

## Chapter DFI-SB 22

### SAVINGS BANK MUTUAL HOLDING COMPANIES

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Note: Chapter SB 1 was renumbered ch. DFI-SB 1 under s. 13.93 (2m) (b) 1, Stats., and corrections made under s. 13.93 (2m) (b) 6. and 7., Stats., Register, November, 1997, No. 503.

#### DFI-SB 22.01 Definitions. In this chapter:

(1) "Acquiree savings bank" means any savings bank other than a resulting savings bank that:

- (a) Is acquired by a mutual holding company as part of and concurrently with a mutual holding company reorganization; and
- (b) Is in the mutual form immediately prior to the acquisition.

(2) (a) "Acting in concert" means:

1. Knowing participation in a joint activity or interdependent conscious parallel action towards a common goal whether or not pursuant to an express agreement; or

2. A combination or pooling of voting or other interests in the securities of an issuer for a common purpose pursuant to any contract, understanding, relationship, agreement or other arrangement, whether written or otherwise.

(b) A person or company which acts in concert with another person or company is acting in concert with any person or company who is also acting in concert with that other party, except that a stock benefit plan is not acting in concert with its trustee or a person who serves in a similar capacity solely for the purpose of determining whether stock held by the trustee and stock held by the plan will be aggregated. No officer or director of a savings bank or savings bank affiliate is acting in concert with any other officer or director of the savings bank or affiliate by reason of his or her service in those capacities.

(3) "Affiliate" means a person that directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with another person.

(4) "Associate", when indicating a relationship between persons, means:

(a) Any corporation or organization, other than the applicant or a majority-owned subsidiary of the applicant, of which the person is an officer or partner or is directly or indirectly the beneficial owner of 10% or more of any class of equity securities;

(b) Any trust or other estate in which the person has a substantial beneficial interest or as to which the person serves as trustee or in a similar fiduciary capacity, except that it does not include any stock benefit plan in which a person has a substantial beneficial interest or serves as a trustee or in a similar fiduciary capacity; and

(c) Any relative by blood or marriage of the natural person, or any relative by blood or marriage of the spouse, who has the same legal residence as or shares living quarters with the person or who is a director or officer of the applicant or of any of the applicant's parent organizations or subsidiaries.

(5) (a) "Company" means any corporation, partnership, business trust, joint venture, association or similar organization or any other trust unless by its terms it must terminate within 25 years or not later than 21 years and 10 months after the death of any indi-

vidual living on the effective date of the trust. "Company" does not include:

1. The FDIC, FRB, resolution trust corporation, OTS or any federal home loan bank.

2. Any company, the majority of shares of which is owned by:

- a. The United States or any state.
- b. An officer of the United States or any state acting in his or her official capacity.
- c. An instrumentality of the United States or any state.

(b) "Similar organization" in par. (a) means a combination of parties with the potential for or practical likelihood of a continuing rather than temporary existence, where the parties have knowingly and voluntarily associated for a common purpose pursuant to identifiable and binding relationships which govern the parties with respect to either:

1. The transferability and voting of any stock or other indicia of participation in another entity; or

2. Achievement of a common or shared objective, such as to collectively manage or control another entity.

(6) (a) "Control" of a savings bank means:

1. Controlling, owning or having the power to vote, directly or indirectly or acting through one or more persons, 25% or more of any class of voting securities of the savings bank; or

2. In any manner controlling the election of a majority of the directors of the savings bank.

(b) "Control" of a savings bank shall also exist if the division determines, after notice and opportunity for hearing, that a person directly or indirectly exercises a controlling influence over the management or policies of the savings bank.

(7) "Default" means any adjudication or other official determination of a court or other public authority pursuant to which a conservator, receiver or other legal custodian is appointed for a mutual holding company or savings bank subsidiary of a mutual holding company.

(8) "FDIC" means the federal deposit insurance corporation.

(9) "FRB" means the board of governors of the federal reserve system.

(10) "Member" means any depositor of a savings bank subsidiary of a mutual holding company that is entitled, under a statute or the articles of incorporation or bylaws of the mutual holding company, to vote on matters affecting the mutual holding company.

(11) "Mutual holding company" means a mutual savings bank holding company organized under s. 214.095, Stats., and this chapter which has control over any savings bank or any company that is or becomes a mutual holding company by virtue of this chapter.

(12) "OTS" means the federal office of thrift supervision.

(13) "Parent", when describing the relationship between two companies, means the company that controls the other company, either directly or indirectly, through one or more subsidiaries.

(14) "Person" means an individual or company.

(15) "Reorganization plan" means a plan to reorganize into the mutual holding company format which contains the information required by s. DFI-SB 22.06.

(16) "Reorganizing savings bank" means a mutual savings bank that proposes to reorganize into a mutual holding company under this chapter.

(17) "Resulting savings bank" means a stock savings bank that is organized as a subsidiary of a reorganizing savings bank to receive a substantial part of the assets and liabilities, including all deposit accounts, of the reorganizing savings bank upon consummation of the reorganization.

(18) "Savings association" means a savings association as defined in 12 USC 1813 (3) (b) (1) the deposits of which are insured by the FDIC and includes a federal savings association, federal savings bank and a building and loan or savings and loan association organized and operating under the laws of the state in which it is organized.

(19) "Stock" means the units into which the proprietary interests of a savings bank are divided including common or preferred stock, any other type of equity security, as well as warrants or options to acquire common or preferred stock, and other securities that are convertible into common or preferred stock.

(20) "Stock benefit plan" means any defined benefit plan or defined contribution plan and includes an employee stock ownership plan, stock bonus plan, profit-sharing plan or other plan of a mutual holding company or any of its subsidiaries or affiliates, whether or not the plan with its related trust, meets the qualifying requirements under section 401 of the internal revenue code.

(21) "Stock issuance plan" means a plan submitted under s. DFI-SB 22.07 providing for the issuance of stock by a savings bank subsidiary of a mutual holding company.

(22) "Subsidiary" means a company controlled either directly or indirectly by another company.

Note: This section interprets or implements s. 214.095, Stats.  
History: Cr. Register, February, 1994, No. 458, eff. 3-1-94.

