

(Aug. 1, 1956, ch. 852, § 2, 70 Stat. 908.)

Editorial Notes

REFERENCES IN TEXT

The National Bank Act, referred to in text, is act June 3, 1864, ch. 106, 13 Stat. 99, which is classified principally to chapter 2 (§ 21 et seq.) of this title. For complete classification of this Act to the Code, see References in Text note set out under section 38 of this title.

§ 42. Territorial application

The provisions of all Acts of Congress relating to national banks shall apply in the several States, the District of Columbia, the several Territories and possessions of the United States, and the Commonwealth of Puerto Rico.

(Pub. L. 86-230, § 14, Sept. 8, 1959, 73 Stat. 458.)

§ 43. Interpretations concerning preemption of certain State laws

(a) Notice and opportunity for comment required

Before issuing any opinion letter or interpretive rule, in response to a request or upon the agency's own motion, that concludes that Federal law preempts the application to a national bank of any State law regarding community reinvestment, consumer protection, fair lending, or the establishment of intrastate branches, or before making a determination under section 36(f)(1)(A)(ii) of this title, the appropriate Federal banking agency (as defined in section 1813 of this title) shall—

(1) publish in the Federal Register notice of the preemption or discrimination issue that the agency is considering (including a description of each State law at issue);

(2) give interested parties not less than 30 days in which to submit written comments; and

(3) in developing the final opinion letter or interpretive rule issued by the agency, or making any determination under section 36(f)(1)(A)(ii) of this title, consider any comments received.

(b) Publication required

The appropriate Federal banking agency shall publish in the Federal Register—

(1) any final opinion letter or interpretive rule concluding that Federal law preempts the application of any State law regarding community reinvestment, consumer protection, fair lending, or establishment of intrastate branches to a national bank; and

(2) any determination under section 36(f)(1)(A)(ii) of this title.

(c) Exceptions

(1) No new issue or significant basis

This section shall not apply with respect to any opinion letter or interpretive rule that—

(A) raises issues of Federal preemption of State law that are essentially identical to those previously resolved by the courts or on which the agency has previously issued an opinion letter or interpretive rule; or

(B) responds to a request that contains no significant legal basis on which to make a preemption determination.

(2) Judicial, legislative, or intragovernmental materials

This section shall not apply with respect to materials prepared for use in judicial proceedings or submission to Congress or a Member of Congress, or for intragovernmental use.

(3) Emergency

The appropriate Federal banking agency may make exceptions to subsection (a) if—

(A) the agency determines in writing that the exception is necessary to avoid a serious and imminent threat to the safety and soundness of any national bank; or

(B) the opinion letter or interpretive rule is issued in connection with—

(i) an acquisition of 1 or more banks in default or in danger of default (as such terms are defined in section 1813 of this title); or

(ii) an acquisition with respect to which the Federal Deposit Insurance Corporation provides assistance under section 1823(c) of this title.

(R.S. § 5244, as added Pub. L. 103-328, title I, § 114, Sept. 29, 1994, 108 Stat. 2366.)

Editorial Notes

CODIFICATION

Another R.S. § 5244 is classified to section 8 of Title 33, Navigation and Navigable Waters.

SUBCHAPTER II—CAPITAL, STOCK, AND STOCKHOLDERS

§ 51. Repealed. Pub. L. 106-569, title XII, § 1233(c), Dec. 27, 2000, 114 Stat. 3037

Section. R.S. § 5138; Mar. 14, 1900, ch. 41, § 10, 31 Stat. 48; Feb. 25, 1927, ch. 191, § 4, 44 Stat. 1227; June 16, 1933, ch. 89, § 17(a), 48 Stat. 185; Aug. 23, 1935, ch. 614, title III, § 309, 49 Stat. 709, related to capital and surplus requirements.

§ 51a. Preferred stock; issuance authorized

Notwithstanding any other provision of law, any national banking association may, with the approval of the Comptroller of the Currency and by vote of shareholders owning a majority of the stock of such association, upon not less than five days' notice, given by registered mail or by certified mail pursuant to action taken by its board of directors, issue preferred stock of one or more classes, in such amount and with such par value as shall be approved by said Comptroller, and make such amendments to its articles of association as may be necessary for this purpose; but, in the case of any newly organized national banking association which has not yet issued common stock, the requirement of notice to and vote of shareholders shall not apply. No issue of preferred stock shall be valid until the par value of all stock so issued shall be paid in and notice thereof, duly acknowledged before a notary public by the president, vice president, or cashier of said association, has been transmitted to the Comptroller of the Currency and his certificate obtained specifying the amount of such issue of preferred stock and his approval thereof and that the amount has been duly paid in as a part of the capital of such association;

which certificate shall be deemed to be conclusive evidence that such preferred stock has been duly and validly issued.

(Mar. 9, 1933, ch. 1, title III, § 301, 48 Stat. 5; June 15, 1933, ch. 79, 48 Stat. 147; Aug. 23, 1935, ch. 614, title III, § 336, 49 Stat. 720; Pub. L. 86-507, § 1(9), June 11, 1960, 74 Stat. 200.)

