FEDERAL RESERVE SYSTEM

12 CFR Parts 217 and 239

[Regulations Q and MM; Docket No. R–1895]

RIN 7100–AH26

Regulatory Modernization and Relief for Mutual Holding Companies

AGENCY: Board of Governors of the Federal Reserve System (Board).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Board invites comment on a notice of proposed rulemaking (proposal) to modernize the regulatory framework applicable to mutual holding companies (MHCs), primarily through proposed revisions to Regulation MM (12 CFR part 239), which governs the formation, operations, activities, and conversion of savings and loan holding companies in mutual form. The proposal would amend Regulation MM by, among other things, eliminating certain dividend waiver requirements, reducing burden associated with conversions from mutual-to-stock form, revising certain post-conversion restrictions, eliminating the requirement that subsidiary holding companies of MHCs obtain federal charters, and revising and clarifying other provisions of the regulation. The proposal also would amend the capital rule (12 CFR part 217) to clarify that certain mutual capital instruments may qualify as regulatory capital and to codify model term sheets for mutual capital certificates as appendices to the regulation.

DATES: Comments must be submitted by October 5, 2026.

ADDRESSES: You may submit comments, identified by Docket No. R–1895 and RIN 7100–AH26, by using any of the following methods:

• *Agency Website: https://www.federalreserve.gov/apps/proosals/.* Follow the instructions for submitting comments, including attachments. *Preferred Method.*

• *Mail:* Benjamin W. McDonough, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

• *Hand Delivery/Courier:* Same as mailing address.

• *Other Means: publiccomments@frb.gov.* You must include the docket number in the subject line of the message.

Comments received are subject to public disclosure. In general, comments received will be made available on the Board's website at *https://www.federalreserve.gov/apps/proposals/* without change and will not be modified to remove personal or business information including confidential, contact, or other identifying information. Comments should not include any information such as confidential information that would not be appropriate for public disclosure. Public comments may also be viewed electronically or in person in Room M—4365A, 2001 C St. NW, Washington, DC 20551, between 9 a.m. and 5 p.m. during Federal business weekdays.

FOR FURTHER INFORMATION CONTACT: Lucy Chang, Assistant General Counsel, (202) 475–6331; Mark Buresh, Senior Special Counsel, (202) 452–5270; Victoria Szybillo, Senior Counsel, (202) 475–6325; Trevor Feigleson, Senior Counsel, (202) 452–3274; Jonah Kind, Senior Counsel, (202) 452–2045; Tara Hofbauer, Senior Attorney, (202) 680–2503; Sean KimKwon, Attorney, (240) 374–7747; Timothy Kelly, Attorney, (771) 210–6989, Legal Division; Anna Lee Hewko, Associate Director, (202) 250–1577, Jonathan Rono, Manager, (202) 603–9780, Missaka Nuwan Warusawitharana, Manager, (202) 452–3461, Helen Xu, Manager, (202) 603–1924, Division of Supervision and Regulation; Board of Governors of the Federal Reserve System, 20th and C Street NW, Washington, DC 20551. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), (202) 263–4869.

SUPPLEMENTARY INFORMATION:

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I. Background

On July 21, 2011, pursuant to section 312 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), the Board assumed responsibility for the supervision and regulation of savings and loan holding companies (SLHCs) from the former Office of Thrift Supervision (OTS).[1] This responsibility extended to SLHCs in mutual form (thrift MHCs) and involved all functions of the OTS and the Director of the OTS related to SLHCs, including rulemaking authority and authority to issue orders.[2]

Mutual banking organizations are a type of banking organization owned directly by those with deposit and lending relationships with the institution (members), rather than by shareholders. These institutions are arranged in mutual, rather than stock form, and their charters typically set forth how individuals can qualify for membership. Typically, customers gain membership in such an institution through deposits or through a lending relationship with the mutual organization (similar to credit unions). Depending on the institution's charter and relevant state law, as applicable, members may have the right to vote on matters affecting the mutual banking organization, as well as other rights and privileges.[3]

Because of their ownership by members (sometimes referred to as mutuality), mutual banking organizations focus uniquely on their members and their local communities and can prioritize long-term stability over near-term profits. Additionally, mutuality can support the safety and soundness of these banking organizations, as members (generally depositors and borrowers) have an additional incentive based on their ownership of the organization to support the organization's long-term health. Mutual banking organizations also support the safety and stability of the U.S. banking system by contributing to the diversity of institutions in the U.S. banking system. However,

[1] 12 U.S.C. 5412.

[2] *See id.*

[3] For example, members may have an interest in the proceeds of the institution in the event the institution liquidated (known as a liquidation interest).

mutuality also can result in mutual banking organizations facing issues that are not faced by stock-form banking organizations. For example, as discussed in section I.B., mutual banking organizations face additional challenges in raising capital due to their general inability to sell equity securities.

Mutual banking organizations can be arranged in three main structures. First, a mutual bank or mutual savings association can be a stand-alone entity that is owned directly by its members. Second, a mutual bank or mutual savings association may undergo a ''reorganization'', whereby a company is formed (the mutual holding company, or MHC) to control the subsidiary bank or savings association, which itself would become a stock-form entity that is wholly owned by the MHC.[4] This structure is primarily utilized by institutions that seek to retain 100 percent mutuality but seek the corporate flexibility provided by the holding company format. Finally, a mutual banking organization can be organized in a three-tier format with (i) a top-tier MHC, (ii) a stock-form holding company formed as a majority-owned subsidiary to the top-tier MHC (mid-tier holding company or subsidiary holding company);[5] and (iii) a stock-form bank or savings association that is wholly owned by the mid-tier holding company. In this structure, the top-tier MHC must own at least a majority of the mid-tier holding company in order to preserve mutuality for the top-tier MHC. This three-tier structure allows institutions to blend mutuality with stock ownership, as the mid-tier holding company has the ability to issue stock to outside shareholders, as long as a majority of its stock continues to be held by the top-tier MHC. MHCs and mid-tier holding companies within the two- or three-tier structure can be either an SLHC or a BHC, depending on the charter of the subsidiary depository institution.

In addition to having varying structures, the entities that make up mutual banking organizations—like stock-form institutions—also can have varying charter types. As mentioned, the Board is responsible for supervising and regulating thrift MHCs. In 2011, the Board adopted an interim final rule (IFR) that provided for the transfer of the OTS's regulations necessary for the Board to administer the statutes applicable to SLHCs, including the Home Owners' Loan Act (HOLA) and the Change in Bank Control Act of 1978, and to supervise SLHCs, including thrift MHCs.[6] The IFR established Regulation LL, which applies to all SLHCs, and Regulation MM, which applies to thrift MHCs and their subsidiary holding companies, and made certain technical amendments to existing Board regulations necessary to accommodate the transfer of supervisory authority for SLHCs from the OTS to the Board.[7] Regulation MM adopted, with minimal changes, the predecessor regulations of the OTS, which first finalized in 1993.[8] Regulation MM has not been amended since its adoption in 2011.

Bank MHCs are not subject to HOLA or Regulation MM by their terms, but are instead subject to the Board's supervision and regulation pursuant to the Bank Holding Company Act of 1956 (BHC Act).[9] As discussed in section II.D, bank MHCs are governed by relevant state law and generally have entered into commitments with the Federal Reserve to comply with certain provisions of Regulation MM. Banks and savings associations in mutual form that are not state member banks are not directly supervised or regulated by the Board. The Board has not issued regulations specifically relating to the mutuality of state member banks in mutual form.

A. Comments Received

In connection with this proposed rulemaking, the Board has taken into consideration comments received in response to its earlier IFR[10] and through outreach conducted pursuant to the Economic Growth and Regulatory Paperwork Reduction Act (EGRPRA),[11] as well as feedback received from regulated entities. These comments were taken into consideration in developing this proposed rulemaking (proposal).

Multiple comments focused on section 239.8(d) of Regulation MM, which sets forth provisions governing the waiver of dividends by a thrift MHC. These comments are discussed in more detail in section II.A.1. of this proposal, which addresses those provisions.

The Board received comments on other aspects of Regulation MM as well. For example, one commenter suggested that the Board's source of strength doctrine (as it applies to SLHCs) renders the proposed share repurchase provisions set forth at sections 239.8(c) and 239.63(c) and (d) of Regulation MM unnecessary.

The same commenter also suggested that the Board delete the 5 percent limit on repurchasing shares in the first year following conversion in section 239.63(c)(1)(i) and apply only a valid business purpose standard to such repurchases. This comment will be discussed in more detail in section II.A.3.iv. of the proposal, which addresses that provision.

Another commenter argued that the Board is not the primary federal regulator of MHCs, has no authority to issue MHC charters, and has usurped any authority it has from other Federal regulatory institutions or state regulators. This comment will be addressed in section II.A.2.i. of the proposal, which discusses the Board's authority and Regulation MM's provisions concerning thrift MHCs and their subsidiary holding companies. Meanwhile, a different commenter noted that certain provisions of Regulation MM relating to business activities and investments of mutual holding companies are unclear, including references throughout the regulation to ''non-controlling investments'' by thrift MHCs. The Board does not propose to make any changes to the specific Regulation MM provisions regarding ''non-controlling'' investments by thrift MHCs. However, the proposal in general strives to improve the general clarity of the regulation and to provide additional transparency for mutual banking organizations.

B. Board Experience as Primary Federal Regulator of MHCs

Mutual banking organizations tend to be uniquely community-oriented with straightforward business models. Their structure as member-owned institutions makes them durable, preserves their ability to remain independent, and allows them to be closely tied to the communities in which they operate.

[4] Under this structure, mutuality ''shifts up,'' such that the members of the bank or savings association instead become members of the MHC (since the bank or savings association becomes a stock-form entity wholly owned by the MHC) and any new customer of the bank or savings association would become members of the MHC upon establishing a deposit or loan account at the bank or savings association.

[5] Regulation MM uses the term ''subsidiary holding company,'' but such entities are often also referred to, both in practice and in this proposal, as mid-tier holding companies.

[6] 76 FR 56508 (September 13, 2011) (hereafter, the 2011 IFR).

[7] *See id.*

[8] 58 FR 44104 (August 19, 1993).

[9] 12 U.S.C. 1841 *et seq.*

[10] In 2011, the Board sought comment on all aspects of the IFR and received 49 comments in total referencing Regulation MM. The Board did not make any changes to the regulation in response to the comments received to the IFR.

[11] Public Law 104–208, Div. A, Title II, section 2222, 110 Stat. 3009–414, (1996) (codified at 12 U.S.C. 3311). *See also* Regulatory Publication and Review Under the Economic Growth and Regulatory Paperwork Reduction Act of 1996, 89 FR 8084 (February 6, 2024); Regulatory Publication and Review Under the Economic Growth and Regulatory Paperwork Reduction Act of 1996, 90 FR 35241 (July 25, 2025).

Mutual banking organizations confront many of the same issues facing other community banks, including high compliance and technology costs relative to asset size, challenges with succession planning, an older depositor base, and competition from credit unions. Rising compliance and technology costs have contributed to consolidation across the banking industry, especially as many smaller institutions, including mutual banking organizations, have pursued mergers and acquisitions to achieve economies of scale, improve operational efficiency, and support technology and compliance infrastructure. These institutions are challenged with maintaining relationship-based community banking models while needing to invest in advances in financial technologies to meet evolving consumer expectations.

In addition, mutual banking organizations face issues specific to their mutuality. First, mutual banking organizations face constraints with respect to their ability to raise capital because of their unique ownership structure. Since mutual banking organizations are owned by their members, they have limited available options for raising capital. Stock-form banking organizations, on the other hand, generally are permitted to issue a range of capital instruments under their charters and applicable law. As a result, mutual banking organizations tend to rely heavily on retained earnings to meet capital requirements. While thrift MHCs can raise capital by having a subsidiary stock holding company conduct a minority stock issuance, mutual banking organizations historically have struggled to raise capital quickly without diminishing or ceding their mutuality.

In addition, since the Board assumed the regulation and supervision of thrift MHCs, it has found the regulatory framework applicable to such institutions to be overly complicated and burdensome. In the Board's view, thrift MHCs would benefit greatly from updates, clarifications, and modernizations to Regulation MM that would appropriately reduce burden, consistent with those organizations' safe and sound operations. The Board believes that the changes outlined in section II would achieve this goal through a simplified regulatory framework applicable to thrift MHCs that would make them more competitive in the modern banking environment.

II. The Proposal

The Board proposes to make changes to Regulation MM based on the Board's supervisory experience and consideration of feedback received from regulated entities. The Board is also proposing targeted changes to its capital rule to clarify the treatment of capital instruments issued by mutual banking organizations. The Board invites comments generally on any of the proposed changes to the capital rule and Regulation MM, or with respect to any other revisions to the regulatory framework applicable to MHCs that commenters believe may be appropriate. In addition, the Board invites comment in response to the specific questions included throughout this notice.

A. Changes To Support Capital Raising

As noted in section I.B., due to their mutuality, mutual banking organizations may be constrained in their ability to raise capital, especially common equity tier 1 [12] and additional tier 1 capital.[13] MHCs cannot issue traditional equity instruments and often rely on retained earnings to meet capital requirements. A subsidiary holding company in stock form can raise capital through a minority stock issuance; however, the amount that can be raised is limited, as the top-tier MHC must remain the majority shareholder. These constraints on the ability of mutual banking organizations to raise capital limit their ability to grow and to increase the amount of products and services they provide to their communities. In addition, the reliance on retained earnings as a source of capital for mutual banking organizations makes it difficult to establish a de novo mutual banking organization, which, by definition, will not have retained any earnings.

The Board is proposing modifications to both Regulation MM and to its capital rule that are meant to clarify and support mutual banking organizations' ability to raise capital.

1. Dividend Waivers

Dividend waivers can be an important tool for thrift MHCs to raise capital while still retaining their mutual form of ownership. When a thrift MHC waives its right to receive a dividend declared by its subsidiary holding company, the dividend that would otherwise be allocated to the thrift MHC is instead distributed to the other shareholders of the thrift MHC's subsidiary holding company. This reallocation helps increase the value of the public stock of the mid-tier holding company, improving its ability to attract investors for future capital raises. In doing so, dividend waivers also enable thrift MHCs to continue to compete with other similar institutions effectively without losing their mutuality by converting fully to stock form.

As mentioned in section I.A., many of the comments that the Board received on the IFR concerned dividend waivers. Some of the comments related to the procedural requirements associated with dividend waivers, including the specific items that must be provided to the Board in connection with a thrift MHC's notice of its intent to waive dividends. Regulation MM currently includes overly prescriptive procedural requirements. These requirements were designed to mitigate potential conflicts of interest concerns. When a thrift MHC's directors approve a waiver of dividends, they may directly benefit from the MHC's waiver of dividends.[14] Some commenters suggested that no conflict of interest exists or that the conflict is perceived or potential in nature. Other commenters acknowledged the conflict of interest but suggested that, because thrift MHC directors often also serve as directors of the mid-tier holding company and savings association, it is difficult or impossible to segregate the fiduciary duties the directors owe to each organization.

HOLA guarantees the ability of certain thrift MHCs to waive dividends, even if waiving dividends may benefit insiders of the organization, as long as such institutions comply with the Board's procedural requirements.[15] Specifically, thrift MHCs that waived dividends prior to December 1, 2009 (legacy waiver MHCs), may continue to do so if a 30-day notice has been submitted to the Board pursuant to Regulation MM in advance of the institution waiving its right to receive dividends.[16] As part of the notice, the board of directors of the thrift MHC must determine expressly that the dividend waiver is consistent with their fiduciary duties to the members of the thrift MHC.[17] Additionally, the notice must affirm that

[12] Common equity tier 1 capital is the most loss-absorbing form of capital. It includes, among other things, retained earnings and common stock (plus any related surplus), net of treasury stock, that meet certain criteria. *See* 12 CFR 217.20(b).

[13] Additional tier 1 capital instruments are intended to be available to absorb losses on a going-concern basis and can have a broader range of terms than common equity tier 1 instruments. *See* 12 CFR 217.20(c).

[14] *See* 2011 IFR at 56508, 56512; Letter from William W. Wiles, Secretary of the Board, to Kevin M. Houlihan, Greater Delaware Valley Holding, MHC (May 28, 1997).

[15] 12 U.S.C. 1467a(o)(11)(D)(iii).

[16] 12 CFR 239.8(d)(1)(ii).

[17] 12 CFR 239.8(d)(3)(ii). The resolution containing this determination from the board of directors must include a description of the conflict of interest that exists because of an MHC director's ownership of stock in the mid-tier holding company that is declaring dividends.

a majority of members eligible to vote have approved the waiver within the last 12 months.[18] Many of the comments on the IFR concerned the member vote requirement.[19]

HOLA does not guarantee expressly the ability of thrift MHCs that did not waive dividends prior to December 1, 2009 (non-legacy waiver MHCs), to do so. Therefore, in addition to the requirements applicable to legacy waiver MHCs, the Board by regulation has restricted non-legacy waiver MHCs from waiving dividends and they may only waive dividends if either (i) a majority of the entire thrift MHC board of directors approves the waiver, with any directors who would benefit directly or indirectly from the waiver, abstaining from the vote; [20] or (ii) any thrift MHC insider who would benefit from the waiver waives the right to receive any dividend.[21]

Since Regulation MM's promulgation in 2011, the Board has received input from many legacy waiver MHCs—both via comments on the IFR and the EGRPRA process—regarding the burdens and costs associated with the procedural requirements for waiving dividends. Most of the burdens and costs arise as a result of the requirement to seek the approval of a majority of members on an annual basis. The Board understands that members typically do not have any concerns with the potential conflicts of interest associated with dividend waivers; therefore, this annual vote requirement often represents an unnecessary expenditure of resources on the part of the legacy waiver MHC. Likewise, the Board understands from non-legacy waiver MHCs that, given the fact that many of their other shareholders are insiders or related parties, they are effectively prevented from issuing dividend waivers due to the additional requirement that either (i) a majority of the entire thrift MHC board of directors approve the waiver, with any directors who would benefit directly or indirectly from the waiver, abstaining from the vote; or (ii) any thrift MHC insider who would benefit from the waiver waives the right to receive any dividend. As a result, non-legacy waiver MHCs effectively are prevented from using dividend waivers to increase the value of the shares of their mid-tier holding companies. These restrictions thereby constrain the ability of these MHCs to raise capital and retain their mutuality.

Based on the comments received that the annual member vote requirement is overly burdensome, costly, and unnecessary, the Board is proposing to eliminate the requirement that legacy waiver MHCs affirm that a majority of members eligible to vote have approved the waiver within the last 12 months. As indicated in the comments, most members of the legacy waiver MHCs do not appear concerned with dividend waivers, have consistently voted to approve such waivers, and institutions and their management must spend significant time and money to encourage members to participate in the necessary vote under the present regulation.

Notwithstanding some of the assertions by commenters, the Board observes that dividend waivers may still present potential for conflicts of interest concerns. However, in connection with a dividend waiver notice, HOLA requires that a thrift MHC's board of directors must already determine that the dividend waiver is consistent with their fiduciary duties to members.[22] The Board believes that this determination is sufficient to mitigate any potential conflicts of interest concerns. Additionally, to ensure members are aware of these potential conflicts of interest concerns, the Board would require legacy waiver MHCs to make appropriate disclosures regarding dividend waivers to new members at time of opening of a deposit account or loan relationship.

Additionally, to create a more level playing field across thrift MHCs and in response to the comments received, the Board is proposing to allow non-legacy waiver MHCs also to waive dividends without requiring that either (i) a majority of the entire thrift MHC board of directors approve the waiver, with any directors who would benefit directly or indirectly from the waiver, abstaining from the vote, or that (ii) any thrift MHC insider who would benefit from the waiver waive their right to receive any dividend. Instead, consistent with the statutory distinction between legacy waiver MHCs and non-legacy waiver MHCs,[23] the proposal would require that non-legacy waiver MHCs affirm to the Board that, in a vote held within the past ten years, members have approved the dividend waiver. However, to reduce the burden associated with proxy solicitation outlined in the comments to the IFR, non-legacy waiver MHCs would not be required to obtain the approval of a majority of members eligible to vote, instead just a majority of votes cast.

Finally, all dividend waivers would remain subject to safety and soundness and applicable limitations.[24]

The Board seeks comment on all aspects of its proposed changes to the dividend waiver framework, particularly:

Question 1: Is the determination by the thrift MHC board of directors that dividend waivers are consistent with their fiduciary duties to the institution's members sufficient to mitigate any potential conflict of interest concerns with dividend waivers? Should the Board consider any alternative requirements? If so, what would be the advantages and disadvantages of those alternatives?

Question 2: Should the Board continue to maintain a distinction between its treatment of legacy waiver MHCs and non-legacy waiver MHCs? If so, is the balance struck by the proposal appropriate? If not, why not, and what would be the advantages and disadvantages of an alternative balancing?

Question 3: Is the requirement that non-legacy waiver MHCs obtain the approval of members on a decennial basis appropriate? Should non-legacy waiver MHCs be required to obtain the approval of members on a more or less frequent basis (such as every three years or every five years)? If so, why?

Question 4: Should the Board consider any additional changes to the procedural requirements associated with dividend waivers to reduce burden? If so, what would be the advantages and disadvantages of such additional changes?

[18] 12 CFR 239.8(d)(2)(iv).

[19] Some commenters noted that most members did not understand dividend waivers, requiring costly outreach and education, or do not care about dividend waivers. Those commenters asserted that, as a result, the member vote requirement was unnecessary and overly burdensome. Commenters also stated that members are not harmed by dividend waivers. Certain commenters further argued that members' interests in the thrift MHC do not rise to the level of shareholders' interests, and, therefore, members are not entitled to a vote on corporate governance matters in the same way as shareholders in a stock-form company. In addition to these substantive issues, commenters also raised concerns about the burden associated with the member vote requirement. Commenters noted that the cost and burden on management of obtaining the approval of a majority of the members eligible to vote is substantially greater than gaining the approval of members by a majority of votes cast at a meeting. Commenters pointed out that large numbers of members typically do not vote without significant efforts by management and significant expenditures by the thrift MHCs. Some of the commenters further stated that the cost and burden of obtaining member approval is magnified because section 239.8(d) of Regulation MM permits consideration of only one year's worth of dividend waivers at a time.

[20] 12 CFR 239.8(d)(4)(v)(A).

[21] 12 CFR 239.8(d)(4)(v)(B).

[22] 12 U.S.C. 1467a(o)(11)(D)(ii).

[23] 12 U.S.C. 1467a(o)(11).

[24] 12 U.S.C. 1467a(o)(11)(D)(i); 12 CFR part 238, subpart K.