**DFI-SB 22.02 Mutual holding company reorganization.** A mutual savings bank may, upon application to and approval by the division, reorganize as a mutual holding company by:

(1) Organizing one or more subsidiary stock savings banks, the ownership of which shall be evidenced by shares of stock to be owned by the reorganizing parent savings bank and transferring a substantial portion of its assets and all of the insured deposits and part or all of its other liabilities to one or more subsidiary savings banks; or

(2) Organizing a first tier subsidiary stock savings bank and causing that subsidiary to organize a second tier subsidiary stock savings bank and transferring, by merger of the reorganizing savings bank with the second tier subsidiary, a substantial portion of its assets, all of its insured deposits and part or all of its other liabilities to the resulting savings bank at which time the first tier subsidiary stock savings bank becomes a mutual holding company.

(3) Organizing a mutual holding company with the division's approval under s. 214.095, Stats., which organizes a subsidiary stock savings bank and transfers, by merger of the reorganizing savings bank, a substantial portion of its assets and all of its insured deposits and part or all of its other liabilities to the resulting savings bank.

Note: This section interprets or implements s. 214.095, Stats.  
History: Cr. Register, February, 1994, No. 458, eff. 3-1-94.

**DFI-SB 22.03 Approval of mutual holding company reorganization.** (1) GENERAL. Prior to reorganizing into a mutual holding company, a reorganizing savings bank shall do all the following:

(a) Obtain approval of a reorganization plan by a majority of the board of directors of the reorganizing savings bank and the board of directors of any acquiree savings bank.

(b) File the reorganization plan with the division within 5 business days after the approval of the board of directors.

(c) Obtain approval of a reorganization plan by an affirmative vote of a majority of the voting members of the reorganizing savings bank and any acquiree savings bank, at a meeting of members held under its bylaws.

(d) Obtain the approval of the reorganization plan by the division and, if applicable, the FDIC, FRB or OTS.

(2) ACTIONS BY DIVISION. A proposed reorganization shall be approved or disapproved by the division within 45 days of its filing and, if approved, shall be subject to the following conditions:

(a) The reorganization shall be consummated within one year of the approval.

(b) The capitalization of the mutual holding company shall not cause the resulting savings bank to fail to meet its capital maintenance requirement under ss. 214.40 and 214.43, Stats.

(c) Any other conditions which the division prescribes in the interests of a sound financial system.

(3) CERTIFICATE OF REORGANIZATION. If the division determines that the reorganizing savings bank has complied with all requirements of law and has implemented the reorganization plan as approved, the division shall issue a certificate of reorganization evidencing that the mutual savings bank has been reorganized into a mutual holding company and prescribing the effective date of the reorganization. The certificate shall be recorded in the office of the register of deeds in the county in which the home office of the reorganizing savings bank was located and in the county in which the registered office of the mutual holding company is located.

Note: This section interprets or implements s. 214.095, Stats.  
History: Cr. Register, February, 1994, No. 458, eff. 3-1-94.

**DFI-SB 22.04 Grounds for disapproval of reorganizations.** (1) BASIC STANDARDS. The division may disapprove an application for a mutual holding company reorganization on one or more of the following grounds:

(a) Disapproval is necessary to prevent unsafe or unsound practices, or to otherwise maintain a sound financial institution.

(b) The reorganization plan is not fair to members of the reorganizing savings bank.

(c) The reorganization plan does not protect the interests of deposit account holders of the reorganizing savings bank.

(d) The financial or managerial resources of the reorganizing savings bank or any acquiree savings bank warrant disapproval.

(e) After the proposed capitalization of the mutual holding company, any savings bank subsidiary would fail to meet the requirements of ss. 214.40 and 214.43, Stats.

(f) A stock issuance, proposed in connection with a mutual holding company reorganization, fails to meet the standards established by s. DFI-SB 22.07 or 22.08.

(g) The reorganizing savings bank or any acquiree savings bank fails to furnish information required in the reorganization plan or any other information requested by the division regarding the proposed reorganization.

(h) The proposed reorganization would violate any law or rule.

(2) CAPITALIZATION. (a) The division shall disapprove a proposal by a reorganizing savings bank or an acquiree savings bank to capitalize a mutual holding company if, immediately following the reorganization, the resulting or acquiree savings bank would fail to meet the capital requirements of ss. 214.40 and 214.43, Stats. If the net worth of the reorganizing savings bank will, under the reorganization plan, meet the minimum net worth requirements of ss. 214.40 and 214.43, Stats., a reorganization plan may

permit a mutual holding company to retain assets of the reorganizing mutual savings bank.

(b) Proposals by reorganizing and acquiree savings banks to capitalize mutual holding companies shall comply with any statutes and rules governing capital distributions by savings banks.

History: Cr. Register, February, 1994, No. 458, eff. 3-1-94.

**DFI-SB 22.05 Membership rights. (1) DEPOSITORS OF MUTUAL SAVINGS BANKS.** The articles of incorporation or bylaws of a mutual holding company shall provide that:

(a) On the effective date of reorganization or acquisition, the owners of deposit accounts in the resulting or acquiree savings bank become members of the mutual holding company, their membership rights in the mutual savings bank end and their membership rights in the mutual holding company begin.

(b) A person becomes a member of a mutual holding company by owning a deposit account in a mutual savings bank that is a subsidiary of the mutual holding company unless the deposit account is evidenced by a negotiable certificate of deposit that is not in registered form.

(c) A member of a mutual holding company shall have one vote for each \$100 or additional fraction of \$100 of the combined withdrawal value of the member's deposit accounts in a subsidiary mutual savings bank of the mutual holding company.

(d) Members of a mutual holding company may vote in person or by proxy at any meeting. A proxy shall be in writing and signed by the member or the member's authorized representative. Unless specified in the proxy, a proxy filed with the secretary shall continue in force until revoked by a written notice to the secretary or superseded by another proxy.

(e) Membership in a mutual holding company ends if the member withdraws the full withdrawal value of all deposit accounts in subsidiary mutual savings banks. A member who requests the full withdrawal value of the member's deposit accounts remains a member until the withdrawal value is paid in full.