Editorial Notes

AMENDMENTS

1960—Pub. L. 86-507 inserted “or by certified mail” after “registered mail”.

1935—Act Aug. 23, 1935, amended last sentence generally.

1933—Act June 15, 1933, struck out all of former section and inserted a new section which incorporated all former provisions and inserted “of one or more classes,” in first sentence.

Executive Documents

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in Comptroller of the Currency, referred to in this section, not included in transfer of functions to Secretary of the Treasury, see note set out under section 1 of this title.

§ 51b. Dividends, voting, and retirement of preferred stock; individual liability

(a) Notwithstanding any other provision of law, whether relating to restriction upon the payment of dividends upon capital stock or otherwise, the holders of such preferred stock shall be entitled to receive such cumulative dividends and shall have such voting and conversion rights and such control of management, and such stock shall be subject to retirement in such manner and upon such conditions, as may be provided in the articles of association with the approval of the Comptroller of the Currency. The holders of such preferred stock shall not be held individually responsible as such holders for any debts, contracts, or engagements of such association, and shall not be liable for assessments to restore impairments in the capital of such association as now provided by law with reference to holders of common stock.

(b) No dividends shall be declared or paid on common stock until the cumulative dividends on the preferred stock shall have been paid in full; and, if the association is placed in voluntary liquidation or a conservator or a receiver is appointed therefor, no payments shall be made to the holders of the common stock until the holders of the preferred stock shall have been paid in full the par value of such stock plus all accumulated dividends.

(Mar. 9, 1933, ch. 1, title III, § 302, 48 Stat. 5; June 15, 1933, ch. 79, 48 Stat. 148; Pub. L. 96-221, title VII, § 702, Mar. 31, 1980, 94 Stat. 186.)

Editorial Notes

AMENDMENTS

1980—Subsec. (a). Pub. L. 96-221 struck out limitation on payment of cumulative dividends at a rate not exceeding 6 per centum per annum.

1933—Subsec. (a). Act June 15, 1933, struck out former subsec. (a) and inserted a new subsec. (a) which incorporated all former provisions and inserted “Notwithstanding any other provision of law, whether relating

to restriction upon the payment of dividends upon capital stock or otherwise” and “and conversion rights,” in first sentence.

Executive Documents

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in Comptroller of the Currency, referred to in this section, not included in transfer of functions to Secretary of the Treasury, see note set out under section 1 of this title.

§ 51b-1. Consideration of preferred stock in determining impairment of capital; dividends; retirement

If any part of the capital of a national bank, State member bank, or bank applying for membership in the Federal Reserve System consists of preferred stock, the determination of whether or not the capital of such bank is impaired and the amount of such impairment shall be based upon the par value of its stock even though the amount which the holders of such preferred stock shall be entitled to receive in the event of retirement or liquidation shall be in excess of the par value of such preferred stock. If any such bank or trust company shall have outstanding any capital notes or debentures of the type which the Reconstruction Finance Corporation is authorized to purchase pursuant to the provisions of section 51d of this title, the capital of such bank may be deemed to be unimpaired if the sound value of its assets is not less than its total liabilities, including capital stock, but excluding such capital notes or debentures and any obligations of the bank expressly subordinated thereto. Notwithstanding any other provision of law, the holders of preferred stock issued by a national banking association pursuant to the provisions of the Emergency Banking and Bank Conservation Act, approved March 9, 1933, as amended, shall be entitled to receive such cumulative dividends on the purchase price received by the association for such stock and, in the event of the retirement of such stock, to receive such retirement price, not in excess of such purchase price plus all accumulated dividends, as may be provided in the articles of association with the approval of the Comptroller of the Currency. If the association is placed in voluntary liquidation, or if a conservator or a receiver is appointed therefor, no payment shall be made to the holders of common stock until the holders of preferred stock shall have been paid in full such amount as may be provided in the articles of association with the approval of the Comptroller of the Currency, not in excess of such purchase price of such preferred stock plus all accumulated dividends.

(Aug. 23, 1935, ch. 614, title III, § 345, 49 Stat. 722; Pub. L. 96-221, title VII, § 703, Mar. 31, 1980, 94 Stat. 186.)

Editorial Notes

REFERENCES IN TEXT

Section 51d of this title, referred to in text, which was section 304 of the Emergency Banking and Bank Conservation Act, approved March 9, 1933, ch. 1, 48 Stat. 6, as amended, and which authorized the Reconstruction Finance Corporation, upon the request of the Secretary of the Treasury approved by the President, to

purchase, or to make loans upon, the capital stock of any bank or trust company requiring funds for capital purposes in connection with its organization or reorganization, and which made provision for the purchase of the capital notes of banks organized in States which subject holders of preferred stock to double liability and for the sale of any stock or notes purchased under such authority, was repealed by act June 30, 1947, ch. 166, title II, § 206(b), (o), 61 Stat. 208. However, according to the information received from the Department of the Treasury, the second sentence of this section is not obsolete even though it contains such obsolete reference to section 51d of this title, and even though, under 1957 Reorg. Plan No. 1, eff. June 30, 1957, 22 F.R. 4633, 71 Stat. 647, set out in the Appendix to Title 5, Government Organization and Employees, the Reconstruction Finance Corporation was abolished, for many banks have outstanding debentures which they obtained pursuant to the provisions of section 51d, and which they are not required to redeem; and their benefits or entitlements conferred by the second sentence of this section will remain until the debentures are redeemed.

