

third day of June 1864, in or toward the organization of any national banking association under the act of February 25, 1863; but all associations which, on the third day of June 1864, were organized or commenced to be organized under that act, shall enjoy all the rights and privileges granted, and be subject to all the duties, liabilities, and restrictions imposed by title 62 of the Revised Statutes, notwithstanding all the steps prescribed by title 62 of the Revised Statutes for the organization of associations were not pursued, if such associations were duly organized under that act.

(R.S. §5156.)

#### REFERENCES IN TEXT

Title 62 of the Revised Statutes, referred to in text, was in the original "this Title" meaning title LXII of the Revised Statutes, consisting of R.S. §§5133 to 5244, which are classified to this section and sections 16, 21, 22 to 24a, 25a, 25b, 26, 27, 29, 35 to 37, 43, 52, 53, 55 to 57, 59 to 62, 66, 71, 72 to 76, 81, 83 to 86, 90, 91, 93, 93a, 94, 141 to 144, 161, 164, 181, 182, 192 to 194, 196, 215c, 481 to 485, 501, 541, 548, and 582 of this title. See, also, sections 8, 333, 334, 475, 656, 709, 1004, and 1005 of Title 18, Crimes and Criminal Procedure. For complete classification of R.S. §§5133 to 5244 to the Code, see Tables.

Act of February 25, 1863, referred to in text, was act Feb. 25, 1863, ch. 58, 12 Stat. 665, which was the original National Bank Act, and was repealed by act June 3, 1864, ch. 106, §62, 13 Stat. 118.

#### CODIFICATION

R.S. §5156 derived from act June 3, 1864, ch. 106, §62, 13 Stat. 118, which was the National Bank Act. See section 38 of this title.

### § 40. Virgin Islands; extension of National Bank Act

The National Bank Act, as amended [12 U.S.C. 21 et seq.], and all other Acts of Congress relating to national banks, shall, insofar as not locally inapplicable after July 19, 1932, apply to the Virgin Islands of the United States.

(July 19, 1932, ch. 508, 47 Stat. 703.)

#### REFERENCES IN TEXT

The National Bank Act, referred to in text, is act June 3, 1864, ch. 106, 13 Stat. 99, as amended, 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.

### § 41. Guam; extension of National Bank Act

The National Bank Act [12 U.S.C. 21 et seq.], and all other Acts of Congress relating to national banks, shall, insofar as not locally inapplicable after August 1, 1956, apply to Guam.

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

#### REFERENCES IN TEXT

The National Bank Act, referred to in text, is act June 3, 1864, ch. 106, 13 Stat. 99, as amended, 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.)

#### 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.)

#### 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.

#### 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.)

#### 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.

#### 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