2. Special Deposits and Mutual Capital Certificates

To further support mutual banking organizations' capital raising efforts, the Board proposes to amend sections 217.20(b)(1), (c)(1), and (d)(1) of its capital rule to clarify that special deposits and mutual capital certificates issued by a mutual banking organization can qualify as common equity tier 1, additional tier 1, or tier 2 capital,[25] respectively, if all of the qualifying criteria are satisfied. Special deposits are capital instruments issued by mutual banking organizations that may be especially useful as a means for newly formed organizations to raise capital. It is possible that the exact features and terms of special deposits may vary. However, a special deposit may be sold for a higher price; similar to equity stock, it could entitle holders to modest earnings based on bank profits, and may not be insured by the Federal Deposit Insurance Corporation. Mutual capital certificates are a form of instrument that mutual banking organizations can issue, to the extent authorized by their organizing documents and governing law, that can serve similar loss-absorbing functions as qualifying regulatory capital instruments. Mutual banking organizations may be able to issue additional forms of capital instruments beyond special deposits and mutual capital certificates. The goal of the proposal is to clarify that forms of capital instruments that the Board understands have been issued by mutual banking organization may qualify as regulatory capital and not to preclude any other form of instrument issued by mutual banking organizations from qualifying as regulatory capital.

There can be substantial variation in the form and terms of mutual capital certificates and special deposits. In order to qualify as common equity tier 1, additional tier 1, or tier 2 capital under the Board's capital rule, mutual capital certificates and special deposits must meet the qualifying criteria listed in section 217.20(b)(1)(i)–(xiii), section 217.20(c)(1)(i)–(xiv), or section 217.20(d)(1)(i)–(xi), respectively, of the rule. The proposed amendment would clarify that mutual capital certificates and special deposits are eligible for this treatment, as long as the qualifying criteria are met, giving increased certainty to issuing organizations.

The Board seeks comment on all aspects of its proposed changes to clarify the capital treatment of special deposits. In particular:

Question 5: What are the advantages and disadvantages of the Board's proposed changes to make clear that instruments that meet the definition of regulatory capital qualify as regulatory capital? Do the amendments to section 217.20(b)(1), 217.20(c)(1), and 217.20(d)(1) provide additional clarity regarding the treatment of special deposits in particular?

Question 6: What other steps, if any, should the Board take to enhance the ability of mutual banking organizations to raise qualifying capital? Are there any other changes that the Board could make to meaningfully broaden the market for these capital instruments, improving the ability for mutual banking organizations to raise qualifying capital?

3. Appendices to the Capital Rule

The second proposed modification to the capital rule concerns the treatment of mutual capital certificates, which are capital instruments issued by mutual banking organizations that may be eligible for treatment as common equity tier 1, additional tier 1, or tier 2 capital under the Board's capital rule, depending on their features. In October 2025, Board staff published on the Board's public website a set of frequently asked questions and two model term sheets to help clarify how mutual banking organizations may issue mutual capital certificates that qualify as regulatory capital, while maintaining mutuality.[26] One term sheet set out key terms for mutual capital certificates to be eligible to qualify as common equity tier 1 capital, while the other set out terms for qualification as additional tier 1 capital. Board staff requested public comment on the model term sheets by June 30, 2026.[27]

The Board has received some feedback on the model term sheets. A commenter recommended revisions to language in the term sheets that would clarify the permissibility of a disclosed target distribution rate and confirm that certificate holders are not considered members of the mutual banking organization solely by virtue of holding such certificates. In addition, the commenter recommended edits that would modify the provisions governing the seniority and subordination of mutual capital certificates relative to other capital instruments and liquidation claims, and that would prescribe the treatment of mutual capital certificates following corporate reorganizations or liquidation scenarios. Finally, the commenter suggested new sections to the term sheets: one addressing charter amendments and another discussing the permissibility and conditions under which depository institutions and their affiliates may invest in mutual capital certificates.

The Board now proposes to include these mutual capital certificate term sheets as appendices to the Board's capital rule, amended to reflect certain feedback received on the model term sheets published in October 2025. By adding these term sheets as appendices to the capital rule, the Board hopes to assist mutual banking organizations in developing capital instruments eligible for consideration under the rule. The term sheets are intended to serve as templates for mutual banking organizations to use as references when issuing capital instruments intended to qualify as common equity tier 1 or additional tier 1 capital.

In publishing these model term sheets as appendices to the Board's capital rule, the Board is incorporating certain changes recommended in the feedback received on the model term sheets. More specifically, the term sheets proposed as appendices to the capital rule in this proposal include revisions to clarify the permissibility of a disclosed nonbinding target distribution rate and to confirm that certificate holders are not considered members of the mutual banking organization solely by virtue of holding certificates. The Board believes these changes provide additional transparency to mutual banking organizations seeking to use the model term sheets.

The Board seeks comment on all aspects of the proposed appendices to the capital rule. In particular:

Question 7: What are the advantages and disadvantages of including the mutual capital certificate term sheets as appendices to the capital rule? Does incorporating the term sheets in the appendices to the capital rule limit in any way the flexibility mutual banking organizations have to craft their own instrument? Should the Board consider any changes to how it publishes or codifies the term sheets?

Question 8: Should the Board consider any additional changes to the provisions of the term sheets?

[25] Tier 2 capital instruments are the least loss-absorbing instruments permitted to be counted as regulatory capital. *See* 12 CFR 217.20(d).

[26] *See* ''Frequently Asked Questions about Regulation MM'' available at *www.federalreserve.gov/supervisionreg/legalinterpretations/reg-mm-frequently-asked-questions.htm.*

[27] Members of the public that seek to comment on the proposed model term sheets should review the proposed appendices included in this proposal and must submit comments in line with the procedures under this proposal.

4. Model Charter Amendments

In one of the frequently asked questions posted to the Board's public website, Board staff noted that a mutual banking organization must be legally authorized to issue mutual capital certificates and therefore should consult its charter and applicable law to determine whether it has the authority to issue such certificates. The frequently asked question noted that a Board-chartered mutual banking organization whose charter conforms to the Mutual Holding Company Model Charter provided at Appendix A to Regulation MM (Model Charter) would need to adopt a charter amendment in order to issue mutual capital certificates because the existing Model Charter states, ''The Mutual Holding Company shall have no capital stock.'' [28]

As outlined in section II.B.1.vi., the Board is proposing changes as part of this notice of proposed rulemaking that would eliminate the requirement that thrift MHCs' charters conform to the Model Charter. However, and as explained more fully in section II.B.1.vi., the Board intends to retain the Model Charter as an appendix to Regulation MM as an example document. To ensure the Model Charter remains a useful and up-to-date example, the Board is proposing to codify the staff guidance on mutual capital certificates, discussed in section II.A.4., by updating the Model Charter. Specifically, the Model Charter would be revised to include optional language authorizing the issuance of mutual capital certificates. Institutions need not amend their charters to incorporate this language if they do not wish to issue mutual capital certificates. However, if an institution seeks to issue mutual capital certificates, it should ensure that its charter allows such issuance and may wish to adopt the language in the revised Model Charter. Any mutual institution desiring to amend its charter must follow the procedures in section 239.14 of Regulation MM. Charter amendments consistent with the proposed amendment to the Model Charter generally would require only 30 days' prior notice, pursuant to section 239.14(a)(2)(ii) of Regulation MM, and not an application pursuant to section 239.14(a)(2)(i).

The Board seeks comment on all aspects of its proposed updates to the Model Charter, particularly:

Question 9: Should the Board consider any additional changes to the language included in the Model Charter to make clear that institutions may issue mutual capital certificates? What would be the advantages and disadvantages of any such changes?

B. Other Changes to Regulation MM

As discussed in section I.B., supervisory experience indicates that Regulation MM is overly complicated and burdensome for regulated entities. Because of the regulation's complexity, thrift MHCs are often required to obtain sophisticated and expensive legal counsel in order to ensure compliance with the rule. Such resources could be better utilized through re-investment in the mutual banking organization or in its local community. The Board believes the proposed changes would reduce the regulatory burden borne by these institutions.

1. Subpart B

Subpart B of Regulation MM governs the operations of thrift MHCs. It contains requirements regarding reorganization from a stand-alone mutual savings association structure into a thrift MHC structure. It also includes, among other things, requirements related to member rights, communications with members, and thrift MHC charters and bylaws. In addition, Subpart B outlines restrictions and requirements around acquisitions of other mutual savings associations, general operations and governance (including with respect to dividend waivers), and voluntary and involuntary liquidations of MHCs. The following section outlines the Board's proposed changes to Subpart B of Regulation MM.[29]

i. Reorganization Into the Multi-Tier Structure

Sections 239.3 and 239.4 of Regulation MM outline the procedural requirements associated with reorganization from a single-tier mutual savings association structure into a multi-tier MHC structure. Stand-alone mutual savings associations may seek to convert to a multi-tier structure for increased corporate flexibility and to be able to raise capital through a minority stock issuance. Such institutions must first develop a Reorganization Plan (Plan),[30] that contains all of the provisions outlined in section 239.6 of Regulation MM [31] and is approved by a majority of the savings association's board of directors.[32] The Plan also must be voted upon by the savings association's members and receive the approval of a majority of the total votes eligible to be cast at a meeting.[33] Additionally, the mutual savings association must submit a Reorganization Notice to the Board [34] and receive all necessary regulatory approvals.[35] Section 239.4 then outlines the grounds under which the Board may disapprove a proposed MHC reorganization.[36]

At this time, the Board does not propose to amend the requirements associated with a mutual savings association's reorganization into a multi-tier structure. However, the Board invites comment on whether it should amend the procedural requirements or disapproval standard in any way, including to reduce burden for reorganizing mutual savings associations.

Question 10: What changes, if any, should the Board consider making to the procedural requirements associated with MHC reorganizations under section 239.3 of Regulation MM? What would be the advantages and disadvantages of any such changes?

Question 11: What value, if any, is served by the member vote requirement, provided at section 239.3(a)(3), for reorganization into the MHC structure? Is the vote standard of approval by a majority of the total votes eligible to be cast appropriate and why? If not, what alternatives should the Board consider, and what would be the advantages and disadvantages of such alternatives?

Question 12: What changes, if any, should the Board consider making to the approval standard for reorganizations, provided at section 239.4 of Regulation MM? What would be the advantages and disadvantages of any such changes?

Question 13: What changes, if any, should the Board consider making to the contents and provisions that must be included in a Plan submitted under section 239.6 of Regulation MM? What would be the advantages and disadvantages of any such changes?

ii. Membership Rights

Section 239.5(a) of Regulation MM currently addresses membership rights of depositors and borrowers of resulting associations and target mutual savings associations. It provides that when a mutual savings association reorganizes into the thrift MHC structure, the members of the savings association must receive the same membership rights in the new thrift MHC as they had held in

[28] 12 CFR part 239, app. A.

[29] For proposed changes with respect to dividend waivers, *see* section II.A.1. above.

[30] 12 CFR 239.2(o); 12 CFR 239.3(a).

[31] 12 CFR 239.6.

[32] 12 CFR 239.3(a)(1).

[33] 12 CFR 239.3(a)(3).

[34] 12 CFR 239.2(n); 12 CFR 239.3(a)(2).

[35] 12 CFR 239.3(a)(4).

[36] 12 CFR 239.4.

the mutual savings association.[37] It also provides that, when a thrift MHC acquires a mutual savings association, the members of the target mutual savings association must receive membership rights in the acquiring thrift MHC.[38] However, section 239.5 of Regulation MM does not currently contemplate a thrift MHC's acquisition of another MHC, likely because that such transactions were rare when the OTS first issued the regulation.

The Board proposes to modify section 239.5(a) to add that the members of a target thrift MHC will receive the same membership rights in the acquiring MHC as those conferred upon the members of the acquiring thrift MHC. This change would help guarantee that the rights of the members of a target MHC remain equivalent to those of the acquiring MHC's members. It also would align section 239.5(a) of Regulation MM with existing practice, as thrift MHCs typically have granted membership rights to the members of target thrift MHCs upon consummation of the acquisition. Similarly, section 239.5(b) of Regulation MM would be amended to ensure that membership rights would be conferred upon target MHC members regardless of whether the thrift subsidiaries are merged into a single institution by the acquiring MHC or continue operations as stand-alone institutions.

Question 14: Are there additional advantages or disadvantages of the proposed change to the membership rights provisions that the Board should consider? If so, what?

Question 15: What additional changes, if any, should the Board consider in order to clarify the membership rights afforded to the members of a target thrift MHC? What would be the advantages and disadvantages of any such changes?

Question 16: What additional burden, if any, is imposed by the proposed change to the membership rights provisions? Are the Board's proposed amendments the most appropriate way to guarantee the membership rights of a target thrift MHC, or should the Board consider other changes? If so, what would be the advantages and disadvantages of any such changes?

iii. Acquisitions

Section 239.7 of Regulation MM outlines requirements and restrictions associated with the acquisition by a thrift MHC of a savings association, SLHC, or other corporation.[39] In particular, section 239.7(a)(3) provides that, with respect to a thrift MHC's acquisition of another thrift MHC, ''[t]he approval of the members of the mutual holding companies shall also be obtained if the Board advises the mutual holding companies in writing that such approval will be required.'' This language applies broadly to both an approval by the members of the acquiring institution and to an approval by the members of the institution to be acquired. Currently, Regulation MM does not include any information regarding the factors that the Board may consider in determining whether to require the approval of either institution's members. This lack of transparency can cause confusion for institutions and contribute to delays in the processing of applications.

The Board proposes to amend section 239.7(a) to codify factors that the Board or Reserve Bank would evaluate in considering whether to require approval by an institution's members. The proposed factors reflect facts that the Federal Reserve historically has considered when evaluating whether a member vote may be warranted. Specifically, the proposal would update section 239.7(a) to include four factors that the Board or Reserve Bank shall consider in determining whether approval by members will be required. These factors would include: (i) the corporate governance structure of the thrift MHC; (ii) the ability of members to vote on any future mutual-to-stock conversion of the resulting thrift MHC; (iii) the supervisory condition of the institution that would be acquired; and (iv) the burden and cost associated with obtaining the members' approval.

In considering the corporate governance factor, the Board would take into consideration members' opportunities for direct participation in corporate governance matters following consummation of the transaction. If, as a result of the transaction, the members of either institution would have fewer opportunities to participate in corporate governance, this proposed factor may suggest a member vote by the affected institution may be warranted. Likewise, if, as a result of the transaction, members of either institution would not have the ability to vote on any future mutual-to-stock conversion of the resulting institution, the second proposed factor may indicate a member vote by the affected institution may be warranted. Next, under the third proposed factor, the Board would weigh the supervisory condition of the target institution and whether potential delays associated with obtaining members' approval could exacerbate the institution's existing condition or delay its resolution. Under the fourth proposed factor, the Board would consider the cost and burden upon either institution associated with obtaining its members' approval. In situations where the cost of obtaining members' approval represents a significant expenditure, especially with respect to the institution's annual earnings, a member vote may not appear reasonable.

The Board invites comment on all aspects of its proposed changes to codify the factors it would consider in determining whether to require members' approval of an MHC's acquisition of another mutual banking organization, particularly with respect to the following:

Question 17: What are the advantages and disadvantages of the Board requiring thrift MHCs to obtain members' approval of an acquisition by or of another thrift MHC? Should the Board consider requiring this only in specific circumstances and, if so, what would be the appropriate circumstances?

Question 18: What are the advantages and disadvantages of the proposed factors for determining whether to require members' approval? Should the Board consider any other factors in determining whether to require thrift MHCs to obtain members' approval of an acquisition by or of another thrift MHC? If so, what other factors should the Board consider, and what would be the advantages and disadvantages of including those factors?

Question 19: Should the Board consider making any other changes to the requirements and restrictions associated with a thrift MHC's acquisition of a savings association, SLHC, or other corporation?

iv. Running Proxies

In the Board's experience, many thrift MHCs rely on ''running'' proxies as a corporate governance tool. Section 239.10(a)(4) provides that an MHC ''may make use of any proxy conferring general authority to vote on any and all matters at any meeting of members,'' although so-called ''running'' proxies ''may not be used to vote for a [thrift MHC] reorganization, mutual-to-stock conversion undertaken by a [thrift MHC], dividend waiver, or any other material transaction.''[40] The Board does not propose to change its approach to running proxies. However, the Board invites comment on all aspects of its

[37] 12 CFR 239.5(a)(1); 12 CFR 239.5(a)(3).

[38] 12 CFR 239.5(a)(2); 12 CFR 239.5(a)(4).

[39] 12 CFR 239.7(a)(6).

[40] 12 CFR 239.10(a)(4).

rules related to running proxies, particularly:

Question 20: What are the advantages and disadvantages of the Board's existing limitations around the use of running proxies—specifically, that they cannot be used to vote for a thrift MHC reorganization, mutual-to-stock conversion, dividend waiver, or any other material transaction? Should the Board consider incorporating any additional limitations around the use of running proxies? Why or why not? What would be the advantages and disadvantages of any such additional limitations? Alternatively, should the Board consider allowing running proxies to be used to vote for a thrift MHC reorganization, mutual-to-stock conversion, dividend waiver, or any other material transaction? If so, why?

v. Postal Mail Requirements

As noted in section I., Regulation MM adopted with minimal changes the predecessor regulations of the OTS, which had first been finalized in 1993. At the time the OTS first implemented these predecessor regulations, email was not widely accessible and postal mail was the primary form of communication. As a result, Regulation MM contains numerous references to postal mail, requiring thrift MHCs to communicate with members almost exclusively via physical mail. For instance, section 239.12 of Regulation MM sets out the right of members to communicate with other members of the thrift MHC but provides solely for physical mail communication. Additionally, provisions regarding stock issuances by a mid-tier holding company and those with respect to conversion offerings exclusively refer to communications with members being ''mailed.''

The varying physical mail requirements throughout Regulation MM are out-of-date, costly, and unduly burdensome for institutions. Therefore, the proposal updates various provisions in subparts B, C, and E of Regulation MM, as well as in the Appendices to the regulation, to change references to ''mailing'' certain information or communications to ''sending'' certain information or communications. The Board intends through this change to allow institutions to use electronic mail or other available technology to notify its members instead of relying on physical, postal mail, consistent with all other federal and state law. The Board believes these changes will modernize Regulation MM, reduce expenses for thrift MHCs, and provide increased flexibility for both institutions and their members.

The Board seeks comment on all aspects of its proposed changes to allow institutions greater flexibility in its communications with members, particularly:

Question 21: Are there any communications that the Board should specifically require to be physically mailed to members? Are there any for which confirmation of receipt or some other notice of receipt should be required?

Question 22: What are the advantages and disadvantages of the Board's proposed changes to improve the flexibility of thrift MHCs options for communicating with members? Should the Board consider additional or alternative changes? If so, what would be the advantages and disadvantages of such changes?

Question 23: Given the continued advancement of communication technologies, is the term ''send'' sufficiently flexible enough to give thrift MHCs optionality in how they communicate with their members? Should the Board consider using a different term than ''send,'' such as ''provide,'' in order to ensure thrift MHCs have sufficient flexibility to adapt to new communication technologies? What would be the advantages and disadvantages of using a term other than ''send'' for describing how thrift MHCs must communicate with members?

vi. Charter and Bylaws

Regulation MM provides model charters and bylaws for thrift MHCs and their mid-tier holding companies in Appendices A through D.[41] Subparts B and C of Regulation MM contain numerous references to thrift MHCs and their subsidiary holding companies needing to comply with the provisions of the model charter and bylaws. For instance, section 239.6(a) of Regulation MM requires that the charter and bylaws of a mutual savings association reorganizing into a multi-tier structure ''read in the form of the charter and bylaws of a mutual holding company, and attach and incorporate such charter and bylaws.'' [42] Likewise, section 239.11(c) mandates that the charter and bylaws of a subsidiary holding company of a thrift MHC ''be in the form set forth in Appendices B and D, respectively.'' [43] The Board does not believe such prescriptions are necessary. Therefore, in order to promote corporate flexibility, the Board proposes to abolish the requirements that thrift MHCs and their subsidiary holding companies adopt the model charters and bylaws, although the Board would retain the authority to review proposed charters and bylaws as part of its review of the formation of thrift MHCs and their subsidiary holding companies.[44] Additionally, a thrift MHC seeking to make any changes to its charter would continue to be required to follow the procedures outlined in section 239.14 of Regulation MM.[45]

Although the Board proposes to remove the requirements that a thrift MHC and its subsidiary holding company adopt the model charters and bylaws, the Board would retain the model charters and bylaws as appendices to Regulation MM as examples and would retain provisions contained in subparts B and C of Regulation MM identifying terms that thrift MHCs and their subsidiary holding companies may include in their charters and bylaws. The Board believes that it may be helpful to thrift MHCs and their subsidiary holding companies to retain these as example documents, even though these institutions will no longer be required to adhere to them. Small institutions and institutions without sophisticated counsel may particularly benefit from the provision of example documents. Additionally, as described in section II.A.4., the Board is implementing changes to the Model Charter that institutions may implement should they wish to be able to issue mutual capital certificates.

The Board seeks comment on all aspects of its proposed changes to the model charters and bylaws provided in the appendices to Regulation MM, particularly:

Question 24: What are the advantages and disadvantages of the Board removing the requirements contained throughout Regulation MM that an MHC and its subsidiary holding company adhere to the model charters and bylaws provided in the appendices to Regulation MM? How could removal of these requirements improve corporate flexibility?

Question 25: Are the model charters and bylaws provided in the appendices to Regulation MM useful? What are the advantages and disadvantages of retaining these model charters and bylaws but not requiring adherence to them? Should the Board remove the

[41] *See* 12 CFR part 239, app. A, ''Mutual Holding Company Model Charter''; 12 CFR part 239, app. B, ''Subsidiary Holding Company of a Mutual Holding Company Model Charter''; 12 CFR part 239, app. C, ''Mutual Holding Company Model Bylaws''; 12 CFR part 239, app. D, ''Subsidiary Holding Company of a Mutual Holding Company Model Bylaws.''

[42] 12 CFR 239.6(a).

[43] 12 CFR 239.11(c).

[44] 12 CFR 239.3; 12 CFR 239.4.

[45] 12 CFR 239.14.

model charters and bylaws from the appendices to Regulation MM?