**(2) DEPOSITORS OF STOCK SAVINGS BANKS.** A mutual holding company that acquires a stock savings bank other than a resulting savings bank or an acquiree savings bank shall not confer any membership rights upon the depositors of that savings bank unless the savings bank is merged into a mutual savings bank from which the mutual holding company draws members, in which case the depositors of the stock savings bank shall receive the same membership rights as other depositors of the savings bank into which the stock savings bank is merged.

Note: This section interprets or implements s. 214.095, Stats.

History: Cr. Register, February, 1994, No. 458, eff. 3-1-94.

**DFI-SB 22.06 Contents of mutual holding company reorganization plans.** Each reorganization plan shall contain a description of all significant terms of the proposed reorganization, shall attach and incorporate any proposed stock issuance plan and an opinion of counsel or a ruling from the federal internal revenue service and the department of the revenue as to the federal and state tax treatment of the proposed reorganization and shall include:

(1) A copy of the proposed articles of incorporation and bylaws of the resulting savings bank in the form prescribed by ss. DFI-SB 9.02 and 10.02 and the mutual holding company.

(2) A description of the method of reorganization under s. DFI-SB 22.02.

(3) A description of the organization of the resulting savings bank.

(4) An amendment to the articles and bylaws of any acquiree savings bank in the form prescribed by ss. DFI-SB 9.02 and 10.02.

(5) A statement that:

(a) Upon consummation of the reorganization, certain assets and liabilities, including all deposit accounts of the reorganizing

savings bank, shall be transferred to the resulting savings bank, which shall immediately become a savings bank subsidiary of the mutual holding company.

(b) All assets, rights, obligations and liabilities of the reorganizing savings bank that are not expressly retained by the mutual holding company shall be transferred to the resulting savings bank.

(c) Each holder of a deposit account in the reorganizing savings bank or any acquiree savings bank immediately prior to the reorganization shall receive, upon consummation of the reorganization, without payment, an identical deposit account in the resulting savings bank or the acquiree savings bank.

(d) A proxy that may be cast on behalf of a mutual savings bank member may be cast on behalf of a mutual holding company member until the proxy is revoked or superseded under s. DFI-SB 22.05 (1) (d).

(e) The reorganization plan adopted by the boards of directors of the reorganizing savings bank and any acquiree savings bank may be:

1. Amended by those boards as a result of any regulator's comments prior to any solicitation of proxies from the members to vote on the reorganization plan and at any later time with the consent of the division.

2. Terminated by either board at any time prior to the meeting at which the members vote on the reorganization plan and at any later time with the consent of the division.

3. Terminated if not completed within a specified time period which shall not exceed 24 months from the date on which the members of the board voting last approved it.

(6) A copy of any stock issuance plan which is proposed as part of the reorganization plan.

(7) A summary of the expenses to be incurred in connection with the reorganization.

History: Cr. Register, February, 1994, No. 458, eff. 3-1-94.

**DFI-SB 22.07 Stock issuance plans. (1) APPROVAL REQUIRED.** (a) No savings bank subsidiary of a mutual holding company, including a resulting or acquiree savings bank, may, directly or indirectly, issue stock to persons other than its mutual holding company parent without the prior written approval of the division.

(b) The division shall approve a proposed stock issuance plan upon determining that all of the following criteria are met:

1. The plan contains all the provisions required by this section.

2. The plan is consistent with the savings bank's articles of incorporation, including the type and amount of stock that may be issued.

3. The plan would provide the savings bank, its mutual holding company and any other savings bank subsidiaries of the mutual holding company with sufficient capital and would not be detrimental to the savings bank, its mutual holding company, members of the mutual holding company or the interests of depositors of the savings bank.

4. The proposed price or price range, the classification and any terms or conditions of the stock to be issued are reasonable.

5. The savings bank furnishes all information required by the division.

6. The plan is approved by the members of the mutual holding company or, if the plan is part of a reorganization plan under s. DFI-SB 22.06, by members of the reorganizing savings bank, at a meeting of members held under the bylaws of the mutual holding company or the reorganizing savings bank.

7. The proposed issuance complies with all other applicable laws.

(c) In determining whether the criteria of par. (b) are met, the division may consider the following factors:

1. The savings bank's size, capital position and quality of management.
2. The savings bank's business objective.
3. The dollar amount and number of shares to be issued pursuant to the plan.
4. The market conditions which may affect the plan.
5. The existence of a trading market in, or methods of later resale or repurchase, of the stock to be issued under the plan.
6. Any benefits provided to the savings bank through employe or director incentive aspects of the plan.
7. The impact, if any, of the participation or non-participation in the offering by members of the mutual holding company parent of the savings bank or other shareholders.

(2) **PRICING OF STOCK.** Each application for approval of a proposed stock issuance shall state and explain the proposed sales price or price range if it is not possible to specify the exact price at the time. Those materials shall:

(a) Support the reasonableness of the proposed price or price range and demonstrate to the satisfaction of the division that it was prepared by independent persons who are experienced and expert in corporate valuations. A person does not lack independence merely because he or she will participate in effecting a sale of the stock under the plan or will receive a fee for services rendered in connection with preparation of the pricing materials.

(b) Contain a brief summary of data sufficient to support its conclusions.

(c) If the proposed price or price range is based upon a capitalization of the projected income of the savings bank after the issuance of the stock, indicate the basis for determination of the income to be derived from the proceeds of the stock sale, demonstrate the appropriateness of the earnings multiple used and include all assumptions regarding future earnings growth. If the proposed price or price range is based upon a comparison of the stock of the savings bank with the issued and outstanding stock of other stock savings banks or similar institutions, those institutions shall be reasonably comparable to the savings bank in terms of size, asset composition, market area, competitive conditions, profit history, expected future earnings, and other stated relevant factors.

(d) If the proposed price or price range includes any discount due to the minority status of the stock to be offered, state the amount of the discount and explain how that discount was determined.

(e) Any additional information about the pricing which the division may request.

