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(6) All obligations under the contract shall be terminated, except to the extent determined that continuation of the contract is necessary to the continued operation of the mutual holding company—

(i) By the Board, at the time the Federal Deposit Insurance Corporation enters into an agreement to provide assistance to or on behalf of the subsidiary savings association under the authority contained in 13(c) of the Federal Deposit Insurance Act; or

(ii) By the Board, at the time the Board approves a supervisory merger to resolve problems related to operation of the mutual holding company or when the mutual holding company is determined by the Board to be in an unsafe or unsound condition.

Subpart E—Conversions From Mutual to Stock Form

§ 239.50 Purpose and scope.

(a) *General.* This subpart governs how a mutual holding company may convert from the mutual to the stock form of ownership. This subpart supersedes all inconsistent charter and bylaw provisions of mutual holding companies converting to stock form.

(b) *Prescribed forms.* A mutual holding company must use the forms prescribed under this subpart and provide such information as the Board may require under the forms by regulation or otherwise. The forms required under this subpart include: Form AC (Application for Conversion); Form PS (Proxy Statement); Form OC (Offering Circular); and Form OF (Order Form).

(c) *Waivers.* The Board may waive any requirement of this subpart or a provision in any prescribed form. To obtain a waiver, a mutual holding company must file a written request with the Board that:

(1) Specifies the requirement(s) or provision(s) that the mutual holding company wants the Board to waive;

(2) Demonstrates that the waiver is equitable; is not detrimental to the mutual holding company, mutual members, or other mutual holding companies or savings associations; and is not contrary to the public interest; and

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(3) Includes an opinion of counsel demonstrating that applicable law does not conflict with the waiver of the requirement or provision.

§ 239.51 Acquiring another insured stock depository institution as part of a conversion.

When a mutual holding company converts to stock form, the subsidiary savings association may acquire for cash or stock another insured depository institution that is already in the stock form of ownership.

§ 239.52 Definitions.

The following definitions apply to this subpart and the forms prescribed under this subpart:

(a) *Association members or members* are persons who, under applicable law, are eligible to vote at the meeting on conversion.

(b) *Eligibility record date* is the date for determining eligible account holders. The eligibility record date must be at least one year before the date that the board of directors adopts the plan of conversion.

(c) *Eligible account holders* are any persons holding qualifying deposits on the eligibility record date.

(d) *IRS* is the United States Internal Revenue Service.

(e) *Local community* includes:

(1) Every county, parish, or similar governmental subdivision in which the mutual holding company has a home or branch office;

(2) Each county's, parish's, or subdivision's metropolitan statistical area;

(3) All zip code areas in the mutual holding company's Community Reinvestment Act assessment area; and

(4) Any other area or category the mutual holding company sets out in its plan of conversion, as approved by the Board.

(f) *Mutual holding company* has the same meaning in this subpart as that term is given in subpart A. For purposes of this subpart, references to mutual holding company shall also include a resulting stock holding company, where applicable.

(g) *Offer, offer to sell, or offer for sale* is an attempt or offer to dispose of, or

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a solicitation of an offer to buy, a security or interest in a security for value. Preliminary negotiations or agreements with an underwriter, or among underwriters who are or will be in privity of contract with the mutual holding company or resulting stock holding company, are not offers, offers to sell, or offers for sale.

(h) *Proxy soliciting material* includes a proxy statement, form of proxy, or other written or oral communication regarding the conversion.

(i) *Purchase or buy* includes every contract to acquire a security or interest in a security for value.

(j) *Qualifying deposit* is the total balance in an account holder's savings accounts at the close of business on the eligibility or supplemental eligibility record date. The mutual holding company's plan of conversion may provide that only savings accounts with total deposit balances of \$50 or more will qualify.

(k) *Resulting stock holding company* means the stock savings and loan holding company that is issuing stock in connection with conversion of a mutual holding company pursuant to this subpart.

(l) *Sale or sell* includes every contract to dispose of a security or interest in a security for value. An exchange of securities in a merger or acquisition approved by the Board is not a sale.

(m) *Solicitation and solicit* is a request for a proxy, whether or not accompanied by or included in a form of proxy; a request to execute, not execute, or revoke a proxy; or the furnishing of a form of proxy or other communication reasonably calculated to cause the members to procure, withhold, or revoke a proxy. Solicitation or solicit does not include providing a form of proxy at the unsolicited request of a member, the acts required to mail communications for members, or ministerial acts performed on behalf of a person soliciting a proxy.

(n) *Subscription offering* is the offering of shares through nontransferable subscription rights to:

(1) Eligible account holders under § 239.59(h);

(2) Tax-qualified employee stock ownership plans under § 239.59(m);

(3) Supplemental eligible account holders under § 239.59(h); and

(4) Other voting members under § 239.59(j).

(o) *Supplemental eligibility record date* is the date for determining supplemental eligible account holders. The supplemental eligibility record date is the last day of the calendar quarter before the Board approves the conversion and will occur only if the Board has not approved the conversion within 15 months of the eligibility record date.

(p) *Supplemental eligible account holders* are any persons, except officers, directors, and their associates of the mutual holding company or subsidiary savings association, holding qualifying deposits on the supplemental eligibility record date.

(q) *Underwriter* is any person who purchases any securities from the mutual holding company or resulting stock holding company with a view to distributing the securities, offers or sells securities for the mutual stock holding company or resulting stock holding company in connection with the securities' distribution, or participates or has a direct or indirect participation in the direct or indirect underwriting of any such undertaking. Underwriter does not include a person whose interest is limited to a usual and customary 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

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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.

(d) *Board review of the business plan.* (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.

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(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.

(ii) The mutual holding company will send its members a proxy statement with detailed information on the proposed conversion before the mutual holding company convenes a members' meeting to vote on the conversion.

(iii) The members will have an opportunity to approve or disapprove the proposed conversion at a meeting. At least a majority of the eligible votes must approve the conversion.

(iv) The mutual holding company will not vote existing proxies to approve or disapprove the conversion. The mutual holding company will solicit new proxies for voting on the proposed conversion.

(v) The Board must approve the conversion before the conversion will be effective. The members will have an opportunity to file written comments, including objections and materials supporting the objections, with the Board.

(vi) The IRS must issue a favorable tax ruling, or a tax expert must issue an appropriate tax opinion, on the tax

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consequences of the conversion before the Board will approve the conversion. The ruling or opinion must indicate the conversion will be a tax-free reorganization.

(vii) The Board might not approve the conversion, and the IRS or a tax expert might not issue a favorable tax ruling or tax opinion.

(viii) Savings account holders will continue to hold accounts in the savings association with the same dollar amounts, rates of return, and general terms as existing deposits. The FDIC will continue to insure the accounts.

(ix) The mutual holding company's conversion will not affect borrowers' loans, including the amount, rate, maturity, security, and other contractual terms.

(x) The savings association's business of accepting deposits and making loans will continue without interruption.

(xi) The current management and staff will continue to conduct current services for depositors and borrowers under current policies and in existing offices.

(xii) The subsidiary savings association may continue to be a member of the Federal Home Loan Bank System.

(xiii) The mutual holding company may substantively amend the proposed plan of conversion before the members' meeting.

(xiv) The mutual holding company may terminate the proposed conversion.

(xv) After the Board approves the proposed conversion, the mutual holding company will send proxy materials providing additional information. After the mutual holding company sends proxy materials, members may telephone or write to the mutual holding company with additional questions.

(xvi) The proposed record date for determining the eligible account holders who are entitled to receive subscription rights to purchase the shares.

(xvii) A brief description of the circumstances under which supplemental eligible account holders will receive subscription rights to purchase the shares.

(xviii) A brief description of how voting members may participate in the conversion.

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(xix) A brief description of how directors, officers, and employees will participate in the conversion.

(xx) A brief description of the proposed plan of conversion.

(xxi) The par value (if any) and approximate number of shares that will be issued and sold in the conversion.

(3) *Other requirements.* (i) The mutual holding company may not solicit proxies, provide financial statements, describe the benefits of conversion, or estimate the value of the shares upon conversion in the letter, notice, or press release.

(ii) If the mutual holding company responds to inquiries about the conversion, it may address only the matters listed in paragraph (c)(2) of this section.

(d) *Amending a plan of conversion.* The mutual holding company may amend its plan of conversion before it solicits proxies. After the mutual holding company solicits proxies, it may amend the plan of conversion only if the Board concurs.

§ 239.55 Filing requirements.

