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into such company, unless the necessary approvals are obtained from the Board, including approval pursuant to § 238.11 of this chapter. The approval of the members of the mutual holding companies shall also be obtained if the Board advises the mutual holding companies in writing that such approval will be required.

(4) *Stock holding companies.* A mutual holding company may not acquire control of a savings and loan holding company in the stock form that is not a subsidiary holding company, unless the necessary approvals are obtained from the Board, including approval pursuant to § 238.11 of this chapter. The acquired holding company may be held as a subsidiary of the mutual holding company or merged into the mutual holding company.

(5) *Non-controlling acquisitions of savings association stock.* A mutual holding company may acquire non-controlling amounts of the stock of savings associations and savings and loan holding companies subject to the restrictions imposed by 12 U.S.C. 1467a(e) and (q) and §§ 238.41 and 238.11 of this chapter.

(6) *Other corporations.* A mutual holding company may not acquire control of, or make non-controlling investments in the stock of, any corporation other than a savings association or savings and loan holding company unless:

(i)(A) Such corporation is engaged exclusively in activities that are permissible for mutual holding companies pursuant to § 239.8(a); or

(B) It is lawful for the stock of such corporation to be purchased by a federal savings association under the applicable regulations of the Comptroller of the Currency or by a state savings association under the applicable regulations of the Federal Deposit Insurance Corporation and the laws of any state where any subsidiary savings association of the mutual holding company has its home office; and

(ii) Such corporation is not controlled, directly or indirectly, by a subsidiary savings association of the mutual holding company.

(b) *Dispositions.* (1) A mutual holding company shall provide written notice to the appropriate Reserve Bank at least 30 days prior to the effective date

of any direct or indirect transfer of any of the stock that it holds in a subsidiary holding company, a resulting association, an acquiree association, or any subsidiary savings association that was in the mutual form when acquired by the mutual holding company, including stock transferred in connection with a pledge pursuant to § 239.8(b) or any transfer of all or a substantial portion of the assets or liabilities of any such subsidiary holding company or association. Any such disposition shall comply with the requirements of this part, as appropriate, and with any other applicable statute or regulation.

(2) A mutual holding company may, subject to applicable laws and regulations, transfer any or all of the stock or cause or permit the transfer of any or all of the assets and liabilities of:

(i) Any subsidiary savings association that was in the stock form when acquired, provided such association is not a resulting association or an acquiree association;

(ii) Any subsidiary holding company acquired pursuant to paragraph (a)(4) of this section; or

(iii) Any corporation other than a savings association or savings and loan holding company.

(3) A mutual holding company may, subject to applicable laws and regulations, transfer any stock acquired pursuant to paragraph (a)(5) of this section.

(4) No transfer authorized by this section may be made to any insider of the mutual holding company, any associate of an insider of the mutual holding company, or any tax-qualified or non-tax-qualified employee stock benefit plan of the mutual holding company unless the mutual holding company provides notice to the appropriate Reserve Bank at least 30 days prior to the effective date of the proposed transfer. This notice shall be in addition to any other application or notice required under applicable laws or regulations, including those imposed by this part or Regulation LL.

§ 239.8 Operating restrictions.

(a) *Activities restrictions.* A mutual holding company may engage in any business activity specified in 12 U.S.C. 1467a(c)(2) or (c)(9)(A)(ii). In addition,

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the business activities of subsidiaries of mutual holding companies may include the activities specified in § 239.7(a)(6). A mutual holding company or its subsidiaries may engage in the foregoing activities only upon compliance with the procedures specified in §§ 238.53(c) or 238.54(b) of this chapter.

