

SUGGESTED CHANGES IN S. 1715

(SUGGESTED BY RECONSTRUCTION FINANCE CORPORATION)

Suggestion No. 1.

Insert after the word "corporation" on page 8, line 3, the following words:

"and to the Reconstruction Finance Corporation, if it owns or holds as pledgee any preferred stock, capital notes, or debentures of such bank,"

This suggestion is for the purpose of providing notice to Reconstruction Finance Corporation of the intention of a bank to withdraw from membership in the insurance fund provided by the Federal Deposit Insurance Corporation.

Suggestion No. 2.

Insert after the word "Corporation" on page 13, line 14, the following words:

"and to the Reconstruction Finance Corporation, if it owns or holds as pledgee any preferred stock, capital notes, or debentures of such bank,"

This suggestion is for the same purpose as suggestion No. 1.

Suggestion No. 3.

Strike the word "and" appearing on page 13, line 25, and the word "also" appearing on page 14, line 1, and insert after the comma and before the words "a statement" on page 14, line 2, the words "and, in all cases, to the Reconstruction Finance Corporation if it owns or holds as pledgee any preferred stock, capital notes, or debentures of any such bank,"

This suggestion is for the purpose of providing notice by Federal Deposit Insurance Corporation to Reconstruction Finance Corporation before terminating the insured status of the bank on account of improper practices.

Suggestion No. 4.

Insert after the word "stock" on page 36, line 2, the following words:

"or interest on its capital notes or debentures (if such interest is required to be paid only out of net profits),"

This suggestion relates to the section of the bill which prohibits a bank from paying dividends on its capital stock while it remains in default in the payment of any assessment due Federal Deposit Insurance Corporation. The suggested amendment also prohibits the payment of interest on capital notes or debentures during such default if interest is payable only out of net profits.

Suggestion No. 5.

Amend Section 22 (4) of the Bill by striking lines 15, 16, 17 and 18 on page 36 and inserting in lieu thereof the following:

"and no insured State nonmember bank (except a district bank) shall without such consent

(a) reduce the amount of its capital stock,

- (b) purchase or otherwise acquire, or make loans secured in whole or in part by, any of its capital stock, capital notes or debentures,
- (c) voluntarily retire any of its preferred stock of any class,
- (d) voluntarily retire, redeem or pay any of its capital notes or debentures;

provided, however, that no such consent shall be required for the payment of any such capital notes or debentures at maturity (whether or not the maturity date thereof shall have been accelerated pursuant to the provisions thereof) or the retirement or redemption of any such preferred stock, capital notes or debentures from any sinking fund provided therefor by the charter of the bank or by such capital notes or debentures."

This suggestion permits a bank, without the consent of Federal Deposit Insurance Corporation, to pay its capital notes or debentures at maturity and to retire preferred stock, capital notes or debentures out of a sinking fund required to be set up pursuant to the express provisions of the charter of the bank or of the capital notes or debentures. It prohibits the bank from making a loan on its own capital stock of any class or on its own capital notes or debentures without consent of the Federal Deposit Insurance Corporation.

Suggestion No. 6.

Add to said Bill the following new section:

no.
"Section _____. If any part of the capital of a national bank, state member bank or bank applying for membership in the Federal Reserve System consists of preferred stock, the determination of whether or not the capital of such bank is impaired and the amount of such impairment shall be based upon the par value of its stock even though the amount which the holders of such preferred stock shall be entitled to receive in the event of retirement or liquidation shall be in excess of the par value of such preferred stock."

Suggestion No. 7.

Add to said Bill the following new section:

"Section _____. Section 302 of the Emergency Banking and Bank Conservation Act, approved March 9, 1933, as amended, is amended to read as follows:

- (a) Notwithstanding any other provision of law, whether relating to restriction upon the payment of dividends upon capital stock or otherwise, the holders of such preferred stock shall be entitled to receive such cumulative dividends at a rate not exceeding 6 per centum per annum of the sum received by the bank in payment for such preferred stock and shall have such voting and conversion rights and such control of management, and such stock shall be subject to retirement at such price, in such manner and upon such conditions, as may be provided in the articles of association with the approval of the Comptroller of the Currency. The holders of such preferred stock shall not be held individually responsible as such holders

for any debts, contracts, or engagements of such association, and neither such preferred stock nor the holders thereof shall (not) be liable for assessments to restore impairments in the capital of such association as now provided by law with reference to holders of common stock.

- (b) No dividends shall be declared or paid on common stock until the cumulative dividends on the preferred stock shall have been paid in full; and, if the association is placed in voluntary liquidation or a conservator or a receiver is appointed therefor, no payments shall be made to the holders of common stock until the holders of the preferred stock shall have been paid in full (the par value of such stock) the amount originally received by the bank in payment for such preferred stock plus all accumulated dividends or such lesser amount as may be provided in the articles of association of the bank." (Existing law proposed to be omitted is enclosed in parenthesis; new matter is underscored.)

