

Comptroller of the Currency, Treasury

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- (2) Number of employees;
- (3) Amount of deposit liabilities; and
- (4) Amount of cash and securities normally held by the bank.

§ 7.2014 Indemnification of institution-affiliated parties.

(a) *Administrative proceedings or civil actions initiated by Federal banking agencies.* A national bank may only make or agree to make indemnification payments to an institution-affiliated party with respect to an administrative proceeding or civil action initiated by any Federal banking agency, that are reasonable and consistent with the requirements of 12 U.S.C. 1828(k) and the implementing regulations thereunder. The term “institution-affiliated party” has the same meaning as set forth at 12 U.S.C. 1813(u).

(b) *Administrative proceeding or civil actions not initiated by a Federal banking agency—(1) General.* In cases involving an administrative proceeding or civil action not initiated by a Federal banking agency, a national bank may indemnify an institution-affiliated party for damages and expenses, including the advancement of expenses and legal fees, in accordance with the law of the state in which the main office of the bank is located, the law of the state in which the bank’s holding company is incorporated, or the relevant provisions of the Model Business Corporation Act (1984, as amended 1994, and as amended thereafter), or Delaware General Corporation Law, Del. Code Ann. tit. 8 (1991, as amended 1994, and as amended thereafter), provided such payments are consistent with safe and sound banking practices. A national bank shall designate in its bylaws the body of law selected for making indemnification payments under this paragraph.

(2) *Insurance premiums.* A national bank may provide for the payment of reasonable premiums for insurance covering the expenses, legal fees, and liability of institution-affiliated parties to the extent that the expenses, fees, or liability could be indemnified under paragraph (b)(1) of this section.

§ 7.2015 Cashier.

A national bank’s bylaws, board of directors, or a duly designated officer may assign some or all of the duties previously performed by the bank’s cashier to its president, chief executive officer, or any other officer.

§ 7.2016 Restricting transfer of stock and record dates.

(a) *Conditions for stock transfer.* Under 12 U.S.C. 52, a national bank may impose conditions upon the transfer of its stock reasonably calculated to simplify the work of the bank with respect to stock transfers, voting at shareholders’ meetings, and related matters and to protect it against fraudulent transfers.

(b) *Record dates.* A national bank may close its stock records for a reasonable period to ascertain shareholders for voting purposes. The board of directors may fix a record date for determining the shareholders entitled to notice of, and to vote at, any meeting of shareholders. The record date should be in reasonable proximity to the date that notice is given to the shareholders of the meeting.

§ 7.2017 Facsimile signatures on bank stock certificates.

The president and cashier, or other officers authorized by the bank’s bylaws, shall sign each national bank stock certificate. The signatures may be manual or facsimile, including electronic means of signature. Each certificate must be sealed with the seal of the association.

§ 7.2018 Lost stock certificates.

If a national bank does not provide for replacing lost, stolen, or destroyed stock certificates in its articles of association or bylaws, the bank may adopt procedures in accordance with § 7.2000.

§ 7.2019 Loans secured by a bank’s own shares.

(a) *Permitted agreements, relating to bank shares.* A national bank may require a borrower holding shares of the bank to execute agreements:

- (1) Not to pledge, give away, transfer, or otherwise assign such shares;

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(2) To pledge such shares at the request of the bank when necessary to prevent loss; and

(3) To leave such shares in the bank's custody.

(b) *Use of capital notes and debentures.* A national bank may not make loans secured by a pledge of the bank's own capital notes and debentures. Such notes and debentures must be subordinated to the claims of depositors and other creditors of the issuing bank, and are, therefore, capital instruments within the purview of 12 U.S.C. 83.

§ 7.2020 Acquisition and holding of shares as treasury stock.

(a) *Acquisition of outstanding shares.* Pursuant to 12 U.S.C. 59, including the requirements for prior approval by the bank's shareholders and the OCC imposed by that statute, a national bank may acquire its outstanding shares and hold them as treasury stock, if the acquisition and retention of the shares is, and continues to be, for a legitimate corporate purpose.

(b) *Legitimate corporate purpose.* Examples of legitimate corporate purposes include the acquisition and holding of treasury stock to:

(1) Have shares available for use in connection with employee stock option, bonus, purchase, or similar plans;

(2) Sell to a director for the purpose of acquiring qualifying shares;

(3) Purchase a director's qualifying shares upon the cessation of the director's service in that capacity if there is no ready market for the shares;

(4) Reduce the number of shareholders in order to qualify as a Subchapter S corporation; and

(5) Reduce costs associated with shareholder communications and meetings.

(c) *Prohibition.* It is not a legitimate corporate purpose to acquire or hold treasury stock on speculation about changes in its value.

[64 FR 60099, Nov. 4, 1999]

§ 7.2021 Preemptive rights.

A national bank in its articles of association must grant or deny preemptive rights to the bank's shareholders. Any amendment to a national bank's articles of association which modifies such preemptive rights must be ap-

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proved by a vote of the holders of two-thirds of the bank's outstanding voting shares.

§ 7.2022 Voting trusts.

The shareholders of a national bank may establish a voting trust under the applicable law of a state selected by the participants and designated in the trust agreement, provided the implementation of the trust is consistent with safe and sound banking practices.

§ 7.2023 Reverse stock splits.

(a) *Authority to engage in reverse stock splits.* A national bank may engage in a reverse stock split if the transaction serves a legitimate corporate purpose and provides adequate dissenting shareholders' rights.

(b) *Legitimate corporate purpose.* Examples of legitimate corporate purposes include a reverse stock split to:

(1) Reduce the number of shareholders in order to qualify as a Subchapter S corporation; and

(2) Reduce costs associated with shareholder communications and meetings.

[64 FR 60099, Nov. 4, 1999]

§ 7.2024 Staggered terms for national bank directors and size of bank board.

(a) *Staggered terms.* Any national bank may adopt bylaws that provide for staggering the terms of its directors. National banks shall provide the OCC with copies of any bylaws so amended.

(b) *Maximum term.* Any national bank director may hold office for a term that does not exceed three years.

(c) *Number of directors.* A national bank's board of directors shall consist of no fewer than 5 and no more than 25 members. A national bank may, after notice to the OCC, increase the size of its board of directors above the 25 member limit. A national bank seeking to increase the number of its directors must notify the OCC any time the proposed size would exceed 25 directors. The bank's notice shall specify the reason(s) for the increase in the size of the board of directors beyond the statutory limit.

[68 FR 70131, Dec. 17, 2003]