

(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 Repealed.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