(a) *Applications under this subpart.* Any filing with the Board required under this subpart must be filed in accordance with § 238.14 of this chapter. The Board will review any filing made under this subpart in accordance with § 238.14 of this chapter.

(b) *Requirements.* (1) The application for conversion must include all of the following information.

(i) A plan of conversion meeting the requirements of § 239.54(b).

(ii) Pricing materials meeting the requirements paragraph (g)(2) of this section.

(iii) Proxy soliciting materials under § 239.57(d), including:

(A) A preliminary proxy statement with signed financial statements;

(B) A form of proxy meeting the requirements of § 239.57(b); and

(C) Any additional proxy soliciting materials, including press releases, personal solicitation instructions, radio or television scripts that the mutual holding company plans to use or furnish to the members, and a legal opinion indicating that any marketing materials comply with all applicable securities laws.

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(iv) An offering circular described in § 239.58(a).

(v) The documents and information required by Form AC. The mutual holding company may obtain Form AC from the appropriate Reserve Bank and the Board's Web site (<http://www.federalreserve.gov>).

(vi) Where indicated, written consents, signed and dated, of any accountant, attorney, investment banker, appraiser, or other professional who prepared, reviewed, passed upon, or certified any statement, report, or valuation for use. See Form AC, instruction B(7).

(vii) The business plan, submitted as a separately bound, confidential exhibit. See paragraph (c) of this section.

(viii) Any additional information the Board requests.

(2) The Board will not accept for filing, and will return, any application for conversion that is improperly executed, materially deficient, substantially incomplete, or that provides for unreasonable conversion expenses.

(c) *Filing an application for conversion.* (1) The mutual holding company must file the application for conversion on Form AC with the appropriate Reserve Bank.

(2) Upon receipt of an application under this subpart, the Reserve Bank will promptly furnish notice and a copy of the application to the primary federal supervisor of any subsidiary savings association. The primary supervisor will have 30 calendar days from the date of the letter giving notice in which to submit its views and recommendations to the Board.

(d) *Confidential treatment of portions of an application for conversion.* (1) The Board makes all filings under this subpart available to the public, but may keep portions of the application for conversion confidential under paragraph (d)(2) of this section.

(2) The mutual holding company may request the Board keep portions of the application confidential. To do so, the mutual holding company must separately bind and clearly designate as "confidential" any portion of the application for conversion that the mutual holding company deems confidential. The mutual holding company must provide a written statement specifying

the grounds supporting the request for confidentiality. The Board will not treat as confidential the portion of the application describing how the mutual holding company plans to meet the Community Reinvestment Act (CRA) objectives. The CRA portion of the application may not incorporate by reference information contained in the confidential portion of the application.

(3) The Board will determine whether confidential information must be made available to the public under 5 U.S.C. 552 and part 261 of this chapter. The Board will advise the mutual holding company before it makes information the mutual holding company designated as "confidential" available to the public.

(e) *Amending an application for conversion.* To amend an application for conversion, the mutual holding company must:

(1) File an amendment with an appropriate facing sheet;

(2) Number each amendment consecutively;

(3) Respond to all issues raised by the Board; and

(4) Demonstrate that the amendment conforms to all applicable regulations.

(f) *Notice of filing of application and comment process—(1) Public notice of an application for conversion.* (i) The mutual holding company must publish a public notice of the application for conversion in accordance with the procedures in § 238.14 of this chapter. The mutual holding company must simultaneously prominently post the notice in its home office and in all of the branch offices of its subsidiary savings associations.

(ii) Promptly after publication, the mutual holding company must file a copy of any public notice and an affidavit of publication from each publisher with the appropriate Reserve Bank.

(iii) If the Board does not accept the application for conversion under § 239.55(g) and requires the mutual holding company to file a new application, the mutual holding company must publish and post a new notice and allow an additional 30 days for comment.

(2) *Public comments.* Commenters may submit comments on the application in accordance with the procedures in

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§ 238.14 of this chapter. A commenter must file any comments with the appropriate Reserve Bank.

(g) *Board review of the application for conversion—(1) Board action on a conversion application.* The Board may approve an application for conversion only if:

(i) The conversion complies with this subpart;

(ii) The mutual holding company will meet all applicable regulatory capital requirements after the conversion; and

(iii) The conversion will not result in a taxable reorganization under the Internal Revenue Code of 1986, as amended.

(2) *Board review of appraisal.* The Board will review the appraisal required by paragraph (b)(1)(ii) of this section in determining whether to approve the application. The Board will review the appraisal under the following requirements.

(i) Independent persons experienced and expert in corporate appraisal, and acceptable to the Board, must prepare the appraisal report.

(ii) An affiliate of the appraiser may serve as an underwriter or selling agent, if the mutual holding company ensures that the appraiser is separate from the underwriter or selling agent affiliate and the underwriter or selling agent affiliate does not make recommendations or affect the appraisal.

(iii) The appraiser may not receive any fee in connection with the conversion other than for appraisal services.

(iv) The appraisal report must include a complete and detailed description of the elements of the appraisal, a justification for the appraisal methodology, and sufficient support for the conclusions.

(v) If the appraisal is based on a capitalization of the pro forma income, it must indicate the basis for determining the income to be derived from the sale of shares, and demonstrate that the earnings multiple used is appropriate, including future earnings growth assumptions.

(vi) If the appraisal is based on a comparison of the shares with outstanding shares of existing stock associations, the existing stock associations must be reasonably comparable in size, market area, competitive con-

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ditions, risk profile, profit history, and expected future earnings.

(vii) The Board may decline to process the application for conversion and deem it materially deficient or substantially incomplete if the initial appraisal report is materially deficient or substantially incomplete.

(viii) The mutual holding company may not represent or imply that the Board has approved the appraisal.

(3) *Board review of compliance record.* The Board will review the compliance record of the subsidiary savings association under the regulations applicable to the savings association and the business plan to determine how the conversion will affect the convenience and needs of its communities.

(i) Based on this review, the Board may approve the application, deny the application, or approve the application on the condition that the resulting stock holding company will improve the CRA performance or will address the particular credit or lending needs of the communities that it will serve.

(ii) The Board may deny the application if the business plan does not demonstrate that the proposed use of conversion proceeds will help the resulting stock holding company to meet the credit and lending needs of the communities that the resulting stock holding company will serve.

(4) The Board may request that the mutual holding company amend the application if further explanation is necessary, material is missing, or material must be corrected.

(5) The Board will deny the application if the application does not meet the requirements of this subpart, unless the Board waives the requirement under § 239.50(c).

(h) *Judicial review.* (1) Any person aggrieved by the Board's final action on the application for conversion may ask the court of appeals of the United States for the circuit in which the principal office or residence of such person is located, or the U.S. Court of Appeals for the District of Columbia Circuit, to review the action under 12 U.S.C. 1467a(j), which provisions shall apply in all respects as if such final action were an order, subject to paragraph (h)(2) of this section.

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(2) To obtain court review of the action, the aggrieved person must file a written petition requesting that the court modify, terminate, or set aside the final Board action. The aggrieved person must file the petition with the court within the later of 30 days after the Board publishes notice of its final action in the FEDERAL REGISTER or 30 days after the mutual holding company mails the proxy statement to its members under § 239.56(c).

§ 239.56 Vote by members.

(a) *Mutual member approval of the plan of conversion.* (1) After the Board approves the plan of conversion, the mutual holding company must submit the plan of conversion to its members for approval. The mutual holding company must obtain this approval at a meeting of its members.

(2) The members must approve the plan of conversion by a majority of the total outstanding votes.

(3) The members may vote in person or by proxy.

(4) The mutual holding company may notify eligible account holders or supplemental eligible account holders who are not voting members of the proposed conversion. The mutual holding company may include only the information in § 239.54(c) in the notice.

(b) *Eligibility to vote for the plan of conversion.* The mutual holding company determines members' eligibility to vote by setting a voting record date. The mutual holding company must set a voting record date that is not more than 60 days nor less than 20 days before the meeting.

(c) *Notifying members of the meeting.* The mutual holding company must notify the members of the meeting to consider the conversion by sending the members a proxy statement.

(2) The mutual holding company must notify its members 20 to 45 days before the meeting.

(3) The mutual holding company must also notify each beneficial holder of an account at any subsidiary savings association held in a fiduciary capacity:

(i) If the subsidiary savings association is a federal association and the name of the beneficial holder is dis-

closed on the records of the subsidiary savings association; or

(ii) If the subsidiary savings association is a state-chartered association and the beneficial holder possesses voting rights under state law.