Suggestions 6 and 7 are directed to the same end. A number of banks which have issued preferred stock have impairments in their capital, or their capital would be impaired if all proper charge-offs or write-downs of assets should be made. In many instances, an effort to restore the impairments by levying assessments against the common shareholders would be a useless gesture and the impairments cannot be fully taken care of by a reduction in the common capital stock alone. If the maximum amount which a preferred stockholder can receive upon retirement or in the event of liquidation is limited to the par value of his stock and the maximum amount of dividends which he is entitled to receive is limited to 6 per cent of the par value, he would naturally be unwilling to consent to a reduction in the par value of his stock as he would thereby give up all prospect of eventually recovering the full amount of his investment even though the bank might later be restored to a prosperous condition, and would also be forced to receive dividends at an unreasonably low rate in view of the amount of his original investment. If the par value of the preferred stock, rather than the retirement or liquidation value is used as the basis for determining impairments, impairments can be taken care of by reducing the par value of the preferred stock without irreparable injury to the preferred stock holder.

Suggestion No. 8.

Add to said Bill the following new section:

"Section _____. Section 5143 of the Revised Statutes, as amended, is amended by striking out the period at the end thereof and inserting a comma and the following:

"and no shareholder shall be entitled to any distribution of assets by reason of any reduction of the capital of any association unless such distribution shall have been approved by the Comptroller of the Currency and the Federal Reserve Board, and by the affirmative vote of not less than two-thirds of the shares of each class of stock outstanding, voting as 'classes'."

Under certain court decisions (see Seeley v. New York National Exchange Bank, 8 Daly (N.Y.) 400; and Jerome v. Cogswell,

*unredundant in
House Bill already
takes away P.R.B.
approval of reductions*

204 U. S. 1) the shareholders are, under certain circumstances, entitled to a pro rata distribution of assets released by reason of a reduction of capital stock. Suggestion No. 8 is designed to prevent a distribution of assets released by any such reduction without the approval of the Comptroller of the Currency and the Federal Reserve Board and the affirmative vote of not less than two-thirds of the shares of each class of stock outstanding, voting as classes.

Suggestion No. 9.

Add to said Bill the following new section:

"Section _____. Section 5139 of the Revised Statutes, as amended, is amended by adding to the end of the first paragraph the following new paragraph:

"The certificates hereafter issued representing shares of stock of the association shall state (1) the name and location of the association; (2) the name of the holder of record of the stock represented thereby; (3) the number and class of shares which the certificates represent; and (4) if the association shall issue stock of more than one class the respective rights, preferences, privileges, voting rights, powers, restrictions, limitations and qualifications of each class of stock issued shall be stated in full or in summary upon the front or back of the certificate or shall be incorporated by a reference on the front of the certificate to the articles of association. Every certificate shall be signed by the president and the cashier of the association or by such other officers as the by-laws of the association shall provide and shall be sealed with the seal of the association."

The purpose of this suggestion is merely to make more explicit the requirements with respect to certificates representing capital stock of national banking associations.

Suggestion No. 10.

Add to said Bill the following new section:

"Section _____. Section 5144 of the Revised Statutes, as amended, is amended by adding at the end of the first paragraph thereof the following:

"Provided, that nothing in this paragraph shall be construed to limit the voting rights of holders of preferred stock under the terms and provisions of the articles of association or amendments thereto adopted pursuant to the provisions of Section 302 (a) of the Emergency Banking and Bank Conservation Act, approved March 9, 1933, as amended."

Section 302 (a) of the Emergency Banking and Bank Conservation Act, as amended June 15, 1933, provides that the holders of preferred stock shall have such voting rights and such control over management as may be provided in the articles of association with the approval of the Comptroller of the Currency. Section 5144 of the Revised Statutes, as amended by the Act approved June 16, 1933, provides that in all elections of directors, each shareholder shall have the right to vote the number of shares owned by him for as many persons as there are directors to be elected, or to cumulate such shares and give one candidate as many votes as the number of directors multiplied by the number of his shares shall equal, or to

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In House bill
see Sec. 310(a)

distribute them on the same principle among as many candidates as he shall think fit. The purpose of suggestion No. 10 is to clear up any ambiguity between the two provisions above mentioned and make it clear that Section 5144, as amended, does not limit preferred stockholders to one vote per share in the election of directors if the articles of association of the bank otherwise provide.

Suggestion No. 11.

Insert after the word "loans" on page 49, line 8, a comma, and the words "either directly or in cooperation with other banks or lending institutions, or by the purchase of shares or participations,"; insert a period after the words "real estate" on page 49, line 13, and strike out the words "when the entire amount of such obligation or obligations is made or is sold to such association.", on page 49, lines 13, 14 and 15.

Under existing law national banks may make loans secured by real estate only in cases where the entire loan is made by the bank. Suggestion No. 11 would permit a national bank to participate with others in the making of real estate loans.

