CHAPTER 221

STATE BANKS

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SUBCHAPTER I

GENERAL PROVISIONS

221.0101 Title. This chapter may be cited as the "Wisconsin banking law".

History: 1995 a. 336.

221.0102 Definitions. In this chapter:

(1) "Articles of incorporation" includes amended and restated articles of incorporation.

(2) "Authorized shares" means the shares of all classes that a bank is authorized to issue.

(3) "Capital stock" means the stock of a bank, other than preferred stock.

(4) "Capital" means, with respect to any bank, the sum of all of the following, less the bank's intangible assets:

(a) The bank's capital stock.

(b) The bank's preferred stock.

(bm) The bank's surplus.

(c) The bank's undivided profits.

(d) Outstanding notes and debentures of the bank that are legally issued and sold by the bank and approved by the division under s. 221.0318 (2).

(5) "Record date" means the date on which a bank determines the identity of its shareholders for purposes of this chapter.

(6) "Shareholder" means the person in whose name shares are registered in the records of a bank or, to the extent of the rights granted by a nominee certificate on file with a bank, the beneficial owner of the shares.

(7) "Subscriber" means a person who subscribes for shares in a bank, whether before or after incorporation of the bank.

(8) "Treasury shares" means shares of a bank that have been issued, that have been subsequently acquired by and belong to the bank, and that have not been canceled or restored to the status of authorized but unissued shares.

(9) "Voting group" means any of the following:

(a) All shares of one or more classes or series that, under the articles of incorporation or this chapter, are entitled to vote and be counted together collectively on a matter at a meeting of shareholders.

(b) All shares that under the articles of incorporation or this chapter are entitled to vote generally on a matter.

History: 1995 a. 336; 1997 a. 27.

221.0103 Notice. (1) APPLICABILITY. This section applies to a notice that is required under this chapter or that is made subject to this section by express reference to this section.

(2) WHEN ORAL NOTICE PERMITTED. A person shall give notice in writing, except that notices to or from a bank may be given orally, if permitted by the bank's articles of incorporation or bylaws and not otherwise prohibited by this chapter.

(3) METHOD OF PROVIDING WRITTEN NOTICE. Unless otherwise provided in the articles of incorporation or bylaws, notice may be communicated in person, by telephone, telegraph, teletype, facsimile or other form of wire or wireless communication, or by mail or private carrier. If these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where published or by radio, television or other form of public broadcast communication.

(4) DATE NOTICE IS EFFECTIVE. (a) Except as provided in par. (b) and ss. 221.0607 (2) and 221.0622 (1), written notice is effective on the earliest of the following:

1. On the date received.

2. Five days after deposit of the notice in the U.S. mail, if mailed postpaid and correctly addressed.

3. On the date shown on the return receipt, if the notice is sent by registered or certified mail, return receipt requested, and if the receipt is signed by or on behalf of the addressee.

4. On the effective date specified in the articles of incorporation or bylaws.

(b) Written notice by a bank to a shareholder of the bank is effective when mailed. The notice may be addressed to the shareholder's address shown in the bank's current record of shareholders.

(c) Oral notice is effective when communicated.

History: 1995 a. 336.

221.0104 Applicability. This chapter applies to all banks organized and existing within this state. The powers, privileges, duties and restrictions conferred and imposed upon a bank existing and doing business under the laws of this state are hereby abridged, enlarged or modified, as each particular case may require, to conform to this chapter.

History: 1995 a. 336.

221.0105 Fees. The division may establish such fees as it determines are appropriate for documents filed with the division under this chapter and for such other services as the division may provide under this chapter.

History: 1995 a. 336.

SUBCHAPTER II

BANK ORGANIZATION

221.0201 Applicants. Any number of adult residents of this state, not less than 3 nor more than 20, who desire to associate for the purpose of organizing a banking corporation under this chapter, may apply to the division to organize a bank. The application shall be made on a form prescribed by the division.

History: 1995 a. 336.

221.0202 Application. (1) CONTENTS. An application under s. 221.0201 shall be prepared and filed in duplicate, and shall include all of the following:

(a) The location of the proposed bank.

(b) The character of the business to be transacted by the proposed bank.

(c) The proposed capital of the proposed bank.

(d) The full name, residence, and occupation of each applicant.

(e) Other information required by the division.

(2) NOTICE OF APPLICATION. Upon receipt by the division of properly executed application, the division shall, within 5 days, forward to the applicants a copy of a notice of application for authority to organize a bank. The notice of application shall contain the information required under sub. (1) and a date and place for hearing on the application. The notice shall be published as a class 3 notice, under ch. 985, by the applicants, at their own expense, in the city, village or town where the bank is to be located. Proof of publication shall be filed with the division in such form as the division requires. The division may waive the requirement of publication, if the bank to be organized is to replace, absorb or consolidate one or more existing banks.

(3) FEE. The applicants shall pay to the division a fee in an amount determined by the division, together with the actual costs incurred by the division in making an investigation under sub. (4) of the application.

(4) INVESTIGATION. (a) At the hearing and by such investigation as the division considers necessary, the division shall consider all of the following:

1. Whether the character, responsibility and general fitness of the persons named in the application command confidence and warrant the belief that the business of the proposed bank will be honestly and efficiently conducted in accordance with this chapter.

2. Whether public convenience and advantage will be promoted by allowing the bank to organize.

3. The character and experience of the proposed officers.

4. The adequacy of existing banking facilities and the need of further banking capital.

5. The outlook for the growth and development of the area where the bank is to be located.

6. The methods and banking practices of any existing banks in the area where the bank is to be located; the interest rate that these existing banks charge to borrowers; and the character of the service which these existing banks provide to the community.

7. The prospects for the success of the proposed bank if efficiently managed.

(b) The division shall complete the investigation within 90 days after the filing with the division of proof of publication under sub. (2) and the paying of the fee under sub. (3), whichever is later. If a majority of the applicants and the division mutually agree, the time may be extended for an additional period of 60 days.

(5) DECISION. After completing the investigation under sub. (4), the division shall make a written report to the banking review board stating the results of the investigation and the division's recommendation. The board shall consider the matter, conduct any necessary hearing and promptly make its decision approving or disapproving the application. The decision shall be final except pursuant to s. 220.035 (1) and (3). If the application is approved, the division shall endorse on each of the original applications the word "Approved". If the application is disapproved, the division shall endorse the word "Disapproved". One of the duplicate originals shall be filed in the division's office and one shall be returned by mail to the applicants.

History: 1995 a. 336.

221.0203 Certificate of authority. (1) POWERS GRANTED BY CERTIFICATE. If an application for authority to organize a banking corporation is approved, the division shall issue a certificate of authority to the applicants, who shall thereafter be known as the incorporators. The certificate of authority shall grant the incorporators such powers as are incidentally or necessarily preliminary to the organization of a banking corporation. These powers include all of the following:

(a) Creating a temporary organization, consisting of a chairperson, a secretary and a treasurer.

(b) Executing and filing articles of incorporation.

(c) Adopting rules for the conduct of meetings of the incorporators and of the first meeting of the shareholders.

(d) Opening subscription books for stock.

(e) Securing an option on real estate to be used as a bank office.

(f) Fixing an amount at which the stock shall be sold.

(g) Collecting subscriptions to the stock.

(h) Selecting a depository for funds as may be collected.

(i) Appointing any agent or agents.

(j) Compiling a set of bylaws for submission to the shareholders.

(2) VOTING REQUIREMENTS. Following the incorporation of a bank, an action permitted by this chapter to be taken by its incorporators may be taken by the majority of its incorporators or the survivors of the incorporators.

History: 1995 a. 336.

221.0204 Temporary organization. The chairperson of the incorporators shall preside at all meetings and shall exercise other duties that are ordinarily performed by a chairperson. The secretary shall manage the correspondence of the incorporators, record fully all proceedings of the meetings of the incorporators, file and preserve all documents and papers of the organization, and file any necessary papers with the division. The treasurer shall receive all moneys paid in on subscriptions to stock or for other purposes, keep a true account thereof, deposit these funds in the designated depository, and pay such valid orders as may be drawn on the treasurer. The incorporators shall require a bond in a suitable amount from the treasurer and from other officers and agents who may handle the funds of the proposed bank. The incorporators shall audit claims against the proposed bank and record of action on these claims in the minutes. If a claim is ordered paid, an order shall be drawn upon the treasurer and signed by the chairperson and secretary. Until the completion of the organization of the proposed bank, the incorporators may exercise the powers conferred upon incorporators of corporations under ch. 180, to the extent that these powers are not in conflict with this chapter.

History: 1995 a. 336.

221.0205 Capital stock. Immediately following a bank's organization under this chapter, the division shall determine the required capital of the bank, subject to review by the banking review board. In addition to the required capital stock, a contingent fund and paid−in surplus each in an amount equal to at least 25% of the aggregate amount of the capital stock, shall be subscribed at the time the subscription list of shareholders is prepared by the incorporators.

History: 1995 a. 336; 1997 a. 146.

221.02055 Reserves. (1) DEFINITIONS. In this section:

(a) "Municipal obligation" has the meaning given in s. 67.01 (6).

(b) "Short−term" means maturing within 18 months or less.

(2) RESERVE REQUIREMENTS. A bank shall maintain sufficient reserves to meet anticipated withdrawals, commitments and loan demand. A bank shall maintain at least the level of reserves required for it by the federal reserve system. The division may prescribe additional reserve requirements for an individual bank based on examination findings or other reports available to the division.

(3) PERMITTED RESERVES. A bank's reserves consist of all of the following:

(a) Cash.

(b) Cash items in the process of collection.

(c) Short−term obligations of or demand balances with other insured financial institutions in the United States.

(d) Short−term obligations of or guaranteed by the federal government.

(e) Short−term obligations of this state.

(f) Short−term municipal obligations.

(g) Short−term obligations approved by rule of the division.

(h) Balances with federal reserve banks.

(4) EFFECT OF INSUFFICIENT RESERVES. If the reserves of a bank fall below the reserves required under sub. (2), the bank may not increase its loans or discounts, except by discounting or purchasing bills of exchange payable at sight or on demand. The division shall notify a bank whose reserves are below the reserves required under sub. (2) that the bank shall make good its reserves. If the bank fails for 30 days thereafter to make good such reserves, the division may assess the bank $100 for each 2−week period during which the bank has not made good its reserves and may notify the attorney general and the department of justice shall institute proceedings for the appointment of a receiver and to wind up the business of the bank. The assessment shall be paid to the division and, if any such bank fails or refuses to pay the assessment, the division may maintain an action for the recovery of the assessment.

History: 1995 a. 336.

221.0206 Articles of incorporation. (1) TIME FOR FILING. The incorporators shall file articles of incorporation with the division within a reasonable time, as determined by the division, from the date on which the division approved the certificate of authority. If the incorporators do not file the articles of incorporation within this period, all rights of the incorporators cease and the certificate of authority to organize is void.

(2) FORM AND CONTENTS. (a) The articles of incorporation shall be executed in duplicate, and shall be signed by the majority of the incorporators. All signers must be residents of this state and must be subscribers to stock of the bank or of a bank holding company of the bank.

(b) The articles of incorporation shall contain all of the following:

1. A declaration that the incorporators associate for the purpose of forming a banking corporation under this chapter and stating whether the bank is a state bank or a trust company bank.

2. The name of the bank.

3. The county and the village, town or city where the bank is to be located.

4. The amount of the bank's capital stock.

5. Before issuing more than one class of shares, all of the following:

a. The distinguishing designation of each class.

b. The number of shares of each class that the bank is authorized to issue.

c. The preferences, limitations and relative rights of that class.

6. Before the issuance of one or more series of shares within a class of shares, all of the following:

a. The distinguishing designation of each series within a class.

b. The number of shares of each series that the bank is authorized to issue.

c. The preferences, limitations and relative rights of that series.

7. Any other lawful provisions defining and regulating the powers or business of the bank, its officers or directors; the transfer of its stock; and the disposition of new stock that may be created by amending the articles of incorporation to increase the bank's capital.

(3) APPROVAL OR DISAPPROVAL. The division shall, in the division's discretion, approve or disapprove the articles of incorporation. If approved, the division shall endorse on each of the 2 duplicate originals the word "Approved". If disapproved, the division shall endorse on each of the 2 duplicate originals the word "Disapproved". The division shall file one of the originals and shall send the remaining original to the incorporators, together with a certificate showing the date of filing, the approval or disapproval and the date of the approval or disapproval. If the articles of incorporation are approved, the copy sent to the incorporators shall be filed with the records of the bank.

(4) FEES. The incorporators shall pay a fee to the division when the articles of incorporation are filed. The fee shall be in an amount determined by the division.

History: 1995 a. 336.

221.0207 Filed documents. (1) PROPOSED BYLAWS AND SHAREHOLDER LIST. Within 90 days after the filing of the articles of incorporation under s. 221.0206, unless extended by the division, the incorporators shall file with the division, in duplicate, the proposed bylaws and a complete list of the shareholders of the proposed bank. The list of shareholders shall show the number of shares held by each shareholder and the post−office address of each shareholder. On approval by the division, the bylaws shall be submitted for consideration by the shareholders.

(2) SWORN DECLARATION. Within the period for filing under sub. (1), the incorporators shall also file a declaration subscribed and sworn to by each of the incorporators, stating that, to the best of their knowledge and belief, all of the following are true:

(a) All shareholders have subscribed for the stock accredited to them in the list of shareholders, in good faith and not as the representative or agent of any corporation or other person.

(b) One hundred percent of each stock subscription has been paid in lawful money.

(c) No incorporator has entered into any agreement or promise that the bank, when open, shall loan to any shareholder funds for the purpose of paying any indebtedness that may have been incurred by a shareholder to obtain funds to purchase shares of the bank.

(d) All money received in payment of stock subscriptions, except such amount as may have been paid out by order of the incorporators, is on deposit to the credit of the incorporators in the designated depository.

History: 1995 a. 336.

221.0208 Charter. (1) NOTICE REQUIRED. (a) A bank organizing under this chapter shall give notice in writing to the division that it is prepared to commence business after it has done all of the following:

1. Adopted bylaws, approved by the division.

2. Obtained suitable banking quarters, and the necessary books, forms, stationery, furniture and equipment for the proper and orderly transaction of the business of banking.

3. Complied with any other requirements imposed by law or rules of the division necessary to commence business.

(b) The notice under par. (a) shall be given to the division within a reasonable time after the date of filing the articles of incorporation, as determined by the division.

(2) EXAMINATION AND ISSUANCE OF CHARTER. After receiving a notice under sub. (1) (a), the division shall make an examination of the organizing bank. If this examination satisfies the division that the stock subscriptions have been fully paid in lawful money and that the bank is lawfully entitled to commence business, the division shall issue to the bank a certificate of authority for the bank to commence business. The certificate of authority to commence business is the charter of the bank. The division shall give each charter a charter number.

(3) DENIAL OF CHARTER. The division may, with the advice and consent of the attorney general, deny the issuance of a charter if the division has reason to believe that any of the following is true:

(a) The shareholders have formed the bank for any purpose other than the legitimate business contemplated by this chapter.

(b) A fact stated in the declaration under s. 221.0207 (2) is untrue, or that other reasons exist that would make the opening of the bank injurious to the public interest.

History: 1995 a. 336.

221.0209 Prohibition on transacting business. A bank may not transact any business, except such as is incidental or nec-

essarily preliminary to its organization until it has been issued a charter under s. 221.0208.

History: 1995 a. 336.

221.0210 Publication of charter. The bank shall cause the charter issued under s. 221.0208, to be published as a class 1 notice, under ch. 985, in the city, village or town where the bank is located. This notice shall be published within 15 days after the division issues the charter. The bank shall file proof of publication with the division. If a bank fails to comply with this section, the division shall cause the notice to be published at the bank's expense and the bank shall forfeit $100 to the division.

History: 1995 a. 336.

221.0211 Amendment of articles of incorporation. (1) VOTING, FILING AND APPROVAL REQUIREMENTS. A bank may amend its articles of incorporation in any manner not inconsistent with law. The amendment may be made at any time, by a vote of its shareholders owning a majority of the stock of the bank who are entitled to vote, unless the articles of incorporation or bylaws require a greater number of affirmative votes of the capital stock. The vote shall be taken at a meeting called for that purpose. The bank shall submit the amendment to the division. The amendment is not effective unless approved by the division.

(2) FILING. The amendment, certified by an officer of the bank, shall be filed with the division, as required for the articles of incorporation.

(3) INCREASE OF CAPITAL. An increase of the capital of the bank, by amending the bank's articles of incorporation, is not valid until the amount of the increase has been subscribed and actually paid in. The entire surplus fund of a bank, or as much as may be required, may be declared and paid out as a stock dividend to apply on, and be converted into, an increase of capital.

(4) REDUCTION OF CAPITAL. An amendment of the articles of incorporation may not reduce the capital of the bank to an amount less than that required under this chapter. A bank may not cancel stock certificates pursuant to an amendment to the bank's articles of incorporation reducing the bank's capital, until the amendment has been approved by the division. Any reduction in capital must be a proportional reduction of all outstanding shares, unless the division determines that a reduction in a different manner is in the best interests of the depositors.

History: 1995 a. 336.

221.0212 Restated articles of incorporation. (1) WHEN PERMITTED. A bank's board of directors may restate the articles of incorporation at any time. Except as provided in sub. (3), shareholder approval is not required.

(2) FORM OF RESTATED ARTICLES. The restated articles of incorporation shall consist of the articles of incorporation, as amended to date, and shall contain a statement that the restated articles of incorporation supersede and take the place of the original articles of incorporation, any restated articles of incorporation previously adopted, and all amendments to the original and any restated articles of incorporation.

(3) RESTATEMENTS INCLUDING AMENDMENTS. In addition to the contents described in sub. (2), the restatement may include one or more amendments to the articles of incorporation. If the restatement includes an amendment, the restatement shall be adopted in the manner provided under s. 221.0211.

(4) REQUIRED FILING AND CERTIFICATE. A bank restating its articles of incorporation shall file articles of restatement, certified by an officer of the bank, with the division. The articles of restatement shall include the name of the bank and the text of the restated articles of incorporation. The articles of restatement shall be filed with a certificate that includes all of the following information:

(a) A statement indicating whether the restatement contains an amendment to the articles of incorporation requiring shareholder approval.

(b) If the restatement does not contain an amendment to the articles of incorporation requiring shareholder approval, a statement that the board of directors of the bank adopted the restatement.

(c) If the restatement contains an amendment to the articles of incorporation requiring shareholder approval, the information required by s. 221.0211.

(5) EFFECT OF RESTATEMENT. The restated articles of incorporation supersede the original articles of incorporation, any restated articles of incorporation previously adopted, and all amendments to the original and any restated articles of incorporation.

History: 1995 a. 336.

221.0213 Bylaws. (1) VOTING REQUIREMENTS. A bank may make, amend or repeal its bylaws by an affirmative vote of shareholders owning a majority of the stock of the bank who are entitled to vote, unless the articles of incorporation or bylaws require a greater number of affirmative votes.

(2) CONTENT. The bylaws of a bank may contain any provision for managing the business and regulating the affairs of the bank that is not inconsistent with its articles of incorporation or with the laws of this state.

History: 1995 a. 336.

221.0214 Amendment of bylaws by board of directors or shareholders. (1) AMENDMENT BY BOARD OF DIRECTORS. A bank's board of directors may amend or repeal the bank's bylaws or adopt new bylaws, except to the extent that any of the following applies:

(a) The articles of incorporation, s. 221.0503 or any other provision of this chapter reserve that power exclusively to the shareholders.

(b) The shareholders, in adopting, amending or repealing a particular bylaw, provided in the bylaws that the board of directors may not amend, repeal or readopt that bylaw.

(2) AMENDMENT BY SHAREHOLDERS. A bank's shareholders may amend or repeal the bank's bylaws or adopt new bylaws, even though the board of directors may also amend or repeal the bank's bylaws or adopt new bylaws.

History: 1995 a. 336.

221.0215 Authorized stock. (1) INCREASE IN CAPITAL STOCK. A bank may authorize an increase in the capital stock of the bank in the category of authorized but unissued stock if approved by the division and if approved by a vote of shareholders owning a majority of the stock of the bank entitled to vote, or by such greater percentage provided in the bank's articles of incorporation or bylaws.

(2) AUTHORIZED BUT UNISSUED STOCK. A bank may issue authorized but unissued stock in all of the following circumstances:

(a) To employees of the bank pursuant to a stock option or stock purchase plan.

(b) In exchange for convertible preferred stock and convertible capital debentures, in accordance with the terms of the stock or debentures.

(c) For such other purposes and considerations as may be approved by both the division and the board of directors of the bank.

(3) CLASSES OF SHARES. The articles of incorporation shall prescribe the classes of shares and the number of shares of each class that the bank is authorized to issue. If more than one class of shares is authorized, the articles of incorporation shall prescribe a distinguishing designation for each class. Before the issuance of shares of a class, the bank shall describe in its articles of incorporation the preferences, limitations and relative rights of that class. All shares of a class shall have preferences, limitations and relative rights identical with those of other shares of the same class, unless the class is divided into series.

(4) SERIES OF SHARES. The articles of incorporation may create series of shares within a class of shares. Before the issuance of shares of a series, the bank shall describe in its articles of incorporation the number of shares of each series that the bank is authorized to issue, a distinguishing designation for each series within a class and the preferences, limitations and relative rights of that series. All shares of a series shall have preferences, limitations and relative rights identical with those of other shares of the same series and, except to the extent otherwise provided in the description of the series, with those of other series of the same class.

(5) ARTICLES OF INCORPORATION. The articles of incorporation shall authorize all of the following:

(a) One or more classes of shares that together have unlimited voting rights.

(b) One or more classes of shares, which may be the same class or classes as those with voting rights under par. (a), that together are entitled to receive the net assets of the bank upon dissolution.

(6) TYPES OF PREFERENCES AND RIGHTS. The articles of incorporation may authorize one or more classes of shares that have designations, preferences, limitations and relative rights that may include any of the following:

(a) Special, conditional or limited voting rights, or no right to vote, except to the extent prohibited by this chapter.

(b) Subject to s. 221.0323, provisions for the redemption or conversion of the shares under any of the following terms specified by articles of incorporation:

1. At the option of the bank, the shareholder or another person, or upon the occurrence of a designated event.

2. For cash, indebtedness, securities or other property.

3. In a designated amount or in an amount determined in accordance with a designated formula or by reference to extrinsic data or events.

(c) Provisions entitling the holders to distributions calculated in any manner, including dividends that may be cumulative, noncumulative or partially cumulative.

(d) Preference over any other class of shares with respect to distributions, including dividends and distributions upon the dissolution of the bank.

(7) POWERS OF BOARD OF DIRECTORS WITH RESPECT TO CLASSES AND SERIES. To the extent provided in the articles of incorporation, the board of directors may, subject to the limits of this section, do any of the following:

(a) Determine with respect to any class of shares the preferences, limitations and relative rights, in whole or in part, before the issuance of any shares of that class.

