

## Federal Reserve System

## § 239.40

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