

Federal Reserve System

§ 239.56

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 com-

pany 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

§ 239.57

12 CFR Ch. II (1–1–12 Edition)

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.