§ 238.53 Prescribed services and activities of savings and loan holding companies.

(a) General. For the purpose of §238.51(b)(6)(ii), the activities set forth in paragraph (b) of this section are, and were as of March 5, 1987, permissible services and activities for savings and loan holding companies or subsidiaries thereof that are neither savings associations nor service corporation subsidiaries of subsidiary savings associations. Services and activities of service corporation subsidiaries of savings and loan holding company subsidiary savings associations are prescribed by paragraph (d) of this section.

(b) Prescribed services and activities. Subject to the provisions of paragraph (c) of this section, a savings and loan holding company subject to restrictions on its activities pursuant to §238.51(b), or a subsidiary thereof which is neither a savings association nor a service corporation of a subsidiary savings association, may furnish or perform the following services and engage in the following activities to the extent that it has legal power to do so:

(1) Originating, purchasing, selling and servicing any of the following:

(i) Loans, and participation interests in loans, on a prudent basis and secured by real estate, including brokerage and warehousing of such real estate loans, except that such a company or subsidiary shall not invest in a loan secured by real estate as to which a subsidiary savings association of such company has a security interest;

(ii) Manufactured home chattel paper (written evidence of both a monetary obligation and a security interest of first priority in one or more manufactured homes, and any equipment installed or to be installed therein), including brokerage and warehousing of such chattel paper;

(iii) Loans, with or without security, for the altering, repairing, improving, equipping or furnishing of any residential real estate;

(iv) Educational loans; and

(v) Consumer loans, as defined in §160.3 of this title, Provided, That, no subsidiary savings association of such holding company or service corporation of such savings association shall engage directly or indirectly, in any transaction with any affiliate involving the purchase or sale, in whole or in part, of any consumer loan.

(2) Subject to the provisions of 12 U.S.C. 1468, furnishing or performing clerical accounting and internal audit services primarily for its affiliates;

(3) Subject to the provisions of 12 U.S.C. 1468, furnishing or performing the following services primarily for its affiliates, and for any savings association and service corporation subsidiary thereof, and for other multiple holding companies and affiliates thereof:

(i) Data processing;

(ii) Credit information, appraisals, construction loan inspections, and abstracting;

(iii) Development and administration of personnel benefit programs, including life insurance, health insurance, and pension or retirement plans;

(iv) Research, studies, and surveys;

(v) Purchase of office supplies, furniture and equipment;

(vi) Development and operation of storage facilities for microfilm or other duplicate records; and

(vii) Advertising and other services to procure and retain both savings accounts and loans;

(4) Acquisition of unimproved real estate lots, and acquisition of other unimproved real estate for the purpose of prompt development and subdivision, for:
(i) Construction of improvements,
(ii) Resale to others for such construction,
(iii) Use as mobile home sites;
(5) Development, subdivision and construction of improvements on real estate acquired pursuant to paragraph (b)(4) of this section, for sale or rental;
(6) Acquisition of improved real estate and mobile homes to be held for rental;
(7) Acquisition of improved real estate for remodeling, rehabilitation, modernization, renovation, or demolition and rebuilding for sale or for rental;
(8) Maintenance and management of improved real estate;
(9) Underwriting or reinsuring contract of credit life or credit health and accident insurance in connection with extensions of credit by the savings and loan holding company or any of its subsidiaries, or extensions of credit by any savings association or service corporation subsidiary thereof, or any other savings and loan holding company or subsidiary thereof;
(10) Preparation of State and Federal tax returns for accountholders of or borrowers from (including immediate family members of such accountholders or borrowers but not including an accountholder or borrower which is a corporation operated for profit) an affiliated savings association;
(11) Purchase and sale of gold coins minted and issued by the United States Treasury pursuant to Public Law 99–185, 99 Stat. 1177 (1985), and activities reasonably incident thereto; and
(12) Any services or activities approved by order of the former Federal Savings and Loan Insurance Corporation prior to March 5, 1987, pursuant to its authority under section 408(c)(2)(F) of the National Housing Act, as in effect at the time.

