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

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

(e) *Restrictions on issuance of stock to insiders.* A subsidiary of a mutual holding company that is not a savings association or subsidiary holding company may issue stock to any insider, associate of an insider or tax-qualified or non-tax-qualified employee stock benefit plan of the mutual holding company or any subsidiary of the mutual holding company, provided that such persons or plans provide written notice to the appropriate Reserve Bank at least 30 days prior to the stock issuance, and the Reserve Bank or the Board does not object to the subsequent stock issuance. Subsidiary holding companies may issue stock to such persons only in accordance with § 239.24.

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

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

§ 239.9 Conversion or liquidation of mutual holding companies.

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

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

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

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

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

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

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

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

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

(c) *Voluntary liquidation.* The provisions of § 239.16 shall apply to mutual holding companies.

§ 239.10 Procedural requirements.

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

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

(i) The reasons for the reorganization, including the relative advantages and disadvantages of undertaking the transaction proposed instead of a standard conversion;

(ii) Whether management believes the reorganization is in the best interests of the association and its accountholders and the basis of that belief;

(iii) The fiduciary duties owed to accountholders by the association's officers and directors and why the reorganization is in accord with those duties and is otherwise equitable to the accountholders and the association;

(iv) Any compensation agreements that will be entered into by management

in connection with the reorganization; and

(v) Whether the mutual holding company intends to waive dividends, the implications to accountholders, and the reasons such waivers are consistent with the fiduciary duties of the directors of the mutual holding company.

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

(i) The consequences to accountholders of voting to approve a reorganization in which their subscription rights are prioritized differently and potentially eliminated; and

(ii) Any intent by the mutual holding company to waive dividends, and the implications to accountholders.

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

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

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

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

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

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

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

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

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

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

§ 239.11 Subsidiary holding companies.

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

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

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

§ 239.12 Communication between members of a mutual holding company.

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

(b) *Member communication procedures.* If a member of a mutual holding company desires to

communicate with other members, the following procedures shall be followed:

(1) The member shall give the mutual holding company a written request to communicate;

(2) If the proposed communication is in connection with a meeting of the mutual holding company's members, the request shall be given at least thirty days before the annual meeting or 10 days before a special meeting;

(3) The request shall contain—

(i) The member's full name and address;

(ii) The nature and extent of the member's interest in the mutual holding company at the time the information is given;

(iii) A copy of the proposed communication; and

(iv) If the communication is in connection with a meeting of the members, the date of the meeting;

(4) The mutual holding company shall reply to the request within either—

(i) Fourteen days;

(ii) Ten days, if the communication is in connection with the annual meeting; or

(iii) Three days, if the communication is in connection with a special meeting;

(5) The reply shall provide either—

(i) The number of the mutual holding company's members and the estimated reasonable cost to the mutual holding company of mailing to them the proposed communication; or

(ii) Notification that the mutual holding company has determined not to mail the communication because it is ''improper'', as defined in paragraph (c) of this section;

(6) After receiving the amount of the estimated costs of mailing and sufficient copies of the communication, the mutual holding company shall mail the communication to all members, by a class of mail specified by the requesting member, either—

(i) Within fourteen days;

(ii) Within seven days, if the communication is in connection with the annual meeting;

(iii) As soon as practicable before the meeting, if the communication is in connection with a special meeting; or

(iv) On a later date specified by the member;

(7) If the mutual holding company refuses to mail the proposed communication, it shall return the requesting member's materials together with a written statement of the specific reasons for refusal, and shall simultaneously send to the appropriate Reserve Bank a copy of each of the requesting member's materials, the mutual holding company's written statement, and any other relevant material. The materials shall be sent within:

(i) Fourteen days,

(ii) Ten days if the communication is in connection with the annual meeting, or

(iii) Three days, if the communication is in connection with a special meeting, after the mutual holding company receives the request for communication.

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

(1) At the time and in the light of the circumstances under which it is made:

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

(ii) Omits a material fact necessary to make the statements therein not false or misleading, or necessary to correct a statement in an earlier communication on the same subject which has become false or misleading;

(2) Relates to a personal claim or a personal grievance, or is solicitous of personal gain or business advantage by or on behalf of any party;

(3) Relates to any matter, including a general economic, political, racial, religious, social, or similar cause, that is not significantly related to the business of the mutual holding company or is not within the control of the mutual holding company; or

(4) Directly or indirectly and without expressed factual foundation:

(i) Impugns character, integrity, or personal reputation,

(ii) Makes charges concerning improper, illegal, or immoral conduct, or

(iii) Makes statements impugning the stability and soundness of the mutual holding company.

§ 239.13 Charters.

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

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

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

§ 239.14 Charter amendments.

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

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

(2) *Form of filing*—

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

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

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

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

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

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

(c) *Reissuance of charter.* A mutual holding company that has amended its charter may apply to have its charter, including the amendments, reissued by the Board. Such request for reissuance should be filed with the appropriate Reserve Bank.

§ 239.15 Bylaws.

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

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

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

(2) *Special meetings of members.* Procedures for calling any special meeting of the members and for conducting such a meeting shall be set forth in the bylaws. The subject matter of such special meeting must be established in the notice for such meeting. The board of directors of the mutual holding company or the holders of 10 percent or more of the voting capital shall be entitled to call a special meeting. For purposes of this section, ''voting capital'' means FDIC-insured deposits as of the voting record date.

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

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

(5) *Member quorum.* Any number of members present and voting, represented in person or by proxy, at a regular or special meeting of the members shall constitute a quorum. A majority of all votes cast at any meeting of the members shall determine any question, unless otherwise required by regulation. At any adjourned meeting, any business may be transacted that might have been transacted at the meeting as originally called. Members present at a duly constituted meeting may continue to transact business until adjournment.

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

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

(i) A list of depositors in or borrowers from the subsidiary savings association;

(ii) Their addresses;

(iii) Individual deposit or loan balances or records; or

(iv) Any data from which such information could be reasonably constructed.

(8) *Number of directors, membership.* The bylaws shall set forth a specific number of directors, not a range. The number of directors shall be not fewer than five nor more than fifteen, unless a higher or lower number has been authorized by the Board. Each director of the mutual holding company shall be a member of the mutual holding company. Directors may be elected for periods of one to three years and until their successors are elected and qualified, but if a staggered board is chosen, provision shall be made for the election of approximately one-third or one-half of the board each year, as appropriate.

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

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

(ii) All officers and agents of the mutual holding company, as between themselves and the mutual holding company, shall have such authority and perform such duties in the management of the mutual holding company as may be provided in the bylaws, or as may be determined by resolution of the board of directors not inconsistent with the bylaws. In the absence of any such provision, officers shall have such powers and duties as generally pertain to their respective offices. Any officer may be removed by the board of directors with or without cause, but such removal, other than for cause, shall be without prejudice to the contractual rights, if any, of the officer so removed.

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

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

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

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

(ii) To fix the compensation of directors, officers, and employees; and to remove any officer or employee at any time with or without cause;

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

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

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

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

(i) Amendments shall be effective:

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

(B) After receipt of any applicable regulatory approval.

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

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

(c) *Form of filing*—(1) *Application requirement.* (i) Any bylaw amendment shall be submitted to the appropriate Reserve Bank for approval if it would:

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

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

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

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

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

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

amendment is to be adopted by the mutual holding company.

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

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

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

§ 239.16 Voluntary dissolution.

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

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

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

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

Subpart C—Subsidiary Holding Companies

§ 239.20 Scope.

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

§ 239.21 Charters.

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

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

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

(2) *Beneficial ownership limitation.* No person may directly or indirectly offer to acquire or acquire the beneficial ownership of more than 10 percent of the outstanding stock of any class of voting stock of the subsidiary holding company held by persons other than the subsidiary holding company's mutual holding company parent. This limitation expires on [insert date within five years of minority stock issuance] and does not apply to a transaction in which an underwriter purchases stock in connection with a public offering, or the purchase of stock by an employee stock ownership plan or other tax-qualified employee stock benefit plan which is exempt from the approval requirements under § 238.12(a)(7) of this chapter.

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

§ 239.22 Charter amendments.

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

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

(2) *Form of filing.*

(i) *Application requirement.* If the proposed charter amendment would render more difficult or discourage a merger, tender offer, or proxy contest, the assumption of control by a holder of a block of the subsidiary holding company's stock, the removal of incumbent management, or involve a

significant issue of law or policy, the subsidiary holding company shall file the proposed amendment with and shall obtain the prior approval of the Board pursuant to § 238.14 of this chapter; and

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

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

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

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

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

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

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

Except for shares issued in the initial organization of the subsidiary holding company, no shares of capital stock (including shares issuable upon conversion, exchange, or exercise of other securities) shall be issued, directly or indirectly, to officers, directors, or controlling persons of the association or subsidiary holding company other than as part of a general public offering or as qualifying shares to a director, unless their issuance or the plan under which they would be issued has been approved by a majority of the total votes eligible to be cast at a legal meeting.

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

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

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

(iii) To any amendment which would adversely change the specific terms of any class or series of capital stock as set forth in this Section 5 (or in any supplementary sections hereto), including any amendment which would create or enlarge any class or series ranking prior thereto in rights and preferences. An amendment which increases the number of authorized shares of any class or series of capital stock, or substitutes the surviving subsidiary holding company in a merger or consolidation for the subsidiary holding company, shall not be considered to be such an adverse change.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(7) [Reserved]

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

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

A. *Beneficial Ownership Limitation.* No person shall directly or indirectly offer to acquire or acquire the beneficial ownership of more than 10 percent of any class of an equity security of the subsidiary holding company. This limitation shall not apply to a transaction in which the subsidiary holding company forms a holding company without change in the respective beneficial ownership interests of its stockholders other than pursuant to the exercise of any dissenter and appraisal rights, the purchase of shares by underwriters in connection with a public offering, or the purchase of shares by a tax-qualified employee stock benefit plan which is exempt from the approval requirements under § 238.12(a) of this chapter.

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

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

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

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

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

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

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

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

(c) *Anti-takeover provisions.* The Board may grant approval to a charter amendment not listed in paragraph (b) of this section regarding the acquisition by any person or persons of its equity securities provided that the subsidiary holding company shall file as part of its application for approval an opinion, acceptable to the Board, of counsel independent from the subsidiary holding company that the proposed charter provision would be permitted to be adopted by a corporation chartered by the state in which the principal office of the subsidiary holding company is located. Any such provision must be consistent with applicable statutes, regulations, and Board policies. Further, any such provision that would have the effect of rendering more difficult a change in control of the subsidiary

holding company and would require for any corporate action (other than the removal of directors) the affirmative vote of a larger percentage of shareholders than is required by this part, shall not be effective unless adopted by a percentage of shareholder vote at least equal to the highest percentage that would be required to take any action under such provision.

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

§ 239.23 Bylaws.

(a) *General.* At its first organizational meeting, the board of directors of a subsidiary holding company shall adopt a set of bylaws for the administration and regulation of its affairs. Bylaws may be adopted, amended or repealed by either a majority of the votes cast by the shareholders at a legal meeting or a majority of the board of directors. The bylaws shall contain sufficient provisions to govern the subsidiary holding company in accordance with the requirements of §§ 239.26, 239.27, 239.28, and 239.29 and shall not contain any provision that is inconsistent with those sections or with applicable laws, rules, regulations or the subsidiary holding company's charter, except that a bylaw provision inconsistent with §§ 239.26, 239.27, 239.28, and 239.29 may be adopted with the approval of the Board.

(b) *Form of filing* —(1) *Application requirement.*

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

(A) Render more difficult or discourage a merger, tender offer, or proxy contest, the assumption of control by a holder of a large block of the subsidiary holding company's stock, or the removal of incumbent management; or

(B) Be inconsistent with §§ 239.26, 239.27, 239.28, and 239.29, with applicable laws, rules, regulations or the subsidiary holding company's charter or involve a significant issue of law or policy, including indemnification, conflicts of interest, and limitations on director or officer liability.

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

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

(2) *Filing requirement.* If the proposed bylaw amendment does not implicate paragraph (b)(1) or (b)(3) of this section and is permissible under all applicable laws, rules, or regulations, the subsidiary holding company shall submit the amendment to the appropriate Reserve Bank at least 30 days prior to the date the bylaw amendment is to be adopted by the subsidiary holding company.

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

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

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

§ 239.24 Issuances of stock by subsidiary holding companies of mutual holding companies.

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

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

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

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

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

(5) The aggregate amount of outstanding common stock of the subsidiary holding company owned or controlled by persons other than the subsidiary holding company's mutual holding company parent at the close of the proposed issuance shall be less than 50 percent of the subsidiary holding company's total outstanding common stock, unless the subsidiary holding company was a stock holding company when acquired by the mutual holding company, in which case the foregoing

restriction shall not apply. Any amount of preferred stock may be issued by any subsidiary holding company of a mutual holding company to persons other than the subsidiary holding company's mutual holding company, consistent with any other applicable laws and regulations.

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

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

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

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

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

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

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

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

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

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

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

(ii) Make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or

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

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

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

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

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

(ii) Provide that the offering be structured in a manner similar to a standard conversion under subpart E of this part, including the stock purchase priorities accorded members of the issuing subsidiary holding company's mutual holding company, unless the subsidiary holding company would qualify for a supervisory conversion if it were to undertake a conversion under subpart E of this part; or demonstrates to the satisfaction of the Board that a non-conforming issuance would be more beneficial to the savings association and subsidiary holding company compared to a conforming offering, considering, in the aggregate, the effect of each on the savings association and subsidiary holding company's financial and managerial resources and future prospects, the effect of the issuance upon the savings association and subsidiary holding company, the insurance risk to the Deposit Insurance Fund, and the convenience and needs of the community to be served.

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

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

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

§ 239.25 Contents of Stock Issuance Plans.

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

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

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

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

stockholders' equity at the close of the proposed issuance;

(4) Provide that all ESOPs and management recognition plans (MRPs) must not encompass, in the aggregate, more than either 4.9 percent of the outstanding shares of the subsidiary holding company's common stock or 4.9 percent of the subsidiary holding company's stockholders' equity at the close of the proposed issuance. However, if the subsidiary holding company's tangible capital equals at least ten percent at the time of implementation of the plan, the Board may permit such ESOPs and MRPs to encompass, in the aggregate, up to 5.88 percent of the outstanding common stock or stockholders' equity at the close of the proposed issuance;

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

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

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

(8)(i) Provide that the aggregate amount of common stock that may be encompassed under all Option Plans and MRPs, or acquired by all insiders of the subsidiary holding company and subsidiary savings association and associates of insiders of the subsidiary holding company and subsidiary savings association, must not exceed the following percentages of common stock or stockholders' equity of the subsidiary holding company, held by persons other than the subsidiary holding company's mutual holding company parent at the close of the proposed issuance:

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

(ii) The percentage limitations contained in paragraph 8(i) of this section may be exceeded provided that all stock acquired by insiders and associates of insiders or awarded under all MRPs and Option Plans in excess of those limitations is acquired in the secondary market. If acquired for such awards on the secondary market, such acquisitions must begin no earlier than one year after the close of the proposed issuance or any subsequent issuance that is made in substantial conformity with the purchase priorities set forth in subpart E of this part.

(iii) In calculating the number of shares held by insiders and their associates under this provision, shares awarded but not delivered under an ESOP, MRP, or Option Plan that are attributable to such persons shall not be counted as being acquired by such persons.

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

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

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

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

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

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

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

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

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

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

(15) Provide that stock purchased by insiders of the subsidiary holding company and subsidiary savings association and their associates in the proposed issuance shall not be sold for a period of at least one year following the date of purchase, except in the case of death of the insider or associate;

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

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

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

(iii) Any shares issued as a stock dividend, stock split, or otherwise with respect to any such restricted stock shall

be subject to the same restrictions as apply to the restricted stock;

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

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

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

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

(21) Provide that, unless an extension is granted by the Board, the Stock Issuance Plan shall be terminated if not completed within 90 days of the date of such approval; or

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

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

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

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

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

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

(c) *Applicability of provisions of § 239.63(a)(1) to minority stock issuances.* Notwithstanding § 239.24(d), § 239.63(a)(1)(ii) do not apply to minority stock issuances, because the permissible sizes of ESOPs, MRPs, and Option Plans in minority stock issuances are subject to each of the requirements set forth at paragraphs (a)(3) through (a)(9) of this section. Section 239.63(a)(4) through (a)(14), apply for one year after the subsidiary holding company engages in a minority stock issuance that is conducted in accordance with the purchase priorities set forth in subpart E of this part. In addition to the shareholder vote requirement for Option Plans and MRPs set forth at § 239.63(a)(1)(vi), any Option Plans and MRPs put to a shareholder vote after a minority stock issuance that is conducted in accordance with the purchase priorities set forth in subpart E of this part must be approved by a majority of the votes cast by stockholders other than the mutual holding company.