(b) Create one or more series within a class, and, with respect to any series, determine the number of shares of the series, the distinguishing designation and the preferences, limitations and relative rights, in whole or in part, before the issuance of any shares of that series.

(8) ARTICLES OF AMENDMENT. Articles of amendment to a bank's articles of incorporation authorizing the issuance of shares of a class or series shall contain all of the following and shall be delivered to the division before issuing any shares of the class or series:

(a) The name of the bank.

(b) The text of the amendment determining the terms of the class or series of shares.

(c) The number of shares of the class or series of shares created.

(d) A statement that none of the shares of the class or series has been issued.

(e) The date that the amendment was adopted.

(f) A statement that the amendment was adopted by the board of directors and that shareholder action was not required. An amendment filed under this subsection is not effective unless approved by the division.

(9) RESOLUTIONS MODIFYING PREFERENCES, LIMITATIONS AND RELATIVE RIGHTS. After the articles of amendment are filed under sub. (8) and before the bank issues any shares of the class or series that is the subject of the articles of amendment, the board of directors may alter or revoke any preferences, limitations or relative rights described in the articles of amendment, by adopting another resolution appropriate for that purpose. The bank shall file with the division revised articles of amendment that comply with sub. (8). A preference, limitation or relative right may not be altered or revoked after the issuance of any shares of the class or series that are subject to the preference, limitation or relative right.

History: 1995 a. 336.

221.0216 Preferred stock. (1) ISSUANCE. (a) Except as provided in sub. (2), a bank may issue preferred stock of one or more classes by providing for the issuance in the original articles of incorporation, or by providing for the issuance by an amendment to these articles of incorporation that is approved by the division and by shareholders owning a majority of the stock of the bank entitled to vote, or such greater percentage as may be required in the bank's articles of incorporation or bylaws. An issue of preferred stock is not valid until the par value of all preferred stock is paid in.

(b) Preferred stock issued under par. (a) may be issued in such amount and with such par value as may be approved by the division and may provide for any of the following, subject to the approval of the division:

1. Payment of dividends at a specified rate on the preferred stock before dividends are paid on the capital stock.

2. The cumulation of dividends under subd. 1.

3. A preference over the capital stock in the distribution of the assets of the bank.

4. Conversion of the preferred stock into capital stock.

5. Redemption of the preferred stock.

6. Denying or restricting the voting power of the preferred stock.

(2) NEWLY ORGANIZED BANKS. The requirement for a vote of shareholders under sub. (1) (a) does not apply to a newly organized bank that has not yet issued capital stock.

(3) CHANGES RELATING TO PREFERRED STOCK. No change in relation to preferred stock may be made except by an amendment to the articles of incorporation that is approved by all of the following:

(a) A vote of the shareholders owning a majority of the preferred stock of the bank who are entitled to vote or such greater percentage required under the articles of incorporation or bylaws.

(b) A vote of the shareholders owning a majority of the capital stock of the bank entitled to vote or such greater percentage required under the articles of incorporation or bylaws.

(c) The division.

(4) LIABILITY OF HOLDERS OF PREFERRED STOCK. Preferred stock of a bank is not subject to an assessment to restore an impairment in the capital of the bank. A holder of preferred stock of a bank is not individually responsible, in the shareholder's capacity as a shareholder, for any debt, contract or acknowledgment of a bank.

(5) DIVIDEND RIGHTS. A dividend may not be declared or paid on capital stock until the cumulative dividends on the preferred stock have been paid in full. If the bank is placed in liquidation, a payment may not be made to the holders of the capital stock if the holders of the preferred stock have not been paid in full the par value of the stock plus all cumulative dividends.

History: 1995 a. 336; 1997 a. 35, 146.

221.0217 Reorganization of a state bank as a national bank. A bank organized under this chapter may reorganize under the laws of the United States as a national bank. When the bank has obtained a certificate from the U.S. comptroller of the currency authorizing it to commence business under the federal bank-

ing law, the bank is reorganized as a national bank. The reorganized bank takes and holds all of the assets, real and personal, of the bank organized under this chapter, subject to all liabilities existing against the bank at the time of the reorganization. The reorganized bank shall immediately notify the division of the reorganization.

History: 1995 a. 336.

221.0218 Reorganization of a national bank as a state bank. A national bank that is authorized to dissolve and that has taken the necessary steps to effect a dissolution, may reorganize as a state bank under this chapter, with the approval of the division and upon the consent in writing of the shareholders owning a majority of the stock of the bank entitled to vote or such greater percentage required in the articles of incorporation or bylaws. The shareholders shall make, execute and acknowledge articles of incorporation as required by this chapter. A national bank seeking to reorganize under this section shall pay to the division a fee determined by the division, plus the actual costs incurred by the division in investigating the proposed reorganization. Upon the filing of articles of incorporation under this chapter and upon the approval of the division, the bank is reorganized under this chapter, and the assets, real and personal, of the dissolved national bank become the property of the reorganized bank, subject to all liabilities of the national bank not liquidated before the reorganization.

History: 1995 a. 336.

221.0219 Conversion of a credit union to a state bank. A credit union under ch. 186 may become a state bank under this chapter by doing all of the following:

(1) Applying to the division of banking for authority to organize as a bank under this chapter and satisfying all requirements under this chapter for organizing as a bank.

(2) Satisfying all requirements under s. 186.314 (2m) for conversion to a state bank.

(3) Recording the bank's articles of incorporation in the county in which its home office is located.

History: 2011 a. 32.

SUBCHAPTER III

PURPOSES AND POWERS

221.0301 General powers. Upon approval of the articles of incorporation by the division, the bank is a body corporate and, except as provided in sub. (6), has perpetual duration. In addition to all other powers granted under this chapter, a bank has all of the following powers:

(1) POWER TO CONTRACT. To make contracts necessary and proper to effect its purpose and conduct its business.

(2) POWER TO SUE. To sue and be sued, and to appear and defend in all actions and proceedings under its corporate name to the same extent as a natural person.

(3) CORPORATE SEAL. To adopt and use a corporate seal and alter the same at pleasure.

(4) OFFICERS AND AGENTS. To elect or appoint officers, agents and employees, define their duties and obligations, require bonds of them, fix their compensation, dismiss them and fill vacancies.

(5) BUSINESS OF BANKING. To exercise by its board of directors, or duly authorized officers or agents, all incidental powers necessary to carry on the business of banking. A bank may exercise the powers granted by this subsection to carry on the business of banking at a branch bank. Powers granted under this subsection include all of the following:

(a) Buying, discounting and negotiating promissory notes, bonds, drafts, bills of exchange, foreign and domestic, and other evidences of debt.

(b) Buying and selling coin and bullion.

(c) Receiving commercial and savings deposits under such conditions as the bank may establish.

(d) Buying and selling exchange.

(e) Making loans on personal and real security in accordance with this chapter.

(6) SUCCESSION. To have succession until any of the following occurs:

(a) The bank is dissolved by the act of its shareholders owning a majority of the stock of the bank entitled to vote or such greater percentage required under its articles of incorporation or bylaws.

(b) The bank's corporate existence becomes terminated by a provision in its articles of incorporation.

(c) The bank's charter is forfeited under s. 220.08 (18) or 221.0803.

(7) INTERMEDIARY OR PAYER BANK. To establish and maintain facilities for the receipt of checks and other transit items as an intermediary or payer bank in bank−to−bank transactions.

(8) SERVICES TO OTHER DEPOSITORY INSTITUTIONS. To contract with one or more depository institutions to provide banking and financially related products or services on its behalf to its customers, except that no contract is required for the acceptance of deposits of customers at affiliated banks. A bank that proposes to enter into a contract under this subsection shall file with the division, at least 30 days before the effective date of the contract, a notice of intention to enter into a contract with a depository institution, a description of the services proposed to be performed under the contract and a copy of the contract. A bank may not, pursuant to a contract under this subsection, conduct any activity as an agent that it would be prohibited from conducting as a principal under applicable state or federal law, or have an agent conduct any activity that the bank as a principal would be prohibited from conducting under applicable state or federal law. The division may order a bank or any other depository institution subject to the division's enforcement powers to cease acting as an agent or principal under any contract that the division finds to be inconsistent with safe and sound banking practices.

(9) OTHER. To exercise such other powers as may be provided or permitted under this chapter.

History: 1995 a. 336.

221.0302 Branch banks and other facilities. (1g) DEFINITIONS. In this section:

(a) "Affiliate" means any company that directly or indirectly controls, or is under common control with, another company.

(b) "Bank holding company" has the meaning given in 12 USC 1841 (a).

(c) "Commercial activities" means those activities in which a bank holding company, financial holding company, national bank, state bank, as defined in s. 221.0903 (1) (e), or state bank certified under ch. 222 as a universal bank are not authorized to engage under federal or state law.

(d) "Company" has the meaning given in s. 221.0901 (2) (f).

(e) "Financial holding company" has the meaning given in 12 USC 1841 (p).

(1m) ESTABLISHMENT. A bank may establish and maintain a branch bank or joint branch bank with the approval of the division.

(2) CONVERSION. A bank may be converted to a branch bank of the surviving bank of a merger or consolidation under s. 221.0702. A branch of a bank converted into a branch bank becomes a branch of the surviving bank.

(3) TRANSFER. A bank may transfer a branch bank to any other bank located in this state with the approval of the division. A bank may transfer a branch bank to a bank located in another state only if the division has determined under s. 221.0904 (3) (b) that the state's laws are reciprocal regarding establishing branches.

(4) OUT−OF−STATE BRANCHES. A bank may establish a branch bank in another state with the approval of the division.

(5) ACTIVITIES NOT CONSIDERED BRANCH BANKING. The following activities do not constitute the establishment or maintenance of a branch bank or a joint branch bank:

(a) Picking up deposits and delivering money to bank customers at locations designated by the bank.

(b) Establishing or maintaining a facility under s. 221.0301 (7).

(c) Acting as an agent, or having another bank act as agent, under s. 221.0301 (8).

(d) Operating a trust service office under s. 221.0316 (4).

(6) APPLICATION. A bank shall apply for the establishment or transfer of a branch bank under this section to the division on a form furnished by the division. The application shall be accompanied by a fee determined by the division.

(7) STANDARDS FOR APPROVAL. (a) *General.* Except as provided in par. (b), the division shall approve the establishment of a branch bank under sub. (1m) or the conversion of a bank to a branch bank under sub. (2) if the financial and managerial resources and future prospects of the bank establishing a branch bank, or the surviving bank of a merger or consolidation, are satisfactory to the division.

(b) *Location restrictions; certification of compliance.* The division may not approve the establishment of a branch bank under sub. (1m), the conversion of a bank to a branch bank under sub. (2), or the transfer of a branch bank under sub. (3) if the establishment, conversion, or transfer would violate sub. (8m). Each bank shall certify to the division that the location of a branch bank complies with sub. (8m).

(8) APPLICABILITY OF LAWS AND RULES GOVERNING BANKS. Branch banks are subject to all laws and rules applicable to banks generally.

(8m) LOCATION RESTRICTIONS FOR BRANCH BANKS. Except as provided in sub. (10) (b), no bank may directly or indirectly establish or maintain in this state a branch bank that is located within a 1.5−mile radius of premises or property owned, leased, or otherwise controlled, directly or indirectly, by an affiliate of the bank that engages in commercial activities. No bank may circumvent the prohibition in this subsection by first establishing a branch bank and then locating, or attempting to influence or facilitate the location of, an office of the bank's affiliate engaged in commercial activities within a 1.5−mile radius of the location of the branch bank.

(9) CLOSURE OF BRANCH BANKS. At least 30 days before closing a branch bank, a bank shall notify the division in writing and post a notice of the closing in the lobby of the bank and the lobby of the branch bank to be closed.

(10) EXEMPTIONS. (a) *Grandfathered branch banks.* Every branch bank, branch office, or bank station existing on August 1, 1989, is considered to be a branch bank approved by the division under this paragraph.

(b) *Exemption from location restrictions.* Subsections (7) (b) and (8m) do not apply to any bank branch approved by the division on or before April 2, 2008.

History: 1995 a. 336; 1997 a. 146; 2005 a. 217; 2007 a. 112.
Cross−reference: See also ch. DFI−Bkg 8, Wis. adm. code.

221.0303 Customer bank communications terminals. **(1)** In this section, "customer bank communications terminal" means a terminal or other facility or installation, attended or unattended, that is not located at the principal place of business or at a branch or remote facility of a bank and through which customers and banks may engage, by means of either the direct transmission of electronic impulses to and from a bank or the recording of electronic impulses or other indicia of a transaction for delayed transmission to a bank, in transactions which are incidental to the conduct of the business of banking and which are otherwise permitted by law. "Customer bank communications terminal" also includes all equipment, regardless of location, which is interconnected with a customer bank communications terminal and which is necessary to transmit, route and process electronic impulses in order to enable the customer bank communications terminal to perform any function for which it is designed.

(2) OPERATION AND ACQUISITION OF CUSTOMER BANK COMMUNICATIONS TERMINALS. A bank may, directly or indirectly, acquire, place, and operate, or participate in the acquisition, placement, and operation of, at locations other than its main or branch offices, customer bank communications terminals, in accordance with rules established by the division. The rules of the division shall provide that any such customer bank communications terminal shall be available for use, on a nondiscriminatory basis, by any state or national bank and by all customers designated by a bank using the terminal. This subsection does not authorize a bank which has its principal place of business outside this state to conduct banking business in this state. The customer bank communications terminals also shall be available for use, on a nondiscriminatory basis, by any credit union, savings and loan association, or savings bank, if the credit union, savings and loan association, or savings bank requests to share its use, subject to rules jointly established by the division of banking and the office of credit unions. The division by order may authorize the installation and operation of a customer bank communications terminal in a mobile facility, after notice and hearing upon the proposed service stops of the mobile facility.

(3) TERMINALS OWNED OR OPERATED BY RETAILERS. If a person who is primarily engaged in the retail sale of goods or services owns or operates a customer bank communications terminal on the person's premises and allows access to the terminal by any financial institution, group of financial institutions, or their customers for any purpose or function, then all of the following apply:

(a) The division may not require the person to accept any connection to or use of the customer bank communications terminal on its premises for any other purpose or function, or to accept any connection to the terminal on its premises by any other financial institution.

(b) This chapter, and the rules promulgated by the division, do not apply to the person, except for laws or rules directly related to the particular function performed by the terminal on such person's premises for a financial institution.

(4) USE OF TRANSMITTED INFORMATION. Information transmitted from a customer bank communications terminal, either identified as to particular transactions or aggregate information, may be used only for purposes of effecting the financial transactions for which the information was received, for any other purpose lawfully authorized by contract or for any other purpose permitted by statute or rules pertaining to the dissemination and disclosure of such information.

History: 1995 a. 336; 1997 a. 27; 1999 a. 9; 2003 a. 33.
Cross−reference: See also s. DFI−Bkg 14.02, Wis. adm. code.

221.0304 Safe deposits. A bank may take and receive personal property from any person for safekeeping and storage and may rent out the use of safes or other receptacles upon its premises upon such compensation as may be agreed upon. The bank has a lien for its charges on any property taken or received by it for safekeeping. If the lien is not paid within 2 years after the date the charges accrue, or if the property taken or received by the bank is not called for within 2 years after the date the charges accrue, the bank may sell the property at public auction. The bank shall provide such notice as is required for the sale of personal property on execution. After retaining from the proceeds of such sale all the liens and charges due the bank and the reasonable expenses of the sale, the bank shall pay the balance to the person who deposited the property, or to the person's legal representatives or assignees.

History: 1995 a. 336.

221.0305 Memberships and investments in federal reserve bank. A bank may purchase and hold, for the purpose of becoming a member of the federal reserve bank, so much of the capital stock of the federal reserve bank as will qualify it for membership under 12 USC 321 to 339 in the federal reserve bank. The

bank may become a member of the federal reserve bank, and may have and exercise all powers, not in conflict with the laws of this state, that are conferred upon a member bank. The member bank and its directors, officers and shareholders remain subject to all liabilities and duties imposed upon them by the laws of this state.

History: 1995 a. 336.

221.0306 Memberships and investments in federal home loan bank. (1) PERMITTED ACTIVITIES. Subject to review by the division under sub. (2), a bank may, with the approval of its board of directors, purchase and hold capital stock of the federal home loan bank for the purpose of becoming a member of the federal home loan bank under 12 USC 1421 to 1449. A bank that becomes a member may exercise borrowing privileges or use any other services offered to a member by the federal home loan bank, if the privileges or services are not in conflict with the laws of this state. Without becoming a member, a bank may exercise deposit privileges and use other services offered to nonmembers by the federal home loan bank.

(2) NOTICE AND REVIEW. A bank that intends to become a member of the federal home loan bank shall give the division written notice of its intention to apply for membership. The division may prohibit a bank from becoming a member if the bank's capital and undistributed surplus is less than the amount required for that bank or if the division finds that the bank is in an unsafe or unsound condition. The division shall have 30 days after the date on which the notice is received to issue a prohibition under this subsection. The division may extend the time for issuing a prohibition up to 30 additional days if the division notifies the bank before the initial 30−day period expires that the division is extending the time limit.

History: 1995 a. 336.

221.0307 Memberships and investments in other state and federal agencies. A bank may, with the approval of the division and by action of the bank's board of directors, acquire and hold the stock of any state or federal agency or of any similar institution approved by the division. A bank that intends to make such an investment shall give the division written notice of its intention. The division may disallow the investment if it finds that the bank is in an unsafe or unsound condition or that the transaction would be an unsafe or unsound investment for the bank. The division shall have 30 days after the date on which notice is received to issue a prohibition under this section. The division may extend the time for issuing the prohibition to 30 additional days if the division notifies the bank before the initial 30−day period expires that the division is extending the time limit.

History: 1995 a. 336.

221.0308 Benefits under federal law; Federal Deposit Insurance Corporation. A bank may, by action of its board of directors, enter into such contracts, incur such obligations and perform such acts as may be necessary or appropriate in order to take advantage of any and all memberships, loans, subscriptions, contracts, grants, rights or privileges that may at any time be available or inure to banking institutions or to their depositors, creditors, shareholders, conservators, receivers or liquidators, by virtue of any federal law establishing the Federal Deposit Insurance Corporation; providing for the insurance of deposits; or regulating or safeguarding banking institutions and their depositors. A bank may also subscribe for and acquire any stock, debenture, bond or other type of security of the Federal Deposit Insurance Corporation. A bank that becomes a member of the Federal Deposit Insurance Corporation shall comply with the lawful regulations and requirements issued by the Federal Deposit Insurance Corporation. The bank and its directors, officers and shareholders shall continue to be subject to all liabilities and duties imposed upon them by any laws of this state.

History: 1995 a. 336.

221.0309 Investments in international banking and financial institutions. A bank may, with the approval of the division, invest an amount not exceeding in the aggregate 15% of its capital in one or more corporations principally engaged in international or foreign banking, or banking in dependencies or insular possessions of the United States, organized pursuant to 12 USC 611 to 631. A bank may also invest, with the approval of the division, an amount not exceeding in the aggregate 10% of its capital in the stock of one or more corporations principally engaged in international or foreign financial operations other than banking, as well as such financial operations in dependencies or insular possessions of the United States, organized pursuant to 12 USC 611 to 631.

History: 1995 a. 336.

221.0310 Federal National Mortgage Association. A bank that has loans secured by real estate mortgages may, with the approval of the division, sell all or any portion of the loans to the Federal National Mortgage Association, or any successor to that association. In connection with this sale of loans, the bank may make payments of any required capital contributions in the nature of subscriptions for stock of the Federal National Mortgage Association or any successor to that association, may receive stock evidencing these capital contributions and may hold or dispose of this stock.

History: 1995 a. 336.

221.0311 Investments in agricultural credit corporations. A bank may invest, with the approval of the division, in an agricultural credit corporation. Unless a bank owns at least 80% of the stock of the agricultural credit corporation, the amount invested by the bank may not exceed 20% of the bank's capital.

History: 1995 a. 336.

221.0312 Investments in development companies. A bank is authorized to invest, in an amount not to exceed in the aggregate 5% of its capital, in shares of the Wisconsin Development Credit Corporation and in shares of small business investment companies located in this state.

History: 1995 a. 336.

221.0313 Information to division; stock holdings. A bank that invests in the capital stock of other banks or of corporations as provided in this chapter shall furnish information concerning the condition of the other banks or corporations to the division upon demand. If the division determines that the bank is not complying with rules of the division regarding these investments, the division may institute an investigation of the bank's investments. If the investigation establishes a violation of division rules regarding permissible investments, the division may require the bank to dispose of its investment in the other bank or corporation, upon reasonable notice.

History: 1995 a. 336.

221.0314 Sale of U.S. bonds. A bank may, by resolution of its board of directors authorizing such action, act as agent for the U.S. treasury or other instrumentality of the United States in connection with the sale of bonds or other obligations of the United States or an instrumentality of the United States, if designated as agent by the secretary of the U.S. treasury or by the other instrumentality. A bank may enter into contracts, incur obligations, make investments, pledge assets or take other actions if necessary or appropriate in order to act as agent under this section. A bank may exercise powers granted under this section only upon express approval previously granted by the division, and only in such manner and to such extent as the division may approve, and with such limitations upon the exercise of those powers as the division may impose.

History: 1995 a. 336.

221.0315 Insurance activities. (1) INSURANCE INTERMEDIARY ACTIVITIES PERMITTED. A bank, or an officer or salaried employee of a bank, may obtain a license as an insurance intermediary, if otherwise qualified.

(2) INSURANCE UNDERWRITING PROHIBITED. A bank may not, directly or through a subsidiary, engage in the business of underwriting insurance.

History: 1995 a. 336.

221.0316 Trust powers. (1) GENERAL. When authorized by the division, and after the bank has in good faith complied with all requirements of law and fulfilled all the conditions precedent to the exercise of trust powers imposed by law upon trust company banks, a bank may act as trustee, personal representative, registrar of stocks and bonds, guardian of estates, assignee, receiver, and in any other fiduciary capacity in which trust company banks are permitted to act. A bank authorized by the division to exercise trust powers under this section shall comply with s. 223.02 before exercising such authority. Upon compliance with s. 223.02, the bank is entitled to the same exemption as to making and filing any oath or giving any bond or security as is conferred on trust company banks by s. 223.03 (6) (a).

(2) APPLICATION AND APPROVAL. (a) With its application for permission to exercise trust powers under this section, a bank shall submit to the division a fee determined by the division.

(b) In approving an application by a bank to exercise trust powers, the division may take into consideration the amount of capital of the applying bank, whether the capital is sufficient under the circumstances, the needs of the community to be served, and any other facts and circumstances that may be material. The division shall approve or disapprove the application within 6 months after the date on which the application is filed. The division may approve an application under this subsection if the division is satisfied that the bank has in good faith complied with all the requirements of law and has fulfilled all the conditions precedent to the exercise of these powers imposed by law.

