acquisition more than one year after the resulting stock holding company converts.

(iv) One or more of the tax-qualified employee stock benefit plans may acquire the shares, if the plan or plans do not beneficially own more than 25 percent of any class of shares of the resulting savings association in the aggregate.

(v) An acquiror does not have to file a separate application to obtain Board approval under paragraph (f)(1) of this section, if the acquiror files an application under part 238 of this chapter that specifically addresses the criteria listed under paragraph (f)(4) of this section and the resulting stock holding company does not oppose the proposed acquisition.

(4) The Board may deny an application under paragraph (f)(1) of this section if the proposed acquisition:

(i) Is contrary to the purposes of this subpart;

(ii) Is manipulative or deceptive;

(iii) Subverts the fairness of the conversion;

(iv) Is likely to injure the resulting stock holding company;

(v) Is inconsistent with the plan to meet the credit and lending needs of the proposed market area;

(vi) Otherwise violates laws or regulations; or

(vii) Does not prudently deploy the conversion proceeds.

(g) *Additional requirements that apply following conversion.* After conversion, the resulting stock holding company must:

(1) Promptly register the shares under the Securities Exchange Act of 1934 (15 U.S.C. 78a–78jj, as amended). The resulting stock holding company may not deregister the shares for three years.

(2) Encourage and assist a market maker to establish and to maintain a market for the shares. A market maker for a security is a dealer who:

(i) Regularly publishes bona fide competitive bid and offer quotations for the security in a recognized interdealer quotation system;

(ii) Furnishes bona fide competitive bid and offer quotations for the security on request; or

(iii) May effect transactions for the security in reasonable quantities at quoted prices with other brokers or dealers.

(3) Use the best efforts to list the shares on a national or regional securities exchange or on the National Association of Securities Dealers Automated Quotation system.

(4) File all post-conversion reports that the Board requires.

§ 239.64 Contributions to charitable organizations.

(a) *Forming a charitable organization as part of a conversion.* When a mutual holding company converts to the stock form, it may form a charitable organization. Its contributions to the charitable organization are governed by the requirements of paragraphs (b) through (f) of this section.

(b) *Donating conversion shares or conversion proceeds to a charitable organization.* Some of the conversion shares or proceeds may be contributed to a charitable organization if:

(1) The plan of conversion provides for the proposed contribution;

(2) The members approve the proposed contribution; and

(3) The IRS either has approved, or approves within two years after formation, the charitable organization as a tax-exempt charitable organization under the Internal Revenue Code.

(c) *Member approval of charitable contributions.* At the meeting to consider conversion of the mutual holding company, the members must separately approve by at least a majority of the total eligible votes, a contribution of conversion shares or proceeds. If the mutual holding company has a subsidiary holding company with minority shareholders, or if the subsidiary savings association has minority shareholders, and the mutual holding company is adding a charitable contribution as part of a second step stock conversion, it must also have the minority shareholders separately approve the charitable contribution by a majority of their total eligible votes.

(d) *Charitable organization contribution limits.* A reasonable amount of conversion shares or proceeds may be contributed to a charitable organization, if the contribution will not exceed limits

for charitable deductions under the Internal Revenue Code and the Board does not object on supervisory grounds. If the mutual holding company or resulting stock holding company is well-capitalized pursuant to § 238.62 of this chapter, the Board generally will not object if it contributes an aggregate amount of eight percent or less of the conversion shares or proceeds.

(e) *Charitable organization requirements.* The charitable organization's charter (or trust agreement) and gift instrument must provide that:

(1) The charitable organization's primary purpose is to serve and make grants in the local community;

(2) As long as the charitable organization controls shares, it must vote those shares in the same ratio as all other shares voted on each proposal considered by the shareholders;

(3) For at least five years after its organization, one seat on the charitable organization's board of directors (or board of trustees) is reserved for an independent director (or trustee) from the local community. This director may not be the officer, director, or employee, or the affiliate's officer, director, or employee, and should have experience with local community charitable organizations and grant making; and

(4) For at least five years after its organization, one seat on the charitable organization's board of directors (or board of trustees) is reserved for a director from the board of directors or the board of directors of an acquiror or resulting institution in the event of a merger or acquisition of the organization.

(5) The Board may examine the charitable organization at the charitable organization's expense;

(6) The charitable organization must comply with all supervisory directives that the Board imposes;

(7) The charitable organization must annually provide the Board with a copy of the annual report that the charitable organization submitted to the IRS;

(8) The charitable organization must operate according to written policies adopted by its board of directors (or board of trustees), including a conflict of interest policy; and

(9) The charitable organization may not engage in self-dealing, and must comply with all laws necessary to maintain its tax-exempt status under the Internal Revenue Code.