Question 26: What are the advantages and disadvantages of retaining the provisions throughout subparts B and C of Regulation MM identifying the terms that MHCs and their subsidiary holding companies may include in their charters and bylaws? Would retaining these provisions contribute to the unnecessary complexity of the overall regulation? Should the Board instead remove these provisions?

vii. Voluntary Dissolution

Regulation MM permits a thrift MHC to propose a plan of voluntary dissolution.[46] In addressing voluntary dissolutions, section 239.16(b) of Regulation MM currently provides that the Board will approve a proposed dissolution plan if the plan is ''advisable'' and ''best for all concerned.'' Similarly, section 239.16(a)(2) provides that a thrift MHC's directors, when proposing a plan for dissolution, may propose a plan that provides for dissolution in a manner that the directors consider ''best for all concerned.'' [47] In the Board's experience, these standards are confusing for thrift MHCs seeking to dissolve back into the single-tier mutual savings association structure and contribute to unnecessary delays in applications processing. The Board proposes to amend section 239.16(b) to (i) remove the terms ''advisable'' and ''best for all concerned'' from its standard of review, (ii) clarify that the Board will consider impact of the dissolution on the thrift MHC's members and other relevant parties (such as, creditors), and (iii) state that the Board may approve the plan if dissolution is appropriate under the circumstances. This proposed amendment is consistent with the Federal Reserve's current approach to considering whether to approve a dissolution plan and provides clarity on the focus and scope of review. The Board believes that this change would reduce ambiguity for thrift MHCs seeking to dissolve into a single-tier mutual savings association structure and facilitate expeditious processing of applications for voluntary dissolution. Similarly, the Board proposes to amend section 239.16(a)(2) of Regulation MM to provide that directors may propose a plan of dissolution that provides for dissolution in a manner that appropriately takes into account the impact of the proposed dissolution on the thrift MHC's members and other relevant parties like creditors. A requirement that the plan be ''appropriate'' rather than ''consider[ed] best'' by the directors would better align with the Board's standard of review for assessing the plan, and the Board would have a better ability to assess compliance with the revised requirement.

The Board seeks feedback on all aspects of its proposed changes to the voluntary dissolution standard, particularly:

Question 27: What are the advantages and disadvantages of replacing the current ''advisable'' and ''best for all concerned'' standard for the Board's review of plans of voluntary dissolution with the proposed standard? Is the proposed standard sufficiently clear? What modifications to the proposed standard should the Board make in order to make it clearer or more appropriate for assessing plans of voluntary dissolution?

Question 28: Is the proposed standard for plans of dissolution proposed by directors sufficiently clear? Should the Board consider alternative approaches? If so, what would be the advantages or disadvantages of such alternatives?

2. Subpart C

Subpart C of Regulation MM governs the operations of mid-tier holding companies of MHCs. It contains requirements relating to the general governance of subsidiary holding companies of thrift MHCs, including with respect to their charter and bylaws. It also contains detailed provisions regarding issuances of stock by subsidiary holding companies of thrift MHCs. The following section outlines the Board's proposed changes to Subpart C of Regulation MM.

i. Chartering of Subsidiary Holding Companies of Thrift MHCs

Prior to the transfer of supervision of SLHCs to the Board in 2011, the OTS was the chartering authority for thrift MHCs and their subsidiary holding companies. When the Board took over supervision of SLHCs from the OTS in 2011, it became the chartering authority for thrift MHCs and their subsidiary holding companies.[48]

HOLA specifically requires the Board to charter thrift MHCs.[49] Regulation MM also requires subsidiary holding companies of thrift MHCs to be chartered by the Board.[50] However, although HOLA explicitly requires a thrift MHC to be chartered by the Board, it does not explicitly require a subsidiary holding company of a thrift MHC to be chartered by the Board. To allow for greater flexibility, including with respect to choice of corporate structure,[51] the Board proposes to eliminate the requirement that subsidiary holding companies of thrift MHCs have federal charters. This proposed change would allow subsidiary holding companies of thrift MHCs to obtain a validly issued charter from any state, as defined by section 238.2(nn) of Regulation LL.[52] A subsidiary holding company of a thrift MHC would not be required to obtain a charter from the state in which its main office is located or in which its MHC parent or subsidiary depository institution operates.[53] As a result of this change, subsidiary holding companies of MHCs would have increased flexibility to select the appropriate chartering entity while remaining subject to applicable provisions of Regulation MM (in particular sections 239.24 and 239.25 of Regulation MM, which govern issuances of stock by subsidiary holding companies).

The Board invites comment on its proposal to eliminate the requirement that subsidiary holding companies of MHCs be chartered by the Board, particularly:

Question 29: What are the advantages and disadvantages of allowing subsidiary holding companies of thrift MHCs to organize under state law rather than requiring they be chartered by the Board?

Question 30: What are the advantages and disadvantages of the proposal to allow a subsidiary holding company of a thrift MHC to organize in a state of its choosing? Should the Board instead require a subsidiary holding company of a thrift MHC to organize in the state in which its subsidiary depository institution operates or maintains its main office, or based on some other qualification or criteria? What would be

[46] 12 CFR 239.16(b).

[47] Alternatively, the plan may provide for ''[t]ransfer of all the mutual holding company's assets to another mutual holding company or home-financing institutions under Federal charter either for cash sufficient to pay all obligations of the mutual holding company and retire all outstanding accounts or in exchange for that mutual holding company's payment of all the mutual holding company's outstanding obligations and issuance of share accounts or other evidence of interest to the mutual holding company's members on a pro rata basis.'' 12 CFR 239.16(a)(1).

[48] 12 CFR 239.11(c) and 239.21.

[49] 12 U.S.C. 1467a(o)(7).

[50] 12 CFR 239.11(c).

[51] For example, organizing under state law may allow a subsidiary holding company of a thrift MHC to be organized as a corporation, LLC, or some other corporate form. Currently, subsidiary holding companies may organize only as Federal corporations.

[52] 12 CFR 238.2(nn).

[53] This is consistent with the flexibility available generally to bank holding companies concerning corporate form.

the advantages or disadvantages of those alternate criteria or requirements?

ii. Issuances of Stock by Subsidiary Holding Companies of MHCs

The Board is proposing a series of amendments to sections 239.24 and 239.25 of Regulation MM that concern stock issuances by mid-tier holding companies of thrift MHCs. These provisions are unnecessarily complex, creating an undue burden for the subject institutions. The Board's proposed changes are intended to simplify and streamline the applicable provisions and to reduce cross-references to other provisions within the regulation as much as possible so that the requirements are clearer. The proposed updates are intended to make the regulation easier to understand, reducing burden on institutions and allowing for expeditious processing of applications.

First, the Board proposes amendments to sections 239.24 and 239.25 of Regulation MM to clarify the provisions that apply to stock issuances solely to a stock benefit plan, employee stock ownership plan, stock option plan, or management recognition plan (collectively, a stock plan for employees). Currently, sections 239.24 and 239.25 of Regulation MM do not distinguish between stock issuances involving the public offering and sale of shares in the MHC's subsidiary holding company and stock issuances solely to a stock plan for employees. As a result, institutions can face uncertainty regarding the exact provisions of Regulation MM that apply to a particular proposed issuance. Some of the changes to sections 239.24 and 239.25 of Regulation MM are intended to address this unnecessary source of confusion by clarifying the provisions that do not apply to stock issuances solely to a stock plan for employees.

The Board proposes further to streamline the requirements related to stock issuances to a stock plan for employees under sections 239.24 and 239.25. Currently, section 239.25 includes many provisions regarding the size of a proposed issuance to a stock plan for employees. These requirements can be confusing and require the retention of sophisticated legal counsel. The Board proposes to streamline these requirements to make them both easier to understand and to simplify compliance. Rather than include many varied requirements regarding the size of each stock plan for employees, the Board proposes instead to require only (i) that all stock plans for employees not, at any given time, hold in the aggregate more than either 4.9 percent of the outstanding shares of the subsidiary holding company's common stock or 4.9 percent of the subsidiary holding company's stockholders' equity; and (ii) that at the close of the proposed issuance, the amount of stock authorized to be issued or acquired by all stock plans for employees may not exceed, in the aggregate, 25 percent of the outstanding shares of the subsidiary holding company's common stock or 25 percent of the subsidiary holding company's stockholders' equity. These requirements are intended to ensure that a stock plan for employees does not become an SLHC. The Board believes that these proposed changes are easier to understand and, therefore, less burdensome for regulated institutions.

In addition to changes intended to clarify the requirements applicable for stock issuances to stock plans for employees, the Board also proposes changes to sections 239.24 and 239.25 to clarify the applicability of certain requirements contained in subpart E of Regulation MM. Currently, sections 239.24 and 239.25 of Regulation MM include many confusing cross-references to subpart E of Regulation MM, which can be difficult for regulated entities to understand and require the retention of sophisticated counsel. The Board proposes changes to sections 239.24 and 239.25 to make clearer the interaction between these parts of the regulation. Specifically, the Board proposes changes to section 239.24(a) of Regulation MM to clarify the applicability of the convenience and needs standard to a proposed minority stock issuance. Additionally, the Board proposes changes to section 239.25(c) to indicate expressly the applicability of provisions of section 239.63(a)(1) of Regulation MM to minority stock issuances.

The Board invites comment on all aspects of its proposed changes to the rules regarding issuances of public stock by MHCs' subsidiary holding companies, particularly:

Question 31: Are the proposed changes sufficient to make clear which provisions of sections 239.24 and 239.25 apply to proposed stock issuances solely to a stock plan for employees? How could the Board better delineate the requirements applicable to stock issuances solely to a stock plan for employees?

Question 32: What are the advantages and disadvantages of the proposed changes regarding the size of a stock plan for employees? Do the proposed changes adequately simplify the size thresholds applicable to stock issuances to a stock plan for employees? What, if any, alternatives should the Board consider and why?

Question 33: Do the proposed changes to sections 239.24 and 239.25 of Regulation MM make clear which provisions of subpart E of Regulation MM are applicable to a stock issuance by a subsidiary holding company of a thrift MHC? What other clarifying changes should the Board consider making to sections 239.24 and 239.25 of Regulation MM to better indicate what provisions of subpart E are applicable to stock issuances by a subsidiary holding company of a thrift MHC?

Question 34: What other changes should the Board consider making to the requirements applicable to stock issuances by a subsidiary holding company of a thrift MHC? What would be the advantages and disadvantages of any such change?

3. Subpart E

Subpart E of Regulation MM governs how a thrift MHC may convert from the mutual-to-stock form of ownership. It includes numerous requirements related to the process of conversion and also contains limitations on certain actions of a converted stock holding company within the first few years of completion of the conversion. The Board is proposing several changes to subpart E of Regulation MM. These changes are intended to reduce the regulatory burden associated with mutual-to-stock conversions and to implement corrections to known drafting errors in the regulation.

i. Definition of Qualifying Deposits

Section 239.52 of Regulation MM sets forth definitions applicable to subpart E and the forms prescribed by it.[54] In particular, section 239.52(j) currently defines ''qualifying deposit'' to include ''the total balance in an account holder's savings accounts.'' [55] ''Savings account,'' in turn, is currently defined by section 239.2(r) of Regulation MM to mean ''any withdrawable account, except a demand account, a tax and loan account, a note account, a United States Treasury general account, or a United States Treasury time deposit-open account.'' [56] Because demand accounts are excluded from the definition of savings accounts, they also are excluded from the definition of ''qualifying deposits'', and as a result, demand deposit holders are currently not entitled to liquidation rights under Regulation MM. However, many thrift MHCs grant membership rights,

[54] 12 CFR 239.52.

[55] 12 CFR 239.52(j).

[56] 12 CFR 239.2(r).

including liquidation rights, to holders of demand accounts. Therefore, in order to be able to grant such individuals their promised membership rights, such institutions presently must request a waiver from the definition of qualifying deposits to ensure that demand deposit holders receive the liquidation rights associated with their membership. These waivers are unnecessarily burdensome on institutions seeking only to comply with the membership rights granted under the thrift MHC's organizational documents.

Therefore, the Board is proposing to amend the definition of ''savings account'' in section 239.2(r) of Regulation MM to include demand accounts. Because the definition of qualifying deposits provided at section 239.52(j) of Regulation MM uses the term ''savings account,'' this proposed change would have the effect of incorporating demand deposits into the definition of qualifying deposits for purposes of subpart E of Regulation MM. Additionally, to ensure that thrift MHCs are not required to grant liquidation rights to demand deposit holders, the definition of ''qualifying deposit'' in section 239.52(j) of Regulation MM would be amended to mean ''the total balance in an account holder's eligible savings account at the close of business on the eligibility or supplemental eligibility record date.'' As a result of this proposal, thrift MHCs that grant membership rights to demand deposit holders would no longer have to request a waiver of the definition of ''qualifying deposits'' in connection with their mutual-to-stock conversion, reducing burden for both the institutions and the Federal Reserve System. However, thrift MHCs would not be required to grant liquidation rights to such demand deposit holders.

Question 35: What are the advantages and disadvantages of the Board's proposed amendment to the definition of ''savings account,'' provided at section 239.2(r) of Regulation MM? Does the Board's proposed amendment to the definition of ''savings account'' ensure that demand deposit holders receive the liquidation rights associated with their membership? Should the Board consider alternative provisions and if so, what would be the advantages and disadvantages of such alternatives?

ii. Forms

Regulation MM includes requirements to file information in connection with certain proposals involving thrift MHCs, including the reorganization of a savings association into the MHC structure, stock issuances of subsidiary holding companies of thrift MHCs, and conversions of thrift MHCs to stock form. Among other reporting forms, applicants may be required to file a Proxy Statement (FR MM–PS or Form PS), Offering Circular (FR MM–OC or Form OC), or Order Form (FR MM–OF or Form OF). The Federal Reserve uses information submitted by an applicant or notificant on these forms to evaluate the aforementioned transactions with respect to the relevant statutory and regulatory factors.

a. FR MM–PS

The Form PS, otherwise known as the proxy statement, is used to provide members of the applicant mutual savings association or thrift MHC with information necessary to vote on a reorganization of the applicant to the thrift MHC structure, a conversion of the applicant from mutual-to-stock form, or other transactions. Information required by Regulation MM and Form PS includes, among other things, the notice of the members' meeting; description of the voting rights of the mutual members; the vote threshold required for approval of each matter presented for a vote; and presentation of business, financial, and managerial information of the organization. A proxy statement must be disclosed to all members prior to a member vote,[57] and must be submitted to the appropriate Reserve Bank in connection with a notice to reorganize into the MHC structure or an application to convert from mutual to stock form.[58] Subpart E of Regulation MM also contains certain additional procedural and informational requirements for proxy statements. Proxies requesting accountholder approval of an MHC reorganization or non-conforming minority stock issuance also must comply with the informational requirements of sections 239.10(a)(2) and 239.10(a)(3) of Regulation MM, respectively, as well as any other applicable federal and state laws and regulations.

b. FR MM–OC

A thrift MHC that files an application in connection with a stock issuance conducted as part of any transaction or proposal pursuant to HOLA and Regulation MM must file Form OC with the appropriate Reserve Bank.[59] An offering circular must accompany Form OC and such offering circular must be prepared in accordance with applicable state law and rules and regulations promulgated by the U.S. Securities and Exchange Commission (SEC).

c. FR MM–OF

A thrift MHC that applies for Board approval of its conversion from mutual-to-stock form must submit Form OF along with order forms to the Federal Reserve and distribute such order forms to all eligible account holders, supplemental eligible account holders, and other voting members to enable them to subscribe for the shares they are permitted under the proposed transaction. If applicable, order forms provided to the Board should comply with state law and be in the same format as any order forms that the applicant has provided to the SEC.

d. Elimination of Form OC and Form OF

In general, submission of these forms in connection with certain applications can create burden for thrift MHCs, especially given that much of the information contained in these forms is, in some manner, duplicative of information provided to the SEC. Therefore, in order to reduce burden, the Board proposes to eliminate the requirements in section 239.50 to submit the Form OC and Form OF to the Federal Reserve in connection with transactions involving thrift MHCs. Additionally, while the Board intends to retain the requirement that institutions submit Form PS, it proposes to streamline the form itself by removing many of the requirements contained within the General Instructions to the form.

With respect to Form OC and Form OF, the Board proposes to eliminate both the forms themselves and the references to them in sections 239.58 and 239.59, respectively, as well as their respective General Instructions. The General Instructions to Form OC state that offering circulars must be prepared in accordance with applicable state law and rules and regulations promulgated by the SEC. These instructions do not provide any specific guidance related to content necessary for Board review of Form OC. Likewise, Form OF's General Instructions state that order forms provided to the Board should comply with state law, as applicable, and be in the same format as any order forms that the applicant has provided to the SEC. Such instructions again do not provide any Board-specific guidance or request Board-specific information. Therefore, the Board may eliminate these unnecessary forms and reduce burden for thrift MHCs.

Question 36: What are the advantages and disadvantages of the Board retaining Form OC or Form OF and their

[57] 12 CFR 239.56(c).

[58] 12 CFR 239.10(a)(1) (notice to reorganize into mutual form); 12 CFR 239.55(b)(1)(iii) (application to convert from mutual-to-stock form).

[59] *See* 12 CFR 239.58.

respective General Instructions? Are there instances in which SEC rules and regulations regarding offering circulars and order forms would not apply to a given stock issuance (for instance, in situations where an institution does not meet Nasdaq or regional listing requirements)? If so, in the alternative, should the Board instead retain and update Form OC or Form OF?

e. Streamlining Form PS

With respect to Form PS, the Board intends to retain the form itself, but reduce many of the requirements contained in the form's General Instructions. While the SEC sets out rules and regulations regarding proxy soliciting materials, its requirements relate to securities issuances generally, without any specific requirements that may be appropriate for transactions applicable to mutual banking organizations and their members, such as conversions from mutual-to-stock form. The SEC's rules and regulations do not appear to specifically contemplate either the unique circumstances of a conversion or the appropriate disclosures to members in such instance. The Board's Form PS, though, contains disclosure requirements targeted to inform members of matters on which they will be asked to vote, including conversion transactions. These disclosures include the planned use of conversion proceeds and members' rights following consummation of the conversion. Therefore, the Board believes certain elements of the General Instructions to Form PS remain important to ensuring compliance by an MHC with its obligations to its members.

However, the Board believes many of the requirements contained in the General Instructions to Form PS are unnecessary and duplicative of the requirements of the SEC's Schedule 14A and applicable rules and regulations (SEC proxy regulations).[60] Accordingly, the proposal would eliminate the following items. First, the proposal would eliminate the requirements under Item 1 from the General Instructions to Form PS. The information contained in Item 1 regarding the member vote, its date, location, and the matters to be considered, is already required to be included in a proxy statement by the SEC proxy regulations. Therefore, the proposal would remove all of the requirements under the existing Item 1 from the General Instructions to Form PS.

The proposal would eliminate Item 3 regarding persons soliciting proxies from the General Instructions to Form PS as it is also duplicative of information required to be included in a proxy statement by the SEC proxy regulations. Additionally, existing Item 3(2) from the General Instructions to Form PS requires institutions to describe the method it will use to solicit proxies, unless it solicits by mail. This instruction has the effect of encouraging institutions to solicit proxies by mail. However, as discussed in section II.B.1.v., physical mail requirements are out-of-date, costly and unduly burdensome for institutions. Therefore, the proposal would remove Item 3 of the General Instructions to Form PS.

Next, the proposal would eliminate the existing Item 4(2) and (3) from the General Instructions to Form PS. These items require institutions to disclose the record date for individuals entitled to vote at the meeting and the vote required for approval of each matter to be considered at the meeting. This information must already be disclosed in connection with SEC proxy regulations. Therefore, the proposal would eliminate Item 4(2) and Item 4(3) from the General Instructions to Form PS.

The proposal would also eliminate Items 5 and 6 from the General Instructions to Form PS. Item 5 covers directors and executive officers of the institution, while Item 6 concerns management compensation. Both of these items include cross-references to requirements and forms promulgated by the SEC, and such information appears unnecessary to either the Board's review of the proxy statement and any associated filing or members' determination as to whether to furnish such proxy. The Board, therefore, proposes to remove the existing Items 5 and 6 from the General Instructions to Form PS.

Next, Item 7 of the General Instructions to Form PS requires institutions to furnish specific information concerning their business. Such information includes requirements concerning a description of the business, certain financial data, and management's views and analysis regarding the institution's operations. Most of the informational requirements outlined in Item 7 can be streamlined. The proposal would update Items 7(1), 7(2), and 7(3) to eliminate excessive detail. The proposal would also remove the existing Item 7(4) as duplicative of information already encompassed in Item 7. Finally, the proposal would eliminate Item 7(13), as it only includes cross-references to SEC requirements.

Finally, Items 8 through 13 of Form PS outline requirements applicable only in the case of a mutual-to-stock conversion. Generally, such requirements are unique to the context of thrift MHCs and would not be otherwise covered by the SEC's proxy regulations. Retaining such requirements is important to ensure members are sufficiently informed regarding the proposed conversion. The proposal would keep all of these items except for elements of Item 9. In general, Item 9 requires a description of the entity's stock. Items 9(1) and 9(2) are duplicative of requirements imposed by the SEC. Therefore, the proposal would eliminate Items 9(1) and 9(2), but otherwise retain Items 8 through 13 of Form PS. Following these revisions, Form PS would be markedly shorter and streamlined only to include necessary disclosures for members thrift MHCs.

The Board believes these proposed changes would reduce the regulatory burden borne by thrift MHCs. The Board invites comment on all aspects of its proposal, including:

Question 37: What are the advantages and disadvantages of the Board retaining Form PS and its General Instructions? What information from the General Instructions to Form PS should the Board retain? Is there any additional information (other than what is being proposed) that the General Instructions of Form PS currently require institutions to include in their proxy statements that the Board should remove or retain? For example, are there other Items (such as Item 2) in the General Instructions to Form PS that are duplicative of SEC proxy regulations and should be removed? What would be the advantages and disadvantages in removing or retaining additional requirements?

iii. Mathematical Error in Calculation of Liquidation Accounts

Section 239.62(b) sets forth how a thrift MHC should determine the initial balances of liquidation sub-accounts. Section 239.62(b)(1)(i) states a 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 a fraction that has as its numerator the qualifying deposits in the particular savings account expressed in dollars as of the eligibility record date and as its denominator the total qualifying deposits expressed in dollars of all eligible account holders on the eligibility record date. Section

[60] 12 CFR 240.14a–101. Schedule 14A sets out the information required to be in a proxy statement when a shareholder vote is being solicited.