(b) *Pledging stock.* (1) No mutual holding company may pledge the stock of its resulting association, an acquiree association, or any subsidiary savings association that was in the mutual form when acquired by the mutual holding company (or its parent mutual holding company), unless the proceeds of the loan secured by the pledge are infused into the association whose stock is pledged. No mutual holding company may pledge the stock of its subsidiary holding company unless the proceeds of the loan secured by the pledge are infused into any subsidiary savings association of the subsidiary holding company that is a resulting association, an acquiree association, or a subsidiary savings association that was in the mutual form when acquired by the subsidiary holding company (or its parent mutual holding company). In the event the subsidiary holding company has more than one subsidiary savings association, the loan proceeds shall, unless otherwise approved by the Board, be infused in equal amounts to each subsidiary savings association. Any amount of the stock of such association or subsidiary holding company may be pledged for these purposes. Nothing in this paragraph shall be deemed to prohibit:

(i) The payment of dividends from a subsidiary savings association to its mutual holding company parent to the extent otherwise permissible; or

(ii) The payment of dividends from a subsidiary holding company to its mutual holding company parent to the extent otherwise permissible; or

(iii) A mutual holding company from pledging the stock of more than one subsidiary savings association provided that the stock pledged of each such subsidiary association is proportionate to the proceeds of the loan infused into each subsidiary association.

(2) Any mutual holding company that fails to make any payment on a loan secured by the pledge of stock pursuant

to paragraph (b)(1) of this section on or before the date on which such payment is due shall, on the first day after such payment is due, provide written notice of nonpayment to the appropriate Reserve Bank.

(c) *Restrictions on stock repurchases.* (1) No subsidiary holding company that has any stockholders other than its parent mutual holding company may repurchase any share of stock within one year of its date of issuance (which may include the time period the shares issued by the savings association were outstanding if the subsidiary holding company was formed after the initial issuance by the savings association), unless the repurchase:

(i) Is in compliance with the requirements set forth in § 239.63;

(ii) Is part of a general repurchase made on a pro rata basis pursuant to an offer approved by the Board and made to all stockholders of the association or subsidiary holding company (except that the parent mutual holding company may be excluded from the repurchase with the Board's approval);

(iii) Is limited to the repurchase of qualifying shares of a director; or

(iv) Is purchased in the open market by a tax-qualified or non-tax-qualified employee stock benefit plan of the savings association (or of a subsidiary holding company) in an amount reasonable and appropriate to fund such plan.

(2) No mutual holding company may purchase shares of its subsidiary savings association or subsidiary holding company within one year after a stock issuance, except if the purchase complies with § 239.63. For purposes of this section, the reference in § 239.63 to five percent refers to minority shareholders.

(d) *Restrictions on waiver of dividends.*

(1) A mutual holding company may waive the right to receive any dividend declared by a subsidiary of the mutual holding company, if—

(i) No insider of the mutual holding company, associate of an insider, or tax-qualified or non-tax-qualified employee stock benefit plan of the mutual holding company holds any share of the stock in the class of stock to which the waiver would apply; or

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(ii) The mutual holding company gives written notice to the Board of the intent of the mutual holding company to waive the right to receive dividends, not later than 30 days before the date of the proposed date of payment of the dividend, and the Board does not object to the waiver.

(2) A notice of a waiver under paragraph (d)(1)(ii) of this section shall include a copy of the resolution of the board of directors of the mutual holding company together with any supporting materials relied upon by the board of directors of the mutual holding company, concluding that the proposed dividend waiver is consistent with the fiduciary duties of the board of directors to the mutual members of the mutual holding company. The resolution shall include:

(i) A description of the conflict of interest that exists because of a mutual holding company director's ownership of stock in the subsidiary declaring dividends and any actions the mutual holding company and board of directors have taken to eliminate the conflict of interest, such as waiver by the directors of their right to receive dividends;

(ii) A finding by the mutual holding company's board of directors that the waiver of dividends is consistent with the board of directors' fiduciary duties despite any conflict of interest;

(iii) If the mutual holding company has pledged the stock of a subsidiary holding company or subsidiary savings association as collateral for a loan made to the mutual holding company, or is subject to any other loan agreement, an affirmation that the mutual holding company is able to meet the terms of the loan agreement; and

(iv) An affirmation that a majority of the mutual members of the mutual holding company eligible to vote have, within the 12 months prior to the declaration date of the dividend by the subsidiary of the mutual holding company, approved a waiver of dividends by the mutual holding company, and any proxy statement used in connection with the member vote contained—

(A) A detailed description of the proposed waiver of dividends by the mutual holding company and the reasons the board of directors requested the waiver of dividends;

(B) The disclosure of any mutual holding company director's ownership of stock in the subsidiary declaring dividends and any actions the mutual holding company and board of directors have taken to eliminate the conflict of interest, such as the directors waiving their right to receive dividends; and

(C) A provision providing that the proxy concerning the waiver of dividends given by the mutual members may be used for no more than 12 months from the date it is given.