(f) *Conflicts of interest involving the directors of the mutual holding company or resulting stock holding company.*

(1) An individual who is the director, officer, or employee, or a person who has the power to direct the management or policies, or otherwise owes a fiduciary duty to the mutual holding company or resulting stock holding company and who will serve as an officer, director, or employee of the charitable organization, is subject to the following obligations:

(i) The individual must not advance their own personal or business interests, or those of others with whom the individual has a personal or business relationship, at the expense of the mutual holding company or resulting stock holding company;

(ii) If the individual has an interest in a matter or transaction before the board of directors, the individual must:

(A) Disclose to the board all material nonprivileged information relevant to the board's decision on the matter or transaction, including the existence, nature and extent of the individual's interests, and the facts known to the individual as to the matter or transaction under consideration;

(B) Refrain from participating in the board's discussion of the matter or transaction; and

(C) Recuse themselves from voting on the matter or transaction (if the individual is a director). *See* Form AC, which provides further information or operating plans and conflict of interest plans. The mutual holding company may obtain Form AC from the appropriate Reserve Bank and the Board's Web site at *http://www.federalreserve.gov*.

(2) Before the board of directors may adopt a plan of conversion that includes a charitable organization, the mutual holding company must identify the directors that will serve on the charitable organization's board. These directors may not participate in the board's discussions concerning contributions to the charitable organization, and may not vote on the matter.

(3) The stock certificates of shares contributed to the charitable organization or that the charitable organization otherwise acquires must bear the following legend: ''The board of directors must consider the shares that this stock certificate represents as voted in the same ratio as all other shares voted on each proposal considered by the shareholders, as long as the shares are controlled by the charitable organization.''

(4) As long as the charitable organization controls shares, the resulting stock holding company must consider those shares as voted in the same ratio as all of the shares voted on each proposal considered by the shareholders.

(5) After the stock offering is complete, the resulting stock holding company must submit an executed copy of the following documents to the appropriate Reserve Bank: the charitable organization's charter and bylaws (or trust agreement), operating plan (within six months after the stock offering), conflict of interest policy, and the gift instrument for the contributions of either stock or cash to the charitable organization.

§ 239.65 Voluntary supervisory conversions.

(a) *Voluntary supervisory conversion.*

(1) The mutual holding company must comply with this section and § 239.66 to engage in a voluntary supervisory conversion. This subpart applies to all voluntary supervisory conversions under sections 10(o)(7) and 10(p) of the Home Owners' Loan Act (12 U.S.C. 1467a(o) and (p)).

(2) Sections 239.50 through 239.64 also apply to a voluntary supervisory conversion, unless a requirement is clearly inapplicable.

(b) *Conducting a voluntary supervisory conversion.* In conducting a voluntary supervisory conversion, the mutual holding company may:

(1) Sell its shares to the public;

(2) Convert into stock form by merging into a state-chartered corporation; or

(3) Sell its shares directly to an acquiror, who may be an individual, company, depository institution, or depository institution holding company.

(c) *Member rights in a voluntary supervisory conversion.* Members of the mutual holding company do not have the right to approve or participate in a voluntary supervisory conversion, and will not have any legal or beneficial ownership interests in the converted association, unless the Board provides otherwise. The members may have interests in a liquidation account, if one is established.

(d) *Eligibility for a voluntary supervisory conversion.* A mutual holding company may be eligible to engage in a voluntary supervisory conversion if:

(1) Either the mutual holding company or its subsidiary savings association is significantly undercapitalized under applicable regulatory capital requirements (or the mutual holding company or its subsidiary savings association is undercapitalized under applicable regulatory capital requirements and a standard conversion that would make it adequately capitalized is not feasible) and will be a viable entity following the conversion;

(2) Severe financial conditions threaten stability of the mutual holding company, and a conversion is likely to improve its financial condition.

(e) A mutual holding company or its subsidiary savings association will be a viable entity following the conversion if it satisfies all of the following:

(1) It will be adequately capitalized as a result of the conversion;

(2) It, the proposed conversion, and its acquiror(s) comply with applicable supervisory policies;

(3) The transaction is in the best interest of the mutual holding company and its subsidiary savings associations, and the best interest of the Deposit Insurance Fund and the public; and

(4) The transaction will not injure or be detrimental to the mutual holding company and its subsidiary savings associations, the Deposit Insurance Fund, or the public interest.

(f) *Plan of voluntary supervisory conversion.* A majority of the board of directors of the mutual holding company must approve a plan of voluntary supervisory conversion. The mutual holding company must include all of the following information in the plan of voluntary supervisory conversion.