

## § 239.50

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.

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

(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.

**Federal Reserve System****§ 239.52**

(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 privyty 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

**§ 239.53**

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

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

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.