(3) The Board may not object to a waiver of dividends under paragraph (d)(1)(ii) of this section if:

(i) The waiver would not be detrimental to the safe and sound operation of the savings association;

(ii) The board of directors of the mutual holding company expressly determines that a waiver of the dividend by the mutual holding company is consistent with the fiduciary duties of the board of directors to the mutual members of the mutual holding company; and

(iii) The mutual holding company has, prior to December 1, 2009—

(A) Reorganized into a mutual holding company under section 10(o) of HOLA;

(B) Issued minority stock either from its mid-tier stock holding company or its subsidiary stock savings association; and

(C) Waived dividends it had a right to receive from the subsidiary stock savings association.

(4) For a mutual holding company that does not meet each of the conditions in paragraph (d)(3) of this section, the Board will not object to a waiver of dividends under paragraph (d)(1)(ii) of this section if—

(i) The savings association currently operates in a manner consistent with the safe and sound operation of a savings association, and the waiver is not detrimental to the safe and sound operation of the savings association;

(ii) If the mutual holding company has pledged the stock of a subsidiary holding company or subsidiary savings association as collateral for a loan made to the mutual holding company, or is subject to any other loan agreement, an affirmation that the mutual

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holding company is able to meet the terms of the loan agreement;

(iii) Within the 12 months prior to the declaration date of the dividend by the subsidiary of the mutual holding company, a majority of the mutual members of the mutual holding company has approved the waiver of dividends by the mutual holding company. Any proxy statement used in connection with the member vote must contain—

(A) A detailed description of the proposed waiver of dividends by the mutual holding company and the reasons the board of directors requested the waiver of dividends;

(B) The disclosure of any mutual holding company director's ownership of stock in the subsidiary declaring dividends and any actions the mutual holding company and board of directors have taken to eliminate the conflict of interest, such as the directors waiving their right to receive dividends; and

(C) A provision providing that the proxy concerning the waiver of dividends given by the mutual members may be used for no more than 12 months from the date it is given;

(iv) The board of directors of the mutual holding company expressly determines that the waiver of dividends is consistent with the board of directors' fiduciary duties despite any conflict of interest;

(v)(A) A majority of the entire board of directors of the mutual holding company approves the waiver of dividends and any director with direct or indirect ownership, control, or the power to vote shares of the subsidiary declaring the dividend, or who otherwise directly or indirectly benefits through an associate from the waiver of dividends, has abstained from the board vote; or

(B) Each officer or director of the mutual holding company or its affiliates, associate of such officer or director, and any tax-qualified or non-tax-qualified employee stock benefit plan in which such officer or director participates that holds any share of the stock in the class of stock to which the waiver would apply waives the right to receive any dividend declared by a subsidiary of the mutual holding company;

(vi) The Board does not object to the amount of dividends declared by a sub-

subsidiary of the mutual holding company. In reviewing whether a declaration by a subsidiary of the mutual holding company is appropriate, the Board may consider, among other factors, the reasonableness of the entire dividend distribution declared if the waiver is not approved;

(vii) The waived dividends are excluded from the capital accounts of the subsidiary holding company or savings association, as applicable, for purposes of calculating any future dividend payments;

(viii) The mutual holding company appropriately accounts for all waived dividends in a manner that permits the Board to consider the waived dividends in evaluating the proposed exchange ratio in the event of a full conversion of the mutual holding company to stock form; and

(ix) The mutual holding company complies with such other conditions as the Board may require to prevent conflicts of interest or actions detrimental to the safe and sound operation of the savings association.

(5) *Valuation.* (i) The Board will consider waived dividends in determining an appropriate exchange ratio in the event of a full conversion to stock form.