(c) If the division approves the application, the division shall issue, in duplicate, a special authorization certificate to the bank. The certificate shall state that the bank has complied with the provisions of law applicable to banks exercising trust powers and that the bank is authorized to exercise trust powers. One of the duplicate special authorization certificates shall be transmitted by the division to the bank and the other shall be filed with the division.

(d) In exercising trust powers, a bank shall comply with all the provisions of law applicable to individuals acting in a trust or fiduciary capacity.

(3) TRUST FUNDS; HOW KEPT. (a) In this subsection, "affiliated bank" means, with respect to a bank exercising trust powers, any bank that directly or indirectly controls, or is directly or indirectly controlled by, or is under common control with, the bank exercising trust powers.

(b) A bank that exercises trust powers shall keep its trust accounts in books separate from its other books of account. All funds and property held by the bank in a trust capacity shall, at all times, be kept separate from the other funds and property of the bank, except that uninvested trust funds may be deposited in an account in the bank or in any other bank, including an affiliated bank, that is a member of the Federal Deposit Insurance Corporation. All deposits of uninvested trust funds shall be deposited as trust funds to its credit as trustee. In the event of insolvency or liquidation of a bank in which the accounts are maintained, all bank accounts comprising trust funds so deposited have preference and priority in all assets of the bank over the bank's general creditors, without the necessity of tracing or identifying the trust funds.

(4) TRUST SERVICE OFFICES. A state bank exercising trust powers may, with the approval of the division, establish and maintain a trust service office at any office of any other depository institution, as defined under s. 221.0901 (2) (i). A state bank may, with the approval of the division, permit any other depository institution, as defined under s. 221.0901 (2) (i), exercising trust powers or any trust company bank organized under ch. 223 to establish and maintain a trust service office at any of its banking offices. The establishment and operation of a trust service office are subject to s. 223.07. This subsection does not authorize branch banking.

History: 1995 a. 336; 1997 a. 138; 2001 a. 102; 2005 a. 158.

221.0317 Securitization of assets. A bank may, with the approval of the division, securitize its assets for sale to the public in accordance with the rules which shall be promulgated by the division under this section.

History: 1995 a. 336.

221.0318 Notes and debentures. (1) ISSUANCE. A bank may, by the action of its board of directors, issue and sell its notes or debentures of one or more classes in the amount, in the form and with the maturity determined by the board. The notes and debentures may confer such rights and privileges upon the holders of the notes and debentures as determined by the board.

(2) LIMITATION ON ISSUANCE. A bank may issue notes and debentures if the amount issued is within limits previously established by the division for issuances by the bank.

(3) STATUS AS CAPITAL OF BANK. Notes and debentures issued by a bank constitute capital of the bank, only if approved by the division.

(4) RETIREMENT OF NOTES AND DEBENTURES. Before a bank may retire or pay notes or debentures, any existing deficiency of the bank's capital, disregarding the notes and debentures to be retired, must be paid in cash or in assets acceptable to the division, so that the sound capital assets of the bank shall at least equal the capital stock of the bank.

(5) LIABILITY FOR ASSESSMENT. A bank's notes or debentures are not subject to any assessment. The holders of these notes or debentures are not liable for the debts, contracts or engagements of the bank or for assessments to restore impairments in the capital of the bank.

History: 1995 a. 336.

221.0319 Real estate. (1) PURPOSES FOR WHICH REAL ESTATE MAY BE HELD. A bank may purchase, lease, hold and convey only the following types of real estate:

(a) Real estate necessary for the convenient transaction of its business, including facilities connected with the office, furniture, equipment and fixtures. A bank may include with its banking offices, other facilities to rent as a source of income. A bank may also invest in the stocks, bonds or obligations of a bank building corporation. A bank's investment under this paragraph or its liability for it may not exceed in the aggregate 60% of the bank's capital.

(b) Real estate conveyed to the bank in satisfaction of debts previously contracted in the course of the bank's business.

(c) Real estate purchased at sale on judgments, decrees or mortgage foreclosures under securities held by the bank, but a bank may not bid at a sale a larger amount than is necessary to satisfy its debts and costs.

(d) Subject to the approval of the division, real estate purchased and held for the purpose of providing needed housing accommodations for its essential employees who are relocated by the bank, including purchasing the former residence of the relocated, essential employee.

(e) Real estate acquired or held for such other purposes as may be approved by the division, subject to s. 221.0321.

(2) TIME LIMITATION. Real estate acquired under sub. (1) (b), (c) or (d) may not be held for more than 5 years, unless an extension is granted by the division. If an application for an extension is denied, the real estate must be sold at a private or public sale within one year after the denial of the application. This section does not prevent a bank from lending money secured by real estate as provided by law. Real estate may be conveyed under the signature of an officer of the bank.

(3) HOLDING COMPANIES. Subject to sub. (1) (a), a bank may convey real estate to an entity engaged solely in holding property of the bank, to a bank holding company, as defined in 12 USC

1841 (a), of which the bank is a subsidiary or to any other subsidiary of that bank holding company. A liability of the entity holding property of the bank, bank holding company or subsidiary of the bank holding company to the bank that results from a conveyance under this subsection is not subject to the limitation under s. 221.0320 (1).

History: 1995 a. 336.

221.0320 Limit of loans and investments. (1) IN GENERAL. Except as provided in subs. (2) to (8) and s. 221.0319 (3), the total liabilities of any person, other than a municipal corporation, to a bank for money borrowed may not, at any time, exceed 20% of the capital of the bank. In determining compliance with this section, the total liabilities of a partnership includes the liabilities of the general partners of the partnership, computed individually as to each general partner on the basis of his or her direct liability.

(2) WAREHOUSE RECEIPTS AND CERTAIN BONDS AND NOTES. The percentage limitation under sub. (1) is 50% of the bank's capital, if the liabilities under sub. (1) are limited to the following types of liabilities:

(a) A liability secured by warehouse receipts issued by warehouse keepers licensed and bonded in this state under ss. 99.02 and 99.03 or under the federal bonded warehouse act or holding a license under s. 126.26, if all of the following requirements are met:

1. The receipts cover readily marketable nonperishable staples.

2. The staples are insured, if it is customary to insure the staples.

3. The market value of the staples is not, at any time, less than 140% of the face amount of the obligation.

(b) A liability in the form of a note or bond that meets any of the following qualifications:

1. The note or bond is secured by not less than a like amount of bonds or notes of the United States issued since April 24, 1917, or certificates of indebtedness of the United States.

2. The note or bond is secured or covered by guarantees or by commitments or agreements to take over, or to purchase the bonds or notes, and the guarantee, commitment or agreement is made by a federal reserve bank, the federal small business administration, the federal department of defense or the federal maritime commission.

3. The note or bond is secured by mortgage or trust deeds insured by the federal housing administrator.

(3) OBLIGATIONS OF CERTAIN LOCAL GOVERNMENTAL UNITS. (a) In this subsection, "local governmental unit" has the meaning given in s. 16.97 (7).

(b) Except as otherwise provided in this subsection, the total liabilities of a local governmental unit to a bank for money borrowed may not, at any time, exceed 25% of the capital of the bank.

(c) Liabilities in the form of revenue obligations of a local governmental unit are subject to the limitations provided in par. (b). In addition, a bank is permitted to invest in a general obligation of that local governmental unit in an amount that will bring the combined total of the general obligations and revenue obligations of a single local governmental unit to a sum not in excess of 50% of the capital of the bank.

(d) If the liabilities of the local governmental unit are in the form of bonds, notes or other evidences of indebtedness that are a general obligation of a local governmental unit in this state, the total liability of the local governmental unit may not exceed 50% of the capital of the bank.

(e) The total amount of temporary borrowings of any local governmental unit maturing within one year after the date of issue may not exceed 60% of the capital of the bank. Temporary borrowings and longer−term general obligation borrowings of a single local governmental unit in this state may be considered separately in arriving at the limitations provided in this subsection.

(4) OBLIGATIONS OF CERTAIN INTERNATIONAL ORGANIZATIONS; OTHER FOREIGN BONDS. A bank may purchase bonds offered for sale by the International Bank for Reconstruction and Redevelopment and the Inter−American Development Bank or such other foreign bonds as may be approved under rules established by the division. At no time shall the aggregate investment in any of these bonds issued by a single issuer exceed 10% of the capital of such bank.

(5) FOREIGN NATIONAL GOVERNMENT BONDS. A bank may invest in general obligation bonds issued by any foreign national government if the bonds are payable in American funds. The aggregate investment in these foreign bonds may not exceed 3% of the capital of the bank, except that this limitation does not apply to bonds of the Canadian government and Canadian provinces that are payable in American funds.

(6) DEPOSITS. A bank may invest in time deposits and certificates of deposit of other financial institutions in an amount not to exceed the following:

(a) In each domestic insured U.S. bank, including its offshore branches, and in each domestic insured savings and loan association, savings bank or credit union, 20% of capital or, in domestic insured financial institutions including their offshore branches designated by the board of directors, 50% of capital.

(b) In each uninsured bank or foreign bank, including its domestic branches, and in any other savings and loan association, savings bank or credit union, 20% of capital.

(7) LIMITS ESTABLISHED BY BOARD. (a) A bank may not make or renew a loan or loans, the aggregate total of which exceeds the level established by the board of directors without being supported by a signed financial statement unless the loan is secured by collateral having a value in excess of the amount of the loan. A signed financial statement furnished by the borrower to a bank in compliance with this paragraph must be renewed annually as long as the loan or any renewal of the loan remains unpaid and is subject to this paragraph.

(b) A loan or a renewal of a loan made by a bank in compliance with par. (a), without a signed financial statement, may be treated by the bank as entirely independent of any secured loan made to the same borrower if the loan does not exceed the limitations provided in this section.

(8) EXCEPTIONS. This section does not apply to any of the following:

(a) A liability that is secured by not less than a like amount of direct obligations of the United States which will mature not more than 18 months after the date such liabilities to the bank are entered into.

(b) A liability that is a direct obligation of the United States or this state, or an obligation of any governmental agency of the United States or this state, that is fully and unconditionally guaranteed by the United States or this state.

(c) A liability in the form of a note, debenture or certificate of interest of the Commodity Credit Corporation.

(d) A liability in the form of a note or debenture issued by the Federal National Mortgage Association or the export−import bank of Washington.

(e) A liability in the form of a note, debenture or bond issued by the federal home loan bank.

(f) A liability created by the discounting of bills of exchange drawn in good faith against actually existing values or the discounting of commercial or business paper actually owned by the person negotiating the same.

History: 1995 a. 336; 2001 a. 16; 2003 a. 33.

Cross−reference: See also ch. DFI−Bkg 18, Wis. adm. code.

221.0321 Other loans and investments. (1) PERMITTED LENDING. Except as provided in sub. (3), a bank may lend under this subsection, through the bank or a subsidiary of the bank, to all borrowers from the bank and all of its subsidiaries, an aggregate amount not to exceed the percentage of its capital established by

the division under sub. (3). Neither a bank nor any subsidiary of the bank may lend to any borrower, under this subsection and any other law or rule, an amount that would result in an aggregate amount for all loans to that borrower that exceeds the percentage of the bank's capital established under sub. (3). A bank or its subsidiary may take an equity position or other form of interest as security in a project funded through these loans. A transaction by a bank or its subsidiary under this subsection requires prior approval by the board of directors of the bank or its subsidiary, respectively. Except as provided in sub. (3), these loans are not subject to s. 221.0326 or to classification as losses, for a period of 2 years from the date of each loan.

(2) PERMITTED INVESTMENTS. Except as provided in sub. (3), a bank may invest under this subsection, through the bank or subsidiary of the bank, amounts not to exceed, in the aggregate, that percentage of its capital established by the division under sub. (3) in equity positions, such as profit−participation projects. A bank may take an investment position in a project with respect to which it is also a lender. The bank shall limit its liability as an investor in a specific project under this subsection to an amount not exceeding the amount of its investment in that project. For purposes of calculating the bank's aggregate investment under this subsection, the amount of each investment shall be established as of the date that the investment is made. A transaction by a bank under this subsection requires prior approval by the board of directors of the bank and shall be disclosed to the shareholders of the bank prior to each annual meeting of the shareholders.

(3) LIMITS ESTABLISHED BY THE DIVISION. The division shall establish for each bank the applicable percentage, not to exceed 20%, under sub. (1) and the applicable percentage, not to exceed 20%, under sub. (2). The division may withdraw or suspend a percentage established under this subsection and, in such case, may specify how outstanding loans or investments shall be treated by the bank or its subsidiary. Among the factors that the division may consider in establishing, withdrawing or suspending a percentage under this subsection are the bank's capital, assets, management and liquidity ratio, and capital ratio.

(4) RECORD−KEEPING REQUIREMENTS. At the time of making a loan or investment, the bank or its subsidiary shall note in its records whether it is made under sub. (1) or (2). The forms of security for loans under sub. (1) and the forms of investment under sub. (2) shall be as approved by the division by rule.

(5) CERTAIN SECURED LOANS. A bank may make loans secured by assignment or transfer of stock certificates or other evidence of the borrower's ownership interest in a corporation formed for the cooperative ownership of real estate. Sections 846.10 and 846.101, as they apply to a foreclosure of a mortgage involving a one−family residence, apply to a proceeding to enforce the lender's rights in security given for a loan under this subsection. The division shall promulgate joint rules with the office of credit unions that establish procedures for enforcing a lender's rights in security given for a loan under this subsection.

(6) INVESTMENTS IN OTHER FINANCIAL INSTITUTIONS. In addition to the authority granted under s. 221.1201 and subject to the limitations of sub. (3), a bank may invest in other financial institutions.

History: 1995 a. 336; 1997 a. 35; 1999 a. 9; 2003 a. 33.
Cross−reference: See also ch. DFI−Bkg 18, Wis. adm. code.

221.0322 Additional banking authority. (1) OTHER PERMITTED ACTIVITIES OR POWERS. Subject to any regulatory approval required by law and subject to sub. (2) and s. 221.0315 (2), a bank, directly or through a subsidiary of the bank, may undertake any activity, exercise any power or offer any financially related product or service in this state that any other provider of financial products or services may undertake, exercise or provide or that the division finds to be financially related.

(2) DIVISION RULES. The activities, powers, products and services that may be undertaken, exercised or offered by banks under sub. (1) are limited to those specified by rule of the division and, with respect to loans under s. 221.0321 (1) and investments under s. 221.0321 (2), are subject to the limitations set forth in s. 221.0321. The division may direct any bank to cease any activity, the exercise of any power or the offering of any product or service authorized by rule under this subsection. Among the factors that the division may consider in so directing a bank are the bank's capital, assets, management and liquidity ratio, and capital ratio.

History: 1995 a. 336.
Cross−reference: See also ch. DFI−Bkg 16, Wis. adm. code.

221.0323 Bank purchase of its own stock. (1) IN GENERAL. A bank may be the holder or purchaser of not more than 10% of its capital stock, capital notes or debentures, except as provided in sub. (2).

(2) DEBTS PREVIOUSLY CONTRACTED. A bank may be the holder or purchaser of more than 10% of its capital stock, capital notes or debentures if the purchase is necessary to prevent loss upon a debt previously contracted in good faith. Stock, notes or debentures purchased under this subsection may not be held by the bank for more than 6 months if the stock, notes or debentures can be sold for the amount of the claim of the bank against the same, and they must be sold for the best price obtainable within one year, or they shall be canceled, and shall then amount to a reduction of the capital stock, capital notes or debentures. If the reduction reduces the capital stock below the minimum required by law, the bank's capital stock must be increased to the amount required by law.

(3) USE AS SECURITY. A bank may not loan any part of its capital, surplus or deposits on the capital stock, capital notes or debentures of its own bank as collateral security.

(4) STATUS OF TREASURY SHARES. Treasury shares are issued shares but not outstanding shares. All shares acquired by a bank after July 1, 1996, constitute treasury shares unless any of the following conditions exists:

(a) The articles of incorporation prohibit treasury shares.

(b) The board of directors, by resolution, cancels the acquired shares, in which event the shares are restored to the status of authorized but unissued shares.

(5) PROHIBITION IN ARTICLES OF INCORPORATION. If the articles of incorporation prohibit treasury shares, all of its own shares acquired by the bank shall be restored to the status of authorized but unissued shares.

(6) SAVING CLAUSE. Treasury shares existing on July 1, 1996, remain treasury shares until disposed of, canceled or restored to the status of authorized but unissued shares by action of the board of directors or shareholders.

History: 1995 a. 336.

221.0324 Assets not to be pledged as security. (1) IN GENERAL. A bank or bank officer may not give preference to any depositor or creditor by pledging the assets of the bank as collateral security, except to secure deposits where otherwise permitted or required by law for a particular depositor, to secure repurchase agreements entered into by the bank or as otherwise provided under this section.

(2) GOVERNMENT DEPOSITS. A bank may deposit with the treasurer of the United States, or in the custody of federal reserve banks or branches of the federal reserve banks designated by a court, so much of its assets, not exceeding its capital and surplus, as may be necessary to do any of the following:

(a) To qualify as a depository for postal savings funds and other government deposits.

(b) To qualify as a depository for bankrupt estates, debtors, corporations and railroads under reorganization under federal bankruptcy laws and receivers, trustees and other officers thereof appointed by any U.S. district court or by any bankruptcy court of the United States. In acting as a depository under this paragraph, a state bank has all the rights and privileges granted to banking institutions under section 61 of the U.S. bankruptcy act, as amended.

(3) TEMPORARY PURPOSES. A bank may borrow money for temporary purposes, and may pledge assets of the bank not exceeding 50% in excess of the amount borrowed as collateral security for this borrowing, if the board of directors has adopted a resolution designating the lender from which the money may be borrowed, the maximum amount for which the bank may become indebted at any one time and the names of the officers who may sign the promissory note evidencing the indebtedness.

(4) BOND REQUIREMENTS. A bank that is authorized to exercise trust powers and that complies with s. 223.02 is exempt from furnishing the bond specified in s. 221.0316 and is entitled to the same exemption as to making and filing any oath or giving any bond or security as is conferred on trust company banks by s. 223.03 (6) (a).

(5) PLEDGES TO FEDERAL RESERVE BOARD. A bank may pledge assets in an amount not to exceed 4 times the amount of its capital to the federal reserve bank, as fiscal agent of the United States, of the federal reserve district in which it is located, except that no such pledge shall be made in excess of the amount of its capital without the consent of the division.

(6) BORROWING TO RELOAN. If a bank is borrowing habitually for the purpose of reloaning, the division may require the bank to repay money so borrowed.

(7) REDISCOUNTING AND ENDORSING NEGOTIABLE NOTES. This section does not prevent a bank from rediscounting in good faith and endorsing its negotiable notes, if authorized by a recorded resolution of the board of directors.

(8) CERTIFICATES OF DEPOSIT. A bank may not issue its certificate of deposit for the purpose of borrowing money. A bank may not make partial payments upon certificates of deposit.

(9) PLEDGES TO AND LOANS FROM THE FEDERAL HOME LOAN BANK. Notwithstanding sub. (3), a bank that is a member of the federal home loan bank may borrow money from the federal home loan bank for a term not to exceed 20 years and may pledge bank assets having a value that does not exceed 2 times the amount of the loan as collateral to secure the loan. Total assets pledged under this subsection may not exceed 4 times the amount of the bank's capital.

History: 1995 a. 336; 2001 a. 102.

221.0325 Certified checks. An officer, employee or agent of a bank may not certify a check, draft or order drawn upon the bank unless the person, firm or corporation drawing the check, draft or order has on deposit with the bank at the time the check, draft or order is certified an amount of money equal to the amount specified in the check, draft or order. A check, draft or order so certified by the duly authorized officer, employee or agent is a valid obligation against the bank.

History: 1995 a. 336.

221.0326 Bad debts. All debts due a bank, on which interest is past due and unpaid for a period of 12 months, shall be considered bad debts and shall be charged off to the profit and loss account at the expiration of one year from the date on which the debt became past due, unless the debts are well secured or in process of collection.

History: 1995 a. 336.

221.0327 Surplus fund. (1) CHARGES TO SURPLUS ACCOUNT. A loss sustained by a bank in excess of its undivided profits may be charged to its surplus account, if its surplus fund is thereafter reimbursed from its earnings. Cash dividends on capital stock may not be declared or paid by the bank in excess of 50% of its net earnings until its surplus fund is fully restored to the amount that was in the surplus account immediately preceding the charge of the loss.

(2) REIMBURSEMENT OF SURPLUS AND RESTRICTED DIVIDENDS. If the surplus fund of a bank is in excess of 100% of its capital stock and if losses charged against it do not reduce the surplus account to an amount less than 100% of its capital stock, the bank is not subject to sub. (1) with respect to reimbursement of the surplus account and with respect to restricted dividends on capital stock.

History: 1995 a. 336.

221.0328 Dividends. (1) WHEN PERMITTED. Except as provided in sub. (2), the board of directors of a bank may declare and pay a dividend from its undivided profits in an amount they consider expedient. The board of directors shall provide for the payment of all expenses, losses, required reserves, taxes, and interest accrued or due from the bank before the declaration of dividends from undivided profits. If dividends declared and paid in either of the 2 immediately preceding years exceeded net income for either of those 2 years respectively, the bank may not declare or pay any dividend in the current year that exceeds year−to−date net income except with the written consent of the division.

(2) LIABILITY OF SHAREHOLDERS. A bank's dividends may not in any way impair or diminish the capital of the bank other than by reducing undivided profits. If a dividend is paid that does not comply with this section, every shareholder receiving the dividend is liable to restore the full amount of the dividend unless the capital is subsequently made good.

(3) LIABILITY OF DIRECTORS. If the board of directors of a bank pays dividends when the bank is insolvent or in danger of insolvency, or not having reason to believe that there were sufficient undivided profits to pay the dividends, the members of the board of directors are jointly and severally liable to the creditors of the bank at the time of declaring dividends in an amount equal to twice the amount of the dividends.

History: 1995 a. 336.

SUBCHAPTER IV

NAME

221.0401 State bank. Every bank incorporated under this chapter shall be known as a state bank.

History: 1995 a. 336.

221.0402 Use of "bank". (1) USE OF "BANK". Except as provided in sub. (2), a person who is engaged in business in this state, who is not subject to supervision and examination by the division, and who is not required to make reports to the division under this chapter, may not use the term "bank", in any form upon any office sign at the place where the business is transacted. Except as provided in sub. (2), the person may not use or circulate letterheads, billheads, blank notes, blank receipts, certificates, circulars, or any written or printed or partly written and partly printed paper, containing an artificial or corporate name, or other words, that indicates that the person's business is the business of a bank.

(2) EXCEPTIONS. (a) A check sold by a bank chartered under the laws of another state or a foreign country or a national bank authorized to do business in another state may use any form of "bank", if the bank is licensed under ch. 217.

(b) Mortgage bankers licensed under s. 224.72 may use the designation "mortgage banker".

(c) A savings bank organized under ch. 214 may use the designation "savings bank".

(3) ENFORCEMENT. Violations of this section may be enforced by the division under s. 220.02 (2).

