

§ 239.15

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 Bylaws may be adopted, amended or repealed by a majority of the votes cast by the members at a legal meeting or a majority of the mutual holding company's board of directors.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 by-

12 CFR Ch. II (1-1-12 Edition)

laws. 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.

Federal Reserve System

§ 239.15

(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 pe-

riods 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

§ 239.15

12 CFR Ch. II (1–1–12 Edition)

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:

Federal Reserve System

§ 239.16

(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