(3) **OFFERING RESTRICTIONS.** (a) No representation may be made regarding the offer or sale of any stock issued under this section that the price or price range has been approved or disapproved by the division or that the division has endorsed the accuracy or adequacy of any offering or sales document disseminated.

(b) In connection with the offer, sale or purchase of stock, no person may:

1. Employ any device, scheme or artifice to defraud.
2. Make any untrue statement of a material fact or omit to state a material fact necessary to make the statements made not misleading, in light of the circumstances.
3. Engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon a purchaser or seller.

(4) **MANDATORY PROVISIONS.** Each stock issuance plan shall:

(a) Describe all significant terms of the proposed stock issuance and shall attach a copy of each proposed stock certificate form, any proposed stock order form and any agreement or other document defining or limiting the rights of stockholders.

(b) Provide that:

1. The aggregate outstanding voting common stock owned or controlled by persons other than the mutual holding company at the close of the issuance shall be less than 50% of the total number of shares of outstanding voting common stock. This provision may be omitted if the issuance will be conducted by a savings bank that was in the stock form when acquired by its mutual holding company parent if the savings bank is not a resulting savings bank or an acquiree savings bank. Any stock which has no present or contingent voting rights may be issued by a savings bank subsidiary of a mutual holding company to persons other than the savings bank's mutual holding company, consistent with applicable law.

2. After the stock issuance, the savings bank shall comply with all applicable federal and state securities registration requirements.

3. The savings bank shall not offer or sell any stock to any person, other than a stock benefit plan of the savings bank, the savings bank's parent or any of its affiliates, whose purchase would be financed by funds loaned to the person by the savings bank or any of its affiliates.

4. If necessary, the savings bank's articles of incorporation shall be amended to authorize the stock issuance.

5. The expenses incurred in connection with the issuance shall be reasonable and specified in the plan.

6. If proposed as part of a reorganization plan, the plan may be amended or terminated in the same manner as the reorganization plan under s. DFI-SB 22.06 (9).

7. The plan will be terminated if not completed within a time specified in the plan unless an extension is requested in writing for good cause shown and approved in writing by the division.

(5) **OPTIONAL PROVISIONS.** A stock issuance plan may provide that:

(a) If the stock issuance is part of a reorganization plan, the offering may be commenced concurrently with or after the mailing of any proxy statements to the members of the reorganizing savings bank and any acquiree savings bank. The offering may be concluded prior to the required membership votes if the offer and sale of the stock is conditioned upon the approval of the reorganization plan and issuance plan by the members of the reorganizing savings bank and any acquiree savings bank.

(b) Any stock not sold in the offering may be sold in any other manner provided in the stock issuance plan that is approved by the division in writing.

(c) In lieu of shares of stock, the savings bank may issue and sell units of securities consisting of stock and long-term warrants or other equity securities, in which event any reference in this section to stock shall apply to units of equity securities unless the context otherwise specifies or requires.

(d) Purchases of stock by persons or entities acting in concert, or by associates, may not exceed a limit established under the terms of the stock issuance plan.

Note: This section interprets or implements s. 214.095, Stats.  
History: Cr. Register, February, 1994, No. 458, eff. 3-1-94.

#### **DFI-SB 22.08 Issuance or sale of stock by savings bank subsidiaries of mutual holding companies.**

(1) **AUTHORIZED SHARES; MANDATORY FEATURES.** The articles of incorporation of a stock savings bank subsidiary of a mutual holding company shall:

(a) Prescribe the classes of shares and the number of shares of each class that the savings bank is authorized to issue. If more than one class of shares is authorized, the articles of incorporation shall prescribe a distinguishing designation for each class. Before the issuance of shares of a class, the savings bank's articles of incorporation shall describe the preferences, limitations and relative rights of that class. All shares of a class shall have preferences, limitations and relative rights identical with those of other shares of the same class unless the class is divided into series.

## (b) Authorize:

1. One or more classes of shares that together have unlimited voting rights.

2. One or more classes of shares, which may be the same class or classes as those with voting rights under subd. 1., that together are entitled to receive the net assets of the savings bank upon dissolution.

**(1m) AUTHORIZED SHARER; OPTIONAL FEATURES.** The articles of incorporation of a stock savings bank subsidiary of a mutual holding company may:

(a) Create one or more series within a class of shares. Before the issuance of shares of a series, the savings bank's articles of incorporation shall describe the number of shares of each series that the savings bank is authorized to issue, a distinguishing designation for each series within a class and the preferences, limitations and relative rights of that series. All shares of a series shall have preferences, limitations and relative rights of that series. All shares of a series shall have preferences, limitations and relative rights identical with those of other shares of the same series and, except to the extent otherwise provided in the description of the series, with those of other series of the same class.

(b) Authorize one or more classes of shares that have designations, preferences, limitations and relative rights that may include:

1. Special, conditional or limited voting rights, or no right to vote, unless prohibited by this chapter.

2. Provisions for the redemption or conversion of the shares under any of the following terms specified by the articles of incorporation:

a. At the option of the savings bank, the shareholder or another person, or upon the occurrence of a designated event.

b. For cash, indebtedness, securities or other property.

c. In a designated amount or in an amount determined under a designated formula or by reference to extrinsic data or events.

3. Provisions entitling the holders to distributions calculated in any manner, including dividends that may be cumulative, non-cumulative or partially cumulative.

4. Preference over any other class of shares with respect to distributions, including dividends and distributions upon the dissolution of the savings bank.

**(2) TERMS OF CLASS OR SERIES DETERMINED BY BOARD OF DIRECTORS.** (a) Within the limits of subs. (1) and (1m) and as provided in the articles of incorporation, the board of directors may:

1. Determine the preferences, limitations and relative rights, in whole or in part, before the issuance of any shares of that class of shares.

2. Create one or more series within a class and, with respect to any series, determine the number of shares of the series, the distinguishing designation and the preferences, limitations and relative rights, in whole or in part, before the issuance of any shares of that series.