§ 239.26 Shareholders.

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

(b) *Notice of shareholder meetings.* Written notice stating the place, day, and hour of the meeting and the purpose or purposes for which the meeting is called shall be delivered not fewer than 20 nor more than 50 days before the date of the meeting, either personally or by mail, by or at the direction of the chairman of the board, the president, the secretary, or the directors, or other natural persons calling the meeting, to each shareholder of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the mail, addressed to the shareholder at the address appearing on the stock transfer books or records of the subsidiary holding company as of the record date prescribed in paragraph (c) of this section, with postage thereon prepaid. When any shareholders' meeting, either annual or special, is adjourned for 30 days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Notwithstanding anything in this section, however, a subsidiary holding company that is wholly owned shall not be subject to the shareholder notice requirement.

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

(d) *Voting lists.* (1) At least 20 days before each meeting of the shareholders, the officer or agent having charge of the stock transfer books for the shares of the subsidiary holding company shall make a complete list of the stockholders of record entitled to vote at such meeting, or any adjournments thereof, arranged

in alphabetical order, with the address and the number of shares held by each. This list of shareholders shall be kept on file at the home office of the subsidiary holding company and shall be subject to inspection by any shareholder of record or the stockholder's agent during the entire time of the meeting. The original stock transfer book shall constitute *prima facie* evidence of the stockholders entitled to examine such list or transfer books or to vote at any meeting of stockholders. Notwithstanding anything in this section, however, a subsidiary holding company that is wholly owned shall not be subject to the voting list requirements.

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

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

(f) *Shareholder voting*— (1) *Proxies.* Unless otherwise provided in the subsidiary holding company's charter, at all meetings of shareholders, a shareholder may vote in person or by proxy executed in writing by the shareholder or by a duly authorized attorney in fact. Proxies may be given telephonically or electronically as long as the holder uses a procedure for verifying the identity of the shareholder. A proxy may designate as holder a corporation, partnership or company, or other person. Proxies solicited on behalf of the management shall be voted as directed by the shareholder or, in the absence of such direction, as determined by a majority of the board of directors. No proxy shall be valid more than eleven months from the date of its execution except for a proxy coupled with an interest.

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

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

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

§ 239.27 Board of directors.

(a) *General powers and duties.* The business and affairs of the subsidiary holding company shall be under the direction of its board of directors. The board of directors shall annually elect a chairman of the board from among its members and shall designate the chairman of the board, when present, to preside at its meeting. Directors need not be stockholders unless the bylaws so require.

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

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

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

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

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

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

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

(g) *Executive and other committees.* The board of directors, by resolution adopted by a majority of the full board, may designate from among its members an executive committee and one or more other committees each of which, to the extent provided in the resolution or bylaws of the subsidiary holding company, shall have and may exercise all of the authority of the board of directors, except no committee shall have the authority of the board of directors with reference to: the declaration of dividends; the amendment of the charter or bylaws of the subsidiary holding company; recommending to the stockholders a plan of merger, consolidation, or conversion; the sale, lease, or other disposition of all, or substantially all, of the property and assets of the subsidiary holding company otherwise than in the usual and regular course of its business; a voluntary dissolution of the subsidiary holding company; a revocation of any of the foregoing; or the approval of a transaction in which any member of the executive committee, directly or indirectly, has any material beneficial interest. The designation of any committee and the delegation of authority thereto shall not operate to relieve the board of directors, or any director, of any responsibility imposed by law or regulation.

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

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

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

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

§ 239.28 Officers.

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

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

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

§ 239.29 Certificates for shares and their transfer.

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

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

§ 239.30 Annual reports; books and records.

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

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

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

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

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

(ii) Not less than five percent of the total outstanding voting shares.

No stockholder or group of stockholders of a subsidiary holding company shall have any other right under this section or common law to examine its books and records of account, minutes and record of stockholders, except as provided in its bylaws with respect to inspection of a list of stockholders.

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

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

(i) A list of depositors in or borrowers from such subsidiary holding company;

(ii) Their addresses;

(iii) Individual deposit or loan balances or records; or

(iv) Any data from which such information could be reasonably constructed.

§ 239.31 Indemnification; employment contracts.

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

(b) *Restrictions on employment contracts.* The provisions of § 239.41 and any policies of the Board thereunder shall apply to subsidiary holding companies.

Subpart D—Indemnification; Employment Contracts

§ 239.40 Indemnification of directors, officers and employees.

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

(a) *Definitions and rules of construction.* (1) Definitions for purposes of this section.

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

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

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

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

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

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

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

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

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

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

(2) In case of:

(i) Settlement,

(ii) Final judgment against him or her, or

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

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

period, of its objection to the indemnification.

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

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

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

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

§ 239.41 Employment contracts.

(a) *General.* A mutual holding company may enter into an employment contract with its officers and other employees only in accordance with the requirements of this section. All employment contracts shall be in writing and shall be approved specifically by the respective mutual holding company's board of directors. A mutual holding company shall not enter into an employment contract with any of its officers or other employees if such contract would constitute an unsafe or unsound practice. The making of such an employment contract would be an unsafe or unsound practice if such contract could lead to material financial loss or damage to the mutual holding company or could interfere materially with the exercise by the members of its board of directors of their duty or discretion provided by law, charter, bylaw or regulation as to the employment or termination of employment of an officer or employee of the mutual holding company. This may occur, depending upon the circumstances of the case, where an employment contract provides for an excessive term.

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

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

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

(i) Pay the officer or employee all or part of the compensation withheld while its contract obligations were suspended, and

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

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

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

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

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

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

(ii) By the Board, at the time the Board approves a supervisory merger to resolve problems related to operation of the mutual holding company or when the mutual holding company is determined by the Board to be in an unsafe or unsound condition.

Subpart E—Conversions From Mutual to Stock Form

§ 239.50 Purpose and scope.

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

(b) *Prescribed forms.* A mutual holding company must use the forms prescribed under this subpart and provide such information as the Board may require under the forms by regulation or otherwise. The forms

required under this subpart include: Form AC (Application for Conversion); Form PS (Proxy Statement); Form OC (Offering Circular); and Form OF (Order Form).

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

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

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

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

§ 239.51 Acquiring another insured stock depository institution as part of a conversion.

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

§ 239.52 Definitions.

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

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

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

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

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

(e) *Local community* includes:

(1) Every county, parish, or similar governmental subdivision in which the mutual holding company has a home or branch office;

(2) Each county's, parish's, or subdivision's metropolitan statistical area;

(3) All zip code areas in the mutual holding company's Community Reinvestment Act assessment area; and

(4) Any other area or category the mutual holding company sets out in its plan of conversion, as approved by the Board.

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

(g) *Offer, offer to sell,* or *offer for sale* is an attempt or offer to dispose of, or a solicitation of an offer to buy, a security or interest in a security for value. Preliminary negotiations or agreements with an underwriter, or among underwriters who are or will be in privity of contract with the mutual holding company or resulting stock holding company, are not offers, offers to sell, or offers for sale.

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

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

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

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

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

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

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

(1) Eligible account holders under § 239.59(h);

(2) Tax-qualified employee stock ownership plans under § 239.59(m);

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

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

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

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

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

§ 239.53 Prior to conversion.

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

(2) The mutual holding company should also consult with the Board or appropriate Reserve Bank before it files its application for conversion. The Reserve Bank or Board will discuss the information that the mutual holding company must include in the application for conversion, general issues that the mutual holding company may confront in the conversion process, and any other pertinent issues.

(b) *Business plan.*

(1) Prior to filing an application for conversion, the mutual holding company must adopt a business plan reflecting the mutual holding company's intended plans for deployment of the proposed conversion proceeds. The

business plan is required, under § 239.55(b), to be included in the mutual holding company's conversion application. At a minimum, the business plan must address:

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

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

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

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

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

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

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

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

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

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

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

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

(e) *Disclosure of business plan.*

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

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

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

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

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

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

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

§ 239.54 Plan of conversion.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) *Other requirements.*

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

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

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

§ 239.55 Filing requirements.

(a) *Applications under this subpart.* Any filing with the Board required under this subpart must be filed in accordance with § 238.14 of this chapter. The Board will review any filing made under this subpart in accordance with § 238.14 of this chapter.

(b) *Requirements.*

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

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

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

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

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

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

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

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

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

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

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

(viii) Any additional information the Board requests.

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

(c) *Filing an application for conversion.*

(1) The mutual holding company must file the application for conversion on Form AC with the appropriate Reserve Bank.

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

(d) *Confidential treatment of portions of an application for conversion.*

(1) The Board makes all filings under this subpart available to the public, but may keep portions of the application for conversion confidential under paragraph (d)(2) of this section.

(2) The mutual holding company may request the Board keep portions of the application confidential. To do so, the mutual holding company must separately bind and clearly designate as ''confidential'' any portion of the application for conversion that the mutual holding company deems confidential. The mutual holding company must provide a written statement specifying the grounds supporting the request for confidentiality. The Board will not treat as confidential the portion of the

application describing how the mutual holding company plans to meet the Community Reinvestment Act (CRA) objectives. The CRA portion of the application may not incorporate by reference information contained in the confidential portion of the application.

(3) The Board will determine whether confidential information must be made available to the public under 5 U.S.C. 552 and part 261 of this chapter. The Board will advise the mutual holding company before it makes information the mutual holding company designated as ''confidential'' available to the public.

(e) *Amending an application for conversion.* To amend an application for conversion, the mutual holding company must:

(1) File an amendment with an appropriate facing sheet;

(2) Number each amendment consecutively;

(3) Respond to all issues raised by the Board; and

(4) Demonstrate that the amendment conforms to all applicable regulations.

(f) *Notice of filing of application and comment process.*

(1) *Public notice of an application for conversion.*

(i) The mutual holding company must publish a public notice of the application for conversion in accordance with the procedures in § 238.14 of this chapter. The mutual holding company must simultaneously prominently post the notice in its home office and in all of the branch offices of its subsidiary savings associations.

(ii) Promptly after publication, the mutual holding company must file a copy of any public notice and an affidavit of publication from each publisher with the appropriate Reserve Bank.

(iii) If the Board does not accept the application for conversion under § 239.55(g) and requires the mutual holding company to file a new application, the mutual holding company must publish and post a new notice and allow an additional 30 days for comment.

(2) *Public comments.* Commenters may submit comments on the application in accordance with the procedures in § 238.14 of this chapter. A commenter must file any comments with the appropriate Reserve Bank.

(g) *Board review of the application for conversion.*

(1) *Board action on a conversion application.* The Board may approve an application for conversion only if:

(i) The conversion complies with this subpart;

(ii) The mutual holding company will meet all applicable regulatory capital requirements after the conversion; and

(iii) The conversion will not result in a taxable reorganization under the Internal Revenue Code of 1986, as amended.

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

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

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

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

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

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

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

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

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

(3) *Board review of compliance record.* The Board will review the compliance record of the subsidiary savings association under the regulations applicable to the savings association and the business plan to determine how the conversion will affect the convenience and needs of its communities.

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

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

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

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

(h) *Judicial review.*

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

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

§ 239.56 Vote by members.

(a) *Mutual member approval of the plan of conversion*

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

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

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

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

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

(c) *Notifying members of the meeting.*

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

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

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

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

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

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

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

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

(ii) The total votes eligible to be cast.

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

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

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

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

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

§ 239.57 Proxy solicitation.

(a) *Applicability of proxy solicitation provisions.*

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

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

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

(ii) The member solicits proxies through newspaper advertisements after the board of directors adopts the plan of conversion. Any newspaper advertisements may include only the following information:

(A) The name of the mutual holding company;

(B) The reason for the advertisement;

(C) The proposal or proposals to be voted upon;

(D) Where a member may obtain a copy of the proxy solicitation material; and

(E) A request for the members of the mutual holding company to vote at the meeting.

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

(1) A statement in bold face type stating that management is soliciting the proxy.

(2) Blank spaces where the member must date and sign the proxy.

(3) Clear and impartial identification of each matter or group of related matters that members will vote upon. It must include any proposed charitable contribution as an item to be voted on separately.

(4) The phrase ''Revocable Proxy'' in bold face type (at least 18 point).

(5) A description of any charter or state law requirement that restricts or conditions votes by proxy.

(6) An acknowledgment that the member received a proxy statement before he or she signed the form of proxy.

(7) The date, time, and the place of the meeting, when available.

(8) A way for the member to specify by ballot whether he or she approves or disapproves of each matter that members will vote upon.

(9) A statement that management will vote the proxy in accordance with the member's specifications.

(10) A statement in bold face type indicating how management will vote the proxy if the member does not specify a choice for a matter.

(c) *Permissible use of proxies.*

(1) The mutual holding company may not use previously executed proxies for the plan of conversion vote. If members consider the plan of conversion at an annual meeting, the mutual holding company may vote proxies obtained through other proxy solicitations only on matters not related to the plan of conversion.

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

(d) *Proxy statement requirements.*

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

(2) *Other requirements.*

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

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

(e) *Filing revised proxy materials.*

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

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

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

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

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

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

(4) The mutual holding company must file a definitive copy of all proxy solicitation material, in the form in which the mutual holding company furnishes the material to the members. The mutual holding company must file no later than the date that it sends or gives the proxy solicitation material to the members. The mutual holding

company must indicate the date that it plans to release the materials.

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

(f) *Mailing proxy solicitation material.*

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

(i) The board of directors adopted a plan of conversion;

(ii) A member requests in writing that the mutual holding company mail the proxy solicitation material; and

(iii) The member agrees to defray reasonable expenses of the mutual holding company.

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

(i) The approximate number of members that the mutual holding company solicited or will solicit, or the approximate number of members of any group of account holders that the member designates; and

(ii) The estimated cost of mailing the proxy solicitation material for the member.

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

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

(5) A member may furnish other members its own proxy solicitation material, subject to the rules in this section.

(g) *Prohibited solicitations.*

(1) False or misleading statements.

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

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

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

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

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

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

(i) An undated or post-dated proxy;

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

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

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

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

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

(ii) Rescheduling the members' meeting; or

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

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

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

§ 239.58 Offering circular.

(a) *Filing requirements.*

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

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

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

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

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

(b) *Distribution of the offering circular.*

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

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

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

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

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

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

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

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

§ 239.59 Offers and sales of stock.

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

(1) Eligible account holders.

(2) Tax-qualified employee stock ownership plans.

(3) Supplemental eligible account holders.

(4) Other voting members who have subscription rights.

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

(b) *Offering conversion shares.*

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

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

(c) *Pricing conversion shares.*

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

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

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

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

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

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

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

(d) *Selling conversion shares.*

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

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

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

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

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

(e) *Prohibited sales practices.*

(1) In connection with offers, sales, or purchases of conversion shares under this subpart, the mutual holding company and its directors, officers, agents, or employees may not:

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

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

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

(2) During the conversion, no person may:

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

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

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

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

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

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

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

(f) *Payment for conversion shares.*

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

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

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

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

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

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

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

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

(i) The maximum purchase limitation established for the community offering or the public offering under paragraph (p) of this section;

(ii) One-tenth of one percent of the total stock offering; or

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

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

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

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

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

(i) The maximum purchase limitation established for the community offering and the public offering under paragraph (p) of this section; or

(ii) One-tenth of one percent of the total stock offering.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) The mutual holding company may include stock contributed to a charitable organization in the conversion in the calculation of the total offering of conversion shares under paragraphs (m)(1) and (m)(2) of this section, unless the Board objects on supervisory grounds.

(n) *Purchase limitations.*

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

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

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

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

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

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

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

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

(1) If the mutual holding company offers conversion shares in a community offering, a public offering, or both, it must offer and sell the stock to achieve a widespread distribution of the stock.

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

§ 239.60 Completion of the offering.

(a) *Deadline for completing the sale of stock.* The mutual holding company must complete all sales of the stock within 45 calendar days after the last day of the subscription period, unless

the offering is extended under paragraph (b) of this section.

(b) *Offering period extension.*

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

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

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

§ 239.61 Completion of the conversion.

(a) *Completion of the conversion.*

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

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

(b) *Termination of the conversion.*

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

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

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

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

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

§ 239.62 Liquidation accounts.

(a) *Liquidation account.*

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

(2) Before the resulting stock holding company may provide a liquidation distribution to common stockholders, the resulting stock holding company must give a liquidation distribution to those eligible account holders and supplemental eligible account holders who hold savings accounts from the time of conversion until liquidation.

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

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

(b) *Liquidation sub-accounts.*

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

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

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

(2) The resulting stock holding company may not increase the initial sub-account balances. The resulting stock holding company must decrease the initial balance under § 239.62(d) as depositors reduce or close their accounts.

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

(d) *Adjusting liquidation sub-accounts.*

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

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

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

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

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

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

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

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

(e) *Liquidation defined.*

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

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

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

§ 239.63 Post-conversion.