History: 1995 a. 336; 1997 a. 35; 2009 a. 2.

221.0403 Bank names. (1) IN GENERAL. Except as provided in subs. (2) and (3), the name of a bank must be approved by the division and must be distinguishable upon the records of the division from all of the following names:

(a) The name of another state bank organized under this chapter.

(b) The name of a national bank or foreign bank authorized to transact business in this state.

(2) EXCEPTIONS. A bank may apply to the division for the authority to use a name that is not distinguishable upon the records

of the division from one or more of the names described in sub. (1). The division may authorize the use of the name if any of the following occurs:

(a) The other bank consents to the use in writing and submits an undertaking, in a form satisfactory to the division, to change its name to a name that is distinguishable upon the records of the division from the name of the applicant.

(b) The applicant delivers to the division a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(3) USE OF SAME NAME. A bank may use the name that is used in this state by another bank organized under this chapter or authorized to transact business in this state if the bank proposing to use the name has done any of the following:

(a) Merged with the other bank.

(b) Been formed by reorganization of the other bank.

(c) Acquired all or substantially all of the assets, including the name, of the other bank.

(4) USE OF "SAVINGS". A bank name may not contain the word "savings".

History: 1995 a. 336.

221.0404 Deceptive or misleading use of bank name, logo, or symbol. (1) USE OF BANK NAME, LOGO, OR SYMBOL FOR MARKETING PURPOSES. Except as provided in sub. (3), no person may use the name, logo, or symbol, or any combination thereof, of a bank, or any name, logo, or symbol, or any combination thereof, that is deceptively similar to the name, logo, or symbol of a bank, in any marketing material provided to or solicitation of another person in a manner such that a reasonable person may believe that the marketing material or solicitation originated from or is endorsed by the bank or that the bank is responsible for the marketing material or solicitation.

(2) ENFORCEMENT AND PENALTIES. The division shall direct any person the division finds to have violated sub. (1) to cease and desist from violating sub. (1). If a person violates sub. (1) after receiving such direction, the division may impose a forfeiture of up to $1,000 for each violation. Each instance in which marketing material is provided to another person or solicitation of another person takes place in violation of sub. (1) constitutes a separate violation. This subsection does not affect the availability of any remedies otherwise available to a bank.

(3) EXCEPTIONS. Subsection (1) does not apply to a person who uses the name, logo, or symbol of a bank in any of the following circumstances:

(a) With the consent of the bank.

(b) If the person is the bank, an affiliate of the bank, or an agent of the bank.

History: 2003 a. 262.

SUBCHAPTER V

SHARES AND SHAREHOLDERS

221.0501 Quorum and voting requirements for voting groups. (1) QUORUM REQUIREMENT. Shares entitled to vote as a separate voting group may take action on a matter at a meeting only if a quorum of those shares exists with respect to that matter. Unless the articles of incorporation, the bylaws or this chapter provide otherwise, a majority of the votes entitled to be cast on the matter by the voting group constitutes a quorum of that voting group for action on that matter.

(2) METHOD OF DETERMINING QUORUM. If a share is represented for any purpose at a meeting, other than for the purpose of objecting to holding the meeting or transacting business at the meeting, the share is considered present for purposes of determining whether a quorum exists for the remainder of the meeting and for any adjournment of that meeting, unless a new record date is or must be set for that adjourned meeting.

(3) SIMPLE MAJORITY VOTING. If a quorum exists, action on a matter by a voting group is approved if the votes cast within the voting group favoring the action exceed the votes cast opposing the action, unless the articles of incorporation, the bylaws or this chapter require a greater number of affirmative votes.

History: 1995 a. 336.

221.0502 Greater or lower quorum or greater voting requirements. (1) METHOD OF SPECIFYING DIFFERENT REQUIREMENTS. The articles of incorporation may provide, or authorize the bylaws under s. 221.0503 to provide, for a greater or lower quorum requirement or a greater voting requirement for shareholders or voting groups of shareholders than is provided by this chapter.

(2) AMENDMENTS TO ARTICLES OF INCORPORATION TO CHANGE REQUIREMENTS. An amendment to the articles of incorporation that adds, changes or deletes a greater or lower quorum requirement or a greater voting requirement must meet the same quorum requirement and be adopted by the same vote and voting groups required to take action under the quorum and voting requirements then in effect.

History: 1995 a. 336.

221.0503 Bylaw fixing quorum or voting requirements for shareholders. (1) IN GENERAL. If authorized by the articles of incorporation, the shareholders may adopt or amend a bylaw that fixes a greater or lower quorum requirement or a greater voting requirement for shareholders or voting groups of shareholders than is provided by this chapter. The adoption or amendment of a bylaw that adds, changes or deletes a greater or lower quorum requirement or a greater voting requirement for shareholders must meet the same quorum requirement and be adopted by the same vote and voting groups required to take action under the quorum and voting requirement then in effect.

(2) SHAREHOLDER APPROVAL. A bylaw that fixes a greater or lower quorum requirement or a greater voting requirement for shareholders under sub. (1) may not be adopted, amended or repealed by the board of directors.

History: 1995 a. 336.

221.0504 Number of shareholders. (1) METHOD OF COUNTING. For purposes of this chapter, any of the following constitutes one shareholder if identified as a shareholder in a bank's current record of shareholders:

(a) Three or fewer co−owners.

(b) An entity.

(c) The trustees, guardians, custodians or other fiduciaries of a single trust, estate or account.

(2) SUBSTANTIALLY SIMILAR NAMES. For purposes of this chapter, shareholdings registered in substantially similar names constitute one shareholder if it is reasonable to believe that the names represent the same person.

History: 1995 a. 336.

221.0505 Issued and outstanding shares. (1) ISSUED AND OUTSTANDING SHARES. A bank may issue the number of shares of each class or series authorized by the articles of incorporation. Shares that are issued are outstanding shares until they are reacquired, redeemed, converted or canceled.

(2) SHARE REQUIREMENTS. At all times that shares of the bank are outstanding, there must be outstanding one or more shares that together have unlimited voting rights and one or more shares, which may be the same share or shares as those with unlimited voting rights, that together are entitled to receive the net assets of the bank upon dissolution.

History: 1995 a. 336.

221.0506 Fractional shares. (1) ISSUANCE AND DISPOSITION. A bank may do any of the following:

(a) Issue fractions of a share or pay in money the value of fractions of a share.

(b) Arrange for disposition of fractional shares by the shareholders.

(2) RIGHTS OF HOLDERS OF FRACTIONAL SHARES. The holder of a fractional share may exercise the rights of a shareholder, including the right to vote, to receive dividends and to participate in the assets of the bank upon liquidation.

History: 1995 a. 336.

221.0507 Share dividends. (1) DEFINITION. In this section, "share dividend" means shares issued proportionally and without consideration to the bank's shareholders or to the shareholders of one or more classes or series.

(2) POWER TO ISSUE SHARE DIVIDENDS. Except as provided in sub. (3) and unless the articles of incorporation provide otherwise, a bank may issue share dividends.

(3) LIMITATIONS. (a) A bank may not issue shares of one class or series as a share dividend in respect of shares of another class or series unless any of the following is satisfied:

1. The articles of incorporation authorize the issuance.

2. A majority of the votes entitled to be cast by the class or series to be issued approve the issuance.

3. There are no outstanding shares of the class or series to be issued, as determined under par. (b).

(b) If a security is outstanding that is convertible into or carries a right to subscribe for or acquire shares of the class or series to be issued, the holder of the security is considered a holder of the class or series to be issued for purposes of making the determination under par. (a) 3.

(4) RECORD DATE. If the board of directors does not fix the record date for determining shareholders entitled to a share dividend, it is the date on which the board of directors authorizes the share dividend.

History: 1995 a. 336.

221.0508 Form and content of certificates. (1) CONTENTS. At a minimum, a share certificate shall state on its face all of the following:

(a) The name of the issuing bank and that the bank is organized under the laws of this state.

(b) The name of the person to whom issued.

(c) The number and class of shares and the designation of the series, if any, that the certificate represents.

(2) CLASSES AND SERIES REQUIREMENTS. If the issuing bank is authorized to issue different classes of shares or different series within a class, the front or back of each certificate shall contain any of the following:

(a) A summary of the designations, relative rights, preferences and limitations applicable to each class, and the variations in rights, preferences and limitations determined for each series and the authority of the board of directors to determine variations for future series.

(b) A conspicuous statement that the bank will furnish the shareholder the information described in par. (a) on request, in writing and without charge.

(3) SIGNATURE. (a) Each share certificate shall be signed either manually or in facsimile, by the officer or officers designated in the bylaws or by the board of directors.

(b) The validity of a share certificate is not affected if a person who signed the certificate no longer holds office when the certificate is issued.

History: 1995 a. 336.

221.0509 Restriction on transfer of shares and other securities. (1) DEFINITIONS. In this section:

(a) "Other securities" include securities that are convertible into or carry a right to subscribe for or acquire shares.

(b) "Transfer restriction" means a restriction on the transfer or registration of transfer of shares and other securities of a bank.

(2) PERMITTED PURPOSES OF RESTRICTIONS. (a) Except as provided in par. (b), the articles of incorporation, the bylaws, an agreement among shareholders and holders of other securities, or an agreement between shareholders and holders of other securities and the bank, may impose a transfer restriction on shares and other securities of the bank for any reasonable purpose, including any of the following:

1. Maintaining the bank's status under state or federal law when it is dependent on the number or identity of its shareholders.

2. Preserving exemptions under federal or state securities law.

(b) A transfer restriction may not affect shares and other securities issued before the restriction is adopted, unless the holders of the shares and other securities are parties to the transfer restriction agreement or vote in favor of the transfer restriction.

(3) ENFORCEABILITY. A transfer restriction is valid and enforceable against the holder or a transferee of the holder if the transfer restriction is authorized by this section and its existence is noted conspicuously on the front or back of the certificate. Unless so noted, a transfer restriction is not enforceable against a person who does not know of the transfer restriction.

(4) TYPES OF PERMITTED TRANSFER RESTRICTIONS. The transfer restrictions permitted under this section include transfer restrictions that do any of the following:

(a) Obligate the shareholder or holder of other securities first to offer the bank or other persons, whether separately, consecutively or simultaneously, an opportunity to acquire the restricted shares or other securities.

(b) Subject to the limitations of s. 221.0323, if applicable, obligate the bank or other persons, whether separately, consecutively or simultaneously, to acquire the restricted shares or other securities.

(c) Require the bank, the holders of a class of its shares or other securities or another person to approve the transfer of the restricted shares or other securities, if the requirement is not manifestly unreasonable.

(d) Prohibit the transfer of the restricted shares or other securities to designated persons or classes of persons, if the prohibition is not manifestly unreasonable.

History: 1995 a. 336.

221.0510 Preemptive rights. (1) DEFINITION. In this section, "other securities" has the meaning given in s. 221.0509 (1) (a).

(2) WHEN PREEMPTIVE RIGHTS EXIST. The shareholders or holders of other securities of a bank do not have a preemptive right to acquire the bank's unissued shares or other securities except to the extent provided in the articles of incorporation. If the articles of incorporation state that "the bank elects to have preemptive rights", or words of similar meaning, subs. (3) to (6) govern the preemptive rights, except to the extent that the articles of incorporation expressly provide otherwise.

(3) CONDITIONS FOR EXERCISE OF PREEMPTIVE RIGHTS. Except as provided in sub. (5), the shareholders or holders of other securities of the bank have a preemptive right, granted on uniform terms and conditions prescribed by the board of directors to provide a fair and reasonable opportunity to exercise the right, to acquire proportional amounts of the bank's unissued shares or other securities upon the decision of the board of directors to issue the shares or other securities, subject to the following conditions:

(a) Holders of shares or other securities with general voting rights have preemptive rights with respect to shares and other securities of any class with general voting rights.

(b) Holders of shares or other securities without preferential rights to distributions or assets have preemptive rights with respect to shares and other securities of any class without preferential rights to distributions or assets, except that holders of shares or other securities without general voting rights have no preemp-

tive rights with respect to shares or other securities of any class with general voting rights.

(4) WAIVER. A shareholder or holder of other securities may waive his or her preemptive right. A written waiver is irrevocable even if it is not supported by consideration.

(5) EXEMPTIONS. There is no preemptive right with respect to any of the following:

(a) Shares or other securities issued as compensation to directors, officers or employees of the bank or its affiliates.

(b) Shares or other securities issued to satisfy conversion or option rights created to provide compensation to directors, officers or employees of the bank or its affiliates.

(c) Shares or other securities authorized in articles of incorporation that are issued within 6 months after the effective date of incorporation.

(d) Shares or other securities sold for other than money or an obligation to pay money.

(e) Treasury shares.

(6) LAPSE OF PREEMPTIVE RIGHTS. If shares or other securities subject to preemptive rights are not acquired by shareholders or holders of other securities, the bank may issue the shares or other securities to any person for one year after being offered to shareholders or holders of other securities, at a consideration set by the board of directors that is not lower than the consideration set for the exercise of preemptive rights. An offer at a lower consideration or after the expiration of one year is subject to the preemptive rights of shareholders or holders of other securities.

History: 1995 a. 336.

221.0511 Annual meeting. (1) WHEN HELD. A bank shall hold a meeting of shareholders annually at a time stated in or fixed in accordance with the bylaws.

(2) WHERE HELD. A bank may hold the annual shareholders' meeting in or outside this state at the place stated in or fixed in accordance with the bylaws. If no place is stated in or fixed in accordance with the bylaws, the bank shall hold the annual meeting at its principal office.

(3) EFFECT OF FAILURE TO COMPLY. Failure to hold an annual meeting in one or more years does not affect the validity of any bank action.

History: 1995 a. 336.

221.0512 Special meeting. (1) WHEN REQUIRED. A bank shall hold a special meeting of shareholders if any of the following occurs:

(a) A special meeting is called by the board of directors or any person authorized by the articles of incorporation or bylaws to call a special meeting.

(b) The holders of at least 10% of all the votes entitled to be cast on an issue proposed to be considered at the proposed special meeting sign, date and deliver to the bank one or more written demands for the meeting describing one or more purposes for which it is to be held.

(2) RECORD DATE. If not otherwise fixed under s. 221.0517, the record date for determining shareholders entitled to demand a special meeting is the date that the first shareholder signs the demand.

(3) WHERE HELD. A bank may hold a special shareholders' meeting in or outside this state at the place stated in or fixed in accordance with the bylaws. If no place is stated in or fixed in accordance with the bylaws, the bank shall hold a special meeting at its principal office.

(4) LIMITATION ON BUSINESS CONDUCTED. Only business within the purpose described in the meeting notice required by s. 221.0514 (2) (b) may be conducted at a special shareholders' meeting.

History: 1995 a. 336.

221.0513 Shareholder action without a meeting. (1) PERMITTED METHODS. Action required or permitted by this chapter to be taken at a shareholders' meeting may be taken without a meeting in any of the following ways:

(a) Without action by the board of directors, by all shareholders entitled to vote on the action.

(b) If the articles of incorporation so provide, by shareholders who would be entitled to vote at a meeting those shares with voting power to cast not less than the minimum number or, in the case of voting by voting groups, numbers of votes that would be necessary to authorize or take the action at a meeting at which all shares entitled to vote were present and voted, except action may not be taken under this paragraph with respect to an election of directors for which shareholders may vote cumulatively under s. 221.0522.

(2) HOW DOCUMENTED. Action under sub. (1) must be evidenced by one or more written consents describing the action taken, signed by the number of shareholders necessary to take the action under sub. (1) (a) or (b) and delivered to the bank for inclusion in the bank records.

(3) EFFECTIVE DATE. Action taken under sub. (1) is effective when consents representing the required number of shares are delivered to the bank, unless the consent specifies a different effective date. Within 10 days after action taken under sub. (1) (b) is effective, the bank shall give notice of the action to shareholders who, on the record date determined under sub. (4), were entitled to vote on the action but whose shares were not represented on the written consent. The notice shall comply with s. 221.0103.

(4) RECORD DATE. If not otherwise fixed under s. 221.0518, the record date for determining shareholders entitled to take action without a meeting is the date that the first shareholder signs the consent under sub. (1).

(5) EFFECT OF WRITTEN CONSENT. A consent signed under this section has the effect of a meeting vote and may be described as such in any document.

(6) NOTICE REQUIREMENTS. If this chapter requires that notice of proposed action be given to shareholders who are not entitled to vote on the action and the action is to be taken under this section, the bank shall give those nonvoting shareholders written notice of the proposed action at least 10 days before the action becomes effective. The notice shall comply with s. 221.0103 and shall contain or be accompanied by the same material that, under this chapter, would have been required to be sent to nonvoting shareholders in a notice of meeting at which the proposed action would have been submitted to the shareholders for action.

History: 1995 a. 336; 1997 a. 146.

221.0514 Notice of meeting. (1) WHEN REQUIRED. A bank shall notify shareholders of the date, time and place of each annual and special shareholders' meeting not less than 10 days nor more than 60 days before the meeting date, unless a different time is provided by this chapter, the articles of incorporation or the bylaws. The notice shall comply with s. 221.0103. Unless this chapter or the articles of incorporation require otherwise, the bank is required to give notice only to shareholders entitled to vote at the meeting.

(2) CONTENT OF NOTICES. (a) Unless this chapter or the articles of incorporation require otherwise, notice of an annual meeting need not include a description of the purpose for which the meeting is called.

(b) Notice of a special meeting shall include a description of each purpose for which the meeting is called.

(3) RECORD DATE. If not otherwise fixed under s. 221.0517, the record date for determining shareholders entitled to notice of and to vote at an annual or special shareholders' meeting is the close of business on the day before the first notice is given to shareholders.

(4) ADJOURNMENT. (a) Unless the bylaws require otherwise and except as provided in par. (b), if an annual or special share-

holders' meeting is adjourned to a different date, time or place, the bank is not required to give notice of the new date, time or place if the new date, time or place is announced at the meeting before adjournment.

(b) If a new record date for an adjourned meeting is or must be fixed under s. 221.0517 (3), the bank shall give notice of the adjourned meeting under this section to persons who are shareholders as of the new record date.

History: 1995 a. 336.

221.0515 Disclosure to shareholders. The bank shall include with each notice of an annual meeting delivered to shareholders copies for the 2 preceding fiscal years of the bank's balance sheets, statements of profit and loss and reconcilements of the bank's loan loss reserve.

History: 1995 a. 336.

221.0516 Waiver of notice. (1) WRITTEN WAIVER. A shareholder may waive any notice required by this chapter, the articles of incorporation or the bylaws before or after the date and time stated in the notice. The waiver shall be in writing and signed by the shareholder entitled to the notice and contain the same information that would have been required in the notice under any applicable provisions of this chapter, except that the time and place of meeting need not be stated. The shareholder shall deliver the waiver to the bank for inclusion in the bank records.

(2) WAIVER BY ATTENDANCE. A shareholder's attendance at a meeting, in person or by proxy, waives objection to all of the following:

(a) Lack of notice or defective notice of the meeting, unless the shareholder at the beginning of the meeting or promptly upon arrival objects to holding the meeting or transacting business at the meeting.

(b) Consideration of a particular matter at the meeting that is not within the purpose described in the meeting notice, unless the shareholder objects to considering the matter when it is presented.

History: 1995 a. 336.

221.0517 Record date. (1) MANNER OF FIXING DATE. The bylaws may fix or provide the manner of fixing a future date as the record date for one or more voting groups in order to determine the shareholders entitled to notice of a shareholders' meeting, to demand a special meeting, to vote or to take any other action. If the bylaws do not fix or provide for fixing a record date, the board of directors may fix a future date as the record date.

(2) LIMIT ON DATE. A record date fixed under this section may not be more than 70 days before the meeting or action requiring a determination of shareholders.

(3) EFFECT OF ADJOURNMENT. (a) Except as provided in par. (b), a determination of shareholders entitled to notice of or to vote at a shareholders' meeting is effective for any adjournment of the meeting unless the board of directors fixes a new record date, which it shall do if the meeting is adjourned to a date more than 120 days after the date fixed for the original meeting.

(b) If a court orders a meeting adjourned to a date more than 120 days after the date fixed for the original meeting, it may provide that the original record date continues in effect or it may fix a new record date.

History: 1995 a. 336.

221.0518 Shareholders' list for meeting. (1) PREPARATION OF LIST. After fixing a record date for a meeting, a bank shall prepare a list of the names of all its shareholders who are entitled to notice of a shareholders' meeting. The list shall be arranged by class or series of shares and show the address of and number of shares held by each shareholder.

(2) AVAILABILITY PRIOR TO MEETING. The bank shall make the shareholders' list available for inspection by any shareholder, beginning 2 business days after notice of the meeting is given for which the list was prepared and continuing to the date of the meeting, at the bank's principal office or at a place identified in the meeting notice in the city where the meeting will be held. A shareholder or his or her agent or attorney may, on written demand, inspect and copy the list, during regular business hours and at his or her expense, during the period that it is available for inspection under this subsection.

(3) AVAILABILITY AT MEETING. The bank shall make the shareholders' list available at the meeting. A shareholder or his or her agent or attorney may inspect the list at any time during the meeting or an adjournment.

(4) REFUSAL TO ALLOW INSPECTION. If the bank refuses to allow a shareholder or his or her agent or attorney to inspect the shareholders' list before or at the meeting, or to copy the list as permitted by sub. (2), on petition of the shareholder, the circuit court for the county where the bank's principal office is located may, after notice to the bank and an opportunity to be heard, order the inspection or copying at the bank's expense. The court may also postpone the meeting for which the list was prepared until the inspection or copying is complete.

(5) EFFECT OF FAILURE TO COMPLY. Refusal or failure to prepare or make available the shareholders' list does not affect the validity of action taken at the meeting.

History: 1995 a. 336.

221.0519 Proxies. (1) EXERCISE OF VOTE. A shareholder may vote his or her shares in person or by proxy.

(2) METHOD OF APPOINTING A PROXY. A shareholder may appoint a proxy to vote or otherwise act for the shareholder by signing an appointment form, either personally or by his or her attorney−in−fact. An appointment of a proxy may be in durable form as provided in s. 244.04.

(3) WHEN PROXY IS EFFECTIVE. An appointment of a proxy is effective when received by an officer or agent of the bank authorized to tabulate votes. An appointment is valid for 11 months from the date of its signing unless a different period is expressly provided in the appointment form.

(4) REVOCABILITY. (a) An appointment of a proxy is revocable by the shareholder unless the appointment form conspicuously states that it is irrevocable and the appointment is coupled with an interest. Appointments coupled with an interest include the appointment of any of the following:

1. A pledgee.

2. A person who purchased or agreed to purchase the shares.

3. An employee or officer of the bank whose employment contract requires the appointment.

4. A party to a voting agreement created under s. 221.0524.

(b) An appointment made irrevocable under par. (a) is revoked when the interest with which it is coupled is extinguished.