The Emergency Banking and Bank Conservation Act, approved March 9, 1933, as amended, referred to in text, is act Mar. 9, 1933, ch. 1, 48 Stat. 1, which is classified to sections 51a, 51b, 51c, 51d, 95, 201 to 212, 248, 347b, 347c, 347d, and 445 of this title and section 4305 of Title 50, War and National Defense, and classified as a note under section 4305 of Title 50.

AMENDMENTS

1980—Pub. L. 96-221 struck out limitation on payment of cumulative dividends at a rate not exceeding 6 per centum per annum.

Executive Documents

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in Comptroller of the Currency, referred to in this section, not included in transfer of functions to Secretary of the Treasury, see note set out under section 1 of this title.

§ 51c. “Common stock”, “capital”, and “capital stock” defined

The term “common stock” as used in sections 51a, 51b, 51c, and 51d¹ of this title means stock of national banking associations other than preferred stock issued under the provisions of said sections. The term “capital” as used in provisions of law relating to the capital of national banking associations shall mean the amount of unimpaired common stock plus the amount of preferred stock outstanding and unimpaired; and the term “capital stock”, as used in sections 101, 177, and 178¹ of this title, shall mean only the amount of common stock outstanding.

(Mar. 9, 1933, ch. 1, title III, § 303, 48 Stat. 5.)

Editorial Notes

REFERENCES IN TEXT

Section 51d of this title, referred to in text, was repealed by act June 30, 1947, ch. 166, title II, § 206(b), (o), 61 Stat. 208. For effect of the repeal on outstanding debentures held by banks, see note under section 51b-1 of this title.

Sections 101, 177, and 178 of this title, referred to in text, were repealed by Pub. L. 103-325, title VI, § 602(f)(2), (5), Sept. 23, 1994, 108 Stat. 2292, 2293.

¹ See References in Text note below.

§§ 51d to 51f. Repealed. June 30, 1947, ch. 166, title II, § 206(b), (o), 61 Stat. 208

Section 51d, acts Mar. 9, 1933, ch. 1, title III, § 304, 48 Stat. 6; Mar. 24, 1933, ch. 8, § 2, 48 Stat. 21; Mar. 20, 1936, ch. 160, § 1, 49 Stat. 1185; June 25, 1940, ch. 427, § 1, 54 Stat. 572, related to subscription for and sale of preferred stock in banks by the Reconstruction Finance Corporation.

Sections 51e and 51f, act Mar. 20, 1936, ch. 160, §§ 2, 3, 49 Stat. 1185, related to rate of interest on loans and separability provisions.

§ 52. Par value and incidents of stock; transfer of shares

The capital stock of each association shall be divided into shares of \$100 each, or into shares of such less amount as may be provided in the articles of association, and be deemed personal property, and transferable on the books of the association in such manner as may be prescribed in the by-laws or articles of association. Every person becoming a shareholder by such transfer shall, in proportion to his shares, succeed to all rights and liabilities of the prior holder of such shares; and no change shall be made in the articles of association by which the rights, remedies, or security of the existing creditors of the association shall be impaired.

Certificates issued after August 23, 1935, representing shares of stock of the association shall state (1) the name and location of the association, (2) the name of the holder of record of the stock represented thereby, (3) the number and class of shares which the certificate represents, and (4) if the association shall issue stock of more than one class, the respective rights, preferences, privileges, voting rights, powers, restrictions, limitations, and qualifications of each class of stock issued shall be stated in full or in summary upon the front or back of the certificates or shall be incorporated by a reference to the articles of association set forth on the front of the certificates. Every certificate shall be signed by the president and the cashier of the association, or by such other officers as the by-laws of the association shall provide, and shall be sealed with the seal of the association.

After August 23, 1935, no certificate evidencing the stock of any such association shall bear any statement purporting to represent the stock of any other corporation, except a member bank or a corporation engaged on June 16, 1934, in holding the bank premises of such association, nor shall the ownership, sale, or transfer of any certificate representing the stock of any such association be conditioned in any manner whatsoever upon the ownership, sale, or transfer of a certificate representing the stock of any other corporation, except a member bank or a corporation engaged on June 16, 1934 in holding the bank premises of such association: *Provided*, That this section shall not operate to prevent the ownership, sale, or transfer of stock of any other corporation being conditioned upon the ownership, sale, or transfer of a certificate representing stock of a national banking association.

(R.S. § 5139; Feb. 25, 1927, ch. 191, § 16, 44 Stat. 1233; June 16, 1933, ch. 89, § 18, 48 Stat. 186; Aug. 23, 1935, ch. 614, title III, §§ 310(a), 335, 49 Stat. 710, 720.)

Editorial Notes

CODIFICATION

R.S. §5139 derived from act June 3, 1864, ch. 106, §12, 13 Stat. 102, which was the National Bank Act. See section 38 of this title.

