

(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 Repealed.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

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.)

#### 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.

#### 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 51d<sup>1</sup> 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 178<sup>1</sup> of this title, shall mean only the amount of common stock outstanding.

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

#### 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.

#### §§ 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

<sup>1</sup> See References in Text note below.