(c) Procedures for commencing services or activities. A notice to engage in or acquire a company engaged in a service or activity prescribed by paragraph (b) of this section (other than purchase or sale of a government debt security) shall be filed by a savings and loan holding company (including a company seeking to become a savings and loan holding company) with the appropriate Reserve Bank in accordance with this paragraph and the Board’s Rules of Procedure (12 CFR 262.3).

(1) Engaging de novo in services or activities. A savings and loan holding company seeking to commence or to engage de novo in a service or activity pursuant to this section, either directly or through a subsidiary, shall file a notice containing a description of the activities to be conducted and the identity of the company that will conduct the activity.

(2) Acquiring company engaged in services or activities. A savings and loan holding company seeking to acquire or control voting securities or assets of a company engaged in a service or activity pursuant to this section, shall file a notice containing the following:
(i) A description of the proposal, including a description of each proposed service or activity;
(ii) The identity of any entity involved in the proposal, and, if the notificant proposes to conduct the service or activity through an existing subsidiary, a description of the existing activities of the subsidiary;
(iii) If the savings and loan holding company has consolidated assets of $150 million or more:
   (A) Parent company and consolidated pro forma balance sheets for the acquiring savings and loan holding company as of the most recent quarter showing credit and debit adjustments that reflect the proposed transaction;
   (B) Consolidated pro forma risk-based capital and leverage ratio calculations for the acquiring savings and loan holding company as of the most recent quarter; and
   (C) A description of the purchase price and the terms and sources of funding for the transaction;
   (iv) If the savings and loan holding company has consolidated assets of less than $150 million:
      (A) A pro forma parent-only balance sheet as of the most recent quarter showing credit and debit adjustments that reflect the proposed transaction; and
      (B) A description of the purchase price and the terms and sources of funding for the transaction and, if the
transaction is debt funded, one-year income statement and cash flow projections for the parent company, and the sources and schedule for retiring any debt incurred in the transaction;

(v) For each insured depository institution whose Tier 1 capital, total capital, total assets or risk-weighted assets change as a result of the transaction, the total risk-weighted assets, total assets, Tier 1 capital and total capital of the institution on a pro forma basis; and

(vi) A description of the management expertise, internal controls and risk management systems that will be utilized in the conduct of the proposed service or activity; and

(vii) A copy of the purchase agreements, and balance sheet and income statements for the most recent quarter and year-end for any company to be acquired.

(d) Notice provided to Board. The Reserve Bank shall immediately send to the Board a copy of any notice received under paragraphs (c)(1) or (c)(2) of this section.

(e) Notice to public—(1) The Reserve Bank shall notify the Board for publication in the FEDERAL REGISTER immediately upon receipt by the Reserve Bank of:

(i) A notice under paragraph (c) of this section or

(ii) A written request that notice of a proposal under paragraph (c) of this section be published in the FEDERAL REGISTER. Such a request may request that FEDERAL REGISTER publication occur up to 15 calendar days prior to submission of a notice under this subpart.

(2) The FEDERAL REGISTER notice published under this paragraph (e) shall invite public comment on the proposal, generally for a period of 15 days.

(f) Action on notices—(1) Reserve Bank action—(i) In general. Within 30 calendar days after receipt by the Reserve Bank of a notice filed pursuant to paragraphs (c)(1) or (c)(2) of this section, the Reserve Banks shall:

(A) Approve the notice; or

(B) Refer the notice to the Board for decision because action under delegated authority is not appropriate.

(ii) Return of incomplete notice. Within 7 calendar days of receipt, the Reserve Bank may return any notice as informationally incomplete that does not contain all of the information required by this section. The return of such a notice shall be deemed action on the notice.

(iii) Notice of action. The Reserve Bank shall promptly notify the savings and loan holding company of any action or referral under this paragraph.

(iv) Close of public comment period. The Reserve Bank shall not approve any notice under this paragraph (e)(1) of this section prior to the third business day after the close of the public comment period, unless an emergency exists that requires expedited or immediate action.