Suggestion No. 12.

Amend Section 301 by inserting after the word "include" on page 51, line 14, the words:

"any corporation, all of the stock of which is owned by the United States of America or",

The purpose of this suggestion is to make it clear that the Reconstruction Finance Corporation is not a holding company affiliate of any of the banks in which it owns preferred stock.

Suggestion No. 13.

Amend section 307 of the Bill as follows:

- (1) By inserting after the word "provided" on page 54, line 23, the following:

"That the association may subscribe for or purchase and hold for its own account, in an amount not exceeding 5 per centum of the capital stock of such association actually paid in and unimpaired, plus 5 per centum of its unimpaired surplus fund, the non-assessable capital stock, or capital notes, or debentures of any national mortgage association organized under Title III of the National Housing Act, and of any mortgage loan company, trust company, or other similar financial institution, the principal business of which is that of making loans upon mortgages, deeds of trust or other instruments conveying, or constituting a lien upon, real estate or any interest therein, if, at the time of such subscription or purchase, the United States of America or any Corporation all of whose stock is owned by the United States of America, has subscribed for, or is the holder of, at least 50% of the total aggregate par value or principal amount of the capital stock, capital notes, or debentures of such national mortgage association or such institution, and provided further,"

- (2) By striking out the word "hereinafter" on page 55, line 9, and inserting in lieu thereof the word "herein".

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This suggestion is designed to permit a national bank to invest in stock of a national mortgage corporation organized under the National Housing Act, or the non-assessable stock, capital notes or debentures of a corporation engaged in the mortgage loan business, of the type which the Reconstruction Finance Corporation is authorized to invest in under the provisions of Section 5 of "AN ACT to extend the functions of the Reconstruction Finance Corporation for two years, and for other purposes" approved January 31, 1935 (Public No. 1 - 74th Congress) (S-1175), provided that the total amount so invested does not exceed 5 per cent of the unimpaired capital and surplus of the bank.

3-18
Suggestion No. 14.

Strike out the quotation marks on page 60, line 2, and add thereto the following:

*Fractional
✓ shares of
stock, in
stock dividends.*

"In case of a declaration of a stock dividend, return of capital or other distribution of assets or any interest therein, to the holders of common stock, any resulting fractional shares of stock, and any such assets or interest therein, other than cash, may be placed in trust for the benefit of the holders of common stock upon such terms and conditions as may be determined by the Board of Directors with the approval of the Comptroller, and the bank may act as trustee under the terms of any such trust."

This suggestion is merely designed to minimize the inconvenience resulting from the issuance of fractional shares of stock in connection with a dividend payable in common stock.

Suggestion No. 15.

Add to said Bill the following new sections:

"Section _____. The last sentence of Section 301 of the Emergency Banking and Bank Conservation Act, as amended, is amended to read as follows:

In house bill

'No issue of preferred stock shall be valid until the par value of all stock so issued shall be paid in (.) and notice thereof duly acknowledged before a notary public by the president, vice-president or cashier of the association has been transmitted to the Comptroller of the Currency and his certificate obtained specifying the amount of such issue of preferred stock and his approval thereof and that the amount has been duly paid in as a part of the capital of said association; which certificate shall be deemed to be conclusive evidence that such preferred stock has been duly and validly issued.'"

(Existing law proposed to be omitted is enclosed in parenthesis; new matter is underscored).

The purpose of this suggestion is to make the certificate of the Comptroller of the Currency approving the issuance of preferred stock conclusive evidence that the stock has been duly and validly issued.

Suggestion No. 16.

Add to said Bill the following new section:

"Section _____. Paragraph (c) of Section 5155 of the Revised Statutes as amended, is amended by striking the first sentence therefrom and inserting in lieu thereof the following:

'A national banking association may, with the approval of the Comptroller of the Currency, establish and operate new branches: (1) Within the limits of the city, town, or village in which said association is situated, if such establishment and operation are at the time expressly authorized to State banks by the law of the State in question; and (2) at any point within the State in which said association is situated, if such establishment and operation are at the time authorized to State banks by the statute law of the State in question by language specifically granting such authority affirmatively and not merely by implication or recognition, and subject to the restrictions as to location imposed by the law of the State on State banks (.); and (3) at any point within the State in which said association is situated, irrespective of whether or not such establishment and operation are authorized to State banks by the statute law of such State, in cases where such branches are established for the purpose of acquiring by merger, consolidation, sale or otherwise, the business and property of one or more State banks or trust companies or national banking associations (whether in liquidation or doing business either in the usual course or on a restricted basis)."

(Existing law proposed to be omitted is enclosed in parenthesis; new matter is underscored.)

The purpose of this suggestion is to permit national banks to establish branches, with the approval of the Comptroller, at any point within the State in which the Bank is located where such branches are established for the purpose of acquiring the business and property of existing banks.

the business and property of which are acquired by merger, consolidation, purchase or otherwise

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