(a) *Management stock benefit plans.*

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

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

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

(iii)(A) The ESOP and MRP do not exceed, in the aggregate, more than ten percent of the number of shares that the resulting stock holding company issued in the conversion. If the resulting stock holding company has tangible capital of ten percent or more following the conversion, the Board may permit the ESOP and MRP to represent, in the aggregate, up to 12 percent of the number of shares issued in the conversion; and

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

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

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

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

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

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

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

(x) The plan does not begin to vest earlier than one year after shareholders approve the plan, and does not vest at a rate exceeding 20 percent per year.

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

(xii) The plan provides that the executive officers or directors must exercise or forfeit their options in the event the institution becomes critically undercapitalized under the applicable regulatory capital requirements, is subject to Board enforcement action, or receives a capital directive under § 263.83 of this chapter.

(xiii) The resulting stock holding company files a copy of the proposed Option Plan or MRP with the Board and certifies to the Board that the plan approved by the shareholders is the same plan that the resulting stock holding company filed with, and disclosed in, the proxy materials distributed to shareholders in connection with the vote on the plan.

(xiv) The resulting stock holding company files the plan and the certification with the Board within five calendar days after the shareholders approve the plan.

(2) The resulting stock holding company may provide dividend equivalent rights or dividend adjustment rights to allow for stock splits or other adjustments to the stock in the ESOP, MRP, and Option Plan.

(3) The restrictions in paragraph (a)(1) of this section do not apply to plans implemented more than 12 months after the conversion, provided that materials pertaining to any shareholder vote regarding such plans are not distributed within the 12 months after the conversion. If a plan adopted in conformity with paragraph (a)(1) of this section is amended more than 12 months following the conversion, the shareholders must ratify any material deviations to the requirements in paragraph (a)(1) of this section.

(b) *Restrictions on the sale of conversion shares by directors, officers, and their associates.*

(1) Directors and officers who purchase conversion shares may not sell the shares for one year after the date of purchase, except that in the event of the death of the officer or director, the successor in interest may sell the shares.

(2) The resulting stock holding company must include notice of the restriction described in paragraph (b)(1) of this section on each certificate of stock that a director or officer purchases during the conversion or receives in connection with a stock dividend, stock split, or otherwise with respect to such restricted shares.

(3) The resulting stock holding company must instruct the stock transfer agent about the transfer restrictions in this section.

(4) For three years after the resulting stock holding company converts, the officers, directors, and their associates may purchase stock of the resulting stock holding company only from a broker or dealer registered with the Securities and Exchange Commission. However, the officers, directors, and their associates may engage in a negotiated transaction involving more than one percent of the outstanding stock, and may purchase stock through any of the management or employee stock benefit plans.

(c) *Repurchase of conversion shares.*

(1) The resulting stock holding company may not repurchase its shares in the first year after the conversion except:

(i) In extraordinary circumstances, the resulting stock holding company may make open market repurchases of up to five percent of the outstanding stock in the first year after the conversion if the resulting stock holding company files a notice under paragraph (d)(1) of this section and the Board does not disapprove the repurchase. The Board will not approve such repurchases unless the repurchase meets the standards in paragraph (d)(3) of this section, and the repurchase is consistent with paragraph (c)(3) of this section.

(ii) The resulting stock holding company may repurchase qualifying shares of a director or conduct a Board approved repurchase pursuant to an offer made to all shareholders of the stock holding company.

(iii) Repurchases to fund management recognition plans that have been ratified by shareholders do not count toward the repurchase limitations in this section. Repurchases in the first year to fund

such plans require prior written notification to the Board.

(iv) Purchases to fund tax qualified employee stock benefit plans do not count toward the repurchase limitations in this section.

(2) After the first year, the resulting stock holding company may repurchase the shares, subject to all other applicable regulatory and supervisory restrictions and paragraph (c)(3) of this section.

(3) All stock repurchases are subject to the following restrictions.

(i) The resulting stock holding company may not repurchase the shares if the repurchase will reduce its applicable capital levels below the amount required for the liquidation account under § 239.62(a). The resulting stock holding company must comply with the capital distribution requirements of this subpart.

(ii) The restrictions on share repurchases apply to a charitable organization under § 239.64(b). The resulting stock holding company must aggregate purchases of shares by the charitable organization with the repurchases.

(d) *Board review of repurchase of conversion shares.*

(1) To repurchase stock in the first year following conversion, other than repurchases under paragraphs (c)(1)(iii) or (c)(1)(iv) of this section, the resulting stock holding company must file a written notice with the appropriate Reserve Bank. The resulting stock holding company must provide the following information:

(i) The proposed repurchase program;

(ii) The effect of the repurchases on the regulatory capital and other capital levels; and

(iii) The purpose of the repurchases and, if applicable, an explanation of the extraordinary circumstances necessitating the repurchases.

(2) The resulting stock holding company must file the notice with the appropriate Reserve Bank at least thirty days before the resulting stock holding company begins the repurchase program. The Board may extend its review of the notice for an additional sixty days.

(3) The resulting stock holding company may not repurchase the shares if the Board objects to the repurchase program. The Board will not object to the repurchase program if:

(i) The repurchase program will not adversely affect the financial condition of the resulting savings association;

(ii) The resulting stock holding company submits sufficient information to evaluate the proposed repurchases;

(iii) The resulting stock holding company demonstrate extraordinary circumstances and a compelling and valid business purpose for the share repurchases; and

(iv) The repurchase program would not be contrary to other applicable regulations.

(e) *Declaring and paying dividends following conversion.* The resulting stock holding company may declare or pay a dividend on its shares after it converts if:

(1) The dividend will not reduce the regulatory capital below the amount required for the liquidation account under § 239.62(a);

(2) The resulting stock holding company complies with all applicable regulatory capital requirements after it declares or pays dividends;

(3) The resulting stock holding company complies with the capital distribution requirements under this subpart; and

(4) The resulting stock holding company does not return any capital, other than ordinary dividends, to purchasers during the term of the business plan submitted with the conversion.

(f) *Eligibility to acquire shares after conversion.*

(1) For three years after the resulting stock holding company converts, no person may, directly or indirectly, acquire or offer to acquire the beneficial ownership of more than ten percent of any class of the equity securities without the Board's prior written approval. If a person violates this prohibition, the resulting stock holding company may not permit the person to vote shares in excess of ten percent, and may not count the shares in excess of ten percent in any shareholder vote.

(2) A person acquires beneficial ownership of more than ten percent of a class of shares when he or she holds any combination of the stock or revocable or irrevocable proxies under circumstances that give rise to a conclusive control determination or rebuttable control determination under §§ 238.21(a) and (d) of this chapter. The Board will presume that a person has acquired shares if the acquiror entered into a binding written agreement for the transfer of shares. For purposes of this section, an offer is made when it is communicated. An offer does not include non-binding expressions of understanding or letters of intent regarding the terms of a potential acquisition.

(3) Notwithstanding the restrictions in this section:

(i) Paragraphs (f)(1) and (f)(2) of this section do not apply to any offer with a view toward public resale made exclusively to the resulting stock holding company, to the underwriters, or to a selling group acting on behalf of the resulting savings association.

(ii) Unless the Board objects in writing, any person may offer or announce an offer to acquire up to one percent of any class of shares. In computing the one percent limit, the person must include all of his or her acquisitions of the same class of shares during the prior 12 months.

(iii) A corporation whose ownership is, or will be, substantially the same as the ownership may acquire or offer to acquire more than ten percent of the common stock, if it makes the offer or acquisition more than one year after the resulting stock holding company converts.

(iv) One or more of the tax-qualified employee stock benefit plans may acquire the shares, if the plan or plans do not beneficially own more than 25 percent of any class of shares of the resulting savings association in the aggregate.

(v) An acquiror does not have to file a separate application to obtain Board approval under paragraph (f)(1) of this section, if the acquiror files an application under part 238 of this chapter that specifically addresses the criteria listed under paragraph (f)(4) of this section and the resulting stock holding company does not oppose the proposed acquisition.

(4) The Board may deny an application under paragraph (f)(1) of this section if the proposed acquisition:

(i) Is contrary to the purposes of this subpart;

(ii) Is manipulative or deceptive;

(iii) Subverts the fairness of the conversion;

(iv) Is likely to injure the resulting stock holding company;

(v) Is inconsistent with the plan to meet the credit and lending needs of the proposed market area;

(vi) Otherwise violates laws or regulations; or

(vii) Does not prudently deploy the conversion proceeds.

(g) *Additional requirements that apply following conversion.* After conversion, the resulting stock holding company must:

(1) Promptly register the shares under the Securities Exchange Act of 1934 (15 U.S.C. 78a–78jj, as amended). The resulting stock holding company may not deregister the shares for three years.

(2) Encourage and assist a market maker to establish and to maintain a market for the shares. A market maker for a security is a dealer who:

(i) Regularly publishes bona fide competitive bid and offer quotations for

the security in a recognized inter-dealer quotation system;

(ii) Furnishes bona fide competitive bid and offer quotations for the security on request; or

(iii) May effect transactions for the security in reasonable quantities at quoted prices with other brokers or dealers.

(3) Use the best efforts to list the shares on a national or regional securities exchange or on the National Association of Securities Dealers Automated Quotation system.

(4) File all post-conversion reports that the Board requires.

§ 239.64 Contributions to charitable organizations.

(a) *Forming a charitable organization as part of a conversion.* When a mutual holding company converts to the stock form, it may form a charitable organization. Its contributions to the charitable organization are governed by the requirements of paragraphs (b) through (f) of this section.

(b) *Donating conversion shares or conversion proceeds to a charitable organization.* Some of the conversion shares or proceeds may be contributed to a charitable organization if:

(1) The plan of conversion provides for the proposed contribution;

(2) The members approve the proposed contribution; and

(3) The IRS either has approved, or approves within two years after formation, the charitable organization as a tax-exempt charitable organization under the Internal Revenue Code.

(c) *Member approval of charitable contributions.* At the meeting to consider conversion of the mutual holding company, the members must separately approve by at least a majority of the total eligible votes, a contribution of conversion shares or proceeds. If the mutual holding company has a subsidiary holding company with minority shareholders, or if the subsidiary savings association has minority shareholders, and the mutual holding company is adding a charitable contribution as part of a second step stock conversion, it must also have the minority shareholders separately approve the charitable contribution by a majority of their total eligible votes.

(d) *Charitable organization contribution limits.* A reasonable amount of conversion shares or proceeds may be contributed to a charitable organization, if the contribution will not exceed limits for charitable deductions under the Internal Revenue Code and the Board does not object on supervisory grounds. If the mutual holding company or resulting stock holding company is well-capitalized pursuant to § 238.62 of this chapter, the Board generally will not object if it contributes an aggregate amount of eight percent or less of the conversion shares or proceeds.

(e) *Charitable organization requirements.* The charitable organization's charter (or trust agreement) and gift instrument must provide that:

(1) The charitable organization's primary purpose is to serve and make grants in the local community;

(2) As long as the charitable organization controls shares, it must vote those shares in the same ratio as all other shares voted on each proposal considered by the shareholders;

(3) For at least five years after its organization, one seat on the charitable organization's board of directors (or board of trustees) is reserved for an independent director (or trustee) from the local community. This director may not be the officer, director, or employee, or the affiliate's officer, director, or employee, and should have experience with local community charitable organizations and grant making; and

(4) For at least five years after its organization, one seat on the charitable organization's board of directors (or board of trustees) is reserved for a director from the board of directors or the board of directors of an acquiror or resulting institution in the event of a merger or acquisition of the organization.

(5) The Board may examine the charitable organization at the charitable organization's expense;

(6) The charitable organization must comply with all supervisory directives that the Board imposes;

(7) The charitable organization must annually provide the Board with a copy of the annual report that the charitable organization submitted to the IRS;

(8) The charitable organization must operate according to written policies adopted by its board of directors (or board of trustees), including a conflict of interest policy; and

(9) The charitable organization may not engage in self-dealing, and must comply with all laws necessary to maintain its tax-exempt status under the Internal Revenue Code.

(f) *Conflicts of interest involving the directors of the mutual holding company or resulting stock holding company.*

(1) An individual who is the director, officer, or employee, or a person who has the power to direct the management or policies, or otherwise owes a fiduciary duty to the mutual holding company or resulting stock holding company and who will serve as an officer, director, or employee of the charitable organization, is subject to the following obligations:

(i) The individual must not advance their own personal or business interests, or those of others with whom the individual has a personal or business relationship, at the expense of the mutual holding company or resulting stock holding company;

(ii) If the individual has an interest in a matter or transaction before the board of directors, the individual must:

(A) Disclose to the board all material nonprivileged information relevant to the board's decision on the matter or transaction, including the existence, nature and extent of the individual's interests, and the facts known to the individual as to the matter or transaction under consideration;

(B) Refrain from participating in the board's discussion of the matter or transaction; and

(C) Recuse themselves from voting on the matter or transaction (if the individual is a director). *See* Form AC, which provides further information or operating plans and conflict of interest plans. The mutual holding company may obtain Form AC from the appropriate Reserve Bank and the Board's Web site at *http://www.federalreserve.gov.*

(2) Before the board of directors may adopt a plan of conversion that includes a charitable organization, the mutual holding company must identify the directors that will serve on the charitable organization's board. These directors may not participate in the board's discussions concerning contributions to the charitable organization, and may not vote on the matter.

(3) The stock certificates of shares contributed to the charitable organization or that the charitable organization otherwise acquires must bear the following legend: ''The board of directors must consider the shares that this stock certificate represents as voted in the same ratio as all other shares voted on each proposal considered by the shareholders, as long as the shares are controlled by the charitable organization.''

(4) As long as the charitable organization controls shares, the resulting stock holding company must consider those shares as voted in the same ratio as all of the shares voted on each proposal considered by the shareholders.

(5) After the stock offering is complete, the resulting stock holding company must submit an executed copy of the following documents to the

appropriate Reserve Bank: the charitable organization's charter and bylaws (or trust agreement), operating plan (within six months after the stock offering), conflict of interest policy, and the gift instrument for the contributions of either stock or cash to the charitable organization.

§ 239.65 Voluntary supervisory conversions.

(a) *Voluntary supervisory conversion.*

(1) The mutual holding company must comply with this section and § 239.66 to engage in a voluntary supervisory conversion. This subpart applies to all voluntary supervisory conversions under sections 10(o)(7) and 10(p) of the Home Owners' Loan Act (12 U.S.C. 1467a(o) and (p)).

(2) Sections 239.50 through 239.64 also apply to a voluntary supervisory conversion, unless a requirement is clearly inapplicable.

(b) *Conducting a voluntary supervisory conversion.* In conducting a voluntary supervisory conversion, the mutual holding company may:

(1) Sell its shares to the public;

(2) Convert into stock form by merging into a state-chartered corporation; or

(3) Sell its shares directly to an acquiror, who may be an individual, company, depository institution, or depository institution holding company.

(c) *Member rights in a voluntary supervisory conversion.* Members of the mutual holding company do not have the right to approve or participate in a voluntary supervisory conversion, and will not have any legal or beneficial ownership interests in the converted association, unless the Board provides otherwise. The members may have interests in a liquidation account, if one is established.

(d) *Eligibility for a voluntary supervisory conversion.* A mutual holding company may be eligible to engage in a voluntary supervisory conversion if:

(1) Either the mutual holding company or its subsidiary savings association is significantly undercapitalized under applicable regulatory capital requirements (or the mutual holding company or its subsidiary savings association is undercapitalized under applicable regulatory capital requirements and a standard conversion that would make it adequately capitalized is not feasible) and will be a viable entity following the conversion;

(2) Severe financial conditions threaten stability of the mutual holding company, and a conversion is likely to improve its financial condition.

(e) A mutual holding company or its subsidiary savings association will be a viable entity following the conversion if it satisfies all of the following:

(1) It will be adequately capitalized as a result of the conversion;

(2) It, the proposed conversion, and its acquiror(s) comply with applicable supervisory policies;

(3) The transaction is in the best interest of the mutual holding company and its subsidiary savings associations, and the best interest of the Deposit Insurance Fund and the public; and

(4) The transaction will not injure or be detrimental to the mutual holding company and its subsidiary savings associations, the Deposit Insurance Fund, or the public interest.

(f) *Plan of voluntary supervisory conversion.* A majority of the board of directors of the mutual holding company must approve a plan of voluntary supervisory conversion. The mutual holding company must include all of the following information in the plan of voluntary supervisory conversion.

(1) The name and address of the mutual holding company.

(2) The name, address, date and place of birth, and social security number or tax identification number, as applicable, of each proposed purchaser of conversion shares and a description of that purchaser's relationship to the mutual holding company.

(3) The title, per-unit par value, number, and per-unit and aggregate offering price of shares that the mutual holding company will issue.