239.62(b)(1)(ii) provides the same calculation for a savings account held by a supplemental eligible account holder, except that the eligibility record date is replaced with the supplemental eligible record date. Currently, the denominator used for the calculation of the initial sub-account balances for both eligible account holders and supplemental eligible account holders contains an error that results in both groups of account holders having a claim to 100 percent of all liquidation account funds rather than their appropriate portions of the liquidation account. The proposed amendments would correct this error, aligning the calculation with a similar OCC regulation, and make clear that the eligible account holders and supplemental eligible account holders would be allocated their proportionate shares of the liquidation account as defined in section 239.62(a). The proposed amendments also would clarify that, for savings accounts held on both the eligibility record date and the supplemental eligibility record date, the amount of the qualifying deposit for calculating a liquidation sub-account would be the higher account balance of the savings account on either the eligibility record date or the supplemental eligibility record date.

iv. Stock Repurchases

Regulation MM currently includes limitations that prevent recently converted institutions from repurchasing shares of stock within the first year of issuance. This limitation applies both to stock issuances by subsidiary holding companies of thrift MHCs, as well as to a stock issuance by resulting stock holding companies in connection with a mutual-to-stock conversion. With respect to stock issuances by a subsidiary holding company of a thrift MHC, section 239.8(c)(1) prohibits the subsidiary holding company from repurchasing shares of its stock within one year of issuance, except in certain narrow circumstances, some of which require providing prior notice to the Board. Additionally, section 239.8(c)(2) prohibits a thrift MHC from repurchasing shares of its subsidiary holding company within a year of the subsidiary holding company's issuance of stock. Meanwhile, with respect to mutual-to-stock conversions, section 239.53(b)(2) of Regulation MM prohibits a thrift MHC seeking to convert to stock form from including planned stock repurchases in the first year of its post-conversion business plan. Further, section 239.63(c) of Regulation MM prohibits resulting stock holding companies from repurchasing shares within the first year after the mutual-to-stock conversion, except in certain circumstances, some of which require written prior notice to the Board.

The purpose of these limitations is to support the ability of mutual banking organizations or former mutual banking organizations to raise capital without facing immediate pressure from investors to make capital distributions, as well as to reduce the likelihood of the issuing organization explicitly or implicitly promising to repurchase the stock soon after issuance, thereby reducing the quality of the capital. However, resulting stock holding companies or subsidiary holding companies of thrift MHCs may have valid reasons for repurchasing stock within the first year of issuance that do not fall within the existing exceptions to the general prohibition on repurchases in that period. For example, it may be in the interests of these companies to repurchase stock in order to provide price support for the company's share price, or the company may seek to distribute capital following a period of unexpectedly high profits.

The Board proposes to amend these provisions to allow repurchases of stock in the first year after the minority stock issuance or conversion issuance, if the stock issuance plan or business plan submitted in connection with the issuance or conversion contemplates such repurchases. In its review of a proposed minority stock issuance or conversion issuance, the Board would assess whether the contemplated stock repurchase is consistent with approval. With respect to minority stock issuances by a subsidiary holding company of a thrift MHC, repurchases of stock within the first year of the issuance would be permissible if the stock issuance plan issued in connection with the share issuance described the circumstances under which such repurchases would occur and the circumstances of the repurchase are consistent with those described in the plan. Share repurchases in the first year after issuance that were not contemplated in the stock issuance plan or which would be made outside of the circumstances discussed in the stock issuance plan, and which do not fall within an existing exception in the rule, would continue to require prior notice to the Board.

Likewise, with respect to conversion issuances, repurchases of stock within the first year after conversion would be permissible where such repurchases would be consistent with the company's strategy for deploying conversion proceeds under the business plan filed with the application to convert to stock form and where the business plan included projections to repurchase stock. The proposal also would amend section 239.53(b)(2) of Regulation MM to permit a conversion applicant to include such projections in its business plan and to plan for stock repurchases in the first year after conversion.[61]

These proposed amendments would give mutual banking organizations and former mutual banking organizations increased flexibility to deploy capital in the manner most appropriate to the organization's circumstances, while ensuring that the stock repurchase was appropriately planned by the institution and evaluated by the Board in connection with its review of the stock issuance proposal. These companies also would have increased certainty regarding the permissibility of their planned capital actions and would encounter less regulatory burden with respect to repurchases that are contemplated ahead of time. The proposed amendments also address concerns raised by commenters with respect to the limitations on repurchases of stock within the first year of issuance. Firms would be permitted to engage in stock repurchases that have a valid business purpose, without a particular regulatory limit, as long as the possibility of making repurchases was contemplated in the relevant filing reviewed by the Board and the circumstances of the repurchase are consistent with the discussion in the filing.

The Board invites comment on all aspects of its proposal to allow subsidiary holding companies and resulting stock holding companies to repurchase shares within the first year of a stock issuance or conversion issuance, particularly:

Question 38: Should the Board retain the limitations on repurchases but decrease the limitation period from one year to six months, or to some another amount of time? What would be the advantages and disadvantages of basing the restriction on an amount of time other than one year?

Question 39: As an alternative to the proposal, what would be the advantages and disadvantages of eliminating all restrictions on repurchases (i.e., including the requirement that the stock issuance plan or business plan contemplate the repurchase)?

Question 40: Should the Board consider retaining the existing limitations without amendment? What

[61] Conversion applicants would continue to be required to include in their business plans financial projections that do not include returns of capital or special dividends.

would be the advantages and disadvantages of doing so?

Question 41: Rather than the changes proposed, should the Board instead consider amending the current standard in section 239.63(c)(1)(i) of Regulation MM that allows for repurchasing shares in the first year after conversion in extraordinary circumstances? Should the Board consider providing further guidance as to what could constitute an extraordinary circumstance? If so, what definitions or factors should the Board consider and why? Should the Board consider providing further guidance as to what could constitute a compelling and valid business purpose for repurchasing (under section 239.63(d)(3)(iii) of Regulation MM)? If so, what definitions or factors should the Board consider and why?

Question 42: What are the advantages and disadvantages of continuing to require conversion applicants to include in their business plans financial projections that do not include returns of capital or special dividends? Should such a restriction apply for a more limited time period in the business plan (e.g., the first year)? If so, what would be the appropriate period and the advantages and disadvantages of adopting that period?

v. Pricing of Conversion Shares

Section 239.59(c) of Regulation MM sets forth certain requirements regarding the pricing of conversion shares.[62] Among other requirements, the maximum price of conversion shares must be between $5 and $50 per share, the maximum price must be no more than 15 percent above the midpoint of the estimated price range in the offering circular, and the minimum price must be no more than 15 percent below that midpoint. However, the Board may permit the maximum price of conversion shares sold to be increased to an amount no more than the otherwise applicable maximum price.

The Board is proposing to remove from Regulation MM the restrictions on conversion share pricing discussed in the previous paragraph. The regulation's requirements regarding the maximum price and the permissible pricing range of conversion shares impose unwarranted limitations on thrift MHCs' ability to convert to stock form, create additional burden for thrift MHCs and the Federal Reserve, and could lead to distortions in the functioning of the market for converting firms' stock. Although the Board recognizes the importance of appropriately pricing conversion shares, the restrictions that the Board proposes to eliminate are not necessary to further this goal. Regulation MM requires that an application for conversion include an appraisal by an independent appraiser, which the Board reviews in determining whether to approve the application.[63] Through its review of this independent appraisal, the Board can assess whether the conversion shares would be appropriately priced.

The Board proposes to retain the requirements that conversion shares be sold at a uniform price per share at a total price that equals the estimated pro forma market value of the shares after conversion and that the estimated price of conversion shares be included in any preliminary offering circular. The first of these requirements ensures that conversion shares are sold fairly and at an appropriate price, while the latter requirement ensures that prospective buyers are well-informed about the anticipated share price.

The restrictions on the maximum and minimum prices of conversion shares also apply, by cross-reference in Regulation MM, to minority issuances of stock by subsidiary holding companies of thrift MHCs.[64] Consistent with the removal of these requirements with regard to the pricing of conversion shares, and for the same reasons, the Board proposes to remove such restrictions as they apply to minority issuances of stock.

Question 43: What are the advantages and disadvantages of the Board's proposed changes to the pricing of conversion shares? Are the proposed changes likely to have an impact on the pricing of conversion shares, given that most converting thrift MHCs set the price of conversion shares at $10 per share?

vi. Offers and Sales of Stock

Section 239.59 of Regulation MM requires converting MHCs to give subscription rights to purchase conversion shares to all eligible account holders, supplemental eligible account holders, and other voting members who do not qualify as either an eligible account holder or supplemental eligible account holder.[65] In order to be able to offer its conversion shares to individuals, the MHC must either (i) list its shares on a national or regional securities exchange, such as the Nasdaq; or (ii) register its shares in each state in which an eligible account holder, supplemental eligible account holder, or other voting member is located.

The Board recognizes that converting MHCs that do not meet the standards to list their shares on a national or regional securities exchange face burdensome, costly, and varied state securities law requirements to register shares in each state where such individuals reside. These registration fees vary by state, and many states require an initial and annual fee. Additionally, MHCs are subject to a variety of filing and other miscellaneous costs that also vary by state. As a result of these varying requirements, converting MHCs often must retain sophisticated counsel to manage compliance with these burdensome provisions.

Therefore, the Board proposes to amend section 239.59 of Regulation MM to state that, notwithstanding the requirement to offer its shares to all eligible account holders, supplemental eligible account holders, and other voting members, MHCs that do not meet the standards to list their shares on a national or regional exchange need only register their conversion shares in states in which 5 percent or more depositors reside. The Board recognizes that the ability to participate in a conversion offering is an important benefit of membership, and notes that this change merely represents a regulatory floor, not a ceiling. MHCs that do not meet the standards to list their shares on a national or regional exchange may decide to register their conversion shares in states where fewer than 5 percent of depositors reside—for example, because they wish to ensure such depositors can participate in the offering, because they wish to ensure a broad distribution of the offering, because they wish to maximize the offering size, or for some other reason. However, such institutions would only be required under Regulation MM to register their shares in states where 5 percent or more of depositors reside. Additionally, this relief would not be available to institutions that qualify to list their shares on a national or regional securities exchange, as such listing does not impose the same burden as registration in individual states.

The Board invites comment on all aspects of its proposal to limit the burden of state securities registration requirements, particularly:

Question 44: Are the Board's proposed amendments the most appropriate way to balance a member's ability to participate in the offering with the burden associated with broad-based registration? Are there any other factors or alternative approaches the Board should consider? What would be the

[62] 12 CFR 239.59(c).

[63] 12 CFR 239.55(b)(1)(ii); 239.55(g)(2).

[64] 12 CFR 239.24(a)(9).

[65] 12 CFR 239.59(h); 12 CFR 239.59(j).

advantages or disadvantages of such other factors or alternative approaches?

Question 45: Under the proposal, MHCs that do not meet the standards for registering their shares on a national or regional exchange would only be required to offer their shares in states where 5 percent or more eligible account holders, supplemental eligible account holders, or other voting members reside. Should the Board consider a threshold other than 5 percent to ensure that most eligible account holders, supplemental eligible account holders, and other voting members would have the right to participate in conversion offerings where the converting MHC does not meet the listing standards for a national or regional exchange? What would be the advantages and disadvantages of adopting a different threshold or a fixed number of depositors?

vii. Loans to a Tax-Qualified Employee Stock Ownership Plan

Section 239.59(f)(2) of Regulation MM prohibits thrift MHCs from extending credit for the purchase of conversion shares. The Board did not change the loan restriction that the OTS originally imposed upon converting thrift MHCs when it adopted section 239.59(f)(2) in 2011. However, the OTS routinely permitted converting thrift MHCs to extend credit to a tax-qualified employee stock ownership plan (ESOP) established for the benefit of employees of the thrift MHC, resulting stock holding company, or subsidiary savings association. The Board similarly has permitted a resulting stock holding company and its subsidiary bank or thrift to make loans to tax-qualified ESOPs established for the benefit of employees of the thrift MHC, resulting stock holding company, or subsidiary savings association. Thus, the Board proposes to amend this section to permit thrift MHCs to extend credit to a tax-qualified ESOP established for the benefit of employees of the thrift MHC, resulting stock holding company, or subsidiary savings association, thereby bringing the regulation into conformation with current practice. This change also would be incorporated by reference into section 239.24(c)(6)(i) of Regulation MM to apply to extensions of credit made in connection with the issuance of stock by a subsidiary holding company.[66]

The Board invites comment on its proposal to amend section 239.59(f)(2) of Regulation MM, particularly:

Question 46: Should the Board impose any limits on the extension of credit to tax-qualified ESOPs for the purchase of conversion shares under Regulation MM for the protection of thrift MHCs? What would be the advantages or disadvantages of any such limits?

Question 47: What concerns might arise from exempting extensions of credit to tax-qualified ESOPs from the prohibition in section 239.59(f)(2)? Should the Board consider any alternative approaches that would allow such tax-qualified ESOPs to participate in such offerings? What would be the advantages and disadvantages of those alternative approaches?

viii. Benefit Plans

Section 239.63(a) of Regulation MM provides numerous requirements limiting the ability of an MHC to offer a stock plan for employees post-conversion. As mentioned in section II.B.2.ii. with respect to issuances by a subsidiary holding company, the provisions relating to implementation of a stock plan for resulting stock holding company employees can be confusing and may require the retention of sophisticated legal counsel. The complexity of these requirements is unnecessary. Therefore, the Board proposes to simplify and streamline them. Specifically, the proposal would remove the many, varied, and overlapping size limitations for stock plans for employees. Instead, section 239.63(a) would be amended to provide that, in the 12 months after the conversion, stock plans for employees cannot, in the aggregate, exceed 15 percent of the number of shares of the resulting stock holding company issued in the conversion. Additionally, to provide converting institutions added flexibility in the 12 months after the conversion, the proposal would allow such institutions to establish a stock option plan or management recognition plan in connection with the mutual-to-stock conversion.

The Board invites comment on its proposal to amend section 239.63(a) of Regulation MM, particularly:

Question 48: What are the advantages and disadvantages of the proposed changes regarding the size of a stock plan for employees? Do the proposed changes adequately simplify the size thresholds applicable to stock plans for employees? What are the advantages and disadvantages of the proposed 15 percent aggregate limit on stock held by stock plans for employees? Should it be increased or decreased and, if so, why? Additionally, should the Board retain the 12-month time limit for this ownership percentage limitation, or should the Board consider some other time frame (and if so, why)?

Question 49: Because the resulting stock holding company's disclosure of ownership interests by stock plans for employees is calculated and presented to the public on a pro forma basis in the proxy statement and offering circular, should the resulting stock holding company be required to notify its shareholders of the final ownership percentage held by stock plans for employees post-conversion? What would be the advantages and disadvantages of such a requirement?

Question 50: Is there any other language in section 239.63(a) that should be clarified or revised to help conversion applicants better understand the Board's expectations of stock plans for employees post-conversion? What would be the advantages and disadvantages of any such clarifications or revisions?

ix. Judicial Review

Section 239.55(h) of Regulation MM sets forth the availability of judicial review of a decision by the Board regarding an application for a conversion from mutual to stock form. Section 239.55(h) provides that any person aggrieved by the Board's final action on the application for conversion has the right to judicial review and outlines the procedures for such action. The Board is proposing to remove from Regulation MM the judicial review provision. The judicial review set forth by the regulation restates the availability of the judicial review set forth under 12 U.S.C. 1467a(j) that would apply to applications for conversion and therefore is duplicative and unnecessary.

C. Other Technical Amendments

In addition to the substantive changes outlined above, the Board also proposes to implement a number of technical amendments to Regulation MM to fix known typographical errors and to make

[66] Under section 11 of HOLA, savings associations generally must comply with sections 23A and 23B of the Federal Reserve Act in the same manner and to the same extent as if the savings association were a member bank. *See* 12 U.S.C. 1468(a); *see also* 12 CFR part 223 (the Board's regulation implementing sections 23A and 23B of the Federal Reserve Act). Both a thrift MHC parent and a tax-qualified ESOP established for the benefit of the employees of the thrift MHC, resulting stock holding company, or subsidiary savings association are affiliates of the subsidiary savings association for purposes of sections 23A and 23B; therefore, even with the proposed change to Regulation MM, any extension of credit by the savings association to an affiliate (including to the thrift MHC to permit it to lend to the ESOP) must comply with sections 23A and 23B. Section 23B also applies to discretionary contributions by the savings association to an affiliate (such as a tax-qualified ESOP).

other non-substantive changes. For example, the proposal would replace references to ''Savings and Loan Holding Company Act'' and ''Holding Company Act'' with ''Home Owners' Loan Act.'' The Home Owners' Loan Act or HOLA is the proper name for the statute that Regulation MM implements, not Savings and Loan Holding Company Act or Holding Company Act. In addition, in order to resolve a conflict between the model bylaws and the requirements of HOLA, the proposal would remove the requirement from the subsidiary holding company model bylaws that directors of the subsidiary holding company own at least 100 shares of the entity's stock. Finally, the proposal would remove other minor typographical errors.

Question 51: Are there any additional changes to Regulation MM that the Board should consider? What would be the advantages or disadvantages of any such changes?

D. Bank MHC Commitments

As discussed in Section I, Regulation MM applies to SLHCs in the mutual form and to their SLHC subsidiaries. It does not apply directly to bank holding companies organized in the mutual form or to their bank holding company subsidiaries. However, the Board generally has asked these institutions to provide the Board with commitments to comply with certain provisions of Regulation MM, including provisions regarding member rights, dividend waivers, conversion rules, and post-conversion operations (Regulation MM commitments).

Unlike thrift MHCs, bank MHCs are not chartered by the Board; instead, they are chartered under state law. Further, bank MHCs are not subject to HOLA, which is the source of authority for Regulation MM, but instead are subject to the BHC Act and to applicable state law, including with respect to their mutuality.

In order to reduce regulatory burden on bank MHCs, the Board proposes to change its general practice with respect to seeking Regulation MM commitments from bank MHCs. Going forward, the Board would not intend to obtain Regulation MM commitments from mutual BHCs in the ordinary course. Given the Board's authority to supervise bank MHCs pursuant to the BHC Act and chartering states' authority to govern the practices of bank MHCs, Regulation MM commitments generally would not be necessary to protect the rights of members or to assure the safe and sound operation of bank MHCs. The Board expects that it would continue to seek targeted commitments from bank MHCs on a case-by-case basis, where appropriate.

With respect to bank MHCs that have previously provided Regulation MM commitments to the Federal Reserve, these companies would be invited to contact the Board or the appropriate Federal Reserve Bank, following the issuance of a final rule, to seek relief from these commitments. Absent unusual circumstances, the Board expects to be receptive to such requests for relief. By not requiring bank MHCs to enter into the Regulation MM commitments or by releasing such institutions from previously entered into commitments, the Board would reduce regulatory burden for bank MHCs and return governance over these institutions to the states.

III. Economic Analysis

The proposal would modernize the regulatory framework applicable to MHCs. It would amend Regulation MM by, among other things, eliminating certain procedural requirements associated with dividend waivers, amending and reducing the burden associated with conversions from mutual to stock form, eliminating the requirement that subsidiary holding companies of MHCs obtain federal charters, and revising and clarifying other provisions of the regulation. The proposal also would amend the capital rule to clarify that certain mutual capital instruments may qualify as regulatory capital if applicable criteria are met and would provide model term sheets for mutual capital certificates.

The discussion below addresses the economic effects of the proposal, including likely costs and benefits.

A. Baseline

Mutual banking organizations are financial institutions owned by those with deposit and lending relationships with the banking organization rather than by shareholders. Their earnings may be retained as capital or returned to members in the form of higher interest rates on deposits, lower loan fees, and enhanced local services. They typically focus on traditional finance services: residential mortgages, personal loans, and small business lending.

Mutual banking organizations occupy a distinct corner of the U.S. banking system. They focus on specific local communities where they can build deep relationships with customers and build market share. According to recent data from the Federal Deposit Insurance Corporation (FDIC) as of March 31, 2026,[67] there are 4,287 FDIC-insured depository institutions active in the United States. Out of this total, there are 143 depository institutions that are subsidiaries of MHCs,[68] which corresponds to 3.3 percent of all depository institutions.

In terms of assets, depository institution subsidiaries of MHCs collectively hold around $244 billion in assets, which represents about 0.9 percent of those assets held by all depository institutions.

Turning to capital ratios, data from the Federal Financial Institutions Examination Council (FFIEC) for mutual banking organizations show that as of March 31, 2026, the average leverage ratio for depository institution subsidiaries of MHCs was 12.1 percent.[69] In comparison, the average leverage ratio for all FDIC-insured banks was 9.15 percent.[70] In terms of common equity tier 1 ratios, the average for depository institution subsidiaries of MHCs reporting common equity tier 1[71] on March 31, 2026, was 11 percent, compared to an industry average of 13.86 percent.

Mutual banking organizations occupy a unique position in the financial services landscape. In their mission and structure, they closely resemble credit unions: both are member-owned institutions that prioritize their account holders over outside investors, and both focus on serving local communities. Nonetheless, credit unions operate under a not-for-profit cooperative charter and pay no federal income taxes.[72] Mutual banking organizations, on the other hand, are for-profit corporations that pay standard federal and state corporate taxes. Mutual banking organizations are also subject to more stringent regulatory requirements. This creates a competitive disadvantage when mutuals compete with credit unions for deposits and lending opportunities.

B. Affected Parties

Parties affected by the proposal include:

[67] *See https://banks.data.fdic.gov/bankfind-suite/financialreporting/report.*

[68] *See* FFIEC Consolidated Reports of Condition and Income Regulatory Reporting.

[69] The median leverage ratio for depository institution subsidiaries of MHCs was 10.94 percent. *See id.*

[70] *See https://www.fdic.gov/quarterly-banking-profile/quarterly-banking-profile-q1-2026.*

[71] Note that 137 mutual banks opt in to the Community Bank Leverage Ratio (CBLR) framework and thus do not report risk-based capital ratios.

[72] *See https://ncua.gov/regulation-supervision/legal-opinions/2001/not-profit-and-tax-exempt-status-federal-credit-unions.*

• *Mutual Savings and Loan Holding Companies (Thrift MHCs):* Holding companies organized in mutual form that own thrifts. As discussed in Section I, they are governed by HOLA and Regulation MM. Additionally, as discussed in section II.A.1., some thrift MHCs, known as legacy waiver MHCs, are allowed to waive dividends, subject to certain procedural requirements, including an annual member vote,[73] while others, known as non-legacy waiver MHCs, are effectively prevented from waiving dividends that benefit insiders.

• *Mutual Bank Holding Companies (Bank MHCs):* Holding companies organized in mutual form that own commercial banks. As discussed in section II.D., by their terms, they are not governed by HOLA or Regulation MM, but by the BHC Act and Regulation Y. They currently provide commitments to the Board to comply with Regulation MM.

• *De novo mutual banking organizations:* These are newly formed banks or thrifts (and, as applicable, their holding companies) in mutual form.

• *Public shareholders:* Owners of shares in mid-tier stock holding companies of MHCs.

• *Credit unions and community banking organizations:* Credit unions and community banking organizations are direct competitors of mutual banking organizations.

C. Broad Economic Considerations

The proposal would modernize Regulation MM, which hasn't been revised since it was introduced in 2011. The proposal would also make amendments to the Board's capital rule. The overall changes would address two problems: mutual banking organizations have fewer opportunities to raise equity compared to other banking organizations, and certain rules applicable to MHCs are unclear and thus burdensome to comply with.

