§ 239.4 Grounds for disapproval of reorganizations.

(a) Basic standards. The Board may disapprove a proposed mutual holding company reorganization filed pursuant to § 239.3(a) if:

1. Disapproval is necessary to prevent unsafe or unsound practices;
2. The financial or managerial resources of the reorganizing association or any acquiree association warrant disapproval;
3. The proposed capitalization of the mutual holding company fails to meet the requirements of paragraph (b) of this section;
4. A stock issuance is proposed in connection with the reorganization pursuant to § 239.24 that fails to meet the standards established by that section;
5. The reorganizing association or any acquiree association fails to furnish the information required to be included in the Reorganization Notice or any other information requested by the Board in connection with the proposed reorganization; or
6. The proposed reorganization would violate any provision of law, including (without limitation) § 239.3(a) and (c) (regarding board of directors and membership approval) or § 239.5(a) (regarding continuity of membership rights).

(b) Capitalization. (1) The Board shall disapprove a proposal by a reorganizing association or any acquiree association to capitalize a mutual holding company in an amount in excess of a nominal amount if immediately following the reorganization, the resulting association or the acquiree association would fail to be "adequately capitalized" under the regulatory capital requirements applicable to the savings association.

(2) Proposals by reorganizing associations and acquiree associations to capitalize mutual holding companies shall also comply with any applicable statutes, and with regulations or written policies of the Comptroller of the Currency or the Federal Deposit Insurance Corporation, as applicable, governing capital distributions by savings associations in effect at the time of the reorganization.

(c) Presumptive disqualifiers —

1. Managerial resources. The factors specified in § 238.15(d)(1)(i) through (vi) of this chapter shall give rise to a rebuttable presumption that the managerial resources test of paragraph (a)(2) of this section is not met. For this purpose, each place the term acquireor appears in § 238.15(d)(1)(i) through (vi) of this chapter, it shall be read to mean the reorganizing association or any acquiree association, and the reference in § 238.15(d)(1)(v) of this chapter to filings under this part shall be deemed to include filings under either part 238 of this chapter or this part.

2. Safety and soundness and financial resources. Failure by a reorganizing association and any acquiree association to submit a business plan in connection with a Reorganization Notice, or submission of a business plan that projects activities that are inconsistent with the credit and lending needs of the reorganizing association or acquiree association's proposed market area or
that fails to demonstrate that the capital of the mutual holding company will be deployed in a safe and sound manner, shall give rise to a rebuttable presumption that the safety and soundness and financial resources tests of paragraphs (a)(1) and (a)(2) of this section are not met.

(d) **Failure of the Board to act on a Reorganization Notice within the prescribed time period.** A proposed reorganization that obtains regulatory clearance from the Board due to the operation of §238.14 of this chapter may take place in the manner proposed, subject to the following conditions:

(1) The reorganization shall be consummated within one year of the date of the expiration of the Board’s review period under §238.14 of this chapter;

(2) The mutual holding company shall not be capitalized in an amount in excess of what is permissible under §239.4(b);

(3) No request for regulatory waivers or forbearances shall be deemed granted;

(4) The following information shall be submitted within the specified time frames:

   (i) On the business day prior to the date of the reorganization, the chief financial officers of the reorganizing association and any acquiree association shall certify to the Board in writing that no material adverse events or material adverse changes have occurred with respect to the financial condition or operations of their respective associations since the date of the financial statements submitted with the Reorganization Notice;

   (ii) No later than thirty days after the reorganization, the mutual holding company shall file with the Board a certification by legal counsel stating the effective date of the reorganization, the exact number of shares of stock of the resulting association and any acquiree association acquired by the mutual holding company and by any other persons, and that the reorganization has been consummated in accordance with §239.3 and all other applicable laws and regulations and the Reorganization Notice;

   (iii) No later than thirty days after the reorganization, the mutual holding company shall file with the Board an opinion from its independent auditors certifying that the reorganization was consummated in accordance with generally accepted accounting principles; and

   (iv) No later than thirty days after the reorganization, the mutual holding company shall file with the Board a certification stating that the mutual holding company will not deviate materially, or cause its subsidiary savings associations to deviate materially, from the business plan submitted in connection with the Reorganization Notice, unless prior written approval from the Board is obtained.

§ 239.5 **Membership rights.**

(a) **Depositors and borrowers of resulting associations, acquiree associations, and associations in mutual form when acquired.** The charter of a mutual holding company must:

(1) Confer upon existing and future depositors of the resulting association the same membership rights in the mutual holding company as were conferred upon depositors by the charter of the reorganizing association as in effect immediately prior to reorganization;

(2) Confer upon existing and future depositors of any acquiree association or any association that is in the mutual form when acquired by the mutual holding company as were conferred upon depositors by the charter of the acquired association immediately prior to acquisition, provided that if the acquired association is merged into another association from which the mutual holding company draws members, the depositors of the acquired association shall receive the same membership rights as the depositors of the association into which the acquired association is merged;

(3) Confer upon the borrowers of the resulting association who are borrowers at the time of reorganization the same membership rights in the mutual holding company as were conferred upon them by the charter of the reorganizing association immediately prior to reorganization, but shall not confer any membership rights in connection with any borrowings made after the reorganization; and