(4) The number and percentage of shares that each investor will purchase.

(5) The aggregate number and percentage of shares that each director, officer, and any affiliates or associates of the director or officer will purchase.

(6) A description of any liquidation account.

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

(g) *Voluntary supervisory conversion application.* The mutual holding company must include all of the following information and documents in a voluntary supervisory conversion application to the Board under this subpart:

(1) *Eligibility.*

(i) Evidence establishing that the mutual holding company meets the eligibility requirements under paragraph (d) of this section.

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

(2) *Plan of conversion.* A plan of voluntary supervisory conversion that complies with paragraph (e) of this section.

(3) *Business plan.* A business plan that complies with § 239.53(b), when required by the Board.

(4) *Financial data.* (i) The most recent audited financial statements and Thrift Financial Report. The mutual holding company must explain how its current capital levels or the capital levels of its subsidiary savings associations make it eligible to engage in a voluntary supervisory conversion under paragraph (d) of this section.

(ii) A description of the estimated conversion expenses.

(iii) Evidence supporting the value of any non-cash asset contributions. Appraisals must be acceptable to the Board and the non-cash asset must meet all other Board policy guidelines.

(iv) Pro forma financial statements that reflect the effects of the transaction. The mutual holding company must identify the tangible, core, and risk-based capital levels and show the adjustments necessary to compute the capital levels. The mutual holding company must prepare the pro forma statements in conformance with Board regulations and policy.

(5) *Proposed documents.* (i) The proposed charter and bylaws.

(ii) The proposed stock certificate form.

(6) *Agreements.* (i) A copy of any agreements between the mutual holding company and proposed purchasers.

(ii) A copy and description of all existing and proposed employment contracts. The mutual holding company must describe the term, salary, and severance provisions of the contract, the identity and background of the officer or employee to be employed, and the amount of any conversion shares to be purchased by the officer or employee or his or her affiliates or associates.

(7) *Related applications.* (i) All filings required under the securities offering rules of subpart E of this part.

(ii) Any required Holding Company Act application or Control Act notice under part 238 of this chapter.

(iii) A subordinated debt application, if applicable.

(iv) Applications for permission to organize a stock savings and loan holding company and for approval of a merger.

(v) A statement describing any other applications required under federal or state banking laws for all transactions related to the conversion, copies of all dispositive documents issued by

regulatory authorities relating to the applications, and, if requested by the Board, copies of the applications and related documents.

(8) *Waiver request.* A description of any of the features of the application that do not conform to the requirements of this subpart, including any request for waiver of any of these requirements.

(h) *Offers and sales of stock.* If the mutual holding company converts under this subpart, the conversion shares must be offered and sold in compliance with § 239.59.

(i) *Post-conversion acquisition of shares.* For three years after the completion of a voluntary supervisory conversion, neither the resulting stock holding company nor the principal shareholder(s) may acquire shares from minority shareholders without the Board's prior approval.

§ 239.66 Board review of the voluntary supervisory conversion application.

(a) *Board review of a voluntary supervisory conversion application.* The Board will generally approve the application to engage in a voluntary supervisory conversion unless it determines:

(1) The mutual holding company does not meet the eligibility requirements for a voluntary supervisory conversion under §§ 239.65(d) or because the proceeds from the sale of the conversion stock, less the expenses of the conversion, would be insufficient to satisfy any applicable viability requirement;

(2) The transaction is detrimental to or would cause potential injury to the mutual holding company, its subsidiary savings association, or the Deposit Insurance Fund or is contrary to the public interest;

(3) The mutual holding company or the acquiror, or the controlling parties or directors and officers of the mutual holding company or the acquiror, have engaged in unsafe or unsound practices in connection with the voluntary supervisory conversion; or

(4) The mutual holding company fails to justify an employment contract incidental to the conversion, or the employment contract will be an unsafe or unsound practice or represent a sale of control. In a voluntary supervisory conversion, the Board generally will not approve employment contracts of more than one year for the existing management.

(b) *Conditions the Board may impose on an approval.*

(1) The Board will condition approval of a voluntary supervisory conversion application on all of the following.

(i) The conversion stock sale must be complete within three months after the Board approves the application. The Board may grant an extension for good cause.

(ii) The mutual holding company and the resulting stock holding company must comply with all filing requirements of subpart E of this part.

(iii) The mutual holding company must submit an opinion of independent legal counsel indicating that the sale of the shares complies with all applicable state securities law requirements.

(iv) The mutual holding company and the resulting stock holding company must comply with all applicable laws, rules, and regulations.

(v) The mutual holding company and the resulting stock holding company must satisfy any other requirements or conditions the Board may impose.

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

(i) The mutual holding company and the resulting stock holding company must satisfy any conditions and restrictions the Board imposes to prevent unsafe or unsound practices, to protect the Deposit Insurance Fund and the public interest, and to prevent potential injury or detriment to the mutual holding company before and after the conversion. The Board may impose these conditions and restrictions on the mutual holding company and the resulting stock holding company (before and after the conversion), the acquiror, controlling parties, or directors and officers of the mutual holding company or the acquiror; or

(ii) The mutual holding company or the resulting stock holding company must infuse a larger amount of capital, if necessary, for safety and soundness reasons.

Appendix A to Part 239—Mutual Holding Company Model Charter

FEDERAL MUTUAL HOLDING COMPANY CHARTER

Section 1: Corporate title. The name of the mutual holding company is ____(the ''Mutual Holding Company'').

Section 2: Duration. The duration of the Mutual Holding Company is perpetual.

Section 3: Purpose and powers. The purpose of the Mutual Holding Company is to pursue any or all of the lawful objectives of a federal mutual savings and loan holding company chartered under section 10(o) of the Home Owners' Loan Act, 12 U.S.C. 1467a(o), and to exercise all of the express, implied, and incidental powers conferred thereby and all acts amendatory thereof and supplemental thereto, subject to the Constitution and the laws of the United States as they are now in effect, or as they may hereafter be amended, and subject to all lawful and applicable rules, regulations, and orders of the Federal Reserve Board (''Board'').

Section 4: Capital. The Mutual Holding Company shall have no capital stock.

Section 5: Members. [The content of this section 5 shall be identical to the content of the parallel section in the charter of the reorganizing association, with the following exceptions: (A) Any provisions conferring membership rights upon borrowers of the reorganizing association shall be eliminated and replaced with provisions grandfathering those rights in accordance with 12 CFR 239.5; and (B) appropriate changes shall be made to indicate that membership rights in the mutual holding company derive from deposit accounts in and, to the extent of any grandfather provisions, borrowings from the resulting association. Set forth below is an example of how section 5 should appear in the charter of a mutual holding company formed by a reorganizing association whose charter conforms to the model charter prescribed for federal mutual savings associations for calendar year 1989. Additional changes to this section 5 may be required whenever a mutual holding company reorganization involves an acquiree association, or a mutual holding company makes a post-reorganization acquisition of a mutual savings association, so as to preserve the membership rights of the members of the acquired association consistent with 12 CFR 239.5.]

All holders of the savings, demand, or other authorized accounts of ____[insert the name of the resulting association] (the ''Association'') are members of the Mutual Holding Company. With respect to all questions requiring action by the members of the Mutual Holding Company, each holder of an account in the Association shall be permitted to cast one vote for each $100, or fraction thereof, of the withdrawal value of the member's account. In addition, borrowers from the Association as of ____[insert the date of the reorganization or any earlier date as of which new borrowings ceased to result in membership rights] shall be entitled to one vote for the period of time during which such borrowings are in existence. [The foregoing sentence should be included only if the charter of the reorganizing association confers voting rights on any borrowers.] No member, however, shall cast more than one thousand votes. All accounts shall be nonassessable.

Section 6. Directors. The Mutual Holding Company shall be under the direction of a board of directors. The authorized number of directors shall not be fewer than five nor more than fifteen, as fixed in the Mutual Holding Company's bylaws, except that the number of directors may be decreased to a number less than five or increased to a number greater than fifteen with the prior approval of the Board.

Section 7: Capital, surplus, and distribution of earnings. [The content of this section 7 shall be identical to the content of the parallel section in the charter of the reorganizing association, except for changes made to indicate that distribution rights in the mutual holding company derive from deposit accounts in the resulting association, any changes required to provide that the

Board shall be the approving authority in instances where the charter requires regulatory approval of distributions, and any other changes necessary to accommodate the mutual holding company format. Set forth below is an example of how section 7 should appear in the charter of a mutual holding company formed by a reorganizing association whose charter conforms to the model charter prescribed for federal mutual savings associations for calendar year 1989. Additional changes to this section 7 may be required whenever a mutual holding company reorganization involves an acquiree association, or a mutual holding company makes a post-reorganization acquisition of a mutual savings association, so as to preserve the membership rights of the members of the acquired association consistent with 12 CFR 239.5].

The Mutual Holding Company shall distribute net earnings to account holders of the Association on such basis and in accordance with such terms and conditions as may from time to time be authorized by the Board, provided that the Mutual Holding Company may establish minimum account balance requirements for account holders to be eligible for distributions of earnings.

All holders of accounts of the Association shall be entitled to equal distribution of the assets of the Mutual Holding Company, *pro rata* to the value of their accounts in the Association, in the event of voluntary or involuntary liquidation, dissolution, or winding up of the Mutual Holding Company.

Section 8. Amendment. Adoption of any preapproved charter amendment shall be effective after such preapproved amendment has been approved by the members at a legal meeting. Any other amendment, addition, change, or repeal of this charter must be approved by the Board prior to approval by the members at a legal meeting and shall be effective upon filing with the Board in accordance with regulatory procedures.

Attest: _____
Secretary of the Association
By: _____
President or Chief Executive Officer of the Association
By: _____
Secretary of the Board of Governors of the Federal Reserve System
Effective Date: _____

Appendix B to Part 239—Subsidiary Holding Company of a Mutual Holding Company Model Charter

FEDERAL MHC SUBSIDIARY HOLDING COMPANY CHARTER

Section 1. Corporate title. The full corporate title of the mutual holding company (''MHC'') subsidiary holding company is XXX.

Section 2. Domicile. The domicile of the MHC subsidiary holding company shall be in the city of __, in the State of __.

Section 3. Duration. The duration of the MHC subsidiary holding company is perpetual.

Section 4. Purpose and powers. The purpose of the MHC subsidiary holding company is to pursue any or all of the lawful objectives of a federal mutual holding company chartered under section 10(o) of the Home Owners' Loan Act, 12 U.S.C. 1467a(o), and to exercise all of the express, implied, and incidental powers conferred thereby and by all acts amendatory thereof and supplemental thereto, subject to the Constitution and laws of the United States as they are now in effect, or as they may hereafter be amended, and subject to all lawful and applicable rules, regulations, and orders of the Board of Governors of the Federal Reserve System (''Board'').

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

Except for shares issued in the initial organization of the MHC subsidiary holding company, no shares of capital stock (including shares issuable upon conversion, exchange, or exercise of other securities) shall be issued, directly or indirectly, to officers, directors, or controlling persons (except for shares issued to the parent mutual holding company) of the MHC subsidiary holding company other than as part of a general public offering or as qualifying shares to a director, unless the issuance or the plan under which they would be issued has been approved by a majority of the total votes eligible to be cast at a legal meeting.

The holders of the common stock shall exclusively possess all voting power. Each holder of shares of common stock shall be entitled to one vote for each share held by such holder, except as to the cumulation of votes for the election of directors, unless the charter provides that there shall be no such cumulative voting. Subject to any provision for a liquidation account, in the event of any liquidation, dissolution, or winding up of the MHC subsidiary holding company, the holders of the common stock shall be entitled, after payment or provision for payment of all debts and liabilities of the MHC subsidiary holding company, to receive the remaining assets of the MHC subsidiary holding company available for distribution, in cash or in kind. Each share of common stock shall have the same relative rights as and be identical in all respects with all the other shares of common stock.

Section 6. Preemptive rights. Holders of the capital stock of the MHC subsidiary holding company shall not be entitled to preemptive rights with respect to any shares of the MHC subsidiary holding company which may be issued.

Section 7. Directors. The MHC subsidiary holding company shall be under the direction of a board of directors. The authorized number of directors, as stated in the MHC subsidiary holding company's bylaws, shall not be fewer than five nor more than fifteen except when a greater or lesser number is approved by the Board, or his or her delegate.

Section 8. Amendment of charter. Except as provided in Section 5, no amendment, addition, alteration, change or repeal of this charter shall be made, unless such is proposed by the board of directors of the MHC subsidiary holding company, approved by the shareholders by a majority of the votes eligible to be cast at a legal meeting, unless a higher vote is otherwise required, and approved or preapproved by the Board.

Attest: _____
Secretary of the Subsidiary Holding Company
By: _____
President or Chief Executive Officer of the Subsidiary Holding Company
By: _____
Secretary of the Board of Governors of the Federal Reserve System
Effective Date: _____

Appendix C to Part 239—Mutual Holding Company Model Bylaws

MODEL BYLAWS FOR MUTUAL HOLDING COMPANIES

The term ''trustees'' may be substituted for the term ''directors.''

1. Annual meeting of members. The annual meeting of the members of the mutual holding company for the election of directors and for the transaction of any other business of the mutual holding company shall be held, as designated by the board of directors, at a location within the state that constitutes the principal place of business of the mutual holding company, or at any other convenient place the board of directors may designate, at (insert date and time within 150 days after the end of the mutual holding company's fiscal year, if not a legal holiday, or if a legal holiday then on the next succeeding day not a legal holiday). At each annual meeting, the officers shall make a full report of the financial condition of the mutual holding company and of its progress for the preceding year and shall outline a program for the succeeding year.

2. Special meetings of members. Special meetings of the members of the mutual holding company may be called at any time by the president or the board of directors and shall be called by the president, a vice president, or the secretary upon the written request of members of record, holding in the aggregate at least one-tenth of the voting capital of the mutual holding company. Such written request shall state the purpose of the meeting and shall be delivered at the principal place of business of the mutual holding company addressed to the president. For purposes of this section, ''voting capital'' means FDIC-insured deposits as of the voting record date. Annual and special meetings shall be conducted in accordance with the most current edition of Robert's Rules of Order or any other set of written procedures agreed to by the board of directors.

3. Notice of meeting of members. Notice of each meeting shall be either published once a week for the two successive calendar weeks (in each instance on any day of the week) immediately prior to the week in which such meeting shall convene, in a newspaper printed in the English language and of general circulation in the city or county in which the principal place of business of the mutual holding company is located, or mailed postage prepaid at least (insert number no less than 15) days and not more than (insert number not more than 45) days prior to the date on which such meeting shall convene, to each of its members of record at the last address appearing on the books of the mutual holding company. Such notice shall state the name of the mutual holding company, the place of the meeting, the date and time when it shall convene, and the matters to be considered. A similar notice shall be posted in a conspicuous place in each of the offices of the mutual holding company during the 14 days immediately preceding the date on which such meeting shall convene. If any member, in person or by authorized attorney, shall waive in writing notice of any meeting of members, notice thereof need not be given to such member. When any meeting is adjourned for 30 days or more, notice of the adjournment and reconvening of the meeting shall be given as in the case of the original meeting.

4. Fixing of record date. For the purpose of determining members entitled to notice of or to vote at any meeting of members or any adjournment thereof, or in order to make a determination of members for any other proper purpose, the board of directors shall fix in advance a record date for any such determination of members. Such date shall be not more than 60 days nor fewer than 10 days prior to the date on which the action, requiring such determination of members, is to be taken. The member entitled to participate in any such action shall be the member of record on the books of the mutual holding company on such record date. The number of votes which each member shall be entitled to cast at any meeting of the members shall be determined from the books of the mutual holding company as of such record date. Any member of such record date who ceases to be a member prior to such meeting shall not be entitled to vote at that meeting. The same determination shall apply to any adjourned meeting.

5. Member quorum. Any number of members present and voting, represented in person or by proxy, at a regular or special meeting of the members shall constitute a quorum. A majority of all votes cast at any meeting of the members shall determine any question, unless otherwise required by regulation. Directors, however, are elected by a plurality of the votes cast at an election of directors. At any adjourned meeting any business may be transacted which might have been transacted at the meeting as originally called. Members present at a duly constituted meeting may continue to transact business until adjournment.

6. Voting by proxy. Voting at any annual or special meeting of the members may be by proxy pursuant to the rules and regulations of the Board of Governors of the Federal Reserve System (Board), provided, that no proxies shall be voted at any meeting unless such proxies shall have been placed on file with the secretary of the mutual holding company, for verification, prior to the convening of such meeting. Proxies may be given telephonically or electronically as long as the holder uses a procedure for verifying the identity of the member. All proxies with a term greater than eleven months or solicited at the expense of the mutual holding company must run to the board of directors as a whole, or to a committee appointed by a majority of such board. Accounts held by an administrator, executor, guardian, conservator or receiver may be voted in person or by proxy by such person. Accounts held by a trustee may be voted by such trustee either in person or by proxy, in accordance with the terms of the trust agreement, but no trustee shall be entitled to vote accounts without a transfer of such accounts into the trustee name. Accounts held in trust in an IRA or Keogh Account, however, may be voted by the mutual holding company if no other instructions are received. Joint accounts shall be entitled to no more than 1000 votes, and any owner may cast all the votes unless the mutual holding company has otherwise been notified in writing.