(2) Board action; internal schedule. The Board seeks to act on every notice referred to it for decision within 60 days of the date that the notice is filed with the Reserve Bank. If the Board is unable to act within this period, the Board shall notify the notificant and explain the reasons and the date by which the Board expects to act.

(3)(i) Required time limit for System action. The Board or the Reserve Bank shall act on any notice under this section within 60 days after the submission of a complete notice.

(ii) Extension of required period for action. The Board may extend the 60-day period required for Board action under paragraph (e)(3)(i) of this section for an additional 30 days upon notice to the notificant.

(4) Requests for additional information. The Board or the Reserve Bank may modify the information requirements under this section or at any time request any additional information that either believes is needed for a decision on any notice under this section.

(5) Tolling of period. The Board or the Reserve Bank may at any time extend or toll the time period for action on a notice for any period with the consent of the notificant.

(g) Modification or termination of service or activity. The Board may require a savings and loan holding company or subsidiary thereof which has commenced a service or activity pursuant to this section to modify or terminate, in whole or in part, such service or activity as the Board finds necessary in order to ensure compliance with the
provisions and purposes of this part and of section 10 of the Home Owners’ Loan Act, as amended, or to prevent evasions thereof.

(h) Alterations. Except as may be otherwise provided in a resolution by or on behalf of the Board in a particular case, a service or activity commenced pursuant to this section shall not be altered in any material respect from that described in the notice filed under paragraph (c)(1) of this section, unless before making such alteration notice of intent to do so is filed in compliance with the appropriate procedures of said paragraph (c)(1) of this section.

(i) Service corporation subsidiaries of savings associations. The Board hereby approves without application the furnishing or performing of such services or engaging in such activities as permitted by the OTS pursuant to §545.74 of this title, as in effect on March 5, 1987, if such service or activity is conducted by a service corporation subsidiary of a subsidiary savings association and if such service corporation has legal power to do so.

§ 238.54 Permissible bank holding company activities of savings and loan holding companies.

(a) General. For purposes of §238.51(b)(6)(i), the services and activities permissible for bank holding companies pursuant to regulations that the Board has promulgated pursuant to section 4(c) of the Bank Holding Company Act are permissible for savings and loan holding companies, or subsidiaries thereof that are neither savings associations nor service corporation subsidiaries of subsidiary savings associations: Provided, That no savings and loan holding company shall commence any activity described in this paragraph (a) without the prior approval of this Board pursuant to paragraph (b) of this section, unless—

(1) The holding company received a rating of satisfactory or above prior to January 1, 2008, or a composite rating of “1” or “2” thereafter, in its most recent examination, and is not in a troubled condition as defined in §238.72, and the holding company does not propose to commence the activity by an acquisition (in whole or in part) of a going concern; or

(2) The activity is permissible under authority other than section 10(c)(2)(F)(i) of the HOLA without prior notice or approval. Where an activity is within the scope of both §238.53 and this section, the procedures of §238.53 shall govern.

(b) Procedures for applications. Applications to commence any activity prescribed under paragraph (a) of this section shall be filed with the appropriate Reserve Bank on the designated form. The Board must act upon such application according to the procedures of §238.53(d), (e), and (f).

(c) Factors considered in acting on applications. In evaluating an application filed under paragraph (b) of this section, the Board shall consider whether the performance by the applicant of the activity can reasonably be expected to produce benefits to the public (such as greater convenience, increased competition, or gains in efficiency) that outweigh possible adverse effects (such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound financial practices). This consideration includes an evaluation of the financial and managerial resources of the applicant, including its subsidiaries, and of any company to be acquired, and the effect of the proposed transaction on those resources.

Subpart G—Financial Holding Company Activities

§ 238.61 Scope.

Section 10(c)(2)(H) of the HOLA (12 U.S.C. 1467a(c)(2)(H)) permits a savings and loan holding company to engage in activities that are permissible for a financial holding company if the savings and holding company meets the criteria to qualify as a financial holding company and complies with all of the requirements applicable to a financial holding company under sections 4(l) and 4(m) of the BHC Act as if the savings and loan holding company was a bank holding company. This subpart