(d) *Submissions to the Board after the members' meeting.* (1) Promptly after the members' meeting, the mutual holding company must file all of the following information with the appropriate Reserve Bank:

(i) A certified copy of each adopted resolution on the conversion.

(ii) The total votes eligible to be cast.

(iii) The total votes represented in person or by proxy.

(iv) The total votes cast in favor of and against each matter.

(v) The percentage of votes necessary to approve each matter.

(vi) An opinion of counsel that the mutual holding company conducted the members' meeting in compliance with all applicable state or federal laws and regulations.

(2) Promptly after completion of the conversion, the mutual holding company must submit to the appropriate Reserve Bank an opinion of counsel that the mutual holding company has complied with all laws applicable to the conversion.

§ 239.57 Proxy solicitation.

(a) *Applicability of proxy solicitation provisions.* (1) The mutual holding company must comply with these proxy solicitation provisions when the mutual holding company provides proxy solicitation material to members for the meeting to vote on the plan of conversion.

(2) Members of the mutual holding company must comply with these proxy solicitation provisions when they provide proxy solicitation materials to members for the meeting to vote on the conversion, pursuant to paragraph (f) of this section except where:

(i) The member solicits 50 people or fewer and does not solicit proxies on behalf of the mutual holding company; or

(ii) The member solicits proxies through newspaper advertisements after the board of directors adopts the

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plan of conversion. Any newspaper advertisements may include only the following information:

- (A) The name of the mutual holding company;
- (B) The reason for the advertisement;
- (C) The proposal or proposals to be voted upon;
- (D) Where a member may obtain a copy of the proxy solicitation material; and
- (E) A request for the members of the mutual holding company to vote at the meeting.

(b) *Form of proxy.* The form of proxy must include all of the following:

- (1) A statement in bold face type stating that management is soliciting the proxy.
- (2) Blank spaces where the member must date and sign the proxy.
- (3) Clear and impartial identification of each matter or group of related matters that members will vote upon. It must include any proposed charitable contribution as an item to be voted on separately.
- (4) The phrase "Revocable Proxy" in bold face type (at least 18 point).
- (5) A description of any charter or state law requirement that restricts or conditions votes by proxy.
- (6) An acknowledgment that the member received a proxy statement before he or she signed the form of proxy.
- (7) The date, time, and the place of the meeting, when available.
- (8) A way for the member to specify by ballot whether he or she approves or disapproves of each matter that members will vote upon.
- (9) A statement that management will vote the proxy in accordance with the member's specifications.
- (10) A statement in bold face type indicating how management will vote the proxy if the member does not specify a choice for a matter.

(c) *Permissible use of proxies.* (1) The mutual holding company may not use previously executed proxies for the plan of conversion vote. If members consider the plan of conversion at an annual meeting, the mutual holding company may vote proxies obtained through other proxy solicitations only on matters not related to the plan of conversion.

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(2) The mutual holding company may vote a proxy obtained under this subpart on matters that are incidental to the conduct of the meeting. The mutual holding company or its management may not vote a proxy obtained under this subpart at any meeting other than the meeting (or any adjournment of the meeting) to vote on the plan of conversion.

(d) *Proxy statement requirements*—(1) *Content requirements.* The mutual holding company must prepare the proxy statement in compliance with this subpart and Form PS. The mutual holding company may obtain Form PS from the appropriate Reserve Bank and the Board's Web site (<http://www.federalreserve.gov>).

(2) *Other requirements.* (i) The Board will review the proxy solicitation material in its review of the application for conversion.

(ii) The mutual holding company must provide a written proxy statement to the members before or at the same time the mutual holding company provides any other soliciting material. The mutual holding company must mail proxy solicitation material to the members no later than ten days after the Board approves the conversion.

(e) *Filing revised proxy materials.* (1) The mutual holding company must file revised proxy materials as an amendment to the application for conversion.

(2) To revise the proxy solicitation materials, the mutual holding company must file:

- (i) Revised proxy materials as required by Form PS;
- (ii) Revised form of proxy, if applicable; and
- (iii) Any additional proxy solicitation material subject to paragraph (d) of this section.

(3) The mutual holding company must clearly indicate changes from the prior filing.

(4) The mutual holding company must file a definitive copy of all proxy solicitation material, in the form in which the mutual holding company furnishes the material to the members. The mutual holding company must file no later than the date that it sends or gives the proxy solicitation material to

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the members. The mutual holding company must indicate the date that it plans to release the materials.

(5) Unless the Board requests the mutual holding company to do so, the mutual holding company does not have to file copies of replies to inquiries from the members or copies of communications that merely request members to sign and return proxy forms.

(f) *Mailing proxy solicitation material.* (1) The mutual holding company must mail the member's proxy solicitation material if:

(i) The board of directors adopted a plan of conversion;

(ii) A member requests in writing that the mutual holding company mail the proxy solicitation material; and

(iii) The member agrees to defray reasonable expenses of the mutual holding company.

(2) As soon as practicable after the mutual holding company receives a request under paragraph (f)(1) of this section, the mutual holding company must mail or otherwise furnish the following information to the member:

(i) The approximate number of members that the mutual holding company solicited or will solicit, or the approximate number of members of any group of account holders that the member designates; and

(ii) The estimated cost of mailing the proxy solicitation material for the member.

(3) The mutual holding company must mail proxy solicitation material to the designated members promptly after the member furnishes the materials, envelopes (or other containers), and postage (or payment for postage) to the mutual holding company.

(4) The mutual holding company is not responsible for the content of a member's proxy solicitation material.

(5) A member may furnish other members its own proxy solicitation material, subject to the rules in this section.

(g) *Prohibited solicitations.* (1) False or misleading statements. (i) No one may use proxy solicitation material for the members' meeting if the material contains any statement which, considering the time and the circumstances of the statement:

(A) Is false or misleading with respect to any material fact;

(B) Omits any material fact that is necessary to make the statements not false or misleading; or

(C) Omits any material fact that is necessary to correct a statement in an earlier communication that has become false or misleading.

(ii) No one may represent or imply that the Board determined that the proxy solicitation material is accurate, complete, not false or not misleading, or passed upon the merits of or approved any proposal.

(2) Other prohibited solicitations. No person may solicit:

(i) An undated or post-dated proxy;

(ii) A proxy that states it will be dated after the date it is signed by a member;

(iii) A proxy that is not revocable at will by the member; or

(iv) A proxy that is part of another document or instrument.

(3) If a solicitation violates this section, the Board may require remedial measures, including:

(i) Correction of the violation by a retraction and a new solicitation;

(ii) Rescheduling the members' meeting; or

(iii) Any other actions necessary to ensure a fair vote.

(4) The Board may also bring an enforcement action against the violator for violations of this section.

(h) *Re-soliciting proxies.* If the mutual holding company amends its application for conversion, the Board may require it to re-solicit proxies for the members' meeting as a condition of approval of the amendment.

§ 239.58 Offering circular.

(a) *Filing requirements.* (1) The mutual holding company must prepare and file the offering circular with the appropriate Reserve Bank in compliance with this subpart and Form OC. The mutual holding company may obtain Form OC from the Reserve Bank and the Board's Web site (<http://www.federalreserve.gov>).

(2) The mutual holding company must condition the stock offering upon member approval of the plan of conversion.

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(3) The Board will review the Form OC and may comment on the included disclosures and financial statements.

(4) The mutual holding company must file a revised offering circular, final offering circular, and any post-effective amendment to the final offering circular.

(5) The Board will not approve the adequacy or accuracy of the offering circular or the disclosures.

(b) *Distribution of the offering circular.* (1) The mutual holding company may distribute a preliminary offering circular at the same time as or after the mutual holding company mails the proxy statement to its members.

(2) The mutual holding company must distribute the offering circular in accordance with this subpart and with all applicable securities laws.

(3) The mutual holding company must distribute the offering circular to persons listed in the plan of conversion no later than ten days after the Board approves the conversion.

(c) *Post-effective amendments to the offering circular.* (1) The mutual holding company must file a post-effective amendment to the offering circular with the Board when a material event or change of circumstance occurs.

(2) After the Securities and Exchange Commission declares the post-effective amendment effective, the mutual holding company must immediately deliver the amendment to each person who subscribed for or ordered shares in the offering.