AMENDMENTS

1935—Act Aug. 23, 1935, §335, added second par.

Act Aug. 23, 1935, §310(a), among other changes in last par., inserted proviso.

1933—Act June 16, 1933, added last par.

1927—Act Feb. 25, 1927, inserted “or into shares of such less amount as may be provided in the articles of association” in first sentence.

§ 53. When capital stock paid in

All of the capital stock of every national banking association shall be paid in before it shall be authorized to commence business.

(R.S. §5140; Pub. L. 86-230, §4, Sept. 8, 1959, 73 Stat. 457.)

Editorial Notes

CODIFICATION

R.S. §5140 derived from act June 3, 1864, ch. 106, §14, 13 Stat. 103, which was the National Bank Act. See section 38 of this title.

AMENDMENTS

1959—Pub. L. 86-230 substituted requirement that all the capital stock of a national bank must be paid in before it commences business for permissive authority to be open for business upon payment of 50 per centum of the capital stock and installment payment of the remaining 50 per centum.

§ 54. Repealed. Pub. L. 86-230, § 5, Sept. 8, 1959, 73 Stat. 457

Section, R.S. §5141, related to failure to pay installments, remedy and effect if reduction of capital resulted.

§ 55. Enforcing payment of deficiency in capital stock; assessments; liquidation; receivership

Every association which shall have failed to pay up its capital stock, as required by law, and every association whose capital stock shall have become impaired by losses or otherwise, shall, within three months after receiving notice thereof from the Comptroller of the Currency, pay the deficiency in the capital stock, by assessment upon the shareholders pro rata for the amount of capital stock held by each; and the Treasurer of the United States shall withhold the interest upon all bonds held by him in trust for any such association, upon notification from the Comptroller of the Currency, until otherwise notified by him. If any such association shall fail to pay up its capital stock, and shall refuse to go into liquidation, as provided by law, for three months after receiving notice from the comptroller, a receiver may be appointed to close up the business of the association, according to the provisions of section 192 of this title. *And provided*, That if any shareholder or shareholders of such bank shall neglect or refuse, after three months' notice, to pay the assessment, as provided in this section, it shall be the duty of the board of directors to cause a sufficient amount of the capital stock of such share-

holder or shareholders to be sold at public auction (after thirty days' notice shall be given by posting such notice of sale in the office of the bank, and by publishing such notice in a newspaper of the city or town in which the bank is located, or in a newspaper published nearest thereto,)¹ to make good the deficiency, and the balance, if any, shall be returned to such delinquent shareholder or shareholders.

(R.S. §5205; June 30, 1876, ch. 156, §4, 19 Stat. 64.)

Editorial Notes

CODIFICATION

R.S. §5205 derived from act Mar. 3, 1873, ch. 269, §1, 17 Stat. 603.

Statutory Notes and Related Subsidiaries

APPLICATION TO DISTRICT OF COLUMBIA

Provisions of this section were made applicable to banks, etc., in the District of Columbia by act Mar. 4, 1933, ch. 274, §4, 47 Stat. 1567.

Executive Documents

TRANSFER OF FUNCTIONS

All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, formerly set out in the Appendix to Title 5, Government Organization and Employees. See section 321(c) of Title 31, Money and Finance. The Comptroller of the Currency and the Treasurer of the United States, both referred to in this section, are officers of the Treasury Department, but such Plan excepted, from the transfer, any function vested by law in the Comptroller of the Currency.

§ 56. Prohibition on withdrawal of capital; unearned dividends

No association, or any member thereof, shall, during the time it shall continue its banking operations, withdraw, or permit to be withdrawn, either in the form of dividends or otherwise, any portion of its capital. If losses have at any time been sustained by any such association, equal to or exceeding its undivided profits then on hand, no dividend shall be made; and no dividend shall ever be made by any association, while it continues its banking operations, to an amount greater than its undivided profits, subject to other applicable provisions of law. But nothing in this section shall prevent the reduction of the capital stock of the association under section 59 of this title.

(R.S. §5204; Pub. L. 103-325, title VI, §602(h)(1), Sept. 23, 1994, 108 Stat. 2294.)

Editorial Notes

CODIFICATION

R.S. §5204 derived from act June 3, 1864, ch. 106, §38, 13 Stat. 110, which was the National Bank Act. See section 38 of this title.

¹ So in original.

AMENDMENTS

1994—Pub. L. 103-325 substituted “undivided profits, subject to other applicable provisions of law” for “net profits then on hand, deducting therefrom its losses and bad debts” in second sentence and struck out after second sentence “All debts due to any associations, on which interest is past due and unpaid for a period of six months, unless the same are well secured, and in process of collection, shall be considered bad debts within the meaning of this section.”

