

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 subsecs. (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 provi-

sions 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. 109-351, title III, §301, Oct. 13, 2006, 120 Stat. 1969.)

#### Editorial Notes

##### CODIFICATION

R.S. §5144 derived from act June 3, 1864, ch. 106, §11, 13 Stat. 102, which was the National Bank Act. See section 38 of this title.

##### AMENDMENTS

2006—Pub. L. 109-351 substituted “or, if so provided by the articles of association of the national bank, to cumulate” for “or to cumulate” and struck out comma after “his shares shall equal”.

1966—Pub. L. 89-485 struck out: clause (4) requirement of a voting permit from the Board for voting shares controlled by a holding company affiliate of a national bank except when voting in favor of voluntary liquidation of an association; second par. definition of control of shares by a holding company affiliate; third par. prescribing procedure for obtaining a voting permit: application to Board, grant or denial of permit in the public interest, factors for consideration, and conditions described in subsecs. (a) to (e) for granting a permit; subsec. (a) requirement of agreement of the holding company affiliate to an examination of the affiliate by bank examiners, reports by such examiners, examination of affiliated banks, and publication of individual or consolidated statements of condition of such banks; subsec. (b) provisions for possession of readily marketable assets other than bank stock and reinvestment of a prescribed amount of net earnings in such assets; subsec. (c) provisions for reserve of assets, use of assets for capital replacement, and situations involving more than one holding company affiliate; subsec. (d) provisions for penalties for false entries; subsec. (e) requirements for disclosure in application of a absence of securities company status and for declaration of dividends out of net earnings; penultimate par. prescribing procedure for revocation of voting permit and prohibiting the use of the bank as a depository for public moneys

of the United States and payment of dividends to the affiliate; and last par. authorization for forfeiture of rights, privileges, and franchises of national banks.

1959—Subsec. (c). Pub. L. 86-114 authorized the Board to designate one of the chain of holding company affiliates which would have to maintain the 12 percent reserve and exempted the other holding company affiliates from the requirement.

1954—Subsec. (d). Act Sept. 3, 1954, substituted “section 1005 of Title 18” for “section 592 of this title”.

1935—Act Aug. 23, 1935, amended first par., first sentence of third par., and inserted “and the provisions of this subsection, instead of subsection (b), shall apply to all holding company affiliates with respect to any shares of bank stock owned or controlled by them as to which there is no statutory liability imposed upon the holders of such bank stock” at end of subsec. (c).

1933—Act June 16, 1933, inserted provisions for cumulative voting of shares or distribution of votes on a cumulative voting principle, prohibited national banks holding their own shares as sole trustee from voting such shares but permitted such shares to be voted when held by another person or persons as trustees with the bank, denied voting rights to shares controlled by a holding company affiliate of a national bank unless a voting permit was first obtained, provided for application for a voting permit to the Federal Reserve Board, specified conditions for granting the voting permit and procedure for its revocation, and authorized the forfeiture of a National Bank’s rights, privileges, and franchises upon such revocation.

## § 62. List of shareholders

The president and cashier of every national banking association shall cause to be kept at all times a full and correct list of the names and residences of all the shareholders in the association, and the number of shares held by each, in the office where its business is transacted. Such list shall be subject to the inspection of all the shareholders and creditors of the association, and the officers authorized to assess taxes under State authority, during business hours of each day in which business may be legally transacted. A copy of such list, verified by the oath of such president or cashier, shall be transmitted to the Comptroller of the Currency within ten days of any demand therefor made by him.

(R.S. § 5210; May 18, 1953, ch. 59, § 1, 67 Stat. 27.)

### Editorial Notes

#### CODIFICATION

R.S. § 5210 derived from act June 3, 1864, ch. 106, § 40, 13 Stat. 111, which was the National Bank Act. See section 38 of this title.

#### AMENDMENTS

1953—Act May 18, 1953, changed the requirement for annual transmission of a copy of the shareholders list to the Comptroller of the Currency by authorizing the Comptroller to acquire such copy at any time on 10 days’ notice.

### Statutory Notes and Related Subsidiaries

#### APPLICATION TO DISTRICT OF COLUMBIA

Provisions of this section were made applicable to banks, etc., in the District of Columbia by act Mar. 4, 1933, ch. 274, § 4, 47 Stat. 1567.

### 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.

### §§ 63, 64. Repealed. Pub. L. 86-230, § 7, Sept. 8, 1959, 73 Stat. 457

Section 63, R.S. § 5151, related to individual liability of shareholders.

Section 64, act Dec. 23, 1913, ch. 6, § 23, 38 Stat. 273, related to transfer of shares as affecting individual liability of shareholders. Limitation on liability of shareholders, see section 64a of this title.

The status of former section 63 of this title had been doubtful. At different times it had been held to have been repealed, superseded, and superseded only in part by former section 64 of this title which related to the same subject. See *American T. Co. v. Grut*, C.C.A. 1935, 80 F.2d 155; *Miller v. Hamner*, C.C.A. 1920, 269 F. 891; and *First Nat. Bank v. First Nat. Bank*, D.C. 1926, 14 F.2d 129.

### § 64a. Individual liability of shareholders; limitation on liability

The additional liability imposed upon shareholders in national banking associations by the provisions of sections 63 and 64 of this title shall not apply with respect to shares in any such association issued after June 16, 1933. Such additional liability shall cease on July 1, 1937, with respect to all shares issued by any association which shall be transacting the business of banking on July 1, 1937: *Provided*, That not less than six months prior to such date, such association shall have caused notice of such prospective termination of liability to be published in a newspaper published in the city, town, or county in which such association is located, and if no newspaper is published in such city, town, or county, then in a newspaper of general circulation therein. If the association fail<sup>1</sup> to give such notice as and when above provided, a termination of such additional liability may thereafter be accomplished as of the date six month<sup>2</sup> subsequent to publication, in the manner above provided. In the case of each association which has not caused notice of such prospective termination of liability to be published prior to May 18, 1953, the Comptroller of the Currency shall cause such notice to be published in the manner provided in this section, and on the date six months subsequent to such publication by the Comptroller of the Currency such additional liability shall cease.

(June 16, 1933, ch. 89, § 22, 48 Stat. 189; Aug. 23, 1935, ch. 614, title III, § 304, 49 Stat. 708; May 18, 1953, ch. 59, § 2, 67 Stat. 27.)

### Editorial Notes

#### REFERENCES IN TEXT

Sections 63 and 64 of this title, referred to in text, were repealed by Pub. L. 86-230, § 7, Sept. 8, 1959, 73 Stat. 457.

#### AMENDMENTS

1953—Act May 18, 1953, provided for termination of the additional liability, referred to in the section, by action of the Comptroller of the Currency with regard to those associations which had not, prior to May 18, 1953, caused notice of termination to be published.

1935—Act Aug. 23, 1935, added second and third sentences.

<sup>1</sup> So in original. Probably should be “fails”.

<sup>2</sup> So in original. Probably should be “months”.