(b) Before issuing any shares of a class or series under par. (a), the savings bank shall file with the division an amendment to its articles of incorporation that includes all of the following:

1. The name of the savings bank.

2. The text of the amendment determining the terms of the class or series of shares.

3. The number of shares of the class or series of shares created.

4. A statement that none of the shares of the class or series has been issued.

5. The date that the amendment was adopted.

6. A statement that the amendment was adopted by the board of directors and the shareholders of the savings bank.

(c) After the amendment is filed under par. (b) and before the savings bank issues any shares of the class or series that is the subject of the amendment, the board of directors may alter or revoke

any preferences, limitations or relative rights described in the amendment by adopting another resolution appropriate for that purpose. The savings bank shall file with the division the revised amendment that complies with par. (b). A preference, limitation or relative right may not be altered or revoked after the issuance of any shares of the class or series that are subject to the preference, limitation or relative right, except by amendment of the articles of incorporation.

**(3) ISSUED AND OUTSTANDING SHARES.** Subject to s. DFI-SB 22.07:

(a) A savings bank may issue the number of shares of each class or series authorized by its articles of incorporation. Shares that are issued are outstanding shares until they are reacquired, redeemed, converted or canceled.

(b) When shares of the savings bank are outstanding, there must be outstanding one or more shares that together have unlimited voting rights and one or more shares, which may be the same as those with unlimited voting rights, that together are entitled to receive the net assets of the savings bank upon dissolution.

(c) The reacquisition, redemption or conversion of outstanding shares is subject to the limitations of par. (b) and s. DFI-SB 22.10 (2).

**(4) FRACTIONAL SHARES.** (a) Subject to s. DFI-SB 22.07 (1) (a), a savings bank may:

1. Issue fractions of a share or pay in money the value of fractions of a share.

2. Arrange for disposition of fractional shares by the shareholders.

3. Issue scrip in registered or bearer form entitling the holder to receive a full share on the surrender of enough scrip to equal a full share.

(b) A certificate representing scrip shall be conspicuously labeled "scrip" and shall contain the terms of exchange for a full share and the information required by s. DFI-SB 22.07 (9), except that it may state that it is issued to bearer.

(c) The holder of a fractional share may exercise the rights of a shareholder including the right to vote, to receive dividends and to participate in the assets of the savings bank upon liquidation. The holder of scrip is not entitled to the rights described in this subsection unless the scrip provides for them.

(d) The board of directors may authorize the issuance of scrip subject to any condition considered desirable, including:

1. The scrip will become void unless exchanged for full shares before a specified date.

2. The shares for which the scrip is exchangeable may be sold and the proceeds paid to the scripholders.

**(5) ISSUANCE OF SHARES.** (a) The powers granted to the board of directors in pars. (b) to (e) may be reserved to the shareholders by the articles of incorporation.

(b) The board of directors may authorize issuance of shares for consideration consisting of any tangible or intangible property or benefit to the savings bank, including cash, promissory notes, services performed, contracts for services to be performed, or other securities of the savings bank.

(c) Before the savings bank issues shares, the board of directors shall determine that the consideration received or to be received for the shares to be issued is adequate. The board of directors' determination is conclusive insofar as the adequacy of consideration for the issuance of shares relates to whether the shares are validly issued, fully paid and nonassessable.

(d) When the savings bank receives the consideration for which the board of directors authorized the issuance of shares, the shares issued for that consideration are fully paid and nonassessable.

(e) The savings bank may place in escrow shares issued for a contract for future services or benefits or a promissory note, or make other arrangements to restrict the transfer of the shares, and

may credit distributions in respect of the shares against their purchase price, until the services are performed, the benefits are received or the note is paid. If the services are not performed, the benefits are not received or the note is not paid, the corporation may cancel, in whole or in part, the shares escrowed or restricted and the distributions credited.

**(6) LIABILITY OF SHAREHOLDERS, TRANSFEREES AND OTHERS.**

(a) A purchaser from a savings bank of the savings bank shares is not liable to the savings bank or its creditors with respect to the shares except to pay the consideration for which the shares were authorized to be issued.

(b) Unless otherwise provided in the articles of incorporation, a shareholder of a savings bank is not personally liable for the acts or debts of the savings bank, except that a shareholder may become personally liable by his or her acts or conduct other than as a shareholder.

**(7) SHARE DIVIDENDS.** (a) In this section, "share dividend" means shares issued proportionally and without consideration to the savings bank's shareholders or to the shareholders of one or more classes or series.

(b) Except as provided by ch. 214, Stats., in par. (c) or the articles of incorporation a savings bank may issue share dividends.

(c) 1. A savings bank may not issue shares of one class or series as a share dividend in respect of shares of another class or series unless: the articles of incorporation authorize the issuance; a majority of the votes entitled to be cast by the class or series to be issued approve the issuance; or there are no outstanding shares of the class or series to be issued, as determined under subd. 2.

2. For purposes of this paragraph, if a security is outstanding that is convertible into or carries a right to subscribe for or acquire shares of the class or series to be issued, the holder of the security is considered a holder of the class or series to be issued.

(d) If the board of directors does not fix the record date for determining shareholders entitled to a share dividend, it is the date on which the board of directors authorizes the share dividend.

**(8) SHARE RIGHTS, OPTIONS AND WARRANTS.** Unless the articles of incorporation provide otherwise before the issuance of rights, options or warrants, a savings bank may issue rights, options or warrants for the purchase of shares of the savings bank. The rights, options or warrants may contain provisions that adjust the rights, options or warrants in the event of an acquisition of shares or a reorganization, merger, share exchange, sale of assets or other occurrence. Subject to the articles of incorporation, the board of directors shall determine the terms on which the rights, options or warrants are issued, their form and content, and the consideration for which the shares are to be issued. Notwithstanding any other provision of this section, and unless otherwise provided in the articles of incorporation before issuance of the rights, options or warrants, a savings bank may issue rights, options or warrants that include conditions that prevent the holder of a specified percentage of the outstanding shares of the savings bank, including subsequent transferees of the holder, from exercising those rights, options or warrants.

**(9) FORM AND CONTENT OF CERTIFICATES.** (a) At a minimum, a share certificate shall state on its face:

1. The name of the issuer and that the issuer is organized under the laws of this state;
2. The name of the person to whom issued; and
3. The number and class of shares and the designation of the series, if any, that the certificate represents.

