Federal Reserve System § 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 planned 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 holding company’s stockholders’ equity at the close of the proposed issuance;

(4) Provide that all ESOPs and management recognition plans (MRPs) 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 holding company’s stockholders’ equity at the close of the proposed issuance;

(5) Provide that all MRPs must not encompass, in the aggregate, more than either 1.47 percent of the common stock of the subsidiary holding company or 1.47 percent of the subsidiary holding company’s stockholders’ equity at the close of the proposed issuance. However, if the subsidiary holding company’s tangible capital is at least ten percent at the time of implementation of the plan, the Board may permit MRPs to encompass, in the aggregate, up to 1.96 percent of the savings subsidiary holding company’s stockholders’ equity at the close of the proposed issuance;

(6) Provide that all stock option plans (Option Plans) must not encompass, in the aggregate, more than either 4.9 percent of the subsidiary holding company’s outstanding common stock at the close of the proposed issuance or 4.9 percent of the subsidiary holding company’s stockholders’ equity at the close of the proposed issuance;

(7) Provide that an ESOP, a MRP or an Option Plan modified or adopted no earlier than one year after the close of: the proposed issuance, or any subsequent issuance that is made in substantial conformity with the purchase priorities § 239.59(a) set forth in subpart E of this part, may exceed the percentage limitations contained in paragraphs (a)(3) through (6) of this section (plan expansion), subject to the following two requirements. First, all common stock awarded in connection with any plan expansion must be acquired for such awards in the secondary market. Second, such acquisitions must begin no earlier than when such plan expansion is permitted to be made;

(8)(i) Provide that the aggregate amount of common stock that may be encompassed under all Option Plans and MRPs, or acquired by all insiders of the subsidiary holding company and
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subsidiary savings association and associates of insiders of the subsidiary holding company and subsidiary savings association, must not exceed the following percentages of common stock or stockholders’ equity of the subsidiary holding company, held by persons other than the subsidiary holding company’s mutual holding company parent at the close of the proposed issuance:

<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>
<tr>
<td>$350,000,001–400,000,000</td>
<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>

(ii) The percentage limitations contained in paragraph 8(i) of this section may be exceeded provided that all stock acquired by insiders and associates of insiders or awarded under all MRPs and Option Plans in excess of those limitations is acquired in the secondary market. If acquired for such awards on the secondary market, such acquisitions must begin no earlier than one year after the close of the proposed issuance or any subsequent issuance that is made in substantial conformity with the purchase priorities set forth in subpart E of this part.

(iii) In calculating the number of shares held by insiders and their associates under this provision, shares awarded but not delivered under an ESOP, MRP, or Option Plan that are attributable to such persons shall not be counted as being acquired by such persons.

(9) Provide that the amount of common stock that may be encompassed under all Option Plans and MRPs must not exceed, in the aggregate, 25 percent of the outstanding common stock held by persons other than the subsidiary holding company’s mutual holding company parent at the close of the proposed issuance;

(10) Provide that the issuance shall be conducted in compliance with, to the extent applicable, the forms required by the Board;

(11) Provide that the sales price of the shares of stock to be sold in the issuance shall be a uniform price determined in accordance with § 239.24;

(12) Provide that, if at the close of the stock issuance the subsidiary holding company has more than thirty-five shareholders of any class of stock, the subsidiary holding company shall promptly register that class of stock pursuant to the Securities Exchange Act of 1934, as amended (15 U.S.C. 78a–78jj), and undertake not to deregister such stock for a period of three years thereafter;

(13) Provide that, if at the close of the stock issuance the subsidiary holding company has more than one hundred shareholders of any class of stock, the subsidiary holding company shall use its best efforts to:

(i) Encourage and assist a market maker to establish and maintain a market for that class of stock; and

(ii) List that class of stock on a national or regional securities exchange or on the NASDAQ quotation system;

(14) Provide that, for a period of three years following the proposed issuance, no insider of the subsidiary holding company or his or her associates shall purchase, without the prior written approval of the Board, any stock of the subsidiary holding company except from a broker dealer registered with the Securities and Exchange Commission, except that the foregoing restriction shall not apply to:

(i) Negotiated transactions involving more than one percent of the outstanding stock in the class of stock; or

(ii) Purchases of stock made by and held by any tax-qualified or non-tax-qualified employee stock benefit plan of the subsidiary holding company even if such stock is attributable to insiders of the subsidiary holding company and subsidiary savings association or their associates;

(15) Provide that stock purchased by insiders of the subsidiary holding company and subsidiary savings association and their associates in the proposed issuance shall not be sold for a period of at least one year following
the date of purchase, except in the case of death of the insider or associate;

(16) Provide that, in connection with stock subject to restriction on sale for a period of time:

(i) Each certificate for such stock shall bear a legend giving appropriate notice of such restriction;

(ii) Appropriate instructions shall be issued to the subsidiary holding company’s transfer agent with respect to applicable restrictions on transfer of such stock; and

(iii) Any shares issued as a stock dividend, stock split, or otherwise with respect to any such restricted stock shall be subject to the same restrictions as apply to the restricted stock;

(17) Provide that the subsidiary holding company will not offer or sell any of the stock proposed to be issued to any person whose purchase would be financed by funds loaned, directly or indirectly, to the person by the subsidiary holding company;

(18) Provide that, if necessary, the subsidiary holding company’s charter will be amended to authorize issuance of the stock and attach and incorporate by reference the text of any such amendment;

(19) Provide that the expenses incurred in connection with the issuance shall be reasonable;