As discussed in section II.A. above, due to their mutuality, mutual banking organizations may be constrained in their ability to raise capital. MHCs cannot issue traditional stock instruments and often primarily rely on retained earnings to meet capital requirements. These constraints can affect these institutions' ability to grow and increase the products and services they provide to their communities.

Additionally, the requirements set forth in Regulation MM are burdensome and complex to apply for small institutions. This creates two problems. First, it is costly to determine the actual regulatory requirement. When rules are vague or difficult to understand, institutions need to obtain costly expertise to understand the applicable rule or standard. These costs are particularly burdensome for smaller institutions, who lack economies of scale. Second, this complexity creates an incentive for consolidation, as larger institutions are better placed to absorb such costs. Such consolidation reduces competition and results in fewer locally owned mutual banking organizations that focus on serving their communities.

D. Costs and Benefits of the Proposal

1. Better Access to Capital

Currently, as discussed above, mutual banking organizations face limitations in their ability to raise capital compared to other banking organizations. The proposal addresses this in several ways. First, the proposal clarifies the circumstances under which certain instruments (like mutual capital certificates and special deposits)[74] qualify as regulatory capital. This change could increase investor confidence in these instruments, potentially increasing demand.

Additionally, the proposed changes would reduce the procedural requirements around dividend waivers. By waiving its right to a portion of the dividends declared by its mid-tier holding company and allowing that dividend to be redistributed to the other shareholders of the mid-tier holding company, an MHC can help make the public share of the mid-tier holding company more attractive to outside investors. Dividend waivers can be an important tool, as mutual banking organizations have fewer ways to raise capital than traditional banks. Finally, by clarifying rules around special deposits, the proposal could ease the formation of new mutual banking organizations, subsequently increasing competition in local banking markets. Altogether, enhancing the ability of mutual banking organizations to obtain capital facilitates their growth and enables them to better serve their communities.

2. Reduced Compliance Costs

The proposal would reduce the compliance burden of Regulation MM. In addition, it codifies certain current supervisory practices, which gives mutual banking organizations regulatory clarity and facilitates compliance. Likewise, the proposal would eliminate requirements to submit two forms to the Board in connection with certain transactions,[75] while streamlining another form.[76] These changes would reduce compliance costs.

In addition, the current process for converting from mutual to stock form involves navigating complex state and federal requirements. The proposal would clarify certain requirements, reducing the costs and regulatory burden associated with such conversions. Moreover, the proposal would list specific factors the Board considers when evaluating certain applications from mutual holding companies, reducing regulatory uncertainty. Lastly, Regulation MM currently prohibits institutions from extending credit for the purchase of conversion shares; however, the Board has routinely granted waivers from this provision for the extension of credit to tax-qualified ESOPs for the benefit of employees so that the ESOP can participate in conversion offerings. The proposal would clarify that loans to ESOPs are permissible, subject to existing regulatory requirements.

3. Potential for Conflicts of Interest and Reduced Accountability

The proposed changes to dividend waivers could create situations where management personally benefits from their choice to waive dividends. When an MHC waives its dividend rights, more money goes to stockholders, which often includes the same executives and directors making the waiver decision.

Furthermore, for the four legacy waiver MHCs that currently require annual member votes, the proposal would eliminate this requirement entirely and instead rely on a simple self-certification from the institution's board that it is acting in accordance with applicable law and its fiduciary duties. Finally, for non-legacy waiver MHCs,[77] the proposal would allow waivers that benefit insiders, for the first time since the Board assumed responsibility for supervision of thrift MHCs. For such institutions, member approval would only be required once every ten years. Since dividend waivers

[73] The four existing Legacy Waiver MHCs are First Federal MHC, Greene County Bancorp MHC, Greenville Federal MHC, Third Federal S&LA of Cleveland MHC.

[74] As explained in section II.A.2. (Special Deposits and Mutual Capital Certificates), special deposits are capital instruments issued by mutual banking organizations that may be especially useful as a means for newly formed organizations to raise capital.

[75] *See* section II.B.3.ii.d.

[76] *See* section II.B.3.ii.e.

[77] The different treatments afforded in the proposal to legacy and non-legacy waiver MHCs, with respect to dividend waivers, could also perpetuate a competitive imbalance between these two categories of thrift MHCs.

tend to persist over time, this change could result in a transfer of wealth to insiders who hold stock in a mid-tier holding company over time. These proposed changes would also reduce existing accountability mechanisms set forth under Regulation MM, as institutions would not be required to explain dividend waivers to their members on an annual basis.

Nevertheless, market forces and existing transparency requirements limit such conflicts of interest. The proposal maintains decennial member voting on dividend waivers by non-legacy waiver MHCs.

In addition, directors and officers of thrift MHCs also owe fiduciary duties of care and loyalty to the institutions they serve. These are legally enforceable obligations backed by potential personal liability. When directors vote to waive dividends or take other actions that involve potential conflicts of interest, they must reasonably believe such actions serve the institution's interests. HOLA requires that a thrift MHC's board of directors must determine that a dividend waiver is consistent with its fiduciary duty to members prior to approving a dividend waiver.[78] Furthermore, HOLA allows the Board to object to dividend waivers if the waiver would be detrimental to the safe and sound operation of the thrift, and any dividend from the thrift would be subject to the statutory limitations on dividends for all depository institutions.[79]

Finally, to mitigate the potential conflicts of interest stemming from the reduced requirements, the Board would require legacy waiver MHCs to make appropriate disclosures regarding dividend waivers to new members at time of opening of a deposit account or loan relationship. These disclosures should ensure that members, including new members, have clear information about potential conflicts and can make informed decisions about establishing and maintaining their membership.

Separate from the proposed changes to dividend waivers, the proposal would also make changes to other requirements around thrift MHC's required disclosures to and notification of members. For instance, the proposal would amend the requirements contained in Form PS to reduce the specific information that must be contained in a proxy solicitation to members. Proxy solicitations provide important disclosures to members and provide accountability to members, including regarding issues where management and directors have direct personal financial interests.

4. Adjustment Costs

While the proposal would reduce compliance costs over the long-term, institutions subject to Regulation MM would face short-term expenses as they learn and adapt to the new regulations. These institutions will need to review the updated rules, train staff, update internal policies and procedures, and potentially modify their compliance systems.

These costs will vary by institution, based on the size and experience of compliance staff; however, these are primarily one-time costs; once these institutions understand and implement the new framework, they would benefit from the overall reduction in compliance burdens.

E. Conclusion

The proposed amendments to Regulation MM and the capital rule modernize and clarify regulatory requirements for mutual banking organizations, reducing compliance burdens. They also would facilitate raising external equity by these entities, supporting their growth and enabling them to better serve their customers. The costs of the proposed changes are small. Overall, the analysis indicates that the benefits of the proposal justify the costs.

IV. Administrative Law Matters

A. Paperwork Reduction Act Analysis

Certain provisions of the proposal contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) (PRA). In accordance with the requirements of the PRA, the Board may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The information collection affected by this rulemaking is the Reporting and Disclosure Requirements Associated with Regulation MM (FR MM; OMB No. 7100–0340). This Board proposes to extend this information collection for three years, with revision. The Board reviewed the proposal under the authority delegated to the Board by OMB.

Comments are invited on:

(a) Whether the collections of information are necessary for the proper performance of the Board's functions, including whether the information has practical utility;

(b) The accuracy of the Board's estimate of the burden of the information collections, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

All comments will become a matter of public record. Comments on aspects of this notice that may affect reporting, recordkeeping, or disclosure requirements and burden estimates should be sent to the addresses listed in the **ADDRESSES** section of this document. A copy of the comments may also be submitted to the OMB desk officer for the Board by mail to U.S. Office of Management and Budget, 725 17th Street NW, #10235, Washington, DC 20503; facsimile to (202) 395–6974; or email to *oira_submission@omb.eop.gov,* Attention, Federal Banking Agency Desk Officer.

Current Actions: The proposal would modify certain reporting and disclosure requirements currently included in Regulation MM and in related reporting forms. First, the proposal would eliminate two formal Board reporting forms and their associated instructions: the Offering Circulars (FR MM–OC) and the Order Forms (FR MM–OF). Currently, these documents must include information prescribed by their respective instructions, and must be submitted to the Federal Reserve and distributed to a thrift MHC's members in connection with certain transactions or events. The proposal would eliminate the FR MM–OC and FR MM–OF as individual reporting forms Firms would still be required to submit to the Federal Reserve and disclose to members copies of an offering circular or ordering form in the situations described in Regulation MM.[80]

[78] 12 U.S.C. 1467a(o)(11)(D)(ii); 12 CFR part 238, subpart K.

[79] 12 U.S.C. 1467a(o)(11)(D)(i).

[80] With regard to the offering circular, *see* 12 CFR 239.58 (submission to Federal Reserve in connection with a stock issuance conducted as part of any transaction or proposal pursuant to HOLA and Regulation MM); 12 CFR 239.58(b) (disclosure to members at the same time as or after mailing of proxy statement); and 12 CFR 239.58(c) and 239.60 (submission to Federal Reserve and disclosure to members of post-effective amendments in certain circumstances). With regard to the order form, *see* 12 CFR 239.59(d)(1) (disclosure to members in connection with certain transactions or proposals pursuant to HOLA and Regulation MM).

Second, the Board proposes to revise the Proxy Statement (FR MM–PS), as discussed in further detail in section II.B.3.ii of this Supplementary Information, to streamline the form by removing many of the requirements contained within the General Instructions to the form.

In addition to the proposed revisions to FR MM related to this rulemaking, the Board proposes to revise the FR MM information collection to account for certain reporting provisions in the current Regulation MM, in sections 239.8(d), 239.14(a), 239.16(b), 239.22(a), 239.50(c), and 239.63(d), that have not previously been cleared by the Board under the PRA. The proposal to recognize sections 239.14(a), 239.22(a), 239.50(c), and 239.63(d) as part of the FR MM information collection is meant to ensure compliance with the PRA, but would not substantively change the regulatory requirements to which thrift MHCs and their subsidiary holding companies are subject. Similarly, recognition of sections 239.8(d) and 239.16(b), which would be revised under the proposal to be clearer and less burdensome on thrift MHCs, would ensure that the provisions comply with the PRA.

Currently, under section 239.8(d) of Regulation MM, a thrift MHC that wishes to waive the right to receive a dividend declared by a subsidiary holding company must provide written notice to the Board of the intent of the thrift MHC to waive the right to receive dividends not later than 30 days before the date of the proposed date of payment of the dividend. The notice must include a copy of the resolution of the board of directors of the thrift MHC together with any supporting materials relied upon by the board of directors of the thrift MHC, concluding that the proposed dividend waiver is consistent with the fiduciary duties of the board of directors to the mutual members of the thrift MHC. The resolution must include certain information described in section 239.8(d)(2) of Regulation MM, including a description of (1) the conflict of interest that exists because of a thrift MHC director's ownership of stock in the subsidiary declaring dividends; (2) representations related to the fiduciary duties of the board of directors of the thrift MHC; and an affirmation that a majority of the mutual members of the thrift MHC eligible to vote have, within the 12 months preceding the declaration date of the dividend, approved a waiver of dividends by the thrift MHC. As discussed in section II.A.1. of this Supplementary Information, the proposal would modify the required contents of the written notice required under section 239.8(d).

Separately, under sections 239.14(a) and 239.22(a) of Regulation MM, in order to adopt a charter amendment, a thrift MHC or subsidiary holding company of a thrift MHC, respectively, must adopt a resolution of the board of directors proposing the charter amendment that states the text of such amendment, and either apply to the Board in order to adopt the charter amendment, or submit notice of the proposed charter amendment. If the proposed charter amendment would render more difficult or discourage a merger, proxy contest, the assumption of control by a mutual account holder of the MHC, or the removal of incumbent management, or involve a significant issue of law or policy, then the thrift MHC or subsidiary holding company of the thrift MHC must apply to the appropriate Reserve Bank for approval of the charter amendment. In all other cases, the entity must submit notice and a copy of the proposed amendment to the appropriate Reserve Bank at least 30 days prior to the effective date of the proposed charter amendment.

Under section 239.16(b) of Regulation MM, a thrift MHC or subsidiary holding company of a thrift MHC that proposes a voluntary dissolution must submit to the appropriate Reserve Bank its plan for dissolution (plan), as well as a statement of reasons for proposing dissolution and for proposing the plan. The required contents of the plan are set forth in section 239.16(a) of Regulation MM, which would be modified as discussed in section II.B.1.vii. of this Supplementary Information. When the plan is approved by the board of directors of the thrift MHC or its subsidiary holding company and by the Board, it must be submitted to the thrift MHC's members at a duly called meeting and, approved by a majority of votes cast at that meeting. After dissolution in accordance with the plan, a certificate evidencing dissolution, supported by such evidence as the Board may require, shall immediately be filed with the Board.

Next, section 239.50(c) of Regulation MM provides that the Board may waive any requirement under subpart E of Regulation MM or a provision in any prescribed form. To obtain a waiver, a thrift MHC must file a written request with the Board that specifies the requirement or provision that the thrift MHC wants the Board to waive; demonstrates that the waiver is equitable, is not detrimental to the thrift MHC, mutual members, or other MHCs or savings associations, and is not contrary to the public interest; and includes an opinion of counsel demonstrating that applicable law does not conflict with the waiver of the requirement or provision.

Finally, under 239.63(d), a resulting stock holding company that has converted from mutual form must file a written notice with the appropriate Reserve Bank in order to repurchase its own stock in the first year following conversion, in certain circumstances. The notice must include the proposed repurchase plan, information regarding the effect of the repurchases on the regulatory capital and other capital levels, a description of the purpose of the repurchases and, if applicable, an explanation of the extraordinary circumstances necessitating the repurchases. The notice must be filed at least thirty days before the repurchases commence. This prior notice requirement also applies in certain circumstances when a subsidiary holding company of a thrift MHC seeks to repurchase shares of its stock within one year of the issuance of such shares.[81]

Proposed Extension for Three Years, with Revision, of the Following Information Collection

Collection title: Reporting and Disclosure Requirements Associated with Regulation MM.

Collection identifier: FR MM.

OMB control number: 7100–0340.

General description of collection: The FR MM includes collections of information in the Board's Regulation MM—Mutual Holding Companies (12 CFR part 239) as well as six reporting forms:

- Notice of Mutual Holding Company Reorganization (FR MM–10(o)–1),
- Application for Approval of a Stock Issuance by a Subsidiary Holding Company of a Mutual Holding Company (FR MM–10(o)–2),
- Application for Conversion of a Mutual Holding Company to Stock Form (FR MM–AC),
- Proxy Statement (FR MM–PS),
- Offering Circular (FR MM–OC), and
- Order Forms (FR MM–OF).

The FR MM consists of information that must be filed in connection with certain proposals involving SLHCs that are organized in MHC form, including the reorganization of a savings association into MHC form, stock issuances of holding company subsidiaries of MHCs, and conversions of MHCs to stock form, as well as certain disclosures related to these filings. The Board requires the submission of these filings to allow the

[81] 12 CFR 239.8(c)(2).

Board to fulfill its obligations to review such transactions under section 10(o) of the HOLA, as amended and the Board's Regulation MM. The Board uses the information submitted by an applicant or notificant to evaluate these transactions with respect to the relevant statutory and regulatory factors.

Frequency: Event-generated.

Respondents: Mutual savings associations and SLHCs that are organized in mutual form.

Total estimated number of respondents: 13.

Estimated average hours per response:

Reporting

FR MM–10(o)–1—66.59.
FR MM–10(o)–2—33.56.
FR MM–AC—66.56.
FR MM–PS—25.
Section 239.4(d)(4) Notice of reorganization—1.
Section 239.8(d) Restrictions on waiver of dividends—20.
Section 239.14(a) Charter amendments (mutual holding company)—22.
Section 239.16(b) Voluntary dissolution—20.
Section 239.22 Charter amendments (subsidiary holding company)—22.
Section 239.50© Request for waivers—16.5.
Section 239.58 Offering circular—0.56.
Section 239.60 Completion of the offering—0.56.
Section 239.60(b) Offering period extension—1.
Section 239.63(d) Post conversion—20.
Section 239.65(g) Voluntary supervisory conversion—1.

Disclosure

FR MM–10(o)–1—1.
FR MM–AC—1.
FR MM–PS—1.
Sections 239.3(a)(2) and 239.54(c)(1) Newspaper publication—1.
Section 239.16(b) Voluntary dissolution—1.
Section 239.58(b) Distribution of the offering circular—1.
Section 239.59(d)(1) Selling conversion shares—1.

Total estimated annual burden hours: 1,407.

B. Regulatory Flexibility Act Analysis

The Board is providing an initial regulatory flexibility analysis with respect to this proposal. The Regulatory Flexibility Act (RFA) [82] requires an agency to consider whether the rule it proposes will have a significant economic impact on a substantial number of small entities.[83] In connection with a proposal, the RFA requires an agency to prepare and invite public comment on an initial regulatory flexibility analysis describing the impact of the rulemaking on small entities, unless the agency certifies that the proposed rule, if promulgated, would not have a significant economic impact on a substantial number of small entities. An initial regulatory flexibility analysis must contain (1) a description of the reasons why action by the agency is being considered; (2) a succinct statement of the objectives of, and legal basis for, the proposed rule; (3) a description of, and, where feasible, an estimate of the number of small entities to which the proposed rule will apply; (4) a description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; (5) an identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap with, or conflict with the proposed rule; and (6) a description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and minimize any significant economic impact of the proposed rule on small entities.[84]

The Board has considered the potential impact of the proposal on small entities in accordance with the RFA. Based on its analysis and for the reasons stated here, the Board believes that this proposal will not have a significant economic impact on a substantial number of small entities. Nevertheless, the Board is publishing and inviting comment on this initial regulatory flexibility analysis.

As discussed in section II.B. of this Supplementary Information, the Board is proposing changes to Regulation MM that are intended to reduce the regulatory burden borne by thrift MHCs and their subsidiary holding companies. The proposal would, among other things, eliminate certain dividend waiver requirements, reduce burden associated with conversions from mutual-to-stock form, revise certain post-conversion restrictions, eliminate the requirement that subsidiary holding companies of MHCs obtain federal charters, and revise and clarify other provisions of the regulation. Pursuant to section 312 of the Dodd-Frank Act, the Board's responsibility for the supervision and regulation of SLHCs, including thrift MHCs and their subsidiary holding companies, involves all the former functions of OTS and its Director related to SLHCs, including rulemaking authority and the authority to issue orders.[85]

As discussed in section II.A. of this Supplementary Information, the Board is also proposing targeted changes to the capital rule to clarify the treatment of capital instruments issued by mutual banking organizations. First, the Board proposes to amend sections 217.20(b)(1), (c)(1), and (d)(1) of the capital rule to clarify that special deposits and mutual capital certificates issued by a mutual banking organization can qualify as common equity tier 1, additional tier 1, or tier 2 capital, respectively, if all of the qualifying criteria are satisfied. Second, the Board proposes to add two mutual capital certificate term sheets as appendices to the capital rule. The term sheets are intended to serve as templates for mutual banking organizations to use as a reference when issuing capital instruments intended to qualify as common equity tier 1 or additional tier 1 capital. Various statutory authorities provide the Board with broad authority to set capital requirements and standards for the institutions it regulates.[86]

The proposal would apply to mutual banking organizations supervised by the Board.[87] Based on regulatory report

[82] 5 U.S.C. 601 *et seq.*

[83] Under regulations issued by the U.S. Small Business Administration (SBA), a small entity includes a depository institution, bank holding company, or savings and loan holding company with total assets of $850 million or less. *See* 13 CFR 121.201. Consistent with the SBA's General Principles of Affiliation, the Board includes the assets of all domestic and foreign affiliates toward the size threshold when determining whether to classify a particular entity as a small entity. *See* 13 CFR 121.103. As of the fourth quarter of 2025, there were approximately 2,267 small BHCs and approximately 84 small SLHCs, and approximately 438 small state member banks.

[84] 5 U.S.C. 603(b)–(c).

[85] 12 U.S.C. 5412.

[86] *See, e.g.,* 12 U.S.C. 248(a), 321–338a, 481–486, 1462a, 1467a, 1818, 1828, 1831n, 1831o, 1831p–1, 1831w, 1835, 1844(b), 1851, 3904, 3906–3909, 4808, 5365, 5368, 5371, and 5371 note, and 15 U.S.C. 9050.

[87] As discussed in section I of this Supplementary Information, mutual banking organizations can have varying structures and charter types. HOLA and Regulation MM apply to thrift MHCs and their subsidiary holding companies. Although bank MHCs are not subject to HOLA or Regulation MM, they are subject to the Board's supervision and regulation pursuant to the BHC Act. Banks and savings associations in mutual form are not directly supervised or regulated by the Board, except for state member banks in mutual form. The Board generally uses the industry-specific size standards adopted by the SBA for purposes of estimating the number of small entities to which a proposal would apply. The SBA has adopted size standards that provide that mutual banking organizations with average assets of $850 million or less over the preceding year (based on the institution's four quarterly financial statements) are considered small

Continued

data, there are approximately 73 mutual banking organizations that have total domestic assets of $850 million or less and thus are considered small entities for purposes of the RFA.[88] The proposed amendments to Regulation MM would apply to thrift MHCs and their subsidiary holding companies. Although Regulation MM does not apply directly to bank MHCs, such institutions generally have provided the Federal Reserve with commitments to comply with certain provisions of Regulation MM. Therefore, these entities could be affected by the proposal to the extent the proposed changes would alter provisions of Regulation MM that are covered by the commitments. Additionally, small mutual banking organizations that are bank MHCs or thrift MHCs are generally subject to the Small Bank Holding Company and Saving and Loan Holding Company Policy Statement.[89]

As discussed in section III of this Supplementary Information, the proposal would modernize the regulatory framework applicable to MHCs, thereby reducing the compliance burdens borne by MHCs and supporting their ability to raise capital, grow, and better serve their communities. MHCs would face short-term expenses in adapting to the updated regulatory framework, such as expenses incurred by reviewing the updated rules, training staff, updating internal policies and procedures, and potentially modifying their compliance systems. However, these would primarily be one-time costs, the overall costs of the proposed changes are expected to be small, and MHCs would ultimately benefit from an overall reduction in compliance burdens. Further, as noted in section IV.A. of this Supplementary Information, the proposal would modify certain reporting and disclosure requirements currently included in Regulation MM and in related reporting forms, including by eliminating the FR MM–OC and FR MM–OF as individual reporting forms and streamlining the FR MM–PS. The proposal would not affect reporting, recordkeeping, and other compliance requirements under the capital rule. Therefore, there would be no reporting, recordkeeping, or other compliance requirements from this proposal that would impose a significant cost on small entities.