(b) If the issuing savings bank is authorized to issue different classes of shares or different series within a class, each certificate shall contain:

1. A summary of the designations, relative rights, preferences and limitations applicable to each class, and the variations in rights, preferences and limitations determined for each series and

the authority of the board of directors to determine variations for future series; or

2. A conspicuous statement that the savings bank will furnish the shareholder the information described in par. (a) on request, in writing and without charge.

(c) Each share certificate shall be signed either manually or in facsimile, by the officer or officers designated in the bylaws or by the board of directors. The validity of a share certificate is not affected if a person who signed the certificate no longer holds office when the certificate is issued.

**(10) SHARES WITHOUT CERTIFICATES.** (a) Unless the articles of incorporation or bylaws provide otherwise, the board of directors of a savings bank may authorize the issuance of any shares of any of its classes or series without certificates. The authorization does not affect shares already represented by certificates until the certificates are surrendered to the savings bank.

(b) Within a reasonable time after the issuance or transfer of shares without certificates, the savings bank shall send the shareholder a written statement of the information required on share certificates by sub. (9) (a) and (b) and, if applicable, sub. (11).

(c) Unless the articles of incorporation or bylaws expressly provide otherwise, the rights and obligations of shareholders are identical whether or not their shares are represented by certificates.

**(11) RESTRICTION ON TRANSFER OF SHARES AND OTHER SECURITIES.** (a) In this subsection:

1. "Other securities" include securities that are convertible into or carry a right to subscribe for or acquire shares.

2. "Transfer restriction" means a restriction on the transfer or registration of transfer of shares and other securities of a savings bank.

(b) 1. Except as provided in subd. 2., the articles of incorporation, bylaws, an agreement among shareholders and holders of other securities, or an agreement between shareholders and holders of other securities and the savings bank may impose a transfer restriction on shares and other securities of the savings bank for any reasonable purpose, including:

a. Maintaining the savings bank's status when it is dependent on the number or identity of its shareholders.

b. Preserving exemptions under federal or state securities law.

2. A transfer restriction may not affect shares and other securities issued before the restriction is adopted unless the holders of the shares and other securities are parties to the transfer restriction agreement or vote in favor of the transfer restriction.

(c) A transfer restriction is valid and enforceable against the holder or a transferee of the holder if the transfer restriction is authorized by this section and its existence is noted conspicuously on the front or back of the certificate or is contained in the information statement required by sub. (10) (b). Unless so noted, a transfer restriction is not enforceable against a person who does not know of the transfer restriction.

(d) The transfer restrictions permitted under this section include transfer restrictions that:

1. Obligate the shareholder or holder of other securities first to offer the savings bank or other persons, whether separately, consecutively or simultaneously, an opportunity to acquire the restricted shares or other securities.

2. Obligate the savings bank or other persons, whether separately, consecutively or simultaneously, to acquire the restricted shares or other securities.

3. Require the savings bank, the holders of any class of its shares or other securities or another person to approve the transfer of the restricted shares or other securities, if the requirement is not manifestly unreasonable.

4. Prohibit the transfer of restricted shares or other securities to designated persons or classes of persons, if the prohibition is not manifestly unreasonable.

**(12) EXPENSE OF ISSUING SHARES.** A savings bank may pay the expense of selling or underwriting its shares, and of organizing or reorganizing the savings bank from the consideration received for shares.

**(13) PREEMPTIVE RIGHTS.** (a) In this subsection, "other securities" has the meaning specified in sub. (11) (a) 1.

(b) The shareholders or holders of other securities of a savings bank do not have a preemptive right to acquire the savings bank's unissued shares or other securities except to the extent provided in the articles of incorporation. If the articles of incorporation state that "the corporation elects to have preemptive rights", or words of similar meaning, pars. (c) to (f) govern the preemptive rights, except to the extent that the articles of incorporation expressly provide otherwise.

(c) Except as provided in par. (e), the shareholders or holders of other securities of the savings bank have a preemptive right, granted on uniform terms and conditions prescribed by the board of directors to provide a fair and reasonable opportunity to exercise the right, to acquire proportional amounts of the savings bank's unissued shares or other securities upon the decision of the board of directors to issue the shares or other securities, subject to the following conditions:

1. Holders of shares or other securities with general voting rights have preemptive rights with respect to shares and other securities of any class with general voting rights.

2. Holders of shares or other securities without preferential rights to distributions or assets have preemptive rights with respect to shares and other securities of any class without preferential rights to distributions or assets, except that holders of shares or other securities without general voting rights have no preemptive rights with respect to shares or other securities of any class with general voting rights.

(d) A shareholder or holder of other security may waive his or her preemptive right. A written waiver is irrevocable even if it is not supported by consideration.

(e) There is no preemptive right with respect to:

1. Shares or other securities issued as compensation to directors, officers or employees of the savings bank or its affiliates;

2. Shares or other securities issued to satisfy conversion or option rights created to provide compensation to directors, officers or employees of the savings bank or its affiliates;

3. Shares or other securities authorized in articles of incorporation that are issued within 6 months from the effective date of incorporation; or

4. Shares or other securities sold for other than money or an obligation to pay money.

(f) If shares or other securities subject to preemptive rights are not acquired by shareholders or holders of other securities, the savings bank may issue the shares or other securities to any person for one year after being offered to shareholders or holders of other securities, at a consideration set by the board of directors that is not lower than the consideration set for the exercise of preemptive rights. An offer at a lower consideration or after the expiration of one year is subject to the preemptive rights of shareholders or holders of other securities.

**(14) SAVINGS BANK'S ACQUISITION OF ITS OWN SHARES.** (a) A savings bank may, subject to the provisions of DFI-SB 22.10 (3), acquire its own shares and shares so acquired constitute authorized but unissued shares.

