

§ 239.53

12 CFR Ch. II (1–12 Edition)

distributor's or seller's commission from an underwriter or dealer.

§ 239.53 Prior to conversion.

(a) *Pre-filing meeting and consultation.*

(1) The mutual holding company's board, or a subcommittee of the board, may meet with the staff of the appropriate Reserve Bank or Board staff before the mutual holding company's board of directors votes on the plan of conversion. At that meeting the mutual holding company may provide the Reserve Bank or Board staff with a written strategic plan that outlines the objectives of the proposed conversion and the intended use of the conversion proceeds.

(2) The mutual holding company should also consult with the Board or appropriate Reserve Bank before it files its application for conversion. The Reserve Bank or Board will discuss the information that the mutual holding company must include in the application for conversion, general issues that the mutual holding company may confront in the conversion process, and any other pertinent issues.

(b) *Business plan.* (1) Prior to filing an application for conversion, the mutual holding company must adopt a business plan reflecting the mutual holding company's intended plans for deployment of the proposed conversion proceeds. The business plan is required, under § 239.55(b), to be included in the mutual holding company's conversion application. At a minimum, the business plan must address:

(i) The subsidiary savings association's projected operations and activities for three years following the conversion. The business plan must describe how the conversion proceeds will be deployed at the savings association (and holding company, if applicable), what opportunities are available to reasonably achieve the planned deployment of conversion proceeds in the relevant proposed market areas, and how its deployment will provide a reasonable return on investment commensurate with investment risk, investor expectations, and industry norms, by the final year of the business plan. The business plan must include three years of projected financial statements. The business plan must provide that the

subsidiary savings associations receive at least 50 percent of the net conversion proceeds. The Board may require that a larger percentage of proceeds be contributed to the subsidiary savings associations.

(ii) The mutual holding company's plan for deploying conversion proceeds to meet credit and lending needs in the proposed market areas. The Board strongly discourages business plans that provide for a substantial investment in mortgage securities or other securities, except as an interim measure to facilitate orderly, prudent deployment of proceeds during the three years following the conversion, or as part of a properly managed leverage strategy.

(iii) The risks associated with the plan for deployment of conversion proceeds, and the effect of this plan on management resources, staffing, and facilities.

(iv) The expertise of the mutual holding company and saving association subsidiary's management and board of directors, or that the mutual holding company has planned for adequate staffing and controls to prudently manage the growth, expansion, new investment, and other operations and activities proposed in its business plan.

(2) The mutual holding company may not project returns of capital or special dividends in any part of the business plan. A newly converted company may not plan on stock repurchases in the first year of the business plan.

(c) *Management and board review of business plan.* (1) The chief executive officer and members of the board of directors of the mutual holding company must review, and at least two-thirds of the board of directors must approve, the business plan.

(2) The chief executive officer and at least two-thirds of the board of directors of the mutual holding company must certify that the business plan accurately reflects the intended plans for deployment of conversion proceeds, and that any new initiatives reflected in the business plan are reasonably achievable. The mutual holding company must submit these certifications with its business plan, as part of the conversion application under paragraph (b) of this section.

Federal Reserve System

§ 239.54

(d) *Board review of the business plan.* g(1) The Board will review the business plan to determine whether it demonstrates a safe and sound deployment of conversion proceeds, as part of its review of the conversion application. In making its determination, the Board will consider how the mutual holding company has addressed the applicable factors of paragraph (b) of this section. No single factor will be determinative. The Board will review every case on its merits.

(2) The mutual holding company must file its business plan with the appropriate Reserve Bank. The Board or appropriate Reserve Bank may request additional information, if necessary, to support its determination under paragraph (d)(1) of this section. The mutual holding company must file its business plan as a confidential exhibit to the Form AC.

(3) If the Board approves the application for conversion and the mutual holding company completes the conversion, the resulting stock holding company must operate within the parameters of the business plan. The Board must approve any material deviation from the business plan in writing prior to such material deviation.

(e) *Disclosure of business plan.* (1) The mutual holding company may discuss information about the conversion with individuals that it authorizes to prepare documents for the conversion.

(2) Except as permitted under paragraph (e)(1) of this section, the mutual holding company must keep all information about the conversion confidential until the board of directors adopts the plan of conversion.

(3) If the mutual holding company violates this section, the Board may require it to take remedial action. For example, the Board may require the mutual holding company to take any or all of the following actions:

(i) Publicly announce that the mutual holding company is considering a conversion;

(ii) Set an eligibility record date acceptable to the Board;

(iii) Limit the subscription rights of any person who violates or aids in a violation of this section; or

(iv) Take any other action to ensure that the conversion is fair and equitable.

§ 239.54 Plan of conversion.

(a) *Adoption by the board of directors.* Prior to filing an application for conversion, the board of directors of the mutual holding company must adopt a plan of conversion that conforms to §§ 239.59 through 239.62 and 239.63(b). The board of directors must adopt the plan by at least a two-thirds vote. The plan of conversion is required, under § 239.55(b), to be included in the conversion application.

(b) *Contents of the plan of conversion.* The mutual holding company must include the information included in §§ 239.59 through 239.62 and 239.63(b) in the plan of conversion. The Board may require the mutual holding company to delete or revise any provision in the plan of conversion if the Board determines the provision is inequitable; is detrimental to the mutual holding company, the account holders, other mutual holding companies, or other savings associations; or is contrary to public interest.

(c) *Notice of board of directors' approval of the plan of conversion—(1) Notice.* The mutual holding company must promptly notify its members that the board of directors adopted a plan of conversion and that a copy of the plan is available for the members' inspection in the mutual holding company's home office and in each of the subsidiary savings association's branch offices. The mutual holding company must mail a letter to each member or publish a notice in the local newspaper in every local community where the savings association has an office. The mutual holding company may also issue a press release. The Board may require broader publication, if necessary, to ensure adequate notice to the members.

(2) *Contents of notice.* The mutual holding company may include any of the following statements and descriptions in the letter, notice, or press release.

(i) The board of directors adopted a proposed plan to convert from mutual to stock form.