The Board is aware of no other federal rules that duplicate, overlap, or conflict with the proposal. The Board has not identified any significant alternatives to the proposal that would accomplish the stated objectives and minimize the economic impact of the proposal on small entities.

Therefore, the Board believes that the proposal will not have a significant economic impact on a substantial number of small entities supervised by the Board.

The Board welcomes comment on all aspects of its analysis. In particular, the Board requests that commenters describe the nature of any impact on small entities and provide empirical data to illustrate and support the extent of the impact.

C. Solicitation of Comments on the Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act (Pub. L. 106–102, 113 Stat.1338, 1471, 12 U.S.C. 4809) requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The Board has sought to present the proposed amendments in a simple and straightforward manner and invites comment on the use of plain language.

D. Riegle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA),[90] in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions (IDIs), the Board must consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, section 302(b) of RCDRIA requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on IDIs generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form, with certain exceptions.[91]

The Board notes that comment on these matters has been requested in other sections of this Supplementary Information, and that the requirements of RCDRIA will be considered as part of the overall rulemaking. The Board has determined that the proposed rule (1) would not impose any additional reporting, disclosures, or other new requirements on IDIs, and (2) places no new administrative burdens on depository institutions, including small depository institutions, and customers of depository institutions. Therefore, the requirements of RCDRIA do not apply. However, the Board invites comments that will further inform its consideration of RCDRIA.

E. Providing Accountability Through Transparency Act of 2023

The Providing Accountability Through Transparency Act of 2023 [92] requires that a notice of proposed rulemaking include the internet address of a summary of not more than 100 words in length of a proposed rule, in plain language, that shall be posted on the internet website under section 206(d) of the E-Government Act of 2002.[93]

In summary, the Board proposes to modernize the regulatory framework applicable to mutual holding companies (MHCs). The proposal would amend Regulation MM (12 CFR part 239), including by eliminating certain dividend waiver requirements, reducing burden associated with conversions from mutual-to-stock form, revising certain post-conversion restrictions, eliminating federal charter requirements for subsidiary holding companies of MHCs, and revising and clarifying other provisions. The proposal also would amend the capital rule (12 CFR part 217) to clarify that certain mutual capital instruments may qualify as regulatory capital and to codify model term sheets for mutual capital certificates as appendices to the regulation.

The proposal and summary can be found at *https://www.regulations.gov* and *https://www.federalreserve.gov/supervisionreg/reglisting.htm.*

List of Subjects

12 CFR Part 217

Administrative practice and procedure, Banks, Banking, Capital, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Risk, Securities.

entities. *See* 13 CFR 121.201 (sectors 522110–522180).

[88] The Board's estimate is based on total consolidated assets reported on Forms FR Y–9C (Consolidated Financial Statements for Holding Companies), FR Y–9SP (Parent Company Only Financial Statements for Small Holding Companies), and FFIEC 041 and 051 (Consolidated Reports of Condition and Income) for year-end 2025.

[89] *See* 12 CFR part 225, app. C.

[90] 12 U.S.C. 4802(a).

[91] 12 U.S.C. 4802(b).

[92] 5 U.S.C. 553(b)(4).

[93] 44 U.S.C. 3501 note.

12 CFR Part 239

Administrative practice and procedure, Banks, Banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

Authority and Issuance

For the reasons set forth in the preamble, the Board of Governors of the Federal Reserve System proposes to amend chapter II of title 12 of the Code of Federal Regulations as follows:

PART 217—CAPITAL ADEQUACY OF BANK HOLDING COMPANIES, SAVINGS AND LOAN HOLDING COMPANIES, AND STATE MEMBER BANKS (REGULATION Q)

■ 1. The authority citation for part 217 is revised to read as follows:

Authority: 12 U.S.C. 248(a), 321–338a, 481–486, 1462a, 1467a, 1818, 1828, 1831n, 1831o, 1831p–1, 1831w, 1835, 1844(b), 1851, 3904, 3906–3909, 4808, 5365, 5368, 5371, and 5371 note, and 15 U.S.C. 9050.

Subpart C—Definition of Capital

■ 2. Amend 217.20 by revising the introductory text of paragraph (b)(1), the introductory text of paragraph (c)(1), and the introductory text of paragraph (d)(1) to read as follows:

§ 217.20 Capital components and eligibility criteria for regulatory capital instruments.

* * * * *

(b) * * *

(1) Any common stock instruments (plus any related surplus) issued by the Board-regulated institution, net of treasury stock, and any capital instruments issued by mutual banking organizations (such as mutual capital certificates or mutual special deposits), that meet all the following criteria:

* * * * *

(c) * * *

(1) Instruments (including any instruments issued by mutual banking organizations such as mutual capital certificates or mutual special deposits), plus any related surplus, that meet the following criteria:

* * * * *

(d) * * *

(1) Instruments (including any instruments issued by mutual banking organizations such as mutual capital certificates or mutual special deposits), plus any related surplus, that meet the following criteria:

* * * * *

■ 3. Appendix B to part 217 is added to read as follows:

Appendix B to Part 217—Key Terms for Mutual Capital Certificates Qualifying as Common Equity Tier 1 Capital

1. Background

This appendix sets out key terms for special instruments or capital certificates, issued by mutual banking organizations, eligible to qualify as common equity tier 1 capital, pursuant to section 217.20(b) of the Board's Regulation Q (12 CFR 217.20(b)). Banking organizations are encouraged to seek legal advice and consider additional legal requirements, such as state law or regulatory requirements, that may be applicable to the offering of mutual capital certificates. These key terms are offered as one method of complying with the requirements of section 217.20(b) for mutual-form banking organizations specifically. Banking organizations are encouraged to reach out to Federal Reserve staff if they have questions.

■ 2. *Key Terms*

(a) *Issuer.* Mutual-Form Bank Holding Company, Mutual-Form Savings and Loan Holding Company, or Mutual-Form State Member Bank (''Mutual Banking Organization'').

(b) *Certificates Offered.* Certificates are instruments, issued by the Mutual Banking Organization, representing paid-in capital, the paid-in amount of which shall be classified as equity under U.S. Generally Accepted Accounting Principles. Certificates constitute a claim in liquidation, receivership, insolvency, or similar proceeding, on the residual assets of the Mutual Banking Organization, after the payment in full of all depositors, general creditors, subordinated debt holders, or other senior claimants.

(c) *Ordinary Distributions.*

(1) The Mutual Banking Organization may make distributions on the Certificates only if declared by its board of directors (or a duly authorized committee of the board), to be paid out of the Mutual Banking Organization's net income, retained earnings, or surplus related to other common equity tier 1 instruments, after other legal obligations have been satisfied. The Mutual Banking Organization retains full discretion at all times to cancel distributions on the instrument without triggering an event of default, a requirement to make a payment-in-kind, or an imposition of other restrictions, except in relation to any distribution to holders of instruments that are on parity with the Certificates.

(2) Distributions on Certificates will not be cumulative, are not mandatory, and are not based on a specific distribution rate specified at issuance.[1] Issuers may disclose to investors target distribution rates, provided however, issuers also clearly disclose that such distribution target rates will not be cumulative or mandatory.

(d) *Maturity.* Certificates are perpetual and have no maturity date.

(e) *Redemption.* Certificates have no maturity date, and holders of Certificates do not have the right to require redemption. The Mutual Banking Organization may, in its discretion, redeem the Certificates with the prior approval of the Board of Governors of the Federal Reserve System (''Board'').

(f) *Ranking.* Certificates must be subordinated to all liabilities and other obligations, both with respect to payments and in a receivership, insolvency, liquidation, or similar proceeding. Certificates are not secured, nor covered by any guarantee of the Mutual Banking Organization or of an affiliate of the Mutual Banking Organization, and Certificates are not subject to any other arrangement that legally or economically enhances the seniority of the instrument.

(g) *Voting Rights.* Certificate holders can be granted voting rights to the extent permitted by the charter of the Mutual Banking Organization and applicable federal and state law. However, Certificate holders are not considered members of the Mutual banking Organization solely because they hold Certificates.

(h) *Conflicts of Interest and Financing.* The Mutual Banking Organization, or an entity that the Mutual Banking Organization controls, may not purchase or, directly or indirectly, fund the purchase of the Certificates.

(i) *Listing.* Not required. Certificates can be listed or not listed.

(j) *Reorganization, Recapitalization, and Merger.* Except in the event of insolvency, liquidation, or receivership, the Certificates may survive any reorganization, recapitalization, or merger in accordance with their terms.

Correspondence of Key Terms to Regulatory Requirements

[1] State member banks are subject to other legal restrictions on reductions in capital resulting from distributions, including out of the capital surplus account, under 12 U.S.C. 324 and 12 CFR 208.5.

TABLE 1 TO APPENDIX B

Citation to 12 CFR 217.20	Regulatory text requirement	Term
217.20(b)(1)(i)	The instrument is paid-in, issued directly by the Board- regulated institution, and represents the most subordinated claim in a receivership, insolvency, liquidation, or similar proceeding of the Board-regulated institution.	Certificates Offered; Ranking.
217.20(b)(1)(ii)	The holder of the instrument is entitled to a claim on the residual assets of the Board-regulated institution that is proportional with the holder's share of the Board-regulated institution's issued capital after all senior claims have been satisfied in a receivership, insolvency, liquidation, or similar proceeding.	Certificates Offered; Ranking.
217.20(b)(1)(iii)	The instrument has no maturity date, can only be redeemed via discretionary repurchases with the prior approval of the Board to the extent otherwise required by law or regulation, and does not contain any term or feature that creates an incentive to redeem.	Maturity; Redemption.
217.20(b)(1)(iv)	The Board-regulated institution did not create at issuance of the instrument through any action or communication an expectation that it will buy back, cancel, or redeem the instrument, and the instrument does not include any term or feature that might give rise to such an expectation.	Maturity; Redemption.
217.20(b)(1)(v)	Any cash dividend payments on the instrument are paid out of the Board-regulated institution's net income, retained earnings, or surplus related to common stock, and are not subject to a limit imposed by the contractual terms governing the instrument. State member banks are subject to other legal restrictions on reductions in capital resulting from cash dividends, including out of the capital surplus account, under 12 U.S.C. 324 and 12 CFR 208.5.	Distributions.
217.20(b)(1)(vi)	The Board-regulated institution has full discretion at all times to refrain from paying any dividends and making any other distributions on the instrument without triggering an event of default, a requirement to make a payment-in-kind, or an imposition of any other restrictions on the Board- regulated institution.	Distributions.
217.20(b)(1)(vii)	Dividend payments and any other distributions on the instrument may be paid only after all legal and contractual obligations of the Board-regulated institution have been satisfied, including payments due on more senior claims.	Distributions.
217.20(b)(1)(viii)	The holders of the instrument bear losses as they occur equally, proportionately, and simultaneously with the holders of all other common stock instruments before any losses are borne by holders of claims on the Board-regulated institution with greater priority in a receivership, insolvency, liquidation, or similar proceeding.	Distributions; Redemption.

■ 4. Appendix C to part 217 is added to read as follows:

Appendix C to Part 217—Key Terms for Mutual Capital Certificates Qualifying as Additional Tier 1 Capital

1. Background

This appendix sets out key terms for special instruments or capital certificates, issued by mutual banking organizations, eligible to qualify as additional tier 1 capital, pursuant to section 217.20(c) of the Board's Regulation Q (12 CFR 217.20(c)). Banking organizations are encouraged to seek legal advice and consider additional legal requirements, such as state law or regulatory requirements, that may be applicable to the offering of mutual capital certificates. These key terms are offered as one method of complying with the requirements of section 217.20(c) for mutual-form banking organizations specifically. Banking organizations are encouraged to reach out to Federal Reserve staff if they have questions.

2. Key Terms

(a) *Issuer.* Mutual-Form Bank Holding Company, Mutual-Form Savings and Loan Holding Company, or Mutual-Form State Member Bank (''Mutual Banking Organization'')

(b) *Certificates Offered.* Certificates are instruments, issued by the Mutual Banking Organization, representing paid-in capital, the paid-in amount of which shall be classified as equity under U.S. Generally Accepted Accounting Principles.

(c) *Ordinary Distributions.*

(1) The Mutual Banking Organization may make distributions on the Certificates only if declared by its board of directors (or a duly authorized committee of the board), to be paid out of the Mutual Banking Organization's net income, retained earnings, or surplus related to other additional tier 1 instruments. The Mutual Banking Organization retains full discretion at all times to cancel distributions on the instrument without triggering an event of default, a requirement to make a payment-in-kind, or an imposition of other restrictions, except in relation to any distribution to holders of instruments that are on parity with the Certificates.

(2) Distributions on Certificates will not be cumulative and are not mandatory. The Mutual Banking Organization has flexibility to choose and disclose to investors an appropriate target distribution rate, including rates that are adjusted periodically independent of a Mutual Banking Organization's credit quality, in relation to general market interest rates. However, distribution rates cannot reset based in whole or in part on the Mutual Banking Organization's credit quality, nor contain a ''step- up'' feature or other terms that create an incentive to redeem the instruments early.

(d) *Maturity.* Certificates are perpetual and have no maturity date.

(e) *Redemption.*

(1) Certificates do not have any maturity date, and holders of Certificates will not have the right to require redemption. The Mutual Banking Organization may, in its discretion, redeem the Certificates with the prior approval of the Board of Governors of the Federal Reserve System (''Board'').

(2) The Certificates may be callable by their terms, provided the Certificates may be called by the Mutual Banking Organization only after a minimum of five years following issuance, except that the Certificates may allow it to be called earlier than five years upon the occurrence of a regulatory event that precludes the instrument from being included in additional tier 1 capital, a tax event, or if the issuing entity is required to register as an investment company pursuant to the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*). The Mutual Banking Organization must receive prior approval from the Board to exercise any call option on the Certificates. Prior to exercising the call option, or immediately thereafter, the Mutual Banking Organization must either replace the Certificates to be called with an equal amount of instruments that satisfy the criteria under section 217.20(b) or (c), or demonstrate to the satisfaction of the Board that, following redemption, the Mutual Banking Organization will continue to hold capital commensurate with its risks.

(f) *Ranking.* Certificates must be subordinated to depositors, general creditors, and subordinated debt holders, both with respect to payments and in a receivership, insolvency, liquidation or similar proceeding. The Certificates are not secured, nor covered by any guarantee of the Mutual Banking Organization or of an affiliate of the Mutual Banking Organization, and Certificates are not subject to any other arrangement that legally or economically enhances the seniority of the instrument. The Certificates can be senior to any rights based on membership in the Mutual Bank Organization.

(g) *Liquidation Rights.* In the event the Mutual Banking Organization voluntarily or involuntarily liquidates, dissolves, or winds up its affairs, holders of Certificates may be entitled to receive an amount per certificate, plus any ordinary distributions that have been declared but not paid prior to the date of payment of distributions to Certificate holders. Distributions can be made only to the extent the Mutual Banking Organization has assets that are available for distribution to Certificate holders, after payment or provision for payment of more senior obligations.

(h) *Voting Rights.* Certificate holders can be granted voting rights to the extent permitted by the charter of the Mutual Banking Organization and applicable federal and state law. However, Certificate holders are not considered members of the Mutual banking Organization solely because they hold Certificates.

(i) *Conflicts of Interest and Financing.* The Mutual Banking Organization, or an entity that the Mutual Banking Organization controls, may not purchase or, directly or indirectly, fund the purchase of the Certificates.

(j) *Preemptive Rights.* The Certificates do not have any features that would limit or discourage additional issuance of capital by the Mutual Banking Organization, such as provisions that require the Mutual Banking Organization to compensate holders of the Certificates if a new instrument is issued at a lower price during a specified time frame.

(k) *Listing.* Not required. Certificates can be listed or not listed.

(l) *Reorganization, Recapitalization, and Merger.* Except in the event of insolvency, liquidation, or receivership, the Certificates may survive any reorganization, recapitalization, or merger in accordance with their terms.

[1] State member banks are subject to other legal restrictions on reductions in capital resulting from distributions, including out of the capital surplus account, under 12 U.S.C. 324 and 12 CFR 208.5.

3. Correspondence of Key Terms to Regulatory Requirements

TABLE 1 TO APPENDIX C

Citation to 12 CFR 217.20	Regulatory text requirement	Term
217.20(c)(1)(i)	The instrument is issued and paid-in	Certificates Offered.
217.20(c)(1)(ii)	The instrument is subordinated to depositors, general creditors, and subordinated debt holders of the Board- regulated institution in a receivership, insolvency, liquidation, or similar proceeding.	Certificates Offered; Liquidation Rights; Ranking.
217.20(c)(1)(iii)	The instrument is not secured, not covered by a guarantee of the Board-regulated institution or of an affiliate of the Board-regulated institution, and not subject to any other arrangement that legally or economically enhances the seniority of the instrument.	Ranking.
217.20(c)(1)(iv)	The instrument has no maturity date and does not contain a dividend step-up or any other term or feature that creates an incentive to redeem.	Maturity; Ordinary Distributions; Redemption.
217.20(c)(1)(v)	If callable by its terms, the instrument may be called by the Board-regulated institution only after a minimum of five years following issuance, except that the terms of the instrument may allow it to be called earlier than five years upon the occurrence of a regulatory event that precludes the instrument from being included in additional tier 1 capital, a tax event, or if the issuing entity is required to register as an investment company pursuant to the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*). In addition: A. The Board-regulated institution must receive prior approval from the Board to exercise a call option on the instrument. B. The Board-regulated institution does not create at issuance of the instrument, through any action or communication, an expectation that the call option will be exercised. C. Prior to exercising the call option, or immediately thereafter, the Board-regulated institution must either: Replace the instrument to be called with an equal amount of instruments that meet the criteria under paragraph (b) of this section or this paragraph (c); or demonstrate to the satisfaction of the Board that following redemption, the Board-regulated institution will continue to hold capital commensurate with its risk.	Redemption.
217.20(c)(1)(vi)	Redemption or repurchase of the instrument requires prior approval from the Board	Redemption.

PART 239—MUTUAL HOLDING COMPANIES (REGULATION MM)

■ 5. The authority citation for part 239 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1464, 1467a, 1828, and 2901.

Subpart A—General Provisions

■ 6. Amend § 239.2 by:

■ a. Redesignating paragraphs (b) through (cc) as paragraphs (c) through (dd);

■ b. Adding paragraph (b); and

■ c. Revising paragraphs (c) and (d), the introductory text of paragraph (f), paragraph (g), paragraphs (p) through (u), and the introductory text of paragraph (v).

The addition and revisions read as follows:

§ 239.2 Definitions.

* * * * *

(b) *Acquiree mutual holding company* means a mutual holding company that would be acquired or controlled by another mutual holding company as a result of a merger or acquisition.

* * * * *

(c) *Acting in concert* has the same meaning as in 12 CFR 238.31(b).

(d) *Affiliate* has the same meaning as in 12 CFR 238.2(a).

* * * * *

(f) *Company* means any corporation, partnership, trust, association, joint venture, pool, syndicate, unincorporated organization, joint-stock company or similar organization, as defined in this section; but a company does not include:

* * * * *

(g) *Control* has the same meaning as in 12 CFR 238.2(e).

* * * * *

(p) *Reorganization Plan* means a plan to reorganize into the mutual holding company form containing the information required by § 239.6.

(q) *Reorganizing association* means a mutual savings association that proposes to reorganize to the mutual holding company form pursuant to this part.

(r) *Resulting association* means a savings association in the stock form that is organized as a subsidiary of a mutual holding company to receive the substantial part of the assets and liabilities (including all deposit accounts) of the reorganizing association upon consummation of the reorganization.

(s) *Savings account* means any withdrawable account, including a demand account, except this term does not mean a tax and loan account, a note account, a United States Treasury general account, or a United States Treasury time deposit-open account.

(t) *Savings association* has the same meaning as in 12 CFR 238.2(l).

(u) *Savings and loan holding company* has the same meaning as specified in section 10(a)(1) of the HOLA and 12 CFR 238.2(m).

(v) *Similar organization* for purposes of paragraph (f) of this section means a combination of parties with the potential for or practical likelihood of continuing rather than temporary existence, where the parties thereto have knowingly and voluntarily associated for a common purpose pursuant to identifiable and binding relationships which govern the parties with respect to either:

* * * * *

Subpart B—Mutual Holding Companies

■ 7. Amend § 239.3 by removing in paragraph (a)(2) the text ''§ 238.14 of this chapter'' and adding in its place the text ''12 CFR 238.14''.

■ 8. Amend § 239.4 by:

■ a. Revising paragraph (c)(1); and

■ b. Removing in paragraph (d) the text ''§ 238.14 of this chapter'' wherever it appears and adding in its place the text ''12 CFR 238.14''.

The revision reads as follows:

§ 239.4 Grounds for disapproval of reorganizations.

* * * * *

(c) * * *

(1) *Managerial resources.* The factors specified in 12 CFR 238.15(c)(1)(i) through (vi) shall give rise to a rebuttable presumption that the managerial resources test of paragraph (a)(2) of this section is not met. For this purpose, each place the term *acquiror* appears in 12 CFR 238.15(c)(1)(i) through (vi), it shall be read to mean the reorganizing association or any acquiree association, and the reference in 12 CFR 238.15(c)(1)(v) of this chapter to filings under this part shall be deemed to include filings under either 12 CFR part 238 or this part.

* * * * *

■ 9. Amend § 239.5 by:

■ a. Revising the introductory text of paragraph (a);

■ b. Adding paragraph (a)(5); and

■ c. Revising paragraph (b).

The revisions and addition read as follows:

§ 239.5 Membership rights.

(a) *Depositors and borrowers of resulting associations, acquiree associations, and associations in mutual or stock form when acquired.* The charter of a mutual holding company must:

* * * * *

(5) Confer upon the members of any acquiree mutual holding company the same membership rights in the acquiring mutual holding company as are conferred upon the members of the acquiring mutual holding company.

(b) *Depositors and borrowers of associations in the stock form when acquired.* A mutual holding company that acquires a savings association in the stock form, other than a resulting association or an acquiree association, shall not confer any membership rights upon the depositors and borrowers of such association, unless;

(1) such association is merged into an association from which the mutual holding company draws members, in which case the depositors of the stock association shall receive the same membership rights as other depositors of the association into which the stock association is merged; or

(2) such association is the subsidiary of another mutual holding company that, while in the mutual form, is acquired by the mutual holding company, and the acquiring mutual holding company chooses to operate the acquired savings association separately from its resulting association.

■ 10. Amend § 239.6 by revising paragraphs (a), (g), and (i) to read as follows:

§ 239.6 Contents of Reorganization Plans.