(b) If the articles of incorporation prohibit the reissuance of acquired shares, the number of authorized shares is reduced by the number of shares acquired by the savings bank, effective upon amendment of the articles of incorporation. The board of directors may adopt articles of amendment under this subsection without shareholder action and deliver them to the division for filing. The articles shall include:

1. The name of the savings bank.

2. The reduction in the number of authorized shares, itemized by class and series.

3. The total number of authorized shares, itemized by class and series, remaining after reduction of the shares.

4. A statement that the amendment was adopted by the board of directors and that shareholder action was not required.

**(15) DISTRIBUTIONS TO SHAREHOLDERS.** (a) The board of directors may authorize and the savings bank may make distributions to its shareholders, subject to par. (c), any restriction in its articles of incorporation or its bylaws.

(b) The record date for determining shareholders entitled to a distribution, other than a distribution involving a purchase, redemption or other acquisition of the savings bank's shares, is the date on which the board of directors authorizes the distribution, unless the board of directors fixes a different record date.

(c) No distribution may be made if, after giving it effect:

1. The savings bank would not be able to pay its debts as they become due in the usual course of business;

2. The savings bank's total assets would be less than the sum of its total liabilities plus, unless the articles of incorporation permit otherwise, the amount that would be needed if the savings bank were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of shareholders whose preferential rights are superior to those receiving the distribution; or

3. The distribution would violate the restrictions in s. 214.435, Stats.

(d) The board of directors may base a determination that par. (c) does not prohibit a distribution on financial statements and other financial data prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances.

(e) Except as provided in par. (g), the effect of a distribution for purposes of par. (c) is measured as of the following dates:

1. In the case of distribution by purchase, redemption or other acquisition of the savings bank's shares, as of the earlier of:

a. The date on which money or other property is transferred or debt is incurred by the savings bank; or

b. The date on which the shareholder ceases to be a shareholder with respect to the acquired shares.

2. In the case of any other distribution of indebtedness, as of the date on which the indebtedness is distributed.

3. In all other cases, as of:

a. The date on which the distribution is authorized, if the payment occurs within 120 days after the date of authorization.

b. The date on which the payment is made, if payment occurs more than 120 days after the date of authorization.

(f) A savings bank's indebtedness to a shareholder incurred because of a distribution made in accordance with this section is at parity with the savings bank's indebtedness to its general, unsecured creditors except to the extent subordinated by agreement.

(g) Indebtedness of a savings bank, including indebtedness issued as a distribution, is not considered a liability for purposes of determinations under par. (c) if its terms provide that payment of principal and interest are made only if and to the extent that payment of a distribution to shareholders could then be made under this section. If the indebtedness is issued as a distribution, each payment of principal or interest is treated as a distribution, the effect of which is measured on the date on which the payment is actually made.

Note: This section interprets or implements s. 214.095, Stats.

History: Cr. Register, February, 1994, No. 458, eff. 3-1-94.

**DFI-SB 22.09 Articles of Incorporation and bylaws of mutual holding companies.** (1) MODEL ARTICLES AND BYLAWS. The articles of incorporation and bylaws of a mutual holding company shall be in a form approved by the division. The

division may establish and require a specific form for the articles of incorporation or bylaws or both of a mutual holding company:

(2) **FILING.** Duplicate originals of the articles of incorporation and bylaws of a mutual holding company and any amendments to them shall be filed with and approved by the division. Upon their approval they shall be recorded in the office of the register of deeds in the county in which the mutual holding company has its principal place of business.

(3) **EFFECTIVE DATE.** (a) *Articles of incorporation.* The effective date of the articles of incorporation and amendments to them shall be the date of recording in the office of the register of deeds or a later date if the document provides one.

(b) *Bylaws.* The effective date of bylaws or any amendment to the bylaws is the date of written approval by the division or a later date if the document provides one.

(4) **AVAILABILITY OF ARTICLES AND BYLAWS.** (a) *Holding company.* A mutual holding company shall make available to its members during regular office hours in each office of each subsidiary savings bank from which the mutual holding company draws members a copy of its articles of incorporation and bylaws, including any amendments, and shall deliver a copy to any member upon request without charge.

(b) *Savings bank.* A savings bank that is a subsidiary of a mutual holding company shall make available to any requesting stockholder or any member of its parent mutual holding company, at each office in which it transacts business, a copy of its articles of incorporation and bylaws, including any amendments, for inspection or retention or both without charge.

Note: This section interprets or implements s. 214.095, Stats.

History: Cr. Register, February, 1994, No. 458, eff. 3-1-94.

**DFI-SB 22.10 Activities of mutual holding companies.** (1) **PERMITTED ACTIVITIES.** A mutual holding company may:

(a) Invest in or acquire control of a savings bank or savings and loan association or their holding companies.

(b) Acquire a mutual savings bank or mutual savings and loan association by merger with an interim or existing subsidiary savings bank of the mutual holding company from which the mutual holding company draws members under subch. IX of ch. 214, Stats.

(c) With the consent of the division and subject to conditions as the division may prescribe, upon an affirmative vote of at least two-thirds of the board of each entity, acquire control of another mutual holding company by merging with or into it or by merging it with or into a subsidiary interim holding company.

(d) Acquire control of a savings bank holding company or savings and loan association holding company in the stock form with the written approval of the division. An acquired holding company may be held as a subsidiary or merged into the mutual holding company.

(e) Invest in or acquire control of any corporation which is engaged exclusively in activities approved by the division.

(f) Invest in securities a savings bank may invest in under subch. VII of ch. 214, Stats.

(g) Engage in activities a savings bank may engage in under ch. 214, Stats.

(h) Furnish or perform management services for a subsidiary.

(i) Hold, manage or liquidate assets owned by or acquired from a subsidiary.

(j) Hold or manage property which it or a subsidiary uses.

(k) Unless limited or prohibited by the division, engage in any activity that the federal reserve board permits a bank holding company to engage in under 12 CFR 225, subpart C.

(L) Convert itself and any savings bank subsidiary into a mutual savings bank under a plan, approved by the division, that provides that the converting mutual holding company ceases to

engage in activities that the converted savings bank may not engage in and that provides that stock in a subsidiary savings bank that is not held by the converting mutual holding company is redeemed.