(5) DEATH OR INCAPACITY OF SHAREHOLDER. The death or incapacity of the shareholder appointing a proxy does not affect the right of the bank to accept the proxy's authority unless the officer or agent of the bank authorized to tabulate votes receives notice of the death or incapacity before the proxy exercises his or her authority under the appointment.

(6) REVOCATION IN CERTAIN CASES INVOLVING TRANSFERS FOR VALUE. Notwithstanding sub. (4), a transferee for value of shares subject to an irrevocable appointment may revoke the appointment if the transferee did not know of its existence when he or she acquired the shares and the existence of the irrevocable appointment was not noted conspicuously on the certificate representing the shares or, if the shares are without certificates, on the information statement for the shares.

(7) EFFECT OF PROXY. Subject to s. 221.0521 and to any express limitation on the proxy's authority appearing on the face of the appointment form, a bank may accept the proxy's vote or other action as that of the shareholder making the appointment.

History: 1995 a. 336; 2009 a. 319.

221.0520 Shares held by nominees. (1) ESTABLISHMENT OF PROCEDURES. A bank may establish a procedure by which the

beneficial owner of shares that are registered in the name of a nominee is recognized by the bank as the shareholder. The extent of this recognition may be determined in the procedure.

(2) SCOPE OF PROCEDURES. The procedure may set forth all of the following:

(a) The types of nominees to which it applies.

(b) The rights or privileges that the bank recognizes in a beneficial owner.

(c) The manner in which the nominee selects the procedure.

(d) The information that must be provided when the procedure is selected.

(e) The period for which selection of the procedure is effective.

(f) Other aspects of the rights and duties created.

History: 1995 a. 336.

221.0521 Acceptance of instruments showing shareholder action. (1) WHEN NAME CORRESPONDS TO THAT OF A SHAREHOLDER. If the name signed on a vote, consent, waiver or proxy appointment corresponds to the name of a shareholder, the bank, if acting in good faith, may accept the vote, consent, waiver or proxy appointment and give it effect as the act of the shareholder.

(2) WHEN NAME DOES NOT CORRESPOND TO THAT OF A SHAREHOLDER. If the name signed on a vote, consent, waiver or proxy appointment does not correspond to the name of its shareholder, the bank, if acting in good faith, may accept the vote, consent, waiver or proxy appointment and give it effect as the act of the shareholder if any of the following applies:

(a) The shareholder is an entity and the name signed purports to be that of an officer or agent of the entity.

(b) The name signed purports to be that of a personal representative, guardian, or conservator representing the shareholder and, if the bank requests, evidence of fiduciary status acceptable to the bank is presented with respect to the vote, consent, waiver, or proxy appointment.

(c) The name signed purports to be that of a receiver or trustee in bankruptcy of the shareholder and, if the bank requests, evidence of this status acceptable to the bank is presented with respect to the vote, consent, waiver or proxy appointment.

(d) The name signed purports to be that of a pledgee, beneficial owner, or attorney−in−fact of the shareholder and, if the bank requests, evidence acceptable to the bank of the signatory's authority to sign for the shareholder is presented with respect to the vote, consent, waiver or proxy appointment.

(e) Two or more persons are the shareholder as cotenants or fiduciaries and the name signed purports to be the name of at least one of the co−owners and the person signing appears to be acting on behalf of all co−owners.

(3) WHEN REJECTION PERMITTED. The bank may reject a vote, consent, waiver or proxy appointment if the officer or agent of the bank who is authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the shareholder.

(4) EFFECT ON LIABILITY. The bank and its officer or agent who accepts or rejects a vote, consent, waiver or proxy appointment in good faith and in accordance with this section are not liable in damages to the shareholder for the consequences of the acceptance or rejection.

(5) EFFECT ON VALIDITY OF ACTION. Bank action based on the acceptance or rejection of a vote, consent, waiver or proxy appointment under this section is valid unless a court of competent jurisdiction determines otherwise.

History: 1995 a. 336; 2001 a. 102.

221.0522 Voting for directors; cumulative voting. (1) PLURALITY VOTE REQUIRED. Unless otherwise provided in the articles of incorporation, directors are elected by a plurality of the votes cast by the shares entitled to vote in the election at a meeting at which a quorum is present. In this subsection, "plurality" means that the individuals with the largest number of votes are elected as directors up to the maximum number of directors to be chosen at the election.

(2) CUMULATIVE VOTING PERMITTED. Shareholders do not have a right to cumulate their votes for directors unless the articles of incorporation provide for cumulative voting. If the articles of incorporation contain a statement indicating that all or a designated voting group of shareholders are entitled to cumulate their votes for directors, the shareholders so designated are entitled to multiply the number of votes that they are entitled to cast by the number of directors for whom they are entitled to vote and cast the product for a single candidate or distribute the product among 2 or more candidates.

(3) WHEN CUMULATIVE VOTING MAY BE USED. (a) Except as provided in par. (b), shares entitled under sub. (2) to vote cumulatively may not be voted cumulatively at a particular meeting unless any of the following notice requirements is satisfied:

1. The meeting notice or proxy statement accompanying the notice states conspicuously that cumulative voting is authorized.

2. A shareholder who has the right to cumulate his or her votes gives notice that complies with s. 221.0103 to the bank not less than 48 hours before the time set for the meeting of his or her intent to cumulate his or her votes during the meeting.

(b) If one shareholder gives notice under par. (a) 2., all other shareholders in the same voting group participating in the election are entitled to cumulate their votes without giving further notice.

(4) EFFECT OF VOTES AGAINST A CANDIDATE. For purposes of this section, votes against a candidate are not given legal effect and are not counted as votes cast in an election of directors.

History: 1995 a. 336.

221.0523 Voting trusts. (1) CREATION. One or more shareholders may create a voting trust, conferring on a trustee the right to vote or otherwise act for them, by signing an agreement setting out the provisions of the trust and transferring their shares to the trustee. The voting trust agreement may include any provision consistent with the voting trust's purpose. When a voting trust agreement is signed, the trustee shall prepare a list of the names and addresses of all owners of beneficial interests in the trust, together with the number and class of shares each transferred to the trust, and deliver copies of the list and agreement to the bank's principal office.

(2) EFFECTIVE DATE. A voting trust becomes effective on the date that the first shares subject to the trust are registered in the trustee's name.

History: 1995 a. 336.

221.0524 Voting agreements. (1) CREATION. Two or more shareholders may provide for the manner in which they will vote their shares by signing an agreement for that purpose. A voting agreement created under this section is not subject to s. 221.0523.

(2) ENFORCEABILITY. A voting agreement created under this section is specifically enforceable.

History: 1995 a. 336.

221.0525 Shares of stock, when not transferable. The shares of stock of a bank are personal property. The bank shall transfer the shares on the books of the bank in such manner as the bylaws may direct. A transfer of capital stock is not valid while the bank is under notice to make good the impairment of its capital, as provided in s. 220.07, until the impairment is made good. A transfer of stock shall be certified by an officer of the bank to the division within 3 days after the transfer, if the transfer is of at least 5% of the outstanding shares or affects the holdings of the owner of record or beneficial owner of at least 5% of the outstanding shares. A person who fails to comply with this certification requirement may be fined not more than $100.

History: 1995 a. 336.

221.0526 Stock control of bank or trust company bank by other corporation. (1) EFFECT OF OWNERSHIP. A domestic

corporation, investment trust, or other form of trust or any out−of−state bank holding company that owns, holds or in any manner controls a majority of the stock in a bank or trust company bank is engaged in the business of banking and is subject to the supervision of the division. The corporation, trust or company shall file reports of its financial condition or activities when required by the division, and the division may order an examination of its condition and solvency whenever in the division's opinion an examination is required. The cost of this examination shall be paid by the corporation, trust or company. Whenever the division determines that the condition of the corporation, trust or company endangers the safety of the deposits in a bank that the corporation, trust or company owns or controls, or that the operation of the corporation, trust or company is carried on in such a manner as to endanger the safety of the trust company bank or the bank or its depositors, the division may order the corporation, trust or company to remedy the condition or policy within 90 days. If the corporation, trust or company does not comply with the order, the division may direct the operation of the bank or trust company bank until the order is complied with, and may withhold all dividends from the corporation, trust or company, during the period in which the division directs the operation of the bank or trust company bank.

(2) APPLICABILITY TO FOREIGN ENTITIES. Subsection (1) applies to a foreign corporation, association, investment trust, or other form of trust that is authorized to do business in this state.

(3) OTHER ENTITIES AND TRUSTS. This section applies equally to associations, investment trusts, or other forms of organized trusts, whether so specifically stated or not. Nothing contained in this section shall be construed to prohibit a trust company bank, or state or national bank, authorized to administer or execute trusts, from accepting and carrying out the provisions of any personal trust, or any trust created by will that the owner of bank stock creates for the owner's benefit during the owner's lifetime, or that the owner creates by will for the benefit of the owner's heirs. This section does not apply to trusts so created.

History: 1995 a. 336.

SUBCHAPTER VI

DIRECTORS, OFFICERS AND EMPLOYEES

221.0601 Requirement for and duties of board of directors. (1) REQUIREMENT. A bank shall have a board of directors.

(2) POWERS. All corporate powers shall be exercised by or under the authority of, and the business and affairs of the bank managed under the direction of, its board of directors, subject to any limitation set forth in the articles of incorporation.

(3) REQUIRED OATH. Every director shall take and subscribe an oath to perform diligently and honestly the director's duty and to not knowingly violate or permit a violation of chs. 220 to 224.

History: 1995 a. 336.

221.0602 Qualifications of directors. The articles of incorporation or bylaws may prescribe qualifications for directors. A director need not be a resident of this state or a shareholder of the bank unless the articles of incorporation or bylaws so prescribe. A person who has been convicted of a crime against federal or state banking law may not be elected director.

History: 1995 a. 336.

221.0603 Number and election of directors. (1) REQUIRED NUMBER. A board of directors shall consist of 5 or more natural persons, with the number specified in or fixed in accordance with the articles of incorporation or bylaws.

(2) CHANGE IN NUMBER. The number of directors may be increased or, subject to s. 221.0605 (2), decreased from time to time by amendment to, or in the manner provided in, the articles of incorporation or the bylaws.

(3) ELECTION. Directors shall be elected at the meeting held before the bank is authorized to commence business by the division, and at each annual meeting thereafter unless their terms are staggered under s. 221.0606.

History: 1995 a. 336.

221.0604 Election of directors by certain classes of shareholders. If the articles of incorporation authorize dividing the shares into classes, the articles of incorporation may also authorize the election of all or a specified number of directors by the holders of one or more authorized classes of shares. A class or classes of shares entitled to elect one or more directors shall be a separate voting group for purposes of the election of directors.

History: 1995 a. 336.

221.0605 Terms of directors generally. (1) EXPIRATION OF TERM. The terms of the directors of a bank, including the initial directors, expire at the next annual shareholders' meeting unless their terms are staggered under s. 221.0606.

(2) EFFECT OF DECREASE IN NUMBER. A decrease in the number of directors may not shorten an incumbent director's term.

(3) EFFECT OF EXPIRATION OF TERM. Despite the expiration of a director's term, the director shall continue to serve, subject to ss. 221.0607 and 221.0608, until his or her successor is elected and, if necessary, qualifies or until there is a decrease in the number of directors.

History: 1995 a. 336.

221.0606 Staggered terms of directors. The articles of incorporation, or the bylaws if the articles of incorporation so provide, may provide for staggering the terms of the directors by dividing the total number of directors into 2 or 3 groups. In that event, the terms of directors in the first group expire at the first annual shareholders' meeting after their election, the terms of the 2nd group expire at the 2nd annual shareholders' meeting after their election, and the terms of the 3rd group, if any, expire at the 3rd annual shareholders' meeting after their election. At each annual shareholders' meeting held thereafter, the number of directors equal to the number of the group whose term expires at the time of the meeting shall be chosen for a term of 2 years, if there are 2 groups, or a term of 3 years, if there are 3 groups.

History: 1995 a. 336.

221.0607 Resignation of directors. (1) WRITTEN NOTICE. A director may resign at any time by delivering written notice that complies with s. 221.0103 to the board of directors, to the chairperson of the board of directors or to the bank.

(2) EFFECTIVE DATE. A resignation is effective when the notice is delivered unless the notice specifies a later effective date.

History: 1995 a. 336.

221.0608 Removal of directors by shareholders. (1) WHEN REMOVAL PERMITTED. The shareholders may remove one or more directors with or without cause, unless the articles of incorporation or bylaws provide that directors may be removed only for cause.

(2) CUMULATIVE VOTING. If cumulative voting is authorized under s. 221.0522, the shareholders may not remove a director if the number of votes sufficient to elect the director under cumulative voting is voted against his or her removal. If cumulative voting is not authorized under s. 221.0522, the shareholders may remove a director only if the number of votes cast to remove the director exceeds the number of votes cast not to remove him or her.

(3) MEETING AND NOTICE REQUIREMENTS. A director may be removed by the shareholders only at a meeting called for the purpose of removing the director, and the meeting notice shall state that the purpose, or one of the purposes, of the meeting is removal of the director.

History: 1995 a. 336.

221.0609 Vacancy on board. (1) HOW FILLED. Unless the articles of incorporation provide otherwise, and except as pro-

vided in sub. (2), 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 any of the following:

(a) A vote of the shareholders.

(b) A vote of the board of directors, except that if the directors remaining in office constitute fewer than a quorum of the board, the directors may fill a vacancy by the affirmative vote of a majority of all directors remaining in office.

(2) VOTING GROUPS. If the vacant office was held by a director elected by a voting group of shareholders, only the holders of shares of that voting group may vote to fill the vacancy if it is filled by the shareholders, and only the remaining directors elected by that voting group may vote to fill the vacancy if it is filled by the directors.

(3) VACANCIES AT A LATER DATE. A vacancy that will occur at a specific later date, because of a resignation effective at a later date under s. 221.0607 (2) or otherwise, may be filled before the vacancy occurs, but the new director may not take office until the vacancy occurs.

History: 1995 a. 336; 1997 a. 146.

221.0610 Meetings. (1) FREQUENCY OF MEETINGS. The board of directors shall meet at least once each calendar quarter.

(2) DUTIES TO BE PERFORMED AT MEETINGS. At each meeting the board of directors shall generally investigate the affairs of the bank and determine whether the assets are of the value at which they are carried on the books of the bank.

(3) ATTENDANCE. If the division determines that a director is lax in attending board meetings, the division may remove the director. The vacancy shall be filled within a reasonable time as the division may direct.

(4) COMMUNICATION AT MEETINGS. (a) Unless the articles of incorporation or bylaws provide otherwise, the board of directors may permit any or all directors to participate in a regular or special meeting or in a committee meeting, including a loan committee or examining committee meeting, of the board of directors by, or to conduct the meeting through the use of, any means of communication by which any of the following occurs:

1. All participating directors may simultaneously hear each other during the meeting.

2. All communication during the meeting is immediately transmitted to each participating director, and each participating director is able to immediately send messages to all other participating directors.

(b) If a meeting will be conducted through the use of any means described in par. (a), all participating directors shall be informed that a meeting is taking place at which official business may be transacted. A director participating in a meeting by any means described in par. (a) is considered to be present in person at the meeting. If requested by a director, a copy of the minutes of the meeting prepared under sub. (5) shall be distributed to each director.

(5) RECORDS OF MEETINGS. (a) The board of directors shall elect a secretary, who shall keep a correct record of the minutes of the meeting in a book kept for that purpose. The minutes shall particularly disclose the date and location of the meeting, and the names of the directors absent. The minutes shall be subscribed to by the presiding officer. The minutes shall be approved at the next succeeding meeting, by the board of directors, and the minutes of the next succeeding meeting shall show this. The minute book shall be available at the bank when needed.

(b) The bank examiner shall examine the minute book at the time that he or she examines the bank and shall include in his or her report of examination of the bank, a statement of the dates on which the meetings were held since the last examination of the bank by the bank examiner and the names of the directors in attendance at each of these meetings.

(c) A person who makes a false entry in the minute book or changes or alters an entry made in the minute book may be fined not less than $100 nor more than $500, or imprisoned for not less than 30 days nor more than 6 months, or both.

History: 1995 a. 336.

221.06105 Board action without a meeting. (1) WHEN PERMITTED. Unless the articles of incorporation or bylaws provide otherwise, action required or permitted under this chapter to be taken at a board of directors' meeting may be taken without a meeting if the action is taken by all members of the board. The action shall be evidenced by one or more written consents describing the action taken, signed by each director and retained by the bank.

(2) EFFECTIVE DATE. Action taken under this section is effective when the last director signs the consent, unless the consent specifies a different effective date.

(3) EFFECT OF ACTION. A written consent signed under this section has the effect of a unanimous vote taken at a meeting at which all directors were present, and may be described as such in any document.

History: 1997 a. 146.

221.0611 Response to examination. (1) RESPONSE REQUIRED. After receipt by the board of directors of a bank of a report of examination of the bank by the division, the board or an examining committee appointed under sub. (2) in accordance with s. 221.0615, unless the division requires response by the board as provided in s. 220.05 (5), shall do all of the following:

(a) Study the report of examination.

(b) Prepare a written report setting forth any recommended corrective action to be taken by the board in response to criticisms and suggestions contained in the report of examination.

(2) EXAMINING COMMITTEE. Upon receipt of a report of examination under sub. (1), the board of directors may appoint an examining committee, consisting of not fewer than 3 of its members, to perform the study and prepare the report under sub. (1) (a) and (b).

(3) DISTRIBUTION AND ACKNOWLEDGEMENT REQUIREMENTS. Each member of the board of directors shall obtain and review a copy of the report prepared under sub. (1) (b) and shall prepare a written acknowledgment stating all of the following:

(a) That the board has received the report of examination under sub. (1).

(b) That the member of the board has obtained and reviewed a copy of the report prepared under sub. (1) (b).

(4) RECORDATION. The secretary of the board of directors shall record the report prepared under sub. (1) (b) in the minutes of the next meeting of the board following completion of the report.

(5) TRANSMISSION TO DIVISION. The board of directors shall transmit the report prepared under sub. (1) (b) and the acknowledgments prepared under sub. (3) to the division within 45 days after receipt by the board of the report of examination under sub. (1).

History: 1995 a. 336.

221.0612 Notice of meeting. (1) REGULAR MEETINGS. Unless the articles of incorporation or bylaws provide otherwise, regular meetings of the board of directors may be held without notice of the date, time, place or purpose of the meeting.

(2) SPECIAL MEETINGS. Unless the articles of incorporation or bylaws provide for a longer or shorter period, special meetings of the board of directors shall be preceded by at least 48 hours' notice of the date, time and place of the meeting. The notice shall comply with s. 221.0103. The notice need not describe the purpose of the special meeting unless required by the articles of incorporation or bylaws.

History: 1995 a. 336.

221.0613 Waiver of notice. (1) WRITTEN WAIVER. A director may waive a notice required by this chapter, the articles of incorporation or the bylaws before or after the date and time stated in the notice. Except as provided by sub. (2), the waiver shall be

in writing, signed by the director entitled to the notice and retained by the bank.

(2) WAIVER BY ATTENDANCE OR PARTICIPATION. A director's attendance at or participation in a meeting waives any required notice to him or her of the meeting, unless the director at the beginning of the meeting or promptly upon his or her arrival objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

History: 1995 a. 336.

221.0614 Quorum and voting. (1) QUORUM REQUIREMENTS GENERALLY. (a) Unless the articles of incorporation or bylaws require a greater or, under sub. (2), a lesser number, and except as provided in par. (b) or in s. 221.0619 (4), a quorum of a board of directors shall consist of a majority of the number of directors specified in or fixed in accordance with the articles of incorporation or bylaws.

(b) When the number of directors specified or fixed in accordance with the articles of incorporation or bylaws exceeds 9, the directors may, for a period of not to exceed 6 months during any one year, designate by resolution 9 directors, any 5 of whom shall constitute a quorum.

(c) Unless the articles of incorporation or bylaws require a greater, or under sub. (2) a lesser number, and except as provided in s. 221.0619 (4), a quorum of a committee of the board of directors created under s. 221.0615 consists of a majority of the number of directors appointed to serve on the committee.

(2) MINIMUM QUORUM REQUIREMENTS. (a) The articles of incorporation or bylaws may authorize a quorum of a board of directors to consist of no fewer than one−third of the number of directors specified in or fixed in accordance with the articles of incorporation or bylaws.

(b) The articles of incorporation or bylaws may authorize a quorum of a committee of the board of directors created under s. 221.0615 to consist of no fewer than one−third of the number of directors appointed to serve on the committee.

(3) VOTING REQUIREMENTS GENERALLY. Except as provided in ss. 221.0615 (3) and (4), 221.0619 (4) and 221.0631 (1) and (2), if a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors or a committee of the board of directors created under s. 221.0615, unless the articles of incorporation or bylaws require the vote of a greater number of directors.

(4) WHEN ASSENT GIVEN. (a) Except as provided in par. (b), a director who is present and is announced as present at a meeting of the board of directors or a committee of the board of directors created under s. 221.0615, when corporate action is taken assents to the action taken unless any of the following occurs:

1. The director objects at the beginning of the meeting or promptly upon his or her arrival to holding the meeting or transacting business at the meeting.

2. The director dissents or abstains from an action taken and minutes of the meeting are prepared that show the director's dissent or abstention from the action taken.

3. The director delivers written notice that complies with s. 221.0103 of his or her dissent or abstention to the presiding officer of the meeting before its adjournment or to the bank immediately after adjournment of the meeting.

4. The director dissents or abstains from an action taken, minutes of the meeting are prepared that fail to show the director's dissent or abstention from the action taken and the director delivers to the bank a written notice of that failure that complies with s. 221.0103 promptly after receiving the minutes.

(b) A director who votes in favor of action taken may not dissent or abstain from that action.

History: 1995 a. 336.

221.0615 Committees. (1) IN GENERAL. Unless the articles of incorporation or bylaws provide otherwise, a board of directors may create one or more committees, appoint members of the board of directors to serve on the committees and designate other members of the board of directors to serve as alternates. Each committee shall have 2 or more members. Unless otherwise provided by the board of directors, members of the committee shall serve at the pleasure of the board of directors.

(2) CREATION OF A COMMITTEE AND APPOINTMENT OF MEMBERS. Except as provided in sub. (3), the creation of a committee, appointment of members to it and designation of alternate members, if any, shall be approved by the greater of the following:

(a) A majority of all the directors in office when the action is taken.

(b) The number of directors required by the articles of incorporation or bylaws to take action under s. 221.0614.

(3) VACANCIES. The board of directors may provide by resolution that any vacancies on the committee shall be filled by the affirmative vote of a majority of the remaining committee members.

(4) APPLICABILITY OF CERTAIN PROVISIONS. Sections 221.0610 to 221.0613 apply to committees of a board of directors and to committee members.

(5) AUTHORITY WHICH MAY BE EXERCISED BY COMMITTEE. To the extent specified by the board of directors or in the articles of incorporation or bylaws, each committee may exercise the authority of the board of directors, except that a committee may not do any of the following:

(a) Authorize distributions.