(a) Provide for amendment of the charter and bylaws of the reorganizing association, and attach and incorporate such charter and bylaws;

* * * * *

(g) Provide that each depositor in the reorganizing association or any acquiree association immediately prior to the reorganization shall upon consummation of the reorganization receive, without payment, an identical account in the resulting association or the acquiree association, as the case may be (with appropriate modifications made to this provision if savings associations are being merged as a part of the reorganization);

* * * * *

(i) Provide that the Reorganization Plan shall be terminated if not completed within a specified period of time (where the time period shall not be more than 24 months from the date upon which the members of the reorganizing association or the date upon which the members of any acquiree association, whichever is earlier, approve the Reorganization Plan and may not be extended by the reorganizing or acquiree association); and

* * * * *

■ 11. Amend § 239.7 by:

■ a. Removing in paragraph (a)(1) the text ''§ 238.11 of this chapter'' and adding in its place the text ''12 CFR 238.11'';

■ b. Revising paragraphs (a)(2)(iii), (a)(2)(iv), and (a)(3);

■ c. Removing in paragraph (a)(4) the text ''§ 238.11 of this chapter'' and adding in its place the text ''12 CFR 238.11''; and

■ d. Removing in paragraph (a)(5) the text ''§§ 238.41 and 238.11 of this chapter'' and adding in its place the text ''12 CFR 238.41 and 238.11''.

The revisions read as follows:

§ 239.7 Acquisition and disposition of savings associations, savings and loan holding companies, and other corporations by mutual holding companies.

(a) * * *

(2) * * *

(iii) The necessary approvals are obtained from the Board, including approval pursuant to 12 CFR 238.11, and any other approvals required to form an interim association, to amend the charter and bylaws of the association being acquired, or to amend the charter and bylaws of the mutual holding company consistent with § 239.6(a); and

(iv) The approval of the members of the mutual holding company is obtained, if the Board advises the mutual holding company in writing that such approval will be required. In determining whether members' approval will be required, the Board shall consider:

(A) The corporate governance structure of the mutual holding company;

(B) The ability of members to vote on any future mutual-to-stock conversion of the acquiring mutual holding company;

(C) The supervisory condition of the mutual savings association that would be acquired; and

(D) The burden and cost associated with obtaining the members' approval.

(3) *Mutual holding companies.*

(i) A mutual holding company that is not a subsidiary holding company may not acquire control of another mutual holding company, including a subsidiary holding company, by merging with or into such company, unless the necessary approvals are obtained from the Board, including approval pursuant to 12 CFR 238.11.

(ii) The approval of the members of one or both of the mutual holding companies shall also be obtained if the Board advises the mutual holding companies in writing that such approval will be required. In determining whether the members' approval will be required, the Board shall consider:

(A) The corporate governance structure of the mutual holding company;

(B) The ability of members to vote on any future mutual-to-stock conversion of the resulting mutual holding company;

(C) The supervisory condition of the acquiree mutual holding company; and

(D) The burden and cost associated with obtaining the members' approval.

* * * * *

■ 12. Amend § 239.8 by:

■ a. Removing in paragraph (a) the text ''§§ 238.53(c) or 238.54(b) of this chapter'' and adding in its place the text ''12 CFR 238.53(c) or 238.54(b)'';

■ b. Revising paragraph (c)(1)(i);

■ c. Removing in paragraph (c)(1)(iii) the word ''or'';

■ d. Revising paragraph (c)(1)(iv);

■ e. Adding paragraph (c)(1)(v);

■ f. Revising paragraphs (c)(2), (d)(2)(iv), and (d)(4)(iii);

■ g. Deleting paragraph (d)(4)(v);

■ h. Redesignating paragraphs (d)(4)(vi) through (d)(4)(ix) as (d)(4)(v) through (d)(4)(viii); and

■ i. Removing in paragraph (f) the text ''parts 207, 228, and 238 of this chapter'' and adding in its place the text ''12 CFR Parts 207, 228, and 238''.

The revisions and addition read as follows:

§ 239.8 Operating restrictions.

* * * * *

(c) * * *

(1) * * *

(i) Is in compliance with the requirements set forth in § 239.63(c)–(d) as if the share issuance had been a conversion;

* * * * *

(iv) Is purchased in the open market by a tax-qualified or non-tax-qualified employee stock benefit plan of the savings association (or of a subsidiary holding company) in an amount reasonable and appropriate to fund such plan; or

(v) Is conducted under circumstances consistent with the circumstances indicated in the subsidiary holding company's Stock Issuance Plan related to a proposed purchase of shares within one year of the date of issuance of the shares.

(2) No mutual holding company may purchase shares of its subsidiary savings association or subsidiary holding company within one year after a stock issuance, except if the purchase is conducted under circumstances consistent with the circumstances indicated in the subsidiary holding company's Stock Issuance Plan related to a proposed purchase of shares within one year of the date of issuance of the shares complies with § 239.63. For purposes of this section, the reference in § 239.63 to five percent refers to minority shareholders.

(d) * * *

(2) * * *

(iv) An affirmation that all mutual members of the mutual holding company received at some prior time disclosure containing a detailed description of dividend waivers by the mutual holding company and the reasons the board of directors waives the mutual holding company's right to receive dividends declared by a subsidiary of the mutual holding company.

* * * * *

(4) * * *

(iii) Within the ten years prior to the declaration date of the dividend by the subsidiary of the mutual holding company, the mutual members of the mutual holding company have approved the waiver of dividends by the mutual holding company by a majority of votes cast during a member vote. Any proxy statement used in connection with the member vote must contain—

(A) A detailed description of the proposed waiver of dividends by the mutual holding company and the reasons the board of directors requested the waiver of dividends; and

(B) The disclosure of any mutual holding company director's ownership of stock in the subsidiary declaring dividends and any actions the mutual holding company and board of directors have taken to eliminate the conflict of interest, such as the directors waiving their right to receive dividends;

* * * * *

■ 13. Amend § 239.9 by:

■ a. Revising paragraphs (b)(2) and (b)(3); and

■ b. Deleting paragraph (c).

The revisions read as follows:

§ 239.9 Conversion or liquidation of mutual holding companies.

* * * * *

(b) * * *

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

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

■ 14. Amend § 239.10 by:

■ a. Removing in paragraph (b) the text ''§ 238.14 of this chapter'' wherever it appears and adding in its place the text ''12 CFR 238.14'';

■ b. Removing in paragraph (c)(2) the text ''§ 238.14 of this chapter'' and adding in its place the text ''12 CFR 238.14'';

■ c. Revising paragraph (c)(3);

■ d. Removing in paragraph (e) the text ''§ 238.14 of this chapter'' and adding in its place the text ''12 CFR 238.14'';

■ e. Removing in paragraph (e) the text ''§§ 238.14(f) and (g) of this chapter'' and adding in its place the text ''12 CFR 238.14(f) and (g)'';

■ f. Removing in paragraph (f) the text ''§ 238.14(b) of this chapter'' and adding in its place the text ''12 CFR 238.14(b)''; and

■ g. Removing in paragraph (f) the text ''§ 238.14 of this chapter'' and adding in its place the text ''12 CFR 238.14''.

The revision reads as follows:

§ 239.10 Procedural requirements.

* * * * *

(c) * * *

(3) *Public notice, public comment, and meetings.* Mutual holding company reorganizations are subject to applicable public notice, public comment, and meeting requirements under the Home Owners' Loan Act regulations at 12 CFR 238.11 and 12 CFR 238.14.

* * * * *

■ 15. Amend § 239.11 by revising paragraph (c) to read as follows:

§ 239.11 Subsidiary holding companies.

* * * * *

(c) *Charters and bylaws for subsidiary holding companies.* The charter and bylaws of a subsidiary holding company may be in the form set forth in Appendices B and D, respectively. A subsidiary holding company may be chartered by the Board or by any state, as defined by 12 CFR 238.2(nn).

■ 16. Amend § 239.12 by revising paragraph (b)(5), the introductory text of paragraph (b)(6), and the introductory text of paragraph (b)(7) to read as follows:

§ 239.12 Communication between members of a mutual holding company.

* * * * *

(b) * * *

(5) The reply shall provide either—

(i) The number of the mutual holding company's members and the estimated reasonable cost to the mutual holding company of sending to them the proposed communication; or

(ii) Notification that the mutual holding company has determined not to send the communication because it is ''improper'', as defined in paragraph (c) of this section;

(6) After receiving the amount of the estimated costs of sending and sufficient copies of the communication, the mutual holding company shall send the communication to all members, either—

* * * * *

(7) If the mutual holding company refuses to send the proposed communication, it shall return the requesting member's materials together with a written statement of the specific reasons for refusal, and shall simultaneously send to the appropriate Reserve Bank a copy of each of the requesting member's materials, the mutual holding company's written statement, and any other relevant material. The materials shall be sent within:

* * * * *

■ 17. Amend § 239.13 by revising paragraphs (a) and (b) to read as follows:

§ 239.13 Charters.

(a) *Charters.* The charter of a mutual holding company may be in the form set forth in appendix A of this part and may be amended pursuant to this paragraph.

(b) *Corporate title.* The corporate title of each mutual holding company shall include the term ''mutual'' or the abbreviation ''MHC'' or ''M.H.C.''

* * * * *

■ 18. Amend § 239.14 by:

■ a. Removing in paragraph (a)(2)(i) the text ''§ 238.14 of this chapter'' and adding in its place the text ''12 CFR 238.14''; and

■ b. Revising the introductory text of paragraph (b) and paragraph (b)(2).

The revisions read as follows:

§ 239.14 Charter amendments.

* * * * *

(b) *Approval.* Any charter amendment filed pursuant to paragraph (a)(2)(ii) of this section shall automatically be approved 30 days from the date of filing of such amendment with the appropriate Reserve Bank, provided that the mutual holding company follows the requirements of its charter in adopting such amendment, unless the Reserve Bank or the Board notifies the mutual holding company prior to the expiration of such 30-day period that such amendment is rejected or is deemed to be filed under the provisions of paragraph (a)(2)(i) of this section. Notwithstanding anything in paragraph (a) of this section to the contrary, the following charter amendments shall be effective and deemed approved at the time of adoption, if adopted without change and filed with Board, within 30 days after adoption, provided the mutual holding company follows the requirements of its charter in adopting such amendments.

* * * * *

(2) *Maximum number of votes.* A mutual holding company may amend the Capital Stock section of its charter by substituting the maximum number of votes per member to any number from 1 to 1000.

* * * * *

■ 19. Amend § 239.15 by:

■ a. Revising paragraph (b)(3);

■ b. Removing in paragraph (c)(ii) the text ''§ 238.14 of this chapter'' and adding in its place the text ''12 CFR 238.14''; and

■ c. Removing in paragraph (c)(iii) the sentence ''The Board may amend the model bylaws provided in appendix C to this part.''

The revision reads as follows:

§ 239.15 Bylaws.

* * * * *

(b) * * *

(3) *Notice of meeting of members.* Notice specifying the date, time, and place of the annual or any special meeting and adequately describing any business to be conducted shall be published for two successive weeks immediately prior to the week in which such meeting shall convene in a newspaper of general circulation in the city or county in which the principal place of business of the subsidiary savings association is located, or shall be sent to each of the members of record at least 15 days and not more than 45 days prior to the date on which such meeting shall convene. A similar notice shall be posted in a conspicuous place in each of the offices of the subsidiary savings association during the 14 days immediately preceding the date on which such meeting shall convene. The bylaws may permit a member to waive in writing any right to receive personal delivery of the notice. When any meeting is adjourned for 30 days or more, notice of the adjournment and reconvening of the meeting shall be given as in the case of the original meeting.

* * * * *

■ 20. Amend § 239.16 by revising paragraphs (a)(2) and (b) to read as follows:

§ 239.16 Voluntary dissolution.

(a) * * *

(2) Dissolution in a manner proposed by the directors that appropriately takes into account the impact of the proposed dissolution on the mutual holding company's members and other relevant parties.

(b) The plan, and a statement of reasons for proposing dissolution and for proposing the plan, shall be submitted to the appropriate Reserve Bank for approval. The Board will approve the plan if the Board believes dissolution is appropriate under the circumstances, taking into account the impact of the proposed dissolution on the mutual holding company's members and other relevant parties. If the Board considers the plan inappropriate, the Board may either make recommendations to the mutual holding company concerning the plan or disapprove it. When the plan is approved by the mutual holding company's board of directors and by the Board, it shall be submitted to the mutual holding company's members at a duly called meeting and, when approved by a majority of votes cast at that meeting, shall become effective. After dissolution in accordance with the plan, a certificate evidencing dissolution, supported by such evidence as the Board may require, shall immediately be filed with the Board. When the Board receives such evidence satisfactory to the Board, it will terminate the corporate existence of the dissolved mutual holding company and the mutual holding company's charter shall thereby be canceled.

Subpart C—Subsidiary Holding Companies

■ 21. Amend § 239.21 by:

■ a. Revising paragraph (a); and

■ b. Removing in paragraph (b)(2) the text ''§ 12 CFR 238.12(a)(7) of this chapter'' and adding in its place the text ''12 CFR 238.12(a)(6)''.

The revision reads as follows:

§ 239.21 Charters.

(a) *Charters.* The charter of a subsidiary holding company of a mutual holding company may be in the form set forth in appendix B of this part and may be amended pursuant to § 239.22.

* * * * *

■ 22. Amend § 239.22 by:

■ a. Revising the introductory text of paragraph (a) and paragraph (a)(2)(i);

■ b. Removing in paragraph (a)(2)(ii) the word ''mailed'' and adding in its place the word ''sent'';

■ c. Revising the introductory text of paragraph (b);

■ d. Removing in paragraph (b)(2) the text ''in section 2 of its charter'';

■ e. Removing in paragraph (b)(3) the text ''Section 5 of'';

■ f. Removing in paragraph (b)(4) the text ''by revising Section 5'' and the number ''5'' wherever it appears;

■ g. Revising paragraph (b)(5); and

■ h. Removing in paragraph (b)(6) the text ''Section 5'' and adding in its place the text ''the section on Capital Stock'';

■ i. Removing in paragraph (b)(8) the text ''section 8'' wherever it appears and adding in its place the text ''section'';

■ j. Removing in paragraph (b)(8) the text ''Section 8'' wherever it appears and adding in its place the text ''Section''; and

■ k. Revising paragraphs (c) and (d).

The revisions appear as follows:

§ 239.22 Charter amendments.

(a) *General.* In order to adopt a charter amendment, a subsidiary holding company that is chartered by the Board must comply with the following requirements:

* * * * *

(2) * * *

(i) *Application requirement.* If the proposed charter amendment would render more difficult or discourage a merger, tender offer, proxy contest, the assumption of control by a holder of a block of the subsidiary holding company's stock, or the removal of incumbent management, or would involve a significant issue of law or policy, the subsidiary holding company shall file the proposed amendment with and shall obtain the prior approval of the Board according to the procedures in 12 CFR 238.14; and

* * * * *

(b) *Approval.* Any charter amendment filed by a Board-chartered subsidiary holding company pursuant to paragraph (a)(2)(ii) of this section shall automatically be approved 30 days from the date of filing of such amendment, provided that the subsidiary holding company follows the requirements of its charter in adopting such amendment, unless the Board notifies the mutual holding company prior to the expiration of such 30-day period that such amendment is rejected or is deemed to be filed under the provisions of paragraph (a)(2)(i) of this section. In addition, the following charter amendments, including the adoption of the charter as set forth in appendix B of this part, shall be approved at the time of adoption, if adopted without change and filed with the Board within 30 days after adoption, provided the Board-chartered subsidiary holding company follows the requirements of its charter in adopting such amendments.

* * * * *

(5) *Limitations on subsequent issuances.* A subsidiary holding company may amend its charter to require shareholder approval of the issuance or reservation of common stock or securities convertible into common stock under circumstances which would require shareholder approval under the rules of the stock exchange on which its shares were listed.

* * * * *

(c) *Anti-takeover provisions.* The Board may grant approval to a charter amendment not listed in paragraph (b) of this section regarding the acquisition by any person or persons of its equity securities provided that the Board-chartered subsidiary holding company shall file as part of its application for approval an opinion, acceptable to the Board, of counsel independent from the subsidiary holding company that the proposed charter provision would be permitted to be adopted by a corporation chartered by the state in which the principal office of the subsidiary holding company is located. Any such provision must be consistent with applicable statutes, regulations, and Board policies. Further, any such provision that would have the effect of rendering more difficult a change in control of the Board-chartered subsidiary holding company and would require for any corporate action (other than the removal of directors) the affirmative vote of a larger percentage of shareholders than is required by this part, shall not be effective unless adopted by a percentage of shareholder vote at least equal to the highest percentage that would be required to take any action under such provision.

(d) *Reissuance of charter.* A Board-chartered subsidiary holding company that has amended its charter may apply to have its charter, including the amendments, reissued by the Board. Such requests for reissuance should be filed with the appropriate Reserve Bank, and contain signatures required by the charter in appendix B to this part, together with such supporting documents as needed to demonstrate that the amendments were properly adopted.

■ 23. Amend § 239.23 by removing in paragraph (b)(1)(ii) the text ''§ 12 CFR 238.14 of this chapter'' and add in its place the text ''12 CFR 238.14''.

■ 24. Amend § 239.24 by:

■ a. Revising the introductory text of paragraph (a) and paragraphs (a)(4) and (a)(7);

■ b. Deleting paragraph (a)(9); and

■ c. Revising paragraphs (c)(6)(i) and (c)(8).

The revisions read as follows:

§ 239.24 Issuances of stock by subsidiary holding companies of mutual holding companies.

(a) *Requirements.* No subsidiary holding company of a mutual holding company may issue stock to persons other than its mutual holding company parent in connection with a mutual holding company reorganization, or at any time subsequent to the subsidiary holding company's acquisition by the mutual holding company, unless the subsidiary holding company obtains advance approval of each such issuance from the Board. Approval of a mutual holding company reorganization filed pursuant to § 239.3(a) shall be deemed to constitute approval of any stock issuance specifically applied for pursuant to this section in connection with the reorganization, unless otherwise specified by the Board. The proposed issuance must meet each of the following criteria:

* * * * *

(4) The proposed price or price range of the stock to be issued is reasonable. The Board shall review the reasonableness of the proposed price or price range, if applicable. To the extent the proposed issuance is solely to a stock benefit plan, employee stock ownership plan, stock option plan, or management recognition plan, the Board will review the reasonableness of the terms of such plan.

* * * * *

(7) The Board will review the Stock Issuance Plan and the compliance record of the subsidiary holding company and its subsidiary savings association under the regulations applicable to those entities to determine how the stock issuance would 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 subsidiary holding company will improve the Community Reinvestment Act (CRA) performance of its subsidiary savings association or will address the particular credit or lending needs of one of more of the communities that it serves.

(ii) The Board may deny the application if the Stock Issuance Plan does not demonstrate that the proposed stock issuance would help the subsidiary holding company meet the credit and lending needs of the communities that it serves.

* * * * *

(c) * * *

(6) * * *

(i) Comply with § 239.59 as if the stock issuance were being conducted as part of a conversion and, to the extent applicable, the form or forms specified by the Board; and

* * * * *

(8) As part of a reorganization, a reasonable amount of shares or proceeds may be contributed to a charitable organization that complies with §§ 239.64(b) to 239.64(f), provided such contribution does not result in any taxes on excess business holdings under section 4943 of the Internal Revenue Code of 1986, as amended (Internal Revenue Code) (26 U.S.C. 4943).

* * * * *

■ 25. Amend § 239.25 by:

■ a. Revising paragraphs (a)(1) through (a)(3);

■ b. Deleting paragraphs (a)(4) through (a)(7);

■ c. Adding paragraph (a)(4);

■ d. Redesignating paragraph (a)(8) as paragraph (a)(5);

■ e. Revising paragraph (a)(5);

■ f. Deleting paragraph (a)(9);

■ g. Redesignating paragraphs (a)(10) through (a)(22) as paragraphs (a)(6) through (a)(18); and

■ h. Revising paragraphs (a)(7), (a)(8), (a)(10), (a)(13), (a)(18), (b)(1), (b)(4), and (c).

The revisions and addition read as follows:

§ 239.25 Contents of Stock Issuance Plans.

(a) * * *

(1) Provide that, except with respect to a proposed issuance solely to a stock benefit plan, employee stock ownership plan, stock option plan, or management recognition plan, the stock shall be sold at a total price equal to the estimated *pro forma* market value of such stock, based upon an independent valuation;

(2) Provide that the aggregate amount of outstanding common stock of the subsidiary holding company owned or controlled by persons other than the subsidiary holding company's mutual holding company parent at the close of the proposed issuance shall be less than fifty percent of the subsidiary holding company's total outstanding common stock (although this provision may be omitted if the proposed issuance will be conducted by a subsidiary holding company that was in the stock form when acquired by its mutual holding company parent);

(3) Provide that all stock benefit plans, employee stock ownership plans, stock option plans, or management recognition plans may not, at any given time, hold in the aggregate more than either 4.9 percent of the outstanding shares of the subsidiary holding company's common stock or 4.9 percent of the subsidiary holding company's stockholders' equity;

(4) Provide that, following completion of the proposed issuance, the amount of stock authorized to be issued or acquired by all stock benefit plans, employee stock ownership plans, stock option plans, or management recognition plans may not exceed, in the aggregate, 25 percent of the outstanding shares of the subsidiary holding company's common stock or 25 percent of the subsidiary holding company's stockholders' equity.

(5)

(i) Provide that the aggregate amount of common stock that may be acquired by all insiders of the subsidiary holding company and subsidiary savings association and associates of insiders of the subsidiary holding company and subsidiary savings association, must not exceed the following percentages of common stock or stockholders' equity of the subsidiary holding company, held by persons other than the subsidiary holding company's mutual holding company parent at the close of the proposed issuance:

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

(ii) The percentage limitations contained in paragraph 5(i) of this section may be exceeded provided that all stock acquired by or awarded to insiders and associates of insiders in excess of those limitations is acquired in the secondary market.

(iii) In calculating the number of shares held by insiders and their associates under this provision, shares awarded but not delivered under a stock benefit plan, employee stock ownership plan, stock option plan, or management recognition plan that are attributable to such persons shall not be counted as being acquired by such persons.