(3) The post-effective amendment must indicate that each person may increase, decrease, or rescind their subscription or order.

(4) The post-effective offering period must remain open no less than 10 days nor more than 20 days, unless the Board approves a longer rescission period.

§ 239.59 Offers and sales of stock.

(a) *Purchase priorities.* The mutual holding company must offer to sell the conversion shares in the following order:

(1) Eligible account holders.

(2) Tax-qualified employee stock ownership plans.

(3) Supplemental eligible account holders.

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(4) Other voting members who have subscription rights.

(5) The community, the community and the general public, or the general public.

(b) *Offering conversion shares.* (1) The mutual holding company may offer to sell the conversion shares if the Board approves the conversion, subject to compliance with requirements of the Securities and Exchange Commission.

(2) The offer may commence at the same time as the proxy solicitation of the members begins.

(c) *Pricing conversion shares.* (1) The conversion shares must be sold at a uniform price per share and at a total price that is equal to the estimated pro forma market value of the shares after conversion.

(2) The maximum price must be no more than 15 percent above the midpoint of the estimated price range in the offering circular.

(3) The minimum price must be no more than 15 percent below the midpoint of the estimated price range in the offering circular.

(4) If the Board permits, the maximum price of conversion shares sold may be increased. The maximum price, as adjusted, must be no more than 15 percent above the maximum price computed under paragraph (c)(2) of this section.

(5) The maximum price must be between \$5 and \$50 per share.

(6) The mutual holding company must include the estimated price in any preliminary offering circular.

(d) *Selling conversion shares.* (1) The mutual holding company must distribute order forms to all eligible account holders, supplemental eligible account holders, and other voting members to enable them to subscribe for the conversion shares they are permitted under the plan of conversion. The mutual holding company may either send the order forms with the offering circular or after it distributes the offering circular.

(2) The mutual holding company may sell the conversion shares in a community offering, a public offering, or both. The mutual holding company may begin the community offering, the public offering, or both at any time during

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the subscription offering or upon conclusion of the subscription offering.

(3) The mutual holding company may pay underwriting commissions (including underwriting discounts). The Board may object to the payment of unreasonable commissions. The mutual holding company may reimburse an underwriter for accountable expenses in a subscription offering if the public offering is limited. If no public offering occurs, the mutual holding company may pay an underwriter a consulting fee. The Board may object to the payment of unreasonable consulting fees.

(4) If the mutual holding company conducts the community offering, the public offering, or both at the same time as the subscription offering, it must fill all subscription orders first.

(5) The mutual holding company must prepare the order form in compliance with this subpart and Form OF. The mutual holding company may obtain Form OF from the Reserve Bank and from the Board's Web site (www.federalreserve.gov).

(e) *Prohibited sales practices.* (1) In connection with offers, sales, or purchases of conversion shares under this subpart, the mutual holding company and its directors, officers, agents, or employees may not:

(i) Employ any device, scheme, or artifice to defraud;

(ii) Obtain money or property by means of any untrue statement of a material fact or any omission of a material fact necessary to make the statements, in light of the circumstances under which they were made, not misleading; or

(iii) Engage in any act, transaction, practice, or course of business that operates or would operate as a fraud or deceit upon a purchaser or seller.

(2) During the conversion, no person may:

(i) Transfer, or enter into any agreement or understanding to transfer, the legal or beneficial ownership of subscription rights for the conversion shares or the underlying securities to the account of another;

(ii) Make any offer, or any announcement of an offer, to purchase any of the conversion shares from anyone but the mutual holding company; or

(iii) Knowingly acquire more than the maximum purchase allowable under the plan of conversion.

(3) The restrictions in paragraphs (e)(2)(i) and (e)(2)(ii) of this section do not apply to offers for more than 10 percent of any class of conversion shares by:

(i) An underwriter or a selling group, acting on behalf of the mutual holding company or resulting stock holding company, that makes the offer with a view toward public resale; or

(ii) One or more of the tax-qualified employee stock ownership plans so long as the plan or plans do not beneficially own more than 25 percent of any class of the equity securities in the aggregate.

(4) Any person that violates the restrictions in paragraphs (e)(2)(i) and (e)(2)(ii) of this section may face prosecution or other legal action.

(f) *Payment for conversion shares.* (1) A subscriber may purchase conversion shares with cash, by a withdrawal from a savings account, or a withdrawal from a certificate of deposit. If a subscriber purchases conversion shares by a withdrawal from a certificate of deposit, the mutual holding company or its subsidiary savings association may not assess a penalty for the withdrawal.

(2) The mutual holding company may not extend credit to any person to purchase the conversion shares.

(g) *Interest on payments for conversion shares.* (1) The mutual holding company or its subsidiary savings association must pay interest from the date it receives a payment for conversion shares until the date it completes or terminates the conversion. The mutual holding company or its subsidiary savings association must pay interest at no less than the passbook rate for amounts paid in cash, check, or money order.

(2) If a subscriber withdraws money from a savings account to purchase conversion shares, the mutual holding company or its subsidiary savings association must pay interest on the payment until the mutual holding company completes or terminates the conversion as if the withdrawn amount remained in the account.

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(3) If a depositor fails to maintain the applicable minimum balance requirement because he or she withdraws money from a certificate of deposit to purchase conversion shares, the mutual holding company or its subsidiary savings association may cancel the certificate and pay interest at no less than the passbook rate on any remaining balance.

(h) *Subscription rights for each eligible account holder and each supplemental eligible account holder.* (1) The mutual holding company must give each eligible account holder subscription rights to purchase conversion shares in an amount equal to the greater of:

(i) The maximum purchase limitation established for the community offering or the public offering under paragraph (p) of this section;

(ii) One-tenth of one percent of the total stock offering; or

(iii) Fifteen times the following number: The total number of conversion shares that the mutual holding company will issue, multiplied by the following fraction: the numerator is the total qualifying deposit of the eligible account holder, and the denominator is the total qualifying deposits of all eligible account holders. The mutual holding company must round down the product of this multiplied fraction to the next whole number.

(2) The mutual holding company must give subscription rights to purchase shares to each supplemental eligible account holder in the same amount as described in paragraph (h)(1) of this section, except that the mutual holding company must compute the fraction described in paragraph (h)(1)(iii) of this section as follows: the numerator is the total qualifying deposit of the supplemental eligible account holder, and the denominator is the total qualifying deposits of all supplemental eligible account holders.

(i) *Officers, directors, and their associates as eligible account holders.* The officers, directors, and their associates of the mutual holding company and subsidiary savings association may be eligible account holders. However, if an officer, director, or his or her associate receives subscription rights based on increased deposits in the year before the eligibility record date, the mutual

holding company must subordinate subscription rights for these deposits to subscription rights exercised by other eligible account holders.

(j) *Other voting members eligible to purchase conversion shares.* (1) The mutual holding company must give rights to purchase the conversion shares in the conversion to voting members who are neither eligible account holders nor supplemental eligible account holders. The mutual holding company must allocate rights to each voting member that are equal to the greater of:

(i) The maximum purchase limitation established for the community offering and the public offering under paragraph (p) of this section; or

(ii) One-tenth of one percent of the total stock offering.

(2) The mutual holding company must subordinate the voting members' rights to the rights of eligible account holders, tax-qualified employee stock ownership plans, and supplemental eligible account holders.

(k) *Purchase limitations for officers, directors, and their associates.* (1) When the mutual holding company converts, the officers, directors, and their associates of the mutual holding company and subsidiary savings association may not purchase, in the aggregate, more than the following percentage of the total stock offering:

Institution size	Officer and director purchases (percent)
\$50,000,000 or less	35
\$50,000,001-100,000,000	34
\$100,000,001-150,000,000	33
\$150,000,001-200,000,000	32
\$200,000,001-250,000,000	31
\$250,000,001-300,000,000	30
\$300,000,001-350,000,000	29
\$350,000,001-400,000,000	28
\$400,000,001-450,000,000	27
\$450,000,001-500,000,000	26
Over \$500,000,000	25

(2) The purchase limitations in this section do not apply to shares held in tax-qualified employee stock benefit plans that are attributable to the officers, directors, and their associates.

(l) *Allocating conversion shares in the event of oversubscription.* (1) If the conversion shares are oversubscribed by the eligible account holders, the mutual holding company must allocate shares among the eligible account

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holders so that each, to the extent possible, may purchase 100 shares.

(2) If the conversion shares are oversubscribed by the supplemental eligible account holders, the mutual holding company must allocate shares among the supplemental eligible account holders so that each, to the extent possible, may purchase 100 shares.