(ii) In the case of a savings association that has reorganized into a mutual holding company, has issued minority stock from a mid-tier stock holding company or a subsidiary stock savings association of the mutual holding company, and has waived dividends it had a right to receive from a subsidiary savings association before December 1, 2009, the Board shall not consider waived dividends in determining an appropriate exchange ratio in the event of a full conversion to stock form.

(e) *Restrictions on issuance of stock to insiders.* A subsidiary of a mutual holding company that is not a savings association or subsidiary holding company may issue stock to any insider, associate of an insider or tax-qualified or non-tax-qualified employee stock benefit plan of the mutual holding company or any subsidiary of the mutual holding company, provided that such persons or plans provide written notice to the appropriate Reserve Bank at

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least 30 days prior to the stock issuance, and the Reserve Bank or the Board does not object to the subsequent stock issuance. Subsidiary holding companies may issue stock to such persons only in accordance with § 239.24.

(f) *Applicability of rules governing savings and loan holding companies.* Except as expressly provided in this part, mutual holding companies shall be subject to the provisions of 12 U.S.C. 1467a and 3201 *et seq.* and the provisions of parts 207, 228, and 238 of this chapter.

(g) *Separate vote for charitable organization contribution.* In a mutual holding company stock issuance, a separate vote of a majority of the outstanding shares of common stock held by stockholders other than the mutual holding company or subsidiary holding company must approve any charitable organization contribution.

§ 239.9 Conversion or liquidation of mutual holding companies.

(a) *Conversion*—(1) *Generally.* A mutual holding company may convert to the stock form in accordance with the rules and regulations set forth in subpart E of this part.

(2) Exchange of subsidiary savings association or subsidiary holding company stock. Any stock issued by a subsidiary savings association, or by a subsidiary holding company pursuant to § 239.24, of a mutual holding company to persons other than the parent mutual holding company may be exchanged for the stock issued by the successor to parent mutual holding company in connection with the conversion of the parent mutual holding company to stock form. The parent mutual holding company and the subsidiary holding company must demonstrate to the satisfaction of the Board that the basis for the exchange is fair and reasonable.

(3) If a subsidiary holding company or subsidiary savings association has issued shares to an entity other than the mutual holding company, the conversion of the mutual holding company to stock form may not be consummated unless a majority of the shares issued to entities other than the mutual holding company vote in favor of the conversion. This requirement ap-

plies in addition to any otherwise required account holder or shareholder votes.

(b) *Involuntary liquidation.* (1) The Board may file a petition with the federal bankruptcy courts requesting the liquidation of a mutual holding company pursuant to 12 U.S.C. 1467a(o)(9) and title 11, United States Code, upon the occurrence of any of the following events:

(i) The default of the resulting association, any acquiree association, or any subsidiary savings association of the mutual holding company that was in the mutual form when acquired by the mutual holding company;

(ii) The default of the parent mutual holding company or its subsidiary holding company; or

(iii) Foreclosure on any pledge by the mutual holding company of subsidiary savings association stock or subsidiary holding company stock.

(2) Except as provided in paragraph (b)(3) of this section, the net proceeds of any liquidation of any mutual holding company shall be transferred to the members of the mutual holding company and, if applicable, the stockholders of the subsidiary holding company in accordance with the charter of the mutual holding company and, if applicable, the charter of the subsidiary holding company.

(3) If the FDIC incurs a loss as a result of the default of any subsidiary savings association of a mutual holding company and that mutual holding company is liquidated pursuant to paragraph (b)(1) of this section, the FDIC shall succeed to the membership interests of the depositors of such savings association in the mutual holding company to the extent of the FDIC's loss.

(c) *Voluntary liquidation.* The provisions of § 239.16 shall apply to mutual holding companies.

§ 239.10 Procedural requirements.

(a) *Proxies and proxy statements*—(1) *Solicitation of proxies.* The provisions of §§ 239.56 and 239.57(a) through (d) and (f) through (h) shall apply to all solicitations of proxies by any person in connection with any membership vote required by this part. Proxy materials must be in the form specified by the Board and contain the information