

§ 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 approved 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.

Subpart C—Bank Operations**§ 7.3000 Bank hours and closings.**

(a) *Bank hours.* A national bank's board of directors should review its banking hours, and, independently of any other bank, take appropriate action to establish a schedule of banking hours.

(b) *Emergency closings.* Pursuant to 12 U.S.C. 95(b)(1), the Comptroller of the Currency (Comptroller), a state, or a legally authorized state official may declare a day a legal holiday if emergency conditions exist. That day is a legal holiday for national banks or their offices in the affected geographic area (*i.e.*, throughout the country, in a state, or in part of a state). Emergency conditions include natural disasters and civil and municipal emergencies (*e.g.*, severe flooding, or a power emergency declared by a local power company or government requesting that businesses in the affected area close). The Comptroller issues a proclamation authorizing the emergency closing in accordance with 12 U.S.C. 95 at the time of the emergency condition, or soon thereafter. When the Comptroller, a state, or a legally authorized state official declares a day to be a legal holiday due to emergency conditions, a national bank may choose to remain open or to close any of its banking offices in the affected geographic area.

(c) *Ceremonial closings.* A state or a legally authorized state official may de-

clare a day a legal holiday for ceremonial reasons. When a state or a legally authorized state official declares a day to be a legal holiday for ceremonial reasons, a national bank may choose to remain open or to close.

(d) *Liability.* A national bank should assure that all liabilities or other obligations under the applicable law due to the bank's closing are satisfied.

§ 7.3001 Sharing space and employees.

(a) *Sharing space.* A national bank may:

(1) Lease excess space on bank premises to one or more other businesses (including other banks and financial institutions);

(2) Share space jointly held with one or more other businesses; or

(3) Offer its services in space owned or leased to other businesses.

(b) *Sharing employees.* When sharing space with other businesses as described in paragraph (a) of this section, a national bank may provide, under one or more written agreements among the bank, the other businesses, and their employees, that:

(1) A bank employee may act as agent for the other business; or

(2) An employee of the other business may act as agent for the bank.

(c) *Supervisory conditions.* When a national bank engages in arrangements of the types listed in paragraphs (a) and (b) of this section, the bank shall ensure that:

(1) The other business is conspicuously, accurately, and separately identified;

(2) Shared employees clearly and fully disclose the nature of their agency relationship to customers of the bank and of the other businesses so that customers will know the identity of the bank or business that is providing the product or service;

(3) The arrangement does not constitute a joint venture or partnership with the other business under applicable state law;

(4) All aspects of the relationship between the bank and the other business are conducted at arm's length, unless a special arrangement is warranted because the other business is a subsidiary of the bank;

(5) Security issues arising from the activities of the other business on the premises are addressed;

(6) The activities of the other business do not adversely affect the safety and soundness of the bank;

(7) The shared employees or the entity for which they perform services are duly licensed or meet qualification requirements of applicable statutes and regulations pertaining to agents or employees of such other business; and

(8) The assets and records of the parties are segregated.

(d) *Other legal requirements.* When entering into arrangements, of the types described in paragraphs (a) and (b) of this section, and in conducting operations pursuant to those arrangements the bank must ensure that each arrangement complies with 12 U.S.C. 29 and 36 and with any other applicable laws and regulations. If the arrangement involves an affiliate or a shareholder, director, officer or employee of the bank:

(1) The bank must ensure compliance with all applicable statutory and regulatory provisions governing bank transactions with these persons or entities;

(2) The parties must comply with all applicable fiduciary duties; and

(3) The parties, if they are in competition with each other, must consider limitations, if any, imposed by applicable antitrust laws.

Subpart D—Preemption

§ 7.4000 Books and records of national banks.

(a) *Inspection.* Except as otherwise expressly provided by Federal law, including 12 U.S.C. 62, relating to the right of shareholders, creditors, and certain tax officials to inspect the list of shareholders of a bank, only the Comptroller of the Currency or the Comptroller's authorized representatives are authorized to inspect books or records of a national bank. Production of records may, however, be required under normal judicial procedures.

(b) *Visitorial powers.* Except as otherwise expressly provided by Federal law, the exercise of visitorial powers over national banks is vested solely in the OCC, 12 U.S.C. 484. State officials have

no authority to conduct examinations or to inspect or require the production of books or records of national banks, except for the limited purpose of ensuring compliance with applicable state unclaimed property and escheat laws. State authority to review the books and records of a national bank is limited to those circumstances in which there is reasonable cause to believe that the bank has failed to comply with those laws. Federal law provides special procedures for verifying payroll records for unemployment compensation purposes, 26 U.S.C. 3305(c), for enforcing the Fair Labor Standards Act, 29 U.S.C. 211, and for ascertaining the correctness of Federal tax returns, 26 U.S.C. 7602.

(c) *Report of examination.* The report of examination made by an OCC examiner is designated solely for use in the supervision of the bank. The bank's copy of the report is the property of the OCC and is loaned to the bank and any holding company thereof solely for its confidential use. The bank's directors, in keeping with their responsibilities both to depositors and to shareholders, should thoroughly review the report. The report may be made available to other persons only in accordance with the rules on disclosure in 12 CFR part 4.

§ 7.4001 Charging interest at rates permitted competing institutions; charging interest to corporate borrowers.

(a) *Definition.* The term "interest" as used in 12 U.S.C. 85 includes any payment compensating a creditor or prospective creditor for an extension of credit, making available of a line of credit, or any default or breach by a borrower of a condition upon which credit was extended. It includes, among other things, the following fees connected with credit extension or availability: numerical periodic rates, late fees, not sufficient funds (NSF) fees, overlimit fees, annual fees, cash advance fees, and membership fees. It does not ordinarily include appraisal fees, premiums and commissions attributable to insurance guaranteeing repayment of any extension of credit,