

Comptroller of the Currency, Treasury

§ 7.2011

(2) Shares purchased subject to an absolute option vested in the seller to repurchase the shares within a specified period; and

(3) Shares deposited in a voting trust where the depositor surrenders:

(i) Legal ownership (depositor ceases to be registered owner of the stock);

(ii) Power to vote the stock or to direct how it shall be voted; or

(iii) Power to transfer legal title to the stock.

[61 FR 4862, Feb. 9, 1996, as amended at 64 FR 60099, Nov. 4, 1999]

§ 7.2006 Cumulative voting in election of directors.

When electing directors, a shareholder shall have as many votes as the number of directors to be elected multiplied by the number of the shareholder's shares. The shareholder may cast all these votes for one candidate, or distribute the votes among as many candidates as the shareholder chooses. If, after the first ballot, subsequent ballots are necessary to elect directors, a shareholder may not vote shares that he or she has already fully cumulated and voted in favor of a successful candidate.

§ 7.2007 Filling vacancies and increasing board of directors other than by shareholder action.

(a) *Increasing board of directors.* If authorized by the bank's articles of association, between shareholder meetings a majority of the board of directors may increase the number of the bank's directors within the limits specified in 12 U.S.C. 71a. The board of directors may increase the number of directors only by up to two directors, when the number of directors last elected by shareholders was 15 or fewer, and by up to four directors, when the number of directors last elected by shareholders was 16 or more.

(b) *Vacancies.* If a vacancy occurs on the board of directors, including a vacancy resulting from an increase in the number of directors, the vacancy may be filled by the shareholders, a majority of the board of directors remaining in office, or, if the directors remaining in office constitute fewer than a quorum, by an affirmative vote of a

majority of all the directors remaining in office.

§ 7.2008 Oath of directors.

(a) *Administration of the oath.* A notary public, including one who is a director but not an officer of the national bank, may administer the oath of directors. Any person, other than an officer of the bank, having an official seal and authorized by the state to administer oaths, may also administer the oath.

(b) *Execution of the oath.* Each director attending the organization meeting shall execute either a joint or individual oath. A director not attending the organization meeting (the first meeting after the election of the directors) shall execute the individual oath. A director shall take another oath upon re-election, notwithstanding uninterrupted service. Appropriate sample oaths are located in the "Comptroller's Corporate Manual".

(c) *Filing and recordkeeping.* A national bank must file the original executed oaths of directors with the OCC and retain a copy in the bank's records in accordance with the Comptroller's Corporate Manual filing and recordkeeping instructions for executed oaths of directors.

[61 FR 4862, Feb. 9, 1996, as amended at 64 FR 60099, Nov. 4, 1999]

§ 7.2009 Quorum of the board of directors; proxies not permissible.

A national bank shall provide in its articles of association or bylaws that for the transaction of business, a quorum of the board of directors is at least a majority of the entire board then in office. A national bank director may not vote by proxy.

§ 7.2010 Directors' responsibilities.

The business and affairs of the bank shall be managed by or under the direction of the board of directors. The board of directors should refer to OCC published guidance for additional information regarding responsibilities of directors.

§ 7.2011 Compensation plans.

Consistent with safe and sound banking practices and the compensation provisions of 12 CFR part 30, a national

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bank may adopt compensation plans, including, among others, the following:

(a) *Bonus and profit-sharing plans.* A national bank may adopt a bonus or profit-sharing plan designed to ensure adequate remuneration of bank officers and employees.

(b) *Pension plans.* A national bank may provide employee pension plans and make reasonable contributions to the cost of the pension plan.

(c) *Employee stock option and stock purchase plans.* A national bank may provide employee stock option and stock purchase plans.

§7.2012 President as director; chief executive officer.

Pursuant to 12 U.S.C. 76, the president of a national bank must be a member of the board of directors, but a director other than the president may be elected chairman of the board. A person other than the president may serve as chief executive officer, and this person is not required to be a director of the bank.

§7.2013 Fidelity bonds covering officers and employees.

(a) *Adequate coverage.* All officers and employees of a national bank must have adequate fidelity coverage. The failure of directors to require bonds with adequate sureties and in sufficient amount may make the directors liable for any losses that the bank sustains because of the absence of such bonds. Directors should not serve as sureties on such bonds.

(b) *Factors.* The board of directors should determine the amount of such coverage, premised upon a consideration of factors, including:

- (1) Internal auditing safeguards employed;
- (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 adminis-

trative 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