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12 CFR Ch. II (1-1-13 Edition)

of capital stock shall be consecutively numbered or otherwise identified. The name and address of the person to whom the shares are issued, with the number of shares and date of issue, shall be entered on the stock transfer books of the subsidiary holding company. All certificates surrendered to the subsidiary holding company for transfer shall be cancelled and no new certificate shall be issued until the former certificate for a like number of shares shall have been surrendered and cancelled, except that in the case of a lost or destroyed certificate a new certificate may be issued upon such terms and indemnity to the subsidiary holding company as the board of directors may prescribe.

(b) *Transfer of shares.* Transfer of shares of capital stock of the subsidiary holding company shall be made only on its stock transfer books. Authority for such transfer shall be given only by the holder of record or by a legal representative, who shall furnish proper evidence of such authority, or by an attorney authorized by a duly executed power of attorney and filed with the subsidiary holding company. The transfer shall be made only on surrender for cancellation of the certificate for the shares. The person in whose name shares of capital stock stand on the books of the subsidiary holding company shall be deemed by the subsidiary holding company to be the owner for all purposes.

§ 239.30 Annual reports; books and records.

(a) *Annual reports to stockholders.* A subsidiary holding company not wholly-owned by a holding company shall, within 130 days after the end of its fiscal year, mail to each of its stockholders entitled to vote at its annual meeting an annual report containing financial statements that satisfy the requirements of rule 14a-3 under the Securities Exchange Act of 1934. (17 CFR 240.14a-3). Concurrently with such mailing a certification of such mailing signed by the chairman of the board, the president or a vice president of the subsidiary holding company, together with a copy of the report, shall be transmitted by the subsidiary holding

company to the appropriate Reserve Bank.

(b) *Books and records.* (1) Each subsidiary holding company shall keep correct and complete books and records of account; shall keep minutes of the proceedings of its stockholders, board of directors, and committees of directors; and shall keep at its home office or at the office of its transfer agent or registrar, a record of its stockholders, giving the names and addresses of all stockholders, and the number, class and series, if any, of the shares held by each.

(2) Any stockholder or group of stockholders of a subsidiary holding company, holding of record the number of voting shares of such subsidiary holding company specified below, upon making written demand stating a proper purpose, shall have the right to examine, in person or by agent or attorney, at any reasonable time or times, nonconfidential portions of its books and records of account, minutes and record of stockholders and to make extracts therefrom. Such right of examination is limited to a stockholder or group of stockholders holding of record:

(i) Voting shares having a cost of not less than \$100,000 or constituting not less than one percent of the total outstanding voting shares, provided in either case such stockholder or group of stockholders have held of record such voting shares for a period of at least six months before making such written demand, or

(ii) Not less than five percent of the total outstanding voting shares.

No stockholder or group of stockholders of a subsidiary holding company shall have any other right under this section or common law to examine its books and records of account, minutes and record of stockholders, except as provided in its bylaws with respect to inspection of a list of stockholders.

(3) The right to examination authorized by paragraph (b)(2) of this section and the right to inspect the list of stockholders provided by a subsidiary holding company's bylaws may be denied to any stockholder or group of stockholders upon the refusal of any

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such stockholder or group of stockholders to furnish such subsidiary holding company, its transfer agent or registrar an affidavit that such examination or inspection is not desired for any purpose which is in the interest of a business or object other than the business of the subsidiary holding company, that such stockholder has not within the five years preceding the date of the affidavit sold or offered for sale, and does not now intend to sell or offer for sale, any list of stockholders of the subsidiary holding company or of any other corporation, and that such stockholder has not within said five-year period aided or abetted any other person in procuring any list of stockholders for purposes of selling or offering for sale such list.

(4) Notwithstanding any provision of this section or common law, no stockholder or group of stockholders shall have the right to obtain, inspect or copy any portion of any books or records of a subsidiary holding company containing:

- (i) A list of depositors in or borrowers from such subsidiary holding company;
- (ii) Their addresses;
- (iii) Individual deposit or loan balances or records; or
- (iv) Any data from which such information could be reasonably constructed.

§ 239.31 Indemnification; employment contracts.

(a) *Restrictions on indemnification.* The provisions of § 239.40 shall apply to subsidiary holding companies.

(b) *Restrictions on employment contracts.* The provisions of § 239.41 and any policies of the Board thereunder shall apply to subsidiary holding companies.

Subpart D—Indemnification; Employment Contracts

§ 239.40 Indemnification of directors, officers and employees.

A mutual holding company shall indemnify its directors, officers, and employees in accordance with the following requirements:

(a) *Definitions and rules of construction.* (1) Definitions for purposes of this section.

(i) *Action* means any judicial or administrative proceeding, or threatened proceeding, whether civil, criminal, or otherwise, including any appeal or other proceeding for review;

(ii) *Court* includes, without limitation, any court to which or in which any appeal or any proceeding for review is brought.

(iii) *Final judgment* means a judgment, decree, or order which is not appealable or as to which the period for appeal has expired with no appeal taken.

(iv) *Settlement* includes entry of a judgment by consent or confession or a plea of guilty or *nolo contendere*.

(2) References in this section to any individual or other person, including any mutual holding company, shall include legal representatives, successors, and assigns thereof.

(b) *General.* Subject to paragraphs (c) and (g) of this section, a mutual holding company shall indemnify any person against whom an action is brought or threatened because that person is or was a director, officer, or employee of the mutual holding company, for:

(1) Any amount for which that person becomes liable under a judgment if such action; and

(2) Reasonable costs and expenses, including reasonable attorney's fees, actually paid or incurred by that person in defending or settling such action, or in enforcing his or her rights under this section if he or she attains a favorable judgment in such enforcement action.

(c) *Requirements.* Indemnification shall be made to such period under paragraph (b) of this section only if:

(1) Final judgment on the merits is in his or her favor; or

(2) In case of:

(i) Settlement,

(ii) Final judgment against him or her, or

(iii) Final judgment in his or her favor, other than on the merits, if a majority of the disinterested directors of the mutual holding company determine that he or she was acting in good faith within the scope of his or her employment or authority as he or she could reasonably have perceived it under the circumstances and for a purpose he or she could reasonably have