7. Communication between members. Communication between members shall be subject to any applicable rules or regulations of the Board. No member, however, shall have the right to inspect or copy any portion of any books or records of a mutual holding company containing: (i) a list of depositors in or borrowers from such mutual holding company; (ii) their addresses; (iii) individual deposit or loan balances or records; or (iv) any data from which such information could reasonably be constructed.

8. Number of directors, membership. The number of directors shall be ____[not fewer than five nor more than fifteen], except where authorized by the Board. Each director shall be a member of the mutual holding company. Directors shall be elected for periods of one to three years and until their successors are elected and qualified, but if a staggered board is chosen, provision shall be made for the election of approximately one-third or one-half of the board each year, as appropriate.

9. Meetings of the board. The board of directors shall meet regularly without notice at the principal place of business of the mutual holding company at least once each month at an hour and date fixed by resolution of the board, provided that the place of meeting may be changed by the directors. Special meetings of the board may be held at any place specified in a notice of such meeting and shall be called by the secretary upon the written request of the chairman or of three directors. All special meetings shall be held upon at least 24 hours written notice to each director unless notice is waived in writing before or after such meeting. Such notice shall state the place, date, time, and purposes of such meeting. A majority of the authorized directors shall constitute a quorum for the transaction of business. The act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the board. Action may be taken without a meeting if unanimous written consent is obtained for such action. The board may also permit telephonic participation at meetings. The meetings shall be under the direction of a chairman, appointed annually by the board, or in the absence of the chairman, the meetings shall be under the direction of the president.

10. Officers, employees, and agents. Annually at the meeting of the board of directors of the mutual holding company following the annual meeting of the members of the mutual holding company, the board shall elect a president, one or more vice presidents, a secretary, and a treasurer or comptroller: Provided, that the offices of president and secretary may not be held by the same person and a vice president may also be the treasurer or comptroller. The board may appoint such additional officers, employees, and agents as it may from time to time determine. The term of office of all officers shall be one year or until their respective successors are elected and qualified. Any officer may be removed at any time by the board with or without cause, but such removal, other than for cause, shall be without prejudice to the contractual rights, if any, of the person so removed. In the absence of designation from time to time of powers and duties by the board, the officers shall have such powers and duties as generally pertain to their respective offices. Any indemnification by the mutual holding company of the mutual holding company's personnel is subject to any applicable rules or regulations of the Board.

11. Vacancies, resignation or removal of directors. Members of the mutual holding company shall elect directors by ballot: Provided, that in the event of a vacancy on the board between meetings of members, the board of directors may, by their affirmative vote, fill such vacancy, even if the remaining directors constitute less than a quorum. A director elected to fill a vacancy shall be elected to serve only until the next election of directors by the members. Any director may resign at any time by sending a written notice of such resignation to the mutual holding company delivered to the secretary. Unless otherwise specified therein such resignation shall take effect upon receipt by the secretary. More than three consecutive absences from regular meetings of the board,

unless excused by resolution of the board, shall automatically constitute a resignation, effective when such resignation is accepted by the board. At a meeting of members called expressly for that purpose, directors or the entire board may be removed, only with cause, by a vote of the holders of a majority of the shares then entitled to vote at an election of directors.

12. Powers of the board. The board of directors shall have the power: (a) By resolution, to appoint from among its members and remove an executive committee, which committee shall have and may exercise the powers of the board between the meetings of the board, but no such committee shall have the authority of the board to amend the charter or bylaws, adopt a plan of merger, consolidation, dissolution, or provide for the disposition of all or substantially all the property and assets of the mutual holding company. Such committee shall not operate to relieve the board, or any member thereof, of any responsibility imposed by law; (b) To appoint and remove by resolution the members of such other committees as may be deemed necessary and prescribe the duties thereof; (c) To fix the compensation of directors, officers, and employees; and to remove any officer or employee at any time with or without cause; (d) To limit payments on capital which may be accepted; and (e) To exercise any and all of the powers of the mutual holding company not expressly reserved by the charter to the members.

13. Execution of instruments, generally. All documents and instruments or writings of any nature shall be signed, executed, verified, acknowledged, and delivered by such officers, agents, or employees of the mutual holding company or any one of them and in such manner as from time to time may be determined by resolution of the board. All notes, drafts, acceptances, checks, endorsements, and all evidences of indebtedness of the mutual holding company whatsoever shall be signed by such officer or officers or such agent or agents of the mutual holding company and in such manner as the board may from time to time determine. Endorsements for deposit to the credit of the mutual holding company in any of its duly authorized depositories shall be made in such manner as the board may from time to time determine. Proxies to vote with respect to shares or accounts of other mutual holding companies or stock of other corporations owned by, or standing in the name of, the mutual holding company may be executed and delivered from time to time on behalf of the mutual holding company by the president or a vice president and the secretary or an assistant secretary of the mutual holding company or by any other persons so authorized by the board.

14. Nominating committee. The chairman, at least 30 days prior to the date of each annual meeting, shall appoint a nominating committee of three individuals who are members of the mutual holding company. Such committee shall make nominations for directors in writing and deliver to the secretary such written nominations at least 15 days prior to the date of the annual meeting, which nominations shall then be posted in a prominent place in the principal place of business for the 15-day period prior to the date of the annual meeting, except in the case of a nominee substituted as a result of death or other incapacity. Provided such committee is appointed and makes such nominations, no nominations for directors except those made by the nominating committee shall be voted upon at the annual meeting unless other nominations by members are made in writing and delivered to the secretary of the mutual holding company at least 10 days prior to the date of the annual meeting, which nominations shall then be posted in a prominent place in the principal place of business for the 10-day period prior to the date of the annual meeting, except in the case of a nominee substituted as a result of death or other incapacity. Ballots bearing the names of all individuals nominated by the nominating committee and by other members prior to the annual meeting shall be provided for use by the members at the annual meeting. If at any time the chairman shall fail to appoint such nominating committee, or the nominating committee shall fail or refuse to act at least 15 days prior to the annual meeting, nominations for directors may be made at the annual meeting by any member and shall be voted upon.

15. New business. Any new business to be taken up at the annual meeting, including any proposal to increase or decrease the number of directors of the mutual holding company, shall be stated in writing and filed with the secretary of the mutual holding company at least 30 days before the date of the annual meeting, and all business so stated, proposed, and filed shall be considered at the annual meeting; but no other proposal shall be acted upon at the annual meeting. Any member may make any other proposal at the annual meeting and the same may be discussed and considered; but unless stated in writing and filed with the secretary 30 days before the meeting, such proposal shall be laid over for action at an adjourned, special, or regular meeting of the members taking place at least 30 days thereafter. This provision shall not prevent the consideration and approval or disapproval at the annual meeting of the reports of officers and committees, but in connection with such reports no new business shall be acted upon at such annual meeting unless stated and filed as herein provided.

16. Seal. The seal shall be two concentric circles between which shall be the name of the mutual holding company. The year of incorporation, the word ''Incorporated'' or an emblem may appear in the center.

17. Amendment. Adoption of any bylaw amendment pursuant to § 239.15 of the Board's regulations, as long as consistent with applicable law, rules and regulations, and which adequately addresses the subject and purpose of the stated by law section, shall be effective after (i) approval of the amendment by a majority vote of the authorized board, or by a vote of the members of the mutual holding company at a legal meeting; and (ii) receipt of any applicable regulatory approval. When a mutual holding company fails to meet its quorum requirement solely due to vacancies on the board, the bylaws may be amended by an affirmative vote of a majority of the sitting board.

18. Age limitations. [Bylaws on age limitations must comply with all Federal laws, such as the Age Discrimination in Employment Act and the Employee Retirement Income Security Act.]

(a) Directors. No individual ____ years of age shall be eligible for election, reelection, appointment, or reappointment to the board of the mutual holding company. No director shall serve as such beyond the annual meeting of the mutual holding company immediately following the director becoming ____(fill in age used above), except that a director serving on ____(fill in bylaw adoption date) may complete the term as director. This age limitation does not apply to an advisory director.

(b) Officers. No individual ____ years of age shall be eligible for election, reelection, appointment, or reappointment as an officer of the mutual holding company. No officer shall serve beyond the annual meeting of the mutual holding company immediately following the officer becoming ____(fill in age used above), except that an officer serving on ____(fill in bylaw adoption date) may complete the term. However, an officer shall, at the option of the board, retire at age ____ if the officer has served in an executive or high policy-making post for at least two years immediately prior to retirement and is immediately entitled to nonforfeitable annual retirement benefits of at least ____.

Appendix D to Part 239—Subsidiary Holding Company of a Mutual Holding Company Model Bylaws

MHC Subsidiary Holding Company Bylaws

Article I—Home Office

The home office of the Subsidiary Holding Company shall be at _____. [set forth the full address] in the County of _____, in the State of _____.

Article II—Shareholders

Section 1. Place of Meetings. All annual and special meetings of shareholders shall be held at the home office of the Subsidiary Holding Company or at such other convenient place as the board of directors may determine.

Section 2. Annual Meeting. A meeting of the shareholders of the Subsidiary Holding Company for the election of directors and for the transaction of any other business of the Subsidiary Holding Company shall be held annually within 150 days after the end of the Subsidiary Holding Company's fiscal year on the ____of ____ if not a legal holiday, and if a legal holiday, then on the next day following which is not a legal holiday, at ____, or at such other date and time within such 150-day period as the board of directors may determine.

Section 3. Special Meetings. Special meetings of the shareholders for any purpose or purposes, unless otherwise prescribed by the regulations of the Board of Governors of the Federal Reserve System (''Board''), may be called at any time by the chairman of the

board, the president, or a majority of the board of directors, and shall be called by the chairman of the board, the president, or the secretary upon the written request of the holders of not less than one-tenth of all of the outstanding capital stock of the Subsidiary Holding Company entitled to vote at the meeting. Such written request shall state the purpose or purposes of the meeting and shall be delivered to the home office of the Subsidiary Holding Company addressed to the chairman of the board, the president, or the secretary.

Section 4. Conduct of Meetings. Annual and special meetings shall be conducted in accordance with the most current edition of Robert's Rules of Order unless otherwise prescribed by regulations of the Board or these bylaws or the board of directors adopts another written procedure for the conduct of meetings. The board of directors shall designate, when present, either the chairman of the board or president to preside at such meetings.

Section 5. Notice of Meetings. Written notice stating the place, day, and hour of the meeting and the purpose(s) for which the meeting is called shall be delivered not fewer than 20 nor more than 50 days before the date of the meeting, either personally or by mail, by or at the direction of the chairman of the board, the president, or the secretary, or the directors calling the meeting, to each shareholder of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the mail, addressed to the shareholder at the address as it appears on the stock transfer books or records of the Subsidiary Holding Company as of the record date prescribed in section 6 of this article II with postage prepaid. When any shareholders' meeting, either annual or special, is adjourned for 30 days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. It shall not be necessary to give any notice of the time and place of any meeting adjourned for less than 30 days or of the business to be transacted at the meeting, other than an announcement at the meeting at which such adjournment is taken.

Section 6. Fixing of Record Date. For the purpose of determining shareholders entitled to notice of or to vote at any meeting of shareholders or any adjournment, or shareholders entitled to receive payment of any dividend, or in order to make a determination of shareholders for any other proper purpose, the board of directors shall fix in advance a date as the record date for any such determination of shareholders. Such date in any case shall be not more than 60 days and, in case of a meeting of shareholders, not fewer than 10 days prior to the date on which the particular action, requiring such determination of shareholders, is to be taken. When a determination of shareholders entitled to vote at any meeting of shareholders has been made as provided in this section, such determination shall apply to any adjournment.

Section 7. Voting Lists. At least 20 days before each meeting of the shareholders, the officer or agent having charge of the stock transfer books for shares of the Subsidiary Holding Company shall make a complete list of the shareholders of record entitled to vote at such meeting, or any adjournment thereof, arranged in alphabetical order, with the address and the number of shares held by each. This list of shareholders shall be kept on file at the home office of the Subsidiary Holding Company and shall be subject to inspection by any shareholder of record or the shareholder's agent at any time during usual business hours for a period of 20 days prior to such meeting. Such list shall also be produced and kept open at the time and place of the meeting and shall be subject to inspection by any shareholder of record or any shareholder's agent during the entire time of the meeting. The original stock transfer book shall constitute prima facie evidence of the shareholders entitled to examine such list or transfer books or to vote at any meeting of shareholders. In lieu of making the shareholder list available for inspection by shareholders as provided in the preceding paragraph, the board of directors may elect to follow the procedures prescribed in § 239.26(d) of the Board's regulations as now or hereafter in effect.

Section 8. Quorum. A majority of the outstanding shares of the Subsidiary Holding Company entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of shareholders. If less than a majority of the outstanding shares is represented at a meeting, a majority of the shares so represented may adjourn the meeting from time to time without further notice. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally notified. The shareholders present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough shareholders to constitute less than a quorum. If a quorum is present, the affirmative vote of the majority of the shares represented at the meeting and entitled to vote on the subject matter shall be the act of the shareholders, unless the vote of a greater number of shareholders voting together or voting by classes is required by law or the charter. Directors, however, are elected by a plurality of the votes cast at an election of directors.

Section 9. Proxies. At all meetings of shareholders, a shareholder may vote by proxy executed in writing by the shareholder or by his or her duly authorized attorney in fact. Proxies may be given telephonically or electronically as long as the holder uses a procedure for verifying the identity of the shareholder. Proxies solicited on behalf of the management shall be voted as directed by the shareholder or, in the absence of such direction, as determined by a majority of the board of directors. No proxy shall be valid more than eleven months from the date of its execution except for a proxy coupled with an interest.

Section 10. Voting of Shares in the Name of Two or More Persons. When ownership stands in the name of two or more persons, in the absence of written directions to the Subsidiary Holding Company to the contrary, at any meeting of the shareholders of the Subsidiary Holding Company any one or more of such shareholders may cast, in person or by proxy, all votes to which such ownership is entitled. In the event an attempt is made to cast conflicting votes, in person or by proxy, by the several persons in whose names shares of stock stand, the vote or votes to which those persons are entitled shall be cast as directed by a majority of those holding such and present in person or by proxy at such meeting, but no votes shall be cast for such stock if a majority cannot agree.

Section 11. Voting of Shares by Certain Holders. Shares standing in the name of another corporation may be voted by any officer, agent, or proxy as the bylaws of such corporation may prescribe, or, in the absence of such provision, as the board of directors of such corporation may determine. Shares held by an administrator, executor, guardian, or conservator may be voted by him or her, either in person or by proxy, without a transfer of such shares into his or her name. Shares standing in the name of a trustee may be voted by him or her, either in person or by proxy, but no trustee shall be entitled to vote shares held by him or her without a transfer of such shares into his or her name. Shares held in trust in an IRA or Keogh Account, however, may by voted by the Subsidiary Holding Company if no other instructions are received. Shares standing in the name of a receiver may be voted by such receiver, and shares held by or under the control of a receiver may be voted by such receiver without the transfer into his or her name if authority to do so is contained in an appropriate order of the court or other public authority by which such receiver was appointed. A shareholder whose shares are pledged shall be entitled to vote such shares until the shares have been transferred into the name of the pledgee, and thereafter the pledgee shall be entitled to vote the shares so transferred. Neither treasury shares of its own stock held by the Subsidiary Holding Company nor shares held by another corporation, if a majority of the shares entitled to vote for the election of directors of such other corporation are held by the Subsidiary Holding Company, shall be voted at any meeting or counted in determining the total number of outstanding shares at any given time for purposes of any meeting. [If charter authorizes cumulative voting, the following Section 12 shall apply, otherwise renumber Sections 13–16 as Sections 12–15.]

Section 12. Cumulative Voting. Every shareholder entitled to vote at an election for directors shall have the right to vote, in person or by proxy, the number of shares owned by the shareholder for as many persons as there are directors to be elected and for whose election the shareholder has a right to vote, or to cumulate the votes by giving one candidate as many votes as the number of such directors to be elected multiplied by the number of shares shall equal or by distributing such votes on the same principle among any number of candidates.