§ 57. Increase of capital by provision in articles of association

Any national banking association may, with the approval of the Comptroller of the Currency, and by a vote of shareholders owning two-thirds of the stock of such associations, increase its capital stock to any sum approved by the said comptroller, but no increase in capital shall be valid until the whole amount of such increase is paid in and notice thereof, duly acknowledged before a notary public by the president, vice president, or cashier of said association, has been transmitted to the Comptroller of the Currency and his certificate obtained specifying the amount of such increase in capital stock and his approval thereof, and that it has been duly paid in as part of the capital of such association: *Provided, however*, That a national banking association may, with the approval of the Comptroller of the Currency, and by the vote of shareholders owning two-thirds of the stock of such association, increase its capital stock by the declaration of a stock dividend, provided that the surplus of said association, after the approval of the increase, shall be at least equal to 20 per centum of the capital stock as increased. Such increase shall not be effective until a certificate certifying to such declaration of dividend, signed by the president, vice president, or cashier of said association and duly acknowledged before a notary public, shall have been forwarded to the Comptroller of the Currency and his certificate obtained specifying the amount of such increase of capital stock by stock dividend, and his approval thereof.

(R.S. §5142; Feb. 25, 1927, ch. 191, §5, 44 Stat. 1227.)

Editorial Notes

CODIFICATION

R.S. §5142 derived from act June 3, 1864, ch. 106, §13, 13 Stat. 103, which was the National Bank Act. See section 38 of this title.

AMENDMENTS

1927—Act Feb. 25, 1927, among other changes, inserted proviso.

Executive Documents

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in Comptroller of the Currency, referred to in this section, not included in transfer of functions to Secretary of the Treasury, see note set out under section 1 of this title.

§ 58. Repealed. Pub. L. 86-230, § 6, Sept. 8, 1959, 73 Stat. 457

Section, act May 1, 1886, ch. 73, §1, 24 Stat. 18, related to increase of capital by vote of shareholders. See section 57 of this title.

§ 59. Reduction of capital

(a) In general

Subject to the approval of the Comptroller of the Currency, a national banking association may, by a vote of shareholders owning, in the aggregate, two-thirds of its capital stock, reduce its capital.

(b) Shareholder distributions authorized

As part of its capital reduction plan approved in accordance with subsection (a), and with the affirmative vote of shareholders owning at least two thirds of the shares of each class of its stock outstanding (each voting as a class), a national banking association may distribute cash or other assets to its shareholders.

(R.S. §5143; Dec. 23, 1913, ch. 6, §28, 38 Stat. 274; Aug. 23, 1935, ch. 614, title III, §334, 49 Stat. 720; Pub. L. 109-351, title III, §304, Oct. 13, 2006, 120 Stat. 1970.)

Editorial Notes

CODIFICATION

R.S. §5143 derived from act June 3, 1864, ch. 106, §13, 13 Stat. 103, which was the National Bank Act. See section 38 of this title.

AMENDMENTS

2006—Pub. L. 109-351 amended section generally. Prior to amendment, section read as follows: “Any association formed under title 62 of the Revised Statutes may, by the vote of shareholders owning two-thirds of its capital stock, reduce its capital to any sum not below the amount required by title 62 of the Revised Statutes to authorize the formation of associations; but no such reduction shall be allowable which will reduce the capital of the association below the amount required for its outstanding circulation, nor shall any reduction be made until the amount of the proposed reduction has been reported to the Comptroller of the Currency and such reduction has been approved by said Comptroller of the Currency and no shareholder shall be entitled to any distribution of cash or other assets by reason of any reduction of the common capital of any association unless such distribution shall have been approved by the Comptroller of the Currency and by the affirmative vote of at least two-thirds of the shares of each class of stock outstanding, voting as classes.”

1935—Act Aug. 23, 1935, substituted “and no shareholder shall be entitled to any distribution of cash or other assets by reason of any reduction of the common capital of any association unless such distribution shall have been approved by the Comptroller of the Currency and by the affirmative vote of at least two-thirds of the shares of each class of stock outstanding, voting as classes” for “and by the Federal Reserve Board or by the organization committee pending the organization of the Federal Reserve Board”.

§ 60. National bank dividends

(a) In general

Subject to subsection (b), the directors of any national bank may declare a dividend of so much of the undivided profits of the bank as the directors judge to be expedient.

(b) Approval required under certain circumstances

A national bank may not declare and pay dividends in any year in excess of an amount equal to the sum of the total of the net income of the bank for that year and the retained net income

of the bank for the preceding 2 years, minus the sum of any transfers required by the Comptroller of the Currency and any transfers required to be made to a fund for the retirement of any preferred stock, unless the Comptroller of the Currency approves the declaration and payment of dividends in excess of such amount.

(R.S. §5199; Aug. 23, 1935, ch. 614, title III, §315, 49 Stat. 712; Pub. L. 86-230, §21(a), Sept. 8, 1959, 73 Stat. 465; Pub. L. 103-325, title VI, §602(h)(2), Sept. 23, 1994, 108 Stat. 2294; Pub. L. 109-351, title III, §302(a), Oct. 13, 2006, 120 Stat. 1970.)

Editorial Notes

CODIFICATION

R.S. §5199 derived from act June 3, 1864, ch. 106, §33, 13 Stat. 109, which was the National Bank Act. See section 38 of this title.

