

Federal Reserve System

§ 239.24

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.

§ 239.24

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

(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, pro-

vided 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

Federal Reserve System

§ 239.25

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