(b) Approve or propose to shareholders action that this chapter requires be approved by shareholders.

(c) Fill vacancies on the board of directors or, except as provided in sub. (3), on any of its committees.

(d) Amend articles of incorporation under s. 221.0211.

(e) Adopt, amend or repeal bylaws.

(f) Approve a plan of merger not requiring shareholder approval.

(g) Authorize or approve reacquisition of shares, except according to a formula or method prescribed by the board of directors.

(h) Authorize or approve the issuance or sale or contract for sale of shares, or determine the designation and relative rights, preferences and limitations of a class or series of shares, except that the board of directors may authorize a committee or a senior executive officer of the bank to do so within limits prescribed by the board of directors.

(6) EMPLOYMENT OF CONSULTANTS. Unless otherwise provided by the board of directors in creating the committee, a committee may employ counsel, accountants and other consultants to assist it in the exercise of authority.

(7) EFFECT ON RESPONSIBILITY OF BOARD. The creation of a committee, delegation of authority to a committee or action by a committee does not relieve the board of directors or any of its members of any responsibility imposed upon the board of directors or its members by law.

History: 1995 a. 336.

221.0616 Reliance by directors or officers. Unless the director or officer has knowledge that makes reliance unwarranted, a director or officer, in discharging his or her duties to the bank, may rely on information, opinions, reports or statements, which may be written or oral or formal or informal and which may include financial statements, valuation reports and other financial data, if they are prepared or presented by any of the following:

(1) OFFICERS AND EMPLOYEES. An officer or employee of the bank whom the director or officer believes in good faith to be reliable and competent in the matters presented.

(2) EXPERTS. Legal counsel, certified public accountants licensed or certified under ch. 442, or other persons as to matters

that the director or officer believes in good faith are within the person's professional or expert competence.

(3) BOARD COMMITTEES. In the case of reliance by a director, a committee of the board of directors of which the director is not a member if the director believes in good faith that the committee merits confidence.

History: 1995 a. 336; 2001 a. 16.

221.0617 Consideration of interests in addition to shareholders' interests. In discharging his or her duties to the bank and in determining what he or she believes to be in the best interests of the bank, a director or officer may, in addition to considering the effects of an action on shareholders, consider the following:

(1) The effects of the action on employees, suppliers and customers of the bank.

(2) The effects of the action on communities in which the bank operates.

(3) Other factors that the director or officer considers pertinent.

History: 1995 a. 336.

221.0618 Limited liability of directors. (1) IN GENERAL. Except as provided in sub. (2) or s. 221.0803, a director is not liable to the bank, its shareholders, or any person asserting rights on behalf of the bank or its shareholders, for damages, settlements, fees, fines, penalties or other monetary liabilities arising from a breach of, or failure to perform, any duty resulting solely from his or her status as a director, unless the person asserting liability proves that the breach or failure to perform constitutes any of the following:

(a) A willful failure to deal fairly with the bank or its shareholders in connection with a matter in which the director has a material conflict of interest.

(b) A violation of criminal law, unless the director had reasonable cause to believe that his or her conduct was lawful or had no reasonable cause to believe that his or her conduct was unlawful.

(c) A transaction from which the director derived an improper personal profit.

(d) Willful misconduct.

(2) ARTICLES OF INCORPORATION MAY LIMIT. A bank may limit the immunity provided under this section by its articles of incorporation. A limitation under this subsection applies if the cause of action against a director accrues while the limitation is in effect.

History: 1995 a. 336.

221.0619 Director conflict of interest. (1) DEFINITION. In this section, "conflict of interest transaction" means a transaction with the bank in which a director of the bank has a direct or indirect interest.

(2) WHEN TRANSACTION NOT VOIDABLE. A conflict of interest transaction is not voidable by the bank solely because of the director's interest in the transaction if any of the following is true:

(a) The material facts of the transaction and the director's interest were disclosed or known to the board of directors or a committee of the board of directors and the board of directors or committee authorized, approved or specifically ratified the transaction under sub. (4).

(b) The material facts of the transaction and the director's interest were disclosed or known to the shareholders entitled to vote and they authorized, approved or specifically ratified the transaction under sub. (5).

(c) The transaction was fair to the bank.

(3) INDIRECT INTERESTS. For purposes of this section, the circumstances in which a director of the bank has an indirect interest in a transaction include but are not limited to a transaction under any of the following circumstances:

(a) Another entity in which the director has a material financial interest or in which the director is a general partner is a party to the transaction.

(b) Another entity of which the director is a director, officer or trustee is a party to the transaction and the transaction is or, because of its significance to the bank, should be considered by the board of directors of the bank.

(4) AUTHORIZATION, APPROVAL OR RATIFICATION BY BOARD. For purposes of sub. (2) (a), a conflict of interest transaction is authorized, approved or specifically ratified if it receives the affirmative vote of a majority of the directors on the board of directors or on the committee acting on the transaction, who have no direct or indirect interest in the transaction. If a majority of the directors who have no direct or indirect interest in the transaction vote to authorize, approve or ratify the transaction, a quorum is present for the purpose of taking action under this section. The presence of, or a vote cast by, a director with a direct or indirect interest in the transaction does not affect the validity of any action taken under sub. (2) (a) if the transaction is otherwise authorized, approved or ratified as provided in this section.

(5) AUTHORIZATION, APPROVAL OR RATIFICATION BY SHAREHOLDERS. For purposes of sub. (2) (b), a conflict of interest transaction is authorized, approved or specifically ratified if it receives the vote of a majority of the shares entitled to be counted under this subsection. Shares owned by or voted under the control of a director who has a direct or indirect interest in the transaction, and shares owned by or voted under the control of an entity described in sub. (3) (a), may not be counted in a vote of shareholders to determine whether to authorize, approve or ratify a conflict of interest transaction under sub. (2) (b). The vote of those shares shall be counted in determining whether the transaction is approved under other sections of this chapter. A majority of the shares, whether or not present, that are entitled to be counted in a vote on the transaction under this subsection constitutes a quorum for the purpose of taking action under this section.

History: 1995 a. 336.

221.0620 Officers. (1) CREATION AND APPOINTMENT. A bank shall have the officers described in its bylaws or appointed by its board of directors by resolution not inconsistent with its bylaws.

(2) ELECTION OF OFFICERS. The officers of the bank shall be elected by the board of directors. However, a duly appointed officer may appoint one or more officers or assistant officers if authorized by the bylaws or the board of directors.

(3) SENIOR EXECUTIVE OFFICER. The senior executive officer in charge of conducting business shall be chosen from the board of directors.

(4) MULTIPLE OFFICES. An individual may simultaneously hold more than one office in a bank.

(5) INELIGIBILITY FOR OFFICE. An individual who has been previously convicted of any crime under federal or state banking laws may not be elected an officer of a bank.

History: 1995 a. 336.

221.0621 Duties of officers. Each officer has the authority and shall perform the duties set forth in the bylaws or, to the extent not inconsistent with the bylaws, the duties prescribed by the board of directors or by direction of an officer authorized by the bylaws or by the board of directors to prescribe the duties of other officers.

History: 1995 a. 336.

221.0622 Resignation and removal of officers. (1) RESIGNATION. An officer may resign at any time by delivering to the bank notice that complies with s. 221.0103. The resignation is effective when the notice is delivered, unless the notice specifies a later effective date and the bank accepts the later effective date. If a resignation is effective at a later date, the bank's board of directors may fill the pending vacancy before the effective date,

if the board of directors provides that the successor may not take office until the effective date.

(2) REMOVAL. The board of directors may remove an officer and, unless restricted by the bylaws or by the board of directors, an officer may remove an officer or assistant officer appointed by that officer under s. 221.0620 (2), at any time, with or without cause and notwithstanding the contract rights, if any, of the officer removed.

History: 1995 a. 336.

221.0623 Contract rights of officers. (1) EFFECT OF APPOINTMENT. The appointment of an officer does not itself create contract rights.

(2) EFFECT OF RESIGNATION OR REMOVAL. Except as provided in s. 221.0622 (2), an officer's resignation or removal is subject to any remedies provided by any contract between the officer and the bank or otherwise provided by law.

History: 1995 a. 336.

221.0624 Signature of officers. Each document required by this chapter to be signed by an officer or officers of the bank shall be signed by the officer or officers designated in the bylaws or by the board of directors.

History: 1995 a. 336.

221.0625 Loans to bank officials; penalty. (1) LOANS TO OFFICERS AND DIRECTORS. Except as otherwise provided in this subsection, a bank may not lend to any officer or director of the bank an amount that, when aggregated with the amount of all other extensions of credit to that person exceeds the higher of $25,000 or 5% of the bank's capital, without prior approval of the bank's board of directors. Prior approval of the bank's board of directors is also required in all cases when a loan aggregated with all other extensions of credit to the officer or director exceeds $500,000. A bank's board of directors may give prior approval to a line of credit to an officer or director, and prior approval by the bank's board of directors is not required for each advance made to the officer or director pursuant to the preapproved line of credit.

(2) PENALTY. An officer or director of a bank who, in violation of this section, directly or indirectly does any of the following is guilty of a Class F felony:

(a) Borrows or otherwise procures for personal use money, funds or property of the bank.

(b) Procures money, funds or property of the bank through use of personal credit or accommodation of another person.

(c) Procures money, funds or property of the bank by acceptance for discount at the bank of any note, bond or evidence of debt that he or she knows or has reason to know is worth less than the price at which it is accepted as an asset.

History: 1995 a. 336; 1997 a. 283; 2001 a. 109.

Cross−reference: See also ch. DFI−Bkg 18, Wis. adm. code.

221.0626 Definitions applicable to indemnification and insurance provisions. In ss. 221.0626 to 221.0635:

(1) "Director or officer" means any of the following:

(a) An individual who is or was a director or officer of a bank.

(b) An individual who, while a director or officer of a bank, is or was serving at the bank's request as a director, officer, partner, trustee, member of any governing or decision−making committee, manager, employee or agent of another bank, corporation, limited liability company, partnership, joint venture, trust or other enterprise.

(c) An individual who, while a director or officer of a bank, is or was serving an employee benefit plan because his or her duties to the bank also impose duties on, or otherwise involve services by, the person to the plan or to participants in or beneficiaries of the plan.

(d) Unless the context requires otherwise, the estate or personal representative of a director or officer of a bank.

(2) "Expenses" include fees, costs, charges, disbursements, attorney fees and any other expenses incurred in connection with a proceeding.

(3) "Liability" includes the obligation to pay a judgment, settlement, forfeiture, or fine, including an excise tax assessed with respect to an employee benefit plan, plus costs, fees, and surcharges imposed under ch. 814, and reasonable expenses.

(4) "Party" includes an individual who was or is, or who is threatened to be made, a named defendant or respondent in a proceeding.

(5) "Proceeding" means any threatened, pending or completed civil, criminal, administrative or investigative action, suit, arbitration or other proceeding, whether formal or informal, which involves foreign, federal, state or local law and which is brought by or in the right of the bank or by any other person.

History: 1995 a. 336; 2003 a. 139.

221.0627 Mandatory indemnification. (1) WHEN SUCCESSFUL IN DEFENSE OF A PROCEEDING. A bank shall indemnify a director or officer, to the extent that he or she has been successful on the merits or otherwise in the defense of a proceeding, for all reasonable expenses incurred in the proceeding if the director or officer was a party because he or she is a director or officer.

(2) WHEN UNSUCCESSFUL IN DEFENSE OF A PROCEEDING. (a) In cases not included under sub. (1), a bank shall indemnify a director or officer against liability incurred by the director or officer in a proceeding to which the director or officer was a party because he or she is a director or officer, unless liability was incurred because the director or officer breached or failed to perform a duty that he or she owes to the bank and the breach or failure to perform constitutes any of the following:

1. A willful failure to deal fairly with the bank or its shareholders in connection with a matter in which the director or officer has a material conflict of interest.

2. A violation of a criminal law, unless the director or officer had reasonable cause to believe that his or her conduct was lawful or had no reasonable cause to believe that his or her conduct was unlawful.

3. A transaction from which the director or officer derived an improper personal profit.

4. Willful misconduct.

(b) Determination of whether indemnification is required under this subsection shall be made under s. 221.0631.

(c) The termination of a proceeding by judgment, order, settlement or conviction, or upon a plea of no contest or an equivalent plea, does not, by itself, create a presumption that indemnification of the director or officer is not required under this subsection.

(3) HOW INDEMNIFICATION MAY BE SOUGHT. A director or officer who seeks indemnification under this section shall make a written request to the bank.

(4) LIMITS ON MANDATORY INDEMNIFICATION. (a) Indemnification under this section is not required to the extent limited by the articles of incorporation under s. 221.0628.

(b) Indemnification under this section is not required if the director or officer has previously received indemnification or allowance of expenses from any person, including the bank, in connection with the same proceeding.

(c) Indemnification under this section is not required to the extent expressly prohibited by other provisions of this chapter, ch. 220 or applicable federal law or in connection with an administrative proceeding or action instituted under ch. 220 which results in a final order against the officer or director under s. 220.04 (4), (9) or (10).

History: 1995 a. 336.

221.0628 Bank may limit indemnification. A bank's articles of incorporation may limit its obligation to indemnify under s. 221.0627. Any provision of the articles of incorporation relating to a banks power or obligation to indemnify that was in exis-

tence on July 1, 1996, does not constitute a limitation on the bank's obligation to indemnify under s. 221.0627. A limitation under this section applies if the first alleged act or omission of a director or officer for which indemnification is sought occurred while the limitation was in effect.

History: 1995 a. 336.

221.0629 Allowance of expenses as incurred. Upon written request by a director or officer who is a party to a proceeding, a bank may pay or reimburse his or her reasonable expenses as incurred if the director or officer provides the bank with all of the following:

(1) AFFIRMATION OF GOOD FAITH BELIEF. A written affirmation of his or her good faith belief that he or she has not breached or failed to perform his or her duties to the bank.

(2) UNDERTAKING TO REPAY. A written undertaking, executed personally or on his or her behalf, to repay the allowance and, if required by the bank, to pay reasonable interest on the allowance to the extent that it is ultimately determined under s. 221.0631 that indemnification under s. 221.0627 (2) is not required and that indemnification is not ordered by a court under s. 221.0630 (2) (b). The undertaking under this subsection shall be an unlimited general obligation of the director or officer and may be accepted without reference to his or her ability to repay the allowance. The undertaking may be secured or unsecured.

History: 1995 a. 336.

221.0630 Court−ordered indemnification. (1) APPLICATION FOR INDEMNIFICATION. Except as provided otherwise by written agreement between the director or officer and the bank, a director or officer who is a party to a proceeding may apply for indemnification to the court conducting the proceeding or to another court of competent jurisdiction. Application shall be made for an initial determination by the court under s. 221.0631 (5) or for review by the court of an adverse determination under s. 221.0631 (1), (2), (3), (4) or (6). After receipt of an application, the court shall give any notice that it considers necessary.

(2) WHEN TO BE ORDERED BY COURT. The court shall order indemnification if it determines any of the following:

(a) That the director or officer is entitled to indemnification under s. 221.0627. If the court also determines that the bank unreasonably refused the director's or officer's request for indemnification, the court shall order the bank to pay the director's or officer's reasonable expenses incurred to obtain the court−ordered indemnification.

(b) That the director or officer is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, regardless of whether indemnification is required under s. 221.0627.

History: 1995 a. 336.

221.0631 Determination of right to indemnification. Unless otherwise provided by the articles of incorporation or bylaws or by written agreement between the director or officer and the bank, the director or officer seeking indemnification under s. 221.0627 (2) shall select one of the following means for determining his or her right to indemnification:

(1) BOARD OR COMMITTEE VOTE. By a majority vote of a quorum of the board of directors consisting of directors who are not at the time parties to the same or related proceedings. If a quorum of disinterested directors cannot be obtained, by majority vote of a committee duly appointed by the board of directors and consisting solely of 2 or more directors who are not at the time parties to the same or related proceedings. Directors who are parties to the same or related proceedings may participate in the designation of members of the committee.

(2) INDEPENDENT LEGAL COUNSEL. By independent legal counsel selected by a quorum of the board of directors or its committee in the manner prescribed in sub. (1) or, if unable to obtain such a quorum or committee, by a majority vote of the full board of directors, including directors who are parties to the same or related proceedings.

(3) PANEL OF ARBITRATORS. By a panel of 3 arbitrators consisting of one arbitrator selected by those directors entitled under sub. (2) to select independent legal counsel, one arbitrator selected by the director or officer seeking indemnification and one arbitrator selected by the 2 arbitrators previously selected.

(4) SHAREHOLDER VOTE. By an affirmative vote of shares as provided in s. 221.0501. Shares owned by, or voted under the control of, persons who are at the time parties to the same or related proceedings, whether as plaintiffs or defendants or in any other capacity, may not be voted in making the determination.

(5) COURT ORDER. By a court under s. 221.0630.

(6) OTHER METHODS. By any other method provided for in any additional right to indemnification permitted under s. 221.0634.

History: 1995 a. 336.

221.0632 Indemnification and allowance of expenses of employees and agents. (1) MANDATORY INDEMNIFICATION. Except as provided in sub. (3), a bank shall indemnify an employee who is not a director or officer, to the extent that he or she has been successful on the merits or otherwise in defense of a proceeding, for all reasonable expenses incurred in the proceeding if the employee was a party because he or she was an employee of the bank.

(2) PERMITTED INDEMNIFICATION. Except as provided in sub. (3), in addition to the indemnification required by sub. (1), a bank may indemnify and allow reasonable expenses of an employee or agent who is not a director or officer to the extent provided by the articles of incorporation or bylaws, by general or specific action of the board of directors or by contract.

(3) PROHIBITED INDEMNIFICATION. A bank may not indemnify or allow reasonable expenses of an employee or agent who is not a director or officer if the indemnification or allowance is expressly prohibited by s. 221.0803, by other provisions of this chapter or by applicable federal law or in connection with an administrative proceeding or action instituted under ch. 220 which results in a final order against an officer or director under s. 220.04 (4), (9) or (10).

History: 1995 a. 336.

221.0633 Insurance. Except as expressly prohibited by other provisions of this chapter or applicable federal law or in connection with an administrative proceeding or action instituted under ch. 220 which results in a final order against an employee, agent, director or officer under s. 220.04 (4), (9) or (10), a bank may purchase and maintain insurance on behalf of the employee, agent, director or officer against liability asserted against or incurred by the individual in his or her capacity as an employee, agent, director or officer or arising from his or her status as an employee, agent, director or officer, regardless of whether the bank is required or authorized to indemnify or allow expenses to the individual against the same liability under ss. 221.0627, 221.0629, 221.0632 and 221.0634.

History: 1995 a. 336.

221.0634 Additional rights to indemnification and allowance of expenses. (1) PROVISION FOR ADDITIONAL RIGHTS. Except as provided in sub. (2) and except as expressly prohibited by other provisions of this chapter or applicable federal law or in connection with an administrative proceeding or action instituted under ch. 220 which results in a final order against an officer or director under s. 220.04 (4), (9) or (10), ss. 221.0627 and 221.0629 do not preclude any additional right to indemnification or allowance of expenses that a director or officer may have under any of the following:

(a) The articles of incorporation or bylaws.

(b) A written agreement between the director or officer and the bank.

(c) A resolution of the board of directors.

(d) A resolution that is adopted, after notice, by a majority vote of all of the bank's voting shares then issued and outstanding.

(2) WHEN ADDITIONAL RIGHTS PROHIBITED. Regardless of the existence of an additional right under sub. (1), the bank may not indemnify a director or officer, or permit a director or officer to retain any allowance of expenses, unless it is determined by or on behalf of the bank that the director or officer did not breach or fail to perform a duty that he or she owes to the bank which constitutes conduct under s. 221.0627 (2) (a) 1., 2., 3. or 4. A director or officer who is a party to the same or related proceeding for which indemnification or an allowance of expenses is sought may not participate in a determination under this subsection.

(3) REIMBURSEMENT OF CERTAIN EXPENSES. Sections 221.0626 to 221.0635 do not affect a bank's power to pay or reimburse expenses incurred by a director or officer in any of the following circumstances:

(a) As a witness in a proceeding to which he or she is not a party.

(b) As a plaintiff or petitioner in a proceeding because he or she is or was an employee, agent, director or officer.

History: 1995 a. 336.

221.0635 Indemnification and insurance against securities law claims. (1) IN GENERAL. It is the public policy of this state to require or permit indemnification, allowance of expenses and insurance for any liability incurred in connection with a proceeding involving securities regulation described under sub. (2) to the extent required or permitted under ss. 221.0626 to 221.0634.

(2) APPLICABILITY. Sections 221.0626 to 221.0634 apply, to the extent applicable to any other proceeding, to any proceeding involving a federal law or regulation or a state law or rule that regulates the offer, sale or purchase of securities, securities brokers or dealers, or investment companies or investment advisors.

History: 1995 a. 336.

221.0636 Theft. (1) THEFT PROHIBITED. (a) An officer, director, employee or agent of a bank may not do any of the following:

1. Steal, abstract or willfully misapply money, funds, credits, or property of the bank, whether owned by the bank or held in trust.

2. Without authority of the board of directors, issue or put forth a certificate of deposit, draw an order or bill of exchange or make an acceptance, assign a note, bond, draft, bill of exchange, mortgage, judgment or decree.

3. Make a false entry in a book, report or statement of the bank with intent to injure or defraud the bank or any person, or to deceive an officer of the bank, an agent appointed to examine the affairs of the bank, or any other person.

(b) A person may not intentionally aid or abet a violation of par. (a).

(2) PENALTY. Any person who violates sub. (1) is guilty of a Class H felony.

History: 1995 a. 336; 1997 a. 283; 2001 a. 109.

221.0637 Bank officers and employees not to take commissions. (1) COMMISSIONS PROHIBITED. An officer, director, agent or employee of a bank may not, directly or indirectly, take, accept or receive, or offer or agree to take, accept or receive, a commission, fee, compensation, or thing of material value, from any person in consideration of the bank of which he or she is an officer, director, agent or employee, doing any of the following:

(a) Loaning any money to a person.

(b) Buying or discounting a note, bond, draft, or bill of exchange from the person.

(c) Accepting any draft for, or issuing any letter of credit to, the person.

(2) PENALTIES. Any person who violates sub. (1) is guilty of a Class I felony.

History: 1995 a. 336; 1997 a. 283; 2001 a. 109.

SUBCHAPTER VII

SHARE EXCHANGE, MERGER AND CONSOLIDATION

221.0701 Share exchange. A bank or other corporation may acquire all of the outstanding shares of one or more classes or series of a bank organized under this chapter, with the approval of the division, if the board of directors of the bank, by resolution adopted by the board, approves a plan of share exchange and its shareholders also approve a plan of share exchange pursuant to ss. 180.1102 to 180.1106. This section does not limit the power of a corporation or bank to acquire all or part of the shares of one or more classes or series of a bank through a voluntary exchange or otherwise. Application for approval of a share exchange shall be made to the division on a form prescribed by the division. The application shall be accompanied by a fee established by the division.