(3) If a person is an eligible account holder and a supplemental eligible account holder, the mutual holding company must include the eligible account holder's allocation in determining the number of conversion shares that the mutual holding company may allocate to the person as a supplemental eligible account holder.

(4) For conversion shares that the mutual holding company does not allocate under paragraphs (1)(1) and (1)(2) of this section, the mutual holding company must allocate the shares among the eligible or supplemental eligible account holders equitably, based on the amounts of qualifying deposits. The mutual holding company must describe this method of allocation in its plan of conversion.

(5) If shares remain after the mutual holding company has allocated shares as provided in paragraphs (1)(1) and (1)(2) of this section, and if the voting members oversubscribe, the mutual holding company must allocate the conversion shares among those members equitably. The mutual holding company must describe the method of allocation in its plan of conversion.

(m) *Employee stock ownership plan purchase of conversion shares.* (1) The tax-qualified employee stock ownership plan of the mutual holding company may purchase up to 10 percent of the total offering of the conversion shares.

(2) If the Board approves a revised stock valuation range as described in paragraph (c)(5) of this section, and the final conversion stock valuation range exceeds the former maximum stock offering range, the mutual holding company may allocate conversion shares to the tax-qualified employee stock ownership plan, up to the 10 percent limit in paragraph (m)(1) of this section.

(3) If the tax-qualified employee stock ownership plan is not able to or chooses not to purchase stock in the

offering, it may, with prior Board approval and appropriate disclosure in the offering circular, purchase stock in the open market, or purchase authorized but unissued conversion shares.

(4) The mutual holding company may include stock contributed to a charitable organization in the conversion in the calculation of the total offering of conversion shares under paragraphs (m)(1) and (m)(2) of this section, unless the Board objects on supervisory grounds.

(n) *Purchase limitations.* (1) The mutual holding company may limit the number of shares that any person, group of associated persons, or persons otherwise acting in concert, may subscribe to up to five percent of the total stock sold.

(2) If the mutual holding company sets a limit of five percent under paragraph (n)(1) of this section, it may modify that limit with Board approval to provide that any person, group of associated persons, or persons otherwise acting in concert subscribing for five percent, may purchase between five and ten percent as long as the aggregate amount that the subscribers purchase does not exceed 10 percent of the total stock offering.

(3) The mutual holding company may require persons exercising subscription rights to purchase a minimum number of conversion shares. The minimum number of shares must equal the lesser of the number of shares obtained by a \$500 subscription or 25 shares.

(4) In setting purchase limitations under this section, the mutual holding company may not aggregate conversion shares attributed to a person in the tax-qualified employee stock ownership plan with shares purchased directly by, or otherwise attributable to, that person.

(o) *Purchase preference for persons in the local community.* (1) In the subscription offering, subject to the purchase priorities set forth in paragraph (a) of this section, the mutual holding company may give a purchase preference to eligible account holders, supplemental eligible account holders, and voting members residing in the local community.

(2) In the community offering, the mutual holding company must give a

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purchase preference to natural persons residing in the local community.

(p) *Conditions on community offerings and public offerings.* (1) If the mutual holding company offers conversion shares in a community offering, a public offering, or both, it must offer and sell the stock to achieve a widespread distribution of the stock.

(2) If the mutual holding company offers shares in a community offering, a public offering, or both, it must first fill orders for the stock up to a maximum of two percent of the conversion stock on a basis that will promote a widespread distribution of stock. The mutual holding company must allocate any remaining shares on an equal number of shares per order basis until it fills all orders.

§ 239.60 Completion of the offering.

(a) *Deadline for completing the sale of stock.* The mutual holding company must complete all sales of the stock within 45 calendar days after the last day of the subscription period, unless the offering is extended under paragraph (b) of this section.

(b) *Offering period extension.* (1) The mutual holding company must request, in writing, an extension of any offering period.

(2) The Board may grant extensions of time to sell the shares. The Board will not grant any single extension of more than 90 days.

(3) If the Board grants the request for an extension of time, the mutual holding company must provide a post-effective amendment to the offering circular under § 239.58(c) to each person who subscribed for or ordered stock. The amendment must indicate that the Board extended the offering period and that each person who subscribed for or ordered stock may increase, decrease, or rescind their subscription or order within the time remaining in the extension period.

§ 239.61 Completion of the conversion.

(a) *Completion of the conversion.* (1) In the plan of conversion, the mutual holding company must set a date by which the conversion must be completed. This date must not be more than 24 months from the date that the members approve the plan of conver-

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sion. The date, once set, may not be extended by the mutual holding company or by the Board. The mutual holding company must terminate the conversion if it is not completed by that date.

(2) The conversion is complete on the date that the mutual holding company accepts the offers for stock of the resulting stock holding company.

(b) *Termination of the conversion.* (1) The members may terminate the conversion by failing to approve the conversion at the members' meeting.

(2) The mutual holding company may terminate the conversion before the members' meeting.

(3) The mutual holding company may terminate the conversion after the members' meeting only if the Board concurs.

(c) *Voting rights for stockholders following conversion.* The resulting stock holding company must provide the stockholders with exclusive voting rights.

(d) *Rights of savings account holders.* The resulting stock holding company must provide a liquidation account for each eligible and supplemental eligible account holder under § 239.62(a)(1)–(3).

§ 239.62 Liquidation accounts.

(a) *Liquidation account.* (1) A liquidation account represents the potential interest of eligible account holders and supplemental eligible account holders in the mutual holding company's net worth at the time of conversion. The resulting stock holding company must maintain a sub-account to reflect the interest of each account holder.

(2) Before the resulting stock holding company may provide a liquidation distribution to common stockholders, the resulting stock holding company must give a liquidation distribution to those eligible account holders and supplemental eligible account holders who hold savings accounts from the time of conversion until liquidation.

(3) The resulting stock holding company may not record the liquidation account in the financial statements. The resulting stock holding company must disclose the liquidation account in the footnotes to the financial statements.

(4) The initial balance of the liquidation account is the net worth in the

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statement of financial condition included in the final offering circular.

(b) *Liquidation sub-accounts.* (1)(i) The resulting stock holding company determines the initial sub-account balance for a savings account held by an eligible account holder by multiplying the initial balance of the liquidation account by the following fraction: The numerator is the qualifying deposit in the savings account on the eligibility record date. The denominator is total qualifying deposits of all eligible account holders on that date.

(ii) The resulting stock holding company determines the initial sub-account balance for a savings account held by a supplemental eligible account holder by multiplying the initial balance of the liquidation account by the following fraction: The numerator is the qualifying deposit in the savings account on the supplemental eligibility record date. The denominator is total qualifying deposits of all supplemental eligible account holders on that date.

(iii) If an account holder holds a savings account on the eligibility record date and a separate savings account on the supplemental eligibility record date, the resulting stock holding company must compute separate sub-accounts for the qualifying deposits in the savings account on each record date.

(2) The resulting stock holding company may not increase the initial sub-account balances. The resulting stock holding company must decrease the initial balance under § 239.62(d) as depositors reduce or close their accounts.

(c) *Retention of voting rights based on liquidation sub-accounts.* Eligible account holders or supplemental eligible account holders do not retain any voting rights based on their liquidation sub-accounts.

(d) *Adjusting liquidation sub-accounts.* (1)(i) The resulting stock holding company must reduce the balance of an eligible account holder's or supplemental eligible account holder's sub-account if the deposit balance in the account holder's savings account at the close of business on any annual closing date, which for purposes of this section is the fiscal year end, after the relevant eligibility record dates is less than:

(A) The deposit balance in the account holder's savings account at the close of business on any other annual closing date after the relevant eligibility record date; or

(B) The qualifying deposits in the account holder's savings account on the relevant eligibility record date.

(ii) The reduction must be proportionate to the reduction in the deposit balance.

(2) If the resulting stock holding company reduces the balance of a liquidation sub-account, the resulting stock holding company may not subsequently increase it if the deposit balance increases.

(3) The resulting stock holding company is not required to adjust the liquidation account and sub-account balances at each annual closing date if it maintains sufficient records to make the computations if a liquidation subsequently occurs.

(4) The resulting stock holding company must maintain the liquidation sub-account for each account holder as long as the account holder maintains an account with the same social security number or tax identification number, as applicable.

(5) If there is a complete liquidation, the resulting stock holding company must provide each account holder with a liquidation distribution in the amount of the sub-account balance.

