

Federal Reserve System

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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

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