AMENDMENTS

2006—Pub. L. 109-351 amended section generally. Prior to amendment, section related to periodic declarations of dividends subject to certain surplus fund requirements and to the approval of the Comptroller of the Currency in certain situations.

1994—Subsec. (a). Pub. L. 103-325, §602(h)(2)(A), (B), substituted “undivided profits of the association, subject to the limitations in subsection (b) of this section,” for “net profits of the association” in first sentence and “net income” for “net profits” wherever subsequently appearing.

Subsec. (b). Pub. L. 103-325, §602(h)(2)(B), substituted “net income” for “net profits” in two places.

Subsec. (c). Pub. L. 103-325, §602(h)(2)(C), struck out subsec. (c) which read as follows: “For the purpose of this section the term ‘net profits’ shall mean the remainder of all earnings from current operations plus actual recoveries on loans and investments and other assets, after deducting from the total thereof all current operating expenses, actual losses, accrued dividends on preferred stock, if any, and all Federal and State taxes.”

1959—Pub. L. 86-230 designated existing provisions as subsec. (a), authorized the declaration of dividends, quarterly and annually, when at least one-tenth of the bank’s net profits of the preceding half year or of the preceding two consecutive half-year periods has been carried to the surplus fund, respectively, and added subsecs. (b) and (c).

1935—Act Aug. 23, 1935, among other changes, inserted proviso.

§ 61. Shareholders’ voting rights; cumulative and distributive voting; preferred stock; trust shares; proxies, liability restrictions; percentage requirement exclusion of trust shares

In all elections of directors, each shareholder shall have the right to vote the number of shares owned by him for as many persons as there are directors to be elected, or, if so provided by the articles of association of the national bank, to cumulate such shares and give one candidate as many votes as the number of directors multiplied by the number of his shares shall equal or to distribute them on the same principle among as many candidates as he shall think fit; and in deciding all other questions at meetings of shareholders, each shareholder shall be entitled to one vote on each share of stock held by him; except that (1) this shall not be construed as limiting the voting rights of holders of preferred stock under the terms and provi-

sions of articles of association, or amendments thereto, adopted pursuant to the provisions of section 51b of this title; (2) in the election of directors, shares of its own stock held by a national bank as sole trustee, whether registered in its own name as such trustee or in the name of its nominee, shall not be voted by the registered owner unless under the terms of the trust the manner in which such shares shall be voted may be determined by a donor or beneficiary of the trust and unless such donor or beneficiary actually directs how such shares shall be voted; and (3) shares of its own stock held by a national bank and one or more persons as trustees may be voted by such other person or persons, as trustees, in the same manner as if he or they were the sole trustee. Shareholders may vote by proxies duly authorized in writing; but no officer, clerk, teller, or bookkeeper of such bank shall act as proxy; and no shareholder whose liability is past due and unpaid shall be allowed to vote. Whenever shares of stock cannot be voted by reason of being held by the bank as sole trustee such shares shall be excluded in determining whether matters voted upon by the shareholders were adopted by the requisite percentage of shares.

(R.S. §5144; June 16, 1933, ch. 89, §19, 48 Stat. 186; Aug. 23, 1935, ch. 614, title III, §311, 49 Stat. 710; Sept. 3, 1954, ch. 1263, §21, 68 Stat. 1234; Pub. L. 86-114, §4, July 28, 1959, 73 Stat. 264; Pub. L. 89-485, §13(c), July 1, 1966, 80 Stat. 242; Pub. L. 109-351, title III, §301, Oct. 13, 2006, 120 Stat. 1969.)

Editorial Notes

CODIFICATION

R.S. §5144 derived from act June 3, 1864, ch. 106, §11, 13 Stat. 102, which was the National Bank Act. See section 38 of this title.

AMENDMENTS

2006—Pub. L. 109-351 substituted “or, if so provided by the articles of association of the national bank, to cumulate” for “or to cumulate” and struck out comma after “his shares shall equal”.

1966—Pub. L. 89-485 struck out: clause (4) requirement of a voting permit from the Board for voting shares controlled by a holding company affiliate of a national bank except when voting in favor of voluntary liquidation of an association; second par. definition of control of shares by a holding company affiliate; third par. prescribing procedure for obtaining a voting permit: application to Board, grant or denial of permit in the public interest, factors for consideration, and conditions described in subsecs. (a) to (e) for granting a permit; subsec. (a) requirement of agreement of the holding company affiliate to an examination of the affiliate by bank examiners, reports by such examiners, examination of affiliated banks, and publication of individual or consolidated statements of condition of such banks; subsec. (b) provisions for possession of readily marketable assets other than bank stock and reinvestment of a prescribed amount of net earnings in such assets; subsec. (c) provisions for reserve of assets, use of assets for capital replacement, and situations involving more than one holding company affiliate; subsec. (d) provisions for penalties for false entries; subsec. (e) requirements for disclosure in application of a absence of securities company status and for declaration of dividends out of net earnings; penultimate par. prescribing procedure for revocation of voting permit and prohibiting the use of the bank as a depository for public moneys

of the United States and payment of dividends to the affiliate; and last par. authorization for forfeiture of rights, privileges, and franchises of national banks.