(e) *Liquidation defined.* (1) For purposes of this subpart, a liquidation is a sale of the assets and settlement of the liabilities with the intent to cease operations and close. Upon liquidation, the resulting stock holding company must return the charter to the governmental agency that issued it. The government agency must cancel the charter.

(2) A merger, consolidation, or similar combination or transaction with another depository institution, is not a liquidation. If the resulting stock holding company is involved in such a transaction, the surviving institution must assume the liquidation account.

(f) *Effect of liquidation on net worth.* The liquidation account does not affect the net worth.

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§ 239.63 Post-conversion.

(a) *Management stock benefit plans.* (1) During the 12 months after the conversion, the resulting stock holding company may implement a stock option plan (Option Plan), an employee stock ownership plan or other tax-qualified employee stock benefit plan (collectively, ESOP), and a management recognition plan (MRP), provided the resulting stock holding company meets all of the following requirements.

(i) The resulting stock holding company discloses the plans in the proxy statement and offering circular and indicates in the offering circular that there will be a separate shareholder vote on the Option Plan and the MRP at least six months after the conversion. No shareholder vote is required to implement the ESOP. The ESOP must be tax-qualified.

(ii) The Option Plan does not exceed more than ten percent of the number of shares that the resulting stock holding company issued in the conversion.

(iii)(A) The ESOP and MRP do not exceed, in the aggregate, more than ten percent of the number of shares that the resulting stock holding company issued in the conversion. If the resulting stock holding company has tangible capital of ten percent or more following the conversion, the Board may permit the ESOP and MRP to represent, in the aggregate, up to 12 percent of the number of shares issued in the conversion; and

(B) The MRP does not exceed more than three percent of the number of shares that the resulting stock holding company issued in the conversion. If the resulting stock holding company has tangible capital of ten percent or more after the conversion, the Board may permit the MRP to represent up to four percent of the number of shares that the resulting stock holding company issued in the conversion.

(iv) No individual receives more than 25 percent of the shares under any plan.

(v) The directors who are not the officers do not receive more than five percent of the shares of the MRP or Option Plan individually, or 30 percent of any such plan in the aggregate.

(vi) The shareholders approve each of the Option Plan and the MRP by a majority of the total votes eligible to be

cast at a duly called meeting before the resulting stock holding company establishes or implements the plan. The resulting stock holding company may not hold this meeting until six months after the conversion.

(vii) When the resulting stock holding company distributes proxies or related material to shareholders in connection with the vote on a plan, the resulting stock holding company states that the plan complies with Board regulations and that the Board does not endorse or approve the plan in any way. The resulting stock holding company may not make any written or oral representations to the contrary.

(viii) The resulting stock holding company does not grant stock options at less than the market price at the time of grant.

(ix) The resulting stock holding company does not fund the Option Plan or the MRP at the time of the conversion.

(x) The plan does not begin to vest earlier than one year after shareholders approve the plan, and does not vest at a rate exceeding 20 percent per year.

(xi) The plan permits accelerated vesting only for disability or death, or if the resulting stock holding company undergoes a change of control.

(xii) The plan provides that the executive officers or directors must exercise or forfeit their options in the event the institution becomes critically undercapitalized under the applicable regulatory capital requirements, is subject to Board enforcement action, or receives a capital directive under § 263.83 of this chapter.

(xiii) The resulting stock holding company files a copy of the proposed Option Plan or MRP with the Board and certifies to the Board that the plan approved by the shareholders is the same plan that the resulting stock holding company filed with, and disclosed in, the proxy materials distributed to shareholders in connection with the vote on the plan.

(xiv) The resulting stock holding company files the plan and the certification with the Board within five calendar days after the shareholders approve the plan.

(2) The resulting stock holding company may provide dividend equivalent

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rights or dividend adjustment rights to allow for stock splits or other adjustments to the stock in the ESOP, MRP, and Option Plan.

(3) The restrictions in paragraph (a)(1) of this section do not apply to plans implemented more than 12 months after the conversion, provided that materials pertaining to any shareholder vote regarding such plans are not distributed within the 12 months after the conversion. If a plan adopted in conformity with paragraph (a)(1) of this section is amended more than 12 months following the conversion, the shareholders must ratify any material deviations to the requirements in paragraph (a)(1) of this section.

(b) *Restrictions on the sale of conversion shares by directors, officers, and their associates.* (1) Directors and officers who purchase conversion shares may not sell the shares for one year after the date of purchase, except that in the event of the death of the officer or director, the successor in interest may sell the shares.

(2) The resulting stock holding company must include notice of the restriction described in paragraph (b)(1) of this section on each certificate of stock that a director or officer purchases during the conversion or receives in connection with a stock dividend, stock split, or otherwise with respect to such restricted shares.

(3) The resulting stock holding company must instruct the stock transfer agent about the transfer restrictions in this section.

(4) For three years after the resulting stock holding company converts, the officers, directors, and their associates may purchase stock of the resulting stock holding company only from a broker or dealer registered with the Securities and Exchange Commission. However, the officers, directors, and their associates may engage in a negotiated transaction involving more than one percent of the outstanding stock, and may purchase stock through any of the management or employee stock benefit plans.

(c) *Repurchase of conversion shares.* (1) The resulting stock holding company may not repurchase its shares in the first year after the conversion except:

(i) In extraordinary circumstances, the resulting stock holding company may make open market repurchases of up to five percent of the outstanding stock in the first year after the conversion if the resulting stock holding company files a notice under paragraph (d)(1) of this section and the Board does not disapprove the repurchase. The Board will not approve such repurchases unless the repurchase meets the standards in paragraph (d)(3) of this section, and the repurchase is consistent with paragraph (c)(3) of this section.

(ii) The resulting stock holding company may repurchase qualifying shares of a director or conduct a Board approved repurchase pursuant to an offer made to all shareholders of the stock holding company.

(iii) Repurchases to fund management recognition plans that have been ratified by shareholders do not count toward the repurchase limitations in this section. Repurchases in the first year to fund such plans require prior written notification to the Board.

(iv) Purchases to fund tax qualified employee stock benefit plans do not count toward the repurchase limitations in this section.

(2) After the first year, the resulting stock holding company may repurchase the shares, subject to all other applicable regulatory and supervisory restrictions and paragraph (c)(3) of this section.

(3) All stock repurchases are subject to the following restrictions.

(i) The resulting stock holding company may not repurchase the shares if the repurchase will reduce its applicable capital levels below the amount required for the liquidation account under § 239.62(a). The resulting stock holding company must comply with the capital distribution requirements of this subpart.

(ii) The restrictions on share repurchases apply to a charitable organization under § 239.64(b). The resulting stock holding company must aggregate purchases of shares by the charitable organization with the repurchases.

(d) *Board review of repurchase of conversion shares.* (1) To repurchase stock in the first year following conversion,

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other than repurchases under paragraphs (c)(1)(iii) or (c)(1)(iv) of this section, the resulting stock holding company must file a written notice with the appropriate Reserve Bank. The resulting stock holding company must provide the following information:

- (i) The proposed repurchase program;
- (ii) The effect of the repurchases on the regulatory capital and other capital levels; and

(iii) The purpose of the repurchases and, if applicable, an explanation of the extraordinary circumstances necessitating the repurchases.

(2) The resulting stock holding company must file the notice with the appropriate Reserve Bank at least thirty days before the resulting stock holding company begins the repurchase program. The Board may extend its review of the notice for an additional sixty days.

(3) The resulting stock holding company may not repurchase the shares if the Board objects to the repurchase program. The Board will not object to the repurchase program if:

- (i) The repurchase program will not adversely affect the financial condition of the resulting savings association;

- (ii) The resulting stock holding company submits sufficient information to evaluate the proposed repurchases;

- (iii) The resulting stock holding company demonstrate extraordinary circumstances and a compelling and valid business purpose for the share repurchases; and

- (iv) The repurchase program would not be contrary to other applicable regulations.

(e) *Declaring and paying dividends following conversion.* The resulting stock holding company may declare or pay a dividend on its shares after it converts if:

- (1) The dividend will not reduce the regulatory capital below the amount required for the liquidation account under § 239.62(a);

- (2) The resulting stock holding company complies with all applicable regulatory capital requirements after it declares or pays dividends;

- (3) The resulting stock holding company complies with the capital distribution requirements under this subpart; and

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(4) The resulting stock holding company does not return any capital, other than ordinary dividends, to purchasers during the term of the business plan submitted with the conversion.

