§ 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.federal储备.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.

(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 mid-point of the estimated price range in the offering circular.

(3) The minimum price must be no more than 15 percent below the mid-point 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:
§ 239.59  

Institution size  

<table>
<thead>
<tr>
<th>Institution size</th>
<th>Officer and director purchases (percent)</th>
</tr>
</thead>
<tbody>
<tr>
<td>$50,000,000 or less</td>
<td>35</td>
</tr>
<tr>
<td>$50,000,001–100,000,000</td>
<td>34</td>
</tr>
<tr>
<td>$100,000,001–150,000,000</td>
<td>33</td>
</tr>
<tr>
<td>$150,000,001–200,000,000</td>
<td>32</td>
</tr>
<tr>
<td>$200,000,001–250,000,000</td>
<td>31</td>
</tr>
<tr>
<td>$250,000,001–300,000,000</td>
<td>30</td>
</tr>
<tr>
<td>$300,000,001–350,000,000</td>
<td>29</td>
</tr>
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<td>28</td>
</tr>
<tr>
<td>$400,000,001–450,000,000</td>
<td>27</td>
</tr>
<tr>
<td>$450,000,001–500,000,000</td>
<td>26</td>
</tr>
<tr>
<td>Over $500,000,000</td>
<td>25</td>
</tr>
</tbody>
</table>

(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.

(1) **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 (1)(1) and (1)(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 (1)(1) and (1)(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