§ 239.9 Conversion or liquidation of mutual holding companies.

(a) Conversion.—(1) Generally. A mutual holding company may convert to the stock form in accordance with the rules and regulations set forth in subpart E of this part.

(ii) In the case of a savings association that has reorganized into a mutual holding company, has issued minority stock from a mid-tier stock holding company or a subsidiary stock savings association of the mutual holding company, and has waived dividends it had a right to receive from a subsidiary savings association before December 1, 2009, the Board shall not consider waived dividends in determining an appropriate exchange ratio in the event of a full conversion to stock form.

(e) Restrictions on issuance of stock to insiders. A subsidiary of a mutual holding company that is not a savings association or subsidiary holding company may issue stock to any insider, associate of an insider or tax-qualified or non-tax-qualified employee stock benefit plan of the mutual holding company or any subsidiary of the mutual holding company, provided that such persons or plans provide written notice to the appropriate Reserve Bank at least 30 days prior to the stock issuance, and the Reserve Bank or the Board does not object to the subsequent stock issuance. Subsidiary holding companies may issue stock to such persons only in accordance with § 239.24.

(f) Applicability of rules governing savings and loan holding companies. Except as expressly provided in this part, mutual holding companies shall be subject to the provisions of 12 U.S.C. 1467a and 3201 et seq. and the provisions of parts 207, 228, and 238 of this chapter.

(g) Separate vote for charitable organization contribution. In a mutual holding company stock issuance, a separate vote of a majority of the outstanding shares of common stock held by stockholders other than the mutual holding company or subsidiary holding company must approve any charitable organization contribution.

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fiduciary duties despite any conflict of interest;

(v)(A) A majority of the entire board of directors of the mutual holding company approves the waiver of dividends and any director with direct or indirect ownership, control, or the power to vote shares of the subsidiary declaring the dividend, or who otherwise directly or indirectly benefits through an associate from the waiver of dividends, has abstained from the board vote; or

(B) Each officer or director of the mutual holding company or its affiliates, associate of such officer or director, and any tax-qualified or non-tax-qualified employee stock benefit plan in which such officer or director participates that holds any share of the stock in the class of stock to which the waiver would apply waives the right to receive any dividend declared by a subsidiary of the mutual holding company;

(vi) The Board does not object to the amount of dividends declared by a subsidiary of the mutual holding company. In reviewing whether a declaration by a subsidiary of the mutual holding company is appropriate, the Board may consider, among other factors, the reasonableness of the entire dividend distribution declared if the waiver is not approved;

(vii) The waived dividends are excluded from the capital accounts of the subsidiary holding company or savings association, as applicable, for purposes of calculating any future dividend payments;

(viii) The mutual holding company appropriately accounts for all waived dividends in a manner that permits the Board to consider the waived dividends in evaluating the proposed exchange ratio in the event of a full conversion of the mutual holding company to stock form; and

(ix) The mutual holding company complies with such other conditions as the Board may require to prevent conflicts of interest or actions detrimental to the safe and sound operation of the savings association.

(5) Valuation. (i) The Board will consider waived dividends in determining an appropriate exchange ratio in the event of a full conversion to stock form.
The Board may file a petition with the federal bankruptcy courts requesting the liquidation of a mutual holding company pursuant to 12 U.S.C. 1467a(o)(9) and title 11, United States Code, upon the occurrence of any of the following events:

(i) The default of the resulting association, any acquiree association, or any subsidiary savings association of the mutual holding company that was in the mutual form when acquired by the mutual holding company;

(ii) The default of the parent mutual holding company or its subsidiary holding company;

(iii) Foreclosure on any pledge by the mutual holding company of subsidiary savings association stock or subsidiary holding company stock.

(2) Except as provided in paragraph (b)(3) of this section, the net proceeds of any liquidation of any mutual holding company shall be transferred to the members of the mutual holding company and, if applicable, the stockholders of the subsidiary holding company in accordance with the charter of the mutual holding company and, if applicable, the charter of the subsidiary holding company.

(3) If the FDIC incurs a loss as a result of the default of any subsidiary savings association of a mutual holding company and that mutual holding company is liquidated pursuant to paragraph (b)(1) of this section, the FDIC shall succeed to the membership interests of the depositors of such savings association in the mutual holding company to the extent of the FDIC’s loss.

(c) Voluntary liquidation. The provisions of §239.16 shall apply to mutual holding companies.

§239.10 Procedural requirements.

(a) Proxies and proxy statements—(1) Solicitation of proxies. The provisions of §§239.56 and 239.57(a) through (d) and (f) through (h) shall apply to all solicitations of proxies by any person in connection with any membership vote required by this part. Proxy materials must be in the form specified by the Board and contain the information specified in §§239.57(b) and 239.57(d), to the extent such information is relevant to the action that members are being asked to approve, with such additions, deletions, and other modifications as are required under this part, or as are necessary or appropriate under the disclosure standard set forth in §239.57(f). File proxies and proxy statements in accordance with §239.55(c) and address them to the appropriate Reserve Bank. For purposes of this paragraph, the term conversion, as it appears in the provisions of part subpart E of this part, refers to the reorganization, the stock issuance, or other corporate action, as appropriate.

(ii) The reasons for the reorganization, including the relative advantages and disadvantages of undertaking the transaction proposed instead of a standard conversion;

(ii) Whether management believes the reorganization is in the best interests of the association and its