History: 1995 a. 336.

221.0702 Consolidation or merger of banks. (1) IN GENERAL. Any 2 or more banks may, with the approval of the division, consolidate or merge into one bank under the charter of either existing bank. The consolidation or merger shall be done on such terms and conditions as may be lawfully agreed upon by a majority of the board of directors of each bank proposing to consolidate or merge and as may be ratified and confirmed by the affirmative vote of the shareholders of each of the banks. The affirmative vote of the shareholders must be by shareholders owning a majority of the outstanding capital stock entitled to vote of each bank, or any greater percentage specified in the articles of incorporation or the bylaws, and by at least a majority of any outstanding preferred stock entitled to vote of each bank, or any greater percentage specified in the articles of incorporation or the bylaws. The vote must be at a meeting called by the directors, after sending notice of the time, place and object of the meeting to each shareholder of record in accordance with s. 221.0103. The capital stock of the consolidated or merged bank may not be less than that required by the division. If the consolidation or merger is approved by the division, a shareholder of either of the banks who did not vote for the consolidation or merger shall be given notice of the approval by the bank in which the shareholder holds an interest.

(2) ASSETS AND LIABILITIES OF THE CONSOLIDATING OR MERGING BANK. The bank or banks consolidating or merging with another bank under sub. (1) may not be required to go into liquidation but their assets and liabilities shall be reported by the bank with which they have consolidated or merged. The rights, franchises and interests of the banks so consolidated or merged in and the property, personal and mixed, and choses in action belonging to the banks, are transferred to and vested in the consolidated or merged bank without any deed or other transfer. The consolidated or merged bank holds all rights of property, franchises and interests in the same manner and to the same extent as was held by the bank or banks so consolidated or merged.

(3) ROLE OF DIVISION. After consultation with the banking review board, the division may make recommendations to any bank within this state as to the advisability of consolidation or merger with other banks and may make recommendations as to terms for consolidation or merger of banks in order to avoid a condition of oversupply of banks in any community or area of the state. The division may also, if requested so to do, act as mediator or arbitrator to fix any of the terms of any such consolidation or merger. The board of directors of any bank organized under the laws of this state may use a reasonable amount of the assets of the bank toward assisting in bringing about a consolidation or merger

of banks or to aid in reorganization or in avoiding the closing of a bank, if the board considers it to be in the interests of safe banking and the maintenance of credit and banking facilities in the county in which the bank is located.

(4) TRANSFER OF RESOURCES AND LIABILITIES. A bank, which is in good faith winding up its business, for the purpose of consolidating or merging with another bank, may transfer its resources and liabilities to the bank with which it is in process of consolidation or merger. A consolidation or merger may not be made without the consent of the division, and may not defeat or defraud any of the creditors in the collection of their debts against the banks.

(5) APPLICATION FOR CONSOLIDATION OR MERGER. The banks shall apply for approval of a consolidation or merger under sub. (1) on a form prescribed by the division. The application shall be accompanied by a fee determined by the division.

History: 1995 a. 336.

221.0703 Cancellation of charter of merged bank. If a bank has merged or consolidated with or been absorbed by another bank, the division shall cancel the charter of the bank.

History: 1995 a. 336.

221.0704 Interim banks. Subject to the approval of the division, one or more banks may consolidate or merge into or with an interim bank organized under this chapter under the charter of either the existing bank or banks or the interim bank in accordance with the provisions of this chapter for consolidation or merger of a bank. The division shall promulgate rules providing for a simple process for the organization of interim banks under this chapter. The rules shall permit the organization of an interim bank with a minimum of one director.

History: 1995 a. 336.

Cross−reference: See also ch. DFI−Bkg 17, Wis. adm. code.

221.0705 Definitions. In ss. 221.0705 to 221.0718:

(1) "Bank" means the issuer bank or, if a corporate action giving rise to dissenters' rights under s. 221.0706 is a merger or share exchange that has been effectuated, the surviving bank of the merger or the acquiring corporation or bank of the share exchange.

(2) "Beneficial shareholder" means a person who is a beneficial owner of shares held by a nominee as the shareholder.

(3) "Dissenter" means a shareholder or beneficial shareholder who is entitled to dissent from corporate action under s. 221.0706 and who exercises that right when and in the manner required by ss. 221.0709 to 221.0716.

(4) "Fair value", with respect to a dissenter's shares, means the value of the shares immediately before the effectuation of the corporate action to which the dissenter objects, excluding any appreciation or depreciation in anticipation of the corporate action unless the exclusion would be inequitable.

(5) "Interest" means interest from the effectuation date of the corporate action until the date of payment, at a rate that is fair and equitable under all of the circumstances.

(6) "Issuer bank" means a bank that is the issuer of the shares held by a dissenter before the corporate action.

History: 1995 a. 336.

221.0706 Right to dissent. (1) MANDATORY DISSENTERS' RIGHTS. A shareholder or beneficial shareholder may dissent from, and obtain payment of the fair value of his or her shares in the event of, any of the following corporate actions:

(a) Consummation of a plan of merger to which the issuer bank is a party.

(b) Consummation of a plan of share exchange if the issuer bank's shares will be acquired, and the shareholder or the shareholder holding shares on behalf of the beneficial shareholder is entitled to vote on the plan.

(c) Except as provided in sub. (2), any other corporate action taken pursuant to a shareholder vote to the extent that the articles of incorporation, the bylaws or a resolution of the board of directors provides that the voting or nonvoting shareholder or beneficial shareholder may dissent and obtain payment for his or her shares.

(2) PERMISSIVE DISSENTERS' RIGHTS. The articles of incorporation may allow a shareholder or beneficial shareholder to dissent from an amendment of the articles of incorporation and obtain payment of the fair value of his or her shares if the amendment materially and adversely affects rights in respect of a dissenter's shares because it does any of the following:

(a) Alters or abolishes a preferential right of the shares.

(b) Creates, alters or abolishes a right in respect of redemption, including a provision respecting a sinking fund for the redemption or repurchase, of the shares.

(c) Alters or abolishes a preemptive right of the holder of shares to acquire shares or other securities.

(d) Excludes or limits the right of the shares to vote on any matter or to cumulate votes, other than a limitation by dilution through issuance of shares or other securities with similar voting rights.

(e) Reduces the number of shares owned by the shareholder or beneficial shareholder to a fraction of a share if the fractional share so created is to be acquired for cash under s. 221.0506.

(3) RIGHTS OF DISSENTER. A shareholder or beneficial shareholder entitled to dissent and obtain payment for his or her shares under ss. 221.0701 to 221.0718 may not challenge the corporate action creating his or her entitlement unless the action is unlawful or fraudulent with respect to the shareholder, beneficial shareholder or issuer bank.

History: 1995 a. 336.

221.0707 Dissent by shareholders and beneficial shareholders. (1) PARTIAL EXERCISE OF DISSENTERS' RIGHTS. A shareholder may assert dissenters' rights as to fewer than all of the shares registered in his or her name only if the shareholder dissents with respect to all shares beneficially owned by any one person and notifies the bank in writing of the name and address of each person on whose behalf he or she asserts dissenters' rights. The rights of a shareholder, who asserts dissenters' rights under this subsection as to fewer than all of the shares registered in his or her name, are determined as if the shares as to which he or she dissents and his or her other shares were registered in the names of different shareholders.

(2) RIGHTS OF BENEFICIAL SHAREHOLDERS. A beneficial shareholder may assert dissenters' rights as to shares held on his or her behalf only if the beneficial shareholder does all of the following:

(a) Submits to the bank the shareholder's written consent to the dissent not later than the time that the beneficial shareholder asserts dissenters' rights.

(b) Submits the consent under par. (a) with respect to all shares of which he or she is the beneficial shareholder.

History: 1995 a. 336.

221.0708 Notice of dissenters' rights. (1) ACTION AT SHAREHOLDER MEETING. If proposed corporate action creating dissenters' rights under s. 221.0706 is submitted to a vote at a shareholders' meeting, the meeting notice shall state that shareholders and beneficial shareholders are or may be entitled to assert dissenters' rights under ss. 221.0701 to 221.0718 and shall be accompanied by a copy of those sections.

(2) ACTION WITHOUT SHAREHOLDER VOTE. If corporate action creating dissenters' rights under s. 221.0706 is authorized without a vote of shareholders, the bank shall notify, in writing and in accordance with s. 221.0103, all shareholders entitled to assert dissenters' rights that the action was authorized and send them the dissenters' notice described in s. 221.0710.

History: 1995 a. 336.

221.0709 Notice of intent to demand payment. (1) METHOD OF ASSERTING DISSENTERS' RIGHTS. If proposed corporate action creating dissenters' rights under s. 221.0706 is submitted to a vote at a shareholders' meeting, a shareholder or bene-

ficial shareholder who wishes to assert dissenters' rights shall do all of the following:

(a) Deliver to the issuer bank before the vote is taken written notice that complies with s. 221.0103 of the shareholder's or beneficial shareholder's intent to demand payment for his or her shares if the proposed action is effectuated.

(b) Refrain from voting his or her shares in favor of the proposed action.

(2) FAILURE TO COMPLY. A shareholder or beneficial shareholder who fails to comply with sub. (1) is not entitled to payment for his or her shares under ss. 221.0701 to 221.0718.

History: 1995 a. 336.

221.0710 Dissenters' notice. (1) WHEN REQUIRED. If a proposed corporate action creating dissenters' rights under s. 221.0706 is authorized at a shareholders' meeting, the bank shall deliver a written dissenters' notice to all shareholders and beneficial shareholders who satisfied s. 221.0709 (1).

(2) TIMING AND CONTENT OF NOTICE. The dissenters' notice shall be sent no later than 10 days after the corporate action is authorized at a shareholders' meeting or without a vote of shareholders, whichever is applicable, and all necessary regulatory approvals are obtained. The dissenters' notice shall comply with s. 221.0103 and shall include or have attached all of the following:

(a) A statement indicating where the shareholder or beneficial shareholder must send the payment demand and where and when certificates for certificated shares must be deposited.

(b) For holders of uncertificated shares, an explanation of the extent to which transfer of the shares will be restricted after the payment demand is received.

(c) A form for demanding payment that includes the date of the first announcement to news media or to shareholders of the terms of the proposed corporate action and that requires the shareholder or beneficial shareholder asserting dissenters' rights to certify whether he or she acquired beneficial ownership of the shares before that date.

(d) A date by which the bank must receive the payment demand, which may not be fewer than 30 days nor more than 60 days after the date on which the dissenters' notice is delivered.

(e) A copy of ss. 221.0701 to 221.0718.

History: 1995 a. 336.

221.0711 Duty to demand payment. (1) MANNER OF DEMANDING PAYMENT. A shareholder or beneficial shareholder who is sent a dissenters' notice described in s. 221.0710, or a beneficial shareholder whose shares are held by a nominee who is sent a dissenters' notice described in s. 221.0710, must demand payment in writing and certify whether he or she acquired beneficial ownership of the shares before the date specified in the dissenters' notice under s. 221.0710 (2) (c). A shareholder or beneficial shareholder with certificated shares must also deposit his or her certificates in accordance with the terms of the notice.

(2) EFFECT OF DEMAND ON HOLDERS OF CERTIFICATED SHARES. A shareholder or beneficial shareholder with certificated shares who demands payment and deposits his or her share certificates under sub. (1) retains all other rights of a shareholder or beneficial shareholder until these rights are canceled or modified by the effectuation of the corporate action.

(3) EFFECT OF FAILURE TO DEMAND. A shareholder or beneficial shareholder with certificated or uncertificated shares who does not demand payment by the date set in the dissenters' notice, or a shareholder or beneficial shareholder with certificated shares who does not deposit his or her share certificates where required and by the date set in the dissenters' notice, is not entitled to payment for his or her shares under ss. 221.0701 to 221.0718.

History: 1995 a. 336.

221.0712 Restriction on uncertificated shares. (1) WHEN TRANSFER RESTRICTIONS PERMITTED. The issuer bank may restrict the transfer of uncertificated shares from the date that the demand for payment for those shares is received until the corporate action is effectuated or the restrictions released under s. 221.0714.

(2) EFFECT OF DEMAND ON HOLDERS OF UNCERTIFICATED SHARES. The shareholder or beneficial shareholder who asserts dissenters' rights as to uncertificated shares retains all of the rights of a shareholder or beneficial shareholder, other than those restricted under sub. (1), until these rights are canceled or modified by the effectuation of the corporate action.

History: 1995 a. 336.

221.0713 Payment. (1) WHEN PAYMENT MADE. Except as provided in s. 221.0715, as soon as the corporate action is effectuated or upon receipt of a payment demand, whichever is later, the bank shall pay each shareholder or beneficial shareholder who has complied with s. 221.0711 the amount that the bank estimates to be the fair value of his or her shares, plus accrued interest.

(2) MATERIAL TO ACCOMPANY PAYMENT. The payment shall be accompanied by all of the following:

(a) The bank's latest available financial statements, including a balance sheet as of the end of a fiscal year ending not more than 16 months before the date of payment, an income statement for that year, a statement of changes in shareholders' equity for that year and the latest available interim financial statements, if any.

(b) A statement of the bank's estimate of the fair value of the shares.

(c) An explanation of how the interest was calculated.

(d) A statement of the dissenter's right to demand payment under s. 221.0716 if the dissenter is dissatisfied with the payment.

(e) A copy of ss. 221.0701 to 221.0718.

History: 1995 a. 336.

221.0714 Failure to take action. (1) ACTION NOT TAKEN. If an issuer bank does not effectuate the corporate action within 60 days after the date set under s. 221.0710 for demanding payment, the issuer bank shall return the deposited certificates and release the transfer restrictions imposed on uncertificated shares.

(2) ACTION TAKEN AT A LATER DATE. If, after returning deposited certificates and releasing transfer restrictions, the issuer bank effectuates the corporate action, the bank shall deliver a new dissenters' notice under s. 221.0710 and repeat the payment demand procedure.

History: 1995 a. 336.

221.0715 After−acquired shares. (1) WITHHOLDING FOR AFTER−ACQUIRED SHARES. A bank may elect to withhold payment required by s. 221.0713 from a dissenter unless the dissenter was the beneficial owner of the shares before the date specified in the dissenters' notice under s. 221.0710 (2) (c) as the date of the first announcement to news media or to shareholders of the terms of the proposed corporate action.

(2) PAYMENT. To the extent that the bank elects to withhold payment under sub. (1) after effectuating the corporate action, the bank shall estimate the fair value of the shares, plus accrued interest, and shall pay this amount to each dissenter who agrees to accept it in full satisfaction of his or her demand. The bank shall send with its offer a statement of its estimate of the fair value of the shares, an explanation of how the interest was calculated, and a statement of the dissenter's right to demand payment under s. 221.0716 if the dissenter is dissatisfied with the offer.

History: 1995 a. 336.

221.0716 Procedure if dissenter is dissatisfied with payment or offer. (1) RIGHTS OF DISSENTER. A dissenter may, in the manner provided in sub. (2), notify the bank of the dissenter's estimate of the fair value of his or her shares and the amount of interest due, and demand payment of his or her estimate, less any payment received under s. 221.0713, or reject the offer under s. 221.0715 and demand payment of the fair value of his or her shares and interest due, if any of the following applies:

(a) The dissenter believes that the amount paid under s. 221.0713 or offered under s. 221.0715 is less than the fair value of his or her shares or that the interest due is incorrectly calculated.

(b) The bank fails to make payment under s. 221.0715 within 60 days after the date set under s. 221.0710 for demanding payment.

(c) The issuer bank, having failed to effectuate the corporate action, does not return the deposited certificates or release the transfer restrictions imposed on uncertificated shares within 60 days after the date set under s. 221.0710 for demanding payment.

(2) WAIVER OF RIGHTS. A dissenter waives his or her right to demand payment under this section unless the dissenter notifies the bank of his or her demand under sub. (1) in writing within 30 days after the bank makes or offers payment for his or her shares. The notice shall comply with s. 221.0103.

History: 1995 a. 336.

221.0717 Court action. (1) WHEN SPECIAL PROCEEDING REQUIRED. If a demand for payment under s. 221.0716 remains unsettled, the bank shall bring a special proceeding within 60 days after receiving the payment demand under s. 221.0716 and petition the court to determine the fair value of the shares and accrued interest. If the bank does not bring the special proceeding within the 60−day period, it shall pay each dissenter whose demand remains unsettled the amount demanded.

(2) WHERE PROCEEDING TO BE BROUGHT. The bank shall bring the special proceeding in the circuit court for the county where its principal office or, if none in this state, its registered office is located. If the bank is a foreign bank without a registered office in this state, it shall bring the special proceeding in the county in this state in which was located the registered office of the issuer bank that merged with or whose shares were acquired by the foreign bank.

(3) PARTIES TO THE PROCEEDING. The bank shall make all dissenters, whether or not residents of this state, whose demands remain unsettled parties to the special proceeding. Each party to the special proceeding shall be served with a copy of the petition as provided in s. 801.14.

(4) JURISDICTION. The jurisdiction of the court in which the special proceeding is brought under sub. (2) is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value. An appraiser has the power described in the order appointing him or her or in any amendment to the order. The dissenters are entitled to the same discovery rights as parties in other civil proceedings.

(5) JUDGMENTS. Each dissenter made a party to the special proceeding is entitled to judgment for any of the following:

(a) The amount, if any, by which the court finds the fair value of his or her shares, plus interest, exceeds the amount paid by the bank.

(b) The fair value, plus accrued interest, of his or her shares acquired on or after the date specified in the dissenters' notice under s. 221.0710 (2) (c), for which the bank elected to withhold payment under s. 221.0715.

History: 1995 a. 336; 1999 a. 83.

221.0718 Court costs and counsel fees. (1) ASSESSMENT OF AND LIABILITY FOR COSTS. (a) Notwithstanding ss. 814.01 to 814.04, the court in a special proceeding brought under s. 221.0717 shall determine all costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court and shall assess the costs against the bank, except as provided in par. (b).

(b) Notwithstanding ss. 814.01 and 814.04, the court may assess costs against all or some of the dissenters, in amounts that the court finds to be equitable, to the extent that the court finds the dissenters acted arbitrarily, vexatiously or not in good faith in demanding payment under s. 221.0716.

(2) WHEN LIABLE FOR FEES AND COSTS. The parties shall bear their own expenses of the proceeding, except that, notwithstanding ss. 814.01 to 814.04, the court may also assess the fees and expenses of counsel and experts for the respective parties, in amounts that the court finds to be equitable, as follows:

(a) Against the bank and in favor of any dissenter if the court finds that the bank did not substantially comply with ss. 221.0708 to 221.0716.

(b) Against the bank or against a dissenter, in favor of any other party, if the court finds that the party against whom the fees and expenses are assessed acted arbitrarily, vexatiously or not in good faith with respect to the rights provided by this chapter.

(3) PAYMENT OF COUNSEL AND EXPERTS FROM RECOVERY. Notwithstanding ss. 814.01 to 814.04, if the court finds that the services of counsel and experts for any dissenter were of substantial benefit to other dissenters similarly situated, the court may award to these counsel and experts reasonable fees to be paid out of the amounts awarded the dissenters who were benefited.

History: 1995 a. 336.

SUBCHAPTER VIII

DISSOLUTION AND LIQUIDATION

221.0801 Liquidation. (1) WHEN AUTHORIZED. A bank organized or doing business under this chapter may go into liquidation by a vote of its shareholders owning a majority of the capital stock outstanding or such greater percentage required under the articles of incorporation or bylaws. If a vote is taken to go into liquidation, the board of directors shall give notice of this fact to the division, and the notice shall be certified by an officer of the bank. A liquidating bank may not transfer assets or liabilities to another bank until the transfer is approved by the division.

(2) NOTICE. The board of directors shall also give notice of this fact by certified mail to all persons whose names appear as creditors upon the books of the bank and by publication as a class 3 notice, under ch. 985. The notice shall direct all persons who may have claims against the bank to file the claims.

History: 1995 a. 336.

221.0802 Banks may be placed in hands of division. A bank doing business under this chapter may place its affairs and assets under the control of the division by posting a notice on its front door, as follows: "This bank is in the hands of the Division of Banking of the Department of Financial Institutions". Immediately upon posting such notice, the bank shall notify the division of this action. The posting of the notice, or the taking possession of a bank by the division, places the bank's assets and property in the possession of the division, and bars any attachment proceedings. For each day the division is placed in possession of the bank, and until such time as a special deputy is appointed under s. 220.08 (4), the bank shall pay to the division the actual cost of such liquidation proceedings. The division shall pay the amounts to the state treasurer and the percentage specified in s. 20.144 (1) (g) shall be credited to the appropriation account under s. 20.144 (1) (g).

History: 1995 a. 336; 1997 a. 35.

221.0803 Charter, how forfeited. If the board of directors or a quorum thereof or any committee of the board of any bank knowingly violates or knowingly permits any of the officers, agents or employees of the bank to violate this chapter, the directors are jointly and severally liable for the amount of the loss sustained by the bank. If, after a warning from the division, the directors shall fail to make good any loss or damage resulting from the violations, or continue such conduct, it shall constitute a ground for the forfeiture of the charter of the bank, and the division shall institute proceedings to enforce the forfeiture and to secure a dissolution and a winding up of the affairs of the bank.

History: 1995 a. 336.

SUBCHAPTER IX

INTERSTATE BANKING AND FOREIGN BANKS

221.0901 Acquisitions of banks and bank holding companies. (1) APPLICABILITY. This section applies to acquisitions of an in−state bank or an in−state bank holding company by any company.

(2) DEFINITIONS. In this section:

(a) "Affiliate" has the meaning set forth in 12 USC 1841 (k).

(b) "Bank" has the meaning set forth in 12 USC 1841 (c).

(c) "Bank holding company" has the meaning set forth in 12 USC 1841 (a), and unless the context otherwise requires, includes an in−state bank holding company, an out−of−state bank holding company and a foreign bank holding company.

(d) "Bank supervisory agency" means the U.S. office of the comptroller of the currency, the federal deposit insurance corporation, the board of governors of the federal reserve system, or any successor to these agencies, or any agency of another state with primary responsibility for chartering and supervising banks.

(f) "Company" has the meaning set forth in 12 USC 1841 (b) and includes a bank holding company.

(g) "Control" shall be interpreted consistently with 12 USC 1841 (a).

(h) "Deposit" has the meaning set forth in 12 USC 1813 (1).

(i) "Depository institution" means any insured depository institution under 12 USC 1813 (c) (2) and (3).

(j) "Foreign bank holding company" means a bank holding company that is organized under the laws of a country other than the United States or any territory or possession of the United States.

(jm) "Home state" means, with respect to an out−of−state bank, the state in which the bank is chartered and, with respect to an out−of−state bank holding company, the state in which the total deposits of all banking subsidiaries of the company are the largest.

(k) "In−state bank" means a bank that is organized under this chapter, a trust company bank organized under ch. 223 or a bank organized under federal law and having its principal place of business in this state.