Section 13. Inspectors of Election. In advance of any meeting of shareholders, the board of directors may appoint any individual other than nominees for office as inspectors of election to act at such meeting

or any adjournment. The number of inspectors shall be either one or three. Any such appointment shall not be altered at the meeting. If inspectors of election are not so appointed, the chairman of the board or the president may, or on the request of not fewer than 10 percent of the votes represented at the meeting shall, make such appointment at the meeting. If appointed at the meeting, the majority of the votes present shall determine whether one or three inspectors are to be appointed. In case any individual appointed as inspector fails to appear or fails or refuses to act, the vacancy may be filled by appointment by the board of directors in advance of the meeting or at the meeting by the chairman of the board or the president. Unless otherwise prescribed by regulations of the Board, the duties of such inspectors shall include: determining the number of shares and the voting power of each share, the shares represented at the meeting, the existence of a quorum, and the authenticity, validity and effect of proxies; receiving votes, ballots, or consents; hearing and determining all challenges and questions in any way arising in connection with the rights to vote; counting and tabulating all votes or consents; determining the result; and such acts as may be proper to conduct the election or vote with fairness to all shareholders.

Section 14. Nominating Committee. The board of directors shall act as a nominating committee for selecting the management nominees for election as directors. Except in the case of a nominee substituted as a result of the death or other incapacity of a management nominee, the nominating committee shall deliver written nominations to the secretary at least 20 days prior to the date of the annual meeting. Upon delivery, such nominations shall be posted in a conspicuous place in each office of the Subsidiary Holding Company. No nominations for directors except those made by the nominating committee shall be voted upon at the annual meeting unless other nominations by shareholders are made in writing and delivered to the secretary of the Subsidiary Holding Company at least five days prior to the date of the annual meeting. Upon delivery, such nominations shall be posted in a conspicuous place in each office of the Subsidiary Holding Company. Ballots bearing the names of all persons nominated by the nominating committee and by shareholders shall be provided for use at the annual meeting. However, if the nominating committee shall fail or refuse to act at least 20 days prior to the annual meeting, nominations for directors may be made at the annual meeting by any shareholder entitled to vote and shall be voted upon.

Section 15. New Business. Any new business to be taken up at the annual meeting shall be stated in writing and filed with the secretary of the Subsidiary Holding Company at least five days before the date of the annual meeting, and all business so stated, proposed, and filed shall be considered at the annual meeting; but no other proposal shall be acted upon at the annual meeting. Any shareholder may make any other proposal at the annual meeting and the same may be discussed and considered, but unless stated in writing and filed with the secretary at least five days before the meeting, such proposal shall be laid over for action at an adjourned, special, or annual meeting of the shareholders taking place 30 days or more thereafter. This provision shall not prevent the consideration and approval or disapproval at the annual meeting of reports of officers, directors, and committees; but in connection with such reports, no new business shall be acted upon at such annual meeting unless stated and filed as herein provided.

Section 16. Informal Action by Shareholders. Any action required to be taken at a meeting of the shareholders, or any other action which may be taken at a meeting of shareholders, may be taken without a meeting if consent in writing, setting forth the action so taken, shall be given by all of the shareholders entitled to vote with respect to the subject matter.

Article III—Board of Directors

Section 1. General Powers. The business and affairs of the Subsidiary Holding Company shall be under the direction of its board of directors. The board of directors shall annually elect a chairman of the board and a president from among its members and shall designate, when present, either the chairman of the board or the president to preside at its meetings.

Section 2. Number and Term. The board of directors shall consist of ____ [not fewer than five nor more than fifteen] members, and shall be divided into three classes as nearly equal in number as possible. The members of each class shall be elected for a term of three years and until their successors are elected and qualified. One class shall be elected by ballot annually.

Section 3. Regular Meetings. A regular meeting of the board of directors shall be held without other notice than this bylaw following the annual meeting of shareholders. The board of directors may provide, by resolution, the time and place, for the holding of additional regular meetings without other notice than such resolution. Directors may participate in a meeting by means of a conference telephone or similar communications device through which all individuals participating can hear each other at the same time. Participation by such means shall constitute presence in person for all purposes.

Section 4. Qualification. Each director shall at all times be the beneficial owner of not less than 100 shares of capital stock of the Subsidiary Holding Company unless the Subsidiary Holding Company is a wholly owned subsidiary of a holding company.

Section 5. Special Meetings. Special meetings of the board of directors may be called by or at the request of the chairman of the board, the president, or one-third of the directors. The persons authorized to call special meetings of the board of directors may fix any place, within the Subsidiary Holding Company's normal lending territory, as the place for holding any special meeting of the board of directors called by such persons. Members of the board of directors may participate in special meetings by means of conference telephone or similar communications equipment by which all persons participating in the meeting can hear each other. Such participation shall constitute presence in person for all purposes.

Section 6. Notice. Written notice of any special meeting shall be given to each director at least 24 hours prior thereto when delivered personally or by telegram or at least five days prior thereto when delivered by mail at the address at which the director is most likely to be reached. Such notice shall be deemed to be delivered when deposited in the mail so addressed, with postage prepaid if mailed, when delivered to the telegraph company if sent by telegram, or when the Subsidiary Holding Company receives notice of delivery if electronically transmitted. Any director may waive notice of any meeting by a writing filed with the secretary. The attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any meeting of the board of directors need be specified in the notice of waiver of notice of such meeting.

Section 7. Quorum. A majority of the number of directors fixed by section 2 of this article III shall constitute a quorum for the transaction of business at any meeting of the board of directors; but if less than such majority is present at a meeting, a majority of the directors present may adjourn the meeting from time to time. Notice of any adjourned meeting shall be given in the same manner as prescribed by section 5 of this article III.

Section 8. Manner of Acting. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless a greater number is prescribed by regulation of the Board or by these bylaws.

Section 9. Action Without a Meeting. Any action required or permitted to be taken by the board of directors at a meeting may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the directors.

Section 10. Resignation. Any director may resign at any time by sending a written notice of such resignation to the home office of the Subsidiary Holding Company addressed to the chairman of the board or the president. Unless otherwise specified, such resignation shall take effect upon receipt by the chairman of the board or the president. More than three consecutive absences from regular meetings of the board of directors, unless excused by resolution of the board of directors, shall automatically constitute a resignation, effective when such resignation is accepted by the board of directors.

Section 11. Vacancies. Any vacancy occurring on the board of directors may be filled by the affirmative vote of a majority of the remaining directors although less than a quorum of the board of directors. A director elected to fill a vacancy shall be elected to serve only until the next election of directors by the shareholders. Any directorship to be filled by reason of an increase in the number of directors may be filled by election by the board of directors for a term of office

continuing only until the next election of directors by the shareholders.

Section 12. Compensation. Directors, as such, may receive a stated salary for their services. By resolution of the board of directors, a reasonable fixed sum, and reasonable expenses of attendance, if any, may be allowed for attendance at each regular or special meeting of the board of directors. Members of either standing or special committees may be allowed such compensation for attendance at committee meetings as the board of directors may determine.

Section 13. Presumption of Assent. A director of the Subsidiary Holding Company who is present at a meeting of the board of directors at which action on any Subsidiary Holding Company matter is taken shall be presumed to have assented to the action taken unless his or her dissent or abstention shall be entered in the minutes of the meeting or unless he or she shall file a written dissent to such action with the individual acting as the secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the secretary of the Subsidiary Holding Company within five days after the date a copy of the minutes of the meeting is received. Such right to dissent shall not apply to a director who voted in favor of such action.

Section 14. Removal of Directors. At a meeting of shareholders called expressly for that purpose, any director may be removed only for cause by a vote of the holders of a majority of the shares then entitled to vote at an election of directors. If less than the entire board is to be removed, no one of the directors may be removed if the votes cast against the removal would be sufficient to elect a director if then cumulatively voted at an election of the class of directors of which such director is a part. [If cumulative voting has been deleted, the preceding sentence should be deleted.] Whenever the holders of the shares of any class are entitled to elect one or more directors by the provisions of the charter or supplemental sections thereto, the provisions of this section shall apply, in respect to the removal of a director or directors so elected, to the vote of the holders of the outstanding shares of that class and not to the vote of the outstanding shares as a whole.

Article IV—Executive and Other Committees

Section 1. Appointment. The board of directors, by resolution adopted by a majority of the full board, may designate the chief executive officer and two or more of the other directors to constitute an executive committee. The designation of any committee pursuant to this Article IV and the delegation of authority shall not operate to relieve the board of directors, or any director, of any responsibility imposed by law or regulation.

Section 2. Authority. The executive committee, when the board of directors is not in session, shall have and may exercise all of the authority of the board of directors except to the extent, if any, that such authority shall be limited by the resolution appointing the executive committee; and except also that the executive committee shall not have the authority of the board of directors with reference to: the declaration of dividends; the amendment of the charter or bylaws of the Subsidiary Holding Company, or recommending to the shareholders a plan of merger, consolidation, or conversion; the sale, lease, or other disposition of all or substantially all of the property and assets of the Subsidiary Holding Company otherwise than in the usual and regular course of its business; a voluntary dissolution of the Subsidiary Holding Company; a revocation of any of the foregoing; or the approval of a transaction in which any member of the executive committee, directly or indirectly, has any material beneficial interest.

Section 3. Tenure. Subject to the provisions of section 8 of this article IV, each member of the executive committee shall hold office until the next regular annual meeting of the board of directors following his or her designation and until a successor is designated as a member of the executive committee.

Section 4. Meetings. Regular meetings of the executive committee may be held without notice at such times and places as the executive committee may fix from time to time by resolution. Special meetings of the executive committee may be called by any member thereof upon not less than one day's notice stating the place, date, and hour of the meeting, which notice may be written or oral. Any member of the executive committee may waive notice of any meeting and no notice of any meeting need be given to any member thereof who attends in person. The notice of a meeting of the executive committee need not state the business proposed to be transacted at the meeting.

Section 5. Quorum. A majority of the members of the executive committee shall constitute a quorum for the transaction of business at any meeting thereof, and action of the executive committee must be authorized by the affirmative vote of a majority of the members present at a meeting at which a quorum is present.

Section 6. Action Without a Meeting. Any action required or permitted to be taken by the executive committee at a meeting may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the members of the executive committee.

Section 7. Vacancies. Any vacancy in the executive committee may be filled by a resolution adopted by a majority of the full board of directors.

Section 8. Resignations and Removal. Any member of the executive committee may be removed at any time with or without cause by resolution adopted by a majority of the full board of directors. Any member of the executive committee may resign from the executive committee at any time by giving written notice to the president or secretary of the Subsidiary Holding Company. Unless otherwise specified, such resignation shall take effect upon its receipt; the acceptance of such resignation shall not be necessary to make it effective. No notice of any meeting need be given to any member thereof who attends in person. The notice of a meeting of the executive committee need not state the business proposed to be transacted at the meeting.

Section 9. Procedure. The executive committee shall elect a presiding officer from its members and may fix its own rules of procedure, which shall not be inconsistent with these bylaws. It shall keep regular minutes of its proceedings and report the same to the board of directors for its information at the meeting held next after the proceedings shall have occurred.

Section 10. Other Committees. The board of directors may by resolution establish an audit, loan, or other committee composed of directors as they may determine to be necessary or appropriate for the conduct of the business of the Subsidiary Holding Company and may prescribe the duties, constitution, and procedures thereof.

Article V—Officers

Section 1. Positions. The officers of the Subsidiary Holding Company shall be a president, one or more vice presidents, a secretary, and a treasurer or comptroller, each of whom shall be elected by the board of directors. The board of directors may also designate the chairman of the board as an officer. The offices of the secretary and treasurer or comptroller may be held by the same individual and a vice president may also be either the secretary or the treasurer or comptroller. The board of directors may designate one or more vice presidents as executive vice president or senior vice president. The board of directors may also elect or authorize the appointment of such other officers as the business of the Subsidiary Holding Company may require. The officers shall have such authority and perform such duties as the board of directors may from time to time authorize or determine. In the absence of action by the board of directors, the officers shall have such powers and duties as generally pertain to their respective offices.

Section 2. Election and Term of Office. The officers of the Subsidiary Holding Company shall be elected annually at the first meeting of the board of directors held after each annual meeting of the shareholders. If the election of officers is not held at such meeting, such election shall be held as soon thereafter as possible. Each officer shall hold office until a successor has been duly elected and qualified or until the officer's death, resignation, or removal in the manner hereinafter provided. Election or appointment of an officer, employee, or agent shall not of itself create contractual rights. The board of directors may authorize the Subsidiary Holding Company to enter into an employment contract with any officer in accordance with regulations of the Board; but no such contract shall impair the right of the board of directors to remove any officer at any time in accordance with section 3 of this article V.

Section 3. Removal. Any officer may be removed by the board of directors whenever in its judgment the best interests of the Subsidiary Holding Company will be served thereby, but such removal, other than for cause, shall be without prejudice to the contractual rights, if any, of the officer so removed.

Section 4. Vacancies. A vacancy in any office because of death, resignation, removal,

disqualification, or otherwise may be filled by the board of directors for the unexpired portion of the term.

Section 5. Remuneration. The remuneration of the officers shall be fixed from time to time by the board of directors.

Article VI—Contracts, Loans, Checks, and Deposits

Section 1. Contracts. To the extent permitted by regulations of the Board, and except as otherwise prescribed by these bylaws with respect to certificates for shares, the board of directors may authorize any officer, employee, or agent of the Subsidiary Holding Company to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Subsidiary Holding Company. Such authority may be general or confined to specific instances.

Section 2. Loans. No loans shall be contracted on behalf of the Subsidiary Holding Company and no evidence of indebtedness shall be issued in its name unless authorized by the board of directors. Such authority may be general or confined to specific instances.

Section 3. Checks; Drafts. *etc.* All checks, drafts, or other orders for the payment of money, notes, or other evidences of indebtedness issued in the name of the Subsidiary Holding Company shall be signed by one or more officers, employees or agents of the Subsidiary Holding Company in such manner as shall from time to time be determined by the board of directors.

Section 4. Deposits. All funds of the Subsidiary Holding Company not otherwise employed shall be deposited from time to time to the credit of the Subsidiary Holding Company in any duly authorized depositories as the board of directors may select.

Article VII—Certificates for Shares and Their Transfer

Section 1. Certificates for Shares. Certificates representing shares of capital stock of the Subsidiary Holding Company shall be in such form as shall be determined by the board of directors and approved by the Board. Such certificates shall be signed by the chief executive officer or by any other officer of the Subsidiary Holding Company authorized by the board of directors, attested by the secretary or an assistant secretary, and sealed with the corporate seal or a facsimile thereof. The signatures of such officers upon a certificate may be facsimiles if the certificate is manually signed on behalf of a transfer agent or a registrar other than the Subsidiary Holding Company itself or one of its employees. Each certificate for shares of capital stock shall be consecutively numbered or otherwise identified. The name and address of the person to whom the shares are issued, with the number of shares and date of issue, shall be entered on the stock transfer books of the Subsidiary Holding Company. All certificates surrendered to the Subsidiary Holding Company for transfer shall be canceled and no new certificate shall be issued until the former certificate for a like number of shares has been surrendered and canceled, except that in the case of a lost or destroyed certificate, a new certificate may be issued upon such terms and indemnity to the Subsidiary Holding Company as the board of directors may prescribe.

Section 2. Transfer of Shares. Transfer of shares of capital stock of the Subsidiary Holding Company shall be made only on its stock transfer books. Authority for such transfer shall be given only by the holder of record or by his or her legal representative, who shall furnish proper evidence of such authority, or by his or her attorney authorized by a duly executed power of attorney and filed with the Subsidiary Holding Company. Such transfer shall be made only on surrender for cancellation of the certificate for such shares. The person in whose name shares of capital stock stand on the books of the Subsidiary Holding Company shall be deemed by the Subsidiary Holding Company to be the owner for all purposes.

Article VIII—Fiscal Year

The fiscal year of the Subsidiary Holding Company shall end on the _____of_____each year. The appointment of accountants shall be subject to annual ratification by the shareholders.

Article IX—Dividends

Subject to the terms of the Subsidiary Holding Company's charter and the regulations and orders of the Board, the board of directors may, from time to time, declare, and the Subsidiary Holding Company may pay, dividends on its outstanding shares of capital stock.

Article X—Corporate Seal

The board of directors shall provide a Subsidiary Holding Company seal, which shall be two concentric circles between which shall be the name of the Subsidiary Holding Company. The year of incorporation or an emblem may appear in the center.

Article XI—Amendments

These bylaws may be amended in a manner consistent with regulations of the Board and shall be effective after: (i) approval of the amendment by a majority vote of the authorized board of directors, or by a majority vote of the votes cast by the shareholders of the Subsidiary Holding Company at any legal meeting, and (ii) receipt of any applicable regulatory approval. When a Subsidiary Holding Company fails to meet its quorum requirements, solely due to vacancies on the board, then the affirmative vote of a majority of the sitting board will be required to amend the bylaws.