(20) Provide that the Stock Issuance Plan, if proposed as part of a Reorganization Plan, may be amended or terminated in the same manner as the Reorganization Plan. Otherwise, the Stock Issuance Plan shall provide that it may be substantively amended by the board of directors of the issuing subsidiary holding company as a result of comments from regulatory authorities or otherwise prior to approval of the Plan by the Board, and at any time thereafter with the concurrence of the Board; and that the Stock Issuance Plan may be terminated by the board of directors at any time prior to approval of the Plan by the Board, and at any time thereafter with the concurrence of the Board;

(21) Provide that, unless an extension is granted by the Board, the Stock Issuance Plan shall be terminated if not completed within 90 days of the date of such approval; or

(22) Provide that the subsidiary holding company may make scheduled discretionary contributions to a tax-qualified employee stock benefit plan provided such contributions do not cause the subsidiary holding company to fail to meet any of its regulatory capital requirements.

(b) Optional provisions. A Stock Issuance Plan may:

(1) Provide that, in the event the proposed stock issuance is part of a Reorganization Plan, the stock offering may be commenced concurrently with or at any time after the mailing to the members of the reorganizing association and any acquiree association of any proxy statement(s). The offering may be closed before the required membership vote(s), provided the offer and sale of the stock shall be conditioned upon the approval of the Reorganization Plan and Stock Issuance Plan by the members of the reorganizing association and any acquiree association;

(2) Provide that any insignificant residue of stock of the subsidiary holding company not sold in the offering may be sold in such other manner as provided in the Stock Issuance Plan, with the Board’s approval;

(3) Provide that the subsidiary holding company may issue and sell, in lieu of shares of its stock, units of securities consisting of stock and long-term warrants or other equity securities, in which event any reference in the provisions of this section and in §239.24 to stock shall apply to such units of equity securities unless the context otherwise requires; or

(4) Provide that the subsidiary holding company may reserve shares representing up to ten percent of the proposed offering for issuance in connection with an employee stock benefit plan.

(c) Applicability of provisions of §239.63(a)(1) to minority stock issuances. Notwithstanding §239.24(d), §239.63(a)(1)(ii) do not apply to minority stock issuances, because the permissible sizes of ESOPs, MRPs, and Option Plans in minority stock issuances are subject to each of the requirements set forth at paragraphs (a)(3) through (a)(9) of this section. Section 239.63(a)(4) through (a)(14), apply for
one year after the subsidiary holding company engages in a minority stock issuance that is conducted in accordance with the purchase priorities set forth in subpart E of this part. In addition to the shareholder vote requirement for Option Plans and MRPs set forth at § 239.63(a)(1)(vi), any Option Plans and MRPs put to a shareholder vote after a minority stock issuance that is conducted in accordance with the purchase priorities set forth in subpart E of this part must be approved by a majority of the votes cast by stockholders other than the mutual holding company.

§ 239.26 Shareholders.

(a) Shareholder meetings. An annual meeting of the shareholders of the subsidiary holding company for the election of directors and for the trans- action of any other business of the subsidiary holding company shall be held annually within 150 days after the end of the subsidiary holding company’s fiscal year. Unless otherwise provided in the subsidiary holding company’s charter, special meetings of the shareholders may be called by the board of directors or on the request of the holders of 10 percent or more of the shares entitled to vote at the meeting, or by such other persons as may be specified in the bylaws of the subsidiary holding company. All annual and special meetings of shareholders shall be held at such place as the board of directors may determine in the state in which the subsidiary savings association has its principal place of business, or at any other convenient place the board of directors may designate.

(b) Notice of shareholder meetings. Written notice stating the place, day, and hour of the meeting and the purpose or purposes for which the meeting is called shall be delivered not fewer than 20 nor more than 50 days before the date of the meeting, either personally or by mail, by or at the direction of the chairman of the board, the president, the secretary, or the directors, or other natural persons calling the meeting, to each shareholder of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the mail, addressed to the shareholder at the address appearing on the stock transfer books or records of the subsidiary holding company as of the record date prescribed in paragraph (c) of this section, with postage thereon prepaid. When any shareholders’ meeting, either annual or special, is adjourned for 30 days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Notwithstanding anything in this section, however, a subsidiary holding company that is wholly owned shall not be subject to the shareholder notice requirement.

(c) Fixing of record date. For the purpose of determining shareholders entitled to notice of or to vote at any meeting of shareholders or any adjournment thereof, or shareholders entitled to receive payment of any dividend, or in order to make a determination of shareholders for any other proper purpose, the board of directors shall fix in advance a date as the record date for any such determination of shareholders. Such date in any case shall be not more than 60 days and, in case of a meeting of shareholders, not less than 10 days prior to the date on which the particular action, requiring such determination of shareholders, is to be taken. When a determination of shareholders entitled to vote at any meeting of shareholders has been made as provided in this section, such determination shall apply to any adjournment thereof.

(d) Voting lists. (1) At least 20 days before each meeting of the shareholders, the officer or agent having charge of the stock transfer books for the shares of the subsidiary holding company shall make a complete list of the stockholders of record entitled to vote at such meeting, or any adjournments thereof, arranged in alphabetical order, with the address and the number of shares held by each. This list of shareholders shall be kept on file at the home office of the subsidiary holding company and shall be subject to inspection by any shareholder of record or the stockholder’s agent during the entire time of the meeting. The original stock transfer book shall constitute prima facie evidence of the stockholders entitled to examine such list or transfer books or to vote at any meeting of