(L) "In−state bank holding company" means a bank holding company that has its principal place of business in this state or a company that has control of a trust company organized under ch. 223 and is not controlled by a bank holding company other than an in−state bank holding company.

(Lm) "Out−of−state bank" means a bank that is not an in−state bank.

(m) "Out−of−state bank holding company" means a bank holding company that is not an in−state bank holding company and, unless the context requires otherwise, includes a foreign bank holding company.

(mm) "Out−of−state banking organization" means an out−of−state bank or out−of−state bank holding company.

(n) "Principal place of business" of a bank holding company means the state in which the total deposits of its bank subsidiaries are the greatest.

(p) "State" means any state, territory or other possession of the United States, including the District of Columbia.

(q) "Subsidiary" has the meaning set forth in 12 USC 1841 (d).

(3) APPROVAL REQUIREMENTS. (a) Except as otherwise expressly permitted by federal law or par. (b), no company may do any of the following without the prior approval of the division:

1. Merge or consolidate with an in−state bank holding company or in−state bank.

2. Assume direct or indirect ownership or control of:

a. More than 25% of any class of voting shares of an in−state bank holding company or an in−state bank, if the acquiring company is not a bank holding company prior to the acquisition.

b. More than 5% of any class of voting shares of an in−state bank holding company or an in−state bank, if the acquiring company is a bank holding company prior to the acquisition.

c. All or substantially all of the assets of an in−state bank holding company or an in−state bank.

3. Take other action that results in the direct or indirect acquisition of control of an in−state bank holding company or an in−state bank.

(b) The approval of the division is not needed under par. (a) in any of the following transactions:

1. A transaction arranged by the division or a bank supervisory agency to prevent the insolvency or closing of the acquired bank.

2. A transaction in which a bank forms its own bank holding company, if the ownership rights of the former bank shareholders are substantially similar to those of the shareholders of the new bank holding company.

(c) 1. In a transaction in which the division's approval is not required under par. (b), the parties shall give written notice to the division at least 15 days before the effective date of the acquisition, unless a shorter period of notice is required under applicable federal law.

2. In a transaction in which the division's approval is not required because the transaction is expressly permitted under federal law, an out−of−state bank that will result from a merger, consolidation or other transaction involving an in−state bank shall give notice to the division of the proposed merger, consolidation or other transaction no later than the date on which it files an application for the proposed merger, consolidation or other transaction with the federal bank supervisory agency. The notification shall include all of the following:

a. A copy of the application submitted to the federal bank supervisory agency.

b. Evidence that the out−of−state bank has complied with any applicable requirements under subch. XV of ch. 180.

c. Any filing fee required by the division.

(4) REQUIRED APPLICATION. A company that requires the division's approval under sub. (3) (a) shall do all of the following:

(a) File with the division an application in the form that the division requires.

(b) Pay to the division an application fee determined by the division.

(c) Reimburse the division for all actual costs incurred by the division in making an investigation related to the application under par. (a) and in holding any hearing on the application.

(d) Cause to be published a class 3 notice, under ch. 985, in the form prescribed by the division, in the official state newspaper, of the application under par. (a) and of the opportunity for a hearing under sub. (5). If the application is to acquire an in−state bank, the notice also shall be published in a newspaper of general circulation in the city, village or town where the home office of the in−state bank is located.

(e) File with the division proof of publication of the notice under par. (d), upon completion of the publication of the notice.

(f) If the applicant is an out−of−state bank holding company, submit to the division with the application, proof that the applicant has complied with, or is exempt from, the requirements of subch. XV of ch. 180.

(5) HEARING. (a) Except as provided in par. (b), the division shall hold a hearing on the application under sub. (4) (a) if at least 25 residents of this state petition for a hearing within 30 days after the notice under sub. (4) (d) or if the division, on its own motion, calls for a hearing within 30 days after the notice under sub. (4) (d). Except as provided in par. (b), the division may not approve any transaction under sub. (3) (a) until the later of 30 days after the notice under sub. (4) (d) or 30 days after any hearing required under this paragraph.

(b) Paragraph (a) does not apply to a proposed transaction if the division finds that an emergency exists and that the proposed transaction is necessary and appropriate to prevent the probable failure of an in−state bank.

(6) STANDARDS FOR DISAPPROVAL. The division may disapprove a transaction under sub. (3) (a) if the division finds any of the following:

(a) Considering the financial and managerial resources and future prospects of the applicant and of the in−state bank or in−state bank holding company, the transaction would be contrary to the best interests of the shareholders or customers of the in−state bank or in−state bank holding company.

(b) The action would be detrimental to the safety and soundness of the applicant or of the in−state bank or in−state bank holding company, or to the safety and soundness of a subsidiary or affiliate of the applicant, the in−state bank or the in−state bank holding company.

(c) Because the applicant or its executive officers, directors or principal shareholders have not established a record of sound performance, efficient management, financial responsibility and integrity, the action would be contrary to the best interests of the depositors, other customers, creditors or shareholders of the applicant or of the in−state bank or in−state bank holding company or contrary to the best interests of the public.

(d) The applicant has received a rating of "needs to improve record of meeting community credit needs" under 12 USC 2906 (b) (2) (C) or "substantial noncompliance in meeting community credit needs" under 12 USC 2906 (b) (2) (D) by the bank supervisory agency.

(f) The applicant has failed to enter into an agreement prepared by the division to comply with the laws and rules of this state regulating consumer credit finance charges and other charges and related disclosure requirements, except to the extent preempted by federal law or regulation.

(g) The applicant fails to meet any other standards established by rule of the division.

(7) STATE CONCENTRATION LIMIT. The division may not approve any transaction under sub. (3) (a) if, upon consummation of the transaction, the applicant would control a greater percentage of the total amount of deposits of insured depository institutions in the state than the percentage specified under 12 USC 1842 (d) (2) (B) (ii).

(8) AGE REQUIREMENT. (a) Except as provided in pars. (b), (c), and (d), the division may not approve an application under sub. (3) (a), other than an application by an in−state bank holding company or in−state bank, unless the in−state bank to be acquired, or all in−state bank subsidiaries of the in−state bank holding company to be acquired, have as of the proposed date of acquisition been in existence and in continuous operation for at least 5 years.

(b) Except as otherwise provided in this paragraph, the division may approve an application under sub. (3) (a) for an acquisition of an in−state bank holding company that owns one or more in−state banks that have been in existence for less than 5 years, if the applicant divests itself of those in−state banks within 2 years after the date of acquisition of the in−state bank holding company by the applicant. This paragraph does not apply if the applicant is an in−state bank holding company or in−state bank.

(c) Paragraphs (a) and (b) do not apply to an in−state bank that is the surviving bank of a merger with an in−state bank that had been in existence and continuous operation for at least 5 years at the time of the merger or would have been in existence and in continuous operation for at least 5 years as of the proposed date of acquisition, if the merger had not taken place.

(d) Paragraph (a) does not apply to the merger or acquisition by an out−of−state banking organization of all or substantially all of the assets of an in−state bank, or of an in−state bank holding company that owns one or more in−state banks, if all of the following apply:

1. The laws of the home state of the out−of−state banking organization allow an in−state bank or in−state bank holding company to acquire an out−of−state banking organization in the home state.

2. The division determines under par. (e) that the laws of the home state of the out−of−state banking organization are reciprocal with respect to mergers and acquisitions.

(e) 1. The division shall periodically publish a list of states that the division has found have laws that are reciprocal for purposes of par. (d) 2. An out−of−state banking organization with a home state for which the division has made no such determination may request, on a form prescribed by the division, that the division make a determination regarding the home state.

2. The division shall make determinations under subd. 1. in writing. The division may not determine that the laws of a state are reciprocal under subd. 1. unless the division finds that the laws of that state allow an in−state bank or in−state bank holding company to merge with or acquire an out−of−state banking organization under terms and conditions that are substantially similar to the terms and conditions under this section. In making such a finding, the division shall consider, at a minimum, whether the laws of that state discriminate in any way against an in−state bank or in−state bank holding company and whether the laws of that state impose regulatory burdens that are substantially more restrictive than the requirements under this section that apply to an out−of−state banking organization seeking to merge or acquire an in−state bank or in−state bank holding company.

(9) REPORTS. Each bank holding company that controls an in−state bank or an in−state bank holding company shall submit to the division reports under s. 221.0526.

(10) PENALTIES. The division may enforce the provisions of this section pursuant to s. 220.04 (9).

History: 1995 a. 336; 1997 a. 146; 2003 a. 293; 2005 a. 217.

Cross−reference: See also chs. DFI−Bkg 3, 4, and 19, Wis. adm. code.

221.0903 In−state branches maintained by out−of−state banks. (1) DEFINITIONS. In this section:

(ag) "Bank" has the meaning given in 12 USC 1841 (c).

(ar) "Bank supervisory agency" means any of the following:

1. An agency of another state with primary responsibility for chartering and supervising banks.

2. The U.S. office of the comptroller of the currency.

3. The Federal Deposit Insurance Corporation.

4. The system of governors of the federal reserve board.

(b) "Home state" means:

1. With respect to a state−chartered bank, the state in which the bank is chartered.

2. With respect to a national bank, the state in which the main office of the bank is located.

3. With respect to a foreign bank, the state determined to be the home state of the foreign bank under 12 USC 3103 (c).

(c) "In−state branch" means a branch under s. 221.0302 located in this state.

(d) "Out−of−state bank" means a bank with a home state other than this state.

(dm) "Out−of−state state bank" means a bank chartered under the laws of any state other than this state.

(e) "State bank" means a bank chartered under this chapter.

(2) NOTICE AND FILING REQUIREMENTS. Each out−of−state state bank that has an in−state branch shall give the division notice of any merger, consolidation or other transaction that would cause a change of control with respect to the out−of−state state bank or a bank holding company of the out−of−state state bank, such that a filing would be required under 12 USC 1817 (j) or 12 USC 1841 to 1850. The notice required under this subsection shall be provided at least 30 days prior to date that the transaction is to become effective, unless the division determines that a transaction is an emergency transaction.

(3) REPORTING REQUIREMENTS. The division may promulgate rules establishing periodic reporting requirements for out−of−state banks maintaining an in−state branch. Any reporting requirements established by rules promulgated under this subsection shall be consistent with all of the following:

(a) Reporting requirements applicable to state banks.

(b) The division's regulatory responsibilities with respect to that out−of−state bank and its in−state branch.

(4) EXAMINATIONS. (a) *Examination power of division.* The division may examine an in−state branch maintained by an out−of−state state bank, if the division considers the examination necessary to determine whether the in−state branch is being operated in compliance with the laws of this state and in accordance with safe and sound banking practices. The provisions of ch. 220, as they apply to examinations of state banks, apply to the examinations of in−state branches of out−of−state banks.

(b) *Contracts for examination services.* The division may enter into contracts with any bank supervisory agency with concurrent jurisdiction over a state bank or an in−state branch of an out−of−state state bank to engage the services of the agency's examiners at a reasonable rate of compensation, or to provide the services of the division's examiners to the agency at a reasonable rate of compensation. Contracts entered into under this paragraph are exempt from ss. 16.70 to 16.752, 16.754 to 16.76, and 16.767 to 16.82.

(5) ENFORCEMENT. If the division determines that an in−state branch of an out−of−state state bank is being operated in violation of the laws of this state or is being operated in an unsafe or unsound manner, the division may take any enforcement action against the in−state branch that it would be able to take if the in−state branch were a state bank.

(6) JOINT EXAMINATION AND ENFORCEMENT ACTIONS. The division may enter into joint examinations and joint enforcement actions with other bank supervisory agencies having concurrent jurisdiction over a state bank with an out−of−state branch, or an in−state branch of an out−of−state state bank. This subsection does not prevent the division from making examinations or taking enforcement actions independently, if the division considers it appropriate to carry out its responsibilities or to ensure compliance with the laws of this state.

(7) ASSESSMENTS. The division may promulgate rules establishing assessments for in−state branches of out−of−state state banks.

History: 1997 a. 146; 2005 a. 217, 410.

221.0904 Out−of−state banks establishing branches. **(1)** DEFINITIONS. In this section:

(ac) "Affiliate" has the meaning given in s. 221.0302 (1g) (a).

(ag) "Commercial activities" has the meaning given in s. 221.0302 (1g) (c).

(am) "Home state" has the meaning given in s. 221.0903 (1) (b).

(b) "Out−of−state bank" means any bank, as defined in 12 USC 1813 (a) (1), with a home state other than this state.

(c) "State bank" has the meaning given in s. 221.0903 (1) (e).

(2) IN GENERAL. No out−of−state bank may establish a branch in this state unless all of the following apply:

(a) The laws of the home state of the out−of−state bank allow the out−of−state bank to establish a branch in this state.

(b) The division determines under sub. (3) (b) that the laws of the home state of the out−of−state bank are reciprocal with respect to a state bank establishing a branch in that state.

(c) The out−of−state bank complies with the notice requirements under sub. (4).

(3) RECIPROCITY. (a) The division shall periodically publish a list of states that the division has found have laws that are reciprocal for purposes of sub. (2) (b). An out−of−state bank with a home state for which the division has made no such determination may request, on a form prescribed by the division, that the division make a determination regarding the home state.

(b) The division shall make determinations under par. (a) in writing. The division may not determine that the laws of a state are reciprocal under par. (a) unless the division finds that the laws of that state allow a state bank to establish a branch in the state under terms and conditions that are substantially similar to the terms and conditions under this section. In making such a finding, the division shall consider, at a minimum, whether the laws of that state discriminate in any way against a state bank and whether the laws of that state impose regulatory burdens that are substantially more restrictive than the requirements under this section that apply to an out−of−state bank seeking to establish a branch in this state.

(4) NOTICE. (a) Except as provided in par. (b), an out−of−state bank may not establish a branch in this state without providing prior notice to the division. The division shall promulgate rules specifying the requirements and procedures for making such notice. The rules shall allow an out−of−state bank to provide notice by submitting to the division a copy of any notice or application regarding the proposed branch that the out−of−state bank submits to the regulatory authority of its home state or the appropriate federal regulatory authority.

(b) If an out−of−state bank establishes a branch in this state pursuant to this section, the out−of−state bank is not required to provide notice for any subsequent branches established in this state.

(4m) LOCATION RESTRICTIONS FOR BRANCHES OF OUT−OF−STATE BANKS. (a) *General.* Except as provided in par. (c), no out−of−state bank may directly or indirectly establish or maintain in this state a branch that is located within a 1.5−mile radius of premises or property owned, leased, or otherwise controlled, directly or indirectly, by an affiliate of the out−of−state bank that engages in commercial activities. No out−of−state bank may circumvent the prohibition in this paragraph by first establishing a branch and then locating, or attempting to influence or facilitate the location of, an office of the out−of−state bank's affiliate engaged in commercial activities within a 1.5−mile radius of the branch location.

(b) *Certification of compliance.* Each out−of−state bank that establishes or maintains a branch in this state shall certify to the division that the location of any such branch complies with par. (a).

(c) *Exemptions.* This subsection does not apply to any branch of an out−of−state bank that was approved by the division on or before April 2, 2008.

(5) ADDITIONAL BRANCHING AUTHORITY. An out−of−state bank that establishes a branch in this state pursuant to this section may establish additional branches in this state to the same extent as a state bank.

History: 2005 a. 217; 2007 a. 112.

SUBCHAPTER X

RECORDS, REPORTS AND LEGAL PROCESS

221.1001 Stock book. Every bank shall keep a stock book. The stock book shall be subject to the inspection of officers, directors and shareholders of the bank during the usual hours for transacting business. The stock book shall show the name, residence and number of shares held by each shareholder. A refusal by the officers of such bank to exhibit the stock book to any person rightfully demanding inspection of the book, may be required to forfeit not more than $50. In all actions, suits and proceedings, the stock book is presumptive evidence of the facts contained in the book.

History: 1995 a. 336.

221.1002 Reports. **(1)** REPORTING REQUIREMENTS. A bank shall make to the division not less than 2 reports during each calendar year. The reports shall be made at the times required by the division on forms prescribed and furnished by the division. The

forms shall conform as nearly as practicable to that required of national banks, including any schedules.

(2) ATTESTATION. The reports under sub. (1) shall be signed and verified by the oath or affirmation of one of the officers of the bank, and shall be attested by at least 2 of the directors. If by reason of absence or other inability it is impracticable to obtain the signature of 2 directors, the report shall specify the reason why it is impracticable and the attestation by the director so absent or under disability is not required.

(3) RESOURCES AND LIABILITIES. The report under sub. (1) shall exhibit in detail and under the proper headings, the resources and liabilities of the bank at the close of the business of any past day specified by the division. The bank shall transmit the report to the division within 30 days after the receipt of request for the report from the division.

(4) LIST OF SHAREHOLDERS. When requested by the division, any bank shall report to the division a list of its shareholders, their residences, and the amount of stock held by each. The shareholder list shall be signed and verified by the oath or affirmation of one of the officers of the bank.

(5) SPECIAL REPORTS. The division may require special reports from a bank, if the division determines that the reports are necessary to inform the division fully of the bank's condition.

History: 1995 a. 336.

221.1003 Forfeiture. A bank failing to make and transmit to the division a report or proof of publication required under this chapter may be required to forfeit to the division not more than $100 for each day after the report or proof of publication was required. If a bank fails or refuses to pay the forfeiture under this section, the division may institute proceedings for the recovery of the forfeiture.

History: 1995 a. 336.

221.1004 False statements. (1) PROHIBITION. An officer, director or employee of a bank may not do any of the following:

(a) Willfully and knowingly subscribe to or make, or cause to be made, any false statement or false entry in the books of the bank.

(b) Knowingly subscribe to or exhibit false papers with the intent to deceive any person authorized to examine the affairs of the bank.

(c) Knowingly make, state, or publish any false report or statement of the bank.

(2) PENALTIES. Any person who violates sub. (1) is guilty of a Class F felony.

History: 1995 a. 336; 1997 a. 283; 2001 a. 109.

221.1005 Refusal to permit inspection. If an officer in charge of a bank refuses to submit the books, papers and concerns of the bank to the inspection of the division, or refuses to be examined under oath touching the concerns of the bank, the division may inform the attorney general. The department of justice shall then institute an action to procure a judgment dissolving the bank. In order to carry out this section, the division may commence and maintain in the division's name any action necessary or proper to enforce this section.

History: 1995 a. 336.

221.1006 Fees for certified copies. If a certified copy of a record filed in the division is lawfully required to be furnished by the division, the division may assess a reasonable fee as determined by the banking review board. These fees shall be deposited in the general fund.

History: 1995 a. 336.

221.1007 Legal process; how served. Legal process against a bank may be served upon the bank in the manner provided by law for service on other corporations organized under the laws of this state.

History: 1995 a. 336.

221.1008 Record search. A bank is entitled to reimbursement for expenses and costs incurred in searching for, reproducing and transporting books, papers, records and other data required to be produced by legal process, unless otherwise prohibited by law from collecting these expenses and costs or unless the person seeking the production is a government unit, as defined in s. 108.02 (17). The expenses and costs shall be paid by persons seeking such production. If a bank is entitled to reimbursement under this section, a bank may not be required to produce books, papers, records and other data in response to legal process unless the expenses and costs, identified in an itemized invoice to be provided by the bank, are paid or unless payment is tendered to the bank in cash or by certified check or draft.

History: 1995 a. 336.

SUBCHAPTER XI

BANK SERVICE CORPORATIONS

221.1101 Bank service corporations. (1) DEFINITIONS. In this subchapter:

(a) "Bank service corporation" means a corporation organized to perform bank services for 2 or more banks, each of which owns part of the capital stock of the corporation.

(b) "Bank services" means check and deposit sorting and posting, computation and posting of interest and other credits and charges, preparation and mailing of checks, statements, notices and similar items, other clerical, bookkeeping, accounting, statistical, auditing, compliance, loan documentation, administrative, technology, or other similar functions performed for a bank, or any other service established under sub. (6).

(c) "Invest" includes any advance of funds to a bank service corporation, whether by purchase of stock, the making of a loan, or otherwise, except a payment for rent earned, goods sold and delivered, or services rendered prior to the making of the payment.

(2) INVESTMENTS IN BANK SERVICE CORPORATIONS. (a) Two or more banks may invest not more than 10% of the capital of each of the banks in a bank service corporation.

(b) If stock in a bank service corporation is held by 2 banks, and one of the banks ceases to utilize the services of the corporation and ceases to hold stock in it, and leaves the other as the sole stock holding bank, the corporation may nevertheless continue to function as a bank service corporation and the other bank may continue to hold stock in it.

(4) PERMITTED ACTIVITIES OF BANK SERVICE CORPORATIONS. A bank service corporation may not engage in any activity other than the performance of bank services for banks.

(5) CONTRACTING FOR BANK SERVICES. A bank may cause to be performed, by contract or otherwise, any bank service for itself, whether on or off its premises, if the bank and the party performing the service provide the division with assurances, satisfactory to the division, that the performance of the service will be subject to regulation and examination by the division to the same extent as if the service was being performed by the bank itself on its own premises.

(6) ADDITIONAL BANK SERVICES. (a) The division may establish additional services as bank services under sub. (1) (b) if the services are related to the routine daily operations of banks.

(b) A bank may file a written request with the division to exercise its authority under par. (a) and may include, along with the request, a description of any proposed bank service and an explanation of how that service is related to the routine daily operations of banks. Within 60 days after receiving a request

under this paragraph, the division shall approve or disapprove the request.

History: 1995 a. 336; 2013 a. 22.

SUBCHAPTER XII

BANK−OWNED BANKS

221.1201 Stock in bank−owned banks. A bank, or, subject to the limitations of s. 221.0901, a bank holding company, may, with the approval of the division, acquire and hold stock, in an aggregate amount not exceeding 10% of its capital, in one or more of the following:

(1) A bank chartered under s. 221.1202.

(2) A national bank chartered under 12 USC 27 (b).

(3) A bank holding company wholly owning a bank described under sub. (1) or (2).

History: 1995 a. 336.

221.1202 Bank−owned banks. (1) ESTABLISHMENT AND OWNERSHIP. The division may authorize the establishment of, and issue a charter to, a bank, all of the stock of which is owned by 2 or more depository institutions or depository institution holding companies. Notwithstanding any other requirement of this section, the division may authorize, by rule, up to 10% of the stock to be held by other persons to accommodate operational needs of the bank.

(2) STATUS AND POWERS. A bank established under sub. (1) is a state bank chartered under this chapter for all purposes, except that its functions are limited solely to doing the following:

(a) Providing banking and banking−related services to or for depository institutions, subsidiaries of depository institutions, depository institution holding companies, subsidiaries of depository institution holding companies and directors, officers and employees of other depository institutions.

(b) Providing correspondent banking services at the request of other depository institutions or depository institution holding companies, and to depository institution trade associations.

(3) STOCK ISSUANCE. A bank established under sub. (1) may authorize and hold authorized but not issued stock.

History: 1995 a. 336.

Cross−reference: See also s. DFI−Bkg 3.01 and 3.02, Wis. adm. code.