1959—Subsec. (c). Pub. L. 86-114 authorized the Board to designate one of the chain of holding company affiliates which would have to maintain the 12 percent reserve and exempted the other holding company affiliates from the requirement.

1954—Subsec. (d). Act Sept. 3, 1954, substituted "section 1005 of Title 18" for "section 592 of this title".

1935—Act Aug. 23, 1935, amended first par., first sentence of third par., and inserted "and the provisions of this subsection, instead of subsection (b), shall apply to all holding company affiliates with respect to any shares of bank stock owned or controlled by them as to which there is no statutory liability imposed upon the holders of such bank stock" at end of subsec. (c).

1933—Act June 16, 1933, inserted provisions for cumulative voting of shares or distribution of votes on a cumulative voting principle, prohibited national banks holding their own shares as sole trustee from voting such shares but permitted such shares to be voted when held by another person or persons as trustees with the bank, denied voting rights to shares controlled by a holding company affiliate of a national bank unless a voting permit was first obtained, provided for application for a voting permit to the Federal Reserve Board, specified conditions for granting the voting permit and procedure for its revocation, and authorized the forfeiture of a National Bank's rights, privileges, and franchises upon such revocation.

§ 62. List of shareholders

The president and cashier of every national banking association shall cause to be kept at all times a full and correct list of the names and residences of all the shareholders in the association, and the number of shares held by each, in the office where its business is transacted. Such list shall be subject to the inspection of all the shareholders and creditors of the association, and the officers authorized to assess taxes under State authority, during business hours of each day in which business may be legally transacted. A copy of such list, verified by the oath of such president or cashier, shall be transmitted to the Comptroller of the Currency within ten days of any demand therefor made by him.

(R.S. § 5210; May 18, 1953, ch. 59, § 1, 67 Stat. 27.)

Editorial Notes

CODIFICATION

R.S. § 5210 derived from act June 3, 1864, ch. 106, § 40, 13 Stat. 111, which was the National Bank Act. See section 38 of this title.

AMENDMENTS

1953—Act May 18, 1953, changed the requirement for annual transmission of a copy of the shareholders list to the Comptroller of the Currency by authorizing the Comptroller to acquire such copy at any time on 10 days' notice.

Statutory Notes and Related Subsidiaries

APPLICATION TO DISTRICT OF COLUMBIA

Provisions of this section were made applicable to banks, etc., in the District of Columbia by act Mar. 4, 1933, ch. 274, § 4, 47 Stat. 1567.

Executive Documents

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in Comptroller of the Currency, referred to in this section, not

included in transfer of functions to Secretary of the Treasury, see note set out under section 1 of this title.

§§ 63, 64. Repealed. Pub. L. 86-230, § 7, Sept. 8, 1959, 73 Stat. 457

Section 63, R.S. § 5151, related to individual liability of shareholders.

Section 64, act Dec. 23, 1913, ch. 6, § 23, 38 Stat. 273, related to transfer of shares as affecting individual liability of shareholders. Limitation on liability of shareholders, see section 64a of this title.

The status of former section 63 of this title had been doubtful. At different times it had been held to have been repealed, superseded, and superseded only in part by former section 64 of this title which related to the same subject. See *American T. Co. v. Grut*, C.C.A. 1935, 80 F.2d 155; *Miller v. Hamner*, C.C.A. 1920, 269 F. 891; and *First Nat. Bank v. First Nat. Bank*, D.C. 1926, 14 F.2d 129.

§ 64a. Individual liability of shareholders; limitation on liability

The additional liability imposed upon shareholders in national banking associations by the provisions of sections 63 and 64 of this title shall not apply with respect to shares in any such association issued after June 16, 1933. Such additional liability shall cease on July 1, 1937, with respect to all shares issued by any association which shall be transacting the business of banking on July 1, 1937: *Provided*, That not less than six months prior to such date, such association shall have caused notice of such prospective termination of liability to be published in a newspaper published in the city, town, or county in which such association is located, and if no newspaper is published in such city, town, or county, then in a newspaper of general circulation therein. If the association fail¹ to give such notice as and when above provided, a termination of such additional liability may thereafter be accomplished as of the date six month² subsequent to publication, in the manner above provided. In the case of each association which has not caused notice of such prospective termination of liability to be published prior to May 18, 1953, the Comptroller of the Currency shall cause such notice to be published in the manner provided in this section, and on the date six months subsequent to such publication by the Comptroller of the Currency such additional liability shall cease.

(June 16, 1933, ch. 89, § 22, 48 Stat. 189; Aug. 23, 1935, ch. 614, title III, § 304, 49 Stat. 708; May 18, 1953, ch. 59, § 2, 67 Stat. 27.)

Editorial Notes

REFERENCES IN TEXT

Sections 63 and 64 of this title, referred to in text, were repealed by Pub. L. 86-230, § 7, Sept. 8, 1959, 73 Stat. 457.

AMENDMENTS

1953—Act May 18, 1953, provided for termination of the additional liability, referred to in the section, by action of the Comptroller of the Currency with regard to those associations which had not, prior to May 18, 1953, caused notice of termination to be published.

