

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or any member thereof, shall, during the time it shall continue its banking operations, withdraw, or permit to be withdrawn, either in the form of dividends or otherwise, any portion of its capital.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.

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 associa-

tion, 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 associa-

tion 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 subsections (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 provisions 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.