

## Federal Reserve System

## § 239.23

agreement or other arrangements, whether written or otherwise.

B. *Cumulative Voting Limitation.* Stockholders shall not be permitted to cumulate their votes for election of directors.

C. *Call for Special Meetings.* Special meetings of stockholders relating to changes in control of the subsidiary holding company or amendments to its charter shall be called only upon direction of the board of directors.

(c) *Anti-takeover provisions.* The Board may grant approval to a charter amendment not listed in paragraph (b) of this section regarding the acquisition by any person or persons of its equity securities provided that the subsidiary holding company shall file as part of its application for approval an opinion, acceptable to the Board, of counsel independent from the subsidiary holding company that the proposed charter provision would be permitted to be adopted by a corporation chartered by the state in which the principal office of the subsidiary holding company is located. Any such provision must be consistent with applicable statutes, regulations, and Board policies. Further, any such provision that would have the effect of rendering more difficult a change in control of the subsidiary holding company and would require for any corporate action (other than the removal of directors) the affirmative vote of a larger percentage of shareholders than is required by this part, shall not be effective unless adopted by a percentage of shareholder vote at least equal to the highest percentage that would be required to take any action under such provision.

(d) *Reissuance of charter.* A subsidiary holding company that has amended its charter may apply to have its charter, including the amendments, reissued by the Board. Such requests for reissuance should be filed with the appropriate Reserve Bank, and contain signatures required by the charter in Appendix B to this part, together with such supporting documents as needed to demonstrate that the amendments were properly adopted.

### § 239.23 Bylaws.

(a) *General.* At its first organizational meeting, the board of directors of a subsidiary holding company shall adopt a set of bylaws for the adminis-

tration and regulation of its affairs. Bylaws may be adopted, amended or repealed by either a majority of the votes cast by the shareholders at a legal meeting or a majority of the board of directors. The bylaws shall contain sufficient provisions to govern the subsidiary holding company in accordance with the requirements of §§ 239.26, 239.27, 239.28, and 239.29 and shall not contain any provision that is inconsistent with those sections or with applicable laws, rules, regulations or the subsidiary holding company's charter, except that a bylaw provision inconsistent with §§ 239.26, 239.27, 239.28, and 239.29 may be adopted with the approval of the Board.

(b) *Form of filing* —(1) *Application requirement.*

(i) Any bylaw amendment shall be submitted to the appropriate Reserve Bank for approval if it would:

(A) Render more difficult or discourage a merger, tender offer, or proxy contest, the assumption of control by a holder of a large block of the subsidiary holding company's stock, or the removal of incumbent management; or

(B) Be inconsistent with §§ 239.26, 239.27, 239.28, and 239.29, with applicable laws, rules, regulations or the subsidiary holding company's charter or involve a significant issue of law or policy, including indemnification, conflicts of interest, and limitations on director or officer liability.

(ii) Applications submitted under paragraph (b)(1)(i) of this section are subject to the processing procedures under § 238.14 of this chapter;

(iii) For purposes of this paragraph (b), bylaw provisions that adopt the language of the model bylaws contained in Appendix D to this part, if adopted without change and filed with Board within 30 days after adoption, are effective upon adoption. The Board may amend the model bylaws provided in Appendix D.

(2) *Filing requirement.* If the proposed bylaw amendment does not implicate paragraph (b)(1) or (b)(3) of this section and is permissible under all applicable laws, rules, or regulations, the subsidiary holding company shall submit the amendment to the appropriate Reserve Bank at least 30 days prior to the date the bylaw amendment is to be

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adopted by the subsidiary holding company.

(3) *Corporate governance procedures.* A subsidiary holding company may elect to follow the corporate governance procedures of: The laws of the state where the main office of the subsidiary holding company is located; Delaware General Corporation law; or The Model Business Corporation Act, provided that such procedures may be elected to the extent not inconsistent with applicable Federal statutes and regulations and safety and soundness, and such procedures are not of the type described in paragraph (b)(1)(i) of this section. If this election is selected, a subsidiary holding company shall designate in its bylaws the provision or provisions from the body or bodies of law selected for its corporate governance procedures, and shall file a copy of such bylaws, which are effective upon adoption, within 30 days after adoption. The submission shall indicate, where not obvious, why the bylaw provisions do not require an application under paragraph (b)(1)(i) of this section.

(c) *Effectiveness.* Any bylaw amendment filed pursuant to paragraph (b)(2) of this section shall automatically be effective 30 days from the date of filing of such amendment, provided that the subsidiary holding company follows the requirements of its charter and bylaws in adopting such amendment, unless the Board notifies the subsidiary holding company prior to the expiration of such 30-day period that such amendment is rejected or requires an application to be filed pursuant to paragraph (b)(1) of this section.

(d) *Effect of subsequent charter or bylaw change.* Notwithstanding any subsequent change to its charter or bylaws, the authority of a subsidiary holding company to engage in any transaction shall be determined only by the subsidiary holding company's charter or bylaws then in effect, unless otherwise provided by Federal law or regulation.

**§ 239.24 Issuances of stock by subsidiary holding companies of mutual holding companies.**

(a) *Requirements.* No subsidiary holding company of a mutual holding com-

pany may issue stock to persons other than its mutual holding company parent in connection with a mutual holding company reorganization, or at any time subsequent to the subsidiary holding company's acquisition by the mutual holding company, unless the subsidiary holding company obtains advance approval of each such issuance from the Board. Approval of a mutual holding company reorganization filed pursuant to § 239.3(a) shall be deemed to constitute approval of any stock issuance specifically applied for pursuant to this section in connection with the reorganization, unless otherwise specified by the Board. The Board shall approve any proposed issuance that meets each of the criteria set forth below in paragraphs (a)(1) through (a)(7) of this section.

(1) The proposed issuance is to be made pursuant to a Stock Issuance Plan that contains all the provisions required by § 239.25.

(2) The Stock Issuance Plan is consistent with the terms of the subsidiary holding company's charter (or any proposed amendments thereto), including terms governing the type and amount of stock that may be issued.

(3) The Stock Issuance Plan would provide the subsidiary holding company, its mutual holding company parent, and any subsidiary savings associations of the subsidiary holding company with fully sufficient capital and would not be inequitable or detrimental to the subsidiary holding company or its mutual holding company parent or to members of the mutual holding company parent.

(4) The proposed price or price range of the stock to be issued is reasonable. The Board shall review the reasonableness of the proposed price or price range.

(5) 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 50 percent of the subsidiary holding company's total outstanding common stock, unless the subsidiary holding company was a stock holding company when acquired by the mutual holding