PART 261—RULES REGARDING AVAILABILITY OF INFORMATION

■ 15. The authority citation for part 261 is revised to read as follows:

Authority: 5 U.S.C. 552; 12 U.S.C. 248(i) and (k), 321 *et seq.,* 611 *et seq.,* 1442, 1467a, 1817(a)(2)(A), 1817(a)(8), 1818(u) and (v), 1821(o), 1821(t), 1830, 1844, 1951 *et seq.,* 2601, 2801 *et seq.,* 2901 *et seq.,* 3101 *et seq.,* 3401 *et seq.;* 15 U.S.C. 77uuu(b), 78q(c)(3); 29 U.S.C. 1204; 31 U.S.C. 5301 *et seq.;* 42 U.S.C. 3601; 44 U.S.C. 3510.

Subpart A—General Provisions

■ 16. Revise § 261.1(a)(1) and (a)(2) to read as follows:

§ 261.1 Authority, purpose, and scope.

* * * * *

(a) *Authority.* (1) This part is issued by the Board of Governors of the Federal Reserve System (the Board) pursuant to the Freedom of Information Act, 5 U.S.C. 552; Sections 9, 11, and 25A of the Federal Reserve Act, 12 U.S.C. 248(i) and (k), 321 *et seq.,* (including 326), 611 *et seq.;* Section 22 of the Federal Home Loan Bank Act, 12 U.S.C 1442; section 10 of the Home Owners' Loan Act, 12 U.S.C. 1467a; the Federal Deposit Insurance Act, 12 U.S.C. 1817(a)(2)(A), 1817(a)(8), 1818(u) and (v), 1821(o); section 5 of the Bank Holding Company Act, 12 U.S.C. 1844; the Bank Secrecy Act, 12 U.S.C. 1951 *et seq.,* and Chapter 53 of Title 31; the Home Mortgage Disclosure Act, 12 U.S.C. 2801 *et seq.;* the Community Reinvestment Act, 12 U.S.C. 2901 *et seq.;* the International Banking Act, 12 U.S.C. 3101 *et seq.;* the Right to Financial Privacy Act, 12 U.S.C. 3401 *et seq.;* the Securities and Exchange Commission Authorization Act, 15 U.S.C. 77uuu(b), 78q(c)(3); the Employee Retirement Income Security Act, 29 U.S.C. 1204; the Money Laundering Suppression Act, 31 U.S.C. 5301, the Fair Housing Act, 42 U.S.C. 3601; the Paperwork Reduction Act, 44 U.S.C. 3510; and any other applicable law that establishes a basis for the exercise of governmental authority by the Board.

(2) This part establishes mechanisms for carrying out the Board's statutory responsibilities under statutes in paragraph (a)(1) of this section to the extent those responsibilities require the disclosure, production, or withholding of information. In this regard, the Board has determined that the Board, or its delegees, may disclose exempt information of the Board, in accordance with the procedures set forth in this part, whenever it is necessary or appropriate to do so in the exercise of any of the Board's supervisory or regulatory authorities, including but not limited to, authority granted to the Board in the Federal Reserve Act, 12 U.S.C. 221 *et seq.,* the Bank Holding Company Act, 12 U.S.C. 1841 *et seq.,* the Home Owners' Loan Act, 12 U.S.C. 1461 *et seq.,* and the International Banking Act, 12 U.S.C. 3101 *et seq.* The Board has determined that all such disclosures, made in accordance with the rules and procedures specified in this part, are authorized by law.

* * * * *

■ 17. In § 261.2, revise paragraphs (c)(1)(ii), paragraphs (k) and (o) to read as follows:

§ 261.2 Definitions.

* * * * *

(c)(1) * * *

(ii) Information gathered by the Board in the course of any investigation, suspicious activity report, cease-and-desist orders, civil money penalty enforcement orders, suspension, removal or prohibition orders, or other orders or actions under the Financial Institutions Supervisory Act of 1966, Public Law 89–695, 80 Stat. 1028 (codified as amended in scattered sections of 12 U.S.C.), the Bank Holding Company Act of 1956, 12 U.S.C. 1841 *et seq.,* the Home Owners' Loan Act, 12 U.S.C. 1461 *et seq.,* the Federal Reserve Act, 12 U.S.C. 221 *et seq.,* the International Banking Act of 1978, Public Law 95–369, 92 Stat. 607 (codified as amended in scattered sections of 12 U.S.C.), and the International Lending Supervision Act of 1983, 12 U.S.C. 3901 *et seq.;* except—

* * * * *

(k) *Report of inspection* means a report prepared by the Board concerning its inspection of a bank holding company and its bank and nonbank subsidiaries or other supervised financial institution.

* * * * *

(o) *Supervised financial institution* includes a bank, bank holding company (including subsidiaries), savings and loan holding company (including non-depository subsidiaries), U.S. branch or agency of a foreign bank, or any other institution that is supervised by the Board.

Subpart B—Published Information and Records Available to Public; Procedures for Requests

■ 18. Revise § 261.10(a)(7) to read as follows:

§ 261.10 Published information.

(a) * * *

(7) Notices of applications received under the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*), the Home Owners' Loan Act (12 U.S.C. 1461 *et seq.*), and the Change in Bank Control Act (12 U.S.C. 1817);

* * * * *

■ 19. Revise § 261.14(a)(5)(iii) to read as follows:

§ 261.14 Exemptions from disclosure.

(a) * * *

(5) * * *

(iii) Other documents prepared by the staffs of the Board, Federal Reserve Banks, or the Office of Thrift Supervision (including documents transferred to the Board pursuant to section 323(b)(2) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5433)); and

* * * * *

Subpart C—Confidential Information Made Available to Institutions, Financial Institution Supervisory Agencies, Law Enforcement Agencies, and Others in Certain Circumstances

■ 20. In § 261.20, revise paragraphs (a), (b)(1), (c) and (d) to read as follows:

§ 261.20 Confidential supervisory information made available to supervised financial institutions and financial institution supervisory agencies.

(a) *Disclosure of confidential supervisory information to supervised financial institutions.* Confidential supervisory information concerning a supervised bank, bank holding company (including subsidiaries), U.S. branch or agency of a foreign bank, savings and loan holding company (including subsidiaries), or other institution examined by the Federal Reserve System (''supervised financial institution'') may be made available by the Board or the appropriate Federal Reserve Bank to the supervised financial institution.

(b) * * *

(1) *Parent bank holding company, parent savings and loan holding company, directors, officers, and employees.* Any supervised financial institution lawfully in possession of confidential supervisory information of the Board pursuant to this section may disclose such information, or portions thereof, to its directors, officers, and employees, and to its parent bank holding company or parent savings and loan holding company and its directors, officers, and employees.

* * * * *

(c) *Disclosure upon request to Federal financial institution supervisory agencies.* Upon requests, the Director of the Division of Banking Supervision and Regulation or the appropriate Federal Reserve Bank, may make available to the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the Federal Home Loan Bank Board and their regional offices and representatives, confidential supervisory information and other appropriate information (such as confidential operating and condition reports) relating to a bank, bank holding company (including subsidiaries), savings and loan holding company (including subsidiaries), U.S. branch or agency of a foreign bank, or other supervised financial institution.

(d) *Disclosure upon request to state financial institution supervisory agencies.* Upon requests, the Director of the Division of Banking Supervision and Regulation or the appropriate Federal Reserve Bank may make available confidential supervisory information and other appropriate information (such as confidential operating and condition reports) relating to a bank, bank holding company (including subsidiaries), savings and loan holding company (including subsidiaries), U.S. branch or agency of a foreign bank, or other supervised financial institution to:

* * * * *

■ 21. Revise § 261.21(a) to read as follows:

§ 261.21 Confidential information made available to law enforcement agencies and other nonfinancial institution supervisory agencies.

(a) *Disclosure upon request.* Upon written request, the Board may make available to appropriate law enforcement agencies and to other nonfinancial institution supervisory agencies for use where necessary in the performance of official duties, reports of examination and inspection, confidential supervisory information, and other confidential documents and information of the Board concerning banks, bank holding companies and their subsidiaries, U.S. branches and agencies of foreign banks, savings and loan holding companies and their subsidiaries, and other examined institutions.

* * * * *

PART 261b—RULE REGARDING PUBLIC OBSERVATION OF MEETINGS

■ 22a. The authority citation for part 261b continues to read as follows:

Authority: 5 U.S.C. 552b.

■ 22b. Revise § 261b.7(a) to read as follows:

§ 261b.7 Meetings closed to public observation under expedited procedures.

(a) Since the Board and the Committee qualifies for the use of expedited procedures under subsection (d)(4) of the Act, meetings or portions thereof exempt under paragraph (a)(4), (a)(8), (a)(9)(i) or (a)(10) of § 261b.5 of this part, will be closed to public observation under the expedited procedures of this section. Following are examples of types of items that, absent compelling contrary circumstances, will qualify for these exemptions: Matters relating to a

specific bank or bank holding company, such as bank branches or mergers, bank holding company formations, or acquisition of an additional bank or acquisition or de novo undertaking of a permissible nonbanking activity; matters relating to a specific savings and loan holding company or its subsidiaries, such as acquisitions, reorganizations, savings and loan holding company formations, conversions, or acquisition or de novo undertaking of a permissible activity; bank regulatory matters, such as applications for membership, issuance of capital notes and investment in bank premises; foreign banking matters; bank supervisory and enforcement matters, such as cease-and-desist and officer removal proceedings; monetary policy matters, such as discount rates, use of the discount window, changes in the limitations on payment of interest on time and savings accounts, and changes in reserve requirements or margin regulations.

* * * * *

PART 262—RULES OF PROCEDURE

■ 23. The authority citation for part 262 is revised to read as follows:

Authority: 5 U.S.C. 552, 12 U.S.C. 321, 1467a, 1828(c), and 1842.

■ 24. In § 262.3:
■ A. Revise paragraphs (b)(1)(i)(B) and (b)(1)(i)(C);
■ B. Remove the undesignated paragraph following paragraph (b)(1)(i)(C);
■ C. Add paragraphs (b)(1)(i)(D) and (b)(1)(i)(E);
■ D. Revise paragraphs (b)(1)(ii)(D) and (b)(1)(ii)(E), and add paragraphs (b)(1)(ii)(F);
■ E. Revise paragraphs (i) introductory text, (i)(1), and (i)(5); and
■ F. Add paragraph (j)(3).

The revisions and additions read as follows:

§ 262.3 Applications.

* * * * *

(b) * * *

(1)(i) * * *

(B) To become a bank holding company (except as provided in § 225.15 of this chapter),

(C) By a bank holding company to acquire ownership or control of shares or assets of a bank, or to merge or consolidate with any other bank holding company,

(D) To become a savings and loan holding company (except as provided in § 238.14 of this chapter), and

(E) By a savings and loan holding company to acquire ownership or control of shares or assets of a savings association, or to merge or consolidate with any other savings and loan holding company, the applicant shall cause to be published a notice in the form prescribed by the Board.

(ii) * * *

(D) The community or communities in which the head office of each of the banks to be party to the merger, consolidation, or acquisition of assets or assumption of liabilities are located in the case of an application by a bank for merger, consolidation, or acquisition of assets or assumption of liabilities,

(E) The community or communities in which the head offices of the largest subsidiary bank, if any, or an applicant and of each bank, shares of which are to be directly or indirectly acquired, are located in the case of applications under section 3 of the Bank Holding Company Act, or

(F) The community or communities in which the head offices of the largest subsidiary savings association, if any, or an applicant and of each savings association, shares of which are to be directly or indirectly acquired, are located in the case of applications under section 10 of the Home Owners' Loan Act.

* * * * *

(i) *General procedures for bank holding company, savings and loan holding company, and merger applications.* In addition to procedures applicable under other provisions of this part, the following procedures are applicable in connection with the Board's consideration of applications under sections 3 and 4 of the Bank Holding Company Act of 1956 (12 U.S.C. 1842 and 1843), hereafter referred to as ''section 3 applications'' or ''section 4 applications,'' applications under section 10(c), (e), and (o) of the Home Owners' Loan Act (12 U.S.C. 1467a), hereafter referred to as ''section 10 applications,'' and of applications under section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1823), hereafter called ''merger applications.'' Except as otherwise indicated, the following procedures apply to all such applications.

(1) The Board issues each week a list that identifies section 3, section 4, section 10, and merger applications received and acted upon during the preceding week by the Board or the Reserve Banks pursuant to delegated authority. Notice of receipt of all section 3 section 4(c)(8), and section 10 applications acted on by the Board is published in the **Federal Register**.

* * * * *

(5) Unless the Board shall otherwise direct, each section 3, section 4, section 10, and merger application is made available for inspection by the public except for portions thereof as to which the Board determines that nondisclosure is warranted under section 552(b) of title 5 of the United States Code.

(j) * * *

(3) Special rules pertaining to applications filed pursuant to section 10(e) and (o) of HOLA follow:

(i) Each order or each letter of notification approving an application also includes, as a condition of approval, a requirement that the transaction approved shall be consummated within 3 months and, in the case of acquisition by a holding company of stock of a newly organized savings association, a requirement that such savings association shall be opened for business within 6 months, but such periods may be extended for good cause by the Board (or by the appropriate Federal Reserve Bank where authority to grant such extensions is delegated to the Reserve Bank).

(ii) [Reserved]

* * * * *

■ 25. In § 262.25 revise paragraphs (a) introductory text, (a)(2), (a)(3), and (a)(4) to read as follows:

§ 262.25 Policy statement regarding notice of applications; timeliness of comments; informal meetings.

(a) *Notice of applications.* A bank or company applying to the Board for a deposit-taking facility must first publish notice of its application in local newspapers. This requirement, found in § 262.3(b)(1) of the Board's Rules of Procedure covers applications under the Bank Holding Company Act, Bank Merger Act, and Home Owners' Loan Act, as well as applications for membership in the Federal Reserve System and for new branches of State member banks. Notices of these applications are published in newspapers of general circulation in the communities where the applicant intends to do business as well as in the community where the applicant's head office is located. These notices are important in calling the public's attention to an applicant's plans and giving the public a chance to comment on these plans. To improve the effectiveness of the notices, the Board has supplemented its notice procedures as follows.

* * * * *

(2) The Board also publishes notice of bank holding company applications for bank acquisitions (but not for bank mergers or branches) and savings and

loan holding company applications for savings association acquisitions (but not for savings association mergers or branches) in the **Federal Register** after the application is received and the Community Affairs Officer can provide the exact date on which this comment period ends. (The **Federal Register** comment period will generally end after the date specified in the newspaper notice.)

(3) In addition to the formal newspaper and **Federal Register** notices discussed above, each Reserve Bank publishes a weekly list of applications submitted to the Reserve Bank for which newspaper notices have been published. Any person or organization may arrange to have the list mailed to them regularly, or may request particular lists, by contacting the Reserve Bank's Community Affairs Officer. Each Reserve Bank's list includes only applications submitted to that particular Reserve Bank, and persons or groups should request lists from each Reserve Bank having jurisdiction over applications in which they may be interested. Since the lists are prepared as a courtesy by the Reserve Bank, and are not intended to replace any formal notice required by statute or regulation, the Reserve Banks and the Board do not assume responsibility for errors or omissions. In addition, the weekly lists prepared by Reserve Banks include certain applications by bank holding companies and savings and loan holding companies for nonbank and non-depository institution acquisitions, respectively, filed with the Reserve Bank.

(4) With respect to applications by bank holding companies and savings and loan holding companies to engage *de novo* in nonbank activities or make acquisitions of nonbank firms, the Board publishes notice of most of these applications in the **Federal Register** when the applications are filed. Notice of certain small acquisitions may be published in a newspaper of general circulation in the area(s) to be served. While applications for nonbanking activities are not covered by the provisions of the Community Reinvestment Act or the notice provisions of § 262.3 of the Board's Rules of Procedure, the provisions of this Statement apply to such applications.

* * * * *

PART 263—RULES OF PRACTICE FOR HEARINGS

■ 26. The authority citation for Part 263 is revised to read as follows:

Authority: 5 U.S.C. 504, 554–557; 12 U.S.C. 248, 324, 504, 505, 1464, 1467, 1467a, 1468, 1817(j), 1818, 1820(k), 1828(c), 1829(e), 1831o, 1831p–1, 1847(b), 1847(d), 1884(b), 1972(2)(F), 3105, 3107, 3108, 3349, 3907, 3909, 4717; 15 U.S.C. 21, 78(l), 78o–4, 78o–5, 78u–2; and 28 U.S.C. 2461 *note*.; 31 U.S.C. 5321; 42 U.S.C. 4012a.

Subpart A—Uniform Rules of Practice and Procedure

■ 27. In § 263.1:

■ A. Revise paragraph (c); paragraphs (e)(2), (e)(11); and

■ B. Add paragraphs (e)(13) through (e)(15).