(f) *Eligibility to acquire shares after conversion.* (1) For three years after the resulting stock holding company converts, no person may, directly or indirectly, acquire or offer to acquire the beneficial ownership of more than ten percent of any class of the equity securities without the Board's prior written approval. If a person violates this prohibition, the resulting stock holding company may not permit the person to vote shares in excess of ten percent, and may not count the shares in excess of ten percent in any shareholder vote.

(2) A person acquires beneficial ownership of more than ten percent of a class of shares when he or she holds any combination of the stock or revocable or irrevocable proxies under circumstances that give rise to a conclusive control determination or rebuttable control determination under §§ 238.21(a) and (d) of this chapter. The Board will presume that a person has acquired shares if the acquiror entered into a binding written agreement for the transfer of shares. For purposes of this section, an offer is made when it is communicated. An offer does not include non-binding expressions of understanding or letters of intent regarding the terms of a potential acquisition.

(3) Notwithstanding the restrictions in this section:

- (i) Paragraphs (f)(1) and (f)(2) of this section do not apply to any offer with a view toward public resale made exclusively to the resulting stock holding company, to the underwriters, or to a selling group acting on behalf of the resulting savings association.

- (ii) Unless the Board objects in writing, any person may offer or announce an offer to acquire up to one percent of any class of shares. In computing the one percent limit, the person must include all of his or her acquisitions of the same class of shares during the prior 12 months.

- (iii) A corporation whose ownership is, or will be, substantially the same as the ownership may acquire or offer to acquire more than ten percent of the common stock, if it makes the offer or

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acquisition more than one year after the resulting stock holding company converts.

(iv) One or more of the tax-qualified employee stock benefit plans may acquire the shares, if the plan or plans do not beneficially own more than 25 percent of any class of shares of the resulting savings association in the aggregate.

(v) An acquiror does not have to file a separate application to obtain Board approval under paragraph (f)(1) of this section, if the acquiror files an application under part 238 of this chapter that specifically addresses the criteria listed under paragraph (f)(4) of this section and the resulting stock holding company does not oppose the proposed acquisition.

(4) The Board may deny an application under paragraph (f)(1) of this section if the proposed acquisition:

(i) Is contrary to the purposes of this subpart;

(ii) Is manipulative or deceptive;

(iii) Subverts the fairness of the conversion;

(iv) Is likely to injure the resulting stock holding company;

(v) Is inconsistent with the plan to meet the credit and lending needs of the proposed market area;

(vi) Otherwise violates laws or regulations; or

(vii) Does not prudently deploy the conversion proceeds.

(g) *Additional requirements that apply following conversion.* After conversion, the resulting stock holding company must:

(1) Promptly register the shares under the Securities Exchange Act of 1934 (15 U.S.C. 78a-78jj, as amended). The resulting stock holding company may not deregister the shares for three years.

(2) Encourage and assist a market maker to establish and to maintain a market for the shares. A market maker for a security is a dealer who:

(i) Regularly publishes bona fide competitive bid and offer quotations for the security in a recognized inter-dealer quotation system;

(ii) Furnishes bona fide competitive bid and offer quotations for the security on request; or

(iii) May effect transactions for the security in reasonable quantities at quoted prices with other brokers or dealers.

(3) Use the best efforts to list the shares on a national or regional securities exchange or on the National Association of Securities Dealers Automated Quotation system.

(4) File all post-conversion reports that the Board requires.

§ 239.64 Contributions to charitable organizations.

(a) *Forming a charitable organization as part of a conversion.* When a mutual holding company converts to the stock form, it may form a charitable organization. Its contributions to the charitable organization are governed by the requirements of paragraphs (b) through (f) of this section.

(b) *Donating conversion shares or conversion proceeds to a charitable organization.* Some of the conversion shares or proceeds may be contributed to a charitable organization if:

(1) The plan of conversion provides for the proposed contribution;

(2) The members approve the proposed contribution; and

(3) The IRS either has approved, or approves within two years after formation, the charitable organization as a tax-exempt charitable organization under the Internal Revenue Code.

(c) *Member approval of charitable contributions.* At the meeting to consider conversion of the mutual holding company, the members must separately approve by at least a majority of the total eligible votes, a contribution of conversion shares or proceeds. If the mutual holding company has a subsidiary holding company with minority shareholders, or if the subsidiary savings association has minority shareholders, and the mutual holding company is adding a charitable contribution as part of a second step stock conversion, it must also have the minority shareholders separately approve the charitable contribution by a majority of their total eligible votes.

(d) *Charitable organization contribution limits.* A reasonable amount of conversion shares or proceeds may be contributed to a charitable organization, if the contribution will not exceed limits

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for charitable deductions under the Internal Revenue Code and the Board does not object on supervisory grounds. If the mutual holding company or resulting stock holding company is well-capitalized pursuant to § 238.62 of this chapter, the Board generally will not object if it contributes an aggregate amount of eight percent or less of the conversion shares or proceeds.

(e) *Charitable organization requirements.* The charitable organization's charter (or trust agreement) and gift instrument must provide that:

(1) The charitable organization's primary purpose is to serve and make grants in the local community;

(2) As long as the charitable organization controls shares, it must vote those shares in the same ratio as all other shares voted on each proposal considered by the shareholders;

(3) For at least five years after its organization, one seat on the charitable organization's board of directors (or board of trustees) is reserved for an independent director (or trustee) from the local community. This director may not be the officer, director, or employee, or the affiliate's officer, director, or employee, and should have experience with local community charitable organizations and grant making; and

(4) For at least five years after its organization, one seat on the charitable organization's board of directors (or board of trustees) is reserved for a director from the board of directors or the board of directors of an acquiror or resulting institution in the event of a merger or acquisition of the organization.

(5) The Board may examine the charitable organization at the charitable organization's expense;

(6) The charitable organization must comply with all supervisory directives that the Board imposes;

(7) The charitable organization must annually provide the Board with a copy of the annual report that the charitable organization submitted to the IRS;

(8) The charitable organization must operate according to written policies adopted by its board of directors (or board of trustees), including a conflict of interest policy; and

(9) The charitable organization may not engage in self-dealing, and must comply with all laws necessary to maintain its tax-exempt status under the Internal Revenue Code.

(f) *Conflicts of interest involving the directors of the mutual holding company or resulting stock holding company.* (1) An individual who is the director, officer, or employee, or a person who has the power to direct the management or policies, or otherwise owes a fiduciary duty to the mutual holding company or resulting stock holding company and who will serve as an officer, director, or employee of the charitable organization, is subject to the following obligations:

(i) The individual must not advance their own personal or business interests, or those of others with whom the individual has a personal or business relationship, at the expense of the mutual holding company or resulting stock holding company;

(ii) If the individual has an interest in a matter or transaction before the board of directors, the individual must:

(A) Disclose to the board all material nonprivileged information relevant to the board's decision on the matter or transaction, including the existence, nature and extent of the individual's interests, and the facts known to the individual as to the matter or transaction under consideration;

(B) Refrain from participating in the board's discussion of the matter or transaction; and

(C) Recuse themselves from voting on the matter or transaction (if the individual is a director). See Form AC, which provides further information or operating plans and conflict of interest plans. The mutual holding company may obtain Form AC from the appropriate Reserve Bank and the Board's Web site at <http://www.federalreserve.gov>.

(2) Before the board of directors may adopt a plan of conversion that includes a charitable organization, the mutual holding company must identify the directors that will serve on the charitable organization's board. These directors may not participate in the board's discussions concerning contributions to the charitable organization, and may not vote on the matter.

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(3) The stock certificates of shares contributed to the charitable organization or that the charitable organization otherwise acquires must bear the following legend: "The board of directors must consider the shares that this stock certificate represents as voted in the same ratio as all other shares voted on each proposal considered by the shareholders, as long as the shares are controlled by the charitable organization."

(4) As long as the charitable organization controls shares, the resulting stock holding company must consider those shares as voted in the same ratio as all of the shares voted on each proposal considered by the shareholders.

(5) After the stock offering is complete, the resulting stock holding company must submit an executed copy of the following documents to the appropriate Reserve Bank: the charitable organization's charter and bylaws (or trust agreement), operating plan (within six months after the stock offering), conflict of interest policy, and the gift instrument for the contributions of either stock or cash to the charitable organization.