(2) **RESTRICTIONS ON PLEDGING STOCK.** (a) To collateralize an obligation of it or any of its subsidiaries or affiliates, without the prior approval of the division, a mutual holding company may pledge any stock which comprises a minority interest in any subsidiary or that it holds in:

1. A subsidiary savings bank, if the proceeds or other benefit of the obligation collateralized are received by the savings bank whose stock is pledged;

2. A subsidiary savings bank;

3. Any nondepository subsidiary.

(b) No pledge of stock that is not described in par. (a) may be made without the prior written approval of the division.

(c) Within 10 days after any pledge of stock, a mutual holding company shall:

1. Notify the division in writing regarding the terms of the transaction, including the amount of principal and interest, repayment terms, maturity date, the nature and amount of collateral, and the terms governing seizure of the collateral; and

2. If required under par. (a), include in the notice a certification that the proceeds of the loan have been transferred to the subsidiary savings bank whose stock has been pledged.

(d) Any mutual holding company that fails to make any payment on a loan secured by the pledge of stock by the date on which the payment is due shall, on the first day after the payment is due and not made, provide written notice of nonpayment to the division.

(3) **RESTRICTIONS ON STOCK REPURCHASES.** (a) No subsidiary savings bank of a mutual holding company that has any stockholders other than the savings bank's mutual holding company may repurchase any share of stock within 3 years of the stock's date of issuance without the prior written approval of the division unless the repurchase:

1. Is part of a general repurchase made on a pro rata basis under an offer approved in writing by the division and made to all stockholders of the savings bank except that the savings bank's mutual holding company may be excluded from the repurchase with the division's approval;

2. Is accomplished in the open market by a stock benefit plan of the savings bank in an amount reasonable and appropriate to fund the plan.

(b) A mutual holding company may, at any time, and without prior approval of the division, acquire additional shares of the stock of a subsidiary savings bank.

(4) **DISPOSITIONS.** With the written approval of the division, a mutual holding company may:

(a) Directly or indirectly, transfer any interest in stock which it holds in any subsidiary savings bank.

(b) Cause or permit the transfer of all or a substantial portion of the assets or liabilities of any subsidiary savings bank.

(5) **RESTRICTIONS ON WAIVER OF DIVIDENDS.** Unless authorized by the division, no mutual holding company may waive its right to receive any dividend declared by a subsidiary.

(6) **RESTRICTIONS ON INDEMNIFICATION.** Section 214.04 (15), Stats., shall apply to mutual holding companies in the same manner as if they were mutual savings banks.

(7) **RESTRICTIONS ON EMPLOYMENT CONTRACTS.** Chapter DFI-SB 7 shall apply to a mutual holding company in the same manner as it applies to a savings bank.

Note: This section interprets or implements s. 214.095, Stats.

History: Cr. Register, February, 1994, No. 458, eff. 3-1-94.

**DFI-SB 22.11 Registration, reports and examinations.** (1) **REGISTRATION OF MUTUAL HOLDING COMPANIES.** Each

mutual holding company shall register with the division within 90 days after becoming a mutual holding company in the manner and form prescribed by the division. A mutual holding company that receives the division's prior approval under s. DFI-SB 22.03, to become a mutual holding company may complete this registration requirement through submission of its first annual report to the division as required by sub. (2).

**(2) REPORTS OF MUTUAL HOLDING COMPANIES.** Each mutual holding company shall furnish, in the manner and form prescribed by the division, an annual report for the fiscal year in which it becomes a mutual holding company, and for each fiscal year during which it remains a mutual holding company. Additional information and reports shall be furnished as the division may require.

**(3) EXAMINATIONS AND INSPECTIONS.** The division may examine any mutual holding company and each of its subsidiaries and prepare a report of their operations and activities. The division may rely on examination reports made by the primary federal or state supervisor of a subsidiary financial institution of a mutual holding company.

*Note:* This section interprets or implements s. 214.095, Stats.

*History:* Cr. Register, February, 1994, No. 458, eff. 3-1-94.

**DFI-SB 22.12 Conversion or liquidation of mutual holding companies.** **(1) CONVERSION.** A mutual holding company may convert from mutual to stock form in accordance with a plan of conversion approved by the division under procedures the same as for the organizational conversion of a mutual savings bank under s. 214.685, Stats.

**(2) INVOLUNTARY LIQUIDATION.** (a) The division may file a petition with the federal bankruptcy court requesting the liquidation of a mutual holding company pursuant to 12 USC 1467 (a) (o) (9) and title 11, United States Code, upon:

1. The default of the resulting savings bank, any acquiree savings bank, or any subsidiary savings bank of the mutual holding company;

2. The default of the mutual holding company; or

3. Foreclosure on any pledge by the mutual holding company of subsidiary savings bank stock under s. DFI-SB 22.10(3).

(b) Except as provided by par. (c), the net proceeds of any liquidation of mutual holding company shall be transferred to the members of the mutual holding company under the articles of incorporation of the mutual holding company.

(c) If the FDIC incurs a loss from a default of any savings bank subsidiary of a mutual holding company and that mutual holding company is liquidated under par. (a), the FDIC shall succeed to the membership interests of the depositors of the savings bank, to the extent of the FDIC's loss.

**(3) VOLUNTARY LIQUIDATION.** Sections 214.82 to 214.855, Stats., shall apply to a mutual holding company in the same manner as they apply to a savings bank.

*History:* Cr. Register, February, 1994, No. 458, eff. 3-1-94.

**DFI-SB 22.13 Procedural requirements for proxies.**

**(1) SOLICITATION OF PROXIES.** Solicitations of proxies by any person in connection with any membership vote required under this chapter shall be accompanied by proxy materials in a form appropriate, and containing the information relevant to the action that members are being asked to approve.

**(2) USE OF EXISTING PROXIES.** Whenever a mutual savings bank or mutual holding company is required by this chapter to obtain membership approval for a transaction, the savings bank or mutual holding company may use any existing proxy conferring general authority to vote on any and all matters at any meeting of members if the member granting the proxy has been furnished a proxy statement regarding the proposed transaction and the member does not revoke the proxy prior to the vote at the meeting at which the transaction will be considered.

*History:* Cr. Register, February, 1994, No. 458, eff. 3-1-94.