The additions and revisions read as follows:

§ 263.1 Scope.

* * * * *

(c) Change-in-control proceedings under section 7(j)(4) of the FDIA (12 U.S.C. 1817(j)(4)) to determine whether the Board of Governors of the Federal Reserve System (''Board'') should issue an order to approve or disapprove a person's proposed acquisition of a state member bank, bank holding company, or savings and loan holding company;

* * * * *

(e) * * *

(2) Sections 19, 22, 23, 23A and 23B of the Federal Reserve Act (''FRA''), or any regulation or order issued thereunder and certain unsafe or unsound practices or breaches of fiduciary duty, pursuant to 12 U.S.C. 504 and 505;

* * * * *

(11) Any provision of law referenced in section 102(f) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a(f)) or any order or regulation issued thereunder;

* * * * *

(13) Section 5 of the Home Owners' Loan Act (''HOLA'') or any regulation or order issued thereunder, pursuant to 12 U.S.C. 1464 (d), (s) and (v);

(14) Section 9 of the HOLA or any regulation or order issued thereunder, pursuant to 12 U.S.C. 1467(d); and

(15) Section 10 of the HOLA, pursuant to 12 U.S.C. 1467a (i) and (r);

* * * * *

■ 28. In § 263.3:

■ A. Revise paragraphs (f)(4), (f)(5);

■ B. Add paragraph (f)(6);

■ C. Revise paragraphs (i) and (m).

The additions and revisions read as follows:

§ 263.3 Definitions.

* * * * *

(f) * * *

(4) Any foreign bank or company to which section 8 of the IBA (12 U.S.C. 3106), applies or any subsidiary (other than a bank) thereof;

(5) Any Federal agency as that term is defined in section 1(b) of the IBA (12 U.S.C. 3101(5)); and

(6) Any savings and loan holding company or any subsidiary (other than a savings association) of a savings and loan holding company as those terms are defined in the HOLA (12 U.S.C. 1461 *et seq.*).

* * * * *

(i) *OFIA* means the Office of Financial Institution Adjudication, the executive body charged with overseeing the administration of administrative enforcement proceedings for the Board, the Office of Comptroller of the Currency (the *OCC*), the Federal Deposit Insurance Corporation (the *FDIC*), and the National Credit Union Administration (the *NCUA*).

* * * * *

(m) *Uniform Rules* means those rules in subpart A of this part that are common to the Board, the OCC, the FDIC, and the NCUA.

* * * * *

Subpart B—Board Local Rules Supplementing the Uniform Rules

■ 29. Section 263.50(b)(13) and (b)(14) are revised and paragraph (b)(15) is added to read as follows:

§ 263.50 Purpose and scope.

* * * * *

(b) * * *

(13) Reclassification of a member bank on grounds of unsafe and unsound practice under section 38(g)(1) of the FDI Act (12 U.S.C. 1831o(g)(1));

(14) Issuance of an order requiring a member bank to dismiss a director or senior executive officer under section 38 (e)(5) and 38(f)(2) (F)(ii) of the FDI Act (12 U.S.C. 1831o(e)(5) and 1831o(f)(2) (F)(ii));

(15) Adjudications under section 10 of the HOLA (12 U.S.C. 1467a).

■ 30. Revise § 263.56 to read as follows:

§ 263.56 Initial licensing proceedings.

Proceedings with respect to applications for initial licenses shall include, but not be limited to, applications for Board approval under section 3 of the BHC Act and section 10 of HOLA and such proceedings as may be ordered by the Board with respect to applications under section 18(c) of the FDIA. In such initial licensing proceedings, the procedures set forth in subpart A of this part shall apply, except that the Board may designate a Board Counsel to represent the Board in a nonadversary capacity for the purpose of developing for the record information

relevant to the issues to be determined by the Presiding Officer and the Board. In such proceedings, Board Counsel shall be considered to be a decisional employee for purposes of §§ 263.9 and 263.40 of subpart A.

Subpart C—Rules and Procedures for Assessment and Collection of Civil Money Penalties

■ 31. In § 263.65, revise paragraph (a) and add new paragraphs (b) (11) and (b)(12) to read as follows:

§ 263.65 Civil penalty inflation adjustments.

(a) *Inflation adjustments.* In accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 *note*), the Board has set forth in paragraph (b) of this section adjusted maximum penalty amounts for each civil money penalty provided by law within its jurisdiction. The adjusted civil penalty amounts provided in paragraphs (b)(1) through (10) of this section replace only the amounts published in the statutes authorizing the assessment of penalties and the previously-adjusted amounts adopted as of October 12, 2004, October 12, 2000, and October 24, 1996.The adjusted civil penalty amounts provided in paragraphs (b)(11) and (12) of this section replace only the amounts published in the statutes authorizing the assessment of penalties and were adjusted by the Office of Thrift Supervision as of October 27, 2008. The authorizing statutes contain the complete provisions under which the Board may seek a civil money penalty. The increased penalty amounts apply only to violations occurring after September 13, 2011.

* * * * *

(b) * * *

(11) 12 U.S.C. 1467a(i):

(i) 12 U.S.C. 1467a(i)(2)–$32,500.

(ii) 12 U.S.C. 1467a(i)(3)–$32,500.

(12) 12 U.S.C. 1467a(r):

(i) 12 U.S.C. 1467a(r)(1)–$ 2,200.

(ii) 12 U.S.C. 1467a(r)(2)–$32,500.

(iii) 12 U.S.C. 1467a(r)(3)–$1,375,000.

Subpart E—Procedures for Issuance and Enforcement of Directives To Maintain Adequate Capital

■ 32. Revise § 263.80 to read as follows:

§ 263.80 Purpose and scope.

This subpart establishes procedures under which the Board may issue a directive or take other action to require a state member bank, bank holding company, or a savings and loan holding company to achieve and maintain adequate capital.

■ 33. In § 263.81, revise paragraph (c) and add new paragraph (e) to read as follows:

§ 263.81 Definitions.

* * * * *

(c) *Directive* means a final order issued by the Board:

(1) Pursuant to ILSA (12 U.S.C. 3907(b)(2)) requiring a state member bank or bank holding company to increase capital to or maintain capital at the minimum level set forth in the Board's Capital Adequacy Guidelines or as otherwise established under procedures described in § 263.85; or

(2) Pursuant to HOLA (12 U.S.C. 1467a(g)(1)) requiring a savings and loan holding company to increase capital to or maintain capital at a certain level.

* * * * *

(e) *Savings and loan holding company* means any company that controls a savings association as defined in section 10 of the HOLA, 12 U.S.C. 1467a, and in the Board's Regulation LL (12 CFR 238.2) or any direct or indirect subsidiary thereof other than a savings association subsidiary as defined in section 10 of the HOLA, 12 U.S.C. 1467a, and in the Board's Regulation LL (12 CFR 238.2).

■ 34. In § 263.83 revise paragraph (a) to read as follows:

§ 263.83 Issuance of capital directives.

(a) *Notice of intent to issue directive.* If a state member bank or bank holding company is operating with less than the minimum level of capital established in the Board's Capital Adequacy Guidelines, or as otherwise established under the procedures described in § 263.85, or if the Board has determined that the current capital level of a savings and loan holding company is not adequate, the Board may issue and serve upon such state member bank, bank holding company, or savings and loan holding company written notice of the Board's intent to issue a directive to require the bank, bank holding company, or savings and loan holding company to achieve and maintain adequate capital within a specified time period.

* * * * *

■ 35. In § 263.84, revise paragraphs (a) and (c) to read as follows:

§ 263.84 Enforcement of directive.

(a) *Judicial and administrative remedies.* (1) Whenever a bank or bank holding company fails to follow a directive issued under this subpart, or to submit or adhere to a capital adequacy plan as required by such directive, the Board may seek enforcement of the directive, including the capital adequacy plan, in the appropriate United States district court, pursuant to section 908 (b)(2)(B)(ii) of ILSA (12 U.S.C. 3907(b)(2)(B)(ii)) and to section 8(i) of the FDIA (12 U.S.C. 1818(i)), in the same manner and to the same extent as if the directive were a final cease-and-desist order. Whenever a savings and loan holding company fails to follow a directive issued under this subpart, or to submit or adhere to a capital adequacy plan as required by such directive, the Board may seek enforcement of the directive, including the capital adequacy plan, in the proper United States district court, or the United States court of any territory or other place subject to the jurisdiction of the United States, pursuant to section 10(g)(4) of HOLA (12 U.S.C. 1567a(g)(4)).

(2) The Board, pursuant to section 910(d) of ILSA (12 U.S.C. 3909(d)), may also assess civil money penalties for violation of the directive against any bank or bank holding company and any institution-affiliated party of the bank or bank holding company, in the same manner and to the same extent as if the directive were a final cease-and-desist order. The Board, pursuant to section 10(i) (12 U.S.C. 1467a(i)), may also assess civil money penalties for violation of the directive against any savings and loan holding company and any institution-affiliated party of the savings and loan holding company, in the same manner and to the same extent as if the directive were a final cease-and-desist order.

* * * * *

(c) *Consideration in application proceedings.* In acting upon any application or notice submitted to the Board pursuant to any statute administered by the Board, the Board may consider the progress of a state member bank, bank holding company, or savings and loan holding company or any subsidiary thereof in adhering to any directive or capital adequacy plan required by the Board pursuant to this subpart, or by any other appropriate banking supervisory agency pursuant to ILSA. The Board shall consider whether approval or a notice of intent not to disapprove would divert earnings, diminish capital, or otherwise impede the bank, bank holding company, or savings and loan holding company in achieving its required minimum capital level or complying with its capital adequacy plan.

■ 36. In § 263.85, revise paragraphs (b)(1), (b)(2), and (b)(3) to read as follows:

§ 263.85 Establishment of increased capital level for specific institutions.

* * * * *

(b) *Procedure to establish higher capital requirement* —(1) *Notice.* When the Board determines that capital levels above those in the Board's Capital Adequacy Guidelines may be necessary and appropriate for a particular bank or bank holding company under the circumstances, or when the Board determines that the current capital level of a savings and loan holding company is not adequate, the Board shall give the bank or bank holding company notice of the proposed higher capital requirement and shall permit the bank, bank holding company, or savings and loan holding company an opportunity to comment upon the proposed capital level, whether it should be required and, if so, under what time schedule. The notice shall contain the Board's reasons for proposing a higher level of capital.

(2) *Response.* The bank, bank holding company, or savings and loan holding company shall be allowed at least 14 days to respond, unless the Board determines that a shorter period is necessary because of the financial condition of the bank, bank holding company, or savings and loan holding company. Failure by the bank, bank holding company, or savings and loan holding company to file a written response to the notice within the time set by the Board shall constitute a waiver of the opportunity to respond and shall constitute consent to issuance of a directive containing the required minimum capital level.

(3) *Board decision.* After considering the response of the institution, the Board may issue a written directive to the bank, bank holding company, or savings and loan holding company setting an appropriate capital level and the date on which this capital level will become effective. The Board may require the bank, bank holding company, or savings and loan holding company to submit and adhere to a plan for achieving such higher capital level as the Board may set.

* * * * *

Subpart F—Practice Before the Board

■ 37. Revise § 263.94(g) to read as follows:

§ 263.94 Conduct warranting sanctions.

* * * * *

(g) Suspension or debarment from practice before the OCC, the FDIC, the Office of Thrift Supervision, the Securities and Exchange Commission, the NCUA, or any other Federal agency based on matters relating to the supervisory responsibilities of the Board;

* * * * *

Subpart G—Rules Regarding Claims Under the Equal Access to Justice Act

■ 38. Revise § 263.103(c)(3) to read as follows:

§ 263.103 Eligibility of applicants.

* * * * *

(c) * * *

(3) The net worth of a financial institution shall be established by the net worth information reported in conformity with applicable instructions and guidelines on the financial institution's financial report to its supervisory agency for the last reporting date before the initiation of the adversary proceeding. A bank holding company's and a savings and loan holding company's net worth will be considered on a consolidated basis even if the bank holding company or the savings and loan holding company is not required to file its regulatory reports to the Board on a consolidated basis.

* * * * *

■ 39. Revise § 263.105(b)(2) and (b)(3) to read as follows:

§ 263.105 Statement of net worth.

* * * * *

(b) * * *

(2) In the case of applicants or affiliates that are not banks, net worth shall be considered for the purposes of this subpart to be the excess of total assets over total liabilities, as of the date the underlying proceeding was initiated, except as adjusted under § 263.103(c)(5). The net worth of a bank holding company or a savings and loan holding company shall be considered on a consolidated basis. Assets and liabilities of individuals shall include those beneficially owned.

(3) If the applicant or any of its affiliates is a bank or a savings association, the portion of the statement of net worth which relates to the bank or the savings association shall consist of a copy of the bank's or a savings association's last Consolidated Report of Condition and Income filed before the initiation of the adversary adjudication. Net worth shall be considered for the purposes of this subpart to be the total equity capital (or, in the case of mutual savings banks or mutual savings associations, the total surplus accounts) as reported, in conformity with applicable instructions and guidelines, on the bank's or the savings association's Consolidated Report of Condition and Income filed for the last reporting date before the initiation of the proceeding.

* * * * *

Subpart J—Removal, Suspension, and Debarment of Accountants From Performing Audit Services

■ 40. Revise § 263.400 to read as follows:

§ 263.400 Scope.

This subpart, which implements section 36(g)(4) of the Federal Deposit Insurance Act (FDIA)(12 U.S.C. 1831m(g)(4)), provides rules and procedures for the removal, suspension, or debarment of independent public accountants and their accounting firms from performing independent audit and attestation services for insured state member banks, bank holding companies, and savings and loan holding companies required by section 36 of the FDIA (12 U.S.C. 1831m).

■ 41. Revise § 263.401(c) to read as follows:

§ 263.401 Definitions.

* * * * *

(c) *Banking organization* means an insured state member bank, bank holding company, or savings and loan holding company that obtains audit services that are used to satisfy requirements imposed by section 36 or part 363 on an insured subsidiary bank or insured savings association of that holding company.

* * * * *

PART 264a—POST-EMPLOYMENT RESTRICTIONS FOR SENIOR EXAMINERS

■ 42. The authority citation for Part 264a continues to read as follows:

Authority: 12 U.S.C. 1820(k).

■ 43 Revise § 264a.2 to read as follows:

§ 264a.2 Who is considered a senior examiner of the Federal Reserve?

For purposes of this part, an officer or employee of the Federal Reserve is considered to be the ''senior examiner'' for a particular state member bank, bank holding company, savings and loan holding company, or foreign bank if—

(a) The officer or employee has been authorized by the Board to conduct examinations or inspections on behalf of the Board;

(b) The officer or employee has been assigned continuing, broad and lead responsibility for examining or inspecting the state member bank, bank holding company, savings and loan holding company, or foreign bank; and

(c) The officer's or employee's responsibilities for examining, inspecting and supervising the state member bank, bank holding company, savings and loan holding company, or foreign bank—

(1) Represent a substantial portion of the officer's or employee's assigned responsibilities; and

(2) Require the officer or employee to interact routinely with officers or employees of the state member bank, bank holding company, savings and loan holding company, or foreign bank or its affiliates.

■ 44. In § 264a.3, add paragraph (d) to read as follows:

§ 264a.3 What special post-employment restrictions apply to senior examiners?

* * * * *

(d) *Senior Examiners of Savings and Loan Holding Companies.* An officer or employee of the Federal Reserve who serves as the senior examiner of a savings and loan holding company for two or more months during the last twelve months of such individual's employment with the Federal Reserve may not, within one year of leaving the employment of the Federal Reserve, knowingly accept compensation as an employee, officer, director or consultant from—

(1) The savings and loan holding company; or

(2) Any depository institution that is controlled by the savings and loan holding company.

■ 45. Revise § 264a.5(a)(1)(i) to read as follows:

§ 264a.5 What are the penalties for violating these special post-employment restrictions?

(a) * * *

(1) * * *

(i) Removing the individual from office or prohibiting the individual from further participation in the affairs of the relevant state member bank, bank holding company, savings and loan holding company, foreign bank or other depository institution or company for a period of up to five years; and

* * * * *

■ 46. Section 264a.6(c) is revised and paragraph (h) is added to read as follows:

§ 264a.6 What other definitions and rules of construction apply for purposes of this part?

* * * * *

(c) *Control* has the meaning given in section 2 of the Bank Holding Company Act, with respect to banking holding companies, and has the meaning given in section 10 of the Home Owners' Loan Act, with respect to savings and loan holding companies.

* * * * *

(h) *Savings and loan holding company* means any company that controls a savings association (as provided in section 10 of the Home Owners' Loan Act (12 U.S.C. 1461 *et seq.*)).

By order of the Board of Governors of the Federal Reserve System, September 1, 2011.

Jennifer J. Johnson,

Secretary of the Board.

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