§ 239.65 Voluntary supervisory conversions.*(a) Voluntary supervisory conversion.*

(1) The mutual holding company must comply with this section and § 239.66 to engage in a voluntary supervisory conversion. This subpart applies to all voluntary supervisory conversions under sections 10(o)(7) and 10(p) of the Home Owners' Loan Act (12 U.S.C. 1467a(o) and (p)).

(2) Sections 239.50 through 239.64 also apply to a voluntary supervisory conversion, unless a requirement is clearly inapplicable.

(b) *Conducting a voluntary supervisory conversion.* In conducting a voluntary supervisory conversion, the mutual holding company may:

(1) Sell its shares to the public;

(2) Convert into stock form by merging into a state-chartered corporation; or

(3) Sell its shares directly to an acquirer, who may be an individual, company, depository institution, or depository institution holding company.

(c) *Member rights in a voluntary supervisory conversion.* Members of the mutual holding company do not have the right to approve or participate in a voluntary supervisory conversion, and will not have any legal or beneficial ownership interests in the converted association, unless the Board provides otherwise. The members may have interests in a liquidation account, if one is established.

(d) *Eligibility for a voluntary supervisory conversion.* A mutual holding company may be eligible to engage in a voluntary supervisory conversion if:

(1) Either the mutual holding company or its subsidiary savings association is significantly undercapitalized under applicable regulatory capital requirements (or the mutual holding company or its subsidiary savings association is undercapitalized under applicable regulatory capital requirements and a standard conversion that would make it adequately capitalized is not feasible) and will be a viable entity following the conversion;

(2) Severe financial conditions threaten stability of the mutual holding company, and a conversion is likely to improve its financial condition.

(e) A mutual holding company or its subsidiary savings association will be a viable entity following the conversion if it satisfies all of the following:

(1) It will be adequately capitalized as a result of the conversion;

(2) It, the proposed conversion, and its acquirer(s) comply with applicable supervisory policies;

(3) The transaction is in the best interest of the mutual holding company and its subsidiary savings associations, and the best interest of the Deposit Insurance Fund and the public; and

(4) The transaction will not injure or be detrimental to the mutual holding company and its subsidiary savings associations, the Deposit Insurance Fund, or the public interest.

(f) *Plan of voluntary supervisory conversion.* A majority of the board of directors of the mutual holding company must approve a plan of voluntary supervisory conversion. The mutual holding company must include all of the following information in the plan of voluntary supervisory conversion.

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(1) The name and address of the mutual holding company.

(2) The name, address, date and place of birth, and social security number or tax identification number, as applicable, of each proposed purchaser of conversion shares and a description of that purchaser's relationship to the mutual holding company.

(3) The title, per-unit par value, number, and per-unit and aggregate offering price of shares that the mutual holding company will issue.

(4) The number and percentage of shares that each investor will purchase.

(5) The aggregate number and percentage of shares that each director, officer, and any affiliates or associates of the director or officer will purchase.

(6) A description of any liquidation account.

(7) Certified copies of all resolutions of the board of directors relating to the conversion.

(g) *Voluntary supervisory conversion application.* The mutual holding company must include all of the following information and documents in a voluntary supervisory conversion application to the Board under this subpart:

(1) *Eligibility.* (i) Evidence establishing that the mutual holding company meets the eligibility requirements under paragraph (d) of this section.

(ii) An opinion of qualified, independent counsel or an independent, certified public accountant regarding the tax consequences of the conversion, or an IRS ruling indicating that the transaction qualifies as a tax-free reorganization.

(2) *Plan of conversion.* A plan of voluntary supervisory conversion that complies with paragraph (e) of this section.

(3) *Business plan.* A business plan that complies with § 239.53(b), when required by the Board.

(4) *Financial data.* (i) The most recent audited financial statements and Thrift Financial Report. The mutual holding company must explain how its current capital levels or the capital levels of its subsidiary savings associations make it eligible to engage in a voluntary supervisory conversion under paragraph (d) of this section.

(ii) A description of the estimated conversion expenses.

(iii) Evidence supporting the value of any non-cash asset contributions. Appraisals must be acceptable to the Board and the non-cash asset must meet all other Board policy guidelines.

(iv) Pro forma financial statements that reflect the effects of the transaction. The mutual holding company must identify the tangible, core, and risk-based capital levels and show the adjustments necessary to compute the capital levels. The mutual holding company must prepare the pro forma statements in conformance with Board regulations and policy.

(5) *Proposed documents.* (i) The proposed charter and bylaws.

(ii) The proposed stock certificate form.

(6) *Agreements.* (i) A copy of any agreements between the mutual holding company and proposed purchasers.

(ii) A copy and description of all existing and proposed employment contracts. The mutual holding company must describe the term, salary, and severance provisions of the contract, the identity and background of the officer or employee to be employed, and the amount of any conversion shares to be purchased by the officer or employee or his or her affiliates or associates.

(7) *Related applications.* (i) All filings required under the securities offering rules of subpart E of this part.

(ii) Any required Holding Company Act application or Control Act notice under part 238 of this chapter.

(iii) A subordinated debt application, if applicable.

(iv) Applications for permission to organize a stock savings and loan holding company and for approval of a merger.

(v) A statement describing any other applications required under federal or state banking laws for all transactions related to the conversion, copies of all dispositive documents issued by regulatory authorities relating to the applications, and, if requested by the Board, copies of the applications and related documents.

(8) *Waiver request.* A description of any of the features of the application

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that do not conform to the requirements of this subpart, including any request for waiver of any of these requirements.

(h) *Offers and sales of stock.* If the mutual holding company converts under this subpart, the conversion shares must be offered and sold in compliance with §239.59.

(i) *Post-conversion acquisition of shares.* For three years after the completion of a voluntary supervisory conversion, neither the resulting stock holding company nor the principal shareholder(s) may acquire shares from minority shareholders without the Board's prior approval.

§ 239.66 Board review of the voluntary supervisory conversion application.

(a) *Board review of a voluntary supervisory conversion application.* The Board will generally approve the application to engage in a voluntary supervisory conversion unless it determines:

(1) The mutual holding company does not meet the eligibility requirements for a voluntary supervisory conversion under §§239.65(d) or because the proceeds from the sale of the conversion stock, less the expenses of the conversion, would be insufficient to satisfy any applicable viability requirement;

(2) The transaction is detrimental to or would cause potential injury to the mutual holding company, its subsidiary savings association, or the Deposit Insurance Fund or is contrary to the public interest;

(3) The mutual holding company or the acquiror, or the controlling parties or directors and officers of the mutual holding company or the acquiror, have engaged in unsafe or unsound practices in connection with the voluntary supervisory conversion; or

(4) The mutual holding company fails to justify an employment contract incidental to the conversion, or the employment contract will be an unsafe or unsound practice or represent a sale of control. In a voluntary supervisory conversion, the Board generally will not approve employment contracts of more than one year for the existing management.

(b) *Conditions the Board may impose on an approval.* (1) The Board will condition approval of a voluntary super-

visory conversion application on all of the following.

(i) The conversion stock sale must be complete within three months after the Board approves the application. The Board may grant an extension for good cause.

(ii) The mutual holding company and the resulting stock holding company must comply with all filing requirements of subpart E of this part.

(iii) The mutual holding company must submit an opinion of independent legal counsel indicating that the sale of the shares complies with all applicable state securities law requirements.

(iv) The mutual holding company and the resulting stock holding company must comply with all applicable laws, rules, and regulations.

(v) The mutual holding company and the resulting stock holding company must satisfy any other requirements or conditions the Board may impose.

(2) The Board may condition approval of a voluntary supervisory conversion application on either of the following:

(i) The mutual holding company and the resulting stock holding company must satisfy any conditions and restrictions the Board imposes to prevent unsafe or unsound practices, to protect the Deposit Insurance Fund and the public interest, and to prevent potential injury or detriment to the mutual holding company before and after the conversion. The Board may impose these conditions and restrictions on the mutual holding company and the resulting stock holding company (before and after the conversion), the acquiror, controlling parties, or directors and officers of the mutual holding company or the acquiror; or

(ii) The mutual holding company or the resulting stock holding company must infuse a larger amount of capital, if necessary, for safety and soundness reasons.

APPENDIX A TO PART 239—MUTUAL HOLDING COMPANY MODEL CHARTER

FEDERAL MUTUAL HOLDING COMPANY CHARTER

Section 1: Corporate title. The name of the mutual holding company is ____ (the "Mutual Holding Company").