* * * * *

(7) Provide that, except with respect to a proposed issuance solely to a stock benefit plan, employee stock ownership plan, stock option plan, or management recognition plan, the sales price of the shares of stock to be sold in the issuance shall be a uniform price determined in accordance with § 239.24;

(8) Provide that, if at the close of the stock issuance the subsidiary holding company has more than thirty-five shareholders of any class of stock, the subsidiary holding company shall promptly register that class of stock pursuant to the Securities Exchange Act of 1934 (15 U.S.C. 78a–78jj), and undertake not to deregister such stock for a period of three years thereafter;

* * * * *

(10) Provide that, for a period of three years following the proposed issuance, no insider of the subsidiary holding company or his or her associates shall purchase, without the prior written approval of the Board, any stock of the subsidiary holding company except from a broker or dealer registered with the U.S. Securities and Exchange Commission, except that the foregoing restriction shall not apply to:

(i) Negotiated transactions involving more than one percent of the outstanding stock in the class of stock; or

(ii) Purchases of stock made by and held by any stock benefit plan, employee stock ownership plan, stock option plan, or management recognition plan, even if such stock is attributable to insiders of the subsidiary holding company and subsidiary savings association or their associates;

* * * * *

(13) Provide that, except with respect to a proposed issuance to a stock benefit plan, employee stock ownership plan, stock option plan, or management recognition plan, the subsidiary holding company will not offer or sell any of the stock proposed to be issued to any person whose purchase would be financed by funds loaned, directly or indirectly, to the person by the subsidiary holding company;

* * * * *

(18) Provide that the subsidiary holding company may make scheduled discretionary contributions to a stock benefit plan, employee stock ownership plan, stock option plan, or management recognition plan provided such contributions do not cause the subsidiary holding company to fail to meet any of its regulatory capital requirements.

* * * * *

(b) * * *

(1) Provide that, in the event the proposed stock issuance is part of a Reorganization Plan, the stock offering may be commenced concurrently with or at any time after sending any proxy statement(s) to the members of the reorganizing association and any acquiree association. The offering may be closed before the required membership vote(s), provided the offer and sale of the stock shall be conditioned upon the approval of the Reorganization Plan and Stock Issuance Plan by the members of the reorganizing association and any acquiree association;

* * * * *

(4) Provide that, in connection with a reorganization, the subsidiary holding company may reserve shares representing up to ten percent of the proposed offering for issuance in connection with a stock benefit plan, employee stock ownership plan, stock option plan, or management recognition plan.

(c) *Applicability of provisions of § 239.63(a)(1) to minority stock issuances.* Notwithstanding § 239.24(d), § 239.63(a)(1)(ii) does not apply to minority stock issuances, because the permissible sizes of stock benefit plan, employee stock ownership plans, stock option plans, and management recognition plans are subject to the requirements set forth in paragraph (a) of this section. However, the other provisions of Section 239.63(a)(1) apply for one year after the subsidiary holding company engages in a minority stock issuance that is conducted in accordance with the purchase priorities set forth in subpart E of this part.

■ 26. Amend § 239.26 by revising paragraphs (b) and (d)(2) to read as follows:

§ 239.26 Shareholders.

* * * * *

(b) *Notice of shareholder meetings.* Written notice stating the place, day, and hour of the meeting and the purpose or purposes for which the meeting is called shall be sent not fewer than 20 nor more than 50 days before the date of the meeting, by or at the direction of the chairman of the board, the president, the secretary, or the directors, or other natural persons calling the meeting, to each shareholder of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be sent when deposited in themail, addressed to the shareholder at the address appearing on the stock transfer books or records of the subsidiary holding company as of the record date prescribed in paragraph (c) of this section, with postage thereon prepaid. When any shareholders' meeting, either annual or special, is adjourned for 30 days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Notwithstanding anything in this section, however, a subsidiary holding company that is wholly owned shall not be subject to the shareholder notice requirement.

* * * * *

(d) * * *

(2) In lieu of making the shareholders list available for inspection by any shareholders as provided in paragraph (d)(1) of this section, the board of directors may perform such acts as required by paragraphs (a) and (b) of Rule 14a-7 of the General Rules and Regulations under the Securities Exchange Act of 1934 (17 CFR 240.14a-7) as may be duly requested in writing, with respect to any matter which may be properly considered at a meeting of shareholders, by any shareholder who is entitled to vote on such matter and who shall defray the reasonable expenses to be incurred by the subsidiary holding company in performance of the act or acts required.

* * * * *

■ 27. Amend § 239.27 by revising paragraph (j) to read as follows:

§ 239.27 Board of directors.

* * * * *

(j) *Presumption of assent.* A director of the subsidiary holding company who is present at a meeting of the board of directors at which action on any subsidiary holding company matter is taken shall be presumed to have assented to the action taken unless his or her dissent or abstention shall be entered in the minutes of the meeting or unless a written dissent to such action shall be filed with the individual acting as the secretary of the meeting before the adjournment thereof or shall be forwarded by electronic mail or registered mail to the secretary of the subsidiary holding company within five days after the date on which a copy of the minutes of the meeting is received. Such right to dissent shall not apply to a director who voted in favor of such action.

* * * * *

■ 28. Amend § 239.30 by revising paragraph (a) to read as follows:

§ 239.30 Annual reports; books and records.

(a) *Annual reports to stockholders.* A subsidiary holding company not wholly owned by a holding company shall, within 130 days after the end of its fiscal year, send to each of its stockholders entitled to vote at its annual meeting an annual report containing financial statements that satisfy the requirements of rule 14a-3 under the Securities Exchange Act of 1934. (17 CFR 240.14a-3). Concurrently with such transmission, a certification of such transmission signed by the chairman of the board, the president, or a vice president of the subsidiary holding company, together with a copy of the report, shall be sent by the subsidiary holding company to the appropriate Reserve Bank.

* * * * *

Subpart D—Indemnification; Employment Contracts

■ 29. Amend § 239.40 by revising paragraphs (b)(1), (c), and (d) to read as follows:

§ 239.40 Indemnification of directors, officers and employees.

* * * * *

(b) * * *

(1) Any amount for which that person becomes liable under a judgment in such action; and

* * * * *

(c) *Requirements.* Indemnification shall be made to such person under paragraph (b) of this section only if:

(1) Final judgment on the merits is in the person's favor; or

(2) In case of:

(i) Settlement,

(ii) Final judgment against the person, or

(iii) Final judgment in the person's favor, other than on the merits, if a majority of the disinterested directors of the mutual holding company determine that the person was acting in good faith within the scope of the person's employment or authority as the person could reasonably have perceived it under the circumstances and for a purpose the person could reasonably have believed under the circumstances was in the best interests of the mutual holding company or its members.

However, no indemnification shall be made unless the mutual holding company gives the Board at least 60 days' notice of its intention to make such indemnification. Such notice shall state the facts on which the action arose, the terms of any settlement, and any disposition of the action by a court. Such notice, a copy thereof, and a certified copy of the resolution containing the required determination by the board of directors shall be sent to the appropriate Reserve Bank, who shall promptly acknowledge receipt thereof. The notice period shall run from the date of such receipt. No such indemnification shall be made if the Board advises the mutual holding company in writing, within such notice period, of its objection to the indemnification.

(d) *Insurance.* A mutual holding company may obtain insurance to protect it and its directors, officers, and employees from potential losses arising from claims against any of them for alleged wrongful acts, or wrongful acts, committed in their capacity as directors, officers, or employees. However, no mutual holding company may obtain insurance which provides for payment of losses of any individual incurred as a consequence of the individual's willful or criminal misconduct.

* * * * *

■ 30. Amend § 239.41 by revising the introductory text of paragraph (b)(2) and paragraphs (b)(3), (b)(4), and (b)(6)(i) to read as follows:

§ 239.41 Employment contracts.

* * * * *

(b) * * *

(2) If the officer or employee is suspended or temporarily prohibited from participating in the conduct of the mutual holding company's affairs by a notice served under section 8 (e)(3) or (g)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1818 (e)(3) and (g)(1)) the mutual holding company's obligations under the contract shall be suspended as of the date of service unless stayed by appropriate proceedings. If the charges in the notice are dismissed, the mutual holding company may in its discretion:

* * * * *

(3) If the officer or employee is removed or permanently prohibited from participating in the conduct of the mutual holding company's affairs by an order issued under section 8(e)(4) or (g)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1818(e)(4) or (g)(1)), all obligations of the mutual holding company under the contract shall terminate as of the effective date of the order, but vested rights of the contracting parties shall not be affected.

(4) If the subsidiary savings association is in default (as defined in section 3(x)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(x)(1))), all obligations under the contract shall terminate as of the date of default, but this paragraph (b) shall not affect any vested rights of the contracting parties: *Provided,* that this paragraph (b) need not be included in an employment contract if prior written approval is secured from the Board.

* * * * *

(6) * * *

(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 section 13(c) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)); or

* * * * *

Subpart E—Conversions From Mutual to Stock Form

■ 31. Amend § 239.50 by revising paragraph (b) to read as follows:

§ 239.50 Purpose and scope.

* * * * *

(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 form by regulation or otherwise. The forms required under this subpart include: Form AC (Application for Conversion) and Form PS (Proxy Statement).

* * * * *

■ 32. Amend § 239.52 by revising paragraphs (j) and (m) to read as follows:

§ 239.52 Definitions.

* * * * *

(j) *Qualifying deposit* is the total balance in an account holder's eligible 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.

* * * * *

(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 send communications to members, or ministerial acts performed on behalf of a person soliciting a proxy.

* * * * *

■ 33. Amend § 239.53 by:

■ a. Revising paragraph (b)(2); and

■ b. Removing in paragraph (d)(2) the text "The mutual holding company must file its business plan as a confidential exhibit to the Form AC".

The revision reads as follows:

§ 239.53 Prior to conversion.

* * * * *

(b) * * *

(2) The business plan must include projected financial statements that do not include returns of capital or special dividends in any part of the business plan. The business plan may include additional projections that include returns of capital, special dividends, or both.

* * * * *

■ 34. Amend § 239.54 by revising paragraphs (a) and (c)(1) to read as follows:

§ 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.

* * * * *

(c) * * *

(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 send 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.

* * * * *

■ 35. Amend § 239.55 by:

■ a. Revising paragraphs (a), (b)(1)(v), (b)(1)(vi), (c)(2), (d), (f)(1)(i), (f)(2), (g)(1)(iii), and (g)(3)(i); and

■ b. Deleting paragraph (h).

The revision reads as follows:

§ 239.55 Filing requirements.

(a) *Applications under this subpart.* Any filing with the Board required under this subpart must be filed in accordance with 12 CFR 238.14. The Board will review any filing made under this subpart in accordance with 12 CFR 238.14.

* * * * *

(b) * * *

(1) * * *

(v) The documents and information required by Form AC.

(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.

* * * * *

(c) * * *

(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 federal 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.* The confidentiality of information submitted to the Board under this section and related materials shall be determined in accordance with applicable exemptions under the Freedom of Information Act (5 U.S.C. 552(b)) and the Board's Rules Regarding Availability of Information (12 CFR part 261).

* * * * *

(f) * * *

(1) * * *

(i) The mutual holding company must publish a public notice of the application for conversion in accordance with the procedures in 12 CFR 238.14. 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.

* * * * *

(2) *Public comments.* Commenters may submit comments on the application in accordance with the procedures in 12 CFR 238.14. A commenter must file any comments with the appropriate Reserve Bank.

* * * * *

(g) * * *

(1) * * *

(iii) The conversion will not result in a taxable reorganization under the Internal Revenue Code.

* * * * *

(3) * * *

(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 of its subsidiary savings association or will address the particular credit or lending needs of the communities that it will serve.

* * * * *

■ 36. Amend § 239.56 by redesignating paragraphs (c)(2) and (c)(3) as paragraphs (c)(1) and (c)(2).

■ 37. Amend § 239.57 by:

■ a. Revising paragraph (b)(8);

■ b. Removing the word ''mail'' wherever it appears and adding in its place the word ''send'';

■ c. Removing the word ''mailing'' wherever it appears and adding in its place the word ''sending'';

■ d. Removing in paragraph (f)(2) the text ''or otherwise furnish''; and

■ e. Revising paragraph (f)(3).

The revisions read as follows:

§ 239.57 Proxy solicitation.

* * * * *

(b) * * *

(8) A way for the member to specify by ballot whether the member whether he or she approves or disapproves of each matter that members will vote upon.

* * * * *

(f) * * *

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

* * * * *

■ 38. Amend § 239.58 by:

■ a. Removing in paragraph (a)(1) the text ''and Form OC. The mutual holding company may obtain Form OC from the Reserve Bank and the Board's website (*http://www.federalreserve.gov*)'';

■ b. Removing in paragraph (a)(3) the text ''Form OC'' and adding in its place the text ''offering circular'';

■ c. Removing in paragraph (b)(1) the word ''mails'' and adding in its place the word ''sends''; and

■ d. Revising paragraph (c)(2).

The revision read as follows:

§ 239.58 Offering circular.

* * * * *

(c) * * *

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

* * * * *

■ 39. Amend § 239.59 by:

■ a. Removing in paragraph (b)(1) the text ''Securities and Exchange Commission'' and adding in its place the text ''U.S. Securities and Exchange Commission'';

■ b. Deleting paragraphs (c)(2) through (c)(5);

■ c. Redesignating paragraph (c)(6) as paragraph (c)(2);

■ d. Removing in paragraph (d)(5) the text ''and Form OF. The mutual holding company may obtain Form OF from the Reserve Bank and from the Board's website (*www.federalreserve.gov*)'';

■ e. Removing in paragraph (e)(3)(ii) the text ''of the'';

■ f. Revising paragraphs (f)(1), (f)(2), (h)(2), and (i);

■ g. Deleting paragraph (m)(2);

■ h. Redesignating paragraphs (m)(3) and (m)(4) as paragraphs (m)(2) and (m)(3);

■ i. Revising paragraph (m)(3); and

■ j. Adding paragraph (q).

The revisions and addition read as follows:

§ 239.59 Offers and sales of stock.

* * * * *

(f) * * *

(1) A subscriber may purchase conversion shares with cash, by a withdrawal from a savings account, or by 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, other than a tax-qualified employee stock benefit plan of the mutual holding company or its subsidiary, to purchase the conversion shares, subject to all other regulatory requirements.

* * * * *

(h) * * *

(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 use the following fraction instead of the fraction described in paragraph (h)(1)(iii) of this section: 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 an associate of an officer or director 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.

* * * * *

(m) * * *

(3) 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 paragraph (m)(1) of this section, unless the Board objects on supervisory grounds.

* * * * *

(q) *Securities Registration Requirements.*

(1) Notwithstanding the requirements contained in paragraphs (d), (h), and (j) of this section, a mutual holding company that does not meet the standards to register its shares on a national or regional securities exchange need not offer and register its shares in a state, as defined in 12 CFR 238.2(nn), in which less than 5 percent of eligible account holders, supplemental eligible account holders, and other voting members eligible to purchase conversion shares reside. Nothing contained in this paragraph shall limit a mutual holding company from registering its shares in any state where less than 5 percent of eligible account holders, supplemental eligible account holders, and other voting members reside.

(2) Only a mutual holding company that does not meet the standards to register shares on a national or regional securities exchange may qualify for the treatment in paragraph (p)(1) of this section.

■ 40. Amend § 239.62 by revising paragraph (b)(1) to read as follows:

§ 239.62 Liquidation accounts.

* * * * *

(b) * * *

(1) * * *

(i) The resulting stock holding company determines the initial sub-account balance for a savings account held by an eligible account holder, for a savings account not held by the eligible account holder on the supplemental eligibility record date, by multiplying the initial balance of the liquidation account by the following fraction: The numerator is the qualifying deposit in the savings account expressed in dollars on the eligibility record date, and the denominator is the calculation in paragraph (b)(1)(iv) of this section.

(ii) The resulting stock holding company determines the initial sub-account balance for a savings account held by a supplemental eligible account holder, for a savings account not held by the supplemental eligible account holder on the eligibility record date, by multiplying the initial balance of the liquidation account by the following fraction: The numerator is the qualifying deposit in the savings account expressed in dollars on the supplemental eligibility record date, and the denominator is the calculation in paragraph (b)(1)(iv) of this section.

(iii) For a savings account held on both the eligibility record date and the supplemental eligibility record date, the amount of the qualifying deposits for purposes of calculating the initial liquidation sub-account is the higher account balance of the savings account on either the eligibility record date or the supplemental eligibility record date. The resulting stock holding company determines the initial sub-account balance for a savings account held on both the eligibility record date and the supplemental eligibility record date, by multiplying the initial balance of the liquidation account by the following fraction: The numerator is the higher amount of the qualifying deposit in the savings account on either the eligibility record date or the supplemental eligibility record date, expressed in dollars, and the denominator is the calculation in paragraph (b)(1)(iv) of this section.

(iv) The denominator for calculating the initial liquidation sub-account balance of each eligible and supplemental eligible account holder is the sum of the numerator calculations in paragraphs (b)(1)(i), (b)(1)(ii), and (b)(1)(iii) of this section.

(v) 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.

* * * * *

■ 41. Amend § 239.63 by:

■ a. Revising the introductory text of paragraph (a) and paragraphs (a)(1), (a)(2), and (b)(1);

■ b. Removing in paragraph (b)(4) the text "Securities and Exchange Commission" and adding in its place the text "U.S. Securities and Exchange Commission";

■ c. Revising the introductory text of paragraph (c)(1) and paragraph (c)(1)(ii);

■ d. Removing in paragraph (c)(1)(iv) the text "tax qualified" and adding in its place the text "tax-qualified";

■ e. Adding paragraph (c)(1)(v);

■ f. Removing in the introductory text of paragraph (c)(3) the text "." and adding in its place the text ":";

■ g. Revising the introductory text of paragraph (d)(1) and paragraphs (f)(2), (f)(3)(iii), and (f)(3)(v);

■ h. Removing in paragraph (g)(1) the text ", as amended"; and

■ i. Revising paragraph (g)(3).

The revisions read as follows:

§ 239.63 Post-conversion.

(a) *Stock benefit plans, employee stock ownership plans, stock option plans, and management recognition plans.*

(1) During the 12 months after the conversion, the resulting stock holding company may implement a stock benefit plan, employee stock ownership plan, stock option plan, or management recognition plan, 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.

(ii) The aggregate holdings of any stock benefit plan, employee stock ownership plan, stock option plan, and management recognition plan do not exceed more than fifteen percent of the number of shares that the resulting stock holding company issued in the conversion.

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

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

(v) The resulting stock holding company does not fund the option plan or management recognition plan at the time of the conversion.

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

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

(viii) 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.

(2) The resulting stock holding company may provide dividend

equivalent rights or dividend adjustment rights to allow for stock splits or other adjustments to the stock in the stock benefit plan, employee stock ownership plan, stock option plan, or management recognition plan.

* * * * *

(b) * * *

(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.

* * * * *

(c) * * *

(1) The resulting stock holding company may not repurchase its shares in the first year after the conversion except under one of the following circumstances:

* * * * *

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

* * * * *

(v) The resulting stock holding company may repurchase its shares if such purchase would be consistent with the company's strategy for deploying conversion proceeds under the business plan filed with the application to convert to stock form and where that submitted business plan included projections to repurchase such stock.

* * * * *

(d) * * *

(1) To repurchase stock in the first year following conversion, other than repurchases under paragraphs (c)(1)(iii), (c)(1)(iv), or (c)(1)(v) 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:

* * * * *

(f) * * *

(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 subpart C of 12 CFR 238. 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) * * *

(iii) A corporation whose ownership is, or will be, substantially the same as the ownership of the resulting stock holding company may acquire or offer to acquire more than ten percent of the common stock, if it makes the offer or acquisition more than one year after the resulting stock holding company converts.

* * * * *

(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 12 CFR part 238 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.

* * * * *

(g) * * *

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

* * * * *

■ 42. Amend § 239.64 by:

■ a. Removing in paragraph (c) the text ''second step stock'';

■ b. Removing in paragraph (d) the text ''§ 238.62 of this chapter'' and adding in its place the text ''12 CFR 238.2'';

■ c. Revising the introductory text of paragraph (e) and paragraphs (e)(3) and (e)(4); and

■ d. Removing in paragraph (f)(1)(ii)(C) the text ''The mutual holding company may obtain Form AC from the appropriate Reserve Bank and the Board's website at *http://www.federalreserve.gov.*''

The revisions read as follows:

§ 239.64 Contributions to charitable organizations.

* * * * *

(e) *Charitable organization requirements.* The charter (or trust agreement) of a charitable organization formed by a mutual holding company converting to stock form and gift instrument must provide that:

* * * * *

(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 an officer, director, or employee of the mutual holding company or resulting stock holding company, or an officer, director, or employee of an affiliate of the mutual holding company or resulting stock holding company, 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 mutual holding company or resulting stock holding company.

* * * * *

■ 43. Amend § 239.65 by:

■ a. Removing in paragraph (g)(4)(i) the text ''Thrift Financial Report'' and adding in its place the text ''relevant regulatory financial reports''; and

■ b. Revising paragraph (g)(7)(ii).

The revision reads as follows:

§ 239.65 Voluntary supervisory conversions.

* * * * *

(g) * * *

(7) * * *

(ii) Any required Home Owners' Loan Act application or Change in Bank Control Act of 1978 (12 U.S.C. 1817(j)) notice under 12 CFR part 238.

* * * * *

■ 44. Amend § 239.66 by removing in paragraph (b)(1) the text ''.'' and adding in its place the text '':''.

Appendix A to Part 239—Mutual Holding Company Model Charter

■ 45. Amend Appendix A by:

■ a. Revising section 4; and

■ b. Removing the text ''for calendar year 1989'' wherever it appears.

The revision reads as follows:

Appendix A to Part 239—Mutual Holding Company Model Charter

Federal Mutual Holding Company Charter

* * * * *

Section 4: Capital. The Mutual Holding Company shall have no capital stock. However, the Mutual Holding Company shall have the authority to issue mutual capital certificates, consistent with the Home Owners' Loan Act and all applicable state and federal law.

* * * * *

Appendix C to Part 239—Mutual Holding Company Model Bylaws

■ 46. Amend Appendix C by:

■ a. Removing in paragraph 3 the text ''mailed postage prepaid'' and adding in its place the word ''sent'';

■ b. Removing in paragraph 3 the text ''at the last address appearing on the books of the mutual holding company''; and

■ c. Removing in paragraph 6 the text ''(Board)'' and adding in its place the text ''(''Board'')''.

Appendix D to Part 239—Subsidiary Holding Company of a Mutual Holding Company Model Bylaws

■ 47. Amend Appendix D by:

■ a. Removing in section 5 of article II the word ''delivered'' wherever it appears and adding in its place the word ''sent'';

■ b. Removing in section 5 of article II the text ''either personally or by mail,'';

■ c. Deleting section 4 of article III;

■ d. Redesignating section 5 of article III through section 14 of article III as section 4 of article III through section 13 of article III;

■ e. Deleting in section 5 of article III the text ''by telegram'' and adding in its place the text ''through electronic mail'';

■ f. Deleting in section 5 of article III the text ''when delivered to the telegraph company if sent by telegram,'';

■ g. Removing in section 12 of article III the text ''by registered mail'' and adding in its place the text ''by electronic mail or registered mail''; and

■ h. Deleting in section 1 of article IV the text ''Article IV'' and adding in its place the text ''article IV''.

By order of the Board of Governors of the Federal Reserve System.

Benjamin W. McDonough,

Secretary of the Board.

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