1935—Act Aug. 23, 1935, added second and third sentences.

¹ So in original. Probably should be "fails".

² So in original. Probably should be "months".

Executive Documents**EXCEPTION AS TO TRANSFER OF FUNCTIONS**

Functions vested by any provision of law in Comptroller of the Currency, referred to in this section, not included in transfer of functions to Secretary of the Treasury, see note set out under section 1 of this title.

§ 65. Repealed. Pub. L. 86-230, § 8, Sept. 8, 1959, 73 Stat. 457

Section, acts June 30, 1876, ch. 156, § 2, 19 Stat. 63; Sept. 3, 1954, ch. 1263, § 22, 68 Stat. 1234, related to enforcement of shareholders' individual liability by creditors on liquidation. Limitation on liability of shareholders, see section 64a of this title.

§ 66. Personal liability of representatives of stockholders

Persons holding stock as executors, administrators, guardians, or trustees, shall not be personally subject to any liabilities as stockholders; but the estates and funds in their hands shall be liable in like manner and to the same extent as the testator, intestate, ward, or person interested in such trust funds would be, if living and competent to act and hold the stock in his own name.

(R.S. § 5152.)

Editorial Notes**CODIFICATION**

R.S. § 5152 derived from act June 3, 1864, ch. 106, § 63, 13 Stat. 118, which was the National Bank Act. See section 38 of this title.

§ 67. Individual liability of shareholders; compromises; authority of receiver

Any receiver of a national banking association is authorized, with the approval of the Comptroller of the Currency and upon the order of a court of record of competent jurisdiction, to compromise, either before or after judgment, the individual liability of any shareholder of such association.

(Feb. 25, 1930, ch. 58, 46 Stat. 74.)

Statutory Notes and Related Subsidiaries**APPLICATION TO DISTRICT OF COLUMBIA**

Provisions of this section were made applicable to banks, etc., in the District of Columbia by act Mar. 4, 1933, ch. 274, § 4, 47 Stat. 1567.

Executive Documents**EXCEPTION AS TO TRANSFER OF FUNCTIONS**

Functions vested by any provision of law in Comptroller of the Currency, referred to in this section, not included in transfer to Secretary of the Treasury, see note set out under section 1 of this title.

SUBCHAPTER III—DIRECTORS**§ 71. Election**

The affairs of each association shall be managed by not less than five directors, who shall be elected by the shareholders at a meeting to be held at any time before the association is authorized by the Comptroller of the Currency to commence the business of banking; and after-

ward at meetings to be held on such day of each year as is specified therefor in the bylaws. The directors shall hold office for a period of not more than 3 years, and until their successors are elected and have qualified. In accordance with regulations issued by the Comptroller of the Currency, a national bank may adopt bylaws that provide for staggering the terms of its directors.

(R.S. § 5145; Pub. L. 88-232, § 1, Dec. 23, 1963, 77 Stat. 472; Pub. L. 106-569, title XII, § 1205(a), Dec. 27, 2000, 114 Stat. 3033.)

Editorial Notes**CODIFICATION**

R.S. § 5145 derived from act June 3, 1864, ch. 106, §§ 9, 10, 13 Stat. 102, which was the National Bank Act. See section 38 of this title.

AMENDMENTS

2000—Pub. L. 106-569 substituted “for a period of not more than 3 years” for “for one year” and inserted at end “In accordance with regulations issued by the Comptroller of the Currency, a national bank may adopt bylaws that provide for staggering the terms of its directors.”

1963—Pub. L. 88-232 substituted “on such day of each year as is specified therefor in the bylaws” for “on such day in January of each year as is specified therefor in the articles of association”.

Executive Documents**EXCEPTION AS TO TRANSFER OF FUNCTIONS**

Functions vested by any provision of law in Comptroller of the Currency, referred to in this section, not included in transfer of functions to Secretary of the Treasury, see note set out under section 1 of this title.

§ 71a. Number of directors; penalties

After one year from June 16, 1933, notwithstanding any other provision of law, the board of directors, board of trustees, or other similar governing body of every national banking association and of every State bank or trust company which is a member of the Federal Reserve System shall consist of not less than five nor more than twenty-five members, except that the Comptroller of the Currency may, by regulation or order, exempt a national bank from the 25-member limit established by this section. If any national banking association violates the provisions of this section and continues such violation after thirty days' notice from the Comptroller of the Currency, the said Comptroller may appoint a receiver or conservator therefor, in accordance with the provisions of existing law. If any State bank or trust company which is a member of the Federal Reserve System violates the provisions of this section and continues such violation after thirty days' notice from the Board of Governors of the Federal Reserve System, it shall be subject to the forfeiture of its membership in the Federal Reserve System in accordance with the provisions of section 327 of this title.

(June 16, 1933, ch. 89, § 31, 48 Stat. 194; June 16, 1934, ch. 546, § 4, 48 Stat. 971; Aug. 23, 1935, ch. 614, title II, § 203(a), title III, § 306, 49 Stat. 704, 708; Pub. L. 106-569, title XII, § 1205(b), Dec. 27, 2000, 114 Stat. 3034.)